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STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT  
No. GWB 13-05

IN THE MATTER OF THE APPLICATION  
OF VALLEY MEAT COMPANY FOR RENEWAL  
OF GROUND WATER DISCHARGE PERMIT DP-236,  
ROSWELL, NEW MEXICO.

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 22nd day of October,  
2013, this matter came on for hearing before FELICIA  
ORTH, Hearing Officer, at the Chaves County Courthouse,  
400 N. Virginia, Roswell, New Mexico, at the hour of  
9:00 AM.

Volume 1

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A P P E A R A N C E S

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14  
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A P P E A R A N C E S (CONTINUED)

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1	I N D E X	
2	RICARDO DE LOS SANTOS, CHET WYANT, LONEY ASHCRAFT	
3	AND LEONARD BLACH, DVM	
4	Direct Examination by Mr. Dunn	23
5	Cross Examination by Mr. Powers	64
6	Cross Examination by Mr. Holland	87
7	RICARDO DE LOS SANTOS	
8	Cross Examination by Mr. Wagman	94
9	LONEY ASHCRAFT	
10	Cross Examination by Mr. Wagman	119
11	CHET WYANT	
12	Cross Examination by Mr. Wagman	130
13	LEONARD BLACH, DVM	
14	Cross Examination by Mr. Wagman	136
15	Redirect Examination of Panel by Mr. Dunn	167
16	KIMBERLY KIRBY	
17	Direct Examination by Mr. Powers	173
18	Cross Examination by Mr. Wagman	180
19	JERRY SCHOEPPNER	
20	Direct Examination by Mr. Powers	176
21	Cross Examination by Mr. Wagman	183
22	JOHN HOLLAND	
23	Direct Testimony	187
24	Cross Examination by Mr. Dunn	202
25		

## I N D E X (CONTINUED)

1		
2	WILLIAM C. OLSON	
3	Direct Examination by Mr. Biernoff	211
4	Cross Examination by Mr. Dunn	255
5	Cross Examination by Mr. Powers	285
6	Further Cross Examination by Mr. Dunn	323
7	Public Comment	
8	JO MC INERY	332
9	CAROLYN SCHNURR	335
10	PATIENCE O'DOWD	339
11	LISA TEAL	344
12	BEVERLY HUGHES	346
13	KYLE D. "SMILEY" WOOTEN	349
14	PHIL CARTER	351
15	SUSAN CARTER	353
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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1	E X H I B I T S	ADMITTED
2	VALLEY EXHIBIT:	
3	A. Summary of Technical Testimony of Rick	
4	De Los Santos	63
5	B. Summary of Technical Testimony of Chet	
6	Wyant	63
7	C. Summary of Technical Testimony of Loney	
8	Ashcraft with Supporting Subexhibits	63
9	D. Summary of Technical Testimony of Leonard	
10	Blach, DVM	63
11	E. Draft Discharge Permit for Renewal, DP-236	63
12	F. Valley Comments on Draft Discharge Permit	
13	Renewal, DP-236	63
14		
15	BUREAU EXHIBIT:	
16	1. Notice of Hearing and Proof of	
17	Publication	179
18	2. Jerry Schoeppner Resume	179
19	3. Direct Testimony of Jerry Schoeppner	177
20	4. 4/12/13 USDA/FSIS Letter	179
21	5. SWB Compliance Order	179
22	6. SWB Stipulated Final Order	179
23	7. Kimberly Kirby Resume	179
24	8. Direct Testimony of Kimberly Kirby	175
25		

1	E X H I B I T S (CONTINUED)	
2	9. Revised Draft Discharge Permit with	
3	Attached MW Construction Conditions	179
4	10. Summary of Monitoring Well Groundwater	
5	Analytical Data	179
6	11. Groundwater Flow Direction Documentation	179
7	12. Summary of Wastewater Analytical Data	179
8	13. Lagoon Capacity Worksheets	179
9	14. Jennifer Pruett Resume	179
10		
11	AGO AND FRER EXHIBIT:	
12	1. William C. Olson Resume	254
13	2. Driller's Logs for MW 1 and 2,	
14	NMED AR 236C-95	254
15	3. Driller's Logs for MW 3 and 4,	
16	NMED AR 236C-107	254
17	4. Note to File, NMED AR 236C-83	254
18	5. Valley Meat's Table of Recent	
19	Monitoring Results, NMED AR 236C-110	254
20	6. 1/22/10 USDA FSIS Letter to New Mexico	
21	Health Department	254
22	7. Banned and Dangerous Substances Commonly	
23	Given to Horses Sent to Slaughter	254
24	8. Hilary Wood Declaration	254
25		

	E X H I B I T S (CONTINUED)	
1		
2	9. Peggy Larson Declaration	254
3	10. Joanne Pavlis Declaration	254
4	11. Randy Parker Declaration	254
5	12. Michael Grover Declaration	254
6	14. Holly Colella Declaration	254
7	15. Shirley Hoffman Declaration	254
8	16. Gail Vacca Declaration	254
9	17. Cynthia Newberry Declaration	254
10	18. Michelle Conner Declaration	254
11	19. Ronald T. Fitch Declaration	254
12	20. Dick Murphy Declaration	254
13	21. Terry L. Miner Declaration	254
14	22. "Environmental Fate of Pharmaceuticals in	
15	Animal Wastes"	254
16	23. "Selected Veterinary Pharmaceuticals	
17	in Agricultural Water and Soil from	
18	Land Application of Animal Manure	254
19	24. "Activated Sludge Systems Removal	
20	Efficiency of Veterinary Pharmaceuticals	
21	from Slaughterhouse Wastewater"	254
22	25. USGS Fact Sheet FS-027-02	254
23	26. 5/26/82 Notice of Intent to Discharge	254
24	27. 8/29/03 Valley Meat Discharge Permit	
25	Renewal Application	254

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

	E X H I B I T S (CONTINUED)	
1		
2	28. 5/15/13 Kirby E-mail to Powers and	
3	Attached Spreadsheets	254
4	29. Affidavit of Ricardo De Los Santos	254
5	30. Excerpted Tables from "Integrated	
6	Pollution Prevention and Control:	
7	Reference Document on Best Available	
8	Techniques in the Slaughterhouses and	
9	Animal By-products Industries," 5/05	254
10	31. 9/3/87 NMED Compliance Letter to	
11	Valley Meat	254
12	32. 1/8/92 NMED Notice of Noncompliance Letter	
13	to Valley Meat	254
14	33. 8/24/95 NMED Phone Log of Enforcement	
15	Calls to Valley Meat	254
16	34. 3/19/03 NMED Letter of Noncompliance to	
17	Valley Meat	254
18	35. 5/7/10 NMED Notice of Violation to	
19	Valley Meat	254
20	36. 1/23/09 FSIS Notice of Suspension	254
21	37. 7/23/10 FSIS Notice of Suspension	254
22	38. 2/24/12 FSIS Notice of Suspension	254
23	39. 8/2/12 Administrative Compliance Order	
24	Issued to Valley Meat by NMED	254
25		

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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1  
2  
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11  
12  
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14  
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17  
18  
19  
20  
21  
22  
23  
24  
25

E X H I B I T S (CONTINUED)

40. Sarah McGrath Written Testimony in  
WQCC 09-13(R) 254

41. Testimony of Adrian Brown in WQCC  
12-01(R) 254

42. 20.6.7.17 NMAC 254

43. 6/2/82 Notice of Intent to Discharge Form 254

44. Revisions to 20.6.7.23 NMAC, Adopted by the  
WQCC on 9/10/13 254

45. Valley Meat's Response to Plaintiffs' Motion  
to Modify the TRO and Objection to  
Magistrate's Order Requiring Injunction  
Bond 254

1 MS. ORTH: Good morning.

2 My name is Felicia Orth. I'm the Hearing  
3 Officer for the New Mexico Environment Department.

4 We're here today, and potentially tomorrow, in  
5 the Matter of the Application of Valley Meat Company for  
6 a Groundwater Discharge Permit. This would be a renewal  
7 of Discharge Permit -- or DP -- 236, docketed by the  
8 Hearing Clerk as GWB -- GWB stands for Groundwater  
9 Bureau -- 13-05.

10 The hearing will be conducted pursuant to two  
11 sets of regulations in the New Mexico Administrative  
12 Code, 20.6.2 and 20.1.4.

13 The rules call for an evidentiary hearing, and  
14 the broad outline of that hearing are these: The  
15 applicant, which has the burden of proof, goes first  
16 with their technical witnesses and other witnesses. The  
17 Department, which reviewed the permit application, goes  
18 next, again with their technical witnesses and other  
19 witnesses. Then the Attorney General's Office, the  
20 Front Range Equine Rescue group, six other individual  
21 parties, and Mr. Holland will go in any order they have  
22 decided to go.

23 Direct examination is offered first. All  
24 testimony is subject to questioning. Rebuttal may be  
25 offered along the way by the parties or after the end of

1 the entire direct case may be offered by the parties.

2 After the technical case is concluded, I will  
3 invite public comment. The public comment will be  
4 invited in the order in which you signed in.

5 If you haven't yet signed in, please do so.  
6 The sign-in sheets are used as evidence of public  
7 participation and for the correct spelling of your name.

8 If, by some chance, we finish the technical  
9 case before 5:00 tonight, I will invite public comment,  
10 if there is any to be given before then. Regardless of  
11 whether we finish the technical case by 5:00, I will  
12 invite public comment at that time.

13 After inviting public comment, I will talk  
14 with the technical parties in the case about whether  
15 they desire to continue the technical case after public  
16 comment or to pick it up again in the morning. If we  
17 could finish tonight, we may do that.

18 All testimony will be taken either from that  
19 podium or this witness table. Again, all of it is  
20 subject to questioning.

21 The transcript of this proceeding is being  
22 made by Kathy Townsend of Kathy Townsend Court  
23 Reporters. If you would like to obtain a copy of the  
24 transcript, please make contact with Ms. Townsend  
25 directly and make payment arrangements.

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1           The transcript also eventually becomes a  
2 public record viewable in the office of the Hearing  
3 Clerk.

4           Sally Worthington is the Hearing Clerk.  
5 Sally, please wave your hand. We've mentioned Sally  
6 quite a bit. Sally is the one with the sign-in sheets.  
7 Sally will also be able to answer your questions while  
8 we're in hearing, and after we leave today, if you have  
9 a question about where we are in the posthearing  
10 process, please call Sally. She's brought a lot of  
11 business cards.

12           We'll take breaks every 90 minutes to  
13 two hours. We will take a break for lunch. We may or  
14 may not take a break for dinner.

15           Again, no decision is made today. This is the  
16 time when we're taking the evidentiary hearing. We have  
17 a lengthy posthearing process. That posthearing process  
18 lasts approximately four months. I expect Secretary  
19 Flynn to be making his decision sometime in February.

20           The administrative record maintained by the  
21 Groundwater Bureau is here in two volumes, and certainly  
22 when we're on a break, you are free to look at it.

23           I also have the Hearing Clerk's pleading file,  
24 and on a break, you're certainly welcome to look at this  
25 as well, and the Bureau has maintained the record on a

1 web page. It's also viewable there.

2 I understand that this case and the general  
3 topic has generated strong feelings in a number of  
4 people on all sides of the issue and that those feelings  
5 have taken a number of forms of expression, but today  
6 what we're doing is making an evidentiary record, and  
7 it's my job to assure that that record is made in an  
8 orderly fashion.

9 So outbursts, demonstrations and displays in  
10 this courtroom are not appropriate and will not be  
11 indulged. You will be removed, and we will have to  
12 continue without you.

13 Comments that are not made from that podium or  
14 this witness table will not be reflected on the  
15 transcript. So if you have comments for the record,  
16 please participate as the rules require, come up when I  
17 call your name or otherwise invite you up expressly.

18 If you would prefer, you may submit your  
19 comments in writing. You can give those comments in  
20 writing to Sally at any time today, tonight, and  
21 potentially tomorrow, until the record is closed. Once  
22 the record is closed, those comments can't be made part  
23 of the record. But until that time, you can submit  
24 comments to Sally.

25 I believe the technical parties have agreed to

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1 give a brief warning before graphic images are shown,  
2 and we do expect some graphic images as part of this  
3 hearing. Those with more delicate sensibilities will  
4 have an opportunity to close your eyes. I've also  
5 requested that those images not be made redundant  
6 through this hearing.

7 So we have a lot to do today.

8 I will ask for appearances.

9 Department, please start first, please.

10 MR. KENDALL: Jeffrey Kendall on behalf of the  
11 New Mexico Environment Department.

12 MR. POWERS: Good morning, Madam Hearing  
13 Officer.

14 We do have limited microphones, so Valley Meat  
15 and the Department may have to share microphones. That,  
16 I guess, is the courtesy for the audience.

17 If the reporter does not hear our testimony, I  
18 just would ask that she notify us immediately.

19 With that said, my name is Kevin Powers,  
20 Assistant General Counsel, Environment Department.

21 MS. ORTH: Thank you.

22 Mr. Dunn.

23 MR. DUNN: Good morning, Madam Hearing  
24 Officer.

25 Blair Dunn on behalf of the applicant.

1 MS. ORTH: Okay.

2 Mr. Wagman.

3 MR. WAGMAN: Good morning, Madam Hearing  
4 Officer.

5 Bruce Wagman on behalf of Front Range Equine  
6 Rescue and the six Roswell individuals.

7 With me also is Katherine Cisneros from my  
8 office.

9 MS. ORTH: Hello.

10 MS. CISNEROS: Hello.

11 MS. ORTH: Are you Mr. Biernoff?

12 MR. BIERNOFF: Good morning, Madam Hearing  
13 Officer.

14 Ari Biernoff for the New Mexico Attorney  
15 General's Office.

16 MS. ORTH: All right.

17 And Mr. Holland.

18 MR. HOLLAND: Good morning, Madam Hearing  
19 Officer.

20 John Holland with the Equine Welfare Alliance.

21 MS. ORTH: Thank you very much.

22 These are our technical parties. I will tell  
23 you there is excellent legal representation on all  
24 sides. Public comment should not include technical  
25 testimony. All technical testimony has to come through

1 one of these parties.

2 On Friday, the counsel and Mr. Holland and I  
3 participated in a long teleconference concerning a  
4 couple of motions.

5 Correct me if I'm wrong, Mr. Powers or  
6 Mr. Kendall, I believe that the motion to determine  
7 party status and representation was adequately addressed  
8 in that teleconference.

9 Next was a motion to strike the entry of  
10 appearance of the New Mexico Attorney General's Office.  
11 I have given, as I said, more thought to it since Friday  
12 afternoon, and also considered the memorandum that was  
13 issued to that motion sent by Mr. Biernoff over the  
14 weekend, and it has not changed my conclusion that the  
15 motion should be denied.

16 Finally, as to the motion to strike or limit  
17 the testimony of Mr. Olson, I considered again  
18 everything we spoke about on Friday afternoon and also  
19 paid special attention to the statute at 10-16-8(B), as  
20 the Department had asked me to do, and didn't change my  
21 mind there, either.

22 I think there is some real challenges to the  
23 Department's interpretation in that language of the  
24 statute, particularly as to what it means to represent  
25 someone and what the words "this matter" means.

1 Mr. Dunn?

2 MR. DUNN: Yes, Madam Chair.

3 If it's appropriate, I'd like to renew our  
4 objections from the hearing the other day to --

5 MS. ORTH: All right.

6 MR. DUNN: I'd like to put those on the  
7 record, if that's acceptable.

8 MS. ORTH: All right.

9 Please.

10 MR. DUNN: With the matter of striking the  
11 presence of the Attorney General to provide technical  
12 testimony, I'd like to renew that the Attorney General  
13 is the top legal officer for this state, he is not the  
14 top environmental officer for this state, that is not  
15 his area of expertise, and providing technical testimony  
16 in contravention of the actual technical experts of this  
17 state presents a conflict of interest that is I believe  
18 is unwaivable at this point.

19 Regarding Mr. Olson, a similar objection, he  
20 is representing the state, he's a former officer of the  
21 State of New Mexico, a former employee of the State of  
22 New Mexico, that actually ruled on these matters  
23 previously in his official capacity. To now show up and  
24 to speak against his own previous actions, we find also  
25 to be a conflict that pretty much destroys his

1 credibility.

2 So we'd like those on the record.

3 MS. ORTH: All right.

4 Does the Department join in this renewed  
5 motion?

6 MR. POWERS: Yes, Madam Hearing Officer, we  
7 do. We renew our objections.

8 And if it pleases the Court, we can make an  
9 offer of proof of certain witnesses, and we can do that  
10 at a different time or later time during this  
11 proceeding, but we do renew our objections against  
12 Mr. Olson's testimony under 10-16 -- 10-16-8(B) because  
13 of substantial public interest or the substantial  
14 involvement that Mr. Olson had during the proceedings  
15 below or in prior proceedings.

16 Those were enforcement actions against the  
17 same permittee here today, so we do believe that there  
18 is a conflict that is apparent, and for the sake of  
19 justice, we believe that Mr. Olson's testimony should be  
20 stricken.

21 As to the Attorney General's appearance, we do  
22 renew our objection and believe that there is a conflict  
23 between who represents the State of New Mexico, in what  
24 capacity, and in what capacity any witnesses that are  
25 going to be presented represent the views and opinions

1 of the state.

2 MS. ORTH: All right. Thank you, Mr. Powers.  
3 Any change in the opposition to the motions?

4 MR. BIERNOFF: No change, Madam Hearing  
5 Officer. I won't rehash our positions. I just want to  
6 indicate our continuing opposition to both of these  
7 motions.

8 MS. ORTH: All right. Thank you.  
9 Mr. Wagman, you join in that position, I  
10 assume?

11 MR. WAGMAN: Yes, Madam Hearing Officer.

12 MS. ORTH: All right. Thank you.

13 As I said on Friday, I think there is no  
14 question about the identity of the person who makes the  
15 decision in this matter, that's Secretary Flynn,  
16 absolutely, that's -- primary jurisdiction is in  
17 Secretary Flynn's hands.

18 Having said that, we have among the broadest  
19 permitting procedures in the country when it comes to  
20 public participation and the variety of ways in which  
21 they can participate in permitting proceedings, and I  
22 don't see an exclusion there for the Attorney General or  
23 -- and again, as I said, I think the language of  
24 10-16-8(B) does not form a basis to exclude Mr. Olson.

25 So are there any other issues that we need

1 to address before we begin with the applicant's  
2 presentation?

3 MR. DUNN: Madam Hearing Officer, again, just  
4 for the record, you did discuss that there were varying  
5 branches of governments in your ruling last Friday.

6 Could you maybe expand on that and put that on  
7 the record for us as well, if that's still -- if that's  
8 still your present reasoning as to allowing the  
9 different branches of the government -- of the state  
10 government to participate in the same capacity?

11 MS. ORTH: Okay. So if I understand your  
12 question, and I'm not remembering at this point exactly  
13 what you said in the teleconference, it's certainly true  
14 that other branches of New Mexico State Government --  
15 and my memory is there are about 22 branches of state  
16 government set out in our Constitution -- that sometimes  
17 branches -- other branches participate in our permitting  
18 hearings and our rule-making hearings, not so much  
19 enforcement, but I've seen that before, and I simply  
20 don't see an exclusion from them doing that.

21 MR. DUNN: Okay. Thank you.

22 MS. ORTH: Mr. Powers?

23 MR. POWERS: Madam Hearing Officer, I believe  
24 -- I hope I have a consensus with everybody here. I  
25 think I would like to offer a vote of appreciation to

1 the Chaves County Commissioners for letting us use the  
2 courthouse here today, the Chaves County Sheriff's  
3 Office, New Mexico State Police, specifically, and all  
4 the other parties that sort of made this facility and  
5 this hearing secure and safe for all parties involved,  
6 and I just wanted to express that.

7 MS. ORTH: Thank you, Mr. Powers.

8 I join you in that expression of appreciation.

9 Mr. Wagman?

10 MR. WAGMAN: We join the motion.

11 MS. ORTH: Thank you.

12 MR. DUNN: We do as well.

13 MS. ORTH: Thank you. I really enjoy being in  
14 Roswell. It's a beautiful courthouse.

15 Thank you.

16 Anything before we invite the applicant to  
17 present its witnesses? Anything else? No?

18 Mr. Dunn, if you would, please.

19 MR. DUNN: Madam Chair, would it be acceptable  
20 for me to speak just from here -- I have most of my  
21 materials here -- rather than shuffling back and forth  
22 to the podium?

23 MS. ORTH: Yes. That's fine, as long as the  
24 witnesses are over here.

25 MR. DUNN: Thank you.

1 (Oath administered to Mr. De Los Santos,  
2 Mr. Wyant, Mr. Ashcraft and Dr. Blach.)  
3 MR. DUNN: Madam Hearing Officer, if I may.

4 MS. ORTH: Please.

5 RICARDO DE LOS SANTOS, CHET WYANT,  
6 LONEY ASHCRAFT AND LEONARD BLACH  
7 after having been first duly sworn under oath,  
8 were questioned and testified as follows:

9 DIRECT EXAMINATION

10 MR. DUNN: Could I get each of you, starting  
11 from my left to right, to state your full name for  
12 everybody to hear and your position or capacity in being  
13 here today?

14 Rick.

15 MR. DE LOS SANTOS: Ricardo De Los Santos,  
16 general manager of Valley Meat Company.

17 MR. WYANT: I'm Chet Wyant with  
18 EnviroCompliance Services.

19 DR. BLACH: Leonard Blach, large animal  
20 veterinarian.

21 MR. ASHCRAFT: Loney Ashcraft, dairy  
22 consultant.

23 MR. DUNN: Madam Hearing Officer, if there is  
24 objection, I'd like to give the opportunity to voir dire  
25 these witnesses, but we would move their written

1 testimony be accepted as part of the record, and that  
2 they be accepted as experts in the three cases of  
3 Mr. Ashcraft, Dr. Blach and Mr. Wyant.

4 Mr. De Los Santos is being offered more as a  
5 factual and historical witness, as he is the manager for  
6 the applicant.

7 MS. ORTH: Are there objections?

8 MR. WAGMAN: Well, Your Honor, we don't  
9 necessarily accept them as experts in their field, so  
10 the fields in which they intend to testify, but  
11 certainly we accept them as technical experts for this  
12 hearing.

13 MS. ORTH: So my question, more specifically,  
14 would be do you accept them as qualified to offer the  
15 opinions they've offered in the testimony that's been  
16 submitted?

17 MR. WAGMAN: Yes, Madam Hearing Officer.

18 MS. ORTH: All right.

19 Are there any objections to that?

20 MR. POWERS: No, Your Honor, but we do reserve  
21 the right to maybe voir dire -- if they get into  
22 specific territories of testimony, we do reserve that  
23 right to object.

24 MS. ORTH: Thank you. Thank you, Mr. Powers.

25 Anything else? No? All right.

1           Please proceed, Mr. Dunn.

2           MR. DUNN: I'd like to do just a bit of voir  
3           dire, as it might be.

4           As I stated, Mr. De Los Santos is here in his  
5           factual capacity, so I won't go into that.

6           Mr. Wyant, would you tell us a little bit  
7           about your background, any previous examples of where  
8           you've acted as a technical expert in a hearing, or as  
9           an expert witness in court? So a little bit of your  
10          background.

11          MR. WYANT: Yes. I've been working with the  
12          New Mexico Groundwater Bureau discharge permits since  
13          1981 as a admini- -- basically an administrative  
14          assistant's capacity to numerous discharge permit  
15          holders throughout the state.

16          During that time, I've had occasion to be a  
17          witness in hearings in this capacity and in front of the  
18          Water Quality Control Commission a number of times. I  
19          don't know the exact number. Probably 20 or more.

20          MR. DUNN: Anytime in Federal or State Court  
21          as a witness?

22          MR. WYANT: I have in State District Court.

23          MR. DUNN: Were you offered as an expert in  
24          that capacity or as a factual witness?

25          MR. WYANT: Well, yeah, an expert on the

1 permitting issues of that facility that were in  
2 question.

3 MR. DUNN: Okay.

4 Dr. Blach, the same question. If you wouldn't  
5 mind sharing a little bit of your background, your  
6 associations and your qualifications.

7 DR. BLACH: Okay. I'm a large animal  
8 veterinarian. I've been a veterinarian for a long time,  
9 53 years. It's -- strictly, I've been in large animals,  
10 primarily horses, and a great deal in cattle.

11 I belong to the American Veterinary Medical  
12 Association and the American Association of Equine  
13 Practitioners. I'm a lifetime member of both  
14 organizations.

15 My practice has always been large animals,  
16 primarily in horses. I've managed several large  
17 breeding farms, as well as a racetrack practice for many  
18 years.

19 I've done -- just being in Roswell for the  
20 last 35, 40 years, I did a lot of work with dairy  
21 cattle, treating different diseases in dairy cattle,  
22 and that's primarily what I've been doing the last 50  
23 years.

24 MR. DUNN: Are you familiar with the  
25 physiology of cattle and horses and any differences or

1 -- in the livestock?

2 DR. BLACH: Very much so. I've been around  
3 them all these years. I have much experience with both  
4 species.

5 MR. DUNN: And general issues of mannerisms  
6 and cleanliness, are those areas that you're familiar  
7 with?

8 DR. BLACH: Yes.

9 MR. DUNN: You're familiar with  
10 pharmaceuticals applied to livestock --

11 DR. BLACH: Yes, sir.

12 MR. DUNN: -- large animal livestock?

13 DR. BLACH: Yes, sir.

14 MR. DUNN: Thank you, sir.

15 Mr. Ashcraft, would you go -- kind of go over  
16 the same background for you?

17 MR. ASHCRAFT: I've worked for the NRCS, Soil  
18 Conservation Service, for 38 years, worked with numerous  
19 dairies throughout the state in that capacity.

20 In the last ten years, I've been a dairy  
21 consultant, working with discharge permits and different  
22 projects involving the building of ponds and so forth  
23 in facilities to maintain the dairies as well as animal  
24 waste.

25 MR. DUNN: Rick, let's go ahead and get into a

1 little bit of substance.

2 There are a few issues that have been raised  
3 with regards to your past and the history of the  
4 facility. So I'm going to ask you some questions now  
5 regarding those items.

6 The first item that's been raised in the  
7 course of public comments deals with past criminal  
8 convictions.

9 Could you give me a synopsis of your past  
10 criminal convictions in the last ten years?

11 MR. DE LOS SANTOS: I have not had any  
12 criminal convictions in the last ten years at all.

13 MR. DUNN: Just for the sake of argument -- in  
14 arguendo, which means just for the sake of argument,  
15 what about in the last 25 years?

16 MR. DE LOS SANTOS: 25 years -- I've had one  
17 class B misdemeanor in the last 20 years, I think.

18 MR. DUNN: Any other previous convictions for  
19 anything?

20 MR. DE LOS SANTOS: Prior to that -- or after  
21 that, no. Prior to that, I had one in 1978.

22 MR. DUNN: And in 1978, what happened then?  
23 Were you -- what type of conviction did you have in  
24 1978?

25 MR. DE LOS SANTOS: I had a felony conviction

1 in 1978, and it was probation, and I completed that  
2 probation, and since then, I've not had anything.

3 MR. DUNN: Okay. Any other felony  
4 convictions?

5 MR. DE LOS SANTOS: No.

6 MR. DUNN: Any other convictions of any sort  
7 in the last ten years --

8 MR. DE LOS SANTOS: No.

9 MR. DUNN: -- other than a minor traffic  
10 citation?

11 MR. DE LOS SANTOS: No, not at all.

12 MR. DUNN: For purposes of kind of talking  
13 about how we're going to go through this conversation,  
14 as you heard, the burden is on the applicant to prove  
15 that the application, or in this case the renewal,  
16 should issue forth.

17 The Department has issued a draft renewal  
18 permit, so the burden is going to come down to what has  
19 changed, if anything, and what was the previous status  
20 of the permit. So we're going to focus our questions.

21 Mr. Ashcraft, you were -- could you give us a  
22 little bit of your background as to when you were  
23 involved with this permitting process and talk about the  
24 past at this point?

25 MR. ASHCRAFT: I was requested by Rick Robey,

1 who was a part owner at the time in 2005, approximately  
2 that time, to work with him to fulfill some of the  
3 obligations that was deemed necessary by the Environment  
4 Department, which included the building of a new storage  
5 pond -- in other words, we looked at the facility and  
6 the amount of water they were using and designed a pond  
7 by a state professional engineer, Stan Cook, to  
8 evaporate the water that would be generated from there  
9 so there wouldn't be any off-site use of that.

10 The pond was designed, sent to the ED -- the  
11 NMED for approval, was built in about the end of  
12 November, and was checked out in December of '05.

13 MR. DUNN: Okay.

14 MR. ASHCRAFT: And the pond was built to the  
15 specifications at that time and lined with a 40-mil HDPE  
16 plastic -- plastic at that time.

17 MR. DUNN: Perhaps a little bit of extension  
18 on the 40 HDPE.

19 MR. ASHCRAFT: Okay. The requirement that  
20 they -- at that time in the permit was to use a 40-mil  
21 plastic, which is a very heavy type of a plastic  
22 material, and it's checked as well as put in. Snow  
23 Industries installed the plastic, and it was certified  
24 by another professional engineer that the liner was  
25 done correctly and all of the certifications were

1 completed.

2 MR. DUNN: Okay. And so it was sufficient to  
3 meet the standards?

4 MR. ASHCRAFT: Yes.

5 MS. ORTH: Okay. Were there any monitor wells  
6 that were looked at? Was there any testing?

7 MR. ASHCRAFT: Monitoring wells were required  
8 to be put in, considered to be upgradient and  
9 downgradient of the facility.

10 Monitoring well number -- both one and number  
11 two were put in in March of '05. Monitoring well number  
12 three and number four were put in in February of '6, of  
13 '06, because that was right after the pond was built,  
14 and before water was in the pond, they put a monitoring  
15 well on the -- it would be the northeast corner and one  
16 on the east side of the new pond to verify that the  
17 liner would maintain its integrity.

18 MR. DUNN: Did they -- was there testing done  
19 of groundwater at that point in time?

20 MR. ASHCRAFT: Testing was done on all four of  
21 the wells combined. The time frame I worked with them  
22 was in March of '06 and in May of '06, if I remember the  
23 dates right.

24 But the water levels were measured. The  
25 lowest one on the -- the lowest water well was number

1 four. The next was number three, which was below the  
2 new pond.

3 All of the testing, the nitrates were within  
4 range on all of the wells. The TDS and the chlorides  
5 exceeded the state standards, but upgradient/  
6 downgradient, all of those were exceeded just because  
7 the water in that area is poor quality.

8 MR. DUNN: Okay.

9 MR. ASHCRAFT: But it appears that the liner  
10 -- after the liner was being used, that none of the  
11 wells showed any increase or so forth in that, and it  
12 does appear that the liner was functioning properly as  
13 of May of '06.

14 MR. DUNN: Just for clarification, we're  
15 talking actually about two liners now at that point, is  
16 that correct, because there was a previous lagoon, is  
17 that correct?

18 MR. ASHCRAFT: Yes, sir.

19 There was a -- a previous lagoon was put in,  
20 we would say it's a little higher than this particular  
21 one, it was a .6-acre surface area, and this one was 1.6  
22 -- I think 1.6, I would have to look it up, but it was  
23 built below that, yes, because the first liner that was  
24 installed didn't have the capacity to handle all the  
25 water that was generated.

1 MR. DUNN: Okay.

2 MR. POWERS: Madam Hearing Officer, excuse me,  
3 sir.

4 I know I have trouble hearing sometimes. I  
5 wonder if we could use the microphone from the counsel's  
6 table there to sort of -- just to make sure everybody in  
7 the back does hear.

8 MS. ORTH: Thank you, Mr. Powers.

9 MR. ASHCRAFT: Yes, sir.

10 MR. DUNN: Can you go ahead and just give us a  
11 test on that?

12 MR. ASHCRAFT: Yes. There you go.

13 MR. DUNN: Let's see.

14 So in 2004, the period 2004 to 2006, you  
15 assisted in completing the necessary requirements for  
16 that DP-236; is that correct?

17 MR. ASHCRAFT: That would be correct.

18 Mr. Robey had requested that I help him on a  
19 few of the items that were required to maintain or  
20 to bring the permit up to whatever was required on it.

21 MR. DUNN: To your knowledge, the  
22 specifications that Mr. Robey gave you that had been  
23 required from the state, were those all met?

24 MR. ASHCRAFT: As far as I know, yes.

25 MR. DUNN: In your opinion, was there anything

1 at that time that gave you cause that this would in any  
2 way present a potential harm to the environment, or was  
3 this a sufficient lagoon system and monitoring system  
4 for a permit to protect the environment from discharge?

5 MR. ASHCRAFT: Based on the testing and the  
6 results that we had for that, there was -- we tested  
7 monitoring well number one and two three times prior to  
8 the others being installed.

9 Based on the testing and so forth, I would say  
10 it was functioning as planned.

11 MR. DUNN: Okay.

12 Turning to you, Mr. Wyant.

13 If we could, let's talk a little bit more post  
14 that period of time when you became involved.

15 Could you describe a little bit of your  
16 involvement with DP-236?

17 MR. WYANT: Yes.

18 I became involved in May of 2010. The plant  
19 had been notified that it needed to renew a permit, I  
20 think it was past due, a renewal application at that  
21 time.

22 We submitted -- helped prepare the application  
23 for renewal of the permit using some information from  
24 the previous application, the current permit from 2004,  
25 interviews with the owners and operators and site visit

1 of the facility.

2 We submitted the application on June 1st. The  
3 Department received it on June 3rd of 2010. It was  
4 declared administratively complete on June 29th of 2010,  
5 and we published public notice in the Roswell paper on  
6 August 3rd.

7 MR. DUNN: Were there any -- do you know of  
8 any protests or objections filed at that point in time?

9 MR. WYANT: I'm not aware that the Department  
10 received any comments or written -- in particular,  
11 written comments or objections to the permit at that  
12 time.

13 However, I've not looked at the administrative  
14 record for that -- for any of those items.

15 MR. DUNN: Did you review the previous permit  
16 in preparing the renewal?

17 MR. WYANT: Yes, I'm sure I reviewed the  
18 previous permit.

19 MR. DUNN: I'm going to have you look at what  
20 we're going to go with the Bureau's number on, which is  
21 the new draft permit. This is Bureau Exhibit 9.

22 If you could, could you read me this?

23 MR. WYANT: This paragraph?

24 MR. DUNN: No, this paragraph right here.

25 We're looking at in the Introduction section, the fourth

1 paragraph down. It starts off "Up to 8,000."

2 MR. WYANT: Read that paragraph?

3 MR. DUNN: Yes, sir, if you would, please.

4 MR. WYANT: Okay.

5 "Up to 8,000 gallons per day of livestock  
6 processing wastewater is discharged from a slaughter  
7 facility. Wastewater generated from the slaughter  
8 facility and occasional washdown of the receiving pens  
9 collects in two concrete (septic) tanks for solids  
10 settling before flowing into the first of two  
11 synthetically lined impoundments for disposal by  
12 evaporation. The discharge contains water contaminants  
13 which may be elevated above the standards of Section  
14 20.6.2.3103 NMAC and/or the presence of toxic pollutants  
15 as defined in Subsection WW of 20.6.2.7 NMAC."

16 MR. DUNN: Okay. And you and Mr. Ashcraft can  
17 kind of tag team on this a little bit.

18 Is this a fairly typical system at Valley Meat  
19 Company? The two septic systems plus the two lagoons,  
20 is that fairly common for livestock processing water  
21 around the State of New Mexico?

22 MR. WYANT: I'm not sure that I have -- I  
23 don't do a lot of livestock slaughter processing. I've  
24 worked with three in my career.

25 MR. DUNN: Okay.

1 MR. WYANT: Two of the three were discharging  
2 to septic -- I'm sorry, septic tank type of settling  
3 systems.

4 So it's possible that you could say that, yes,  
5 it's -- for a low-flow slaughter plant, that that would  
6 be a typical way of designing the plant.

7 MR. DUNN: And maybe even expanding that just  
8 beyond livestock processing, but livestock wastewater  
9 facilities, dairies, feedlots, are you familiar -- are  
10 either of you familiar with these systems for those  
11 types of enterprises?

12 MR. WYANT: Well, I'm familiar with the  
13 dairies and feed yards, yes.

14 But, typically, you would see a -- the normal  
15 -- the typical dairy in New Mexico probably has a much  
16 larger discharge volume per day. I see anything from  
17 about 4,000 up to 140,000, 150,000, sometimes higher.

18 So the discharge volume would somewhat dictate  
19 the design of the facility.

20 MR. DUNN: And these types of systems tend to  
21 work sufficiently for those types of enterprises?

22 MR. WYANT: I would say that's true.

23 MR. DUNN: Do you have any -- do either of you  
24 have any reason to believe that that type of system,  
25 with the septic tanks or the lagoons, is an inadequate

1 system to prevent discharge into groundwater?

2 MR. ASHCRAFT: The system seems adequate to  
3 me, and that's as far as -- like I say, it's a lot  
4 smaller scale than what we usually work with, but it's  
5 the same theory behind it, yes.

6 MR. DUNN: Is there anything in particular to  
7 Valley Meat Company's lagoons or system that would lead  
8 you to believe it's not sufficient to protect  
9 groundwater from discharge?

10 MR. WYANT: No.

11 MR. ASHCRAFT: No.

12 MR. DUNN: Turning now to that document I  
13 showed you a minute ago, it mentioned livestock.

14 Madam Hearing Officer -- I say Chair, I  
15 apologize, too much time in the legislature.

16 MS. ORTH: That's all right.

17 MR. DUNN: Livestock is defined in state  
18 statute in NMSA 77-2-1.1. This is the Livestock Code.

19 Mr. Wyant, I'm going to ask you again to read  
20 this section of the code there, which is Section A.

21 MR. WYANT: Paragraph A, okay.

22 MR. DUNN: Yes.

23 MR. WYANT: "'Animals' or 'livestock' means  
24 all domestic or domesticated animals that are used or  
25 raised on a farm or ranch, including the carcasses

1    thereof, and exotic animals in captivity and includes  
2    horses, asses, mules, cattle, sheep, goats, swine,  
3    bison, poultry, ostriches, emus, rheas, camelids and  
4    farmed cervidae" -- I've never seen that before -- "upon  
5    any land in New Mexico; provided that for the purposes  
6    of Chapter 77, Article 9 NMSA 1978, 'animals' or  
7    'livestock' have the meaning defined in that article."  
8    'Animals' or 'livestock'" --

9           MR. DUNN:   That's good.

10          MR. WYANT:   That's good?

11          MR. DUNN:   Yes, that's good.

12                 In your experience of -- again, Mr. Ashcraft  
13    and Mr. Wyant, do you know of anything, as far as a  
14    difference in livestock with regard to a livestock  
15    processing or livestock discharge system of any sort,  
16    whether it's processing or feedlot or dairy or something  
17    along those lines?

18                    Is there anything different among that list of  
19    animals that was described as livestock that would --  
20    that in your experience would show any difference in a  
21    wastewater treatment facility of some sort?

22           MR. ASHCRAFT:  Not in my experience.

23           MR. WYANT:   Not my experience.

24           MR. DUNN:   Okay.  Then I'd like to turn,  
25    Dr. Blach, to you, if I could.

1           One of the things that's been discussed is  
2 that somehow this renewal of the permit has changed and  
3 that there is a difference now, requiring that the  
4 permit not be issued or that new conditions be placed on  
5 this permit.

6           I'd like to discuss a little bit -- equines,  
7 in particular, and then equines in regard to the  
8 previous things that went on at that plant.

9           Are you familiar with the business of Valley  
10 prior to making this switch to equines?

11           DR. BLACH: Yes, I'm familiar with that.

12           MR. DUNN: Do you know what they were  
13 processing, in part or in general --

14           DR. BLACH: Yes.

15           MR. DUNN: -- prior to?

16           DR. BLACH: Yes.

17           MR. DUNN: What was that?

18           DR. BLACH: Cattle.

19           MR. DUNN: Any kind of specific cattle?

20           DR. BLACH: Mostly dairy cattle. Entirely  
21 mostly dairy cattle.

22           MR. DUNN: Okay. Would you mind sharing with  
23 us the difference in physiology between, let's say,  
24 dairy cattle and horses with regards to -- let's start  
25 with blood amounts and pharmaceuticals that may or may

1 not be contained in those animals.

2 I'm trying not to be redundant to your written  
3 testimony. So if there is anything you can add or you'd  
4 like to discuss, let's turn to that right away, if we  
5 could.

6 DR. BLACH: Well, in regard to the blood, I  
7 would say that it would be very similar.

8 On the average, it's known that seven percent  
9 of a body weight in animals is blood. The average size  
10 horse in shape for processing would probably weigh  
11 between 1,000 and 1,100 pounds. So seven percent of  
12 that would be blood.

13 A dairy cow, in good shape, that would be  
14 processed would probably weigh 1,200 pounds or more. In  
15 some cases, if we're talking about a bull, a male, he  
16 would weigh a ton. So seven percent -- roughly figuring  
17 seven percent -- or seven percent is considered blood if  
18 you rung them out, you know, to get every drop of blood  
19 out. So that would be that similarity there in regard  
20 to the blood.

21 In regard to the offal, in an 1,100-pound,  
22 1,000 -- or 1,100-, 1,200-pound dairy cattle, there  
23 would probably be -- it's my estimation that the offal  
24 would probably be 350 pounds, plus the large size of an  
25 udder, which sometimes would run up to a hundred pounds,

1 but on the average probably weigh 60 pounds.

2 In a horse that would weigh 1,000 to 1,100  
3 pounds, the offal would be considerably less. That's  
4 because the cow has a huge rumen, a huge stomach, which  
5 has four compartments. That alone would probably weigh  
6 in excess of 150 pounds.

7 That information is based on hundreds of  
8 autopsies or necropsies that I've done on cattle and  
9 horses; whereby, when I autopsy a cow, a dairy cow,  
10 which I've done many, is when I pull the stomach out,  
11 it's more than I can lift. Many times, I have to have  
12 somebody help me pull that from the carcass.

13 Where, in a horse, it's entirely different.  
14 They are a simple-stomached animal, just like we are;  
15 they have a small intestine, just like we are; and they  
16 have a large intestine, a large colon, plus a cecum.

17 And in comparison to the cow, after -- after  
18 it leaves the rumen, and they have the small intestine,  
19 but a huge, huge cecum and a huge, large colon.

20 And based on the feed on a cow, on a dairy  
21 cow, that they can eat as high as 70 pounds a day. So  
22 their colon and their large intestine sometimes will  
23 weigh as much as the rumen does. So they -- in  
24 comparison to a horse, they don't eat near that much, so  
25 the volume in the intestines is not as great.

1           So the offal between a cow and a horse, on a  
2 cow, it is considerably more than it is in a horse.

3           MR. DUNN: Before we turn to any drugs or  
4 vaccines administered to horses versus cows, could you  
5 talk a little bit about the cleanliness of the animals  
6 and, you know, what it would take to get one clean,  
7 which of the two animals is a -- if there is a cleaner  
8 animal between the two in your experience. Is there?

9           DR. BLACH: Yes. There is a huge difference  
10 in the cleanliness of an animal.

11           The dairy cow, in itself, because of the way I  
12 described what they eat, is usually -- their excrement  
13 or their manure is mostly in a diarrhea nature. I mean,  
14 it's loose. You don't have cow patties like you have in  
15 the beef out in the prairies. So they are loose because  
16 of the diet they have, high in protein and the volume.

17           So when one of those -- and I've witnessed  
18 that, when one of those dairy cows goes to be processed,  
19 they are quite filthy behind, you know, all down the  
20 tail, and the tail usually has -- it's caked with manure  
21 in it, and sometimes clear down to the bag, and I've  
22 often spent a few hours in a number of cows that I had  
23 to look at the offal at Pecos Valley Meat when they were  
24 doing dairy cattle, and they are quite -- quite filthy  
25 behind based on that.

1           In a horse, it's altogether different. We  
2 seldom ever see a horse eating that kind of volume, and  
3 as you know, they -- their manure is like in biscuits,  
4 like horse biscuits. Sometimes they will be loose  
5 enough to make a cow patty, sort of, but it stools up  
6 and it's not diarrhea. But they seldom ever have --  
7 unless it's a chronic case of enteritis or something do  
8 they have that manure spread through their tail where  
9 it's full of manure and it's down the rear legs like a  
10 cow.

11           So there is a tremendous difference between  
12 the cleanliness of a cow and the cleanliness of a horse  
13 prior to processing.

14           MR. DUNN: Prior to processing or prior to  
15 treatment by you, is there -- did you form an opinion  
16 as to which one would require more water to get them  
17 clean?

18           DR. BLACH: It definitely would be the cow.

19           MR. DUNN: Can you estimate how much more you  
20 think it might need? I realize this is a rough  
21 estimate.

22           DR. BLACH: Yeah. That, I would say that --

23           MR. DUNN: Twice as much?

24           DR. BLACH: Yeah. Three times as much,  
25 because most of those horses probably would not need

1 any, if they would need any. They are always clean  
2 behind.

3 The horses that I deal with on the breeding  
4 farms and the racetrack, you know, sometimes we have to  
5 do a lot of rectal palpations, you know, where we  
6 palpate them rectally for the digestive tract. In  
7 horses, I could go back there and grab the tail and  
8 examine them with no problem. In a cow, I definitely  
9 have to have some gloves on before I start.

10 MR. DUNN: Sure.

11 Behaviorally, is there any difference in  
12 horses and cows in their cleanliness, in your  
13 veterinarian knowledge of that?

14 DR. BLACH: In what now?

15 MR. DUNN: In your knowledge as a  
16 veterinarian, is there any difference in behavior that  
17 lends itself to cleanliness or --

18 DR. BLACH: In behavior?

19 MR. DUNN: Yes, of the animal.

20 Does one tend to be more concerned with its  
21 cleanliness or less concerned with its cleanliness?

22 DR. BLACH: I don't know that the animal is  
23 more concerned. I think it's just a natural thing for a  
24 dairy cow to be more filthy, you know, than a horse.  
25 It's just because of the way they are fed.

1 MR. DUNN: Okay. Turning now to  
2 pharmaceuticals, you're familiar with the drugs  
3 administered to horses, vaccines, fungicides, those  
4 types of things, or pesticides, in dairy cattle; is that  
5 correct?

6 DR. BLACH: Yes.

7 MR. DUNN: Could you talk a little bit about,  
8 you know, the differences between those two, if there  
9 are differences, if there is similarities in how those  
10 are handled and administered by veterinarians and what  
11 you would expect to find in each of them as they head  
12 towards a processing facility?

13 DR. BLACH: Well, as far as the  
14 pharmaceuticals go in the dairy cow or beef cow or goats  
15 or horses or anything, we all use the same antibiotics,  
16 the same prostaglandins, which is the meclizines and the  
17 Butazolidins and the pain relievers, the antihistamines,  
18 the steroids, the antibiotics, the -- and all of those  
19 things.

20 We use the same drugs. We don't have any  
21 drugs specifically that's for cows or for horses, other  
22 than vaccines that we use to prevent different diseases.  
23 Of course, in horses, we have sleeping sickness, you  
24 know, it takes a vaccine. Cattle don't have that, so we  
25 don't vaccinate them for that.

1           But other than the vaccines, basically our  
2 drugs, antibiotics, antihistamines, we use them the  
3 same, they are interchangeable between horses and  
4 cattle.

5           MR. DUNN: Are there any that are used more  
6 or less in each species and -- between horses or cattle,  
7 or is there something that's more prevalently used in  
8 horses that you would expect to find potentially or be  
9 using on your horses that you wouldn't use on your  
10 cattle that has a withdrawal time or anything like that  
11 that you'd need to think about?

12           DR. BLACH: Not really. Speaking of the ones  
13 that we -- that are so universal, we use on both  
14 animals, is that -- the dosage may change and the  
15 duration of treatment may change, and that also reflects  
16 on withdrawal times, which are very specific.

17           In the dairy cows, in the dairy business,  
18 whether it be in the heifer population or the milking  
19 cow or the dry cow situation, we have certain withdrawal  
20 times that we know that we have to adhere to so that the  
21 milk or the meat is clear for edible purposes, and that  
22 all depends again upon the dosage and the weight of the  
23 animal and the duration that we give that. That's very  
24 specific.

25           In the dairy business, when we're dealing with

1 the cows that are producing the milk, then we use a lot  
2 of antibiotics in the udder for mastitis, and that's  
3 probably the biggest thing that a dairy has, the biggest  
4 problem. The biggest economical factor that affects a  
5 dairy is mastitis.

6           So the affected teat or affected teats are  
7 injected with an antibiotic -- commercially prepared or  
8 compounded, they are injected with an antibiotic for  
9 three or four days in a row until the animal is clear.  
10 At that time the cow is tested by itself, kind of a  
11 litmus test that the herdsman does. That cow is tested  
12 for any presence of any beta-lactams, which is  
13 penicillin derivatives or cephalosporins, and they do a  
14 litmus test there on that cow individually before that  
15 cow is put back into the line to go back into the tank.  
16 Because if just one cow that was positive for that, that  
17 wasn't tested, went into that tank, even though it's  
18 8,000 -- 80,000 pounds in there -- and I don't know,  
19 that's -- how many gallons that would be, but one cow  
20 can contaminate the whole tank if it's -- if the residue  
21 is still in the milk. So each cow is tested.

22           And then when the tank -- when it's cool and  
23 goes in the tank at the barn and then the trucking tank  
24 comes to pick it up, it's tested again to be sure that  
25 that tank is free and clear.

1           So withdrawal times are very important. We  
2 have to educate the herdsmen, and we have to watch that  
3 ourselves so that we do not contaminate the milk.

4           Along that line, on the dairy cow, it's the  
5 same way. We have different withdrawal times for the  
6 processing of the meat, so that the meat is not  
7 contaminated. And that withdrawal time, depending on  
8 the antibiotic or the drug that was given, it may take  
9 as long as 30 days before that cow can go to slaughter.  
10 We do not have any test for that, that we know that the  
11 cow is going to be clean at slaughter. We depend at the  
12 time of the slaughter where the FDA -- USDA's  
13 veterinarian at that station will check the kidney for  
14 residues, and then if that's positive, then the horse,  
15 of course, is condemned.

16           MR. DUNN: I think you meant dairy cow in that  
17 instance, probably.

18           DR. BLACH: Pardon me?

19           MR. DUNN: Dairy cow -- were you talking about  
20 the dairy cow?

21           DR. BLACH: Dairy cow.

22           MR. DUNN: You said the horse was condemned.

23           DR. BLACH: Dairy cow.

24           MR. DUNN: Just for the sake of the record.

25           DR. BLACH: Not horses. I hadn't gotten into

1 that yet.

2 So that's kind of the way it is in the dairy  
3 cows. There is really some stringent rules that we all  
4 have to abide by to make sure that the meat and the milk  
5 is edible, and sometimes that will slip by, and of  
6 course, if it does at the processing plant, being that  
7 cow is condemned, it goes to tankage or waste. And the  
8 same with the milk, the milk would be lost, too, if it  
9 wasn't free of that.

10 MR. DUNN: Just --

11 DR. BLACH: The withdrawal times is very  
12 important.

13 It's all based again upon the dosage, the  
14 weight of the -- and the dosage is based upon the weight  
15 of the animal, and then the duration of the treatment.

16 MR. DUNN: Specifically, on dairy cattle, do  
17 you know of any substance commonly administered that  
18 remains a permanent contaminant in the meat or the milk  
19 of that animal?

20 DR. BLACH: No.

21 I have seen that statement made someplace  
22 that -- I know of no drug -- no substance that we give,  
23 from insecticides to antibiotics to antiinflammatories,  
24 antihistamines, and even the aminoglycosides, all of the  
25 antibiotics that I know of, I don't know of any drug

1 that stays in any animal -- any livestock for the rest  
2 of its life.

3 MR. DUNN: Let's kind of go through that with  
4 horses then.

5 With equine animals, is there any -- I'll ask  
6 that first question first, and then if you want to kind  
7 of go back behind it again. Do you know of any  
8 substance in horses that's commonly administered that  
9 remains a contaminant in that animal's meat or flesh of  
10 any sort, or in its blood, for that matter, for the  
11 duration of the animal's life, forever, it's never gone?

12 DR. BLACH: No, I don't know of any drug.

13 I think the same thing would apply to the  
14 horse. I don't know of any drug that would remain in  
15 that horse's -- remain in that horse for life, or it  
16 would in a goat or any other livestock that we've  
17 discussed this morning, that it would remain in there  
18 for the life of that animal.

19 MR. DUNN: Could you talk a little bit about  
20 the drugs administered to horses and their withdrawal  
21 times and their uses? Just maybe general ones.

22 I know one that's commonly mentioned is Bute.  
23 Could you talk a little bit about that and its presence  
24 in an animal after a withdrawal period and whether or  
25 not that would be present in the blood or any of the

1 drugs commonly used in horses?

2 DR. BLACH: Bute is referred to as  
3 Butazolidin, which is an antiinflammatory drug. We have  
4 a number of those.

5 In my experiences, you know, how long  
6 withdrawal times are for the slaughter of the equine, I  
7 don't know what those are. I would assume they are very  
8 similar.

9 We would have to go by what the label says on  
10 meat residue. But my experience on residues in horses  
11 has been at the racetrack, which I have spent many years  
12 there, and we do medicate racehorses for different  
13 lamenesses and illnesses, and we use the same  
14 antibiotics we do in cattle, the same  
15 antiinflammatories, the same antihistamines, the same  
16 antiprostaglandins, the same drugs, we use the same  
17 drugs.

18 But there we know -- again, just like in the  
19 dairy cattle, we know what the withdrawal times are --  
20 we must know -- because all those horses are tested for  
21 various drugs, including prohibitive drugs, which  
22 sometimes you hear about that there is drugs given to  
23 racehorses that should not be given, which is a Class IV  
24 drug might be in the -- say in the narcotic area, or the  
25 controlled substance area is a better word for that,

1 controlled substance, which we're not supposed to use.  
2 We do not use them in horses unless they are off out of  
3 training after a surgery or something like that.

4 So we know those withdrawal times, what they  
5 are, and how many -- and at the racetrack, we can give  
6 no medication on race day, none whatsoever, besides  
7 Lasix, which is a diuretic. That's permitted, but only  
8 at certain levels.

9 Then antibiotics and antiinflammatories,  
10 Butazolidin and those kind of drugs, we know what the  
11 withdrawal times are, and we know that, you know, we  
12 cannot give those kind of drugs anywhere from four to  
13 five to a week to ten days out of the time the horse is  
14 going to run, because he'll come up positive.

15 Now, the horses that are tested on the  
16 racetrack is always the winner, and then randomly out of  
17 every race, but every race day, they will pick four or  
18 five other horses that didn't win, but just to  
19 spot-check, so we know that all veterinarians and all  
20 trainers are abiding by the withdrawal times.

21 MR. DUNN: Okay. When they test for that --  
22 you speak of tests. Is that blood tests, urinalysis?  
23 What kind of test is that?

24 DR. BLACH: It's blood test and urinalysis.

25 Now, if -- if a horse should break down on the

1 racetrack and be euthanized, then that animal is  
2 supposed to be autopsied and tissue samples are sent in  
3 to the -- and kidney samples, liver samples and so  
4 forth, testing for any foreign substance in there.

5 I might say in that -- on that line, in  
6 horses, the withdrawal times are much more specific than  
7 in cattle, because in cattle, even at the processing  
8 plants, beef cattle or dairy cattle, sometimes it's only  
9 micrograms -- or milligrams, but in horses we -- we go  
10 -- a milligram is a thousand parts per gram, and then  
11 there is a microgram, which is a thousandth of that.  
12 But at the racetrack, a lot of our detecting drugs is a  
13 picogram, which is a thousandth of a microgram. So it's  
14 real strict testing positive of the presence of drugs.

15 I would assume that in a processing plant of  
16 horses that they would probably implement the same type  
17 of testing as they do at the racetrack, which is very,  
18 very specific.

19 MR. DUNN: Okay. Just a quick hypothetical,  
20 and then I'll pick on Rick a little bit and the other  
21 guys again.

22 Let's say, for instance, a horse that's bound  
23 for the race is administered Bute, let's say 30 days  
24 before the race. He ends up winning the race. They  
25 pull the blood. Would you expect to see that as a

1 residue in that horse's blood?

2 Is that within the period of time for a  
3 withdrawal of Bute? Is there a period of time when it  
4 wouldn't show up? So if he's --

5 DR. BLACH: No.

6 MR. DUNN: -- administered the drug, when  
7 would you expect to not even be able to trace it in the  
8 blood?

9 DR. BLACH: Depending on the dose -- the  
10 normal dose, it absolutely would not be present in the  
11 blood or urine in 30 days.

12 MR. DUNN: Okay.

13 Rick, we've been talking about livestock and  
14 livestock watering of horses and dairy cattle.

15 Is it Valley Meat's intention to do livestock  
16 at this facility?

17 Is there a potential you could eventually go  
18 back to cattle or goats or camelids or whatever it might  
19 be that falls underneath that definition?

20 MR. DE LOS SANTOS: Well, being a federal  
21 facility, we could reapply to do cattle or goats. We  
22 cannot slaughter both horses and cattle in the same  
23 facility.

24 MR. DUNN: But you could -- potentially  
25 underneath this discharge permit, you could be going

1 back to cattle at some time in the future for some  
2 reason --

3 MR. DE LOS SANTOS: Yes, sir.

4 MR. DUNN: -- if the law changes or whatever  
5 happens?

6 MR. DE LOS SANTOS: We could.

7 MR. DUNN: You would still intend to use this  
8 permit for the discharge of livestock water, is that  
9 correct?

10 MR. DE LOS SANTOS: Yes. That's correct.

11 MR. DUNN: Would you expect to discharge more  
12 than 8,000 gallons per day no matter what the species of  
13 animal?

14 MR. DE LOS SANTOS: No, not more.

15 MR. DUNN: One of the things that's discussed  
16 in other written testimony is that you've exceeded the  
17 8,000 gallons in the past.

18 Could you talk a little bit about the history  
19 of how Valley has been in compliance with that 8,000,  
20 and kind of give us a little bit of the history of the  
21 facility, let's say, back to 2003 or so, or maybe 2002  
22 to the present?

23 Any instances where you've exceeded what was  
24 going on? Anytime where you know there has been a  
25 discharge or there has been any sort of break in the

1 liner or anything like that? Anything where you would  
2 expect to see some sort of environmental harm?

3 MR. DE LOS SANTOS: No.

4 The liners, what -- we have visual  
5 inspections. You can see -- you could -- you would be  
6 able to see if there was a problem with the liners, with  
7 the lagoon.

8 We've always got people outside our compost  
9 facility that we had out there, we had employees working  
10 out there, so there is people constantly around there.  
11 If there was an issue, it would be noted immediately.

12 As far as discharging -- when we've gone over  
13 the 8,000 gallons per day, what we -- we've gone at that  
14 facility -- in the whole facility, we've processed  
15 upwards of 150 animals per day. So if at a time we went  
16 over the 8,000 gallons per day, it was -- I could see  
17 that, but then there was days that we would be under the  
18 8,000 by 2,000 or 3,000 gallons per day. So it varies.

19 I don't see how horses could be -- or equine  
20 be more water -- we would use more water than we do with  
21 cattle, the processing of cattle.

22 MR. DUNN: I know that you've been in contact  
23 with other facilities in the course of determining to go  
24 the equine route.

25 Have you had any discussions with them as to

1 what they usually have in their discharge? What would  
2 you expect your discharge to be?

3 MR. DE LOS SANTOS: I --

4 MR. DUNN: I'm sorry, your usage per horse.

5 MR. DE LOS SANTOS: We've had -- well, it  
6 would be between 30 and 40 gallons per animal. That  
7 would be complete washdown -- and we say per animal,  
8 because we would have to do a complete cleanup of the  
9 facility after the slaughter day, after the processing  
10 day. So it would be 30 to 40 gallons per animal that it  
11 would take to process and per day.

12 MR. DUNN: If it seemed that you were going to  
13 exceed the 8,000 gallons per day, and for some reason  
14 you learned that it took more for horses, what would be  
15 your process?

16 MR. DE LOS SANTOS: You know what, I don't  
17 think we would use more than the 8,000 gallons per day.

18 We have been in contact with other equine  
19 slaughter facilities, and we've -- we've, you know,  
20 sought counsel from them, asking them what do they use,  
21 what's their process.

22 So we are very confident that we would not go  
23 over the 8,000 gallons per day.

24 MR. DUNN: Just for the sake of argument,  
25 let's say it got close or looked like you might, would

1 you make application to the Department to amend the  
2 permit and have them look at things and work with the  
3 Department in order to make sure that you didn't exceed  
4 that and that you -- it wasn't an issue with those  
5 lagoons?

6 MR. DE LOS SANTOS: Yes, we could definitely  
7 do that, do an amendment.

8 MR. DUNN: Okay. Do you know of anything  
9 that's changed since your permit was last issued --  
10 leaving the horse debate aside for a minute, are you  
11 aware of anything livestock-wise, facility-wise, that  
12 has changed at your facility between the last issuance  
13 of this permit and its renewal now?

14 MR. DE LOS SANTOS: Nothing has changed, no.  
15 Not at all.

16 Our monitor wells are still in the same place.  
17 Our -- nothing has changed. We have a meter that our  
18 water flows through, and so I think that's an upgrade  
19 that we've installed with our last lagoon that we put  
20 in. So, no, nothing has changed other than that.

21 MR. DUNN: So your last operating permit would  
22 be sufficient to still operate the facility in your  
23 opinion?

24 MR. DE LOS SANTOS: Yes. I believe so, yes.

25 MR. DUNN: Mr. Wyant, are you aware of

1 anything -- well, let me back up.

2           You saw the previous permit. You've also seen  
3 the current draft discharge permit issued by the  
4 Department.

5           You helped Valley draft some comments on that,  
6 is that correct?

7           MR. WYANT: Yes. We discussed some comments  
8 that they might want to make on the draft permit.

9           MR. DUNN: Okay. Can you illuminate a little  
10 bit on those comments, as to why those comments were  
11 made and, you know, what Valley was looking at doing in  
12 making those comments to the Department?

13           MR. WYANT: Well, primarily trying to improve  
14 the permit from the standpoint of being able to comply  
15 and operate the facility under the permit. Some --  
16 there were some areas that -- in the course of  
17 discussing the criteria put forth in the draft permit  
18 where they expressed some concern about being able to  
19 actually do what was being required, and so we talked  
20 about that.

21           But that's -- that would be a typical process  
22 that I would go through with any of our nearly 100  
23 facilities that we work with.

24           MR. DUNN: In working with the facilities that  
25 you work with, they commonly go through renewals. Is

1 that correct?

2 MR. WYANT: Yes. Yes, they would.

3 MR. DUNN: In this renewal process, if there  
4 is nothing really changed, do you have any idea or any  
5 belief as to why a permit would not be denied, if it was  
6 still working satisfactorily and sufficient to protect  
7 the environment?

8 MR. WYANT: Could you say that again?

9 MR. DUNN: If the facility were operating  
10 under its current permit and it came up for renewal,  
11 nothing had changed, it was still operating, it was  
12 sufficient to protect the environment, have you ever  
13 encountered an instance where a renewal was not issued  
14 because of a change in species?

15 MR. WYANT: No, I don't think I have.

16 MR. DUNN: Okay. In your opinion, is this  
17 draft permit sufficient to protect the environment from  
18 groundwater discharge?

19 MR. POWERS: Your Honor, I'm going to object  
20 to the form of that question. Maybe "in his opinion"  
21 might be a better way to say it.

22 MR. DUNN: In your opinion, I apologize.

23 In your opinion, is the current draft  
24 discharge permit sufficient to protect the environment  
25 from groundwater discharge?

1 MR. WYANT: Yes. In my opinion, it would be.

2 MR. DUNN: Are the facilities that you've  
3 consulted on adequate for that -- in your opinion, for  
4 protecting groundwater? The facilities at Valley Meat  
5 Company, sorry.

6 MR. WYANT: Yes. I've had limited experience  
7 with the facilities at Valley; basically administrative.

8 We don't do any monitoring assistance or  
9 reporting assistance or anything like that for the  
10 facility.

11 So from what experience I have at the facility  
12 and experience with a number of groundwater discharge  
13 permits that deal with similar waste streams, I think  
14 that the permit -- the draft permit is consistent with a  
15 number of other permits that I've seen over the years  
16 that have been considered protective of groundwater.

17 MR. DUNN: Okay. Dr. Blach, are you aware of  
18 any substance -- is there anything about horse blood  
19 that is ever caustic enough to cause a breakdown in  
20 plastics or to cause any sort of damage to lagoon liners  
21 or a real threat to the environment?

22 DR. BLACH: No. None that I know of at all.

23 MR. DUNN: And, Mr. Wyant (sic), one last  
24 question for you, and then I'll pass the witnesses.

25 When those lagoons were constructed and those

1 monitoring wells were constructed, were those all to  
2 industry standard and sufficient for protecting  
3 groundwater by normal industry standards?

4 MR. ASHCRAFT: Yes, sir, they were. They were  
5 all certified.

6 MR. DUNN: At this time, I'll pass the  
7 witnesses.

8 MS. ORTH: Thank you, Mr. Dunn.

9 Let me ask if any of the other parties have  
10 any objections to all of the exhibits that were listed  
11 in the notice of intent to present technical testimony  
12 by the applicant.

13 MR. WAGMAN: None here, Madam Hearing Officer.

14 MS. ORTH: Objections?

15 MR. POWERS: None at this time, Your Honor.

16 MS. ORTH: All right. They are all admitted  
17 then.

18 (Valley Exhibits A through F admitted.)

19 MS. ORTH: Thank you, Mr. Dunn.

20 Mr. Powers, do you have questions of the  
21 applicant's panel?

22 MR. POWERS: Madam Hearing Officer, I've  
23 talked to my staff, and I don't know if it may be  
24 appropriate, but we're willing to at least forgo our  
25 position and time of questioning until later, pass it to

1 Mr. Wagman, the Attorney General, and at that time --  
2 and after that -- I think their questions may answer a  
3 lot of the same things we were looking at.

4 We would like to go after them, if that's  
5 permissible with the parties.

6 MS. ORTH: All right.

7 Mr. Wagman?

8 MR. WAGMAN: We'd like to maintain the order  
9 that's been described by the Hearing Officer and have  
10 the Department go first.

11 MS. ORTH: All right.

12 Mr. Powers, it is our protocol to have  
13 cross-examination in the same order as the direct  
14 examination goes.

15 MR. POWERS: That's fine, Your Honor.

16 We are prepared to move forward. If I may  
17 borrow the microphone from Mr. Dunn.

18 MS. ORTH: Yes.

19 MR. POWERS: Good morning, gentlemen, and  
20 Madam Hearing Officer. With your permission, we'll  
21 proceed.

22 CROSS EXAMINATION OF PANEL BY MR. POWERS

23 MR. POWERS: Mr. De Los Santos, I want to  
24 start with you, if that's okay.

25 We have a lot of the public here that may not

1 know exactly where this facility is located, sort of the  
2 process operations of what happens there, in general,  
3 please, and sort of the facility operations.

4 Mr. Ashcraft, Mr. Wyant, you may chime in as you see  
5 fit. We are doing cross panel examination.

6 If you could just give us a general idea of  
7 what's happening out here at this facility from where  
8 it's located.

9 MR. DE LOS SANTOS: The facility is located  
10 seven-and-a-half miles southeast of town, of Roswell, in  
11 the county, Chaves County.

12 It is a slaughter facility. It was built like  
13 in 1982. I leased it for a number of years and then  
14 eventually purchased it and continue to work there.  
15 I've employed as many as 50 employees, 55 employees.  
16 It's primarily slaughter of dairy cattle, bobby calves,  
17 goats, sheep, hogs. And so -- but that's what it is, is  
18 a slaughter facility.

19 MR. POWERS: And with that, how did you come  
20 about to decide to switch from your prior operations to  
21 what's proposed here today?

22 MR. DE LOS SANTOS: Well, the economy -- you  
23 know, with the recession, I think we all got hit with  
24 that, and so it was a -- we struggled for a couple of  
25 years just trying to keep the doors open.

1           So the opportunity came up in November of  
2 2011, that President Obama signed a bill that we could  
3 slaughter equine, and so we definitely looked at that  
4 very hard, talking with USDA, and USDA talked to -- you  
5 know, encouraged us to do something like this in  
6 reality. The Denver District Office encouraged us to be  
7 a plant that would -- that we could switch over to  
8 slaughter horses.

9           So we did -- you know, we didn't just wake up  
10 and say, "Oh, we want to slaughter horses." No, we did  
11 our homework and looked at the plants that were in  
12 existence back in 2006 and put the numbers together and  
13 looked at the transportation of the horses going into  
14 Mexico, going into Canada, and we believed it was  
15 something that was definitely worth looking at, because  
16 of the struggles we were going through at the time.

17           MR. POWERS: You mentioned these two  
18 facilities -- or two places where they were going,  
19 Mexico and Canada.

20           Is that the only places currently that are  
21 allowed to slaughter horses outside the United States?

22           MR. DE LOS SANTOS: That I know of that are  
23 slaughtering horses, yes, American horses.

24           MR. POWERS: Okay. If you will, Mr. Wyant,  
25 describe sort of, after leaving the facility or building

1 where this may occur, the general facility diagram or  
2 layout --

3 MR. WYANT: Yes.

4 MR. POWERS: -- structurally.

5 MR. WYANT: The wastewater from the -- it's my  
6 understanding that the layout is that the wastewater  
7 from the kill floor and the rest of the processing area  
8 in the facility goes through a common drain into two --  
9 a series of two septic tank type of concrete tanks that  
10 are buried outside -- just outside the plant wall.

11 MR. POWERS: And their purpose would be what?

12 MR. WYANT: Their purpose is primarily to  
13 settle solids that might be in the waste stream.

14 And then from those two tanks, it goes by a  
15 closed pipeline, buried closed pipeline, to the first  
16 process wastewater pond that was built, and then from  
17 there, it's pumped over a berm between the -- that's  
18 common to the two ponds -- into a finishing or  
19 evaporation pond, which is the one that Mr. Ashcraft  
20 described as being built in, I think, 2005 --

21 MR. ASHCRAFT: That's correct.

22 MR. WYANT: -- 2006.

23 MR. POWERS: What is the purpose of that last  
24 settle? Is there a discharge point after that to any  
25 streams or rivers or any surface waters?

1           MR. WYANT: Not to my knowledge. It's an all  
2 evaporation system. It's very similar to all  
3 evaporation systems that we have on maybe six or seven  
4 dairies that I work with around the state.

5           MR. POWERS: So unless -- and correct me if  
6 I'm wrong. So unless there is a leak with the liners or  
7 the impoundments for some reason or some piping in  
8 between the building and that location, really, there is  
9 no discharge to the groundwater or surface waters; is  
10 that correct?

11           MR. WYANT: That should be the case. That's  
12 correct.

13           MR. POWERS: At least in theory?

14           MR. WYANT: Yes. That's --

15           MR. POWERS: And that's what I want to ask you  
16 next.

17           So if there is a leak from these  
18 impoundments -- so if we've got wash water coming out  
19 from the facility going to these two settling tanks and  
20 then to these two lagoons -- what's the state's role --  
21 in your experience, what do we do to protect making sure  
22 that there is nothing leaking from these lagoons?

23           MR. WYANT: Well, the first line of protection  
24 is proscribed in the permit as monthly visual  
25 inspections of the impoundments. This is a requirement

1 where the operator or operator's representative of some  
2 type is supposed to look at the liner, the visible area  
3 of the liner, to make sure there is not damage, and then  
4 obviously repair it immediately.

5 I've worked with liners over probably about a  
6 25- or 30-year period of time, HDPE liners, and it's  
7 been my experience that below the water level, there is  
8 seldom damage, unless there is some catastrophic  
9 physical event that takes place.

10 Above the waterline is the area of most  
11 concern, I think, from a practical standpoint in terms  
12 of maintaining integrity of the liner system.

13 The second line of defense that has been  
14 used by the state over a long number of years is the  
15 installation of monitoring wells, what's in a position  
16 called downgradient or downstream of the impoundment,  
17 and that's not surface water streams but groundwater  
18 streams.

19 MR. POWERS: Mr. Ashcraft, would you agree  
20 with that general assessment?

21 MR. ASHCRAFT: Yes. I think that's very well  
22 put.

23 MR. POWERS: So the purpose of a monitoring  
24 well is to do what?

25 Mr. De Los Santos, based on your

1 understanding, what are the monitoring wells there to  
2 do?

3 MR. DE LOS SANTOS: To -- to ensure that there  
4 is no -- they are up- -- upgrade of the lagoons and  
5 downgrade. So they ensure that there is no  
6 contamination going downgrade.

7 If there is contamination coming into the  
8 groundwater, then it should maintain the same on the  
9 downside, also.

10 MR. POWERS: A couple questions, again,  
11 Mr. De Los Santos, if I may.

12 Let's talk about volume, if we may. I know  
13 that Mr. Dunn questioned several of you on the volumes  
14 that we've talked about.

15 First of all, I want to talk about the process  
16 wastewater. And for those that may not know what that  
17 is, is everything -- does every single water that's used  
18 in the facility go into that lagoon, or is this only  
19 specific water used in the facility going to the lagoon?

20 MR. DE LOS SANTOS: All the water used in the  
21 facility is -- goes into the lagoon, yes. It goes into  
22 the septic tanks and then out into the lagoons.

23 MR. POWERS: Okay. Of that volume, how much  
24 is used -- is everything in the facility -- I guess what  
25 I'm getting to, and let me correct myself, can you tell

1 us what offal is?

2 MR. DE LOS SANTOS: What what is?

3 MR. POWERS: What offal is.

4 MR. DE LOS SANTOS: Offal?

5 MR. POWERS: Yes, sir.

6 MR. DE LOS SANTOS: It's the intestines, the  
7 guts, the skulls, feet, everything that comes off that  
8 cannot be used off -- off any particular animal.

9 MR. POWERS: And is that -- all of that going  
10 to the lagoon, too?

11 MR. DE LOS SANTOS: The offal?

12 MR. POWERS: Yes.

13 MR. DE LOS SANTOS: No, no.

14 MR. POWERS: And tell us what is required for  
15 you to do with the offal?

16 MR. DE LOS SANTOS: Offal has got to go to a  
17 rendering plant. It's got to be -- it can be composted,  
18 but it has to be disposed of.

19 MR. POWERS: And is this current -- is this  
20 facility currently allowed to do any composting of that  
21 material or of that type of waste?

22 MR. DE LOS SANTOS: No. No composting.

23 MR. POWERS: And if you can, let's talk about  
24 that.

25 Why is that?

1 MR. DE LOS SANTOS: Because I do not have a  
2 permit to compost.

3 MR. POWERS: And have you approached -- have  
4 you ever approached the Department to obtain that type  
5 of permit?

6 MR. DE LOS SANTOS: Have I ever approached?  
7 Yes, sir, I did.

8 MR. POWERS: And are you currently allowed to  
9 do so at this time?

10 MR. DE LOS SANTOS: No composting allowed.

11 MR. POWERS: So what -- what do you do with  
12 the offal, if I may ask?

13 MR. DE LOS SANTOS: It goes to a rendering  
14 plant. We have a rendering plant that will take it in  
15 Dallas.

16 We have all the components ourselves to build  
17 a rendering plant, pending -- you know, if we can get  
18 the work, we'll install the rendering plant. We have  
19 all the components.

20 MR. POWERS: Okay. And I think, Mr. Wyant,  
21 you've expressed that this permit is allowed up to 8,000  
22 gallons per day. Is that correct?

23 MR. WYANT: That's correct.

24 MR. POWERS: And I forget if it's Dr. Blach or  
25 whom said about 30 gallons to 40 gallons -- I think that

1 was you, Mr. De Los Santos.

2 MR. DE LOS SANTOS: Uh-huh.

3 MR. POWERS: I calculated about 228 head, is  
4 that right, at about 35 gallons per, would be about  
5 8,000?

6 MR. DE LOS SANTOS: Yes, 8,000.

7 MR. POWERS: Does that sound about right?

8 MR. DE LOS SANTOS: Yes, sir.

9 MR. POWERS: I know in the media and some of  
10 the other information I've seen, we've talked about 121  
11 heads per day or 250 heads of processing of equines per  
12 day.

13 Is that about what you see?

14 MR. DE LOS SANTOS: We have a contract to  
15 slaughter 120 head per day, yes.

16 MR. POWERS: Okay.

17 Mr. Wyant, I want to talk to you -- I know  
18 you'd had a lot of conversation with Mr. Dunn about the  
19 difference between a dairy facility or a comparison to a  
20 dairy facility.

21 Is this facility a dairy facility?

22 MR. WYANT: No.

23 MR. POWERS: Are they really similar, or are  
24 they inherently different in nature?

25 MR. WYANT: Well, the business is different.

1 I mean, the -- the production activity or the business  
2 is different, but I think from the standpoint of  
3 handling wastewater, they have a great deal of  
4 similarities.

5 MR. POWERS: Mr. Wyant, what about the  
6 domestic wastewater from restrooms, kitchens, or other  
7 things like that, not processing of the material, is  
8 that going to the lagoons as well?

9 MR. WYANT: I don't believe it is, but that  
10 question might better be directed to Mr. De Los Santos.

11 MR. POWERS: Mr. De Los Santos?

12 MR. DE LOS SANTOS: Yes, everything from the  
13 facility -- all the water from the facility that's --  
14 that is used goes into the septic tanks. From there, it  
15 goes into the lagoon. Yes, sir.

16 MR. WYANT: Even the restrooms?

17 MR. DE LOS SANTOS: It's all pumped to that.

18 MR. POWERS: Mr. Ashcraft, I'll just pick on  
19 you for a second.

20 MR. ASHCRAFT: Sure. No problem.

21 MR. POWERS: And, Dr. Blach, we so appreciate  
22 you, and I'll be getting to you in a moment.

23 Mr. Ashcraft, how is the volumetric of water  
24 coming out of the facility measured before it goes into  
25 the lagoons?

1 MR. ASHCRAFT: The time that I was working  
2 with them, they had two different meters on two  
3 different lines, we would call it the entry lines into  
4 the facilities, and that determined how much water came  
5 out of the facility. They were read on a weekly basis.

6 MR. POWERS: Is it a magno meter, a continuous  
7 flow meter or --

8 MR. ASHCRAFT: It was a micrometer, if I  
9 remember right. It's not electronic. It's going to be  
10 a -- probably a micrometer, I would guess. It's been a  
11 long time.

12 MR. POWERS: Mr. Wyant, do you know what type  
13 of meter the facility currently has?

14 MR. WYANT: For the discharge volume?

15 MR. POWERS: Yes.

16 MR. WYANT: Yes, I think it's an  
17 electromagnetic meter. Yes.

18 MR. POWERS: And is that a calibrated -- is  
19 that meter able to be calibrated, to your knowledge?

20 MR. WYANT: I -- you know, I don't really know  
21 anything about that meter. I mean, that could be  
22 ascertained, I'm sure.

23 But at the time we did the permit renewal  
24 application, it was not an issue. We just noted -- just  
25 identified that the meter was there, installed and

1 operational.

2 I am aware that electromagnetic meters are  
3 bench tested and calibrated and sealed at the factory  
4 before they are shipped, so they are -- they meet a  
5 pretty strict ASTM guideline.

6 MR. POWERS: And I think the permit requires  
7 that that meter be calibrated within ten percent of the  
8 actual volume. Is that correct?

9 MR. WYANT: I think that's -- yes, I think  
10 that's in the permit.

11 MR. POWERS: And is that meter, to your  
12 knowledge, Mr. De Los Santos, capable of being  
13 calibrated to that standard?

14 MR. DE LOS SANTOS: Well, it sits about six  
15 feet underground and on the waterline.

16 I've never looked at it to see if it can be  
17 calibrated at all.

18 MR. POWERS: Are you aware that the permit  
19 does require that --

20 MR. DE LOS SANTOS: To be calibrated?

21 MR. POWERS: -- that condition?

22 Yes, sir.

23 MR. DE LOS SANTOS: I was not aware. No.  
24 Huh-uh.

25 MR. POWERS: And I'll instruct you -- this

1 Hearing Officer's attention to permit condition 22 of  
2 the revised current permit, and that does discuss, in  
3 general, the monthly volume of wastewater that's  
4 supposed to be metered.

5 And in Section 23 of the revised permit, for  
6 everyone's attention, is the method and meter  
7 calibration requirements.

8 Mr. De Los Santos, if this permit does issue,  
9 would you comply with the terms of those requirements?

10 MR. DE LOS SANTOS: Yes, sir.

11 MR. POWERS: Okay.

12 And, Mr. De Los Santos, I want to talk to you  
13 also -- looking back at condition 21 of the permit,  
14 there has been some concern of the actual groundwater  
15 direction. And, Mr. Wyant, Mr. Ashcraft, you can chime  
16 in as you see fit.

17 I think it's been undetermined exactly the  
18 precise flow direction of the groundwater. Is that  
19 correct, to your knowledge?

20 MR. DE LOS SANTOS: That it has not been  
21 determined?

22 Yes, I don't think we've seen anything that  
23 actually says the direction of the flow. I don't think  
24 we've seen anything.

25 MR. POWERS: If you would, take a look at

1 paragraph 21 of the revised permit.

2 One of the conditions -- my apologies,  
3 Mr. Dunn -- is to conduct a groundwater elevation  
4 contour study to determine the actual flow direction.

5 MR. DE LOS SANTOS: Okay.

6 MR. POWERS: Would you be willing to comply  
7 with the terms of that requirement?

8 MR. DE LOS SANTOS: Yes, sir.

9 And if I may, let me ask, did we have any --

10 MR. ASHCRAFT: Well, the wells were surveyed  
11 when they were put in and GPS'ed and so forth. And for  
12 the two times that I was involved in that, in March of  
13 '06 and May of '06, the lowest water level was in number  
14 four, the next water level was in number three, and so  
15 forth, so -- which fits the normal, we would say,  
16 topography of the land, which goes to the east/  
17 northeast.

18 MR. POWERS: Okay.

19 MR. ASHCRAFT: But the study was only done --  
20 that was only two quarters. Was it done over a year  
21 period of time, and they don't have -- of course, I  
22 don't have what we call a potentiometric map or a  
23 hydrologic map.

24 MR. POWERS: Mr. De Los Santos, I just want to  
25 direct your attention to permit condition number five of

1 the permit.

2 MR. DE LOS SANTOS: I need my glasses.

3 MR. POWERS: I believe that may clarify -- it  
4 goes back to some of what I was talking about earlier.

5 You indicated that all of the wastewater from  
6 the facility is going to the groundwater impoundments.

7 As you see in permit condition number five,  
8 any domestic wastewater -- it's only the processing  
9 wastewater that's allowed to go to these impoundments.  
10 Is that correct?

11 Mr. Ashcraft, I see you shaking your head.

12 Is that the design and layout of the facility?

13 MR. ASHCRAFT: I would -- I don't know how the  
14 design is or the layout of the facility is, but I was  
15 under the same impression, that anything for domestic  
16 has to be separated into its own septic tank and system.

17 MR. POWERS: Mr. Wyant, do you have anything  
18 to add to that?

19 MR. WYANT: No, I don't.

20 MR. POWERS: Mr. De Los Santos?

21 MR. DE LOS SANTOS: Well, we do have two  
22 septic tanks. We do have two septic tanks, so -- and  
23 now that we look at it and are thinking about it, there  
24 is one septic tank that catches all -- everything coming  
25 in from the facility.

1           The other septic tank, the one on the west  
2 side, catches the manure and so forth coming out --  
3 coming in from the pens.

4           So it could be -- this could be correct here,  
5 that that is -- the one septic tank is for the product  
6 coming in from the facility, the domestic.

7           MR. POWERS: I guess you do understand that if  
8 this permit does issue that that may need to be verified  
9 prior to start-up or verification of the permit?

10          MR. DE LOS SANTOS: Yes, sir. Uh-huh.

11          MR. POWERS: Okay.

12          Mr. Wyant, earlier you said this permit or the  
13 draft permit and prior permits issued to this facility  
14 are fairly consistent with other slaughter facilities  
15 that you've encountered before.

16          Is that correct?

17          MR. WYANT: Yes. I've only seen a few, but,  
18 yes, I'd say it was reasonably consistent.

19          MR. POWERS: When you say reasonably few, I  
20 mean, I understand, based upon my knowledge, you've been  
21 doing dairy permits and other types of permits for quite  
22 some time.

23          I think your testimony certified to that,  
24 correct?

25          MR. WYANT: Correct.

1 MR. POWERS: Do you know how many slaughter  
2 facilities, whether it's cattle, equine, other type of  
3 permit or activity, in the State of New Mexico?

4 MR. WYANT: No, I don't have perfect knowledge  
5 of the number. It's a very -- it's not a large number,  
6 I know that.

7 I've done some work in the past with -- the  
8 difference here would be this is a commercial packing  
9 facility, where a lot of our other work has been with  
10 small custom slaughter operators.

11 MR. POWERS: Okay. And I think earlier -- and  
12 I just want to make sure for the record we have it  
13 clear, the difference between an amended permit or a  
14 modified permit.

15 I think under the statutory or the regulatory  
16 requirements, they are distinct. Is that correct, based  
17 on your understanding?

18 MR. WYANT: That's my understanding, yes.

19 MR. POWERS: And when you talk about an  
20 amendment to a modified permit, can you describe the  
21 difference?

22 MR. WYANT: Well, in my experience with these  
23 permits, a modified permit requires public notice, it's  
24 similar to the renewal process, you're materially  
25 changing the process -- the permit, probably either in

1 the quality of the wastewater or an increase in the  
2 quantity or a change in the location of land  
3 application; where something other with regards to the  
4 permit might be done by an amendment that's simply  
5 issued by the Secretary.

6 MR. POWERS: Okay.

7 Mr. De Los Santos, one of the additional  
8 permit terms that we're proposing, or at least the New  
9 Mexico Department is, is addition of another monitoring  
10 well at the facility.

11 Are you aware of that?

12 MR. DE LOS SANTOS: Yes, sir.

13 MR. POWERS: I think it's permit condition 15  
14 for the Madam's sake.

15 Do you understand that within a certain period  
16 of time that the Department has asked for another  
17 monitoring well, and are you willing to comply with the  
18 terms of that?

19 MR. DE LOS SANTOS: Yes, sir. Uh-huh.

20 MR. POWERS: Mr. Wyant, in permit -- in  
21 condition 17, one of the monitoring parameters that we  
22 have this facility looking to is what's called TKN,  
23 NO<sub>3</sub>-N, TDS and Cl.

24 MR. WYANT: Yes.

25 MR. POWERS: Can you describe what those are

1 and how those constituents are -- what they are from,  
2 just based upon your experience and training?

3 MR. WYANT: Well, they -- these are  
4 groundwater samples from the monitoring well. So they  
5 -- they would either -- those constituents would either  
6 be naturally occurring in the groundwater as it is in  
7 its existing condition.

8 MR. POWERS: Okay. What does TKN stand for?

9 MR. WYANT: Total Kjeldahl nitrogen.

10 MR. POWERS: Based on your knowledge, is that  
11 a regulated component under the groundwater standards?

12 MR. WYANT: No, it's not.

13 MR. POWERS: And why would we ask -- in your  
14 experience, why does the Department ask to monitor that?

15 MR. WYANT: You know, I'm not sure I can  
16 answer that question.

17 MR. POWERS: Maybe it would be a question  
18 better for my witnesses.

19 MR. WYANT: Yes.

20 MR. POWERS: Can you describe what NO<sub>3</sub>-N is?

21 MR. WYANT: That's nitrate nitrogen.

22 MR. POWERS: And TDS?

23 MR. WYANT: TDS is total dissolved solids.

24 MR. POWERS: And Cl?

25 MR. WYANT: Is chlorides.

1 MR. POWERS: Okay.

2 Dr. Blach, I'm just wondering, some of the  
3 pharmaceuticals that you were talking about -- buterol,  
4 can you describe what that is?

5 I think for the laymen's terms, we don't  
6 really understand some of the medication names and  
7 stuff.

8 So could you describe -- I think you were  
9 talking about buterol or something to that effect.

10 DR. BLACH: Yeah, yeah. Bute -- it's mostly  
11 referred to as Bute --

12 MR. POWERS: Okay.

13 DR. BLACH: -- B-u-t-e, but it's called  
14 Butazolidin.

15 MR. POWERS: Okay.

16 DR. BLACH: It's an antiinflammatory drug.

17 MR. POWERS: Is that just for horses?

18 DR. BLACH: Horses and cattle.

19 MR. POWERS: Okay.

20 DR. BLACH: All livestock.

21 MR. POWERS: All livestock?

22 DR. BLACH: Yes.

23 MR. POWERS: I think in review of other  
24 testimony that you've seen a list of other drugs that  
25 were represented as possibly dangerous to human health.

1 DR. BLACH: Pardon me?

2 MR. POWERS: Have you had a chance to review  
3 the testimony of other parties?

4 DR. BLACH: Some, yes.

5 MR. POWERS: And in that testimony, there was  
6 an extensive list of drugs that are used for horses,  
7 equines.

8 Have you had a chance to review that?

9 DR. BLACH: Extensive drugs used in equine?

10 MR. POWERS: Yes. Yes, sir, I'm sorry.

11 We may cover that a little bit later. I think  
12 it may be a little premature for that at this point,  
13 Your Honor.

14 Do you know if, say, buterol, or the drugs  
15 that you were referencing, are they regulated, to your  
16 knowledge, by the State of New Mexico Groundwater  
17 Quality or Environment Department?

18 DR. BLACH: I don't know about Groundwater  
19 Quality. No, I do not know.

20 MR. POWERS: Mr. Wyant, are you aware if any  
21 of those drugs are currently regulated?

22 MR. WYANT: Not in my experience.

23 MR. POWERS: If I may have just a moment,  
24 Madam Hearing Officer.

25 MS. ORTH: All right.

1 MR. POWERS: We'll pass the witnesses at this  
2 time, Your Honor.

3 MS. ORTH: Okay.

4 Thank you, Mr. Powers.

5 Mr. Wagman, have the parties sitting at that  
6 table set forth themselves an order of presentation?

7 MR. WAGMAN: Yes, Madam Hearing Officer.

8 We'll let Mr. Holland ask any questions he  
9 has, and then I will ask questions on behalf of the rest  
10 of the parties here.

11 MS. ORTH: All right.

12 If you would.

13 MR. HOLLAND: Thank you very much, Madam  
14 Hearing Officer. I have a short slide presentation that  
15 will speak -- I guess, can everybody hear me all right?  
16 My voice carries pretty well.

17 MS. ORTH: Mr. Holland, just a moment. Just a  
18 moment. This is questions of this panel.

19 MR. HOLLAND: Oh, I'm sorry. I'm sorry. I  
20 thought you were going to us.

21 MS. ORTH: Yes.

22 MR. HOLLAND: I beg your pardon.

23 MS. ORTH: I'm sorry.

24 So to be clear, at this time it is time for  
25 the -- let me call it the opposing parties to ask

1 questions of this panel.

2 MR. HOLLAND: I do have some questions of the  
3 panel. Thank you very much.

4 MS. ORTH: All right.

5 CROSS EXAMINATION OF PANEL BY MR. HOLLAND

6 MR. HOLLAND: Dr. Blach, you indicated that  
7 horses get the same drugs as cattle.

8 I'm a simple horse owner. I've owned horses  
9 all my life.

10 Why do all the boxes contain a statement that  
11 says "Not for animals intended for slaughter"?  
12 Particularly phenylbutazone, and Clenbuterol for that  
13 matter.

14 MR. BLACH: Well, Clenbuterol is a prohibitive  
15 substance. Butazolidin is used in cattle as well as  
16 horses, and it's just -- and we're just going by the  
17 withdrawal times.

18 MR. HOLLAND: It doesn't state a withdrawal  
19 time on the boxes I have, sir.

20 And isn't it true that phenylbutazone is  
21 forbidden in meat animals -- all meat animals -- my  
22 veterinarian tells me that -- and that it's forbidden in  
23 dairy cattle over 18 years of age?

24 MR. BLACH: I think that's true. Anytime you  
25 give phenylbutazone, it's an off-label, and it has to be

1 prescribed for that particular purpose.

2 MR. HOLLAND: And that animal should not be  
3 sent to slaughter for human consumption?

4 DR. BLACH: That's right.

5 MR. HOLLAND: And you made a statement about  
6 race-day Bute. You said that race-day Bute was not  
7 allowed at the local racetracks. I understand that.

8 Are you aware that that's a state-by-state  
9 issue?

10 I'm assuming that Mr. De Los Santos would like  
11 to slaughter horses from other states, that there are  
12 many states in which race-day Bute is accepted and that  
13 race-day Bute in fact appears on the race cards. It  
14 will have a letter B, indicating that --

15 DR. BLACH: Yeah, that used to be.

16 During these days, I don't know of any state  
17 that relies -- that allows Butazolidin on a race day  
18 now. The Racing Commission -- Racing Commission  
19 International has prohibited that drug to be given on  
20 race day.

21 MR. HOLLAND: Well, sir, I would dispute that,  
22 but we may check that fact.

23 I had another question here for Mr. -- well,  
24 hold on just one second.

25 You were saying that the drugs disappear from

1 the horse in a certain amount of time, from the animal  
2 in a certain amount of time. Right?

3 Are you aware that this is an exponential  
4 decay, that it doesn't just go away magically, that it  
5 goes down -- sort of like walking halfway through a  
6 wall?

7 DR. BLACH: Yes. Most drugs have what we call  
8 a half-life period, either a half-life, a half-life, and  
9 a half-life.

10 MR. HOLLAND: Right.

11 And that some of those drugs -- many of those  
12 drugs have metabolites, so as the half-life of the  
13 original drug begins to decay, the metabolites begin to  
14 appear.

15 MR. BLACH: Can you go over that again?

16 MR. HOLLAND: Okay. Drugs are generally  
17 metabolized in the liver, right? Is that a correct  
18 statement?

19 DR. BLACH: Primarily.

20 MR. HOLLAND: And as they are metabolized,  
21 other compounds are generated. Is that a correct  
22 statement?

23 DR. BLACH: Yes.

24 MR. HOLLAND: Are you aware that  
25 phenylbutazone metabolizes into oxyphenbutazone?

1 DR. BLACH: Yes.

2 MR. HOLLAND: And the half-life of  
3 oxyphenbutazone is much longer than phenylbutazone?

4 DR. BLACH: Somewhat longer, yes.

5 MR. HOLLAND: And that both have similar  
6 toxic -- they are both considered carcinogens?

7 MR. BLACH: The toxic effect, I'm unaware of,  
8 but they are in the carcinogens.

9 MR. HOLLAND: And that they do have --

10 MR. BLACH: Yes.

11 MR. HOLLAND: Some people do have  
12 hypersensitive reactions. Are you aware of that?

13 DR. BLACH: Yes.

14 MR. HOLLAND: So it can be an undetectable  
15 level and a person could still have a hypersensitive  
16 reaction to it, is that correct?

17 DR. BLACH: I don't know about that.

18 MR. HOLLAND: All right.

19 And, Mr. Wyant, you indicated that most of the  
20 damage in these ponds occurs above the waterline. To  
21 the liners.

22 MR. WYANT: That's been my experience over the  
23 years, yes.

24 MR. HOLLAND: Right.

25 Mr. De Los Santos tells us that the waterline

1 goes up and down a great deal. He said that it might be  
2 full one day and down 3,000 gallons the next. Didn't  
3 you, Mr. De Los Santos?

4 MR. DE LOS SANTOS: Well, the water level in  
5 the lagoons is -- is maintained. It doesn't -- if we  
6 use 8,000 gallons today, that's not going to -- I mean,  
7 you're talking about a one-acre lagoon.

8 MR. HOLLAND: But it's evaporating, right?

9 MR. DE LOS SANTOS: Yes, it's evaporating.

10 MR. HOLLAND: And so during the period when  
11 you're not putting anything into it, it's evaporating,  
12 it's got to be going down so you can put some more into  
13 it.

14 MR. DE LOS SANTOS: Yes.

15 MR. HOLLAND: So it's not constantly 8,000  
16 gallons.

17 My point here is that the waterline is  
18 different on any given day, depending on whether you've  
19 just discharged into it or you're ending a period of  
20 evaporation over the weekend or whatever.

21 MS. ORTH: Mr. Holland, just a moment.

22 Mr. Dunn, do you have an objection?

23 MR. DUNN: That's argumentative. It's not a  
24 question.

25 MS. ORTH: Right.

1 MR. HOLLAND: Okay. I'll ask him.

2 MS. ORTH: All right.

3 So, Mr. Holland, just as a general instruction  
4 for all examiners --

5 MR. HOLLAND: Yes.

6 MS. ORTH: -- to the extent you have points to  
7 make, I'll ask that those points be made during your own  
8 testimony. This is really purely for questions.

9 MR. HOLLAND: I see.

10 My only question was, wouldn't the waterline  
11 go up and down then?

12 MS. ORTH: All right. That's a fine question.

13 MR. HOLLAND: Thank you.

14 MS. ORTH: And did you get an answer? I think  
15 you did.

16 MR. HOLLAND: I think I got an answer. It  
17 will go up and down.

18 MR. DE LOS SANTOS: Right.

19 MR. HOLLAND: So that answers my question.

20 And that's all the questions I have, Your  
21 Honor.

22 MS. ORTH: All right.

23 Thank you, Mr. Holland.

24 Mr. Wagman.

25 MR. WAGMAN: Thank you, Your Honor.

1 I notice we've been going 100 minutes. Did  
2 you want to stop now, because I'll be up for a bit?

3 MS. ORTH: Can you estimate for me the length  
4 of your cross-examination?

5 MR. WAGMAN: Probably an hour or more.

6 MS. ORTH: Okay. Then let's take a break now,  
7 and we'll come back in 15 minutes.

8 Thank you.

9 (Recess held.)

10 MS. ORTH: Let's come back from the break,  
11 please.

12 All right. When we broke in the proceedings,  
13 we were about to begin the cross-examination of the  
14 applicant's panel by Mr. Wagman.

15 Mr. Wagman.

16 MR. WAGMAN: Thank you, Madam Hearing Officer.  
17 Would you like me to use the podium?

18 MS. TOWNSEND: Yes.

19 MR. WAGMAN: The court reporter would like me  
20 to use the podium.

21 MS. ORTH: Yes, please.

22 MR. DUNN: Madam Hearing Officer.

23 MS. ORTH: Mr. Dunn?

24 MR. DUNN: With all due apologies,  
25 Mr. Ashcraft just informed me that he does need to be

1 gone after lunch, so if in this period of time we could  
2 kind of just focus towards him, just out of deference  
3 for his schedule, we would appreciate it.

4 MS. ORTH: All right. Mr. Wagman, can you do  
5 that?

6 MR. WAGMAN: I will do that, Your Honor.

7 When is lunch? Or when does Mr. Ashcraft need  
8 to leave?

9 MR. ASHCRAFT: At lunch.

10 MR. WAGMAN: Noon, you mean, or --

11 MR. ASHCRAFT: Noon.

12 MR. WAGMAN: Okay. Sometimes lunch doesn't  
13 happen until very late in the day.

14 Thank you, Madam Hearing Officer and the  
15 panel. I'll try to go through one at a time.

16 Mr. Ashcraft, I'll do you second, so you can get to  
17 lunch.

18 I'd like to start with you, Mr. De Los Santos.

19 CROSS EXAMINATION OF MR. DE LOS SANTOS

20 BY MR. WAGMAN:

21 Q. Who is Rick Robey?

22 A. Who is he?

23 Q. Yes.

24 A. He was a partner of mine at the -- out at the  
25 plant.

1 Q. Okay. And what period of time was he a  
2 partner?

3 A. Like from 19-- 1999, maybe -- '96 -- from  
4 1996 up until 2004, '5, somewhere.

5 MS. DE LOS SANTOS: '7.

6 MR. DE LOS SANTOS: '7? That's my wife. She  
7 knows.

8 MR. WAGMAN: I understand. Okay. That's  
9 fine.

10 Q. (BY MR. WAGMAN) You previously had a permit  
11 to discharge wastewater in connection with a cow  
12 slaughtering operation, correct?

13 A. Yes.

14 Q. And when did you cease operations doing cow  
15 slaughter?

16 A. Cease operations?

17 Q. Yes, sir.

18 A. November -- no, it was April of 2012.

19 Q. And why did you cease operations?

20 A. Because we were applying to slaughter equine,  
21 and you cannot have a grant of inspection for both  
22 species, so --

23 Q. And you're referring to a grant of inspection  
24 from the USDA, United States Department of Agriculture?

25 A. Yes, USDA.

1 Q. And your prior permit for the cow slaughter  
2 operation expired in 2009, is that correct?

3 A. Yes.

4 Q. And you said USDA encouraged you to start  
5 slaughtering horses, correct?

6 A. Yes, that it was a good idea -- that it was  
7 available and that it was a good idea.

8 Q. And when did you first speak with USDA about  
9 slaughtering horses?

10 A. November, 2011.

11 Q. Okay. And did someone else give you the idea  
12 to slaughter horses besides USDA?

13 A. Give me the idea?

14 Q. Yes, sir.

15 A. No.

16 Q. Okay. Did you talk to anyone else about  
17 slaughtering horses, about the process or what it would  
18 entail?

19 A. Yes. I talked to a plant in Fort Worth,  
20 Texas, the former Beltex plant. I talked to the owner  
21 there.

22 Q. Anyone else?

23 A. No. No.

24 Q. Was the owner at the Beltex plant still  
25 operating as a cow slaughter or other slaughter?

1 A. Cow slaughter, yes, sir.

2 Q. And was it the same owner who had done horse  
3 slaughter?

4 A. Yes.

5 Q. Can you tell me, over the course of the time  
6 that you were slaughtering horses at Valley Meat, the  
7 number of cattle you were slaughtering per day?

8 A. The number of cattle?

9 Q. Yes.

10 A. We would do as many as a hundred head a day.

11 Q. Okay.

12 A. And we would process, in the whole facility,  
13 some days up to 150 head per day.

14 Q. And can you distinguish for us the difference  
15 between slaughter and process, please?

16 A. Process would -- entails slaughtering and  
17 processing, boning and cutting up and so forth.

18 Q. Okay. So slaughter -- sorry. Slaughter is  
19 just the killing, and processing is everything from  
20 killing to --

21 A. Yes.

22 Q. -- going out the door?

23 A. Process, yes.

24 Q. Can you describe just briefly what that  
25 process of -- well, first, the process of slaughter, how

1 -- from the time the cow gets to your facility to the  
2 time the cow is slaughtered, can you explain sort of the  
3 steps you take?

4 A. We do an antemortem inspection. USDA goes out  
5 and checks the livestock to make sure it's okay to  
6 slaughter. Then we bring it into the facility and start  
7 the slaughtering process, knocking and bleeding and so  
8 forth.

9 Q. So first you render the animal unconscious.  
10 Is that correct?

11 A. Yes. We stun them, yes.

12 Q. And then how does the bleeding process work?

13 A. You hang them up upside down from one leg, and  
14 you bleed -- bleed them out. Stick them in the jugular  
15 vein.

16 Q. Okay. So the blood drains out?

17 A. Yes.

18 Q. All right. And what happens to the blood?

19 A. It goes in the barrels and goes -- it used --  
20 it was going into our compost pile.

21 Q. And does any of the blood go into the drains?

22 A. I'm sure some. We have washdown. Employees  
23 wash their aprons. I'm sure some would go into the  
24 drains.

25 Q. Okay. The original permit that was applied

1 for at NMED was based on 39.3 cows per day, correct?

2 A. 39.3 cows per day? That was something that we  
3 put in there. It's not -- the state does not regulate  
4 how many animals we slaughter. They do not regulate.  
5 They regulate the amount of water used.

6 Q. I understand. But my question was not what  
7 the state regulates; it was whether that number was in  
8 the application.

9 A. I'm not sure. I'm not sure.

10 MS. ORTH: Mr. Dunn?

11 MR. DUNN: I'm not clear as to which original  
12 permit.

13 Can we get a little more specificity as to  
14 which permits we're talking about, what period of time?  
15 I think it might be easier for the witness to answer  
16 that.

17 MS. ORTH: Thank you.

18 MR. WAGMAN: Well, I'll make it easier.

19 Q. (BY MR. WAGMAN) Was there a permit  
20 application at some point in which you specified that  
21 you would be slaughtering 39.3 cows per day?

22 A. I do not recall, Mr. Wagman. No, I do not  
23 recall.

24 Q. Okay. Mr. De Los Santos, I'm going to show  
25 you the 2003 request for renewal of a permit. It's AR

1 236C-75. I'm just going to point you to 236 --  
2 actually, I'm sorry, 236C-75 is the entire document.

3 MR. DUNN: May I approach, Madam Hearing  
4 Officer?

5 MS. ORTH: Mr. Dunn?

6 MR. DUNN: I think he might need a copy of  
7 that, if he's going to look at it.

8 MR. WAGMAN: I was going to hand him a copy,  
9 Your Honor.

10 MS. ORTH: All right.

11 MR. WAGMAN: Madam Hearing Officer, I'm just  
12 trying to find the right page, because they are not  
13 specifically numbered.

14 Actually, just to expedite this, again, I'll  
15 represent this is 236C-75, dated August 29th, 2003. It  
16 begins with a letter of August 26th, 2003, to Maura  
17 Hanning of the Groundwater Pollution Prevention Section  
18 from Ricardo De Los Santos, and then encloses -- or  
19 attaches the NMED Groundwater Discharge Permit Renewal  
20 Application.

21 MS. ORTH: Mr. Dunn?

22 MR. DUNN: Just for the sake of efficiency and  
23 clarity, could we go ahead and put one of those on the  
24 table for the witnesses?

25 MR. WAGMAN: I'm about to do that.

1 MR. DUNN: Can we actually put the Hearing  
2 Officer's copy on the table so that they could reference  
3 the actual copy of the administrative record?

4 MS. ORTH: Okay. That takes it away from me,  
5 which is why I invite people to look at it on the break,  
6 but if you have a copy for them, and unless, Mr. Dunn,  
7 there is a serious question about whether it's an  
8 accurate copy --

9 MR. DUNN: I'd just like to see it before.

10 MS. ORTH: Okay.

11 Q. (BY MR. WAGMAN) Mr. De Los Santos, if you  
12 look at the one, two, three, four, fifth column, where  
13 it says "Renewed permit."

14 A. Uh-huh.

15 Q. Under that it says, "Cows per day."

16 Do you see that, sir?

17 A. Yes.

18 Q. Do you see that it says 39.3?

19 A. Okay.

20 Q. And then if you flip to the front of this  
21 document that I've handed you, which again is AR  
22 236C-75, is that your signature on that letter?

23 A. Yes, sir, it is.

24 Q. Thank you. That was a whole lot of time for a  
25 little question. I apologize.

1           And the amount of discharge per day that the  
2 permit application was for was what?

3           A.     8,000 gallons per day.

4           Q.     Thank you.

5           Who is responsible for providing monitoring  
6 reports for your facility?

7           A.     I would, and I would designate employees,  
8 also, to pull the ground -- the monitor well water.  
9 I've had several employees do that.

10          Q.     Great.

11          And how often is that done -- or was that  
12 done, I apologize, let's say between 2010 and 2012  
13 before you stopped operating?

14          A.     It was done maybe twice a year.

15          Q.     Okay. The permit that we're talking about  
16 here today you applied for in 2010, correct?

17          A.     Yes.

18          Q.     After you got notice that your prior permit  
19 had expired, correct?

20          A.     It had expired, yes.

21          Q.     At that time you were planning on slaughtering  
22 cows under that permit, correct?

23          A.     We had been slaughtering cattle, yes.

24          Q.     When you applied in 2010, you had no thought  
25 about slaughtering horses. Is that correct?

1 A. In 2010, no.

2 Q. Okay. Did you ever inform NMED or the  
3 Groundwater Water Quality Bureau about your intention to  
4 slaughter horses?

5 A. No. I just submitted a -- no. Oh, go ahead.  
6 I'm sorry. No.

7 Q. No, you're good. You answered.

8 A. No, I just submitted the renewal application.  
9 That's all.

10 Q. When is the first time you discussed  
11 slaughtering horses with any member of the Bureau or the  
12 agency?

13 A. I am not sure when that was. It was after I  
14 submitted the renewal, though.

15 Q. So was it in 2012, do you think?

16 A. It might have been 2012, yeah.

17 Q. 2013?

18 A. '12.

19 Q. Okay. Do you have any experience running a  
20 horse slaughterhouse?

21 A. Not horse slaughter. I've never slaughtered a  
22 horse, never.

23 Q. But you're pretty confident there is no  
24 difference in operations, is that correct?

25 A. In operations, no, sir.

1 Q. But USDA required you to change the facility  
2 at Valley Meat in order to slaughter horses, is that  
3 correct?

4 A. Change the facility?

5 Q. Yes.

6 A. We had to install a catwalk, because of the  
7 inspection regimen that USDA required. We had to change  
8 our knock issue. And this is all voluntary. They don't  
9 make us change anything, it's all voluntary, and so we  
10 did the changes that we thought would help the process.

11 Q. And did USDA tell you that you could slaughter  
12 horses and cows in the same facility?

13 A. At the beginning, in 2011, they said put in a  
14 request for a waiver to the regulation and that I might  
15 be able to do both species in the same facility, and  
16 this was communication between USDA and myself.

17 Q. And -- sorry, go ahead.

18 A. And so they did talk to us about that, and so  
19 we submitted an application to do that.

20 Q. And what was the answer from USDA?

21 A. It was denied.

22 Q. Denied?

23 A. It was denied, yes.

24 Q. Did they tell you -- excuse me. Did they tell  
25 you why?

1           A.     That because we could not do both species in  
2 the same facility.

3           Q.     I understand that's what they told you. Did  
4 they tell you why, or did they just say no?

5           A.     No, they just said that you cannot do it, it's  
6 part of the regulations and in the CFR manual of USDA  
7 that you cannot do both species in the same facility.

8           Q.     So they said it was based on the federal  
9 regulations?

10          A.     Uh-huh. Yes.

11          Q.     Was that a yes?

12          A.     What?

13          Q.     I just need you to answer audibly for the  
14 court reporter.

15          A.     Please repeat.

16          Q.     Yeah.

17                   My question was, they told you that you  
18 couldn't slaughter both species because of federal law,  
19 is that correct?

20          A.     Yes. Uh-huh.

21          Q.     Now, when and if you engage in horse  
22 slaughter, will you -- you'll have different suppliers  
23 than you did for cows; is that correct?

24          A.     Different suppliers?

25          Q.     Yes, sir.

1 A. Yes, sir.

2 Q. And you'll have different customers as well,  
3 is that correct?

4 A. Yes, sir.

5 Q. And the meat will go different places than it  
6 did before, correct?

7 A. Yes.

8 Q. And there are -- these are obviously a  
9 different species, correct, than cows, than you've done  
10 before?

11 A. Yes.

12 Q. Okay. We've heard some testimony that horses  
13 and cows have either a little bit more -- horses either  
14 have a little bit more blood than cows on average or  
15 about the same. Is that correct? Did you hear that?

16 A. Yeah, that's what I heard, five percent or  
17 seven percent of the body weight.

18 Q. And blood is a potential contaminant for water  
19 and the environment. Is that correct?

20 A. To groundwater, I guess it would be.

21 Q. When did you first decide that you were going  
22 to slaughter 121 horses per day?

23 A. When we did the research of what the other  
24 facility -- the three facilities in the United States in  
25 2006, we looked at what they were doing, and they had 50

1 employees, they slaughtered 120 head per day, had a  
2 comparable size of facilities, and so we thought that's  
3 what we could do.

4 We slaughter 80 to 100 cows a day, dairy  
5 cows, so we thought horses would be a lot easier to  
6 handle than cattle, than those old dairy cows we'd  
7 slaughtered.

8 Q. Okay. Have you ever been told that horses are  
9 a lot harder to handle at a slaughterhouse than cows?

10 MR. DUNN: Madam Hearing Officer.

11 MS. ORTH: Mr. Dunn.

12 MR. DUNN: I'm not sure of the relevance of  
13 that question. I'd object to its relevance, as not  
14 being relevant to what goes on with a discharge permit.

15 MS. ORTH: Mr. Wagman, how would you tie this  
16 to the protection of groundwater?

17 MR. WAGMAN: Well, first, the witness just  
18 testified that they were easier, so I was trying to  
19 elicit some impeachment of that statement; and second of  
20 all, the fact that horses are harder means that there is  
21 a much greater likelihood of contamination from things  
22 like manure, saliva and blood, if horses are intended to  
23 be killed in a slaughterhouse.

24 MS. ORTH: All right.

25 And the question, I think, has been answered

1 now in any event.

2 Please go ahead.

3 MR. WAGMAN: Thank you, Madam Hearing Officer.

4 Q. (BY MR. WAGMAN) Mr. De Los Santos, do you  
5 have any concern about the overflow of the lagoons  
6 moving to 121 horses?

7 A. No.

8 Q. Okay. Have you had problems with overflow of  
9 the lagoons in the past?

10 A. No.

11 Q. There has never been any overflow of lagoons  
12 at your facility?

13 A. Overflow?

14 Q. Overflow.

15 A. No. No. Not that I'm aware of, no.

16 Q. Okay. And you're not aware that NMED has  
17 noted at least two occasions on which there was overflow  
18 of the lagoons at your facility, is that correct?

19 A. That they were -- maybe that they were full,  
20 that we needed to put in another lagoon. Maybe that.  
21 Not -- not necessarily overflowing into the ground or  
22 anything. That's not -- I'm not aware of that.

23 Q. Okay. Did you ever tell Mr. Wyant that you  
24 were going to begin slaughtering horses?

25 A. I might have. I might have.

1 Q. But you don't recall?

2 A. No.

3 Q. And how about Mr. Ashcraft?

4 A. I hadn't talked to Mr. Ashcraft in a few years  
5 before this whole process started.

6 Q. But something like seven or eight years, was  
7 it?

8 A. Maybe, yeah.

9 Q. Okay. When the horses are slaughtered, if  
10 there is three times as many horses than -- well, strike  
11 that.

12 Do horses have the same amount of offal as  
13 cows?

14 A. No.

15 Q. And can you describe why you say that?

16 A. Well, if you picture a dairy cow, a big dairy  
17 cows weighs, you know, 1,100 up to 1,800 pounds. They  
18 have udders that weigh 150 pounds. All of that is  
19 offal. They have a huge hide, that's usually dirty and  
20 full of manure. They have intestines that are big and  
21 heavy. Horses -- you can see a horse is lean and  
22 smooth.

23 So, no, I don't think horses have more than --  
24 not even close to what the cows have.

25 Q. And have you talked to anybody about that?

1 A. Yes, I have.

2 Q. Who is that?

3 A. I don't think -- do I need to answer that?

4 MR. DUNN: Well, Madam Hearing Officer, I --  
5 again, you can't ask me if you can't answer. You have  
6 to ask her if you need to answer that.

7 But this goes to testimony that's already been  
8 asked and answered of a licensed veterinarian,  
9 discussing these components of animal intestines.

10 And if he has a question on that, I'm sure  
11 Mr. -- or, excuse me, Mr. Blach could probably best  
12 answer that question.

13 MS. ORTH: We did hear, I thought, a fair  
14 amount from Dr. Blach about the differences in offal.

15 MR. WAGMAN: Yes, Madam Hearing Officer, and I  
16 intend to ask Dr. Blach as well, but it's certainly  
17 relevant that the applicant has stated that he's going  
18 to be slaughtering three times as many horses, and all  
19 of our information suggests that that will produce the  
20 exact same amount of wastewater and roughly the same  
21 amount of offal, and so it's certainly important, since  
22 Dr. Blach, as far as I know, was not involved in the  
23 application process, as to whether the applicant himself  
24 knew that he was applying for a permit that would  
25 generate far more wastewater, which is our contention,

1 and also a similar amount of offal and other products.

2 So it goes directly to a material  
3 misrepresentation on the application, which we believe  
4 is grounds for denial of this permit. So it goes  
5 directly to what the Hearing Officer will need to  
6 consider.

7 MS. ORTH: All right. And so when you say  
8 "three times as much," you're referring to the  
9 difference from the 39.3 figure that you pointed out in  
10 the administrative record, Document 75.

11 Mr. Dunn?

12 MR. DUNN: Again, going to his question, his  
13 question was where Mr. De Los Santos received that  
14 information, not what the accuracy of the information is  
15 or what -- how that information -- it's not the facts,  
16 just where he obtained that knowledge.

17 I don't see how it's relevant, where he  
18 obtained that knowledge or who he discussed it with.  
19 Facts are facts, and the fact -- and where he -- who he  
20 talked to about that fact isn't really relevant to this  
21 hearing and relevant to the discharge. It is either a  
22 fact or it isn't.

23 MS. ORTH: Well, actually, I don't think it's  
24 ever improper cross-examination to ask where a witness  
25 got his information.

1 Mr. Wagman, please go ahead.

2 MR. WAGMAN: Thank you, Madam Hearing Officer.

3 Q. (BY MR. WAGMAN) So, Mr. De Los Santos, where  
4 did you get the information that you've testified to?

5 A. Claude Bouvery in Canada. He's a horse  
6 slaughter. You probably know who he is. That's where I  
7 received the information.

8 Q. Anyone else?

9 A. The gentleman at Beltex also, Eric Nauwelaers.

10 Q. Did Mr. Bouvery give you numbers for  
11 wastewater discharge per horse at his facility?

12 A. He gave me the numbers that it took 35 to  
13 40 gallons per horse through the entire process. Those  
14 are the numbers he gave me.

15 Q. Okay. And the Beltex gentleman or woman gave  
16 you the same information?

17 A. I didn't talk to him about that, no.

18 Q. Oh, you didn't talk to him about that?

19 A. No, not about the wastewater. No.

20 Q. And did you ask Mr. Bouvery if his facility  
21 was similar to yours?

22 A. Yes.

23 Q. And is it?

24 A. And he said it was definitely similar, yes.

25 Q. Okay. And are you aware that Mr. Bouvery

1 has had multiple problems with contamination at his  
2 plant?

3 A. No.

4 Q. Okay.

5 MR. DUNN: Madam Hearing Officer.

6 MS. ORTH: Oh, I'm sorry.

7 Mr. Dunn?

8 MR. DUNN: I'd object to facts not in evidence  
9 and a characterization of a matter that's not before  
10 this hearing.

11 His knowledge of what went on in the Canadian  
12 facility really has no bearing on what the discharge  
13 will be out of this plant.

14 MS. ORTH: Okay.

15 Mr. Wagman?

16 MR. WAGMAN: Well, I certainly disagree.

17 The knowledge and reliance on somebody who  
18 has been contaminating the environment for years  
19 slaughtering horses is certainly impeachable and should  
20 be considered by the Department and the Hearing Officer  
21 when they consider whether or not Mr. De Los Santos  
22 relied on any reliable information.

23 He could have said he asked a six-year-old  
24 outside what it takes, and that might have gotten  
25 actually more accurate information than from

1 Mr. Bouvery.

2 MR. DUNN: Then I object as to hearsay.

3 MS. ORTH: All right.

4 So the hearsay objection, I think, is more on  
5 point, and I'll ask you not to be argumentative,

6 Mr. Wagman.

7 I was wondering where this is going to talk  
8 about the contamination of the Canadian facility?

9 MR. WAGMAN: No, Your Honor, this is  
10 impeachment for the witness, and so I think hearsay is  
11 certainly permissible as impeaching him.

12 MS. ORTH: Okay. Please go ahead.

13 MR. WAGMAN: Thank you.

14 MS. ORTH: I'm not sure when you're going to  
15 reach the limits of his knowledge, but please go until  
16 you get there.

17 MR. WAGMAN: That's the only question I have  
18 about Mr. Bouvery.

19 MS. ORTH: All right.

20 Q. (BY MR. WAGMAN) When you slaughter horses as  
21 opposed to cows, you would still need to clean off the  
22 carcass for sale after the horse is slaughtered; is that  
23 correct?

24 A. Any animal you slaughter, you have to wash  
25 down, yes.

1 Q. And you will still need to wash down the  
2 killing floor as well, correct?

3 A. At the end of the shift.

4 Q. Okay. Will that washing off the floor for  
5 horses be different than washing off the floors for  
6 cows, in your mind?

7 A. It would be cleaner. It would be cleaner.  
8 The whole process would be cleaner because of the type  
9 of animal you're slaughtering.

10 Q. Won't it take about the same amount of water  
11 to get the floor clean?

12 A. I don't think so, no.

13 Q. Okay.

14 A. And let me say this, I've never slaughtered a  
15 horse, so --

16 Q. I understand that. I was just going to ask  
17 you that. That's great.

18 You still need to clean the hide as well with  
19 water, is that correct?

20 A. The hide, no. Not the hide.

21 Q. What happens to the hide?

22 A. The hide is salted and folded.

23 Q. I'm sorry?

24 A. Salted and folded.

25 Q. Okay. So it's not cleaned off, the blood or

1 anything?

2 A. No, no.

3 Q. Okay. The USDA also requires you to clean off  
4 slaughtered animals and the floor, is that correct?

5 A. Yes. You trim -- a majority of the cleaning  
6 is trimming. That's the majority of the cleaning of a  
7 carcass is trimming, any incidental contamination.

8 Q. Can you explain what you mean by "trimming"?

9 A. Trim, you take a knife and cut the piece off  
10 that is contaminated. That's part of the offal, goes in  
11 barrels.

12 Q. And then you have to wash off the place where  
13 you took off the contaminated piece?

14 A. At the end of the whole process, you do a  
15 final rinse and then you put your antimicrobial and put  
16 it in the coolers.

17 Q. You still need to wash up all the equipment  
18 used for slaughter?

19 A. You have to wash your hands. You have to --  
20 yes, you do a complete washdown at the end of the shift.

21 Q. Of the whole facility and the equipment,  
22 correct?

23 A. Yes.

24 Q. Okay. So just so we're clear on your  
25 discussions with Beltex and Mr. Bouvery, can you tell us

1 everything you discussed with the Beltex facility owner  
2 or operator about horse slaughter?

3 A. Everything?

4 Q. Yes.

5 A. We talked about the slaughter of horses. They  
6 gave me some regulations. He came to visit my facility,  
7 and we talked in depth about contracts, about  
8 slaughtering for his company in Belgium. That was what  
9 our conversations were about.

10 Q. Okay.

11 A. He was here during one of the walk-throughs  
12 with USDA to answer any questions they might have had.

13 Q. Have you contracted with him?

14 A. Have I contracted? No. No.

15 Q. Okay. And please tell me all of your  
16 conversations with Mr. Bouvery.

17 A. Conversations?

18 Q. Yes.

19 Tell me the subject.

20 A. The same type of conversations. He slaughters  
21 horses -- he slaughters American horses in Canada, and  
22 he'd like to have a facility here in the United States  
23 that will do the same for him.

24 Q. Did you discuss entering into business with  
25 Mr. Bouvery?

1 A. A lot of business with him, yes, sir.

2 Q. How often does the offal get picked up?

3 A. The offal?

4 Q. Yes.

5 A. We were composting all of our offal, so it was  
6 removed daily to the compost site.

7 Q. In your plans for a horse slaughter operation  
8 here in Roswell, how often do you anticipate the offal  
9 will be picked up?

10 A. Every two days.

11 Q. Okay. And you said it was a company in Dallas  
12 that will be picking it up?

13 A. Yes.

14 Q. What's the name of that company?

15 A. I don't recall right offhand the name. I've  
16 got a letterhead from them that -- the agreement, but I  
17 don't recall right offhand the name.

18 Q. And when did you speak with them?

19 A. During the time Eric Nauwelaers was here from  
20 Beltex, which was a year-and-a-half ago, maybe.

21 Q. I'm sorry?

22 A. A year-and-a-half ago.

23 Q. And I'm sorry, I didn't catch that name, the  
24 name of the gentleman from Beltex.

25 A. Eric Nauwelaers.

1 Q. Nolin, is it?

2 A. Nauwelaers.

3 Q. Can you spell it?

4 A. Yeah, you spell it. Nauwelaers, N-a-u-w-l-e-r  
5 (sic).

6 Q. Okay.

7 A. That sounds right.

8 MR. WAGMAN: Thank you. Thank you, Mr. De Los  
9 Santos.

10 I'll now get to Mr. Ashcraft before lunch.

11 CROSS EXAMINATION OF LONEY ASHCRAFT

12 BY MR. WAGMAN:

13 Q. Mr. Ashcraft, how do you determine hydraulic  
14 gradient?

15 A. The easiest way, and what most engineers would  
16 do, is they would survey the top -- we would say top of  
17 the casing, and determine the water height in the  
18 column. And based on the survey, they would determine  
19 the height of the water column, and it would be the same  
20 as doing a topog, but it's an underground aquifer that  
21 you're topogging to the surface.

22 Q. And I apologize, I'm not a hydrologist. I  
23 meant to cover those words.

24 Let's start with -- are you talking about in a  
25 monitoring well?

1 A. Yes.

2 Q. Okay.

3 A. All the monitoring wells would be surveyed to  
4 a common point. Nowadays, it would be a USGS point --  
5 in other words, to a datum point, and then by --

6 MR. POWERS: I apologize. Could you use the  
7 microphone? I apologize.

8 MS. ORTH: Thank you, Mr. Powers.

9 Q. (BY MR. WAGMAN) Maybe, for Mr. Powers'  
10 benefit, you might start and answer the whole question  
11 again.

12 A. Okay. The normal procedure would be to survey  
13 the top casing -- the top of the casing of each of the  
14 monitoring wells to a datum point. USGS is usually the  
15 datum point that's used and/or a benchmark datum point.

16 And then from that, you measure the depth of  
17 the water in a well at a given time. So when all of the  
18 wells are sampled, it's usually on a quarterly or  
19 semiannually basis. Then they determine the water level  
20 at all of those wells based on this datum point, and you  
21 can determine which well is the highest and so forth.

22 As a general rule, depending on the type of  
23 material that the water runs through, whether it's real  
24 porous or not, so forth, how fast the water moves from  
25 the, quote, highest to the lowest, and that's how they

1 determine the direction of flow.

2 And in this particular case, you'll probably  
3 ask, but number four -- from a benchmark of 100, that's  
4 how they were surveyed originally, not to the USGS, but  
5 just to pick a number from 1 to 100, the lowest one was  
6 number four, and the next was number three, and number  
7 one, as a general rule, would be the higher one.

8 Q. Thank you.

9 MR. WAGMAN: Are you able to hear, Mr. Powers?

10 MR. POWERS: Yes. Thank you.

11 MR. WAGMAN: Okay.

12 Q. (BY MR. WAGMAN) You -- Mr. Ashcraft, you  
13 received a degree in agricultural economics and  
14 agricultural business from New Mexico State, is that  
15 correct?

16 A. That's correct.

17 Q. And you currently own and operate Ashcraft  
18 Consulting?

19 A. Yes, sir.

20 Q. And you provide dairy consulting services?

21 A. Yes, sir.

22 Q. Have you had any education or training in  
23 water quality since 1998?

24 A. Yes, sir.

25 Through the NRCS. I retired from NRCS in

1 2003, 2004, I guess it was the end of 2003, and I had  
2 numerous water quality studies and doing nutrient  
3 management plans and comprehensive nutrient management  
4 plans. So that included water quality, yes.

5 Q. Water quality -- I'm sorry, water quality  
6 education and training?

7 A. Yes.

8 Q. Did you get paid for your work on this case,  
9 for what you're here for today? For this hearing and  
10 for working with Mr. De Los Santos.

11 A. Not for this hearing, but I was reimbursed for  
12 the work I did back in '05 and '06.

13 Q. Okay. And you testified that your consulting  
14 business works with dairy farms, correct?

15 A. Yes.

16 Q. And you've worked with dairy farms for over 35  
17 years?

18 A. Yes, sir.

19 Q. And I apologize for the simple questions.

20 A. No problem.

21 Q. But Valley Meat is not a dairy farm, correct?

22 A. That's correct.

23 Q. And you don't have any professional experience  
24 with horses, is that correct?

25 A. That's correct.

1 Q. Okay. And you don't have any experience with  
2 horse slaughterhouses, either; correct?

3 A. That's correct.

4 Q. Okay. Did you look into, when talking with  
5 Mr. De Los Santos in 2005, anything with respect to the  
6 slaughter of horses?

7 A. No. I worked with Rick Robey in '05 and '06,  
8 and no, sir.

9 Q. Okay. And prior to this hearing, did you look  
10 into whether horses who go to slaughter take different  
11 drugs or substances than cows who are destined for  
12 slaughter?

13 A. No, sir.

14 Q. And did you look into whether the nature of  
15 wastewater discharge for horse slaughter was different  
16 than that for cows?

17 A. No, sir.

18 Q. What -- and I don't want to belabor this, but  
19 just so I have your understanding, what was Rick Robey's  
20 role with respect to you when you worked with him?

21 A. His role was trying to fulfill the obligations  
22 and the requirements of his -- I guess his 2004 permit,  
23 2005, whichever it was issued, and a few of those were  
24 to address the amount of water that was coming out, and  
25 that was -- as I mentioned, the original pond was about

1 a .6-acre pond, and that's surface area, as a rule, and  
2 that wasn't enough volume to maintain the amount.

3 Originally, we'd asked to -- it asked for a  
4 design of 5,000, we went ahead and designed it for 8,000  
5 gallons per day of evaporation, and that's the reason we  
6 built the pond next to it, I believe it's 1.62 or  
7 something like that acres, and to maintain the water  
8 flow out of the facility.

9 Q. And you said the original or the earlier pond  
10 was not adequate or sufficient. Is that what you said?

11 A. The original pond that was there, the .6 pond,  
12 was not adequate to contain the 8,000 or 5,000 gallons a  
13 day they were producing at that time.

14 Q. Were you aware of any problems that arose  
15 because it wasn't adequate to contain that amount?

16 A. Well, it was -- when I was contacted by  
17 Mr. Robey, it was nearing its fullness. In other words,  
18 it was going to overflow if they didn't do something,  
19 either reduce the amount of flow in the facility, which  
20 they did for a period of time, or build a new facility  
21 that would handle that.

22 And so that was the process that they asked me  
23 to help take care of, and we got the pond designed that  
24 would handle, combined with the existing pond, 8,000  
25 gallons per day of evaporation.

1 Q. And what was your role? You, personally, and  
2 I guess Ashcraft Consulting in the construction of the  
3 new storage pond.

4 A. My role was really to get an engineer, which  
5 was Stan Cook, which is a New Mexico PE, to design the  
6 pond, and he an NRCS -- he's retired from NRCS, he used  
7 their criteria, designed the pond, and got the pond  
8 built.

9 Ms. Humphreys would be the person that checked  
10 out -- she's also a PE -- checked out the pond and  
11 checked out the liner to verify that the liner and the  
12 pond was built as proposed and as submitted to the  
13 Department of Environment, and make sure all of the  
14 process was done correctly and the liner specifications  
15 were done and so forth.

16 And so both of those -- one of them did the  
17 design -- they work together in their business, but --  
18 and the other one did the check-out, and the check-out  
19 was done in December of '05, and then the pond -- I  
20 think they started using that particular pond around  
21 February, about the time they did the monitoring wells.

22 Q. But you're not an engineer, correct?

23 A. No, sir.

24 Q. You're not a hydrologist?

25 A. No, sir.

1 Q. A geologist?

2 A. No.

3 Q. And what was your role with installing  
4 monitoring wells one, two, three and four?

5 A. The requirement was that any new pond -- the  
6 existing pond, first of all, had to have monitoring  
7 wells installed to verify that it was functioning  
8 properly; in other words, put in what we call an  
9 upgradient monitoring well and then verify -- and test  
10 that water as compared to a monitoring well what we  
11 would call downgradient of the pond. So that was wells  
12 number one and two -- one being upgradient, that's -- we  
13 would say to the west side of the facility, two being on  
14 the east side of the existing pond, the small -- the  
15 small pond. Those were put in in March of '05.

16 And then when the other pond was completed in  
17 December, and checked out in December and January, the  
18 number three and four were put downgradient of it to  
19 verify that that pond -- that the integrity was  
20 maintained.

21 Q. And based on your knowledge and expertise, you  
22 can't certify that the evaporation pond was installed  
23 correctly; is that right?

24 A. No, sir. That's the reason that we had an  
25 engineer do that.

1 Q. Right.

2 And the same goes for the monitoring wells,  
3 correct? Based on your experience, you can't certify  
4 that they were installed correctly?

5 A. No, the monitoring wells were done by Atkins  
6 Engineering, which does follow the procedures and the  
7 guidelines that are required by NMED.

8 Q. You submitted a letter to Ms. Kirby of NMED on  
9 March 4th, 2005.

10 Are you familiar with that letter?

11 A. You'd have to remind me.

12 Q. Okay. I'm happy to do it. It's AR 236C-94.

13 This is a letter on Ashcraft Consulting  
14 letterhead of March 4th --

15 A. Sure.

16 Q. -- 2005.

17 A. Yes.

18 Q. I just --

19 A. This is it.

20 Q. -- need to get entered in court what we're  
21 looking at together.

22 It's dated March 4th, 2005, received maybe  
23 March 6th, 2005, signed by Mr. Loney Ashcraft.

24 Is that your signature at the bottom of that  
25 page?

1 A. Yes. Yes, sir, it is.

2 Q. And you stated in that letter that Valley Meat  
3 was at that time producing less than 5,000 gallons per  
4 day, correct?

5 A. Correct.

6 Q. And what did you base that conclusion on?

7 A. That particular date would be the amount that  
8 was coming out of the facility if he didn't have the  
9 meter -- if I remember right, but you're asking several  
10 years ago. But the readings I took after this time  
11 showed that one of the months was -- the average was 45  
12 -- 4,510, if I remember right, per day at that time, and  
13 that's one reason the facility -- the request that we  
14 had looked at -- originally, you notice on there that it  
15 says 5,000, because that's -- the meter reading showed  
16 that, and so we wanted to design it for 8,000 in case  
17 they ever wanted to expand, because they are not  
18 concerned about the number of animals, they are  
19 concerned about the volume of water.

20 Q. And the calculations of that volume submitted  
21 with their permit application contemplated 39.3 cows per  
22 day, is that correct?

23 A. Cows -- the number of cows was never  
24 mentioned.

25 Q. Okay.

1           A.     The only thing I have to work with is what's  
2 required by NMED, which is the volume -- total volume  
3 per day.

4           Q.     Okay. Did you perform any calculations on  
5 whether the evaporation pond could properly contain  
6 discharges of much greater than 8,000 gallons per day?

7           A.     Greater than 8,000?

8           Q.     Yes, sir.

9           A.     No, sir.

10          Q.     Okay.

11          A.     It was designed just for 8,000.

12          Q.     Okay. And you assisted Valley Meat with their  
13 quarterly monitoring reports, it sounds like, from 2005  
14 to 2006. Is that correct?

15          A.     That's correct.

16          Q.     Have you assisted Valley Meat with their  
17 reports after May of 2006?

18          A.     No, sir.

19          Q.     Have you done anything for Valley Meat since  
20 then?

21          A.     No, sir.

22                 MR. WAGMAN: Okay. Have a good lunch.

23                 Okay, lunch.

24                 MR. ASHCRAFT: Okay.

25                 MS. ORTH: Excuse me.

1           Mr. Wagman, I'm not quite ready to excuse  
2 Mr. Ashcraft unless I break into your cross-examination  
3 for a moment.

4           Shall I do that?

5           MR. WAGMAN: Please, Madam Hearing Officer.

6           MS. ORTH: All right. Is there anyone else  
7 with a question of Mr. Ashcraft based on his testimony?

8           And, Mr. Dunn, do you have redirect?

9           MR. DUNN: No, Your Honor.

10          MS. ORTH: All right.

11          Now you're excused.

12          MR. ASHCRAFT: Okay. Thank you.

13          MS. ORTH: Thank you very much.

14          MR. WAGMAN: My apologies.

15          MR. ASHCRAFT: No problem.

16          MS. ORTH: Thank you, Mr. Ashcraft.

17          (Mr. Ashcraft excused.)

18          MS. ORTH: Mr. Wagman.

19                    CROSS EXAMINATION OF CHET WYANT

20 BY MR. WAGMAN:

21           Q.    Mr. Wyant, you are president and CEO of  
22 EnviroCompliance Services, Inc.; correct?

23           A.    Correct.

24           Q.    And you are an environmental consultant,  
25 correct?

1 A. We're essentially administrators.

2 Q. Can you explain -- there are so many  
3 administrators in this world.

4 Can you explain what you do as an  
5 administrator?

6 A. We provide administrative assistance to a  
7 number of permittees who hold permits under the  
8 regulations of the New Mexico Environment Department.

9 Q. Okay. I don't want to belabor it, but give me  
10 a few top examples of the types of administrative  
11 assistance or services you provide.

12 A. We -- well, for instance, the preparation of  
13 the application in this case.

14 Q. Okay. You're not a hydrologist, is that  
15 correct?

16 A. No, I'm not.

17 Q. Not a geologist?

18 A. No, I'm not.

19 Q. Toxicologist?

20 A. No, I'm not.

21 Q. Engineer?

22 A. No, I'm not.

23 Q. Do you have any experience with horse  
24 slaughterhouses?

25 A. No, I do not.

1 Q. And I think you testified earlier very limited  
2 experience with custom slaughterhouses?

3 A. Custom slaughterhouses, where they are not  
4 specific -- well, species specific, that's true.

5 Q. And custom slaughterhouse refers to  
6 slaughterhouses that do a very small number of animals,  
7 is that correct?

8 A. Well, it depends on the location, I think. I  
9 don't know what you'd consider small.

10 Q. Have you been involved with any commercial  
11 slaughterhouses?

12 A. Not -- only this one. Only this one.

13 Q. Okay. Have you looked into whether horses who  
14 go to slaughter take different drugs or substances than  
15 cows who are destined for slaughter?

16 A. No, I have not.

17 Q. And have you looked into whether the nature of  
18 the wastewater discharge from horse slaughter is  
19 different than that from cow slaughter or other species?

20 A. I've not studied that.

21 Q. Okay. And you prepared the permit application  
22 submitted on June 3rd, 2010; is that correct?

23 A. Correct.

24 Q. Who assisted you with that?

25 A. The plant owners. I did -- I did a site

1 review with them, and we collected some prior records  
2 for assistance in knowing what had already been  
3 submitted, what hadn't been, that kind of thing, but --

4 Q. And can you tell us the names of the plant  
5 owners? I think we know, but just for the record.

6 A. Yes. Rick and Sarah De Los Santos.

7 Q. Thank you.

8 And were you paid for that work?

9 A. Yes.

10 Q. And who paid for your services?

11 A. If I recall correctly, the name was Pecos  
12 Valley Meat.

13 Q. Okay. And how much were you made?

14 A. I have no idea.

15 Q. Okay. How many water permit applications have  
16 you prepared for commercial slaughterhouses?

17 A. One.

18 Q. This one?

19 A. Yes. For commercial?

20 Q. Yes.

21 A. Yeah.

22 Q. When you prepared the permit application for  
23 Valley Meat in 2010, were you aware that its permit that  
24 was previously issued had expired?

25 A. Yes.

1 Q. Okay. And how did you learn that?

2 A. I was provided with a notice of noncompliance  
3 from the Department.

4 Q. Okay. The permit application, in Part B.2,  
5 states that the discharge quantity is 8,000 gallons per  
6 day. Correct?

7 A. Correct.

8 Q. And that's the same as the previous permit in  
9 2004, correct?

10 A. I believe that's correct.

11 Q. What was the basis for that statement? If you  
12 know. What was the basis for that statement?

13 A. In the application?

14 Q. Yes, sir.

15 A. When I interviewed the -- Sarah and Rick, they  
16 had no desire to change it.

17 Q. Okay. When did you first learn of Valley  
18 Meat's intention to slaughter horses?

19 A. I really don't know when it was. I'm pretty  
20 sure it was some kind of a news announcement.

21 Q. I see.

22 You learned it through the media?

23 A. The media, yeah.

24 Q. Okay. When did you first -- did you ever  
25 talk to Mr. De Los Santos or Mrs. De Los Santos about

1 the fact that they were intending to slaughter horses?

2 A. Not prior to hearing about it in the media.

3 Q. Subsequent to that?

4 A. Well, yes. When I -- and I -- I mean, I don't  
5 have my daily logs with me or anything, but I -- I  
6 couldn't say when.

7 Q. Okay. Do you think it was 2013?

8 A. Yes.

9 Q. Okay. If Valley Meat informed you that they  
10 were intending to slaughter three times as many cows as  
11 they previously had slaughtered, would you think that  
12 would change the amount of wastewater generated?

13 A. It could possibly change it.

14 Q. And why do you say that?

15 A. Well, the multiplier factor, of course.

16 Q. Okay. So probably roughly three times as  
17 much?

18 A. It's possible it could be three times as much.  
19 However, that does not account for efficiencies in --  
20 for the scale of the operation. So it wouldn't  
21 necessarily have to be. It's not a direct multiplier, I  
22 don't believe.

23 Q. And what do you base that belief on?

24 A. Just scales of efficiency.

25 MR. WAGMAN: Okay. Thank you, Mr. Wyant.

1 CROSS EXAMINATION OF LEONARD BLACH, DVM

2 BY MR. WAGMAN:

3 Q. Dr. Blach, is it?

4 A. Blach, yes.

5 Q. Blach, yes.

6 Better take that microphone from Mr. Wyant,  
7 please.

8 Dr. Blach, you've authored numerous articles  
9 related to large animal veterinary medicine, correct?

10 A. Yes.

11 Q. Any on horse slaughter?

12 A. No.

13 Q. Any on the concentration of drug residues in  
14 horses going to slaughter?

15 A. No.

16 Q. Any on levels of chemicals in horse flesh or  
17 horse blood?

18 A. No.

19 Q. Any on potential water contamination from  
20 horse slaughter?

21 A. No.

22 Q. What studies did you rely on, if any, in  
23 preparing your testimony for today, the written  
24 testimony in your direct testimony?

25 A. Primarily personal experience.

1 Q. So no studies?

2 A. No.

3 Q. Okay. Do you -- are you getting compensated  
4 for being here today?

5 A. Pardon me?

6 Q. Are you being compensated for being here  
7 today?

8 A. No.

9 Q. And were you paid for preparing your  
10 declaration?

11 A. No.

12 Q. And did you prepare that declaration?

13 A. Yes.

14 Q. Do you raise horses?

15 A. Yes.

16 Q. And have you thought at any time about selling  
17 any of your horses to Valley Meat?

18 A. To who?

19 Q. To Valley Meat for slaughter.

20 A. No.

21 Q. Okay. Do you have any experience with horse  
22 slaughterhouses?

23 A. No.

24 Q. I'm just going to go through your declaration  
25 a bit and ask you if you can help explain a few of the

1 statements.

2 Do you need a copy, or do you --

3 A. Probably not.

4 Q. Okay. Paragraph three states, quote, "My  
5 career as an active practitioner has been considered to  
6 meet all regulations from a -- from a gated facility of  
7 USDA in regards to therapeutic medications, their  
8 dosage, and withdrawal times," unquote.

9 Can you explain what that sentence means?

10 A. Well, it just means that the practice -- I  
11 practice medicine according to the USDA regulations and  
12 the state regulations.

13 Q. Okay. So -- okay.

14 Which regulations are you referring to?

15 A. Well, the USDA is in regard to federal health  
16 certificates, livestock inspection and vaccinations and  
17 several diseases that are monitored by the USDA.

18 Q. Okay. And those are with respect to animals,  
19 I assume, such as cows who are going to slaughter; is  
20 that correct?

21 A. Eventually, yes.

22 Q. Okay. And have you any experience with any  
23 other species who are going to slaughter?

24 A. Other than cattle?

25 Q. Yes, sir.

1 A. No.

2 Q. And paragraph four says you're knowledgeable  
3 of the regulations imposed on the movement and  
4 transportation of horses internationally.

5 Which regulations are you referring to there?

6 A. It's all the health requirements to ship  
7 horses internationally, and we've done that occasionally  
8 to -- a few times to Europe and most of the time to  
9 South America, which just requires that -- those  
10 countries may require some special tests to be run  
11 before a health certificate can be issued.

12 Q. And those were not horses going to slaughter,  
13 correct?

14 A. No, sir.

15 Q. You state in your declaration that you  
16 understand half-lives and withdrawal times, and  
17 Mr. Holland asked you some questions about those.

18 You say there are, quote, "stringent  
19 withdrawal times to ensure there are no detectable  
20 amounts," unquote.

21 Can you explain that for us?

22 A. Yeah. Well, that varies again, like I think I  
23 mentioned before, was that depending upon the dose, the  
24 dosage -- the recommended dosage and as to whether  
25 that's been followed and then the duration of time would

1 depend upon the half-life or the duration of that drug  
2 to remain in the body.

3 Q. Okay. And so how do you determine what the  
4 withdrawal time is for a particular drug?

5 A. In most drugs that we use in food-producing  
6 animals or even -- in all food-producing animals, there  
7 is a recommended withdrawal time based on the dosage  
8 that they -- that the pharmaceutical company recommends.

9 Q. Okay. So the withdrawal times themselves, you  
10 get from the pharmaceutical companies or from  
11 regulations? I'm just unclear.

12 A. From the label that's put on the drug from the  
13 pharmaceutical company.

14 Q. Okay. What's the purpose of withdrawal times  
15 for drugs, if you know?

16 A. The purpose is -- in most of the time in  
17 food-producing animals, it's for the reason that they be  
18 free of that drug by the time it's processed.

19 Q. And why would we want the meat to be free of  
20 the drug before it's processed?

21 A. Because you'd want your processed product to  
22 be free of drugs.

23 Q. And why?

24 A. Well, I don't know why -- I don't know why we  
25 wouldn't want it. I mean, you try to make a product or

1 a processed piece of meat or milk or cheese or whatever  
2 you're talking about, you want it free of drugs.

3 Q. Because drugs could be dangerous to the  
4 consumer, right?

5 A. You want it drug-free.

6 Q. Because drugs could be dangerous to the  
7 consumer?

8 A. Yes.

9 Q. How is the withdrawal time monitored? How do  
10 you monitor withdrawal times in the herds or animals  
11 you're dealing with?

12 A. Well, I think I explained that earlier.

13 In milk that -- the milk, when they finish  
14 treating the cows, then that is monitored there. By  
15 litmus test, they check and make sure the milk coming  
16 from that cow is clean before it's put in the tank, the  
17 cooling tank, and then it's monitored again before it's  
18 put into the transport tank.

19 So I don't know if that answers your question,  
20 but that's the way it's monitored.

21 Q. It sounds like -- you're talking about testing  
22 the milk for some kind of residue, correct?

23 A. Yes. Yes.

24 Q. How do you -- is there a point in time at  
25 which you say, "Okay, the withdrawal time is X number of

1 days, and this drug was given to this cow on Monday;  
2 therefore, the withdrawal time ends"?

3 MR. POWERS: Your Honor --

4 MS. ORTH: Excuse me, hold on.

5 Mr. Powers?

6 MR. POWERS: Your Honor, I have two motions  
7 for objections, and, hopefully, Mr. Wagman will  
8 understand.

9 First, repetitious, needless information. I  
10 think what we're getting to -- and I want to make sure  
11 we don't stray into that territory of the USDA/FSIS  
12 regulations on meat safety. I don't think we're here  
13 today for that matter.

14 So I understand Mr. Wagman's point, I think  
15 he's going in that direction. If he can just speed it  
16 up, I'd certainly appreciate it, as well as I think some  
17 of this is repetitious. I think Dr. Blach has already  
18 testified to some of these items, and I'd just ask that  
19 Mr. Wagman be cautious of that.

20 MS. ORTH: All right. Thank you.

21 Mr. Wagman, similar thoughts were going  
22 through my head, that this is not the hearing on -- the  
23 USDA hearing, for example.

24 MR. WAGMAN: I have no intention of going that  
25 direction, Your Honor, I'm trying to establish the basis

1 for withdrawal times of drugs in animals, USDA or  
2 otherwise.

3 MS. ORTH: Okay.

4 MR. WAGMAN: As Dr. Blach has indicated, it's  
5 on the label, so I'm just trying to figure out how we do  
6 that and why.

7 MS. ORTH: All right.

8 And you're moving on then fairly  
9 expeditiously, correct?

10 MR. WAGMAN: Yes, Madam Hearing Officer.

11 Q. (BY MR. WAGMAN) So you -- but you -- just to  
12 be clear, you monitor withdrawal time by noting the date  
13 of the administration of the drug and then counting a  
14 certain number of days until the withdrawal time would  
15 be over, is that correct?

16 A. Yes, sir.

17 Q. Okay. And withdrawal times are of no use if  
18 they are not enforced, correct?

19 A. Pardon me?

20 Q. Withdrawal times are of no use and no value if  
21 they are not enforced, is that correct?

22 A. Correct.

23 Q. And they can't be applied if you don't know  
24 when an animal has been given a drug, correct?

25 A. Pardon me?

1 Q. If an animal -- if you don't know when an  
2 animal has been given a drug, you can't determine the  
3 withdrawal time for the drug that's been given, correct?

4 A. No, if we don't know when an animal has been  
5 drugged, I wouldn't know about the withdrawal times, you  
6 know.

7 Q. And not all drugs have withdrawal times,  
8 correct?

9 A. Pardon me?

10 Q. Not all drugs that animals are given have  
11 withdrawal times, is that correct?

12 A. That's correct.

13 Q. Okay. And, in fact, there are many drugs that  
14 are prohibited for use in horses going to food based on  
15 federal law, is that correct?

16 A. Yes.

17 Q. And those, therefore, have no withdrawal  
18 times, correct?

19 A. Yes.

20 Q. For example, phenylbutazone has no withdrawal  
21 time for horses who are going for food; correct?

22 A. No, it's not approved for -- I don't know that  
23 it's approved for horses going to slaughter at this  
24 point.

25 Q. Therefore, a horse --

1 A. There is no regulations as to that.

2 Q. Therefore, a horse who has phenylbutazone  
3 cannot become food, correct?

4 A. Pardon me?

5 Q. Under federal law, a horse who has been  
6 administered phenylbutazone is prohibited from becoming  
7 meat; correct?

8 A. I don't know that that would be correct.

9 Q. Okay. Do you know why -- are you aware that  
10 there are roughly 20 to 50 drugs in the Code of Federal  
11 Regulations that say prohibited for use in horses going  
12 to food?

13 A. Yes, there are a number of drugs that are  
14 prohibited.

15 Q. And do you know why they are prohibited?

16 A. For going to food?

17 Q. Yes, sir.

18 A. No, sir, I don't.

19 Q. Okay. And could it be because that no level  
20 of concentration of it is safe for human consumption?

21 MS. ORTH: I think you've reached the end of  
22 his knowledge on that point already.

23 MR. WAGMAN: Okay.

24 Q. (BY MR. WAGMAN) Do you medicate horses in  
25 your practice?

1 A. Pardon me?

2 Q. Do you medicate horses in your daily practice?

3 A. Absolutely.

4 Q. I'm sorry?

5 A. Absolutely.

6 Q. I'm sorry. I'm just having trouble hearing.

7 When you medicate horses, do you consider

8 whether the horse you're medicating is going to

9 slaughter for food?

10 A. Not at this time.

11 Q. Not at this time?

12 A. Not at this time.

13 Q. Thank you.

14 When you medicate horses, do you pay attention

15 to the laws concerning the administration of drugs given

16 to food animals?

17 A. Yes.

18 Q. When you administer the -- when you medicate

19 horses --

20 A. When I medicate horses?

21 Q. Yes, sir.

22 A. Do I pay attention to what?

23 Q. To the laws and regulations concerning the

24 administration of drugs to food animals, such as horses.

25 A. No, I don't -- I don't -- am unaware of any

1 food regulations as far as horses at this time.

2 Q. When horses are medicated at racetracks, do  
3 the owners and veterinarians consider whether the horses  
4 are going to be food?

5 A. Not at this time.

6 Q. Okay. Paragraph six of your declaration says,  
7 quote, "All medications used on racetracks are tested  
8 for permissible therapeutic medications and prohibited  
9 medications."

10 I think the first "medication" in that  
11 sentence is supposed to be "horses." Is that fair?

12 A. Pardon me?

13 Q. I'll read you the sentence again. I think  
14 it's just a typo. It says -- I just want to be clear on  
15 that.

16 A. I got the sentence, but I didn't get your  
17 question.

18 Q. There is -- the sentence reads, "All  
19 medications used on racetracks are tested for  
20 permissible therapeutic medications and prohibited  
21 medications."

22 Did you mean to say "All horses used on  
23 racetracks," or if not, can you explain that sentence?

24 A. All horses on the racetrack.

25 Q. Okay. Are permissible medications for

1 racehorses also permissible for horses going to be food?

2 If you know.

3 A. I don't know that at this time.

4 Q. Okay. So that statement in paragraph six  
5 doesn't relate to horses as food animals, correct?

6 A. Your question again, please.

7 Q. That statement that I just read to you does  
8 not relate to horses going to be food, correct?

9 A. That's correct.

10 Q. It only refers to horses at racetracks.

11 A. Yes.

12 Q. Okay. Thank you.

13 MR. POWERS: Your Honor, I'm going to have to  
14 renew my objection. We're not talking about food and  
15 animals and equines at this point. I mean, I --

16 MS. ORTH: But hasn't -- isn't he, though now  
17 with these last questions, merely trying to ascertain  
18 the contours of the statements made by Dr. Blach in  
19 paragraph six of Dr. Blach's testimony? That is to say,  
20 I think he's trying to see how far those statements go.

21 MR. POWERS: Yes, ma'am, for impeachment  
22 evidence, I believe that's proper, I believe, but for  
23 the nature of the hearing, I believe it may be a little  
24 improper, so I'd caution the Court at this time, if  
25 that's permissible.

1 MS. ORTH: Okay. All right. Thank you,  
2 Mr. Powers.

3 I'm listening carefully, Mr. Wagman.

4 MR. WAGMAN: I'm doing my best, Your Honor,  
5 Madam Hearing Officer, and you're correct in these  
6 statements reflect specific areas and not horses going  
7 for food, which is certainly what the water permit  
8 reflects here.

9 Q. (BY MR. WAGMAN) Moving to paragraph seven,  
10 Dr. Blach, I'll quote again, "In the dairy industry,  
11 there are stringent regulations by regulatory agencies  
12 that ensure that milk and beef products are safe for  
13 human consumption."

14 These regulations that you're referring to  
15 don't refer to horses going for food, correct?

16 A. That's right.

17 Q. Okay. And is it fair to say that horse owners  
18 who do not know their horses are going to be slaughtered  
19 would not be thinking about these regulations you  
20 referenced in this paragraph; correct?

21 A. At this point, that would be true.

22 Q. Okay. I'd like to move to paragraph eight.  
23 You say, "In comparison, the substances found in both  
24 horses and cattle are very similar." That's a quote.

25 What is the basis for that statement?

1           A.     Because we use the same pharmaceuticals  
2 primarily in cattle as we do horses.

3           Q.     I'm sorry, I didn't understand.

4           A.     We use the same pharmaceutical products in  
5 horses that we do in cattle.

6           Q.     Okay. And are you sure that the same  
7 biochemical and biological processes occur in horses as  
8 in cows when they are administered these drugs?

9           A.     Depending on the drug, but it would be pretty  
10 much they'd have the same response, because we're giving  
11 it for the same reason.

12          Q.     Okay. Can you cite any studies that reflect  
13 your opinion there?

14          A.     Reflect what?

15          Q.     The opinion you've just stated.

16          A.     Well, by and large, you know, any -- whether  
17 it be a horse or cattle, if it was running a fever, you  
18 know, we give the same medication, prescribed, whether  
19 it be antibiotics, antiinflammatories, whatever that  
20 might be.

21          Q.     I understand.

22                    Can you cite any studies that support your  
23 opinion that it's the same treatment and the same  
24 processing within the animal once they are administered  
25 the drugs?

1 A. Well, I think every pharmaceutical --

2 MR. DUNN: Wait, wait, wait.

3 MS. ORTH: I'm sorry.

4 MR. DUNN: Madam Hearing Officer.

5 MS. ORTH: Mr. Dunn?

6 MR. DUNN: This is again repetitive. He was  
7 asked if he'd signed this, and he said that -- in the  
8 discussions that he said no, he's relying on his  
9 practical experience as a long-standing, well-respected  
10 licensed veterinarian here in the State of New Mexico.  
11 He's not relying on studies. That's already asked --  
12 that's already been asked and it's already answered it.

13 MS. ORTH: That's true, Mr. Wagman.

14 MR. WAGMAN: I didn't recall that question.

15 MS. ORTH: Yes. It was earlier.

16 MR. WAGMAN: Okay. That's great.

17 Q. (BY MR. WAGMAN) Are you aware that the USDA  
18 has recently come out with documents that state that  
19 horses and cows get different drugs?

20 A. Get different drugs?

21 Q. Yes.

22 A. Yes.

23 Q. You are aware of those?

24 A. Yes.

25 Q. Okay.

1 MR. DUNN: Your Honor --

2 MS. ORTH: Mr. Dunn?

3 MR. DUNN: -- could we get a citation to those  
4 documents if we're going to refer to them?

5 I'm not sure that's a correct characterization  
6 of those documents. I'm not even sure what he's talking  
7 about.

8 He's asking the witness to talk about  
9 something, but we don't even know what it is.

10 MS. ORTH: All right.

11 Dr. Blach, will you clarify for the rest of us  
12 what you and Mr. Wagman were just talking about?

13 DR. BLACH: What was the question again?

14 Q. (BY MR. WAGMAN) I was asking if you are aware  
15 that the USDA had recently come out with documents that  
16 say that horses and cows get different drugs, and you  
17 responded yes, and the Hearing Officer is asking if you  
18 can cite those documents.

19 A. Yes. We've always had some different drugs  
20 that would apply to horses and not to cattle and some  
21 that would apply to cattle but not to horses.

22 Q. I understand that.

23 A. They've always been in existence.

24 Q. I understand.

25 The question that Mr. Dunn and the Hearing

1 Officer were asking were if you could recite the  
2 documents that you relied on in answering the question.

3 So the question is, can you cite those  
4 documents?

5 A. No documents I relied on. It's from personal  
6 experience and the labeling that -- and the instructions  
7 that the pharmaceuticals give us on a new drug.

8 Q. Okay. So maybe you misunderstood my earlier  
9 question. I said, were you aware that USDA had recently  
10 published documents that said that horses and cows  
11 received different drugs, and you answered yes, which  
12 is --

13 A. Yes, I know they do. I know they do. I don't  
14 know what document -- USDA document you're talking  
15 about.

16 Q. Okay. Great.

17 Cows who go to slaughter have producers, the  
18 owners of the herds who watch them and regulate them as  
19 they -- before they go to slaughter; correct?

20 A. Go over that again.

21 Q. Sure.

22 Who are the producers of cows for slaughter?

23 A. Dairy -- the dairies.

24 Q. Okay. And the dairy owners and employees  
25 monitor the drugs that are given to cows who are going

1 to slaughter. Is that correct?

2 A. Yes.

3 Q. Okay. Horses for food don't have producers  
4 like that, correct?

5 A. Not at this time, that I know of.

6 Q. You're not aware of anyone raising horses for  
7 food, are you?

8 A. No.

9 Q. Okay. There is a significant body of bovine  
10 law and equine law that are -- I'm sorry, strike that,  
11 wrong profession.

12 There is a significant body of equine medicine  
13 and bovine medicine that are separate, is that right?

14 A. Yes.

15 Q. Okay. Can you tell us a couple of big  
16 distinctions between those two areas?

17 A. In the physiology of them?

18 Q. Okay.

19 A. Well, some of that we went over this morning,  
20 is that the digestive system is completely different.  
21 You know, one has a rumen, one has a simple stomach.  
22 One has a different temperature than the other  
23 temperature. Some of them have different breathing  
24 rates, respirations per minute, than the other one.

25 So I don't know if that explains it, or I

1 don't know what you're getting at.

2 Q. That's great.

3 A. But, physiologically, there is a difference  
4 between a cow and a horse.

5 Q. Great. Thank you.

6 And you -- strike that.

7 You said that, quote, "Withdrawal times and  
8 testing ensures that the meat consumption by humans is  
9 safe," unquote.

10 On what do you base that statement?

11 A. The statement was what?

12 Q. Quote, "Withdrawal times and testing ensures  
13 that the meat consumption by humans is safe," unquote.

14 A. And what's your question?

15 Q. What's the basis for that statement?

16 A. Well, it's exactly what it says, that the  
17 withdrawal times and the testing is proscribed by law or  
18 proscribed by -- it's proscribed by the pharmaceutical  
19 company, the withdrawal times.

20 Q. Okay.

21 A. So the meat is -- and so that the beef is  
22 clear and clean.

23 Q. And do the slaughterhouses need to know  
24 whether an animal has cleared his or her withdrawal  
25 times?

1 A. At what point do you mean?

2 Q. When the animal is --

3 A. When the animal arrives there?

4 Q. Yes, sir.

5 A. They probably don't know.

6 Q. Okay. So do they rely on the producers to do  
7 the right job?

8 A. No. They rely on the USDA testing at  
9 processing time.

10 Q. Okay. Are you aware of anyone who is ensuring  
11 compliance with withdrawal times for horses, if there  
12 are any established?

13 A. No, the only -- the only withdrawal times that  
14 I'm familiar with in horses is the ones we described  
15 earlier in the hearing today at the racetrack.

16 Q. Okay. And so those drug limitations are given  
17 to horses because of Racing Commission rules or  
18 something like that, correct?

19 A. Yes. Correct.

20 Q. Okay. But they are not focused, those rules,  
21 on food safety; correct?

22 A. No.

23 Q. And that's a yes, they are not; right? That's  
24 a yes, correct?

25 A. They are not based on, no.

1 Q. Thank you.

2 Do you know if all drugs administered to  
3 horses will be tested for if horses go to slaughter?

4 A. I would assume that they would be.

5 Q. Okay. You stated, quote, "The risk of  
6 contamination in the environment by byproducts of the  
7 slaughter process is identical in horses and cattle, and  
8 unlikely to occur."

9 Do you have any expertise in the area of  
10 environmental contamination?

11 A. No.

12 Q. Okay. Any experience in hydrology?

13 A. No.

14 Q. Geology?

15 A. No.

16 Q. Toxicology?

17 A. No.

18 Q. Okay. Water contamination?

19 A. No.

20 Q. Okay. And just to confirm -- I think this  
21 has been asked and answered, but I want to establish it.

22 You did not look at the list of drugs given to  
23 equines that was submitted with Mr. Olson's testimony,  
24 is that correct?

25 A. No.

1 Q. That's not right?

2 A. Did I look at the list of drugs?

3 Q. Yes, sir.

4 It's just it's an awkward way of questioning.

5 I just need to get --

6 MR. DUNN: And it's been asked and answered.

7 Q. -- a correct answer.

8 Did you look at the list of drugs that was  
9 submitted with Mr. Olson's testimony?

10 A. In whose testimony?

11 Q. Mr. Olson, who is sitting over there. There  
12 was an exhibit with a list of 115 drugs.

13 Did you look at that list?

14 A. I think I looked at the list, yes.

15 Q. You did look at that list?

16 A. Yes.

17 Q. Okay. And did you look at the declarations  
18 that were submitted along with that that said that most  
19 of those drugs were given to horses in America?

20 A. Yes, I think I read that.

21 Q. Okay. Do you disagree with those  
22 declarations?

23 A. No, not really.

24 Q. Okay. Are you aware of any studies analyzing  
25 the byproducts of horse slaughter?

1 A. No.

2 Q. Okay. And you stated, quote, "All medicines  
3 are under strict regulations of USDA to ensure body  
4 fluids and tissues are free of any residues," unquote.

5 What's the basis for that statement?

6 A. The mandatory clearing times or withdrawal  
7 times that they give us, which assures us that there are  
8 no drugs left in them -- in the body tissues or in the  
9 blood.

10 Q. Your statement, I think, is not about  
11 withdrawal times, but actually testing for residues.  
12 Right?

13 A. Yes.

14 Q. It says, "All medicines are under strict  
15 regulation of USDA to ensure body fluids and tissues are  
16 free of any residues."

17 A. Yeah.

18 Q. Is it your understanding that USDA tests for  
19 some drugs in animals going to slaughter?

20 A. Yes, the USDA does.

21 Q. Okay. But they only test for a small sample,  
22 correct?

23 A. They only test what?

24 Q. A small sample of drugs in animals going to  
25 slaughter.

1 A. I don't know how small their sample is, no.

2 Q. You don't know, okay.

3 Do you know what percentage of animals they  
4 test within a given facility?

5 A. USDA will test every cow that's getting  
6 processed.

7 Q. Okay.

8 MR. DUNN: Madam Hearing Officer --

9 MS. ORTH: Mr. Dunn?

10 MR. DUNN: -- Mr. Powers had an objection just  
11 a little bit ago that we were getting far afield into,  
12 again, food safety regulations and testing by USDA.

13 I renew his objection, which you already ruled  
14 was appropriate, and ask that we move along past FDA and  
15 USDA food testing.

16 MS. ORTH: All right.

17 Again, I'm trying to walk this line between  
18 not going too deeply into the USDA testing, but also  
19 allowing Mr. Wagman to explore the basis for the  
20 statements that are actually in the testimony.

21 Mr. Wagman, it's been more than an hour. Are  
22 you nearly done?

23 MR. WAGMAN: If Madam Hearing Officer would  
24 like a break, it might be appropriate. It could be  
25 20 minutes more or something like that. I'm not

1 positive.

2 MS. ORTH: Is everyone okay if we keep going?  
3 Yeah? All right.

4 Please keep going.

5 MR. WAGMAN: Okay. I'll try to shorten it up.

6 Q. (BY MR. WAGMAN) Are you aware that USDA  
7 doesn't test for anywhere near all the drugs that are  
8 given to animals who are going to slaughter?

9 MR. DUNN: Objection. It's argumentative.

10 MS. ORTH: Actually, I think it -- I think he  
11 just answered that right before we started talking.

12 MR. WAGMAN: Okay. I'll rephrase it.

13 Q. (BY MR. WAGMAN) Are you aware that the USDA  
14 has set up a new procedure for testing horses who will  
15 be going to slaughter?

16 A. I'm not aware of that.

17 Q. Okay. You stated, quote, "My expert opinion,  
18 as a veterinarian specializing in equine medicine, is  
19 that the equine species going to slaughter would be free  
20 of any medications for 120 days prior to slaughter,  
21 which would render the carcass free of any residue,"  
22 unquote.

23 Can you explain what that means?

24 A. Yes.

25 Based on all the drugs that we use in the --

1 in horses and cattle, that if they -- if we had a  
2 withdrawal time of 120 days, that the drugs, based on  
3 their therapeutic dosage, should not be present in the  
4 body or body fluids any longer.

5 Q. But you lumped in cows and horses there. How  
6 would cows be monitored for that?

7 A. At slaughter.

8 Q. At slaughter, they'd be monitored for when  
9 they took drugs 120 days earlier? Is that what you're  
10 saying?

11 A. They would just be monitored for the presence  
12 of a foreign substance.

13 Q. For residues?

14 A. Yes.

15 Q. Okay. But you say they would be free of any  
16 medications, and we're talking about horses here, for  
17 120 days prior to slaughter.

18 So let's focus in on that particular part of  
19 the sentence or your statement.

20 On what basis are you saying that horses going  
21 to slaughter would be free of any medications for  
22 120 days?

23 A. Well, based on my personal experience and the  
24 requirements of all the pharmaceutical drugs that we  
25 give, that based on those withdrawal times, that is like

1 eight to ten to twenty times beyond the withdrawal  
2 times. So those animals, in my opinion, should be free  
3 and clear of any residue.

4 Q. But why are you assuming that horses will be?  
5 Are you aware of how horses -- what kind of horses go to  
6 slaughter?

7 A. Well, I would imagine the horses that go to  
8 slaughter are going to be horses that haven't been on  
9 drugs for at least 120 days.

10 Q. And why would you assume that?

11 A. Because that's the -- the same thing is true  
12 in cattle feedlots.

13 Q. Please explain.

14 A. Pardon?

15 Q. Please explain that.

16 Are you suggesting there are horse feedlots  
17 for horse slaughter?

18 A. Yes, I think there will be, or there are now.

19 Q. Okay. So if -- just a hypothetical, assume  
20 that a horse comes from a home or a racetrack and ends  
21 up in a slaughterhouse, and nobody had monitored the  
22 drugs they took for their entire lives, would that horse  
23 have been -- had the appropriate withdrawal time?

24 A. Those kind of horses are probably not going to  
25 be up in slaughter. It's like cattle feed, you know,

1 it's going to take horses that -- most racehorses do not  
2 go to slaughter. And the other horses that probably  
3 will go to slaughter are back in the country, backyard  
4 horses, or horses off the reservation, and they must be  
5 fed up properly before they are slaughtered.

6 Q. And maybe given medications by a veterinarian,  
7 such as yourself?

8 A. They probably do not have any medications  
9 going into slaughter for maybe 100, 120 days, I would  
10 assume. I don't know.

11 Q. Okay. And what do you base that assumption  
12 on?

13 A. I said I don't know. My personal experience  
14 that 120 days would be a proper withdrawal time for any  
15 drug.

16 Q. Okay. But you don't have any experience with  
17 horses who have gone to slaughter?

18 A. No. Not at this time.

19 Q. Okay. You stated, quote, "To my knowledge  
20 there is no medication that would remain in the system  
21 of an equine for the life of the animal, thus rendering  
22 it permanently unfit for human consumption or a threat  
23 to contaminating the environment."

24 The drugs that are prohibited, you're aware of  
25 those, we've discussed those. Yes?

1           Do those render the animal permanently unfit  
2 for human consumption because they've been given those  
3 prohibitive drugs?

4           A.    Has it rendered them unfit?

5           Q.    Yes, sir.

6           A.    For human consumption?

7           Q.    Yes, sir.

8           In other words, the prohibitive drugs say if a  
9 horse gets this drug, they can't be used for human  
10 consumption; correct?

11          A.    Yes.

12          Q.    Okay. That's fine.

13                You said it would take roughly three times as  
14 much water to slaughter a cow as opposed to a horse. Is  
15 that correct?

16          A.    No, I don't -- I don't know that. It would  
17 take three -- what did you say? -- three times as much?

18          Q.    I thought that's what you testified. If I'm  
19 not correct, please correct me.

20          A.    Possibly. It takes more water -- I don't  
21 know, I'm not into that, but I know it would take more  
22 to clean up a cow for it to be processed than it would a  
23 horse.

24                MR. WAGMAN: Okay. Madam Hearing Officer, I'm  
25 going to need to ask Dr. Blach the same questions I

1 asked Mr. De Los Santos with respect to the cleaning up  
2 in the slaughterhouse, if that's okay.

3 So they are not asked and answered with  
4 respect to Mr. Blach, and it will be very short.

5 MS. ORTH: Okay.

6 Q. (BY MR. WAGMAN) In the slaughterhouse, you  
7 still would need to clean off the carcass before you  
8 could sell it; correct?

9 A. That's not my expertise, to be in a  
10 slaughterhouse. I don't know, but I would assume that  
11 would be correct.

12 Q. Okay. You would still need to clean off the  
13 floor at the end of the day and after slaughter, is that  
14 correct?

15 A. I would assume that would be correct.

16 Q. Okay. Are you aware of any of the USDA  
17 regulations around the cleaning of animals who are in  
18 slaughterhouses?

19 A. No, I'm not.

20 MR. WAGMAN: Okay. Okay.

21 Dr. Blach, I'd like to thank you for your  
22 time.

23 I'm done, Your Honor, or Madam Hearing  
24 Officer.

25 MS. ORTH: Thank you, Mr. Wagman.

1           Are there any other questions of the  
2 applicant's panel based on their testimony?

3           Mr. Dunn, do you have any follow-up?

4           MR. DUNN: Very, very brief.

5           MS. ORTH: Okay.

6           REDIRECT EXAMINATION OF THE PANEL BY MR. DUNN

7           MR. DUNN: Rick, the -- Mr. Powers mentioned  
8 some numbers -- or it might have been Mr. Wagman, but I  
9 think it was Mr. Powers -- the number of head, and I  
10 know that we're talking in terms of total gallons and  
11 not number of head, but they said the number 250 head.

12           Have you ever said 250 head on any sort of  
13 application or anything of that nature?

14           MR. DE LOS SANTOS: 250?

15           MR. DUNN: Yes, sir.

16           MR. DE LOS SANTOS: No, sir.

17           MR. DUNN: Yeah, I just wanted to clarify for  
18 the record that that was not something that you had ever  
19 attributed to being able to do.

20           MR. DE LOS SANTOS: No.

21           MR. DUNN: There was a question about the  
22 condition of the permit that discussed domestic water.

23           If it is found that the domestic water from  
24 the facility can't be commingled, and it is currently  
25 being commingled, would Valley Meat Company be willing

1 to install an additional septic system to do whatever  
2 was necessary to be in compliance with the permit?

3 MR. DE LOS SANTOS: Yes, we would do whatever  
4 we needed.

5 MR. DUNN: Okay. The same with, you know, the  
6 requisite field testing and to make sure -- that if  
7 there another monitoring well, you said you would be  
8 happy to do that.

9 MR. DE LOS SANTOS: We would do that, yes.

10 MR. DUNN: Very briefly, Mr. Wyant, in your  
11 extensive experience in doing these types of permits,  
12 has a renewal ever -- do you generally see on a renewal  
13 the applicants retain a geologist or hydrogeologist just  
14 to renew a permit?

15 MR. WYANT: I can't say that it's necessary  
16 to retain a hydrologist or geologist to renew your  
17 permit.

18 There may be conditions in the permit that  
19 would require the expertise after the permit has been  
20 issued.

21 MR. DUNN: But just simply through the renewal  
22 process, it's not common practice?

23 MR. WYANT: But just to renew it, no, I  
24 wouldn't say that's necessary.

25 MR. DUNN: So some sort of material change is

1 what would necessitate the need for a hydrologist or a  
2 geologist?

3 MR. WYANT: The response to a condition in the  
4 permit.

5 MR. DUNN: Dr. Blach, we've talked quite a bit  
6 about prohibitive substances.

7 If it says on the label that it's not intended  
8 for human consumption, is it possible that an animal  
9 could not be intended for human consumption at the time  
10 that that drug is administered and then years down the  
11 road it will become intended for human consumption?

12 Do you -- do veterinarians interpreting the  
13 statute -- and specifically you as a long-standing  
14 veterinarian -- attribute that to mean that once an  
15 animal is given a substance that it's forever condemned  
16 from being a food animal?

17 DR. BLACH: No, it's not.

18 MR. DUNN: Okay. As a veterinarian, through  
19 your training, of course, and vet school and, you know,  
20 any subsequent continuing education or just your  
21 day-to-day operations, you're constantly looking at and  
22 learning about drugs, pharmaceuticals, you know, and the  
23 -- the not required but necessarily the suggested  
24 withdrawal times and half-lives of medications.

25 You're familiar with those in the course of

1 your practice, is that correct?

2 DR. BLACH: Absolutely.

3 MR. POWERS: Your Honor, I'm going to object  
4 to that. That's a little bit of a leading question. I  
5 know the rules don't apply here, but maybe you can break  
6 that down, counsel.

7 MR. DUNN: Okay.

8 MS. ORTH: Thank you, Mr. Powers.

9 MR. DUNN: That's fine.

10 As a -- well, I think he's an expert, too.

11 As an expert in equine medicine, are you  
12 familiar with the drugs that are coming out and  
13 suggested withdrawal times and half-lives of those types  
14 of drugs? Do you make yourself familiar with those  
15 drugs?

16 DR. BLACH: Absolutely.

17 MR. DUNN: Any of the drugs that were  
18 discussed here today, are there any that you're  
19 unfamiliar with?

20 DR. BLACH: No.

21 MR. DUNN: Okay. In your practice as a  
22 veterinarian, would you say that all horses are given  
23 Bute?

24 DR. BLACH: No.

25 MR. DUNN: Are all horses necessarily

1 administered drugs?

2 DR. BLACH: No.

3 MR. DUNN: Of any sort? Are there horses that  
4 are not administered drugs that currently may not be  
5 intended for food but may at some point become for food?

6 DR. BLACH: Yes.

7 MR. DUNN: Okay. I think that's all I have.

8 MS. ORTH: Thank you very much, Mr. Dunn.

9 Is there any reason not to excuse the  
10 applicant's panel at this time?

11 No?

12 Mr. Wagman?

13 MR. WAGMAN: No, Your Honor --

14 MS. ORTH: Okay.

15 MR. WAGMAN: -- Madam Hearing Officer.

16 MS. ORTH: Thank you.

17 Mr. Dunn?

18 MR. DUNN: Madam Hearing Officer, I would like  
19 to reserve the right to call them as a rebuttal witness  
20 at a later date.

21 MS. ORTH: Yes. Absolutely.

22 MR. DUNN: Okay.

23 MS. ORTH: Thank you.

24 Mr. Powers?

25 MR. POWERS: No objection.

1 MS. ORTH: So Mr. Blach, Mr. De Los Santos and  
2 Mr. Wyant, you're excused, and thank you very much for  
3 your direct testimony.

4 We will break for lunch until 1:30.

5 (Recess held.)

6 MS. ORTH: Mr. Powers, if you'd ask your  
7 witnesses to sit at the witness table.

8 MR. POWERS: Yes, ma'am.

9 Kim Kirby is on her way back, You Honor. If  
10 we can give her a moment to arrive.

11 MS. ORTH: All right.

12 MR. POWERS: With your permission, Madam  
13 Hearing Officer, I shall begin.

14 MS. ORTH: Yes, please.

15 MR. POWERS: Counsel, everyone, good  
16 afternoon.

17 (Oath administered to Ms. Kirby and  
18 Mr. Schoeppner.)

19 MS. ORTH: Please go ahead.

20 MR. POWERS: Thank you, Your Honor, or Madam  
21 Hearing Officer.

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KIMBERLY KIRBY

after having been first duly sworn under oath,  
was questioned and testified as follows:

DIRECT EXAMINATION

BY MR. POWERS:

Q. Good afternoon.

Ms. Kirby, please, state your full name for  
the record.

A. Kimberly Kirby.

Q. And how are you employed?

A. I'm a geoscientist with the Groundwater  
Quality Bureau of the New Mexico Environment Department.

Q. And how long have you been employed with the  
New Mexico Environment Department?

A. I have been with the Department for about  
13-and-a-half years.

MS. ORTH: Ms. Kirby, would you pull the  
microphone closer to you?

MS. KIRBY: Sorry.

MS. ORTH: Okay.

Q. (BY MR. POWERS) And I think you indicated  
your current position is geoscientist. Is that correct?

A. That is correct.

Q. Are there any other positions or titles you  
hold at this time?

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1 A. No.

2 Q. And have you worked in any capacity on the  
3 matter we're here for today?

4 A. Yes. I'm the permit reviewer for this  
5 facility.

6 Q. And did you prepare written testimony covering  
7 your general involvement in this matter?

8 A. Yes, I did.

9 Q. And do you hereby adopt that testimony as  
10 being a true and accurate representation of what you  
11 considered then for this case?

12 A. Yes, I do.

13 Q. And has anything significantly changed or  
14 altered your views since the time of that filing until  
15 today's date?

16 A. No, not significantly.

17 There was a suggestion made by Mr. Olson in  
18 his testimony.

19 Q. And could you please elaborate on that just  
20 briefly?

21 A. He -- there was a suggestion in his testimony  
22 to do a leak detection test of the existing concrete  
23 solid settling tanks.

24 Q. And I'm sure Mr. Schoeppner -- who is with you  
25 today, if I may ask?

1           A.     Jerry Schoeppner.  He is the Bureau chief of  
2 the Groundwater Quality Bureau.

3           Q.     Thank you, Ms. Kirby.

4                     Regarding the position of Mr. Olson, as you  
5 just referenced, are you suggesting any changes or  
6 modification to the proposed draft permit?

7                     I think we've also referred to that as the  
8 revised draft permit.

9           A.     That is correct.

10                    We were -- we were considering changes to the  
11 revised draft permit to add a condition for leak  
12 detection.  We have such a standard condition that we  
13 use in domestic waste permits.

14                    MR. POWERS:  Your Honor -- or Madam Hearing  
15 Officer, at this time we would admit, pending any  
16 objections, the testimony of Ms. Kirby as a true and  
17 accurate representation.

18                    MS. ORTH:  Are there objections?

19                    No?  It's admitted.

20                    (Bureau Exhibit 8 admitted.)

21                    MR. POWERS:  And with your permission, I shall  
22 move to Mr. Schoeppner.

23

24

25

1 JERRY SCHOEPPNER

2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. POWERS:

6 Q. Mr. Schoeppner, good afternoon.

7 A. Good afternoon.

8 Q. Please state your name for the record.

9 A. Jerry Schoeppner.

10 Q. And how are you employed, sir?

11 A. I'm employed with the New Mexico Environment  
12 Department, Groundwater Quality Bureau.

13 Q. And with that Groundwater Quality Bureau, what  
14 position do you hold?

15 A. I'm the chief of the Groundwater Quality  
16 Bureau.

17 Q. And what does the chief of the Groundwater  
18 Quality Bureau do, generally?

19 A. Generally oversee all the activity in our four  
20 programs, which includes Superfund, the Mining Section,  
21 the Mediation Oversight Section and Pollution Prevention  
22 Section.

23 Q. And how long have you been employed in this  
24 position?

25 A. I've been in this current position for just

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1 over two years, and I was in this position back another  
2 year, between 2003 and 2004.

3 Q. And did you prepare written testimony  
4 regarding the matter before this Court or this Tribunal?

5 A. Yes, I did.

6 Q. Has anything significantly changed?

7 I think you've heard Ms. Kirby reference a  
8 condition that she would like to add to the revised  
9 draft permit.

10 A. Yes. Nothing other than what Ms. Kirby  
11 mentioned.

12 MR. POWERS: And pending any objections, Madam  
13 Hearing Officer, we would move to have Mr. Schoeppner's  
14 testimony entered into the record.

15 MS. ORTH: Are there objections?

16 MR. WAGMAN: No.

17 MS. ORTH: Hearing none, it is admitted.

18 (Bureau Exhibit 3 admitted.)

19 MR. POWERS: Your Honor, at this time we would  
20 open Mr. Schoeppner and Ms. Kirby up for cross-  
21 examination.

22 I believe that the statements and testimony  
23 filed already cover the exhibit -- or cover the  
24 testimony of the Department.

25 MS. ORTH: All right. Thank you.

1           Mr. Dunn, do you have questions of the Bureau  
2 panel?

3           MR. DUNN: Your Honor, I don't have any  
4 questions for them at this time.

5           I'd reserve the right to ask any sort of  
6 rebuttal questions that may come up, but we agree with  
7 the sufficiency of the draft permit as it was propounded  
8 and also the written testimony that was provided as  
9 being sufficient.

10          MS. ORTH: All right.

11          So this isn't rebuttal, this is direct, and  
12 this is your opportunity to ask cross-exam.

13          MR. DUNN: Then we're fine, Ma'am.

14          MS. ORTH: Thank you.

15          How are the opponents set? How have you set  
16 yourselves for cross-examination of the Department  
17 panel?

18          MR. WAGMAN: I've got a few questions, Madam  
19 Hearing Officer.

20          MR. POWERS: Oh, Madam Hearing Officer.

21          MS. ORTH: Mr. Powers.

22          MR. POWERS: I'm sorry, Mr. Wagman, I do  
23 apologize.

24          I just want to make sure -- it's my  
25 understanding that since all exhibits that were referred

1 to by Ms. Kirby and Mr. Schoepner were part of the  
2 administrative record, those have already been  
3 officially introduced, I don't believe we have anything  
4 outside of that, so I just want to verify that with the  
5 Hearing Officer.

6 MS. ORTH: Yes, that's correct, that's correct  
7 for everyone, to the extent there are records that are  
8 not contained in the administrative record, then it need  
9 not be separately moved, and the fact that you might  
10 have broken it out as an exhibit is fine for ease of  
11 reference, but the administrative record is definitely  
12 part of the record already. And with that being said,  
13 it will be admitted.

14 (Bureau Exhibits 1,2, 4-7 and 9-14 admitted.)

15 MS. ORTH: So, Mr. Wagman, are you and  
16 Mr. Holland doing the questions again?

17 MR. WAGMAN: Mr. Holland, do you have any  
18 questions?

19 MR. HOLLAND: I don't have any questions.

20 MS. ORTH: Mr. Holland doesn't have any  
21 questions.

22 So go ahead, please.

23 MR. WAGMAN: Thank you, Madam Hearing Officer.  
24 I will be very brief here.

25

1 CROSS EXAMINATION OF KIMBERLY KIRBY

2 BY MR. WAGMAN:

3 Q. Ms. Kirby, the permit application allows up to  
4 8,000 per day of discharge, is that correct?

5 A. That is correct.

6 Q. And you've stated in your testimony that it is  
7 important to understand that the proposed discharge  
8 permit limits the maximum daily discharge volume to  
9 8,000 gallons per day, correct?

10 A. That's correct.

11 Q. And that, quote, "This proposal is unchanged  
12 from the previous discharge permit," correct?

13 A. As far as the discharge system and the maximum  
14 discharge volume, that is correct.

15 Q. Okay. Are there any ways in which the  
16 proposal has changed?

17 A. Their proposal hasn't changed; the type of  
18 livestock apparently they are going to be slaughtering  
19 has changed. But it doesn't necessarily change the  
20 permit.

21 Q. Okay. And when did you first learn that they  
22 were going to slaughter a different type of livestock;  
23 specifically, horses?

24 A. I really don't recall. It seems like I heard  
25 it when it first kind of came out in the media, maybe

1 2000- -- spring of 2012, I'm guessing.

2 Q. Okay. Were you aware at any point that  
3 Mr. De Los Santos was testifying that he was intending  
4 to slaughter 121 horses per day?

5 A. No, I was not aware.

6 Q. When did you first learn that?

7 A. In the written testimony of Bill Olson.

8 Q. Okay. Did that concern you at all?

9 A. Not -- no, not necessarily.

10 Our permits are written based on an authorized  
11 maximum daily discharge volume. So if they can  
12 slaughter two horses at 8,000 gallons per day or 120  
13 horses at 8,000 gallons per day, we're concerned about  
14 the maximum daily discharge volume.

15 Q. Thank you.

16 The regulations that the Department relies on  
17 only provide authority over certain constituents,  
18 correct?

19 A. That's correct.

20 Q. If there is a new kind of operation, new kind  
21 of business, new kind of facility, does the NMED ever  
22 investigate on its own to determine if there may be a  
23 different type of discharge in a new type of facility?

24 A. I'm not sure what you mean by a new discharge.

25 We typically look at an application from a

1 technical standpoint. If it's something we haven't seen  
2 before, we will do research on that facility and the  
3 potential contaminants that may be associated with it.

4 Q. Okay. And is it fair to say that you did not  
5 do that here with respect to horse slaughter, because  
6 you weren't aware that horse slaughter was involved?

7 A. I didn't at the time, until I understood that,  
8 that there was -- that until the time that I knew that  
9 horse slaughter was involved. I can't say that it would  
10 -- I can't say that I have found any information to  
11 change the contaminants that we would regulate based on  
12 what we have the authority to regulate.

13 Q. Okay. But an investigation was done with  
14 respect to horse slaughter operations and the potential  
15 wastewater discharge from horse slaughter?

16 A. There were questions that were brought up on  
17 the amount of blood and the amount of offal, and as due  
18 diligence, I researched those items. However, the  
19 permit limits how those things are handled, so --

20 Q. And did the agency make any evaluation of the  
21 potential water contamination from horse slaughter  
22 operations outside of offal and blood volume?

23 A. Only in the instance of the contaminants that  
24 we regulate and the amount of wastewater that they are  
25 discharging.

1 Q. And did the agency consider the potential for  
2 toxic pollutants that are regulated under the NMAC?

3 A. I didn't -- I'm unaware of any of the --  
4 anything associated with slaughter facilities that would  
5 be associated with our toxic pollutants list.

6 Q. Okay. And Valley Meat presented no evidence  
7 to the NMED that this operation would not lead to the  
8 discharge of toxic pollutants, correct?

9 A. Could you restate your -- redo your question  
10 again, please?

11 Q. Sure.

12 Valley Meat presented no evidence to the  
13 Department that this operation would not lead to the  
14 discharge of toxic pollutants, correct?

15 A. There was nothing in their application to  
16 indicate that there were toxic pollutants associated  
17 with it.

18 MR. WAGMAN: Great. Thank you.

19 CROSS EXAMINATION OF JERRY SCHOEPPNER

20 BY MR. WAGMAN:

21 Q. Mr. Schoeppner, in your testimony, you stated  
22 that NMED performs regular facility inspections at  
23 facilities such as Valley Meat. Correct?

24 A. That's correct.

25 Q. Can you define "regular"?

1           A.     Well, that varies with our resources.  If we  
2 have vacancy rates, which we do right now, then we like  
3 to get out to a facility on an annual basis, but if we  
4 have a high vacancy rate, then sometimes we can miss our  
5 annual inspections.

6           It's not a requirement to be out there  
7 annually, but it's something that we like to do to keep  
8 up with the facilities, see if there is any changes, and  
9 check on the conditions that are in the permit.

10          Q.     Is it -- is there any kind of protocol?

11                 Is there -- do you like to do more frequent  
12 inspections for facilities that have been in violation  
13 of the regulations or the laws?

14          A.     Typically, that can be the case.  You know,  
15 higher priority sites are the case, large facilities,  
16 because we have anything from a small RV or mobile home  
17 park up to very large facilities.  So we prioritize  
18 based on the threat to the environment.

19          MR. WAGMAN:  Okay.  Those are all the  
20 questions I have, Madam Hearing Officer.

21          MS. ORTH:  Thank you very much, Mr. Wagman.

22                 Are there other questions for the Bureau panel  
23 based on their testimony?

24          Mr. Powers, do you have follow-up?

25          MR. POWERS:  At this time I don't have any

1 follow-up questions.

2 Thank you.

3 MS. ORTH: All right.

4 Thank you very much, Mr. Schoeppner and  
5 Ms. Kirby.

6 Mr. Dunn?

7 MR. DUNN: Madam Hearing Officer, I'd just  
8 like to reserve the right to recall these witnesses as  
9 rebuttal witnesses at a later time as well.

10 MS. ORTH: Would you take that up with  
11 Mr. Powers, please?

12 MR. DUNN: I will. I will.

13 MS. ORTH: All right.

14 Mr. Wagman, have the parties at your table  
15 decided on an order of presentation?

16 MR. WAGMAN: Mr. Holland.

17 MS. ORTH: Mr. Holland first.

18 Do we need a few minutes to set you up?

19 MR. HOLLAND: Yes. He'll help me set up my  
20 equipment.

21 Is it all right if I testify from the podium  
22 here?

23 MS. ORTH: Absolutely.

24 MR. HOLLAND: Thank you.

25 MR. DUNN: Madam Hearing Officer.

1 MS. ORTH: Mr. Dunn.

2 MR. DUNN: If I might suggest, since we're  
3 going to be cross-examining him, if we could have his  
4 testimony from here, so we could see both the screen and  
5 we could see him when we're questioning him. If he  
6 wants to do his presentation from here, that's fine, but  
7 we're --

8 MS. ORTH: He's going to go through his  
9 presentation there.

10 MR. HOLLAND: Yes, I'll do that and take the  
11 stand.

12 MS. ORTH: So shall we take -- do we need a  
13 few minutes to set this up, or are you ready?

14 MR. HOLLAND: It should come right up here.

15 MS. ORTH: Oath.

16 MR. HOLLAND: I'll start by saying that, first  
17 of all --

18 MS. TOWNSEND: Wait, wait. You need to be  
19 sworn in.

20 MS. ORTH: You need to be sworn in.

21 MR. HOLLAND: Oh, yes.

22 (Oath administered to Mr. Holland.)

23 MS. ORTH: All right.

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JOHN HOLLAND

after having been first duly sworn under oath,  
was questioned and testified as follows:

DIRECT TESTIMONY

MR. HOLLAND: Sorry about that. These legal proceedings are a little bit strange to me. I haven't been in court for a few years.

My expertise is a combination of technical and horse knowledge and the study of statistical evidence from both the record on horse slaughter plants as well as other aspects of equine abuse and neglect.

If you'll look at this, this first slide, I'll just go real quickly through my qualifications. Yes, that's it.

First of all, the Equine Welfare Alliance is a nonprofit 501(c)(4). We're not related to anyone else here at the meeting.

MS. ORTH: Hold on one second.

Mr. Powers?

MR. POWERS: I'm sorry, Mr. Holland, I do apologize.

I just want to remind that if there is any photographs -- I think there might be, there were some filed with your prefiled testimony -- that the Court alert anyone with a sensitive nature that there may

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1 be --

2 MR. HOLLAND: Yes, sir, I will let you know.  
3 I certainly hope I will.

4 MR. POWERS: Thank you, Mr. Holland.

5 MR. HOLLAND: My assistant here is supposed to  
6 remind me, too. It's toward the very end of the  
7 testimony.

8 MS. ORTH: Okay.

9 MR. HOLLAND: We will look at the Valley --  
10 Natural Valley Farms, and at that point, there is one  
11 graphic slide.

12 MS. ORTH: Thank you.

13 Mr. Dunn?

14 MR. DUNN: Do you intend -- does the -- does  
15 Mr. Holland intend to supply these slides as exhibits to  
16 the record, or are they just for demonstrative purposes  
17 today?

18 MR. HOLLAND: You're welcome to them. I  
19 have -- you know, they are basically a summary of what I  
20 put in my written testimony.

21 MS. ORTH: Right.

22 So demonstrative exhibits don't need to be  
23 admitted, but it sounds as though he's willing to send  
24 them to you as a courtesy.

25 MR. DUNN: Well, I'd like to file an objection

1 if we're going to -- if any of these pictures or slides  
2 do not directly pertain to Valley, I'd like to lodge an  
3 objection as to relevance at this point.

4 They may become part of the record, but I'd  
5 like to have that objection on the record as well.

6 MS. ORTH: All right.

7 So let's take that up when we have heard from  
8 Mr. Holland.

9 Please go ahead.

10 MR. HOLLAND: Thank you very much.

11 First of all, I appreciate the -- the ability  
12 to testify here, and what I'm going to testify to is  
13 indeed rather indirect, but it's also very important, I  
14 think, for the record to show what has happened in the  
15 past. That's a specialty we have.

16 But to get back to my expertise, our  
17 organization is all nonprofit, all volunteer, and we do  
18 research and investigations in matters of equine  
19 welfare. That includes slaughter.

20 Our studies and investigations are used by law  
21 enforcement, and we have made them freely available to  
22 the public. Anything that's in my slide presentation  
23 here can be found by citation.

24 The next slide.

25 As a horse owner, I've had horses for 40

1 years. I run a small sanctuary. I'm a founding officer  
2 of Equine Welfare Alliance. My specialty is -- in the  
3 Equine Welfare Alliance is statistical studies and data  
4 analysis, and that's partly because of what I do  
5 professionally.

6 I'm widely published on the subject of equine  
7 welfare, including an article that just came out in the  
8 Kentucky Journal of Equine, Agricultural and Natural  
9 Resources Law.

10 The next slide.

11 My training is as an engineer. I'm an old  
12 electrical engineer from Virginia Tech. I have 40 years  
13 of experience. I have 12 patents and three books.

14 I worked with DOE and DOD, and here is where  
15 my expertise is tangential to this issue, working in  
16 survey and decontamination and remediation systems.

17 I'm currently a consultant. I do what's  
18 called knowledge-based engineering -- that is the  
19 digging of data from records of the past -- for  
20 instance, performance of machines, performance of  
21 operators, performance of materials -- and then I apply  
22 them to real-time controls in factories so as to  
23 maximize the operation of factories.

24 The next slide.

25 I worked on a lot of remedial projects, and

1 here's what I found in them: that most of them were  
2 caused by poor decision making up front. That's why I'm  
3 so glad to be here. They were exacerbated by political  
4 and budget pressures, and they often resulted in  
5 scandals and cover-ups.

6 I'm going to use this one example to prove my  
7 point here. The remediation costs were out of all  
8 proportion to the original costs of having done it right  
9 and all of them had long-term environmental  
10 consequences.

11 So if we can look at the next slide.

12 This is -- that's a younger me, standing  
13 behind a well that we developed for Fernald. Fernald  
14 was a complex northwest of Cincinnati about eight years  
15 ago. It may have been as much as 10 or 12 miles. Very  
16 close to Cincinnati. It was a complex that processed  
17 uranium ore into mill uranium rods during the Cold War,  
18 and it began to come under criticism in the late '80s,  
19 after a whistleblower was found to have accidentally  
20 fallen into a furnace. They never did prove it was  
21 murder, but there were suspicions, and now all of a  
22 sudden, there were a lot of investigations.

23 We were called in in the mid-'90s because at  
24 that point they had to dig up all of the contaminated  
25 material, and that's just a little bit of it you see

1 behind you. It's all what's called mixed waste. It may  
2 have radioactive components or caustic components, and  
3 they stored it while they were destroying this facility.  
4 It's now the entire facility. It was so contaminated by  
5 that point that they turned it into a nature preserve.  
6 People can never inhabit this area in the foreseeable  
7 future.

8           This was just one of many, many, many things  
9 that I did. It doesn't bear directly on this, but the  
10 water from that facility did get into the aquifer and  
11 the Great Miami Aquifer was contaminated. They had to  
12 drill, I think, 16 wells to pump the water out of the  
13 aquifer to try to decontaminate it. They recovered  
14 about three tons of uranium from the aquifer. The water  
15 also contaminated the Miami River, which is nearby,  
16 which ironically I played in as a child.

17           The next slide.

18           So now to the horse slaughter operations.  
19 That wasn't, as I said, directly to it, but I feel that  
20 this hearing needs to know what has happened in the  
21 past, because there has been a lot of statements here  
22 about what's going to happen in the future, and I don't  
23 see it as jibing at all with what's happened in the  
24 past.

25           We've been told that this is just like cows,

1 and that there won't be any problems, that treatment is  
2 pretty much routine. I don't believe that at all.

3 And there is two reasons. There is no market  
4 for the byproducts of equine slaughters. Mr. De Los  
5 Santos was talking about rendering, and I wish him luck,  
6 but most of the plants that I've studied, the rendering  
7 plants turned down their offal because it was  
8 contaminated with drugs.

9 There are many, many examples of people not  
10 being able to get rid of those, but I'm just going to  
11 prove it by showing what happened.

12 Systems designed to treat wastewater from  
13 cattle slaughter operations do not work for horses.  
14 It's just a fact.

15 The next slide.

16 So let's look at Cavel. It's owned by Velda,  
17 which is a corporation out of Belgium. It burned down  
18 -- the next slide. You can see it's a very modern  
19 facility. It burned down Easter Sunday of 2002. It was  
20 rebuilt to the most modern standards.

21 Now, from the front, you could see it looked  
22 like a high-tech industry. It does not look like  
23 Mr. De Los Santos' operation. It was quite well  
24 designed in a lot of ways. The horses disappeared into  
25 it at the back. They went down a ramp, so that nobody

1 could take pictures of them.

2 I have to admit, for the most part, they  
3 controlled odors, which has been a big problem with the  
4 other plants, because they had a big ventilation system.

5 It reopened in the summer of 2004.

6 The next slide.

7 It operated for three years, until it was shut  
8 down by Illinois law banning horse slaughter for human  
9 consumption. It was not shut down by the lack of  
10 federal inspectors, but that was also a pending issue at  
11 the time and the -- it went through the courts about the  
12 same time, and the Illinois law beat the inspections.  
13 They were not in compliance a single month in three  
14 years.

15 Next slide.

16 That's the first warning that they got on the  
17 plant, and that was -- it was a slap on the wrist for  
18 the first year. It was a \$500 fine, and they were given  
19 time to correct it. They announced that they were  
20 bringing in a new bug tank -- and a bug tank is a  
21 processing tank where the compounds are broken down by  
22 chemical reaction. They brought in a new one, and the  
23 next year they found they also couldn't get it to work.

24 The next slide. So they were then fined --  
25 and the next slide -- an increasing amount of money.

1 This is the second year. They were in violation every  
2 month. By now, I think the fine was up to \$5,500.

3 The next slide. The third year, that's the  
4 record of the year for the testing on the plant. Yellow  
5 and red are -- yellow are averages that are out for the  
6 week and red is averages that are -- or values that are  
7 out of compliance for the month.

8 The plant -- and you can't read the columns  
9 very well there, but they are the typical waste  
10 processing things, suspended solids and the oxygen  
11 demand -- chemical and biochemical oxygen demand and pH.

12 They had a lot of problems with their  
13 discharge, and they were then fined \$100,000. They  
14 didn't pay any of these fines until well after they  
15 closed down. They wanted to free the property up and  
16 they then made a deal with the Water Board, the  
17 Sanitation Department.

18 Okay. The next plant -- oh, by the way, this  
19 is their treatment system that they said would fix the  
20 problem. Now, this was a very professional  
21 organization. They knew what they were doing, and they  
22 had money for experts. That tank you can see is  
23 overflowing with a reaction that we don't -- no one will  
24 ever know for sure, but we believe that it has to do  
25 with the fact that this blood contained a lot of

1 chemicals, particularly antibiotics, and the blood tank  
2 depends on bacteria and the antibiotics would kill them.

3 Now, that is speculation on my part. If  
4 somebody has a better explanation for that slide, please  
5 let me know.

6 The water from it did get into the ground.  
7 They did not have an adequate attachment on the bottom  
8 of the tank, and you can see the tank beginning to  
9 split.

10 Next slide.

11 Now, if we look at Dallas Crown, Dallas Crown  
12 is a lot more along the lines of Mr. De Los Santos'  
13 operation, it looks like. It was a -- you can take the  
14 next slide. I took that picture myself, incidentally.  
15 I visited Dallas Crown. It was a cow plant that was  
16 converted to slaughter horses. They had been okay as a  
17 cattle plant. There were comments about smell, but  
18 there are no wastewater problems.

19 When they opened, they said that we will -- we  
20 will do our treatment in accordance with, you know, the  
21 necessary ordinances, and there will be no problem with  
22 disposal of waste.

23 On March 10th, the Board of Adjustments  
24 ordered Dallas Crown closed, unanimously. I was at that  
25 hearing. The plant challenged the town in court,

1 insisting each violation be tried as a separate court  
2 case. In a minute, you'll see why that turned out to be  
3 a problem. And of course, as I said, it was converted  
4 from cattle to horses.

5 The next slide.

6 In a 19-month period of operation, Dallas  
7 Crown committed 481 violations of their discharge  
8 permit.

9 Here is a series of sheets. If you want me to  
10 stop at any point, I will, but I'll go through them  
11 rather quickly. These are the violations during an  
12 18-month period. In all the years they were in  
13 operation, they were never in compliance.

14 Go ahead.

15 Now, this plant was particularly bad, in that  
16 they tried some rather unorthodox methods of getting rid  
17 of their waste. One of their techniques -- that's good.  
18 Hold it right there. Okay. One of their techniques was  
19 to install a pump that would force it down the sewer  
20 line, but the sewer line had branches in it, and when  
21 the clog went past the branch, the discharge from the  
22 plant rose into the bathtubs of the neighborhood. Some  
23 people think that's, you know, a myth, it's not, because  
24 I actually interviewed the people who had that  
25 experience. There was a Robert Eldridge, who lived

1 directly behind the plant, and a delightful wife, who  
2 keeps Christmas decorations up all year. Anyhow, they  
3 -- they adjusted to that.

4 I found the conditions around the plant  
5 abysmal. But right here they are trying to get rid of  
6 blood by a mucking truck, as we call it in the nuclear  
7 business, but, you know, I think Mr. De Los Santos  
8 called it pump and haul, you pump the stuff into a truck  
9 and haul it away, and the truck turned over on its side.  
10 This was all blood right here, and the blood ran down  
11 into the drainage system.

12 Okay. Next slide.

13 Now let's talk about Natural Valley Farms.  
14 When Cavel closed -- they already knew it was coming,  
15 they were under a lot of pressure, and they knew they  
16 would have to close.

17 Natural Valley Farms had been constructed as a  
18 cattle slaughter operation, and it had only operated for  
19 a few years with cattle. It was built in 2005, part of  
20 the EFC problem. There was a lot of pressure -- in some  
21 cases, the borders were closed and they couldn't take  
22 their cows to Chicago for slaughter or to the northern  
23 US and they built this plant.

24 When the border was reopened, it was having  
25 trouble making ends meet, and it was contracted by

1 Cavel, as they left their DeKalb plant, a nice plant, to  
2 do this slaughter under contract, and very much I think  
3 like Mr. De Los Santos indicated his relationship would  
4 be.

5           They used an evaporation pond, supplemented by  
6 a muck and truck disposal. After just two years, they  
7 were closed by the CFIA. Now, before they were ordered  
8 closed, the operating company itself went bankrupt, with  
9 42 million dollars in losses. They went closed, and  
10 shortly thereafter, the parent company of Cavel put them  
11 -- bought the property -- leased their property, I  
12 should say, and put it in operation, hired the people  
13 back, and they slaughtered for about another six months  
14 before the CFIA demanded they would be closed.

15           Now, we're coming up on a graphic picture. I  
16 think it's the one after this, but it might be this one.

17           No, this is the blood, muck and truck. Well,  
18 it turns out that one of our investigators watched from  
19 a high vantage point. Now, this isn't very clear, but  
20 the video is on YouTube, and all you have to do is say  
21 "Natural Valley Farms pouring blood in the river," and  
22 you will get the whole YouTube video, and you can watch  
23 this truck discharging blood along the bank of the  
24 river, it's a tanker truck, and then returning and  
25 parking back in the parking lot of Natural Valley Farms.

1           This was part of the evidence that was just  
2 overwhelming in making them close.

3           Finally, the next slide -- and this is a  
4 graphic one -- is this is what they did for organ  
5 disposal at Natural Valley Farms.

6           Mr. De Los Santos has indicated that he  
7 intends to send that material to a renderer. I didn't  
8 hear him say if he had any renderer agree to take it.  
9 But the history of these plants is that the renderers do  
10 some testing on the materials, and if drugs show up in  
11 the materials, they won't take them.

12           In fact, the horse slaughter, horse manure,  
13 you know, they are not -- they are not well received by  
14 rendering plants, and even the -- the racetracks report  
15 to me, in about 2005, that the truck that took away  
16 their manure would not even take away the manure  
17 anymore, because it was used to raise mushrooms and that  
18 the mushrooms had tested positive for drugs.

19           So if all that we've heard earlier was true,  
20 then why do these problems occur, because these people  
21 had every chance and every resource to do something  
22 about it, and they apparently couldn't.

23           So, finally -- the last slide -- these  
24 examples really prove that you can't -- they are not the  
25 same -- horse waste from a slaughter plant is not the

1 same. If it were the same, these examples wouldn't  
2 exist.

3 Of course, as I said before, the most feasible  
4 cause is drug residues. There is no reason whatever to  
5 believe that Valley Meats will be any better than its  
6 predecessors. I just don't know. I haven't seen any  
7 evidence that they would be. I fear that the residents  
8 of the area would suffer the same consequences as those  
9 people in those communities, and I got to know many of  
10 them personally.

11 So at this point, that concludes my testimony,  
12 and I appreciate you very much allowing me to give it.

13 MS. ORTH: Thank you, Mr. Holland.

14 If you'll go that witness table, I'll ask the  
15 other parties if they have questions of you.

16 Would you like to start, Mr. Dunn?

17 MR. DUNN: Thank you, Madam Hearing Officer.

18 Before I begin, I would like to lodge a series  
19 of objections to the testimony as to relevancy, as to  
20 being based upon hearsay, inadmissible hearsay, tending  
21 to be more prejudicial and not probative, not based upon  
22 actual knowledge, and not of an expert opinion nature  
23 and not anything which he is qualified to give technical  
24 testimony on.

25 I'd just like to go ahead and put those on the

1 record. I understand that this is a broad hearing, and  
2 we want to have people participate, and I'd just like to  
3 have those noted.

4 MS. ORTH: All right.

5 CROSS EXAMINATION

6 BY MR. DUNN:

7 Q. Mr. Holland, you said in your slides in there  
8 that it's just a fact that cattle systems can't handle  
9 equines.

10 Are you qualified to evaluate cattle systems?

11 A. Sir, I believe what I said or what I meant to  
12 say was that they have never been able to. I don't know  
13 that they can or not, but I have never seen an example  
14 where they could.

15 Q. You say "never."

16 Can you qualify your knowledge base as to  
17 never?

18 A. I have not -- to my knowledge, I have not seen  
19 a plant that did not have pollution problems.

20 I only have really details on the three, but  
21 what I have heard directly from the others is the same  
22 story.

23 Q. So you don't know anything beyond those three?

24 A. No. And I'm relying on public records here.  
25 I mean, those reports are not mine. I didn't make them

1 up. Those are public evaluations or evaluations by  
2 water boards.

3 Q. In forming that opinion, did you look at any  
4 of the preceding plants from the previous 75 to 100  
5 years?

6 A. I looked at some of the operations record for  
7 cow slaughter before they converted to horses.

8 Q. What exactly?

9 A. Well, Dallas Crown, they slaughtered cattle  
10 before horses, and they did not show any particular  
11 problems with wastewater disposal.

12 Q. But that's just that one plant. There is  
13 nothing outside of that one?

14 A. And Cavel had -- this is a rebuilt Cavel. The  
15 original plant was much more along the lines of Dallas  
16 Crown. It was an outdoor, it was out of tin and pipe  
17 structure, and they had slaughtered cattle for a number  
18 of years, and I could find no record of any major  
19 problems, but --

20 Q. Well, then let's talk about Cavel for a  
21 second.

22 You showed the slide of the tank. You said "I  
23 don't know, but I believe." Is that fair to say that  
24 you --

25 A. Yes, that's a another sample of --

1 Q. -- did not --

2 MS. TOWNSEND: You're both talking at once.

3 Q. That's a factual determination by you on your  
4 opinion, that's not an actual expert's opinion, that's  
5 just yours?

6 A. That's mine as an engineer saying that I --  
7 you know, we solve problems, and when we have a problem  
8 like that, we look at possible reasons, and I can't  
9 think of any other feasible reason. But if you think of  
10 one, I'll be glad to take it into account.

11 Q. How many things have you evaluated?

12 A. In my life? Thousands.

13 Q. How many at processing facilities?

14 A. Thousands.

15 Q. At a cattle process?

16 A. Not cattle. No, not horse and cattle  
17 processing, no, but processing other things.

18 Q. What other things?

19 A. Oh, all kinds of materials.

20 For example, I work in automation and, you  
21 know, automated different systems, and they use  
22 materials, and sometimes those materials are  
23 contaminants, and the company worries about, you know,  
24 whether they will get discharged into the water, and we  
25 work on systems to assure that they won't.

1           For instance, we -- I work right now for  
2           Optical Cable Corporation, and they have quite a few  
3           dangerous chemicals that -- you know, that go into  
4           making optical cable, and they are very, very diligent  
5           about not allowing them to become part of the discharge  
6           stream.

7           Q.     You heard the definition of livestock earlier  
8           in our New Mexico statutes. Is that correct?

9           A.     Yes, sir.

10          Q.     How many of those plants, these processing  
11          plants that you've worked on, fall within a facility --

12          A.     Well, that --

13          Q.     -- that processes anything off of that list?

14          A.     No, of course, livestock -- are you using the  
15          USDA definition or the FDA?

16          Q.     I'm using the New Mexico statutory definition.

17          A.     The FDA or USDA?

18          Q.     No, the New Mexico statutory definition.

19          A.     They are all different. You know, horses are  
20          not livestock to the FDA.

21          Q.     But my question was, you're familiar with our  
22          New Mexico statute because you heard it read --

23          A.     Yes.

24          Q.     -- and equines are considered under livestock  
25          in New Mexico, is that correct?

1 A. Yes. And I have no experience with that.

2 Q. So you don't have any livestock experience?

3 A. No. I have horse experience.

4 Q. Okay. You spoke that there was -- you offered  
5 that you had heard Mr. De Los Santos talk about the fact  
6 that, you know, no rendering facility would take this  
7 material.

8 Are you aware that he may have?

9 A. No, that's -- I stated that he indicated he  
10 was going to take the offal to a rendering facility, and  
11 I just questioned whether he had told the rendering  
12 facility that it was horse and whether he had, you know,  
13 really gone through checking it out, because I think  
14 he's going to have a problem.

15 The products at rendering facilities are  
16 things that often end up back in the food chain. For  
17 instance, blood meal is one of the main products for  
18 disposal of blood, and it's a fertilizer, and it -- many  
19 of the drugs that are in the blood will end up in the  
20 fertilizer and that, of course, can be taken up into the  
21 plants.

22 Q. What's your basis for that opinion?

23 A. It's just studying it. I've studied -- I've  
24 read deeply on the subject.

25 Q. Can you give me a little bit more specifics?

1           A.     What would you like?

2                     You know, I assisted Dr. Marini in her paper  
3 on the presence of phenylbutazone in horse meat, you  
4 know, and she looked at 18 thoroughbreds, and we tracked  
5 their records back to the slaughter plant and proved  
6 that all 18 of them had been given Bute before being  
7 slaughtered.

8                     I've done other studies that --

9           Q.     Permit me to interrupt you.

10          A.     Yes.

11          Q.     We're getting beyond the scope of my  
12 questioning.

13                    Specifically, are you aware of any rendering  
14 plants that have an environmental issue? So if they'd  
15 taken this stuff in the past, is there anywhere where  
16 there has been some sort of finding of environmental  
17 violation?

18          A.     That's indirect knowledge, not direct  
19 knowledge. I didn't talk to the rendering plant,  
20 although I tried to, but the -- yes, the Dallas Crown  
21 operation was --

22          Q.     Let's just keep it to direct knowledge. If  
23 you have direct knowledge, let's do that --

24          A.     No.

25          Q.     -- if you don't, then I'd rather --

1 MR. POWERS: Madam Hearing Officer --

2 MS. ORTH: Mr. Powers.

3 MR. POWERS: -- and I apologize, but,  
4 Mr. Dunn, if you can ask a direct -- I'd ask that the  
5 Court ask Mr. Dunn to ask a direct question, give the  
6 witness a chance to respond to that before interrupting,  
7 and then I think we can make objections, but if he can  
8 finish his statements.

9 MS. ORTH: Yes. Thank you.

10 MR. DUNN: That's fine. I'm happy that he  
11 answer the question.

12 MS. ORTH: Well, the dialogue was speeding up  
13 pretty fast, so let's just slow it down.

14 MR. DUNN: Okay.

15 Q. (BY MR. DUNN) Mr. Holland, are you familiar  
16 at all with biofuel plants?

17 A. Yes. I worked on biofuel plant project  
18 many, many years ago. It was -- it took wood pulp,  
19 sawdust, and blasted it into a furnace to create  
20 electricity.

21 Is that what you're talking about?

22 Q. Or something that turned it into a biofuel of  
23 some sort.

24 A. Yes, sir, I worked on that for about nine  
25 months.

1 Q. Are you aware they do commonly use animal  
2 waste and animal byproducts in a --

3 A. Yes, sir.

4 Q. I'm sorry -- in the biofuel?

5 A. Yes. Yes, sir. I am familiar with that. It  
6 is -- it's commonly used even by Native Americans. I  
7 mean, the Tibetans used yak poop to cook their meals.

8 Q. Would it be fair to say if one of those two  
9 options were available to Valley, and they confirmed  
10 that, that they really do have an end-product or an end  
11 destination for the byproducts?

12 A. Well, yes. You know, I would still question  
13 whether that end destination is fully aware of what the  
14 end-products are going to be and whether they'll still  
15 feel the same way after they have tested them.

16 MR. DUNN: Okay. No further questions.

17 MS. ORTH: Thank you, Mr. Dunn.

18 Mr. Powers, do you have questions for  
19 Mr. Holland?

20 Oh, Mr. Kendall.

21 MR. KENDALL: Madam Hearing Officer, the New  
22 Mexico Environment Department would like to join in the  
23 objections from Valley Meat on relevancy grounds, both  
24 for what was presented and what was submitted --

25 MS. ORTH: All right.

1 MR. KENDALL: -- prehearing.

2 We have no further questions for Mr. Holland.

3 MS. ORTH: Thank you.

4 Mr. Wagman?

5 MR. WAGMAN: No questions, Madam Hearing  
6 Officer.

7 MS. ORTH: All right. Mr. Biernoff?

8 MR. BIERNOFF: None, Your Honor.

9 MS. ORTH: All right.

10 Thank you, Mr. Holland, very much.

11 MR. HOLLAND: Thank you.

12 MS. ORTH: Certainly some of the material  
13 presented was attenuated relevant to the example of the  
14 material about Fernald, for example.

15 But the material about problems at other  
16 slaughterhouses, I think although it's not about this  
17 slaughterhouse, which hasn't opened for horses at this  
18 point, is acceptable, and to the extent that your  
19 cross-examination shows the appropriate weight to go to  
20 the observations, to the extent the facility operations  
21 can be distinguished, permits can be distinguished, that  
22 is sometimes quite useful in our permitting hearings.

23 So I'm not going to -- I'm not going to  
24 exclude it.

25 Who is going next?

1 MR. WAGMAN: Madam Hearing Officer, we have  
2 our witness, Mr. Olson.

3 MS. ORTH: Mr. Olson, all right.

4 MR. WAGMAN: Could we take a moment to switch  
5 seats and that kind of thing?

6 MR. BIERNOFF: I can do the examination from  
7 here.

8 MS. ORTH: All right.

9 (Oath administered to Mr. Olson.)

10 WILLIAM C. OLSON

11 after having been first duly sworn under oath,  
12 was questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BIERNOFF:

15 Q. Good afternoon, Mr. Olson.

16 A. Good afternoon.

17 Q. Can you indicate to the Hearing Officer for  
18 which parties you're presenting technical testimony  
19 today?

20 A. I am presenting testimony on behalf of the New  
21 Mexico Attorney General, Front Range Equine Rescue, and  
22 six residents of Roswell, and that includes Ramona  
23 Cordova, Cassie Gross, Tanya Littlewolf, Sandy Schaefer,  
24 Krystle Smith and Deborah Trahan.

25 Q. Okay. And you've already submitted written

1 testimony. I'll try not to make you repeat too much of  
2 that as we get into this discussion.

3 I just want to ask you, though, are there any  
4 changes to your filed written testimony that you'd like  
5 to make at this time?

6 A. Yes, there was a couple minor errors that were  
7 in the testimony.

8 In the NOI on page three, it lists Exhibit 35  
9 and a date for that document. It lists the date as  
10 May 7th of 2012, and that should be May 7th of 2010.

11 And then also on Exhibit 1, page one, which is  
12 my resume, at the -- towards the bottom of that page, on  
13 the term of employment for the New Mexico Environment  
14 Department as Bureau chief, it lists an error. It still  
15 says it's from October of 2004 to the present, and it  
16 should be October of 2004 to October of 2011.

17 And then also the Exhibit 24, which was  
18 submitted with the document, it wasn't the complete  
19 copy, it was a partial of that -- a partial copy of that  
20 paper, and that was the paper on "Activated Sludge  
21 Systems Removal of Efficiency for Veterinary  
22 Pharmaceuticals from Slaughterhouse Wastewater."

23 Q. Okay. You've actually provided me with copies  
24 of the complete Exhibit 24 that I'd like to pass to the  
25 Hearing Officer and to counsel.

1 MR. BIERNOFF: Madam Hearing Officer, may I do  
2 that?

3 MS. ORTH: Yes.

4 Q. (BY MR. BIERNOFF) Okay. Mr. Olson, subject  
5 to some of the -- well, subject to all of the changes  
6 that you mentioned, the minor changes, do you adopt the  
7 written testimony that you filed?

8 A. Yes, I do.

9 Q. Okay. Can you give the Hearing Officer just a  
10 quick summary of your educational background?

11 A. Yes.

12 The full information of that is in my direct  
13 testimony, but I've been working on water quality issues  
14 related to the Water Quality Act/the Water Quality  
15 Control Commission for about 27 years.

16 25 years of that occurred as an employee of  
17 state government, for both the New Mexico Environment  
18 Department and the New Mexico Oil Conservation Division.

19 At the end of my service for the state  
20 government, I served for seven years as the Bureau chief  
21 of the Groundwater Quality Bureau, and in that position,  
22 I was responsible for the oversight of those programs  
23 and the permitting of wastewater discharges under the  
24 Water Quality Act and Water Quality Control Commission  
25 Regulations.

1           Prior to that -- or I should say, I'll add to  
2 that that during that time I also served as the expert  
3 witness for the Department in adjudicatory hearings, as  
4 well as rule-making hearings, which included the Dairy  
5 Rule, which was adopted a few years ago.

6           Q.    And an adjudicatory hearing would be a hearing  
7 like this one?

8           A.    It was a rule-making hearing in front of the  
9 Water Quality Control Commission in that case.  There  
10 were actually several hearings that occurred.

11          Q.    I appreciate that overview of your  
12 professional experience.

13                Just really quickly, can you mention your  
14 educational background as well?

15          A.    Yes.

16                I have a bachelor's of science in geology and  
17 a master's of science in hydrology.

18                I would like to add, as well, to the  
19 professional experience was that I served on the Water  
20 Quality Control Commission for approximately 13 years  
21 and also had served on the Oil Conservation Commission  
22 for a period of about five years.

23          Q.    Okay.  Thank you.

24                Can you summarize the history of discharge  
25 permit DP-236?  That's the permit that's before the

1 Hearing Officer now.

2 A. Basically, the first permit application  
3 occurred in 1982. It was permitted for the slaughter of  
4 cattle, as well as it mentioned some -- potentially some  
5 sheep and hogs.

6 The permit was renewed in 1998, and at that  
7 time it required installation of a single-lined  
8 synthetic impoundment.

9 The permit was then again renewed in 2004. At  
10 that time it required the placement of a clay-lined  
11 impoundment at the facility with a synthetic-lined  
12 impoundment.

13 That's kind of the very brief version of that.

14 Q. Okay. And from your review of the record,  
15 what animals did Valley Meat process during this time  
16 frame?

17 A. Largely what was referenced in the  
18 applications was the slaughter of cows.

19 Q. Okay. Is there any evidence in the record  
20 that Valley Meat was processing horses during that time  
21 frame?

22 A. No, there is not.

23 Q. Okay. And did Valley Meat apply for a renewal  
24 of the 2004 permit?

25 A. No, it did not actually. That permit expired

1 in 2009.

2 Q. And how did the Environment Department respond  
3 to the expiration of the permit?

4 A. The Department issued a notice of violation in  
5 2010, asking the applicant to submit a renewal  
6 application and telling them they were in violation of  
7 the Water Quality Control Commission rules.

8 Q. Okay. What is the significance of Valley Meat  
9 having failed to apply for the renewal before the  
10 expiration of the permit in 2009?

11 A. Well, the implication is that the permit has  
12 expired and no longer exists at that point.

13 There is provisions within the Water Quality  
14 Control Commission rules that allow for a permit to  
15 continue and to be allowed to continue to discharge if  
16 you submit an application for renewal at least 120 days  
17 in advance of the expiration of the permit, as well as  
18 you are required to be in compliance with the terms and  
19 conditions of the permit that you are operating under at  
20 that time.

21 Q. And were those conditions met in this case by  
22 Valley Meat?

23 A. No, they were not.

24 The permit application was not submitted until  
25 after it was noted by the Department that it had

1 expired, as well as they were not in compliance with  
2 their -- the terms and conditions of their permit at the  
3 time that it expired.

4 Q. Okay. Based on your review, how is Valley  
5 Meat's contemporary permit application, the application  
6 that's before the Hearing Officer now, different from  
7 its past applications?

8 A. Well, now it's proposing to slaughter horses  
9 at this point, and that's a significant difference from  
10 its prior applications; largely due to the presence of  
11 drugs that may be present in horses sent to slaughter --

12 Q. Okay.

13 A. -- which would not be present most likely in  
14 cattle.

15 Q. Okay. And does the contemporary permit  
16 application, the one that's in the administrative record  
17 in this matter, indicate on its face that Valley Meat is  
18 going to be slaughtering horses?

19 A. No. The application itself does not. It's  
20 just a renewal of the prior applications for a discharge  
21 permit.

22 Q. To your knowledge, has the Environment  
23 Department ever received an application for wastewater  
24 discharge from a horse slaughter facility?

25 A. Not to my knowledge.

1           Q.     Okay.  And you had mentioned that there are  
2 salient differences between slaughtering horses and  
3 slaughtering cattle, and I'd like you to summarize your  
4 understanding of those differences.

5           A.     It's detailed in my testimony, Exhibits 7  
6 through 26, I believe.

7                     There is a number of -- as we discussed  
8 earlier this morning, a number of antibiotics and other  
9 types of drugs that are actually prohibited for use in  
10 food animals that are given to horses.

11                    So there is a potential problem for --

12                   MR. POWERS:  Objection, Your Honor.

13                   MS. ORTH:  Mr. Powers?

14                   Excuse me, Mr. Olson.

15                   MR. POWERS:  Before getting into, much like  
16 the testimony earlier, the regulations regarding food --  
17 pharmaceuticals and food and other FSIS/USDA issues, I'd  
18 ask the Hearing Officer to limit any testimony on that  
19 matter.

20                   MS. ORTH:  Mr. Dunn, do you join in that?

21                   MR. DUNN:  Yes, I'd like to join in that, and  
22 add that Mr. Olson has not been qualified as any sort of  
23 expert in veterinary medicine or animal physiology,  
24 toxicity, or pharmaceuticals.

25                   MS. ORTH:  All right.

1 Mr. Biernoff.

2 MR. BIERNOFF: Madam Hearing Officer, we do  
3 not introduce Mr. Olson's testimony for the purposes of  
4 establishing facts about veterinary medicine or  
5 toxicology.

6 Mr. Olson has testified in written format, and  
7 we'd like to briefly discuss it here today, some of the  
8 salient differences in horses and cows, and it may have  
9 implications for groundwater contamination, and to  
10 therefore explore whether the agency has considered  
11 those differences.

12 MS. ORTH: That's what I thought I heard you  
13 and Mr. Olson doing.

14 So please go ahead.

15 MR. BIERNOFF: Okay. I believe that Mr. Olson  
16 was in the middle of answering the question.

17 MS. ORTH: That's right.

18 MR. BIERNOFF: Madam Court Reporter, could you  
19 read back the question, please?

20 MS. TOWNSEND: "A. It's detailed in my  
21 testimony, Exhibits 7 through 26, I believe.

22 "There is a number of -- as we discussed  
23 earlier this morning, a number of antibiotics and other  
24 types of drugs that are actually prohibited for use in  
25 food animals that are given to horses.

1 "So there is a potential problem for --"

2 MR. OLSON: I was going to say potential  
3 problem for these chemicals to be present in the  
4 wastewater that would be discharged to the impoundments,  
5 which then makes it a potential problem for  
6 contamination of groundwater and public exposure if  
7 these things are released from the impoundment.

8 Q. (BY MR. BIERNOFF) Okay. Mr. Olson, did you  
9 consult any scientific literature to make that  
10 determination?

11 A. Yes. That is in my Exhibits 7 through 26.  
12 There is the list of banned substances for -- that are  
13 actually given to horses that would not be allowed for  
14 meat animals.

15 So these are potentially present -- to be  
16 there and be present in horse slaughter operations and  
17 can be discharged to the impoundments.

18 Q. Okay. Now, do you also have personal  
19 knowledge about drugs that are given to horses?

20 A. Yes. I've -- I had horses for about 20 years.  
21 I trained and raised horses myself.

22 The list that was provided in Exhibit 7, in  
23 review of that, I'm familiar with -- personally familiar  
24 with about 27 of the drugs listed in that exhibit that I  
25 have personal experience with their application;

1 especially through those applications, the labels of  
2 those drugs clearly state that these drugs are not to be  
3 used for food animals.

4 Q. Okay. In your opinion, if a permit applicant  
5 told you that they were going to be conducting a new  
6 kind of business enterprise, different from the business  
7 that they had conducted under the previous permit, would  
8 it be appropriate to inquire into the nature of that new  
9 business operation?

10 MR. POWERS: Your Honor, I'm going to object  
11 to that.

12 Mr. Olson is not currently in a position of  
13 permitting action. I don't believe his opinion would be  
14 reflective of any current regulations. It's been a  
15 couple of years. It's a -- it's not necessarily a  
16 policy issue.

17 I mean, he can opine maybe during his  
18 administration or maybe during his policy, but I don't  
19 believe currently that's correct.

20 MS. ORTH: Mr. Biernoff?

21 MR. BIERNOFF: If I may, thank you, Madam  
22 Hearing Officer.

23 I hope that I -- the way I phrased the  
24 question indicates that I'm asking Mr. Olson for his  
25 opinion, and certainly we all understand that Mr. Olson,

1 nor any of the rest of us, other than yourself and the  
2 Cabinet Secretary, are ultimately responsible for making  
3 that determination here, but based on Mr. Olson's  
4 extensive past experience as a regulator and as a  
5 scientist, it's my intention to ask him generally if a  
6 permit applicant embarking on a new business operation  
7 is an appropriate area for inquiry.

8 MS. ORTH: Right. I think his biography was  
9 set out fairly clearly and that it would be apparent  
10 that Mr. Olson is speaking on his experience, which as a  
11 regulator ended about two years ago.

12 Please go ahead.

13 MR. BIERNOFF: Okay. So if I can just have  
14 the question read back or I can read it again.

15 MS. TOWNSEND: "Q. Okay. In your opinion, if  
16 a permit applicant told you that they were going to be  
17 conducting a new kind of business enterprise, different  
18 from the business that they had conducted under the  
19 previous permit, would it be appropriate to inquire into  
20 the nature of that new business operation?"

21 MR. POWERS: Your Honor, I'm going to object  
22 at that point, too. That's speculative.

23 I mean, if he can tack it down a little bit,  
24 but that's any type of business operation conducting a  
25 new type of operation, would you investigate. I think

1 that's a very highly speculative question.

2 MS. ORTH: Okay. And so in this case,  
3 Mr. Biernoff, I think you made the point earlier that  
4 they were switching from cows to horses.

5 MR. BIERNOFF: I'll be glad to be more  
6 specific.

7 I'd also request that other counsel, if they  
8 have additional objections to this particular question,  
9 that they voice them now so we can address all of them  
10 now instead of having a serial series of objections.

11 MS. ORTH: All right. Mr. Olson, do you  
12 remember the question?

13 MR. OLSON: I think it's the question -- let  
14 me see if I've got this correctly, is should the  
15 Department be concerned and look at differences that  
16 might occur through different types of discharges,  
17 especially through new types of discharges. Does --

18 MR. BIERNOFF: That's right.

19 MR. OLSON: -- that characterize it?

20 I would say yes, the Department should, and I  
21 can think of one experience where there was a new  
22 facility that hadn't been previously in this state that  
23 was permitted and that took some extensive time to look  
24 at, and that was the LES facility out in the Hobbs area,  
25 which was a nuclear fuel enrichment facility. There had

1 never been one of those before in the state, so it took  
2 some time to look at the facility and evaluate potential  
3 contaminants that are going to be generated from that  
4 facility.

5 It's not typical water contaminants that you  
6 would see generated from other facilities, such as a,  
7 you know, dairy or wastewater plant or other type of  
8 activity.

9 So I think it is prudent to look at things,  
10 especially if there is a potential for -- for threats to  
11 public health from discharges into the groundwater.

12 Q. (BY MR. BIERNOFF) Okay. And just getting a  
13 little bit more specific for a moment, would it be  
14 appropriate, in your opinion, for the Environment  
15 Department to inquire as to whether or not any of the  
16 drugs or other chemical substances that might be present  
17 in horse flesh migrate from slaughter operations into  
18 wastewater?

19 A. I think it's prudent, as well as evaluating  
20 whether or not there is any toxic pollutants that might  
21 be generated as part of that, which the Department  
22 clearly has authority over.

23 Q. Okay. Thank you.

24 Let's go back to the permit application and  
25 the draft discharge permit for a moment.

1           Based on your review, what's your  
2 understanding of the volume of wastewater that the draft  
3 permit allows for?

4           A.    It's clear throughout the various permits and  
5 the renewals is that the permit allows for a maximum  
6 daily discharge of 8,000 gallons per day.

7           Q.    Okay.  And how does that volume compare to the  
8 discharges allowed under Valley Meat's past permits?

9           A.    They have exceeded, actually, the permitted  
10 volume I think about 13 percent of the time in their  
11 monitoring reports, the ones that have been submitted.  
12 There is a lot of monitoring reports that are missing,  
13 so we don't know what happened in those other periods.

14                  But out of the ones that are submitted, about  
15 13 percent of the time, they've exceeded their permitted  
16 volume.

17           Q.    And when you say "permitted volume," you're  
18 referring to the 8,000 gallons a day?

19           A.    Yes, the 8,000 gallons per day.  That's  
20 correct.

21           Q.    Okay.  And based upon your review of the  
22 permit history, was there a point in time that Valley  
23 Meat indicated how many animals -- how many head that it  
24 intended to slaughter?

25           A.    Yes.  It shows up in their calculations

1 through their permit renewals, especially in 2003. They  
2 also had discussed it in their original application in  
3 1982.

4 Q. Okay.

5 A. And that's never -- at least there has been no  
6 mention in the permits of any activities greater than  
7 39.3 cows per day.

8 Q. Okay. And based on your review of the record  
9 here, before today, was there any indication that Valley  
10 Meat communicated to the Environment Department how it  
11 would be able to slaughter three times as many animals  
12 without generating any additional wastewater?

13 A. Actually, there was no discussion from Valley  
14 Meat in their applications about the changes to the  
15 volume or changes to their operation to slaughter more  
16 animals at that point.

17 Q. Okay. You were here for this morning's  
18 testimony by Valley Meat's witnesses?

19 A. That's correct.

20 Q. Okay. And did you hear witnesses from Valley  
21 Meat indicating a different figure for how many animals  
22 they would slaughter under the proposed permit?

23 A. Yes. They said that -- I think I heard  
24 testimony at times they've slaughtered up to 150. I  
25 think that was the testimony --

1 Q. Okay.

2 A. -- this morning.

3 Q. Okay. Based on your review of the record,  
4 did Valley Meat provide any supporting evidence of how  
5 it could slaughter a larger number of animals than  
6 listed in its 2003 renewal application without  
7 generating any additional wastewater?

8 MR. DUNN: Madam Hearing Officer.

9 MS. ORTH: Mr. Dunn.

10 MR. DUNN: Again, this gets into being  
11 argumentative and mischaracterizing the evidence before  
12 the Court.

13 Right now, the only thing before the Court is  
14 that it's 8,000 gallons per day. There is not a number  
15 that Valley has attested to that says that's what they  
16 were going to do and that there was any sort of plan to  
17 exceed that and that they needed to provide any  
18 additional information that they were going to exceed  
19 that number. There is not a hard-and-fast number in the  
20 record right now.

21 MS. ORTH: Do I not remember Mr. De Los Santos  
22 using the 121-horse-a-day number?

23 MR. DUNN: Yes, but that's -- they are talking  
24 about previous numbers, and I think that they are trying  
25 to say that this -- the 120 proposed is somehow

1 different than what it was in the past. There is not a  
2 past number.

3 MS. ORTH: The 39.3?

4 MR. DUNN: Yeah, and that -- we still can't  
5 find that. I apologize. We've looked through -- even  
6 if that was in there, their permit is for 8,000 gallons  
7 per day, whatever number of animals that was, that was  
8 not their intention they were going to do the 39.3  
9 animals per day.

10 I don't even know how they arrived at that  
11 number, but it's really not --

12 MS. ORTH: So, Mr. Dunn, this seems to be one  
13 of the more important points being made by the  
14 opponents.

15 So, Mr. Biernoff, is it worth taking a moment  
16 to go back to the document number 75, where I think it  
17 was Mr. Wagman that elicited --

18 MR. BIERNOFF: That would be very -- I'm  
19 sorry, Your Honor.

20 MS. ORTH: -- the testimony showing that  
21 number of 39.3 as being in there?

22 MR. BIERNOFF: Thank you, Your Honor. That  
23 would be very helpful.

24 I'm glad to point out, with the assistance of  
25 Mr. Wagman, where in the record this number appears.

1           So it's 75, as you mentioned, Madam Hearing  
2 Officer, and it is Table 2, Evaporation Calculations.

3           MR. DUNN: Can we get a page number?

4           MR. BIERNOFF: Yes, it looks like it has a  
5 page number of one.

6           MS. ORTH: No, it's five something.

7           MR. WAGMAN: Madam Hearing Officer.

8           MS. ORTH: Yes.

9           MR. WAGMAN: It's also -- I object, because  
10 this is asked and answered of Mr. De Los Santos. I  
11 showed him the document, and he said the number was  
12 there, and so I'm not sure why we're going over this  
13 again, although I'm happy to, but I just want to point  
14 out it's asked and answered and admitted by Mr. De Los  
15 Santos.

16           MS. ORTH: No, I understand. Sometimes we  
17 have to back up for a moment.

18           MR. BIERNOFF: And so is that enough guidance  
19 for everybody to find it? It doesn't look like there is  
20 a Bates number on it. There is a --

21           MR. DUNN: I still don't see it.

22           MR. BIERNOFF: Excuse me?

23           MR. DUNN: What page?

24           MR. BIERNOFF: It is 236C-75, Table 2,  
25 Evaporation Calculations, page number one of that

1 spreadsheet. Table 2, page one.

2 And if everybody looks at the second column  
3 that says "Renewed Permit," underneath that it says  
4 "Cows per day."

5 MR. DUNN: About what page is Table 2? I'm  
6 not finding Table 2. I apologize.

7 MR. BIERNOFF: Well, let's take the time we  
8 need to find it.

9 MR. DUNN: Do you have a page in the document?

10 MR. BIERNOFF: The document hasn't been  
11 prepared that way.

12 MS. ORTH: I believe mine says 517. Try that.  
13 Is it -- Mr. Powers or Ms. Kirby, is it 517?

14 MR. WAGMAN: Madam Hearing Officer, there is  
15 no Bates number on the document we're looking at, that's  
16 for sure, but it is --

17 MR. OLSON: I can point out --

18 MR. BIERNOFF: Again, maybe another way to  
19 find it would be counting back from some readily  
20 identifiable document.

21 So if we look -- if everybody is looking at  
22 this document in the record, 236C-75, if you're looking  
23 at the page where Mr. De Los Santos signed, dated  
24 8/26/03, it's Section 10 of that application, okay, so  
25 if you're on that page, you're then going to count one

1 -- four pages past that.

2 MR. WAGMAN: Madam Hearing Officer, it's also  
3 Exhibit 27 of the Bureau's submission, and if you count  
4 three pages back from the end -- from the last page,  
5 you're there, too.

6 MR. BIERNOFF: That's true.

7 MS. ORTH: Okay.

8 MR. DUNN: Okay. I can clarify a little bit,  
9 Madam Hearing Officer, now that I've found it.

10 MS. ORTH: Okay.

11 MR. DUNN: As far as my objection goes, that's  
12 an average and an estimate. It is not a business plan.  
13 It is not a proposed number and I --

14 MR. WAGMAN: Madam Hearing Officer, I  
15 object --

16 MS. ORTH: Hold on. Hold on.

17 MR. DUNN: So to characterize it as their  
18 number that they gave that they were only going to  
19 obtain to is a mischaracterization of the evidence.

20 If they'd like to say that that was an  
21 estimated number in the application, that's fine, but we  
22 just don't want it to be showing up that somehow that's  
23 the number they agreed to be bound by.

24 MS. ORTH: Okay.

25 Mr. Biernoff?

1 MR. BIERNOFF: Yes, Madam Hearing Officer.

2 Mr. De Los Santos testified that this was the  
3 number. I don't think that it's appropriate for counsel  
4 representing Mr. De Los Santos to testify on his behalf.

5 Certainly, Mr. De Los Santos is entitled to  
6 make whatever testimonial statements are appropriate  
7 today, but --

8 MR. DUNN: Your Honor, if I might.

9 MR. BIERNOFF: -- I think we should proceed.

10 MS. ORTH: Okay. Mr. Dunn.

11 MR. DUNN: Just very quickly. That's the  
12 point. He testified that it was a number in the  
13 document. He didn't testify that that was the number  
14 that they agreed that they were going to do. That's the  
15 mischaracterization that I'm trying to get to here.

16 MS. ORTH: Okay.

17 MR. DUNN: I don't have a problem with him  
18 saying that he did testify that that was the number in  
19 the application, but that it means something other than  
20 that is simply more than it should be.

21 MS. ORTH: All right. So the transcript will  
22 reflect the testimony that Mr. De Los Santos gave this  
23 morning, and it may be appropriate to bring Mr. De Los  
24 Santos back to make whatever clarification you believe  
25 is necessary, but I'm going to let Mr. Biernoff continue

1 his questioning of Mr. Olson, now that we are all  
2 looking at the same page and that number.

3 So, Mr. Biernoff, please go ahead.

4 MR. BIERNOFF: Thank you, Madam Hearing  
5 Officer.

6 Q. (BY MR. BIERNOFF) I believe the question that  
7 was pending was to Mr. Olson whether, in his review of  
8 the administrative record, there was any indication that  
9 Valley Meat had provided any supporting evidence to  
10 explain how it would be able to slaughter three times as  
11 many, or in this any case, many more animals than it was  
12 slaughtering according to this document at the time of  
13 its 2003 permit renewal.

14 So that's the question I want to pose to you.

15 A. Was that a question? Can you try that  
16 again --

17 Q. You bet.

18 A. -- as a question, please?

19 Q. Is there any evidence that you've seen, in  
20 your review of the record, any supporting evidence that  
21 Valley Meat submitted, to explain to the Environment  
22 Department how it could slaughter many more animals but  
23 only generate the same amount of wastewater?

24 A. What I've seen in the record is that the  
25 evaporation calculations list out the number of cows per

1 day that they are looking at for the expected discharge  
2 volume and then how they are going to accommodate that  
3 volume with the impoundment that they are proposing to  
4 operate, and that's the way I interpret this document.

5 Q. Okay. And are you aware of other evidence in  
6 the record that indicates the number of cows that Valley  
7 Meat either was slaughtering or stated that it was  
8 slaughtering prior to this application?

9 A. Well, I do recall there was -- and you have to  
10 piece it together from two documents that are within the  
11 administrative record, but I believe it was in February  
12 of 2005 that there was an inspection report which talked  
13 about the number of animals they were actually  
14 processing per day at that time, and if you'll bear with  
15 me a second -- yeah, I think that was the -- it looks  
16 like it's document 236C-92, and that's a field trip  
17 inspection report of the Environment Department of  
18 February 3rd, 2005.

19 At that time it notes in the inspection  
20 report that the kill rate at the facility -- it was down  
21 at that point, but it was running at 100 head per week.

22 There is a subsequent document on March 4th of  
23 2005, which is document 236C-94, which is the -- came  
24 shortly after this inspection, and that said that they  
25 are currently producing less than 5,000 gallons per

1 day.

2           So they've got -- they are running -- if you  
3 take it at a six days per week, they are running about  
4 16, 17 head per day, and at 5,000 gallons per day,  
5 that's going to be a discharge volume of around  
6 300 gallons per head that was being run at that time.

7           Q.    Okay.  And in your preparation for preparing  
8 your testimony, your written testimony and giving  
9 testimony here today, did you consult with any studies  
10 regarding volume of wastewater that's generated from  
11 slaughter operations?

12           A.    Yes.  I'd looked at a study by the European  
13 Commission that was specifically looking at slaughter  
14 facilities, and there is some extensive tables in there  
15 on discharge volumes of wastewater from slaughter  
16 facilities.

17           Q.    Okay.  And what conclusions did you make from  
18 reviewing that study?

19           A.    Well, you had to do some conversions, because  
20 they based things on metric tons and liters.

21                    But in looking at the conversions and the data  
22 that the European Commission had generated, they  
23 generated a number of ranges of discharge volumes per  
24 animal type based on a pound kind of of live weight, and  
25 they generated ranges from cattle wastewater generation

1 of about 429 to 2,378 gallons of wastewater per -- that  
2 was per 2,205 pounds, which is a metric ton.

3 So that, you know, generally equates down to  
4 around 200 gallons of wastewater per thousand pounds.

5 Q. Okay. And did this study also examine  
6 wastewater generated from slaughter operations for other  
7 animals?

8 A. Yes. It also looked at ranges of generation  
9 of wastewater for sheep and pigs as well. There is a  
10 large range within those, but the lower range on those  
11 is significantly higher for sheep, about -- you know,  
12 approximately three times the amount for cattle, and  
13 then the amount for pigs is about the same wastewater  
14 generation as cattle.

15 Q. Okay. And did the study include any reference  
16 to horses?

17 A. No, it did not contain a reference to horses.

18 So in my testimony, I had looked at taking the  
19 low end of those ranges as a low end of wastewater  
20 generation and applying that to the proximate weight of  
21 a horse and came up with numbers of approximately about  
22 195 gallons per day per thousand pound live weight.

23 Q. Okay. So I understand that the study did not  
24 look at wastewater generated from horse slaughter, but  
25 it did look at wastewater generated from cattle

1 slaughter.

2           Based on your review of that study and Valley  
3 Meat's prior permits, permit applications, is the rate  
4 of wastewater generation that the study found consistent  
5 with Valley Meat's past permitting history?

6           A.     Well, I think it's -- it looks like it's  
7 slightly less than what I'd just -- the example I'd  
8 given a little while ago when they were slaughtering a  
9 hundred head per week and generating 5,000 gallons per  
10 day. That was generating 300 gallons per animal at that  
11 point. And then you get a little bit less --  
12 approximately 200 gallons per animal from horses.

13           So there is a slight difference over those  
14 numbers, but I think the numbers show that it's quite  
15 comparable to the information provided in the European  
16 Commission study.

17           Q.     Okay. There is a lot of ground to cover, and  
18 I want to be mindful of the time that's allotted and  
19 keeping things moving.

20           So I'd like to ask you -- I know there is a  
21 lot that we -- that we weren't able to talk about that's  
22 in your written testimony, but how would you summarize  
23 the concerns that you've indicated in your written  
24 testimony about Valley Meat's permit application?

25           A.     I think the main concerns are -- is reflected

1 in the Department's application, that there is a shallow  
2 depth to groundwater and there is a high potential for  
3 groundwater contamination as a result of discharges at  
4 the site.

5 I think the other thing -- I'm sorry, maybe  
6 I'm getting a little off the question there.

7 Q. Oh, no, that's okay. You answered it just  
8 fine.

9 I was going to ask you, though, do your  
10 concerns that you've articulated rise to the level that,  
11 in your opinion, the permit should be denied?

12 A. That, and especially some of the compliance  
13 history I see as a significant issue that would warrant  
14 denial of the permit.

15 Q. Okay. And in your testimony, I think you  
16 indicate that if the permit is granted that there is  
17 additional steps, additional best practices, that you  
18 believe should be taken in order to bring this permittee  
19 into compliance. Is that right?

20 A. That's correct.

21 Q. Okay. Can you outline those additional  
22 measures that you're recommending?

23 A. It's laid out in more detail in my testimony.

24 But just due to the shallow groundwater  
25 conditions and also the uncertainty of the potential

1 effects of these chemicals if they are released into the  
2 groundwater, I included in my testimony a recommendation  
3 for installation of double-lined impoundments for  
4 wastewater to ensure that there are not releases,  
5 especially in this shallow groundwater setting, because  
6 any release from those impoundments would be directly --  
7 virtually directly into groundwater, considering the  
8 shallow nature of that groundwater.

9 That's based upon a lot of the history of  
10 groundwater contamination at agricultural facilities,  
11 which have nitrogen compounds as well. There is a  
12 significant number of those types of facilities.

13 Also, the Department itself has recognized  
14 problems with liners, and recently in the Copper Mine  
15 Rule hearings, their professional engineer  
16 testifying on their behalf provided testimony on leakage  
17 of liners.

18 So I think there is significant concern over a  
19 single-lined impoundment that's going to take wastes,  
20 with some type of drug compounds that have essentially  
21 some type of effect on humans, although it doesn't seem  
22 that that's really clear from a lot of the information  
23 out there as to what exactly those effects are, because  
24 it seems like they just haven't really been studied as  
25 to what their effects on humans are, just the fact that

1 they are hazardous to human ingestion.

2 Q. Now, you mentioned a concern for potential  
3 negative effects on human health.

4 Are there other risks that are implicated  
5 here?

6 A. Well, there is also the potential for a  
7 release from the impoundment migrating from the site and  
8 posing undue risk to property. There is a clause within  
9 the permit approvals that you're not allowed to actually  
10 have an undue risk to property from a discharge.

11 So if these are released and have potential  
12 impacts on human health, then this would cause an undue  
13 risk to neighboring property.

14 MR. BIERNOFF: Okay. Thank you.

15 Madam Hearing Officer, may I have a moment to  
16 just confer with co-counsel?

17 MS. ORTH: Yes.

18 MR. BIERNOFF: Thank you.

19 (Confers.)

20 Q. (BY MR. BIERNOFF) Mr. Olson, before I pass  
21 you along to other counsel, is there anything from your  
22 written testimony that we didn't get a chance to discuss  
23 today that you'd like to -- just to articulate for the  
24 Hearing Officer in this proceeding?

25 I know there is a lot of detail we're not

1 going to be able to get into, but I just want to give  
2 you that opportunity.

3 A. Yeah, there were just two issues which were  
4 two further recommendations, and that was for the  
5 concrete below-grade septic tanks that are at the  
6 facility. Things have been in place for extended  
7 periods of time, concrete cracks and leaks, and so they  
8 should be inspected for leaks and replaced, if  
9 necessary. And I gave recommendations for that in my  
10 testimony.

11 Q. Okay.

12 A. I also had some testimony for expanding the  
13 groundwater monitoring to include the -- other potential  
14 contaminants to look at, as well as installation of  
15 monitoring wells downgradient of the concrete tanks.  
16 These things have a higher potential to leak even than  
17 the impoundment that's at the facility. So there should  
18 be some type of downgradient monitoring from those  
19 concrete tanks. I think that's the main issues.

20 MR. BIERNOFF: Okay. Thank you very much.

21 MS. ORTH: Thank you, Mr. Biernoff.

22 Mr. Dunn, do you have questions of Mr.  
23 Olson?

24 MR. DUNN: Good afternoon, Mr. Olson.

25 MR. OLSON: Good afternoon.

1 MR. DUNN: Before I get into the questions,  
2 actually, Madam Hearing Officer, I know we placed  
3 objections on the record at the beginning of his  
4 testimony regarding the conflict of interest.

5 I'd also like to lodge an objection on the  
6 basis of relevancy. As an example, the 24 that was  
7 discussed, that we just received a complete copy of,  
8 deals with activated sludge systems removal efficiency  
9 of veterinary pharmaceuticals from wastewater --  
10 slaughterhouse wastewater. We're not talking about an  
11 activated sludge system here.

12 I just think that something along those lines  
13 tend to be more prejudicial than probative, especially  
14 since it's not really relevant.

15 So I would just like to lodge that objection  
16 at this point.

17 MS. ORTH: All right.

18 Shall we take the exhibits, then, before you  
19 conduct your questioning?

20 MR. DUNN: If the rest of counsel wants to  
21 talk about them.

22 MS. ORTH: Mr. -- I'm sorry?

23 MR. DUNN: If it's the pleasure of other  
24 counsel to go ahead and talk about them, that's fine.

25 MS. ORTH: Why don't we do that before you ask

1 your questions.

2 MR. DUNN: That's fine.

3 MS. ORTH: Mr. Biernoff, do you move for  
4 admission of the exhibits?

5 MR. BIERNOFF: I'm sorry, Madam Hearing  
6 Officer?

7 MS. ORTH: The exhibits.

8 MR. BIERNOFF: Yes.

9 MS. ORTH: All right. There were a lot of  
10 them.

11 MR. BIERNOFF: I didn't completely hear your  
12 question, Madam Hearing Officer.

13 Yes, we do move for admission of these  
14 exhibits.

15 MS. ORTH: All right. And I've heard an  
16 objection just now from Mr. Dunn concerning number 24, I  
17 believe it was.

18 MR. BIERNOFF: Right.

19 MS. ORTH: Do you have a response to that  
20 objection?

21 MR. BIERNOFF: I do.

22 Exhibit 24 is one of a series of exhibits that  
23 Mr. Olson considered for purposes of evaluating the  
24 background science here; and even if Valley Meat is not  
25 conducting exactly the same kind of operation, certainly

1 there is background information that's relevant to a  
2 scientist, to a hydrologist, that's contained in this  
3 article and it's appropriate for him to consider.

4 I don't think that I asked any questions of  
5 Mr. Olson asking him to adopt specific findings of this  
6 article, and so there shouldn't be any concern with  
7 that.

8 MS. ORTH: All right.

9 And I guess I didn't necessarily see that the  
10 article was summarized or statements in his testimony  
11 were drawn from this research article in particular,  
12 although he may have relied upon it to reach the  
13 conclusions that were stated there.

14 Is that true?

15 MR. BIERNOFF: I guess that's another way of  
16 phrasing what I was hoping I'd said.

17 MS. ORTH: All right.

18 So, Mr. Dunn, it needn't be admitted for any  
19 purpose other than showing that it was an article that  
20 Mr. Olson read on his way to reaching a conclusion.

21 MR. DUNN: That's fine, as long as the record  
22 notes that we objected, that he used irrelevant  
23 information for the formation of his testimony and his  
24 opinion.

25 MS. ORTH: All right.

1 Mr. Powers, do you have anything?

2 MR. POWERS: Your Honor -- in addition to  
3 that, Madam Hearing Officer, I would object to number  
4 24, as amended, being timely filed. That was supplied  
5 previously, and it was only two pages long, and now  
6 we're looking at -- to be honest, there is not even page  
7 numbers at the conclusion of it that I see.

8 I would just object on the timeliness of it to  
9 be submitted into the record.

10 The first two pages were previously submitted  
11 in the admin record, we had time to review that.  
12 Unfortunately, here on the day of the trial, we were  
13 presented with the fuller article, specifically an  
14 article of -- Exhibit 24.

15 MS. ORTH: Right.

16 MR. POWERS: In addition to that, Madam  
17 Hearing Officer, I would recommend that -- we had  
18 previously in our motion to exclude portions of  
19 Mr. Olson's testimony, 7 through 20 and 21 through 25  
20 were requested to be struck because of several bases.  
21 One is the hearsay objection; two, reliance on unfounded  
22 and unsupported or authenticated documents.

23 And so we would renew those motions as well.

24 MS. ORTH: All right.

25 Mr. Biernoff, any response?

1 MR. BIERNOFF: I do. Thank you, Madam Hearing  
2 Officer.

3 So let's talk about 24 first. Just in  
4 response to Mr. Dunn's objection, I think I've already  
5 covered our position on that. I don't want to rehash  
6 that.

7 We certainly disagree with his objection and  
8 believe that it's perfectly appropriate for Mr. Olson  
9 to have read and considered this material and for it to  
10 be admitted as an exhibit on that basis.

11 As far as Mr. Powers' objection to this being  
12 an incomplete version of the article that was in the  
13 prefiled testimony, certainly that was an inadvertent  
14 mistake.

15 Mr. Powers has an opportunity now to take a  
16 look at the article and to ask Mr. Olson any questions  
17 that he has about it. Certainly, if he discovers  
18 anything that gives him pause -- Mr. Powers, that is --  
19 he should be able to ask the witness about it on  
20 cross-examination. It's not a basis for keeping this  
21 exhibit out of evidence.

22 And are we now going to address Mr. Powers'  
23 larger objection to --

24 MS. ORTH: 7 through 20.

25 MR. BIERNOFF: Yeah.

1           So there is -- there is specific responses  
2 that we have about some of these individual exhibits,  
3 but let me just say, generally, the same proposition  
4 really applies to this larger set as to 24.

5           These are materials that Mr. Olson consulted  
6 with as a scientist, as a former regulator, and these  
7 are the kinds of materials he testified would be  
8 appropriate to look at to educate one's self about what  
9 by all accounts is a new industry, at least in New  
10 Mexico.

11           And so Mr. Olson, in reviewing these exhibits  
12 and in reaching his conclusions, is not simply  
13 rephrasing any content from the exhibits. This is part  
14 of his process of understanding what the problem is and  
15 developing his testimony and his recommendations that  
16 have already been submitted.

17           Exhibit 7, I want to just note that one of  
18 Valley Meat's own witnesses has referred to this and  
19 doesn't have any -- at least I don't think I heard any  
20 disagreement that he had, this is Dr. Blach, with that  
21 exhibit.

22           This is an exhibit that has been part of  
23 multiple regulatory proceedings at all kinds of  
24 different levels of government, and certainly there will  
25 be plenty of opportunities for any counsel to ask

1 Mr. Olson or any other witness about the content of this  
2 exhibit, but I don't think I've heard from Mr. Powers  
3 what is the basis for striking this exhibit from the  
4 materials that Mr. Olson considered and that should be  
5 part of the record.

6 MS. ORTH: All right. So -- Mr. Dunn?

7 MR. DUNN: Just very quickly, Madam Hearing  
8 Officer.

9 In response to the Exhibit 7 issue -- I  
10 believe that's the list of pharmaceuticals, is that  
11 correct?

12 MS. ORTH: "Banned and Dangerous Substances  
13 Commonly Given to Horses Sent to Slaughter."

14 MR. DUNN: I don't believe that the current  
15 witness is qualified to opine on horse pharmaceuticals  
16 or those types of things, so we really can't  
17 cross-examine him with regard to the veracity or the  
18 credibility of that study because he's not qualified to  
19 offer an opinion.

20 So again if he's not qualified as an expert  
21 in those fields, he should not be allowed to opine in  
22 them.

23 MS. ORTH: So let's go to foundation then.

24 Mr. Biernoff, I don't remember that you asked  
25 Mr. Olson where this document came from.

1 MR. BIERNOFF: We did not review that in our  
2 live examination.

3 MS. ORTH: Okay. Can you establish that now?

4 MR. BIERNOFF: I'll be glad to do that now  
5 with Mr. Olson. May I do that from here --

6 MS. ORTH: Yes.

7 MR. BIERNOFF: -- or shall I go back to the  
8 podium?

9 MS. ORTH: Okay.

10 MR. BIERNOFF: Mr. Olson, can you tell the  
11 Hearing Officer where you obtained this exhibit?

12 MR. OLSON: Yes. I obtained this exhibit from  
13 counsel, from a list that they had prepared of chemicals  
14 in -- that are given to horses, pharmaceuticals, other  
15 drugs.

16 MR. BIERNOFF: Okay. And do you have an  
17 understanding of where this list has been used?

18 MR. OLSON: I understand this has been used in  
19 the District Court proceedings that have been going on,  
20 and I also have personally reviewed this list and have  
21 personal knowledge of the use of 27 -- of at least 27 of  
22 these drugs.

23 MR. BIERNOFF: And I believe that we actually  
24 did establish that a moment ago, that you, as a person  
25 who has raised and trained horses, are personally

1 familiar with a number of the drugs that are on this  
2 list.

3 MR. OLSON: That's correct.

4 MR. BIERNOFF: Okay. And can I ask you just  
5 one follow-up question?

6 For what purposes did you consider this list  
7 in arriving at your testimony and your conclusions?

8 MR. OLSON: Well, it's looking at these  
9 compounds, you don't find a lot of human health effects  
10 that have been just actually studied from these  
11 compounds.

12 So the concern I had, in looking at this list  
13 and having personal familiarity with quite a number of  
14 these chemicals, is that in my use of these drugs, with  
15 my horses, typically the labels of these drugs  
16 specifically say "Not intended in animals for human  
17 consumption."

18 MR. BIERNOFF: Okay. And you're talking again  
19 about the 20 or 27 drugs --

20 MR. OLSON: That I'm familiar with, yes.

21 MR. BIERNOFF: -- that you're personally  
22 familiar with?

23 MR. OLSON: Yes.

24 MR. BIERNOFF: Can you give just a few  
25 examples of the drugs that are on that list of about 27?

1           Take a moment, if you need to.

2           MR. OLSON:   There is Acriflavine -- where I  
3 come to these is through -- typically through their  
4 product name --

5           MR. BIERNOFF:   Okay.

6           MR. OLSON:   -- which is what I'm familiar  
7 with.   But then amoxicillin, which is an antibiotic.  
8 Avermectin, which is in, you know, Farnam Ivercare.  
9 Butoxy polypropylene glycol, which is in different types  
10 of fly wipes.   Diflubenzuron, which is in, again, some  
11 different types of fly wipes.   Dipropyl  
12 isocinchomeronate -- I guess I said that properly --  
13 which is in fly repellent roll-on.   Equine influenza  
14 vaccines, there are several of those.   Fenbendazole,  
15 which is in dewormers.   Some different NSAIDs, which  
16 I'll refer to as Banamine.   Again, there are some other  
17 chemicals, I guess, listed as gentian violet,  
18 specifically Blue-Kote, which is an ointment.

19           MR. BIERNOFF:   Okay.   That's probably  
20 sufficient.

21           I just wanted to make sure that you did  
22 recognize, in fact, some of the drugs that you mentioned  
23 being familiar with from your personal experience on  
24 this list, and it certainly sounds like you do.

25           MR. OLSON:   It was from personal experience

1 and actually going back through some of my old vet bills  
2 and looking at the chemicals used in -- used with my  
3 horses.

4 MR. BIERNOFF: Okay. Okay.

5 Madam Hearing Officer, I think that the  
6 witness has demonstrated ample understanding of the  
7 information that's contained in this document.

8 Again, I'm not -- none of the attorneys at  
9 this table are asking Mr. Olson to adopt or to confirm  
10 the truth of the contents of this document, but it is to  
11 show that there is -- certainly this information is  
12 publicly available, and it should be considered, and  
13 Mr. Olson is familiar with it and has considered it and  
14 that it's part of a reasonable inquiry into these  
15 operations.

16 MS. ORTH: All right.

17 Thank you, Mr. Biernoff.

18 Mr. Dunn?

19 MR. DUNN: Madam Hearing Officer --

20 MS. ORTH: Yes.

21 MR. DUNN: -- could I get into some reasonable  
22 inquiry and voir dire the witness -- could I get into a  
23 reasonable inquiry and voir dire the witness on this  
24 subject?

25 MS. ORTH: Yes. Let me just tell you where

1 I'm headed, even before your voir dire. I think  
2 Mr. Biernoff just used a phrase I was going to use,  
3 which is that I guess I draw a distinction between the  
4 laying of a foundation that would allow all of us -- me,  
5 you, the Cabinet Secretary, the Court of Appeals -- to  
6 accept the truth of everything that's stated here, as  
7 opposed to what was effectively a disclosure on  
8 Mr. Olson's part of what he looked at on his way to his  
9 conclusions.

10 That's the distinction I draw, and I think  
11 what we have in front of us is the latter there. He  
12 didn't prepare this document.

13 MR. DUNN: But, Your Honor -- and I can  
14 prepare a follow-up or do some case research, but my  
15 recent memory serves me that scientific evidence  
16 presented unfounded on any basis -- there has to be some  
17 reasonable basis. As we know under Daubert, that you  
18 cannot just rely on any document out there, that  
19 document must be independently and scientifically valid  
20 before that expert can offer testimony or opinion based  
21 upon those documents.

22 MS. ORTH: Okay.

23 MR. DUNN: And that's my concern, Your Honor.

24 MS. ORTH: Thank you, Mr. Dunn.

25 MR. DUNN: And under Daubert, the expert has

1 the opportunity to make that a credible document, to  
2 offer through his expert testimony and his background as  
3 to why that is.

4 He does not have a background in these, and so  
5 as Daubert pointed out, he can't reach the conclusion  
6 that that is a credible exhibit.

7 MS. ORTH: All right. And we don't do formal  
8 Daubert analyses in the administrative -- in  
9 administrative proceedings.

10 Again, I believe what we have here is more a  
11 disclosure of what Mr. Olson looked at and relied on in  
12 his conclusions. You're going to be able to conduct  
13 cross-examination, which will reveal whatever the  
14 appropriate weight is to be given to Mr. Olson's  
15 testimony, but as far as I'm concerned, documents 7  
16 through 20 and -- well, 24 is a different matter, but 7  
17 through 20 certainly, and to some extent 24, are here to  
18 reflect what Mr. Olson looked at, and are not in the  
19 record because everything in them must be taken as true  
20 by, again, the Secretary or a reviewing court.

21 As to 24, I'll put it in the same -- I'll put  
22 it in the same category.

23 Thank you.

24 (AGO/FRER Exhibits 1 through 45 admitted.)

25 MS. ORTH: Mr. Dunn, would you like to do your

1 cross-examination, which can include voir dire?

2 MR. DUNN: I think that that sufficiently ends  
3 it. Thank you, Your Honor.

4 MR. BIERNOFF: Madam Hearing Officer, before  
5 Mr. Dunn begins, I'm just wondering about if the Hearing  
6 Officer -- if Your Honor would be willing to adjourn for  
7 just a few minutes, and if not right now, perhaps after  
8 Mr. Dunn is finished with his cross-examination.

9 MS. ORTH: Yes. We're within ten minutes of  
10 when I'd be taking a break anyway.

11 Shall we take the break before you begin?

12 MR. DUNN: Yes, Madam Hearing Officer.

13 MS. ORTH: All right. So let's take  
14 15 minutes.

15 MR. BIERNOFF: Thank you.

16 MS. ORTH: Thank you.

17 (Recess held.)

18 MS. ORTH: Let's come back from the break,  
19 please.

20 All right. When we broke, Mr. Dunn was about  
21 to question Mr. Olson.

22 MR. DUNN: Thank you, Madam Hearing Officer.

23 CROSS EXAMINATION

24 BY MR. DUNN:

25 Q. Hello again.

1 A. Hello again.

2 Q. First, I'd like to talk a little bit about  
3 your time previous with the Department and previous  
4 permits that you oversaw.

5 Were you -- did you preside -- or not  
6 necessarily preside, but oversee the issuance of  
7 livestock permits, wastewater permits, before in your  
8 capacity as Groundwater Bureau chief?

9 A. There was the -- it was mostly dairy  
10 facilities, yes. Uh-huh.

11 Q. Okay. Were any of a similar nature to what  
12 Valley proposed here, as far as, you know, distance to  
13 groundwater, lagoon systems, liners, those types of  
14 things?

15 A. Yes. There was -- that was -- with every  
16 facility, that is an issue.

17 Q. Again, what was your time as Bureau chief?

18 A. From 2000- -- October of 2004 to October of  
19 2011.

20 Q. So during that period of time, the testimony  
21 has been that the construction of the second lined  
22 impoundment was put into effect pursuant to the request  
23 of the Department, and that would have been underneath  
24 your purview?

25 A. I believe some of it was constructed at the

1 time under when I was Bureau chief, that's correct.

2 Q. And the as-builts and whatnot were supplied to  
3 the Bureau when it was completed, and that was  
4 ultimately given to somebody within your supervision?

5 A. Yes, it was done by the technical staff of the  
6 Bureau. That's correct.

7 Q. If there were issues concerning the  
8 sufficiency of those impoundments or tanks or whatever  
9 else, that was done -- reviewed under your supervision?

10 A. It was reviewed by staff that were under my  
11 supervision, but not necessarily by myself.

12 Q. Were you responsible for the actions and  
13 decisions of your staff?

14 A. I'm responsible for the actions of my staff.  
15 They are typically done through their team leaders and  
16 their program managers and a lot of the time do not rise  
17 to the Bureau chief level, because it's dealt with at a  
18 staff level. It's operational issues dealt with by the  
19 staff.

20 Q. Can you recall any similar permits to this one  
21 with short depths to groundwater and single-lined  
22 impoundments?

23 A. Can you say that again?

24 Q. Can you recall any similar permits with  
25 similar depths to groundwater or single-lined

1 impoundments above that groundwater?

2           Is this -- are there others like this one that  
3 were permitted underneath your supervision?

4           A.    Yes, there are systems that have been  
5 permitted as single lined that were done under my  
6 supervision. There was also a double-lined facility  
7 that was permitted under my supervision, as well, under  
8 -- under not my direct supervision, but the time I was  
9 Bureau chief.

10           Q.    So as Bureau chief, if those were insufficient  
11 at that point in time, you would have raised that issue,  
12 then?

13                    You probably would have said something to the  
14 Cabinet Secretary or done something to say, "Hey, we're  
15 permitting these facilities and they are a threat to the  
16 environment, they are not sufficient to protect the  
17 environment"?

18           A.    I raised those issues at the time, yes.

19           Q.    You raised those issues and those permits were  
20 issued anyways?

21           A.    I raised issues about the adequacy of single  
22 liners when I was Bureau chief.

23           Q.    Were single liners in keeping with the code?

24           A.    I'd say they are in keeping maybe with the  
25 political realities of what was going on at the time.

1 Q. So would it be your testimony that the  
2 Secretary was in error in permitting these single-lined  
3 impoundments at that period of time?

4 A. Personally, I believe they should be -- in a  
5 lot of these instances, they should be double-lined  
6 facilities, but the Secretary has the discretion to  
7 exercise his judgment, and that was his judgment that he  
8 exercised.

9 Q. Well, let's talk about your professional  
10 experience.

11 From a professional standpoint, what's your  
12 basis for these single-lined impoundments not being  
13 sufficient?

14 A. Because, typically, they will have some leaks  
15 over time. There is that potential. Especially in  
16 shallow groundwater settings.

17 I have less of a problem with it in some of  
18 the deep groundwater settings, but especially in the  
19 shallow groundwater settings. The Department had  
20 actually recommended that for dairy facilities in the --  
21 in their proposed rule that was proposed to the Water  
22 Quality Control Commission for dairies and proposed  
23 double-lined systems.

24 Q. But, ultimately, the Secretary at that time  
25 disagreed with you?

1           A.     The Secretary at that time did not disagree  
2 with me. It was not a decision of the Secretary.  
3 That's a rule-making, so that was the decision of the  
4 Water Quality Control Commission.

5           Q.     And the Water Quality Control Commission is  
6 appointed, and the rest of us are bound by that  
7 decision. That is the code on which the public can rely  
8 on, is that correct?

9           A.     For dairy facilities, they have specific  
10 requirements. There is a specific rule, which doesn't  
11 apply to this facility, but applies only to dairy  
12 facilities.

13          Q.     And in dairies, they are the decision-making  
14 body in that instance, and they feel that this is  
15 sufficient, the rest of us should follow that, is that  
16 correct, including you as Bureau chief?

17          A.     That's correct. That's -- they adopt the  
18 rules. That's correct.

19          Q.     So if Valley constructed a single-lined  
20 impoundment in keeping with the rules, and the  
21 Commission decided that that was sufficient to protect  
22 the groundwater, that is the law of the case at this  
23 point. Is that correct?

24          A.     Yes, but there is no rule for slaughterhouse  
25 facilities that says they must be single-lined

1 facilities. They must make a demonstration under the  
2 rules that they will not cause an impact to groundwater.  
3 It's a little different than the dairies.

4 Q. And your Bureau would evaluate those potential  
5 impacts, especially in the case of Valley, and decide  
6 that -- whether or not it was sufficient and whether or  
7 not something else needed to be done. And your Bureau  
8 did that in this instance, is that correct?

9 A. That's what the Bureau has always done, yes.

10 Q. And the permit was issued underneath your  
11 supervision?

12 A. The 2004 permit was -- I don't believe -- that  
13 was issued before I was Bureau chief.

14 Q. And the impoundments and whatnot were overseen  
15 -- again, I'm sorry, I'm reploting here -- but were  
16 overseen by somebody on your staff?

17 A. That's correct.

18 Q. And inspected by somebody on your staff in  
19 that period of time?

20 A. That's correct.

21 Q. Now, I'd like to turn now to the fact that  
22 you've discussed -- you discussed the Copper Rule as  
23 some sort of basis for this belief that these  
24 impoundments that are single lined might not be  
25 sufficient.

1           Could you expand on that a little bit?

2           A.     Sure.

3           That was a Department expert witness,  
4 professional engineer, and he provided the rationale for  
5 why liners leak, and I presented that in my testimony,  
6 and I have a piece of some of his testimony as well on  
7 that issue.

8           Q.     Was that based upon a review of inorganic  
9 compounds associated more with mining activities, or was  
10 that based upon livestock organic processed waste?

11          A.     It wasn't based upon the waste type. It was  
12 based upon why liners leak. There is defects in seams,  
13 liners have inherent permeabilities themselves, and  
14 damage that can occur to liners, punctures, things that  
15 can happen.

16          So it was -- it wasn't based on his -- his  
17 assessment there wasn't based on a type of waste; it was  
18 based upon why there is a problem with liners.

19          Q.     So the type of waste doesn't really matter to  
20 the liner?

21          A.     To the liner, it can. But in most cases, it's  
22 resistant to, say, chemical degradation which might  
23 occur through different compounds, yes.

24          Q.     Are you familiar with any livestock components  
25 -- I know I got a chuckle out of the room when I asked

1 this question, so I'm going to ask it again.

2 Are you familiar with any livestock-based  
3 compounds that have the ability to deteriorate or are  
4 caustic to the plastic of a liner?

5 A. No. I think, as Mr. Wyant expressed, the  
6 biggest issue usually is ultraviolet degradation from  
7 being exposed, from where the liners are exposed.  
8 That's the biggest degradation that occurs with probably  
9 the dairy facilities and agricultural-type facilities.

10 Q. So it's really not a difference in, you know,  
11 livestock water versus, you know, copper tailing water?

12 A. There is in terms of -- it depends on what  
13 some of the waste types are. With the tailings, there  
14 is a lot of issues with sulfates, some of the same type  
15 of concerns that come with ag facilities, there is  
16 inorganics and total dissolved solids, some of the  
17 salts, like that, as well as metals. In some cases,  
18 there are acids as well, and they are using similar  
19 types of liners for those which are resistant to the  
20 acids.

21 Q. Now, I'm a little confused.

22 A. I'm not sure what --

23 Q. Well, could you point to an organic compound  
24 from the slaughter process that poses a threat to  
25 liners?

1           A.    I'm not -- I think maybe you're  
2   misunderstanding what I was saying.

3                    I'm not saying that the organic materials in  
4   the ag facilities are going to cause degradation of the  
5   liners themselves.  So I'm not making that assertion.

6           Q.    Okay.  You're familiar with the code that was  
7   read earlier, I can provide it to you again if you'd  
8   like, it's 77-2- -- and now I forgot it, I apologize,  
9   but it's the definition of livestock from the state  
10  statute.  You're familiar with that?

11          A.    I'm not.  I'm not familiar with that.  I heard  
12  it earlier, but I'm not familiar with it.

13          Q.    This is 77-2-1.1.  It's part of the Livestock  
14  Code.  It describes a list of animals there under  
15  livestock.  I'm not going to ask you to read the list  
16  again, because there is a whole bunch that I think  
17  people didn't realize there.

18                    But do equines fall underneath that list and  
19  do they fall as an animal classified as livestock in the  
20  State of New Mexico?

21          A.    Yeah, horses and asses, I guess, would be the  
22  equines.

23          Q.    Okay.

24          A.    And they are listed there, yes.

25          Q.    Thank you.

1           So the permit for Valley Meat Company is a  
2 livestock processing facility. Is that correct?

3           A. Well, the way it's been represented through  
4 the permits is that -- or the applications -- is that  
5 they are slaughtering cows. So I don't know if that's  
6 -- equines fall in the same category as the application.  
7 I mean, it -- it does say that they are slaughtering  
8 cows.

9           Q. Well, let's talk about the permits instead.  
10           Do the permits reference this as a cattle  
11 processing facility permit, or do they classify it as a  
12 livestock processing facility?

13           A. The permit itself, I believe, says livestock.  
14 I believe it does.

15           Q. Can you point me to anywhere in the  
16 Administrative Code, either existing at the time when  
17 you were Bureau chief or today, or in state statute,  
18 that differentiates, for the purposes of groundwater and  
19 the Environment Department, between horses and cattle?

20           A. I think the distinction that I'm making is  
21 based upon the chemistry of what may occur in these  
22 activities. That's the issue.

23           MR. DUNN: Madam Hearing Officer, I'd ask that  
24 he answer the question I asked, and I would strike that  
25 answer.

1 I asked him if he could point me to anywhere  
2 in the code or statute where it differentiates between  
3 horses and cattle. That's it.

4 MS. ORTH: Can you answer that question,  
5 Mr. Olson?

6 MR. OLSON: What I'm saying is, is that the  
7 Water Quality Control Commission does not distinguish  
8 between animals and mining and a lot of other things in  
9 its standards or how it applies its rules.

10 It applies them in terms of you have to make a  
11 demonstration that whatever this activity is that it's  
12 not going to cause an exceedance of the water quality  
13 standards.

14 It doesn't reference the actual activity, with  
15 the two exceptions now, and that's specific rules for  
16 dairies and specific rules for copper mines.

17 Q. (BY MR. DUNN) But you -- you don't know of  
18 anywhere in the code where it says, for purposes of a  
19 groundwater discharge permit for a livestock permitting  
20 facility, that horses are different than cattle?

21 A. It doesn't say that. It says -- what it's  
22 doing is basing things based upon the contaminants that  
23 are in the wastewater discharge.

24 If it's different for different animals versus  
25 different industries, then you consider the contaminants

1 that are associated with the industry, not the activity  
2 itself.

3 Q. But you're familiar with the fact that cattle  
4 and horses are both classified under livestock, so  
5 that's both part of the same industry underneath the  
6 law.

7 A. Yes, but as I've testified, there is  
8 differences in the drugs that are going to be  
9 potentially discharged from horses. It's different than  
10 they are from cattle. That's -- that's what I was  
11 testifying.

12 Q. Let's talk about that for a minute.

13 How did you reach that conclusion?

14 A. I reached that conclusion based upon the sum  
15 of the information that you're seeing through the  
16 exhibits that we were discussing earlier; Exhibit 7,  
17 which lists chemicals or drugs that are present and  
18 given to horses; also the declarations of a large number  
19 of vets about these chemicals are given to horses; and  
20 then there is the studies that were appearing in  
21 Exhibits -- I believe it's 21 through 26, which looks at  
22 what -- where they are trying to study the fate of  
23 veterinary chemicals.

24 Q. Mr. Olson, are you a veterinarian?

25 A. I've never maintained to be a veterinarian.

1 Q. What's your background in large animal  
2 physiology?

3 A. My only background in it is as personal  
4 knowledge as owning horses and veterinary applications  
5 that I've made to my own horses. That's my only  
6 experience.

7 Q. You don't have any formal education in  
8 veterinary medicine or in pharmacology?

9 MR. BIERNOFF: I'm going to object. I think  
10 that's been asked and answered already.

11 MS. ORTH: All right. Mr. Dunn, I think his  
12 biography --

13 MR. DUNN: I didn't -- you gave me a  
14 definition. I didn't actually ask those questions of  
15 the witness at this point yet.

16 MS. ORTH: All right.

17 You can go ahead.

18 MR. OLSON: So what was the question again?

19 Q. (BY MR. DUNN) Do you have any formal  
20 education or training in veterinary medicine,  
21 pharmacology? We'll just start with those.

22 A. No.

23 Q. So when you make the leap from these drugs are  
24 administered to these animals to their present at  
25 slaughter, what forms your basis when you do that?

1           A.    I'm basing it on the -- the studies raised  
2 looking at their -- seeing the presence of veterinary  
3 chemicals in stream systems and in wastewater.

4           Q.    But you don't have any formal background in  
5 pharmacology, so how do you reach the conclusion that  
6 those studies are valid?

7           A.    They are essentially studies looking at the  
8 prevalence of contaminants through wastewater treatment  
9 systems, et cetera. That's -- I evaluate them as a  
10 scientist. That's what I evaluate them as.

11          Q.    How did you come by the list of these  
12 compounds? How did you come by these studies? How did  
13 you reach this information?

14          A.    Some was provided to me, and I've looked at  
15 other studies myself as well.

16          Q.    So you, as a geologist and hydrogeologist,  
17 have formed an opinion as to what would be present in an  
18 animal at slaughter; is that correct?

19          A.    No, I made my assessment that these are  
20 potentially going to be in the wastewater discharges. I  
21 don't think this issue has really been thoroughly  
22 studied, as shown by some of the lack of information  
23 that you -- when you look for studies on these types of  
24 chemicals. This is an emerging field. It's the same as  
25 what's been happening with pharmaceuticals and

1 wastewater plants for people.

2 Q. How do you reach the conclusion that they will  
3 be in wastewater?

4 A. Because they are going to be -- they are used  
5 in animals, and they are potentially going to be there  
6 in the slaughter. If you're looking at cutting up  
7 animals that might have some of these drugs, then they  
8 could be in the wash water that ends up in the  
9 impoundment.

10 Q. They could be.

11 You don't have any real knowledge or no  
12 veterinary or pharmaceutical background to say that they  
13 would actually be there at the point of slaughter.

14 That's just your opinion based upon opinions  
15 of people who are not present?

16 A. No, it's my own opinion based upon what I've  
17 -- the information that I've looked at that these could  
18 be present, and the fact that they are looking at  
19 studying these issues -- the USGS as well, you know, has  
20 looked at these things in the stream systems.

21 It's one of the exhibits that's in here, you  
22 know, looking at veterinary pharmaceuticals downgradient  
23 of CAFO and animal management facilities.

24 Q. Those studies are based upon horse slaughter  
25 facilities?

1           A.     They are based upon animal wastes, is what  
2 they are based on.

3           Q.     But it doesn't differentiate which type of  
4 animal, does it?

5           A.     I don't know that they do.

6           Q.     So then how do you form the basis to say that  
7 horses are somehow going to contribute to this  
8 contamination that's present in the stream systems  
9 studied by USGS when there is not any going on right  
10 now?

11          A.     Well, what they are showing is that there  
12 is a prevalence of these chemicals to migrate in the  
13 environment and get into our surface water and  
14 groundwater systems. They are present in use of  
15 chemicals within the horses that could end up at the  
16 horse slaughter facility.

17                    So it's -- I'm taking this on -- this is a  
18 logical progression of a scientific assessment of it.

19          Q.     So let's back up a little bit.

20                    How is that stuff getting there now?

21          A.     How is the stuff getting there now?

22          Q.     Uh-huh.

23          A.     It's getting there from -- I don't think they  
24 are entirely sure how it's all getting there. They are  
25 -- right now, we're doing some of the monitoring, like

1 USGS did, and discovering some of these chemicals.

2 I think the point now is they are trying to  
3 figure out some of the exact mechanisms for the  
4 transport of those chemicals, but they are appearing.

5 Q. Would it be safe to say it's not based upon  
6 horse slaughter because horse slaughter is not going on  
7 right now?

8 A. I can't argue with that. It's not going on.

9 Q. Is a likely potential source of these  
10 contaminants dairy or some other industry?

11 A. That's a possibility, too. Yes.

12 Q. So there is a chance that these types of  
13 contaminants or pharmaceuticals are present in dairy  
14 cattle or -- you know, in all of agricultural animals,  
15 antibiotics are commonly used.

16 Is this stuff showing up as a result of other  
17 animal operations?

18 A. It's a possibility.

19 Q. So if it's showing up, and that forms a basis  
20 for your opinion that somehow horse slaughter is causing  
21 or potentially causing this stuff, in the instance of  
22 Valley Meat, they were slaughtering dairy cattle and had  
23 an approved permit.

24 How is -- how do you reach the conclusion that  
25 somehow horses pose a greater threat?

1           A.     Because if you look at the list, there is a  
2 large number of compounds that are not given to food  
3 animals, that now you're looking at horses that would  
4 have these chemicals, it's different, they are not being  
5 given these -- some of these chemicals to -- for the  
6 purposes of animals that go for food.

7           Q.     Did you hear the testimony of Dr. Blach that a  
8 lot of the same chemicals used in horses and cattle  
9 exist?

10          A.     I heard that. I also heard him say that  
11 there is chemicals and veterinary chemicals that are  
12 given to horses that are not allowed to be given to food  
13 animals.

14          Q.     Do you know which ones those are?

15          A.     Off the top of my head, I don't think he  
16 listed them.

17          Q.     No, I'm asking you, in the course of your  
18 testimony, do you know what they are?

19          A.     I know a number of them, from the ones I'm  
20 familiar with, because they say so on the labels of the  
21 chemicals that I give to the horse. It says "Do not use  
22 for food animals."

23          Q.     Did you base your testimony on the ones  
24 specifically for horses or on all of them?

25          A.     I based my testimony on these are present and

1 can be prevalent in the wastewater that might end up in  
2 the impoundment.

3 Q. But they are also potentially used by cattle,  
4 right?

5 A. If they are going for food purposes, they are  
6 not supposed to be.

7 Q. But you don't know, do you?

8 I mean, you don't even know which ones -- you  
9 can't tell me which ones are used for cattle off that  
10 list, can you?

11 A. Which ones are used for --

12 Q. Which ones are used for cattle, dairy cattle.

13 A. No. I mean, I'm not a veterinary expert to  
14 tell you which ones are used on cattle and which ones  
15 are used on horses.

16 I have a list of things that I'm familiar  
17 with, as well as declarations that these are used in  
18 horses, and they could be in the wastewater that ends up  
19 at the impoundment.

20 Q. You mentioned amoxicillin. Do you think  
21 that's used across species?

22 A. Probably as an antibiotic, it probably is.

23 Q. It's a potential contaminant to the  
24 groundwater?

25 A. I would say it is from -- as a drug, yes, it

1 is.

2 Q. Do you think it's used in cattle, horses,  
3 humans, for instance?

4 A. Yes, it's used in humans as well.

5 Q. So you -- really, as an expert opining on what  
6 drugs are used in horses and cattle and how somehow  
7 these drugs used in horses are of a greater threat, you  
8 can't tell me which ones they are in your testimony  
9 today?

10 A. I think what I was saying in my testimony, all  
11 of these are potential concerns and they are applied to  
12 -- as applied to horses for slaughter.

13 Q. Do you think you're limited in the fact that  
14 you're not a veterinarian as being able to speak to  
15 these drugs?

16 A. Well, of course, I'm not a veterinary expert.

17 I'm just talking about -- to it from personal  
18 knowledge and then declarations that are given from vets  
19 that these chemicals are routinely given to horses.

20 Q. So do you think that the testimony of a  
21 veterinarian about what of these chemicals might be  
22 present at the end of their life, in a slaughter  
23 process, would probably be a better indication of what  
24 potentially could contaminate the environment than your  
25 testimony?

1           A.    I don't know if I would carry it that far to  
2 say as to whether they are potentially a threat to the  
3 environment.  Whether they are present maybe.  The vet  
4 -- I don't know they are qualified as a geologist/  
5 hydrologist to look at contaminant migration.  But  
6 whether they are present or not, I would say that, yes,  
7 you know, veterinarians would have an adequate opinion  
8 on that.

9           Q.    When it comes to determining -- let's call it  
10 the point source, rather than where it migrates after  
11 that, a veterinarian or a person in the equine  
12 pharmaceutical or cattle pharmaceutical or veterinary  
13 pharmaceutical of whatever animal it is, is probably  
14 better able to determine what is a potential contaminant  
15 that could then enter the system?

16          A.    Yes, I think that's what these declarations go  
17 towards, declarations from veterinarians that these  
18 chemicals are present and could.

19          Q.    So without those declarations, you don't  
20 really have any other evidence to support your position  
21 that those contaminants are present?

22                   It's strictly what you've read in those  
23 materials and those declarations and those affidavits  
24 from people who aren't here, that's what you're relying  
25 on in forming the basis of your opinion?

1 A. That's correct.

2 Q. I have a theoretical question going back to  
3 your time as a Groundwater Bureau chief.

4 Have you ever seen a third of a cow  
5 slaughtered?

6 A. I wondered what a third of a cow was myself  
7 when I saw that, yes.

8 Q. Does it make sense that that number really  
9 doesn't reflect that that's the number of cows that they  
10 are going to kill in a day, because it's really pretty  
11 tough to just halfway or a third of the way kill a cow?

12 A. Right. You know, looking at it, I would  
13 assume it's probably -- when you come up with a third of  
14 a cow, you come up with some type of average that you're  
15 looking at.

16 Q. So it's some number that's generated on the  
17 spreadsheet as some sort of average for whatever the  
18 computation was? It's not really an indication of the  
19 number of cattle or horses or whatever it is that they  
20 are going to be doing, it's just something that is  
21 derived from that spreadsheet? Is that probably more  
22 accurate?

23 MR. BIERNOFF: I'm going to object. That  
24 question is really compound, and it's also, I think,  
25 pretty poorly formed. So I'm wondering if counsel could

1 rephrase it.

2 MS. ORTH: All right. And actually while  
3 we're on this point, I had meant to say earlier that  
4 notwithstanding the fact that there may be copies of the  
5 administrative record that don't have Bates stamped  
6 numbers on the bottom of them, the copy of the  
7 administrative record that is part of the Hearing  
8 Clerk's file, the page in question is 532. 532.

9 Mr. Dunn, maybe you --

10 MR. DUNN: I'll rephrase. That's fine.

11 MS. ORTH: Maybe we show it to Mr. Olson and  
12 ask him what he understands it to be.

13 Q. (BY MR. DUNN) Are you familiar with what I'm  
14 talking about, where that number in the table is? We  
15 went over that.

16 A. Yes, the 39.3 cows that's listed in the --  
17 that permit application.

18 Q. So it's really not saying that that's the  
19 number of cows that they plan to do, that's some sort of  
20 average or something derived potentially from a  
21 spreadsheet that shows that number of cows for whatever  
22 that spreadsheet was made for?

23 A. Well, I expect they are making a projection of  
24 what their average number of cows per day is. That's  
25 the only way you come up with a third of a cow.

1 Q. Does -- in your experience, past experience as  
2 the Groundwater Bureau chief, is this generally a per  
3 cow or per animal unit limitation in the permit, or is  
4 it a total gallons per day discharge?

5 A. The permit itself -- that's the most critical  
6 part of the permit, is the discharge volume. Everything  
7 in the permit is based on discharge volume, and that's  
8 why I was raising concerns, is you need accurate  
9 assessments of that maximum daily discharge, because of  
10 the effects on liners, the -- a lot of things.

11 Q. But for purposes of the permit, if they are  
12 not exceeding their 8,000 gallons per day, then they are  
13 in compliance with the permit, and there is really not  
14 an issue, is that -- and sufficiently protecting the  
15 environment that way.

16 A. Technically, but if they are having a  
17 significant increase, where the calculations for  
18 capacity are based upon processing, then I think that is  
19 a concern.

20 Q. Did you hear Mr. De Los Santos point out that  
21 he wouldn't be exceeding that 8,000, and if he did, he'd  
22 go back to the Department and work on that? So there is  
23 really not an issue, they are not going to discharge  
24 more than 8,000, and if they did, they'd do whatever it  
25 took to limit that until they discussed that with the

1 Department and looked at their impoundments.

2 A. I heard that testimony, but then I also heard  
3 him saying that he's looking at processing 121 horses a  
4 day, which is -- which is a significant number more than  
5 39.

6 Q. But those were 39 dairy cows, right?

7 A. That's 39 dairy cows, that's correct.

8 Q. So let's talk about horses again.

9 Are you an expert in the cleanliness or in  
10 veterinary medicine as it relates to cleanliness of  
11 animals and to the amount of water it needs to clean a  
12 particular animal?

13 A. No. I based my information on the -- on  
14 studies that have been done on wastewater generation in  
15 the slaughter industry.

16 Q. Of which horses were not included?

17 A. Horses were not included, that is correct.

18 Q. So you extrapolated for horses based upon -- I  
19 think you said the average -- the lower averages of the  
20 different species?

21 A. Well, they are based on live weight of  
22 animals, is what they are looking at.

23 Q. Do you -- obviously, there was a difference  
24 between species. It wasn't just strictly calculated on  
25 live weight between the different species, is that

1 correct?

2 A. Yeah, for the study that was provided there,  
3 the only difference was really with -- the major  
4 difference was with sheep. They had a larger wastewater  
5 generation, I guess, you know, from cleaning operations  
6 with sheep than with cows or with pigs.

7 Q. And in determining this and extrapolating  
8 this, did you contact any known operating horse  
9 processing facilities around the world to see what their  
10 usage was?

11 A. I did not. No, I did not.

12 Q. Could you have?

13 A. What's that?

14 Q. Could you have?

15 A. I don't know that, considering whom I'm  
16 representing, that they would even talk to me. But I  
17 assume I could have, yes.

18 Q. But there is --

19 A. I don't know who they are, to tell you the  
20 truth, in other countries.

21 Q. But there probably is that information out  
22 there as to what actually is the gallons per usage of a  
23 horse. We don't really need to extrapolate, right?

24 MR. BIERNOFF: I'm going to object to that as  
25 calling for total speculation on the witness' part.

1 MS. ORTH: All right.

2 Mr. Olson, unless you can answer the question  
3 without speculating.

4 MR. OLSON: I just don't know. I don't know.

5 Q. (BY MR. DUNN) Okay. So you don't really know  
6 about how the cleanliness of the animal plays into your  
7 calculation and how the differences in animals happen?  
8 You're not an expert in animal physiology, but you still  
9 arrived at a number far in excess of what we heard in  
10 previous testimony from Mr. De Los Santos and his  
11 discussions with the plant in Canada.

12 How do you rectify that?

13 A. I think, as I testified earlier, it's within  
14 the same range of what I see from -- reported from  
15 slaughtering activities that occurred at the facility  
16 when compared to those numbers of the European  
17 Commission study. That's very comparable -- very  
18 comparable numbers.

19 Q. But that's still based on a guess and an  
20 assumption by you. Not actual facts. Correct?

21 A. No, it's based on actual data.

22 Q. The actual data on horses?

23 A. What's that?

24 Q. On actual data?

25 A. On actual data on live weight of animals.

1 Q. No, I'm asking about horses.

2 Do you have actual data on horses?

3 A. I don't have actual data on horses, as I said  
4 earlier.

5 Q. So it's based upon an assumption on the fact  
6 that horses would be the same as other animals on the  
7 live weight?

8 A. It's -- yes. I don't see a lot of difference.  
9 When I look at the live weight that was going for pigs  
10 and for cattle, you generate the same amount of  
11 wastewater.

12 You don't have -- they are totally different  
13 animals, I think as we were hearing this morning, but  
14 you're generating the same volume of wastewater.

15 Q. Do you think it takes more water or less water  
16 varying on the species? Are pigs dirtier than horses?

17 A. I --

18 Q. In your opinion.

19 A. Most likely, they are.

20 Q. Do you think it would take more water to clean  
21 a dirty pig than a dirty horse?

22 A. Depending on the size of it, and so --

23 Q. So the --

24 MS. ORTH: Mr. Dunn, let him finish his  
25 answers.

1 MR. OLSON: Depending on the size, but I, you  
2 know, don't have any -- I don't know what the exact  
3 number is going to be for washing a pig versus washing a  
4 horse or versus washing a cow.

5 Q. (BY MR. DUNN) So if you have a thousand-pound  
6 horse, a thousand-pound cow and a thousand-pound pig, do  
7 you expect a difference in the amount of water it would  
8 take?

9 A. I expect there is some difference. I don't  
10 know that it's -- I don't know how significant that is,  
11 but I would expect there is some difference.

12 Q. You don't know because you're really not an  
13 expert in animal physiology or cleanliness or anything  
14 like that, you're a hydrologist and hydrogeologist; is  
15 that correct?

16 MR. BIERNOFF: I'm going to object.

17 Mr. Dunn has asked this question about ten  
18 times. I'm also not sure there is such a thing as an  
19 expert in animal cleanliness or that anyone here has  
20 been qualified for that purpose, so I'd ask that that  
21 question be stricken.

22 MR. DUNN: Actually, we did discuss that with  
23 Dr. Blach, and he is a veterinarian, and that animal  
24 cleanliness and animal behavior are something that --  
25 are parts of veterinary science.

1 MS. ORTH: I understand, but you don't have to  
2 repeat it with Mr. Olson.

3 MR. DUNN: I'll pass the witness.

4 MS. ORTH: Mr. Powers, do you have questions  
5 of Mr. Olson?

6 MR. POWERS: Yes, Your Honor.

7 CROSS EXAMINATION

8 BY MR. POWERS:

9 Q. Good afternoon -- or good evening, Mr. Olson.

10 A. It's afternoon.

11 Q. I guess one of the -- several of the things we  
12 wanted to talk about -- you have quite an extensive  
13 testimony that's been prefiled, and I think you said at  
14 this time nothing much has changed in the substance of  
15 your arguments.

16 A. I'm not sure I understood your question again.

17 Q. From the prefiled testimony that you filed  
18 with this case, has anything substantially changed in  
19 your testimony?

20 A. I don't recall any substantial changes in my  
21 testimony from what's in my written testimony.

22 Q. Okay. Let's talk about how did you get  
23 involved in this case, if you don't mind me asking.

24 A. I was contacted by one of the parties.

25 Q. By who, sir?

1 A. By one of the attorneys to the hearing.

2 Q. And who is that?

3 A. Well, originally, I was -- for this hearing, I  
4 was contacted by Ari Biernoff to --

5 Q. So that's with the -- Ari Biernoff is with the  
6 Attorney General's Office?

7 A. Yes. For the purposes of this hearing, yes.

8 Q. And are you -- I think you indicated earlier  
9 that you're a horse owner yourself.

10 A. Yes.

11 Q. How long have you had horses?

12 A. 20 years.

13 Q. I guess with being a horse owner and owning  
14 horses 20 years, you personally support horses?

15 A. Yeah. I would say so.

16 Q. Would the contrary, that you oppose horse  
17 slaughter, be accurate?

18 A. I don't know if -- I have kind of mixed  
19 feelings on the issues. I don't like seeing the  
20 abandonment of horses, and there has been a lot of that  
21 that's occurred. I don't like seeing inhumane treatment  
22 of animals, either.

23 So I don't -- that wasn't an issue for why I  
24 was hired for this.

25 Q. And were you hired as a paid consultant?

1 A. Yes.

2 Q. And who is paying those fees?

3 A. The Attorney General's Office.

4 Q. And is there a contract between you and the  
5 Attorney General?

6 A. Yes, we have an agreement. Yes.

7 Q. Okay. Let's go back to your prior work  
8 experience with the Department.

9 I think you indicated you did remember dealing  
10 with Valley Meat at some point.

11 A. Yeah. The only -- actually, when I was  
12 originally asked about this case, I didn't really  
13 remember it, but then once I looked at some of the  
14 documents from the administrative record, I saw the 2010  
15 -- the May 7th, 2010, notice of violation that was in  
16 there, which was issued under -- you know, when I was  
17 Bureau chief.

18 Q. And I think if -- correct me if I'm wrong,  
19 Mr. George Schumann actually signed that on your behalf.  
20 Is that correct?

21 A. That's correct.

22 Q. And who is George Schumann?

23 A. George Schumann was the program manager for  
24 the Pollution Prevention Section, which does discharge  
25 permits.

1 Q. And that's part of the Groundwater Quality  
2 Bureau that handles these types of permits?

3 A. That's correct. He's the program manager for  
4 that section.

5 Q. Do you happen to remember having a  
6 conversation with Mr. Schumann about the issuance of  
7 that NOV?

8 A. To tell you the truth, I really don't.

9 There was a lot going on back then. We were  
10 in the middle of all the Dairy Rule issues, so I'm kind  
11 of guessing that's why he signed that for me, because  
12 there was other things that were going on.

13 Q. And, I guess, did you talk with your staff or  
14 have weekly meetings regarding permits such as this or  
15 renewals or situations, issuance of NOVs?

16 A. No, not weekly meetings.

17 There would be typically regular meetings with  
18 the program managers, looking at the programmatic  
19 issues.

20 I believe at that time George Schumann might  
21 have been having weekly meetings with his staff, with  
22 the technical staff, but they weren't meetings that I  
23 was attending.

24 Q. Was it common practice for him to sign off on  
25 permits or other things like that for you, like the NOVs

1 specifically for Valley Meat?

2 A. It wasn't unusual, if there was a lot of  
3 things going on, that they would contact me and let me  
4 know something was going on that needed to be signed.

5 Q. If we were to offer testimony that it was --  
6 that, in fact, Mr. Schumann will remember talking with  
7 you, and due to the compliance issues, you instructed  
8 him to sign off on that document, would that be a fair  
9 and accurate statement?

10 A. It's probably likely, yes. That's --

11 Q. So --

12 A. He would do the --

13 Q. -- did you have substantial involvement with  
14 Valley Meat?

15 A. I never had any substantial involvement with  
16 the Valley Meat site, outside of that issue being  
17 brought to my attention that their permit had expired.

18 Q. Let's move on, if we may.

19 I guess as somebody that's worked in the  
20 regulating community you understand that all actions by  
21 a Department such as ours have to have a basis in law  
22 and regulations?

23 A. Yes.

24 Q. You would agree with that statement?

25 A. Yes.

1 Q. Earlier, you referred to this being sort of a  
2 new business. Is that correct?

3 A. I think it's a new type of discharge activity  
4 with different contaminants, yes.

5 Q. But I think Mr. Dunn talked to you a little  
6 bit about how livestock processing has been around for  
7 quite some time.

8 Would you agree to that?

9 A. I would agree that livestock processing has  
10 been around, but, you know, if horse slaughter has been  
11 around, not that I know of in New Mexico.

12 Q. But it's been done in the United States  
13 before?

14 A. Yes, there have been some other facilities,  
15 yes, that -- in other states, yes.

16 Q. And I think Mr. Dunn had talked to you --  
17 you're not a certified wastewater treatment plant  
18 operator, are you, by the State of New Mexico?

19 A. No, I am not.

20 Q. Have you ever operated a horse slaughter  
21 facility?

22 A. No, I have not.

23 Q. Operated a livestock processing facility?

24 A. No.

25 Q. Worked at any of those types of facilities?

1           A.     Actually, I worked as a butcher as a  
2 youngster, but -- you know, when I was in high school,  
3 but I don't know if you want to call that livestock  
4 processing --

5           Q.     Certainly --

6           A.     -- getting sides of beef and making steaks and  
7 et cetera.

8           Q.     Definitely.

9                     In your testimony, you talked a lot about  
10 pharmaceuticals impact to the groundwater.

11                    I'm just wondering, have you run any  
12 independent tests yourself to determine that?

13           A.     No, I don't have any resources to do that.

14           Q.     Are you a chemist or toxicologist or otherwise  
15 a veterinarian, a doctor of veterinary medicine, to  
16 really be able to determine that?

17           A.     No. At least for groundwater geochemistry, I  
18 have a lot of background in groundwater geochemistry,  
19 but not as a chemist, per se.

20           Q.     And have you ever testified or consulted with  
21 as being a -- someone to talk about horse contamination  
22 or potential contamination from horses to groundwater?

23           A.     No. This is the first time this has been  
24 raised with me.

25           Q.     Okay. A lot has been made today about the

1 volumetric and the amount discharged from horses versus  
2 cattle. But based on your understanding -- I know  
3 Mr. Dunn was trying to get this to you, and I'm going to  
4 try to hammer this home, too, so forgive me, Mr. Olson.

5           Is it true or incorrect that the Department  
6 can only regulate the volume of discharge -- not the  
7 number of animals being processed, but only the volume  
8 coming out of the facility? Is that correct or  
9 incorrect?

10           A. I'd say in general. It's -- I don't know -- I  
11 mean, volume is the major portion of the permit, it's  
12 volume and the quality of the discharge.

13           Q. And would --

14           A. That is the two major concerns under the  
15 permit. That is correct.

16           Q. And you know I'm going to push you for a yes  
17 or no and then you can explain.

18           A. All right.

19           Q. The Department is limited -- yes or no -- to  
20 regulating the amount of volume coming out of the  
21 facility -- beside quality, let's just talk volume. Is  
22 the -- do we regulate the number of things being -- or  
23 processes going on inside?

24           A. I would say it's the volume.

25           Q. Yes or no again, please. I apologize.

1           A.     Well, I'm just saying it's the -- you know,  
2 I'm agreeing with you. The volume is the major  
3 consideration of the permit.

4           Q.     It sounds like that is a yes.

5           A.     Yes. That's fine.

6           Q.     Okay. Thank you.

7                     And I'll elaborate on that. I think in  
8 talking to my staff, correct me if I am wrong, different  
9 facilities can do different -- things differently.

10                    Would it be your -- your experience that one  
11 facility could do the same number of things with  
12 different discharge volumes than another facility?

13           A.     Yeah, I think that's been evidenced by a lot  
14 of the dairy facilities. Some recycle some waters and  
15 are more efficient with their use. That's correct.

16           Q.     I think some people may call that best  
17 management practices. If they institute those, they can  
18 reduce their volumes?

19           A.     That's correct.

20           Q.     Okay.

21           A.     Some have water rights issues, and they need  
22 to do that.

23           Q.     Yes, sir.

24           A.     Uh-huh.

25           Q.     Looking at your testimony, and I think we've

1 raised this before, on page three of your testimony, you  
2 say, "It is well-known that horses in the United States  
3 are treated with many drugs that would lead to  
4 contamination."

5 Where did you form that opinion?

6 A. Can you point that out again?

7 Q. Page 3 of 23 in your prefiled testimony. It's  
8 Exhibit 1 of the NOI.

9 MR. WAGMAN: It's the last line.

10 A. Oh, the last line, okay.

11 Q. Under Section II, pretty much the last  
12 sentence of the page.

13 A. Okay. I see that.

14 What was the question again?

15 Q. How did you formulate that opinion?

16 A. Part of it based on personal knowledge and  
17 then also evaluation of the documents that I relied on  
18 to give an overall formation of opinion.

19 Q. And again I'm not going to belabor the point,  
20 but you're not a doctor of medicine or a doctor of  
21 toxicology. Is it correct that you formed your opinion  
22 based upon just a review of documents?

23 MR. BIERNOFF: Objection.

24 Your Honor, this is ground that's already been  
25 covered pretty -- in pretty good detail by Mr. Dunn with

1 the witness, and I'd ask that Mr. Powers not repeat that  
2 line of questioning.

3 MS. ORTH: Yes.

4 Mr. Powers, we've heard this a couple of  
5 times.

6 MR. POWERS: I'll move along, Your Honor, or  
7 Madam Hearing Officer.

8 MS. ORTH: Thank you.

9 Q. (BY MR. POWERS) I want to talk about the  
10 regulation of pharmaceuticals that have been at issue  
11 during our conversations.

12 Does the State of New Mexico, Groundwater  
13 Quality Division, these type of permits, regulate -- or  
14 do we have authority to regulate the type of  
15 pharmaceuticals that are in discussion?

16 A. Well, you do if they contain toxic pollutants  
17 or they have the potential to cause an undue risk to  
18 property.

19 Q. But I think our authority is limited to  
20 20.6.2.3103 and 3109. Is that correct?

21 A. I'm not sure, but you're referring to two  
22 different things.

23 One is the -- 3103 are the standards for --  
24 for groundwater; and then the other is a little  
25 different, that's -- 3109 is the criteria for approval

1 of a permit.

2 Q. The toxic pollutants, though, that's what  
3 you're saying, though, that -- and where are the  
4 regulations found?

5 A. Excuse me?

6 Q. Where are the regulations for toxic pollutants  
7 found?

8 A. Toxic pollutants are found in the definitions  
9 in 20.6.2.7.WW.

10 Q. And how are they referenced as enforcement  
11 capabilities?

12 A. They are picked up through a couple of  
13 different ways. They are picked up through the 3103  
14 standards, there is a reference in there, and there is  
15 also a reference to them as -- it's linked to another  
16 definition, it's linked to the definition of hazard to  
17 public health, which that is a criteria for approval in  
18 3109.

19 Q. Okay. Does EPA regulate all those list of  
20 chemicals in groundwater discharges or surface water  
21 discharges?

22 A. They do not regulate groundwater issues. The  
23 groundwater is a province of the state to regulate, with  
24 some exceptions for hazardous waste facilities, there is  
25 some exceptions that way. But in general, EPA doesn't

1 regulate groundwater. They do -- for New Mexico, they  
2 regulate the surface water issues, because New Mexico  
3 does not have primacy for the Clean Water Act programs.

4 Q. So the pharmaceuticals that we're talking  
5 about and the exhibit that has the numerous drugs, does  
6 EPA regulate those in wastewater discharges or  
7 discharges such as these?

8 A. I don't think I've seen them regulate those.  
9 They've been concerned about them and they are looking  
10 at them, but I don't know that they are currently  
11 regulating them. I'm not up to date on what the EPA is  
12 doing with that.

13 Q. But they are of concern, is that correct?

14 A. They are a concern, yes.

15 Q. And similarly, the State of New Mexico, at  
16 least in our department, the New Mexico Environment  
17 Department, does not regulate those chemicals as well;  
18 correct?

19 A. I would say that -- I wouldn't say that's  
20 necessarily true.

21 The Commission could adopt standards for any  
22 chemical out there. At the moment, they are -- you are  
23 correct, though, there is not a standard specific within  
24 the 3103 standard that has a designated concentration  
25 limit with effects on public health, that's correct.

1 Q. And that would be the province, I think you  
2 indicated, of the WQCC to enact rules and regulations;  
3 correct?

4 A. Right, they'd have to adopt a standard for  
5 those constituents, unless they -- unless there is some  
6 kind of byproduct from those that might show up within  
7 the toxic pollutant list. That's the other place it  
8 could occur.

9 Q. Would it also be true that the legislature  
10 could direct the Environment Department to regulate  
11 those as well?

12 A. I don't think that would come -- direct them  
13 to regulate that.

14 I mean, they've already got authority to  
15 regulate and propose standards to the Commission under  
16 the Water Quality Act now. So I don't know that there  
17 is anything that's necessary for the Department to study  
18 it and propose a standard.

19 Q. Okay. Let's talk about -- I think in some of  
20 your testimony you refer to one of the requirements that  
21 you would recommend is a double-lined lagoon. Is that  
22 correct?

23 A. That's correct.

24 Q. And I think you had referenced that there is  
25 one facility that may have been required to have a

1 double liner. Is that correct?

2 A. That's correct.

3 Q. And I think you indicated, correct me if I'm  
4 wrong, that happened after your tenure?

5 A. No, that was during my tenure. That was --

6 Q. And what type of facility was that?

7 A. That was for a dairy facility.

8 Q. Okay.

9 A. The Parasol Dairy.

10 Q. And you referenced in some of your other  
11 testimony that -- and I think it's related to the dairy  
12 facilities, the percentage -- I think 72 percent or  
13 52 percent had leaks and should require some kind of  
14 lining. Is that correct?

15 A. I think that was for demonstrative purposes,  
16 that there is a high potential for groundwater  
17 contamination from ag facilities that go to  
18 impoundments, yes.

19 Q. And I think you referenced that -- you sort of  
20 also by comparison talk about copper mining, is that  
21 correct, and the lining situation?

22 A. I talk about it from the aspect of not saying  
23 that it -- a copper mine is exactly the same as a dairy  
24 facility. It was -- I'm sorry.

25 Q. No, I apologize. I don't mean to interrupt.

1           And my understanding of copper mines, and I've  
2 dealt probably less with it than you have with those,  
3 very high concentrations, low pHs, very -- can be very  
4 acidic, the lining on those huge copper tailing  
5 facilities are critical; correct?

6           A.     Well, right now, there is not a lining on a  
7 lot of those facilities. There is -- they don't -- a  
8 lot of these facilities preexist some of the regulations  
9 and were actually permitted based upon a demonstration  
10 that they would not cause contamination. So they  
11 weren't required to be lined at that time.

12          Q.     So Valley Meat currently has liners -- I think  
13 both lagoons are already lined, is that correct?

14          A.     Yes. Both are lined with synthetic liners.

15          Q.     And you -- I think you indicated around 2003  
16 is when they first started installing those liners?

17          A.     I think one of the liners was -- I'm not sure  
18 exactly when it was installed, but I think it was two  
19 sequences of permit renewals, 1998 and then the permit  
20 renewal from --

21          Q.     The next year?

22          A.     -- 2004, and that probably occurred a year  
23 after that.

24          Q.     I think I remember that as well.

25          A.     Right.

1 Q. And so they've had these liners quite some  
2 time, correct?

3 A. They have had the liner -- the one liner,  
4 they've had longer than the other, yes. Uh-huh.

5 Q. And in your review, and I know we're going to  
6 get to this shortly, there is monitoring wells around  
7 this facility.

8 A. That's correct.

9 Q. And based upon the regulated constituents -- I  
10 know you've indicated that there are some other  
11 monitoring situation constituents that we have to  
12 monitor, but there is compliance constituents, is that  
13 correct, generally?

14 A. Yeah, I'd call them more indicator chemicals  
15 that are used for those facilities.

16 Q. I think you heard my earlier questions, I  
17 think, to Mr. Wyant on TKN, total Kjeldahl nitrogen, are  
18 sort of indicators, is that correct, to the constituents  
19 of real concern, such as nitrogen?

20 A. Right. Well, typically with those ag  
21 facilities, it's TKN, nitrate.

22 Q. TDS, total dissolved solids; correct?

23 A. No, that's the total Kjeldahl nitrogen, and  
24 then the TDS is -- yeah, the total dissolved solids.  
25 There is the chloride, and then even typically sulfate

1 occurs as well at least with these dairy facilities.

2 Q. And how -- I mean, based upon the monitoring  
3 results you've looked at, how has this facility -- have  
4 they exceeded their groundwater standards for the main  
5 constituents?

6 A. Well, there have been a couple of exceedances  
7 that have occurred at the facility.

8 The most difficult thing, in looking at the  
9 data, there is data that's gone on over time, but -- I  
10 don't know, somewhere around 60 percent of the time, the  
11 facility has not submitted required monitoring reports,  
12 or sometimes they've submitted the reports and then  
13 they've been incomplete and not contained monitoring  
14 well data. But there is -- there is some data there  
15 that that's over the period of time of that facility.

16 Q. And I'm going to be general here.

17 The NOV that was issued in, I think, 2010,  
18 what -- how long did it give them to resubmit their  
19 application? Do you remember that?

20 A. If you'll bear with me.

21 It gave them 30 days, until -- it was issued  
22 on May 7th of 2010 and gave them 30 days, until June 7th  
23 of 2010.

24 Q. And I apologize, I didn't give you the  
25 document to look at.

1           Just for the record, as well as the Court, I'm  
2 looking at 236C-109.

3           Is that correct?

4           A. I was referring to our Exhibit 35. I believe  
5 that's the --

6           Q. Oh, sure. It's in several places.

7           A. I think that's probably the same thing.

8           Q. Do you know when they resubmitted their  
9 application after that?

10          A. I believe they submitted it right about that  
11 time. I think it was -- it was approximately --

12          Q. Would you disagree or agree that they  
13 submitted it within the 30-day period?

14          A. I believe it was submitted about that time. I  
15 just don't remember the exact day.

16          Q. Sure.

17          A. But it was in early June. I thought it might  
18 have been the 10th or something, so --

19          Q. Have you had a chance to look at some of the  
20 other correspondence between the applicant and the  
21 Department?

22          A. Yes. I've looked at the correspondence in the  
23 administrative record.

24          Q. Okay. Would you agree or disagree that the  
25 majority of the time, once they were notified of a

1 problem, they did respond, at least in part, to what the  
2 Department requested?

3 A. I'd say they responded for a short period of  
4 time and then resumed noncompliance. That's what's  
5 really evident in the record. But actually some of it  
6 seems more when certain consultants were doing some of  
7 the monitoring for the facility.

8 I know one example was Mary Barron was doing  
9 the facility monitoring, and then it was pretty -- there  
10 was pretty crisp and regular submissions, and then that  
11 all stopped about 2006, something like that.

12 So it's been -- the monitoring has been very  
13 spotty at the facility. I don't think that they have  
14 taken it seriously.

15 Q. When you were in charge of the Department or  
16 the Bureau issuing permits similar to this -- I mean,  
17 how many permits are we talking about to slaughter  
18 facilities?

19 A. I'm only familiar with this one and one other  
20 that -- it wasn't one that was actually for a permit.  
21 It was one that I actually sent a cow to myself, so --

22 Q. Okay. And did you ever issue permits to those  
23 facilities -- or that facility?

24 A. No. Not to my knowledge. I don't recall.

25 Q. And correct me if I'm wrong, you were still

1 with the Department when the renewal permit came out, is  
2 that correct?

3 I think the issuance date was -- I'm sorry.

4 A. Right.

5 Q. I'm thinking of something else.

6 Earlier you mentioned LES. What type of  
7 facility is that?

8 A. That's a uranium enrichment facility over by  
9 -- south of Hobbs, New Mexico.

10 Q. Is that -- that's quite a different type of  
11 facility, is that not correct?

12 A. Yes. I wasn't using that to say that it's the  
13 same as a horse slaughter facility; just that there was  
14 different considerations that had to be looked at for  
15 that type of a facility that hadn't been looked at  
16 before.

17 Q. As a hydrologist, I think your concern, and  
18 correct me if I'm wrong, is that if there is a leak of a  
19 lagoon that groundwater contamination would occur; is  
20 that correct?

21 A. That's -- that's the concern. I think it's a  
22 concern of the Department that's reflected in the  
23 findings of the draft permit as well.

24 Q. And the monitoring wells, aren't those  
25 intended to catch any leakage, or at least show that

1 there was possibly leakage?

2 A. Yes, they catch the leakage after it has  
3 occurred. Yes.

4 Q. And how long -- this is probably my softball  
5 question to you -- how long, as a hydrologist, would you  
6 say the groundwater would move across that facility?

7 A. Well, it's going to be based on the -- you  
8 know, the -- you have to sit down and run some  
9 calculations of the permeability of the material it's  
10 in, but, you know, it varies in the monitoring wells for  
11 that facility. In some places, it's a little more silty  
12 clay; some, it's more sandy; some, it's -- there is a  
13 little bit of gravel in the bottom of some of them. So  
14 you'd have to try to make some assumption of a standard  
15 permeability and then make some calculation to that.

16 But, typically, I can -- I know from the way  
17 the Bureau has done these before, you try to locate them  
18 as close as possible to the impoundments so you're going  
19 to get as early detection of the contaminant as  
20 possible.

21 Q. If somebody represented to me that it would  
22 take maybe a year or more for a full cycle of  
23 groundwater to move past that location, would that be  
24 an accurate statement based upon just a general  
25 hypothesis?

1           A.     To move past the facility, maybe.  But a lot  
2 of it depends on where the leak is, if it's on the same  
3 side that's near the impoundment -- or, you know, if the  
4 impoundment is next to the monitoring well, it's going  
5 to get there quicker than having to sweep the entire  
6 length of the groundwater under the impoundment.

7           Q.     And I think you've heard our staff adopt one  
8 of your recommendations as a condition, leak testing of  
9 the -- at least the septic tanks and maybe the liners;  
10 is that correct?

11          A.     Yes.  I thought that was good.

12          Q.     Now, also included, though, in your testimony  
13 you referenced adding another additional monitoring  
14 well.

15          A.     Right.  In the vicinity of those concrete  
16 septic tanks.

17          Q.     In your experience or in your career as --  
18 with the Groundwater Quality Bureau, was that required  
19 of any other type of facility similar to this, the same  
20 sort of risk level?

21          A.     I'm not exactly sure if we've had that -- if  
22 that had occurred before with those, but I was looking  
23 at this from the age of the tanks and thinking that  
24 there should be something -- especially considering the  
25 shallow nature of the groundwater there, so --

1 Q. And I think in most general permits such as  
2 this, it's very boilerplate in most instances, would you  
3 agree, with some specific conditions changing upon the  
4 location and type of facility?

5 A. Right. The Department tries to be consistent  
6 from facility to facility, to the maximum extent they  
7 can. There is differences from facility to facility as  
8 well, but they try to be consistent in the application  
9 of the rules.

10 Q. And what happens during -- if during the  
11 course of a permit, say this permit does issue or even  
12 the prior one, that the Department finds out new  
13 information or learns that a facility may be causing  
14 pollution, what's the Department's remedies at that  
15 time, based upon your experience as the Bureau chief?

16 A. Well, it could be, you know, three major  
17 things that could occur.

18 One could be they require modification of the  
19 permit to cover the new activity. You know, pursuant to  
20 the statute, it could include termination of the permit,  
21 depending on the severity of the action or as well as  
22 the compliance order.

23 Then it could also result in abatement, if  
24 water has been contaminated. There is another section  
25 of the rules -- the 4000 series of the Water Quality

1 Control Commission rules is for abatement of water  
2 pollution.

3 So there are several things that could occur.

4 Q. And are those ununique items, something that  
5 the Department rarely takes, or is it something the  
6 Department -- not only for this and other types of  
7 facilities, something we regularly do once we become  
8 aware of it?

9 A. Yeah, I don't know how regular it would be,  
10 but it does -- it does occur. Yes.

11 Q. So the Department does have options if it sees  
12 that this facility or another facility is exceeding  
13 their discharges or constituent parameters that we could  
14 take those actions; is that correct?

15 A. Yes, I guess. But in terms of the  
16 constituents, I look at the permit would not be doing  
17 any monitoring for other constituents that might be out  
18 there.

19 I think that's mostly a concern because the  
20 groundwater at the facility is -- the background  
21 concentrations are already elevated, so sometimes it's a  
22 little difficult to tell when you're actually seeing  
23 some impacts from the impoundment, because you have  
24 natural impacts that you're trying to factor into that,  
25 and then the constituents that here are being monitored

1 as part of anything, so it's something that could be  
2 missed.

3 Q. And for lay people listening, to talk about  
4 this, I just want to make sure, and correct me if I'm  
5 wrong, there is a difference between monitoring what's  
6 inside the impoundments above the liners and differences  
7 between what's below and in the groundwater; is that  
8 correct?

9 A. Well, there is typically going to be higher  
10 concentrations in the impoundment than what's in the  
11 groundwater.

12 Q. So --

13 A. That's why the permits are required, right.

14 Q. Sure.

15 And getting back -- I'm sort of backtracking a  
16 little bit.

17 So once it comes out of the facility and goes  
18 into these settling tanks, which I think the Department  
19 at this point would agree that, you know, maybe a leak  
20 test and monitoring might be wise, it goes to these  
21 impoundments and then it's evaporated; is that correct?

22 A. That's the intent of the operation, yes.

23 Q. And I think, as a reasonable person, what's  
24 left over, we want to manage; is that correct?

25 A. Say that again.

1 Q. Solids and biosolids that might be left.

2 A. Yes, there would be biosolids. They are going  
3 to accumulate in the impoundment as well as in the  
4 concrete tanks.

5 Q. And there is -- are there conditions in the  
6 permit that deal with that, regulation and monitoring  
7 and disposal of biosolids left over?

8 A. Well, there has especially been requirements  
9 in the permits that have been in there for some length  
10 of time. I don't see anything in any of the -- that  
11 talked about regular removal of biosolids from the  
12 concrete tanks, and I didn't see anything in the  
13 monitoring reports that was really showing that they've  
14 been removing solids and what they've been doing with  
15 them. I don't know, maybe they hadn't removed them, but  
16 there is nothing in the monitoring reports to indicate  
17 that.

18 Q. And I'll just -- just bear with me for a  
19 moment if you would, sir.

20 A. Sure.

21 Q. And I would -- while my staff is looking that  
22 up, I just would like to point out that the revised  
23 draft permit is included with the New Mexico Environment  
24 Department's revised testimony.

25 MR. BIERNOFF: Mr. Powers, would you just

1 restate what you said? I couldn't hear you.

2 MR. POWERS: I'm sorry.

3 The revised draft permit was included with  
4 Ms. Kim Kirby's testimony. After consideration of all  
5 the factors, she did revise the initial draft permit.

6 So I just want to make sure everybody is clear  
7 on that there are two different permits, the most  
8 current one that we're looking at for implementation --  
9 or proposing for implementation -- is the one included  
10 most recently with Ms. Kirby's NOI testimony.

11 MR. OLSON: Is that the one that's NMED  
12 Exhibit 9?

13 MR. POWERS: Exactly.

14 MR. OLSON: Okay.

15 Q. (BY MR. POWERS) And I'm looking at, as you  
16 referenced, Exhibit 9, conditions 7 and 8 and 11.

17 A. Did you say 7, 8, 9 and 11?

18 Q. Yes.

19 If you need a break, just let us know.

20 A. I'm okay.

21 Q. So reading those conditions, 7, 8 and 11, the  
22 Department has built in some provisions that the  
23 permittee must remove solids in a timely manner. Is  
24 that correct?

25 A. That's correct. That's what --

1 Q. And that's fairly standard boilerplate  
2 language, is that not correct?

3 A. Yes, that is.

4 Q. Okay. We've talked about volume earlier as  
5 well, and this sort of sponsored a second thought of  
6 mine.

7 Freeboard -- freeboard on the lagoons, what is  
8 that?

9 A. That's maintaining a minimum of two feet of  
10 freeboard, which is the distance from the highest  
11 elevation allowed for water in the pond to the top of  
12 the berm. It's to prevent wave action and overtopping  
13 of the berms.

14 Q. And that's a general permit condition, too, as  
15 well?

16 A. That's always been a permit condition for  
17 many, many years, as far as I can recall.

18 Q. And what is that provision for, generally?

19 A. It's for -- when you have a pond, you get  
20 essentially wind blowing across the top of the pond, it  
21 can create wave action, so that can cause overtopping of  
22 the berms and potentially cause a failure of the -- of  
23 the berms.

24 Q. Also excess flow, is that correct?

25 A. No, it's more so for -- originally, it was

1 kind of set out for wind action. Winds coming over a  
2 certain surface can generate waves, and if you're --  
3 you're giving a buffer zone essentially to make sure the  
4 water stays in the impoundment, it doesn't overtop the  
5 berms and cause problems with the integrity of the  
6 berms.

7 Q. All right. I know in your testimony -- and I  
8 made a reference to this in one of my motions -- you say  
9 that there is a high probability that these impoundments  
10 will leak. Is that correct?

11 A. I think --

12 Q. I think on page -- I think it was on page 17  
13 of 23 of your testimony, subsection -- or Section 6.A.

14 A. On page 17?

15 Q. Yes.

16 A. And where are you? I'm not sure exactly where  
17 you're at on that page.

18 Q. The last sentence, "Clearly there is a high  
19 potential for animal wastewater impoundments, similar to  
20 the impoundments at the Valley Meat Company, to cause  
21 groundwater pollution."

22 A. Yes.

23 Q. And how did you draw that conclusion, if I may  
24 ask?

25 A. Well, it's actually also linked to the -- just

1 the high potential for groundwater contamination that's  
2 occurred previously at dairy facilities, as well as  
3 based upon the testimony of NMED's expert witness Adrian  
4 Brown at the Copper Rule hearings, where he testified  
5 that synthetic liners leak through seam failures,  
6 perforations, directly through the liner material, such  
7 that fluid is transported through the liners.

8 So liners do provide a much higher level of  
9 protection, but they can -- they'll still potentially  
10 leak over time. That's why I was suggesting the --  
11 recommending the double-liner system.

12 Q. And one we've only done one time, is that  
13 correct?

14 A. For a dairy facility, one was done once.  
15 Currently, it's now the standard for  
16 impoundments at copper mines for process water.

17 Q. And I think you cited certain testimony by  
18 Sarah -- what's her name? -- McGrath, discussing some of  
19 the dairy rules and information in your testimony. Is  
20 that correct?

21 A. That's correct.

22 Q. Talking with my staff, we -- it was discussed  
23 that pretty much in 2003, they -- most dairy facilities  
24 started installing liners. Is that correct?

25 A. It was -- there were some before that, but

1 that's -- I think it was becoming a more prevalent  
2 practice of the Department in the early 2000s, yeah.

3 Q. And based upon your knowledge -- and I  
4 understand you left not long thereafter, or 2010,  
5 2011 -- how many dairy facilities that did install  
6 liners actually caused groundwater contamination? Do  
7 you have any numbers on that?

8 A. I think a lot of that is too early to tell. I  
9 don't have any numbers to give you on that.

10 But I think right now a lot of that has been  
11 more recent activity, so I don't think that's really,  
12 you know, been fully assessed yet, especially from some  
13 of the older impoundments, because the requirements in  
14 the new Dairy Rule are much more stringent for  
15 engineering quality assurance/quality control for the  
16 construction of those liners -- for the exact purpose,  
17 to make sure that, you know, liners are sealed properly  
18 in their seams.

19 A lot of the leaks actually occur from poor  
20 construction, so there is a lot of liners -- I don't  
21 know the number, I won't say a lot, but there is liners  
22 that were installed prior to the Dairy Rule that do not  
23 have that level of quality assurance/quality control to  
24 know that they were properly constructed.

25 Q. And I think anything over time, correct me if

1 I'm wrong, would leak. Anything after a certain period  
2 of time, any container, would leak, whether it's a  
3 ten-year period or a thousand-year period.

4 A. It's a higher probability if it's been -- not  
5 had good quality assurance/quality control in the  
6 construction.

7 Q. So -- and I may be backtracking, and I'm sure  
8 I'll get an objection for this.

9 So how does the Department tell if there is a  
10 leak occurring or not?

11 A. From a single liner, the only way you're  
12 going to tell if there is a leak is from the monitoring  
13 well. That is after the groundwater contamination has  
14 already occurred.

15 What I've been maintaining here is that  
16 there is some different considerations with these  
17 pharmaceuticals and other drugs that should off- -- so  
18 that the facility should offer a higher level of  
19 protection than the other facilities. That was the  
20 basis for my argument.

21 Q. And I might be hypothesizing too much here,  
22 but the pharmaceuticals, if they discharge, are going to  
23 be discharged along with the nitrogen, too; correct?

24 A. That's correct.

25 Q. So if you get a hot spot on nitrogen, you're

1 going to take abatement actions anyway; correct?

2 A. I guess it's a matter of whether you're really  
3 seeing the nitrate contamination, because at this  
4 facility at the moment there has been some kind of --  
5 right now, I think the data is really poor for the  
6 facility. There has been no water table elevation maps  
7 showing the magnitude direction of the hydraulic  
8 gradient prepared, so there is a lot of information  
9 missing at this point, but in a general sense, the --  
10 when you start seeing some of the nitrate contamination,  
11 you -- and, currently, it might even be more on the TDS,  
12 because as an evaporative pond, the TDS levels have gone  
13 up significantly on this pond over what it used to be.

14 So there are some -- there are other  
15 indicators, I'm not saying that those should be the only  
16 ones, but that they are indicators that it is leaking.

17 MR. POWERS: Thank you.

18 May I have just a moment?

19 MS. ORTH: Yes.

20 (Confers.)

21 MR. POWERS: Just a few more questions and  
22 then I'll let you go, Mr. Olson. I appreciate your  
23 time, I really do.

24 Q. (BY MR. POWERS) During your time and tenure  
25 as Groundwater chief, did you regulate any other

1 facilities that discharge pharmaceuticals, such as  
2 hospital facilities, retirement communities, other  
3 things that may have pharmaceuticals in their waste  
4 streams?

5 A. I don't recall.

6 I mean, I think a majority of those are in the  
7 cities, and that goes to the wastewater treatment  
8 plants, and those don't always fall under a discharge  
9 permit. Typically, they are under an NPDES permit that  
10 the EPA is issuing.

11 Q. Have you personally visited the site or  
12 conducted any inspections, done any independent  
13 monitoring of the groundwater specifically around this  
14 Valley Meat?

15 A. Around this valley?

16 Q. Yes.

17 A. Yeah, I've done a lot of work in this valley,  
18 mostly in oil and gas.

19 Q. No, Valley Meat. I'm sorry.

20 A. Oh, Valley Meat.

21 Q. Discharge Permit 236.

22 A. I thought you were talking about the Pecos  
23 Valley, excuse me.

24 Q. I'm sorry. The Pecos is very nice.

25 A. For the Valley Meat facility, no, I've not

1 done any independent studies of groundwater quality at  
2 the facility.

3 Q. There is many other dairies around this  
4 location.

5 Have you tested any of those wells or  
6 groundwater monitoring sites?

7 A. No. The staff had done that when I was Bureau  
8 chief. There was, you know, monitoring activities that  
9 were occurring, but I hadn't personally done the  
10 monitoring at that point, as I was managing the program.

11 Q. I guess during your course, you've looked at  
12 maps overhead of this facility. Is that about it?

13 A. For this facility -- I'm familiar with the  
14 valley and in that area, but I haven't specifically been  
15 to the exact location.

16 I did pull it up on Google Earth as well and,  
17 you know, looked at it extensively there. But I have  
18 not been out to the facility, because I was -- mostly, I  
19 was looking to see what was nearby with the facility,  
20 what was next to it.

21 Q. My last question.

22 What's your relationship with FRER and the six  
23 residents of Roswell? As a consultant or --

24 A. My relationship is with -- you know, they are  
25 a participating party, kind of joined together with the

1 Attorney General's Office, so -- but, you know -- so I'm  
2 representing a group, but I'm being paid by the Attorney  
3 General's Office. So there is --

4 MR. POWERS: Okay. Thank you.

5 We'll pass the witness, but we'll reserve  
6 rebuttal.

7 MS. ORTH: All right. Thank you, Mr. Powers.

8 I have one question or two questions, I guess,  
9 for Mr. Olson.

10 Did you generally review enforcement actions  
11 when you were Bureau chief?

12 MR. OLSON: I'm not sure what you mean by  
13 generally reviewing them.

14 They'd come through from recommendations from  
15 staff, but a lot of enforcement actions are informal  
16 enforcement actions. I think, as you see in the  
17 administrative record, there is a lot of things that are  
18 being told to the applicant at field inspections, as  
19 well as notices of noncompliance, that were done through  
20 the program manager themselves. There was a delegation  
21 of authority, kind of set out certain signing  
22 responsibilities in the Department when I was there.  
23 I'm assuming there is still a similar one. But not all  
24 enforcement actions would go through the Bureau chief.

25 MS. ORTH: All right. I'm looking at page 14

1 of 15 of Mr. Schoeppner's testimony. He states that  
2 most compliance issues found at Valley Meat are common  
3 at other facilities with DP permits. It doesn't sound  
4 as though the compliance history is all that unusual.

5 Do you -- do you find that the compliance  
6 history at Valley Meat was unusual when compared with  
7 the compliance history at other facilities?

8 MR. OLSON: Well, I guess it depends on the  
9 facility. A lot of facilities -- especially I'm  
10 thinking of a lot of the mining industry and a lot of  
11 other regulated facilities -- are quite good at  
12 complying with their monitoring requirements.

13 MS. ORTH: Well, let's talk about other --

14 MR. OLSON: I think the dairies have been an  
15 issue. The dairies have been an issue, but I think from  
16 what I see here, this -- it just seems that this is an  
17 extremely poor compliance history, because they've been  
18 repeatedly told through inspections and informal  
19 correspondence, as well as the notices of noncompliance,  
20 that they need to submit these, and then they don't do  
21 it, so --

22 MS. ORTH: All right. Thank you.

23 MR. OLSON: Yeah.

24 MS. ORTH: Mr. Biernoff, did you have  
25 follow-up of Mr. Olson?

1 MR. BIERNOFF: I just wanted to make sure  
2 that, if he wishes to, Mr. Holland has an opportunity to  
3 ask any questions he might have.

4 MS. ORTH: I'm sorry. Yes, that was my  
5 earlier question.

6 MR. HOLLAND: Thank you very much, but I don't  
7 have any questions.

8 MS. ORTH: Okay.

9 Are there any other questions of Mr. Olson?

10 MR. DUNN: Just very briefly to kind of  
11 illuminate on the line of questions that you just had,  
12 it raised a question.

13 MS. ORTH: Okay. That's only fair, and then  
14 I'll go back to you, Mr. Biernoff.

15 MR. BIERNOFF: Okay.

16 FURTHER CROSS EXAMINATION

17 BY MR. DUNN:

18 Q. There was a discussion with the Hearing  
19 Officer of compliance history of Valley versus other  
20 things.

21 I'm going to present you two letters, they are  
22 addressed to me from the Department, and that is  
23 Administrative Record 236C-138 and 149.

24 Would you look at those -- and, more  
25 specifically, would you look at the back of those, those

1 -- the lists on those?

2 A. You're talking about the table?

3 Q. The tables, yes.

4 A. Uh-huh.

5 Q. And on the front of those two, it discusses --  
6 that's part of an IPRA request to the Department.

7 Would you read the italicized portion of that  
8 letter real quick?

9 A. The italicized portion says, "Are you aware of  
10 any facility besides Valley Meat Company, LLC, DP-236,  
11 that has been permitted by the groundwater" -- "the  
12 GWQB, where that facility's permit has lapsed because it  
13 did not submit or submitted a late renewal application?  
14 If so, please provide the name or permit number of that  
15 facility."

16 MR. POWERS: Your Honor, I don't -- I'm just  
17 clarifying, what exhibits are we looking at?

18 MR. DUNN: AR 236C-139 and 148, I believe.

19 MR. BIERNOFF: Counsel, could you give us that  
20 citation one more time?

21 MR. DUNN: Okay. I'm looking at 236C-138,  
22 which is the response to a request for public  
23 information, dated 6/18/2013; and 149, which is a  
24 response to request for public information.

25 Those are responses to the same request from

1 my office to the Department.

2 MS. ORTH: Is there a Bates-stamped number?

3 MR. BIERNOFF: Which pages of those exhibits  
4 are you looking at?

5 MR. DUNN: The entirety of those, which should  
6 be those responses.

7 MR. BIERNOFF: Okay. Because you were asking  
8 the witness to read from something a few minutes ago.

9 MR. DUNN: There is one.

10 MR. WAGMAN: But that's just one of them.

11 MR. DUNN: There is another two. I'll get you  
12 one. One of my copies, it seems to have gone astray.

13 MR. WAGMAN: No worries.

14 Q. (BY MR. DUNN) Okay. So you have those lists  
15 in front of you.

16 About how many -- just an estimation, just on  
17 a quick glance, between those two, how many entities or  
18 villages, dairies, are listed there?

19 MR. BIERNOFF: I don't have an objection,  
20 per se, but I just want to note that this is a letter  
21 from 2013, and this postdates Mr. Olson's role as an  
22 official with the agency.

23 MS. ORTH: Okay. I think it's still a good  
24 question.

25 Please go ahead.

1 MR. OLSON: You want me to count all these?

2 Q. (BY MR. DUNN) No. There is quite a number of  
3 them. Just an estimation.

4 A. Uh-huh. I don't know how many there are per  
5 page. There is, you know, two pages mostly of one, and  
6 then there is a page-and-three-quarter on the other.

7 Q. So there is -- probably between the two, would  
8 you say over 50?

9 A. It appears that way.

10 Q. Sure.

11 So if there is over 50, those are institutions  
12 -- when you were the Groundwater Bureau chief, those  
13 would have been sent a notice of compliance or notice of  
14 violation for failure to renew?

15 A. They may have. It just depends on when they  
16 submitted it. If they waited until the agency had to  
17 discover it, then they may have gotten a notice of  
18 violation, but they may have had a phone call from the  
19 staff and maybe they submitted -- I don't know what the  
20 history of each one of these is, how that was corrected,  
21 but --

22 Q. But it does appear to be kind of commonplace?  
23 You have a lot of entities there. A lot of groundwater  
24 permits.

25 A. Yes. These are all permits that -- if --

1 Q. So those all represent --

2 A. I didn't prepare this, but I would assume, if  
3 this is responsive to this, these are facilities that  
4 their permits expired.

5 Q. And those are issues of compliance -- those  
6 are compliance issues for those entities listed there?

7 A. That would be a compliance issue, yes.

8 MR. DUNN: Okay. That's all I have.

9 MS. ORTH: All right. Thank you.

10 Mr. Biernoff?

11 MR. BIERNOFF: In the interests of moving the  
12 proceedings along, we'll rest with Mr. Olson, although  
13 we do want to reserve the opportunity to call him as a  
14 rebuttal witness at the end of the technical case.

15 MS. ORTH: All right. Thank you.

16 Thank you, Mr. Olson.

17 MR. OLSON: Thank you.

18 MS. ORTH: I guess for everyone's information,  
19 the parties at this point -- not at this moment, but at  
20 this point in the technical case, have an opportunity to  
21 decide whether they would like to present rebuttal.  
22 They don't have to say right now, I'm just saying,  
23 because we're going to go to public comment right now.

24 MR. POWERS: Your Honor, I apologize.

25 I didn't know if any of the public had any

1 questions for Mr. Olson.

2 MS. ORTH: I asked earlier if anyone had any  
3 other questions before I moved to Mr. Biernoff.

4 MR. POWERS: Okay.

5 MS. ORTH: But thank you.

6 Let's see. What was I saying?

7 So, again, all of the technical parties have  
8 the opportunity to decide, you don't have to say now,  
9 whether you are going to intend to do rebuttal, and I  
10 believe Mr. Dunn already said he would.

11 MR. DUNN: Yes. Yes, ma'am.

12 MS. ORTH: And again you don't have to  
13 announce your decision just yet, because it is time for  
14 public comment.

15 Just a few observations about public comment.  
16 I will call your names in the order in which you signed  
17 in -- thank you -- and ask you to come to the podium and  
18 to direct your comments to me and to the court reporter,  
19 rather than to the crowd.

20 I will ask you to collect your thoughts,  
21 because I will call on you only once. If you think of  
22 something you really wanted to say after you've already  
23 made public comment, I'll ask you to put that into  
24 writing and to give it to Sally Worthington, the Hearing  
25 Clerk. You can certainly supplement your comments in

1 writing.

2           Finally, I'll ask that you avoid offering any  
3 technical testimony. This is nontechnical public  
4 comment.

5           Are there -- oh, the testimony is taken under  
6 oath.

7           Mr. Dunn?

8           MR. DUNN: Madam Chair, perhaps just a word of  
9 caution. Those of us who are attorneys here in the room  
10 understand the implications of making public statements,  
11 but if you wouldn't mind illuminating on the fact that  
12 you need to be honest and truthful in your statements to  
13 this body, they are going to be part of a public record,  
14 it is a public statement.

15           MS. ORTH: It is a public statement, and you  
16 will be put under oath. So I guess, in my mind,  
17 swearing you to tell the truth means you're going to  
18 tell the truth, or do your very best to tell the truth.

19           Are there questions?

20           By the way, the parties -- the technical  
21 parties are not required to stay for all of the public  
22 comment. Sometimes they duck out to have conversations  
23 among themselves. However, the public comment again is  
24 on the transcript, and all of the technical parties, I  
25 know, study that comment when the transcript comes.

1 Mr. Biernoff?

2 MR. BIERNOFF: Madam Hearing Officer, just a  
3 quick question.

4 How long do you -- roughly, do you anticipate  
5 this public comment session going for? Just for  
6 planning purposes.

7 MS. ORTH: Well, I have only one, two, three,  
8 four, five commenters listed on the sign-in sheet. So I  
9 hope to take all five of them.

10 MR. BIERNOFF: Understood.

11 Thank you.

12 MS. ORTH: Also, you can change your mind. If  
13 you said yes but you've decided no, that's okay. And if  
14 you said no, and you've changed your mind and would like  
15 to give public comment, you need only say so.

16 So that being the case, let me tell you the  
17 order I have: Jo McInery, Carolyn Schnurr, Patience  
18 O'Dowd, Lisa Teal, and Smiley Wooten.

19 Mr. Dunn?

20 MR. DUNN: I'm sorry, I was standing on  
21 something else.

22 Commissioner Wooten is not here at this point  
23 in time, so he won't be here.

24 MR. DE LOS SANTOS: He's here.

25 MR. DUNN: Never mind.

1 MS. ORTH: All right.

2 Are all five of you here?

3 MS. WORTHINGTON: There is one other name  
4 that's checked -- at the top of the page, it's checked  
5 yes, and she filled in on the very top line. Do you see  
6 that?

7 MS. ORTH: Ah. Beverly Hughes, is that it? I  
8 think that's it.

9 Yes? Sir?

10 MR. CARTER: I apparently didn't check the  
11 right box. I would also like to. Phil Carter.

12 MS. ORTH: Tell me your name.

13 MR. CARTER: My name is Phil Carter.

14 MS. ORTH: Phil Carter.

15 Thank you.

16 MS. CARTER: And I'm Susan Carter.

17 MS. ORTH: Who?

18 MS. CARTER: Susan Carter.

19 MS. ORTH: Okay. So Phil and Susan Carter.

20 All right. So let's swear in the first four  
21 of you, and we'll take you in order.

22 Ms. McInery, Ms. Schnurr, Ms. O'Dowd, and Ms.  
23 Teal, if you would all stand and be sworn.

24 (Oath administered to Ms. McInery, Ms.

25 Schnurr, Ms. O'Dowd and Ms. Teal.)

1 MS. ORTH: All right.

2 JO MC INERY

3 after having been first duly sworn under oath,  
4 provided public comment as follows:

5 MS. MC INERY: My name is Jo McInery, and I'm  
6 the president of Animal Welfare Alliance here in Roswell  
7 New Mexico.

8 When I first realized that the slaughterhouse  
9 was coming, it was over the internet, and there was a  
10 gentleman that worked for Mr. De Los Santos that had  
11 taken his horse across his yard, it was bridled, and it  
12 looked like it was his companion horse, and he shot it  
13 through the head.

14 My feeling about it is that when people like  
15 that are working for a company, whatever that company  
16 may be, this is a reflection on the people that are  
17 going to be handling all of the things that need to be  
18 done at this slaughterhouse, meaning that they must be  
19 qualified to clean and make sure that they are doing the  
20 proper things. And from what Mr. De Los Santos said, he  
21 had indicated that the only people that are going to be  
22 able to really monitor this will be himself and his  
23 employees.

24 Now, I -- I know a lot has gone on here, and  
25 the USDA has said, you know, that they will also be

1 investigating and checking in and doing oversight.  
2 However, I know there is only one veterinarian in New  
3 Mexico that handles all of the agricultural and dairy --  
4 dairy ranches and Mr. De Los Santos' facility.

5           So her chances of going and seeing him at any  
6 length of time will be pretty -- pretty hit and miss.  
7 So I'm hoping that there will be a public -- an opening  
8 for the public to be able to go into the facility, when  
9 it just has the doors open, like any business, and that  
10 there be some type of arm's-length oversight to make  
11 sure there aren't things going on that are not being  
12 done properly.

13           So my feeling is, is that -- now -- well, one  
14 other point I did want to make is from Dr. Blach, when  
15 he had indicated about the horses that were going to  
16 come into the slaughter facility, he told -- I  
17 understood that he said that it would be the horses that  
18 were raised for food and that those horses then would  
19 not have drugs or anything else in their system, so we  
20 didn't have to worry about it.

21           Now, throughout this entire time, all of the  
22 newspaper articles, all of the television reports, were  
23 stating that we're picking up the animals that are  
24 abused and neglected in the county, that are out there  
25 being starved to death, they've got broken legs, and all

1 of this, it's a way for us to put them humanely to  
2 sleep. Okay, fine. And then all the horses that are at  
3 the racetrack, they break legs, they will come in and be  
4 humanely euthanized and whatnot.

5 Now, in my opinion, that means that these  
6 horses are not looked at for drugs -- for any kind of  
7 drugs, how they've been fed, how any of this can happen.

8 So I appreciate the fact that Mr. Blach may  
9 have some idea that this is the way it's supposed to be  
10 in raising these horses for food, but my feeling is, is  
11 that if there is any point of any minute possibility of  
12 their contamination in this -- in Chaves County, where  
13 we're raising food to go to France and go to Canada, I  
14 don't see why we should have to stand there and say,  
15 "Oh, it's okay for our water to be contaminated, because  
16 Mr. De Los Santos wants to make money necessary to keep  
17 his facility open."

18 We kill 5,000 animals in this county every  
19 year at our shelter. Now, we're going to start killing  
20 horses. The only thing I've got to say is, then, fine,  
21 Chaves County will be the killing capital of the United  
22 States, welcome, and come see us now and move here. I'm  
23 sorry, this is completely out of line, if what I'm  
24 hearing is correct.

25 Thank you.

1 MS. ORTH: Thank you, Ms. McInery.

2 Ms. Schnurr.

3 MS. SCHNURR: Thank you, Madam Hearing  
4 Officer.

5 I actually prepared some written comments for  
6 submission. Can I do that?

7 MS. ORTH: Yes.

8 MS. SCHNURR: Who should I provide them to?

9 MS. ORTH: The court reporter.

10 MS. SCHNURR: Thank you.

11 CAROLYN SCHNURR

12 after having been first duly sworn under oath,  
13 provided public comment as follows:

14 MS. SCHNURR: Again, Madam Hearing Officer,  
15 thank you for this opportunity to testify.

16 My name is Carolyn Schnurr, and I am a  
17 legislative manager with the American Society for the  
18 Prevention of Cruelty to Animals.

19 I am here today on behalf of the ASPCA and our  
20 over 6,000 supporters that reside in New Mexico to  
21 submit this testimony in regards to the draft  
22 groundwater permit for Valley Meat Company.

23 The ASPCA has long been committed to horse  
24 welfare and strongly opposes horse slaughter as a  
25 practice. As a leader in the Homes for Horses

1 Coalition, our direct connection with this network of  
2 horse rescues and advocates on the front lines of horse  
3 welfare issues informs our position against horse  
4 slaughter, along with the American public's strongly  
5 held position on this matter.

6 Now, having reviewed all the expert testimony  
7 submitted by today's witnesses, along with our long  
8 involvement on this issue, in addition to our opposition  
9 to slaughter on the basis of inherent cruelty of the  
10 practice, we urge the agency today to deny Valley Meat's  
11 application for this permit for the following reasons.

12 First, as it's been mentioned today, horses  
13 are different than traditional food animals. Unlike  
14 cattle, horses are not raised to become food and are  
15 therefore treated with a variety of veterinary drugs and  
16 other substances that are ban for use in animals  
17 slaughtered for food.

18 Some of these drugs will be present in the  
19 byproducts of Valley Meat's slaughter operations and  
20 will be discharged into the lagoons and evaporation  
21 ponds as a result.

22 Second, horses are different because, as we've  
23 just heard today, they are raised in a variety of  
24 settings, in which there are no or very few limits on  
25 the drugs that are given to them.

1           Unlike the producers of traditional food  
2 animals, such as cattle, horse owners do not regulate  
3 the drugs that they give their horses. These drugs  
4 render horse meat, and the wastewater from horse  
5 slaughter operations, dangerous to the environment and  
6 the public.

7           Third, Valley Meat's history of disregard  
8 for the environment, that's been discussed today, makes  
9 the potential issuance of the permit even more  
10 concerning.

11           When Valley Meat last had a discharge permit,  
12 as has been discussed, it repeatedly violated agency  
13 regulations and the Water Quality Act and the terms of  
14 the permit by routinely failing to submit regularly  
15 required monitoring reports or submitting reports that  
16 reflected the presence of regulated substances in excess  
17 of legal limits.

18           As was heard today, when the Valley Meat's  
19 permit -- last permit expired, it continued to operate  
20 and discharge.

21           And again also as has been noted and has been  
22 discussed publicly in the media, Valley Meat illegally  
23 dumps cow carcasses outside its facility for multiple  
24 years in violation of the state law. And all of these  
25 reasons express extreme concern for future environmental

1 violations.

2           If the agency gives Valley Meat a permit, the  
3 wastewater flowing into Valley Meat's lagoons may  
4 contain high levels of dangerous substances. If these  
5 lagoons rip, as has been discussed today, or if the  
6 lagoons overflow, as they have before, the toxic waste  
7 water will enter the environment and possibly the water  
8 supply.

9           Overflowing lagoons are particularly likely,  
10 in light of the testimony -- Valley Meat's testimony  
11 today that it has the intention of slaughtering as many  
12 as three times more animals than it slaughtered when it  
13 last operated. It is incomprehensible that Valley Meat  
14 can slaughter three times more animals and produce three  
15 times the amount of wastewater without exceeding the  
16 permit's 8,000-gallon limit.

17           Yet, until today, Valley Meat has yet to  
18 inform the agency of its plans to expand these  
19 operations based on the prior numbers that were  
20 disclosed.

21           So for all of those reasons, on behalf again  
22 of our 6,000 supporters of ASPCA that reside in New  
23 Mexico, the we urge the New Mexico Environment  
24 Department to protect the environment from the toxic  
25 substances that Valley Meat soon intends to discharge.

1 Thank you.

2 MS. ORTH: All right. Thank you, Ms. Schnurr.  
3 Ms. O'Dowd.

4 PATIENCE O'DOWD

5 after having been first duly sworn under oath,  
6 provided public comment as follows:

7 MS. O'DOWD: Your Honor, my name is Patience  
8 O'Dowd. That's P-a-t-i-e-n-c-e, O-'-D-o-w-d.

9 Okay. You scared me, because you said no  
10 technical comment.

11 I'm here representing two 502(c)(3)s. One is  
12 Citizens Against Equine Slaughter, and we are a national  
13 group and we have members all over the country, board  
14 members around the country, including Dr. Lester  
15 Friedlander, a former USDA vet.

16 The other group I'm representing is the Wild  
17 Horse Observers Association, a long-time nonprofit in  
18 the State of New Mexico.

19 I want to read to you -- I want to clear up  
20 some fallacies for you that you've probably heard over  
21 and over in the news.

22 Is that all right?

23 MS. ORTH: Again, so long as it's not  
24 technical comment.

25 MS. O'DOWD: Okay. What's technical comment?

1 MS. ORTH: Technical comment is comment that  
2 would require more than a high school degree to be  
3 qualified to give.

4 MS. O'DOWD: Okay. Well, I'm a chemical  
5 engineer, so I'll have a hard time.

6 MS. ORTH: Yeah.

7 MS. O'DOWD: Okay.

8 MS. ORTH: I really am asking for nontechnical  
9 comment.

10 MS. O'DOWD: Okay. Here we go.

11 By inspection of public record, I believe  
12 this: "According to New Mexico Cattle Growers  
13 Association 'Because of New Mexico's border with Mexico,  
14 the state is a recipient of unwanted horses from the  
15 entire nation. This compounds the number of horses in  
16 distress that New Mexico is home to.'" I quote again,  
17 "And these horses create grave concerns -- grave concern  
18 to -- for livestock owners and managers due to the  
19 potential for disease transmission."

20 Okay?

21 That's from the New Mexico Cattle Growers  
22 Association and the New Mexico Livestock Bureau.

23 Now, if we -- if we haul these wastes, perhaps  
24 there is not going to be secondary containment when they  
25 are being loaded, perhaps it is going to be raining,

1 there is going to be runoff. This is disease. Okay?

2 There is also the drug residue, and I won't  
3 comment on that because others have done such a good  
4 job.

5 But I want to say that in either case, the  
6 offal and perhaps the liquid wastes will end up in a  
7 renderer.

8 Now, the concern -- scientists are concerned  
9 because this goes into -- rendering products go into  
10 livestock feed that goes into the human food chain. So  
11 though we think that because of mad cow, that's not  
12 happening, that is happening. I can send you the  
13 statute that allows it, and I'm sorry I didn't bring it.  
14 But maybe it doesn't go into humans, but it does go into  
15 pigs and chickens, et cetera, other livestock and  
16 poultry. So I wanted to share that with you.

17 I read that to you about the -- the inspection  
18 of public records request because of the disease issue,  
19 because the kill buyers are dumping horses in New  
20 Mexico, and what you may not know, also, is that the  
21 European Equine Report for 2011, where they went to the  
22 port of entry at each port of entry, Mexico and New  
23 Mexico, what they showed was that of the 58,000 horses  
24 taken for slaughter in 2011, 19,203 of them were  
25 rejected at the border.

1           Now, this information was used by a working  
2 group, which was requested one week after Valley Meats  
3 announced their opening of the slaughterhouse, horse  
4 slaughterhouse.

5           On April 18th, Caren Cowan of the Cattle  
6 Growers Association, speaking for them and the Livestock  
7 Bureau, wrote a letter to the Governor of New Mexico and  
8 to everyone in the Livestock Board and everyone at the  
9 Department of Agriculture saying that -- these words --  
10 this is where I pulled it out from, that letter --  
11 saying that there is a grave concern because there is  
12 tens of thousands of horses being dumped all over New  
13 Mexico, and I will send you -- I will give you a link to  
14 this here.

15           And so what they did in that working group is  
16 instead of work on that issue, they used those numbers  
17 over and over and over again, Your Honor, in the paper  
18 to say that these horses are here because of poor  
19 people, the bad economy and those filthy Indians that  
20 are starving their horses, basically. It was quite  
21 racist, I've got to say.

22           And so I just want you to be aware that you've  
23 heard a lot of untruths in the paper and a lot of  
24 twisting of information regarding the horses that are  
25 here because of slaughter, and they have been using them

1 to say that we need slaughter to take care of these  
2 horses, not out and out. Okay?

3 So that's my piece, and thank you for  
4 listening.

5 I wanted to say to you that when -- about ten  
6 years ago in North Carolina, there was a pig farm, a hog  
7 farm -- I love pigs -- that -- there was a hurricane and  
8 they had a lot -- a lagoon overflow and they  
9 contaminated the Cape Fear River.

10 And so recently when we've had all the rains  
11 here, I was trying to see if somebody could get over  
12 here and take a look at the lagoon. But as we heard  
13 today, the levels in the lagoon rise and fall, and so if  
14 it happens to be rising right when we're making a lot of  
15 money, we might just keep going, and as that rain comes  
16 go, "Oh, dang it."

17 And so I do concur with double liners, and I  
18 do concur that monitoring the water is after the fact.  
19 And I don't want horse meat in the food chain.

20 Thank you.

21 MS. ORTH: Thank you, Ms. O'Dowd.

22 Ms. Hughes.

23 MR. HUGHES: I wasn't sworn in, Your Honor.  
24 She's next.

25 MS. ORTH: Oh. Ms. Teal.

1 MS. TEAL: Thank you, Madam Officer.

2 LISA TEAL

3 after having been first duly sworn under oath,  
4 provided public comment as follows:

5 MS. TEAL: My name is Lisa Teal, and I'm a  
6 concerned citizen of Roswell.

7 We have -- I'd like to present signatures and  
8 comments from 3,489 citizens of the United States.

9 MS. ORTH: Give it to the court reporter,  
10 please.

11 MS. TEAL: I forgot the comments.

12 I would just like to say that 80 percent of  
13 all Americans oppose horse slaughter, and we kind of  
14 proved that with our signatures. That's just  
15 specifically for this. There is other petitions against  
16 horse slaughter that I'm not counting.

17 I'm concerned that we're in a drought. Clean  
18 water is a precious resource to every state. What's  
19 going to happen when we are using 8,000 or plus gallons  
20 a day to -- for something that 80 percent of Americans  
21 don't want?

22 I'm concerned that the water is going to be  
23 contaminated, and once it's contaminated, there is no  
24 turning back.

25 I'm asking that the petition get denied

1 because of the prior violations that Valley Meat has  
2 had.

3 My concern is that taxpayers have to pay for  
4 all the legal battles to enforce code violations, and if  
5 Valley Meat is allowed to open, Roswell will be polluted  
6 with the stench of dead, rotting meat; noise pollution  
7 of the horses screaming as they are being killed.  
8 Horses are hard to make unconscious. Many are  
9 dismembered while still alive.

10 This isn't what can happen, this is what did  
11 happen in Kaufman, Texas.

12 They are saying they are going to promote  
13 jobs. They are low-paying and dangerous jobs. It's  
14 going to scare away the tourists and other businesses  
15 that want to come to a nice, small, rural town.

16 That's all I have to say.

17 Thank you.

18 MS. ORTH: Thank you, Ms. Teal.

19 All right, the next four people, please stand  
20 to be sworn: Ms. Hughes, Mr. Carter, Mrs. Carter, and  
21 Mr. Wooten.

22 (Oath administered to Ms. Hughes, Mr. Carter,  
23 Ms. Carter and Mr. Wooten.)

24 MS. ORTH: Thank you.

25 We'll start with you, Ms. Hughes.

1 MS. HUGHES: I'm getting recorded again.

2 BEVERLY HUGHES

3 after having been first duly sworn under oath,  
4 provided public comment as follows:

5 MS. HUGHES: Hi. I'm Beverly Hughes,  
6 H-u-g-h-e-s. I am from Denver. I call Denver home  
7 because I retired from the Marine Corps there. I'm a  
8 snowbird. I spend a great deal of time and money in New  
9 Mexico, from Taos to Deming, on my way to Arizona every  
10 year.

11 I found out about the whole horse slaughter  
12 issue this summer when I was in Wyoming. I'm a  
13 photographer, and I went there to photograph wild  
14 horses, and while I was there, I found out about the  
15 holding pens for the BLM horses, and I found out that  
16 they are regularly sold to slaughter to be transported  
17 to Canada or to Mexico for slaughter.

18 And then, in turn, I started doing research on  
19 the internet and found out about Mr. De Los Santos and  
20 my beloved Roswell and that you guys were thinking of  
21 opening a slaughter plant here, and I was absolutely  
22 mortified.

23 After finding out about all of this, I formed  
24 a little tight group called the American Horse  
25 Protection Alliance, and what we do is try to get all

1 the different horse concerns, the horse groups, the  
2 horse Facebook pages, the 501(c)(3)s and 501(c)(4)s, to  
3 come together on Facebook and share information about  
4 what is going on so we can all work together.

5 In turn, I heard about the protest here, so  
6 I've spent the last few weeks here with Ms. Teal and  
7 others trying to educate and inform the citizens of  
8 Roswell about the horse slaughter plant and the facts  
9 surrounding it.

10 Horses are, to me, a national icon. I mean, I  
11 was raised in the South, and I was a history major for  
12 forever, and every period of our history is punctuated  
13 by the sacrifices that horses have made for us. So, to  
14 me, they are a precious commodity and not food.

15 But the thing that's got me the most upset is  
16 reading about the violations of Valley Meats, hearing  
17 today that they have absolutely no experience with horse  
18 slaughter whatsoever, meaning those first horses going  
19 into that slaughter ramp are going to go through  
20 unthinkable abuse at the hands of Valley Meats.

21 I think the thing that shocked me the most was  
22 when Mr. Dunn pointed out a list of companies that were  
23 in noncompliance and basically said that if they don't  
24 comply, then it's okay if Valley Meats doesn't comply,  
25 so it's not a big deal. I think it should be a big

1 deal.

2 I'm submitting this to you, and I think  
3 Mr. Holland touched on some of it already, but to me  
4 this is the touchstone for why you do not want slaughter  
5 in New Mexico, especially in Roswell.

6 This is just one paragraph from the letter of  
7 Mayor Paula Bacon of Kaufman, Texas, which Mr. Holland  
8 referenced. She said, "I am a fifth generation in  
9 Kaufman, Texas, a community that spent many difficult  
10 years trying to deal with a horse slaughter plant. As a  
11 resident, business owner, taxpayer, and one who has  
12 served four terms on the city council, two as mayor, I  
13 believe a horse slaughter plant is among the very least  
14 desirable things a community would want. A horse  
15 slaughter plant ranks with a lead smelter plant and  
16 sexually oriented businesses, the dead opposite of  
17 economic development. A horse slaughter plant creates  
18 expensive environment problems for taxpayers, profoundly  
19 affected our crime rate and stigmatizes the community as  
20 'that place where they slaughter horses' -- and good  
21 development goes elsewhere."

22 I cannot tell you the outpour of emotion  
23 across the United States since this subject has come up.  
24 If you ever go on Facebook and just read comments, I  
25 think you will be shocked at the outcry.

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1 I just hope that my Roswell stays my Roswell,  
2 and I can come here every year and enjoy the things that  
3 you have to offer, and I hope the citizens just don't  
4 allow this to happen.

5 Thank you.

6 MS. ORTH: Thank you, Ms. Hughes.

7 Mr. Wooten.

8 KYLE D. "SMILEY" WOOTEN

9 after having been first duly sworn under oath,  
10 provided public comment as follows:

11 MR. WOOTEN: Good afternoon, Your Honor and  
12 counsel.

13 My comments today are not as technical as some  
14 folks, but more kind of based on common horse sense.

15 My name is Smiley Wooten. I'm a Chaves County  
16 Commissioner, District 3, and an active business owner  
17 right here in Roswell, New Mexico.

18 My fellow commissioners and I have expressed  
19 in our public meetings that we support the opening of  
20 Valley Meat Company. We, as county government, welcome,  
21 with open arms, any new business that wants to put  
22 people to work and pay taxes in our county.

23 Chaves County is ranked number one in the  
24 State of New Mexico in agriculture, and we're very proud  
25 to say so.

1           The Commission believes that there is  
2 community support, as well as county and nationwide  
3 agriculture support to have this business open.

4           Also, these lagoon permits are commonplace in  
5 our ag community, and that when done right, present no  
6 environmental threats whatsoever.

7           The opening of this business not only creates  
8 jobs, it's also the most human -- it is also the most  
9 human -- humane, excuse me -- it's also the most humane  
10 solution to a very big problem our nation has faced  
11 since the last horse plant was closed many years ago.

12           The De Los Santos family has been in the meat  
13 processing business at this same location for over 20  
14 years and have always done a good job.

15           We strongly urge you to issue the permit and  
16 get this plant open for business. This family has put  
17 their heart and soul in this endeavor, and they deserve  
18 to open their doors ASAP.

19           Thank you very much.

20           MS. ORTH: Thank you, Commissioner Wooten.

21           MR. WOOTEN: Okay.

22           MS. ORTH: Mr. Carter.

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PHIL CARTER

after having been first duly sworn under oath,  
provided public comment as follows:

MR. CARTER: Thank you, Madam Hearing Officer.

My name is Phil Carter, and I'm the equine  
campaign manager for Animal Protection of New Mexico and  
the coordinator for the Equine Protection Fund.

I'm here representing 7,000 members and  
supporters of my organization here.

We commend the NMED for holding today's  
hearing to review the renewal permit, as we're acutely  
aware of the precedent being set here by this permitting  
consideration.

Simply put, we're deeply concerned that any  
environmental permitting of an equine slaughterhouse is  
being considered for our state and the unknown  
ramifications that it can and will produce if the permit  
is granted.

Industrialized equine slaughter is an industry  
previously unknown to New Mexico that carries many  
negative associations, which is why 70 percent of New  
Mexicans are opposed to the practice, according to a  
2013 poll. In no way should any facet of equine  
slaughter be taken lightly.

According to the written testimony of

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1 Mr. Olson, who we heard from today, the groundwater  
2 depth at Valley Meat is very shallow, at only four to  
3 11 feet underground.

4 According to Mr. Olson's testimony, concerns  
5 for groundwater contamination are, quote, especially  
6 heightened.

7 Additionally, the direction of groundwater  
8 flow at the site is at this date unknown, which we heard  
9 confirmed from the defense's section this morning.

10 Further, we're alarmed at the thought that a  
11 permit renewal by Valley Meat would be taken seriously  
12 by New Mexico Environment Department, considering the  
13 company's history of negligence or outright flaunting of  
14 state environmental law.

15 Olson, in his testimony, outlines five  
16 instances of NMED notifying Valley Meat of  
17 noncompliance, totalling at least 13 violations since  
18 1987. Over a ten-year period ending in 2003, Valley  
19 Meat failed to submit groundwater monitoring results to  
20 NMED 53 percent of the time. That is over half the  
21 time.

22 Additionally, USDA has suspended inspections  
23 of Valley Meat on at least three occasions just in the  
24 last four years because of violations of federal food  
25 safety measures.

1 Management of the Valley Meat has historically  
2 shown little to no interest in preserving the safety of  
3 consumers and nearby residents through complying with  
4 state and federal law.

5 We call upon NMED to acknowledge the facts of  
6 this company's operations. Simply put, Valley Meat has  
7 repeatedly demonstrated that it holds no respect for  
8 protective regulations or for New Mexico's water  
9 quality, and in doing so, has forfeited its right to  
10 conduct this practice of horse slaughter that the vast  
11 majority of the New Mexicans find alarming.

12 We're asking NMED to deny the wastewater  
13 discharge permits to Valley Meat.

14 Thank you.

15 MS. ORTH: Thank you, Mr. Carter.

16 Mrs. Carter.

17 SUSAN CARTER

18 after having been first duly sworn under oath,  
19 provided public comment as follows:

20 MS. CARTER: Since everyone else has spoken  
21 for the horses, I'll speak for a few of the other  
22 creatures that live in this area.

23 The Pecos River and its riparian lands are  
24 home to many birds, wildlife, common mammals, including  
25 the mule deer, coyote, gray fox, bobcat, striped skunk,

1 porcupine, raccoon, badger, jackrabbit, cottontail,  
2 white-footed mouse, deer mouse, grasshopper mouse and  
3 woodrat.

4 Many migratory birds depend on this area,  
5 including ducks, geese, cranes, and other water birds;  
6 morning doves, mocking birds, white-crowned sparrows,  
7 black-throated sparrows, western meadowlarks, crissal  
8 thrashers, western kingbirds, northern flickers, common  
9 nighthawks and roadrunners; birds of prey or raptors,  
10 including the northern harrier, Swainson's hawk, the  
11 American kestrel.

12 The waters of the Pecos, especially the  
13 shallow edges, are home to fish, such as the red shiner,  
14 sand shiner, Arkansas River shiner, the Pecos bluntnose  
15 shiner and Pecos pupfish, the plains minnow, silvery  
16 minnow, plains killifish, mosquito fish, speckled chub,  
17 river carp, sucker and channel catfish.

18 Herptiles include the yellow mud turtle, the  
19 box turtle, eastern fence lizard, side-blotched lizard,  
20 whip-tailed snake, hognose snake, the coachwhip snake.

21 The Pecos gambusia was listed in 1975 by New  
22 Mexico as endangered. This fish is endemic to springs  
23 and spring systems.

24 As you all know, the Pecos River area is part  
25 of the Pecos slope, which drains to the Pecos River.

1 Valley Meat is 1.2 miles from this river. To envision a  
2 lagoon practically two acres in size filled with blood,  
3 as I've seen on Google Earth, and an adjoining lagoon,  
4 supposedly monitored by a man who did not fulfill any of  
5 his requirements to the -- to our Board of Environmental  
6 here, who I'm just appalled that they are here to defend  
7 the opening of this place.

8 This Pecos gambusia was listed in '75, as I  
9 said, as endangered. This fish is endemic to springs  
10 and spring systems. These are the karsts that bring the  
11 tourists here. These are the karsts that contain the  
12 water that we all live on -- that we all need to live  
13 on, not just fish, not just birds, your children, your  
14 grandchildren, their children to the next generation.

15 To allow a lagoon filled with this tainted  
16 drugged blood of horses, and for this to be endorsed by  
17 a man who owns racehorses right next door to this place,  
18 is absolutely pathetic.

19 Okay. The springs and gypsum sinkholes in  
20 Bitter Lake National Wildlife Refuge and Blue Springs  
21 are the only areas of regular occurrence of these  
22 endangered fish -- the only ones in the US. The natural  
23 populations live in Sinkholes #7, 20, 27, Sago Spring  
24 and Dragonfly Spring.

25 There is a spring that I haven't been able to

1 find the name of that is directly less than one mile  
2 southeast -- the way that the waters would run through  
3 this area, directly southeast of this lagoon of Valley  
4 Meat. It's an underground system that runs through the  
5 alluvial soils and will go directly into these lagoons.

6 For the Environmental Department to actually  
7 defend the opening of this place and disregard the clean  
8 waters of New Mexico is absolutely a failure.

9 The gambusia was a federal -- was federally  
10 listed as endangered. The Pecos pupfish was listed as  
11 threatened in New Mexico in 1998 and is proposed for  
12 federal listing as endangered. The pupfish is found  
13 from Roswell to Independence Creek, Texas. It is found  
14 in the Pecos River, in creeks, and in these gypsum  
15 sinkholes -- nowhere else.

16 They are collected from the Bitter Lake  
17 National Wildlife Refuge, which is directly above  
18 Mr. De Los Santos' facility, and they run to Malaga  
19 Bend. The largest populations are in Black Lake -- or  
20 in Bitter Lake National Wildlife, and they are in  
21 artificial impounds, gypsum sinkholes and isolated Oxbow  
22 Lakes. They also persist in Bottomless Lakes State  
23 Park, which is just a little bit south of this area,  
24 which is called an area of critical environmental  
25 concern.

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1           The bluntnose shiner was listed by New Mexico  
2 as threatened in 1976. It's federally listed as  
3 threatened with critical habitat. This critical habitat  
4 is the area between Bitter Lake National Wildlife on the  
5 north and Bottomless Lakes State Park on the south,  
6 which is only a -- I believe it's a six-mile spread of  
7 river.

8           This is directly in the line of any  
9 catastrophic happening that could happen at Mr. De Los  
10 Santos' property. It could be a monsoon that dumps six  
11 to eight inches of rain at one time. It could be a  
12 critical collapse. This area is a karst area. There  
13 could be a karst forming right now as we speak under  
14 Valley Meat.

15           This has happened across the country numerous  
16 times, in Minnesota and different states, where there is  
17 what's called a critical collapse, where the bottom  
18 basically falls out and into the -- into the clean water  
19 goes the blood, the guts, whatever, the manure.

20           So for our environmental people to stand here  
21 and sit here and defend this is beyond reason to me.

22           The proposed restoration project is a  
23 reasonable and prudent measure. This is referring to  
24 the area between Bitter Lake and Bottomless Lakes. It's  
25 referred to as a reasonable and proven measure to be

1 restored for the bluntnose shiner. This is from the  
2 Biological Opinion of the Carlsbad Water Operations EIS  
3 2006.

4 The area -- the rivers flow out into reaches.  
5 The reaches #4 and 5, which are directly in the same  
6 critical area, between Bitter Lake and Bottomless Lakes,  
7 they -- these are areas stated to be the most beneficial  
8 habitat for the Pecos bluntnose shiner -- I'm sorry,  
9 shiner, and that would be from Bitter Lake to Hagerman.

10 So as you can see, this is your -- your area  
11 here, this is -- this is the only area that we're  
12 talking about, and this is the area that our  
13 Environmental Department should be defending, not trying  
14 to pollute.

15 The flows there are perennial, that's why it's  
16 considered good habitat, because there is continual flow  
17 from the Pecos slope across this short six-, seven-mile  
18 stretch to the river. That's why this area is  
19 important, because of the groundwater flow.

20 I've seen a report where the -- where the man  
21 who was supposed to dig the lagoon for Valley Meat  
22 refused to do it because he said that it was a watershed  
23 area, that -- and that the water level was only at four  
24 feet deep at that time.

25 Okay. So this area is riparian habitat, needs

1 to be taken care of. We need to keep these shiners  
2 alive, because they are what feed the other fish. The  
3 other fish are what feed us.

4 So Valley Meat's past history and failure to  
5 comply with clean water concerns does not need to be  
6 given a second chance to further pollute our rivers and  
7 streams.

8 Please, Mr. De Los Santos, find another line  
9 of work.

10 MS. ORTH: Thank you, Mrs. Carter.

11 Is there anyone else who has changed their  
12 mind and wanted to make public comment before we return  
13 to the technical case?

14 I see no hands.

15 Thank you all very much for that.

16 Again, until we close the record, either later  
17 tonight or tomorrow, anyone may submit written comments  
18 to Sally or to the court reporter.

19 So, counsel, let's talk about resuming the  
20 technical case.

21 We know that Mr. Dunn has rebuttal. We would  
22 probably take a dinner break before we did that.

23 Should we just pick up in the morning?

24 MR. DUNN: Your Honor, I would prefer to pick  
25 up in the morning. I'd like to discuss some of that

1 rebuttal testimony and go over a few things with the  
2 witnesses tonight.

3 MS. ORTH: All right.

4 Mr. Powers?

5 MR. POWERS: Are we eligible to come back in  
6 after we talk with the sheriff?

7 MS. ORTH: After you talk with the sheriff?

8 MR. POWERS: Ms. Worthington talked with  
9 security to let us know if we were going to be able to  
10 do that.

11 MS. ORTH: Sally?

12 MS. WORTHINGTON: I'm sorry, I didn't hear  
13 what you said.

14 MR. POWERS: Ms. Worthington, did the sheriff  
15 allow us to come back in after a dinner break, or are we  
16 excluded?

17 MS. WORTHINGTON: He allowed us to let -- have  
18 someone down there to let people in after 5:00 when the  
19 building is closed. If you want me to go ask about a  
20 dinner break, I can ask about a dinner break.

21 MS. ORTH: Let's not yet.

22 I understand your point, Mr. Powers, it will  
23 be logistically difficult to go away and then come back.

24 MR. POWERS: Your Honor, we're fine. The  
25 state has prepared to stay the night. It's too late to

1 cancel reservations, so we're willing to do whatever  
2 Mr. Wagman and Mr. Dunn are wanting to do. We're here.

3 MS. ORTH: And what about coming back in the  
4 morning?

5 MR. POWERS: Yes. That's what I mean.

6 MS. ORTH: All right.

7 Mr. Wagman?

8 MR. WAGMAN: Madam Hearing Officer, we don't  
9 anticipate much rebuttal from us at all and would very  
10 much appreciate finishing tonight so that we could  
11 travel tomorrow early.

12 MS. ORTH: Right.

13 MR. BIERNOFF: And just piggybacking on that,  
14 I think it would be helpful if we could get just a rough  
15 time estimate from other counsel of what they anticipate  
16 for rebuttal testimony for planning purposes, because as  
17 Mr. Wagman said, I think our rebuttal is going to be  
18 very limited.

19 It seems like public comment, unless there is  
20 a bunch of new folks that have added their names  
21 recently, is well underway, and it seems, since it's not  
22 even 6:00, like it would be very realistic to wrap up in  
23 the next few hours.

24 MS. ORTH: All right. So let me ask.

25 Mr. Dunn, how much rebuttal do you anticipate?

1 MR. DUNN: I'd actually need the time --  
2 probably a break now to confer with my clients and with  
3 our experts before we do that.

4 MS. ORTH: Okay. Shall we take a break, then,  
5 and come back on the record in about ten minutes?

6 MR. DUNN: I'd voice my request that we resume  
7 in the morning.

8 MR. POWERS: Your Honor, I'd have to talk with  
9 my staff or talk with counsel. I mean, we might be --  
10 we're willing to do it tomorrow.

11 MS. ORTH: Okay. Mr. Dunn, you might -- well,  
12 we'll see. Let's regroup in ten minutes.

13 (Recess held.)

14 MS. ORTH: Let's come back from the break,  
15 please.

16 All right. So we are back after the break.  
17 We'll call on Mr. Powers first.

18 Mr. Powers, you apparently just had a  
19 conversation with the sheriff.

20 MR. POWERS: Yes, Madam Hearing Officer. I  
21 talked to the security down below. If we leave the  
22 building, we will not get back in tonight. They will  
23 close the door.

24 So with that said, I would prefer to pick it  
25 up in the morning.

1 MS. ORTH: All right.

2 Mr. Dunn?

3 MR. DUNN: I anticipate we're going to  
4 potentially have at least another couple hours for  
5 rebuttal testimony between the witnesses we have and the  
6 Department, but additionally Dr. Blach does need to go,  
7 he has other engagements he needs to be at tonight.

8 I'd ask the indulgence to bring him back in  
9 the morning instead of tonight.

10 MS. ORTH: Okay. He needs to go, but can come  
11 back in the morning.

12 MR. DUNN: Yes, ma'am.

13 MS. ORTH: Okay.

14 Mr. Biernoff?

15 MR. BIERNOFF: Your Honor, I'm concerned that  
16 counsel on the other side of the aisle here are perhaps  
17 looking for a strategic advantage to gain from  
18 adjourning and reconvening in the morning rather than  
19 any legitimate need to present testimony.

20 I guess, first of all, I'm concerned by  
21 Mr. Dunn's estimate that he's looking at several hours  
22 of rebuttal testimony, that's many times the amount of  
23 initial testimony that he elicited, and I'm not really  
24 sure where that's going, but I just want to flag that as  
25 a concern.

1 I would say that even if there is two hours of  
2 rebuttal testimony from Mr. Dunn, that puts us at 8:00  
3 or 9:00, and that's certainly a very plausible hour to  
4 be concluding. Just as Dr. Blach has other engagements,  
5 many of the rest of us also have other engagements. If  
6 Dr. Blach needs to be excused for a finite period of  
7 time, perhaps that can be done and his testimony can be  
8 rearranged to fit his schedule tonight.

9 I don't think we've heard anything that  
10 justifies terminating the proceedings now at 6:00 and  
11 adjourning this to another day.

12 So I'd ask that you stick to the schedule that  
13 was originally contemplated.

14 MS. ORTH: Okay. But I -- my understanding of  
15 the schedule that was originally contemplated was two  
16 days; that is to say, today and tomorrow as necessary.

17 MR. BIERNOFF: And I'm suggesting,  
18 respectfully, that it doesn't sound like it's really  
19 necessary for us to continue until tomorrow; that if  
20 there is even a few more hours of testimony, we should  
21 be able to accomplish that this evening.

22 And like I said, I'm concerned that there may  
23 be other -- other reasons behind it, and we won't  
24 explore that, because it's just --

25 MS. ORTH: Right. The motivation really is --

1 is almost never of interest or relevance to me.

2 MR. BIERNOFF: Okay.

3 MS. ORTH: But I'm concerned that we -- one, I  
4 don't understand the strategic advantage merely by  
5 taking the second day of a two-day hearing we had  
6 scheduled.

7 Plus, I'm concerned about proceeding through  
8 the evening without giving people a chance to even step  
9 out of the building for a little bit of time before we  
10 hit rebuttal, because ordinarily we wouldn't just march  
11 all the way through the dinner hour without -- whether  
12 you're hungry or not --

13 MR. BIERNOFF: Okay.

14 MS. ORTH: -- allowing people to just to step  
15 away from the hearing, but we don't have that.

16 MR. BIERNOFF: Well, certainly, we don't want  
17 anyone to starve.

18 I had understood that we would have access to  
19 this facility as needed, and so I was a little surprised  
20 by Mr. Powers' announcement that he had just now  
21 conferred with building staff and that we were not going  
22 to be able to go in and out.

23 If that is indeed the case, then, of course,  
24 it's Your Honor's decision, but I do want to point out  
25 that several of us -- not me, because I'm -- I'm here in

1 the state, but many of the other people at this table do  
2 have travel and do need to be elsewhere tomorrow, and  
3 that out of fairness to them, I think we should make an  
4 effort to see how far we can get, and if we're able to  
5 conclude at a reasonable hour, then I think we should do  
6 that, or at least aim for that, and if we're still not  
7 able to, then I absolutely understand if the way we have  
8 to do it is to adjourn and start again in the morning.  
9 But I'd just request that we make that effort.

10 MS. ORTH: All right.

11 Mr. Dunn?

12 MR. DUNN: First thing, you've hit on an  
13 important point, which is that not only myself but  
14 probably most everybody in this room has to consume food  
15 at some point. I personally am one that definitely  
16 needs to.

17 I tend to get a little bit cranky when I don't  
18 eat, as I am becoming right now hearing this implication  
19 that I'm somehow misleading you or that there is some  
20 sort of strategic advantage.

21 One, if there is a strategic advantage being  
22 sought here, it seems to be on the part of the Attorney  
23 General's Office to limit testimony and to diminish the  
24 capacity of my witnesses to actually present the  
25 testimony.

1           There is no other strategic advantage, I do  
2 take affront to that, but that could just be my low  
3 blood sugar talking.

4           So I'd again ask if we could, you know, resume  
5 again in the morning and allow my witnesses to go home  
6 and handle their business.

7           MS. ORTH: Right. All right.

8           Mr. Wagman?

9           MR. WAGMAN: Madam Hearing Officer, I just  
10 would request, it seems that's where we're going, and if  
11 it's possible to commence an hour earlier so those of us  
12 who are flying out of state might be able to make  
13 flights that we made arrangements for thinking things  
14 were going to end today. So if we could start at 8:00  
15 or earlier.

16           MS. ORTH: At 8:00 instead of 9:00? I don't  
17 think we can start earlier than 8:00. Is that true?

18           MS. WORTHINGTON: I think they open the  
19 building at 8:00.

20           STATE POLICE OFFICER: The building is open at  
21 8:00. Maybe I can talk with the captain to see if they  
22 can get people here a little bit earlier. I know they  
23 have me in at 8:00, and I'd have to find out from the  
24 others, but I could ask them, if you'd like.

25           MS. ORTH: Yeah, I wouldn't ask to get here

1 earlier than 8:00, actually. I think 8:00 is a decent  
2 compromise.

3 Mr. Powers?

4 MR. POWERS: Your Honor, I know you expressed  
5 this earlier, and all of that aside, these proceedings  
6 are allowed to get the maximum extent of public  
7 comment.

8 I'm uncertain if I really understood the  
9 hearing order that we would go into the next day or  
10 there would be two days of hearing. I understand from  
11 your earlier comment that we would definitely start  
12 today and if necessary go tomorrow.

13 MS. ORTH: Right.

14 MR. POWERS: I'm unsure if the public  
15 understands that clearly. I thought we were certainly  
16 going to have open public comment tomorrow. So --

17 MS. ORTH: I will have public comment  
18 tomorrow. I will invite public comment tomorrow.

19 MR. POWERS: All right.

20 MS. ORTH: I believe it's my responsibility,  
21 under either one set of regs or the other, to invite  
22 public comment each and every day of a multi-day  
23 hearing.

24 MR. POWERS: Right. Okay.

25 MS. ORTH: So, absolutely.

1 MR. POWERS: I just wanted to make sure.

2 MS. ORTH: But as to the presentation of the  
3 technical case, I believe so long as the technical  
4 parties are informed as to when we're doing it and where  
5 we're doing it, the fact that we change it is not an  
6 issue.

7 MR. POWERS: Okay.

8 MR. DUNN: And if the public were to observe  
9 that -- or want to observe that technical testimony,  
10 they wouldn't have notice of that change.

11 MS. ORTH: That's true.

12 MR. DUNN: And then, second, there was -- the  
13 reasoning behind starting earlier was so that an  
14 out-of-state attorney could take off and get out of  
15 here.

16 Part of what they had talked about in their  
17 motion for not having local counsel present was that  
18 that wouldn't in any way impair these proceedings. This  
19 seems to be some sort of change to these proceedings  
20 based upon the fact that it's an out-of-state, non-  
21 licensed New Mexico attorney.

22 MS. ORTH: All right. So I know that's an  
23 issue you care about, Mr. Dunn. However, I think it's a  
24 reasonable -- a reasonable compromise. I don't find it  
25 offensive that an attorney would ask for some

1 consideration for travel.

2 And on your first point, as I understand the  
3 case law, if someone is following along with us and  
4 would know when we're meeting tomorrow, that's as far as  
5 we need to go.

6 That is to say, we don't -- it's not a  
7 violation of due process that not everyone will have  
8 been informed ahead of time that we would start at 8:00  
9 instead of 9:00, because if you're here tonight, you  
10 know that that's when we're starting.

11 So let's do that. Again, I think it's a  
12 reasonable compromise, and the building is open at 8:00.  
13 So let's start as soon after 8:00 as we can, knowing  
14 that we'll all sort of be coming in the building at that  
15 point. So let's try to start at 8:00.

16 MR. POWERS: And barring instruction from  
17 Kenny Cohort, who is allowing us to use this courthouse,  
18 as well as the state police, I know their representative  
19 is here, maybe after we adjourn, we can all just  
20 coordinate just briefly if that's going to be okay with  
21 the state police as well as with the court.

22 MS. ORTH: Okay. Thank you.

23 MR. POWERS: Okay.

24 MS. ORTH: All right. We'll adjourn for the  
25 night.

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MR. BIERNOFF: Thank you.

MR. WAGMAN: Thank you, Madam Hearing  
Officer.

(Proceedings recessed at 6:10 PM.)

1 STATE OF NEW MEXICO )

2 ) ss.

3 COUNTY OF BERNALILLO)

4 I, Kathy Townsend, the officer before whom the  
5 foregoing hearing was taken, do hereby certify that the  
6 witnesses whose testimony appears in the foregoing  
7 transcript were duly sworn by me; that I personally  
8 recorded the testimony by machine shorthand; that said  
9 transcript is a true record of the testimony given by  
10 said witnesses; that I am neither attorney nor counsel  
11 for, nor related to or employed by any of the parties to  
12 the action in which this matter is taken, and that I am  
13 not a relative or employee of any attorney or counsel  
14 employed by the parties hereto or financially interested  
15 in the action.

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<b>0</b>						
<b>1</b>	<b>09-13(R)</b> [1] - 10:3					
<b>1</b>	<b>1</b> [8] - 1:19, 6:16, 7:12, 7:13, 121:5, 212:11, 254:24, 294:8 <b>1,000</b> [3] - 41:11, 41:22, 42:2 <b>1,100</b> [4] - 41:11, 41:22, 42:2, 109:17 <b>1,100-pound</b> [1] - 41:21 <b>1,2</b> [1] - 179:14 <b>1,200</b> [1] - 41:14 <b>1,200-pound</b> [1] - 41:22 <b>1,800</b> [1] - 109:17 <b>1.2</b> [1] - 355:1 <b>1.6</b> [2] - 32:21, 32:22 <b>1.62</b> [1] - 124:6 <b>1/22/10</b> [1] - 7:20 <b>1/23/09</b> [1] - 9:20 <b>1/8/92</b> [1] - 9:12 <b>10</b> [4] - 7:4, 8:3, 191:15, 230:24 <b>10-16</b> [1] - 19:12 <b>10-16-8(B)</b> [3] - 17:19,					

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<b>3</b>	<b>4/12/13</b> [1] - 6:20 <b>40</b> [9] - 10:2, 26:20, 30:18, 58:6, 58:10, 72:25, 112:13, 189:25, 190:12 <b>40-mil</b> [2] - 30:15, 30:20 <b>400</b> [1] - 1:16 <b>4000</b> [1] - 308:25 <b>41</b> [1] - 10:4 <b>415-901-8700</b> [1] - 3:7 <b>42</b> [2] - 10:6, 199:9 <b>429</b> [1] - 236:1 <b>43</b> [1] - 10:7 <b>44</b> [1] - 10:8 <b>45</b> [3] - 10:10, 128:11, 254:24 <b>481</b> [1] - 197:7 <b>4th</b> [4] - 127:9, 127:14, 127:22, 234:22	360:18	73:5, 73:6, 91:6, 91:15, 102:3, 124:4, 124:12, 124:24, 128:16, 129:6, 129:7, 129:11, 134:5, 180:4, 180:9, 181:12, 181:13, 225:6, 225:18, 225:19, 227:14, 228:6, 279:12, 279:21, 279:24, 344:19	<b>abiding</b> [1] - 53:20 <b>abiernoff@nmag.gov</b> [1] - 2:20 <b>ability</b> [2] - 189:11, 263:3 <b>able</b> [29] - 13:7, 55:7, 57:6, 60:14, 60:18, 75:19, 104:15, 121:9, 167:19, 193:10, 202:12, 226:11, 233:10, 237:21, 241:1, 246:19, 254:12, 275:14, 276:14, 291:16, 332:22, 333:8, 355:25, 360:9, 364:21, 365:22, 366:4, 366:7, 367:12 <b>absolutely</b> [14] - 20:16, 55:10, 146:3, 146:5, 170:2, 170:16, 171:21, 185:23, 346:21, 347:17, 355:18, 356:8, 366:7, 368:25 <b>abuse</b> [2] - 187:11, 347:20 <b>abused</b> [1] - 333:24 <b>abysmal</b> [1] - 198:5 <b>accept</b> [4] - 24:9, 24:11, 24:14, 253:6 <b>acceptable</b> [3] - 18:7, 22:19, 210:18 <b>accepted</b> [3] - 24:1, 24:2, 88:12 <b>access</b> [1] - 365:18 <b>accidentally</b> [1] - 191:19 <b>accommodate</b> [1] - 234:2 <b>accomplish</b> [1] - 364:21 <b>accordance</b> [1] - 196:20 <b>according</b> [6] - 138:11, 233:12, 340:12, 351:22, 351:25, 352:4 <b>account</b> [2] - 135:19, 204:10 <b>accounts</b> [1] - 247:9 <b>accumulate</b> [1] - 311:3 <b>accuracy</b> [1] - 111:14 <b>accurate</b> [9] - 101:8, 113:25, 174:10, 175:17, 277:22, 279:8, 286:17, 289:9, 306:24
<b>3</b>	<b>3</b> [6] - 6:19, 7:15, 177:18, 294:7, 349:16 <b>3,000</b> [2] - 57:18, 91:2 <b>3,489</b> [1] - 344:8 <b>3/19/03</b> [1] - 9:16 <b>30</b> [9] - 9:5, 49:9, 54:23, 55:11, 58:6, 58:10, 72:25, 302:21, 302:22 <b>30-day</b> [1] - 303:13 <b>30-year</b> [1] - 69:6 <b>300</b> [2] - 235:6, 237:10 <b>31</b> [1] - 9:10 <b>3103</b> [3] - 295:23, 296:13, 297:24 <b>3109</b> [3] - 295:20, 295:25, 296:18 <b>32</b> [1] - 9:12 <b>323</b> [1] - 5:6 <b>32nd</b> [1] - 3:6 <b>33</b> [1] - 9:14 <b>332</b> [1] - 5:8 <b>335</b> [1] - 5:9 <b>339</b> [1] - 5:10 <b>34</b> [1] - 9:16 <b>344</b> [1] - 5:11 <b>346</b> [1] - 5:12 <b>349</b> [1] - 5:13 <b>35</b> [7] - 9:18, 26:20, 73:4, 112:12, 122:16, 212:8, 303:4 <b>350</b> [1] - 41:24 <b>351</b> [1] - 5:14 <b>353</b> [1] - 5:15 <b>36</b> [1] - 9:20 <b>37</b> [1] - 9:21 <b>38</b> [2] - 9:22, 27:18 <b>386</b> [1] - 3:11 <b>39</b> [4] - 9:23, 280:5, 280:6, 280:7 <b>39.3</b> [1] - 99:1, 99:2, 99:21, 101:18, 111:9, 128:21, 226:7, 228:3, 228:8, 228:21, 278:16 <b>3rd</b> [4] - 35:3, 35:6, 132:22, 234:18	<b>6</b>	<b>6</b> [4] - 6:22, 7:20, 31:12, 124:11 <b>6,000</b> [2] - 335:20, 338:22 <b>6-acre</b> [2] - 32:21, 124:1 <b>6.A</b> [1] - 314:13 <b>6/18/2013</b> [1] - 324:23 <b>6/2/82</b> [1] - 10:7 <b>60</b> [2] - 42:1, 302:10 <b>63</b> [6] - 6:4, 6:6, 6:8, 6:10, 6:11, 6:13 <b>64</b> [1] - 4:5 <b>6605</b> [1] - 2:13 <b>6:00</b> [2] - 361:22, 364:10 <b>6:10</b> [1] - 371:4 <b>6th</b> [1] - 127:23	<b>abandonment</b> [1] - 286:20 <b>abatement</b> [3] - 308:23, 309:1, 318:1 <b>abduinn@</b> <b>ablairduinn</b> [1] - 2:15 <b>abduinn@</b> <b>ablairduinn-esq.com</b> [1] - 2:15 <b>abide</b> [1] - 50:4
<b>4</b>	<b>5</b>	<b>7</b>	<b>9</b>	
<b>4</b>	<b>5</b> [4] - 6:21, 7:18, 95:4, 358:5 <b>5,000</b> [8] - 124:4, 124:12, 128:3, 128:15, 234:25, 235:4, 237:9, 334:18 <b>5/05</b> [1] - 9:9 <b>5/15/13</b> [1] - 9:2 <b>5/26/82</b> [1] - 8:23 <b>5/7/10</b> [1] - 9:18 <b>50</b> [6] - 26:22, 65:15, 106:25, 145:10, 326:8, 326:11 <b>501(c)(3)s</b> [1] - 347:2 <b>501(c)(4)</b> [1] - 187:16 <b>501(c)(4)s</b> [1] - 347:2 <b>502(c)(3)s</b> [1] - 339:11 <b>505-827-2982</b> [1] - 2:10 <b>505-827-6086</b> [1] - 2:20 <b>505-881-5155</b> [1] - 2:15 <b>517</b> [2] - 230:12, 230:13 <b>52</b> [1] - 299:13 <b>53</b> [2] - 26:9, 352:20 <b>532</b> [2] - 278:8 <b>540-268-5693</b> [1] - 3:12 <b>55</b> [1] - 65:15 <b>58,000</b> [1] - 341:23 <b>5:00</b> [3] - 12:9, 12:11, 360:18	<b>8</b>	<b>7</b> [18] - 6:23, 7:22, 95:6, 218:5, 219:21, 220:11, 220:22, 245:19, 246:24, 247:17, 248:9, 254:15, 254:16, 267:16, 312:16, 312:17, 312:21, 355:23 <b>7,000</b> [1] - 351:8 <b>7/23/10</b> [1] - 9:21 <b>70</b> [2] - 42:21, 351:21 <b>72</b> [1] - 299:12 <b>75</b> [4] - 111:10, 203:4, 228:16, 229:1 <b>77</b> [1] - 39:6 <b>77-2</b> [1] - 264:8 <b>77-2-1.1</b> [2] - 38:18, 264:13 <b>7th</b> [5] - 212:10, 287:15, 302:22	<b>A</b>
<b>4</b>	<b>4</b> [4] - 6:20, 7:15, 7:17, 358:5 <b>4,000</b> [1] - 37:17 <b>4,510</b> [1] - 128:12 <b>4-7</b> [1] - 179:14	<b>8</b> [6] - 6:24, 7:24, 175:20, 312:16, 312:17, 312:21 <b>8,000</b> [39] - 36:1, 36:5, 48:18, 56:12, 56:17, 56:19, 57:13, 57:16, 57:18, 58:13, 58:17, 58:23, 72:21, 73:5, 73:6, 91:6, 91:15, 102:3, 124:4, 124:12, 124:24, 128:16, 129:6, 129:7, 129:11, 134:5, 180:4, 180:9, 181:12, 181:13, 225:6, 225:18, 225:19, 227:14, 228:6, 279:12, 279:21, 279:24, 344:19 <b>8,000-gallon</b> [1] - 338:16 <b>8/2/12</b> [1] - 9:23 <b>8/24/95</b> [1] - 9:14 <b>8/26/03</b> [1] - 230:24 <b>8/29/03</b> [1] - 8:24 <b>80</b> [3] - 107:4, 344:12, 344:20 <b>80,000</b> [1] - 48:18 <b>87</b> [1] - 4:6 <b>87110</b> [1] - 2:14 <b>87501</b> [2] - 2:5, 2:10 <b>87504-1508</b> [1] - 2:19 <b>8:00</b> [13] - 364:2, 367:14, 367:16, 367:17, 367:19, 367:21, 367:23, 368:1, 370:8, 370:12, 370:13, 370:15	<b>9</b>	<b>9</b> [7] - 7:2, 8:2, 35:21, 39:6, 312:12, 312:16, 312:17 <b>9-14</b> [1] - 179:14 <b>9/10/13</b> [1] - 10:9 <b>9/12/2017</b> [1] - 372:20 <b>9/3/87</b> [1] - 9:10 <b>90</b> [1] - 13:12 <b>94</b> [1] - 4:8 <b>94105</b> [1] - 3:6 <b>9:00</b> [4] - 1:17, 364:3, 367:16, 370:9
<b>4</b>	<b>4</b> [4] - 6:20, 7:15, 7:17, 358:5 <b>4,000</b> [1] - 37:17 <b>4,510</b> [1] - 128:12 <b>4-7</b> [1] - 179:14	<b>8</b>	<b>A</b>	

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>acidic</b> [1] - 300:4  <b>acids</b> [2] - 263:18, 263:20  <b>acknowledge</b> [1] - 353:5  <b>acre</b> [1] - 91:7  <b>acres</b> [2] - 124:7, 355:2  <b>Acriflavine</b> [1] - 251:2  <b>Act</b> [4] - 213:24, 297:3, 298:16, 337:13  <b>Act/the</b> [1] - 213:14  <b>acted</b> [1] - 25:8  <b>action</b> [7] - 221:13, 308:21, 313:12, 313:21, 314:1, 372:12, 372:15  <b>actions</b> [11] - 18:24, 19:16, 257:12, 257:14, 289:20, 309:14, 318:1, 321:10, 321:15, 321:16, 321:24  <b>Activated</b> [2] - 8:19, 212:20  <b>activated</b> [2] - 242:8, 242:11  <b>active</b> [2] - 138:5, 349:16  <b>activities</b> [5] - 226:6, 262:9, 265:22, 282:15, 320:8  <b>activity</b> [10] - 74:1, 81:3, 176:19, 224:8, 266:11, 266:14, 267:1, 290:3, 308:19, 316:11  <b>actual</b> [15] - 18:16, 76:8, 77:14, 78:4, 101:3, 201:22, 204:4, 266:14, 282:20, 282:21, 282:22, 282:24, 282:25, 283:2, 283:3  <b>acutely</b> [1] - 351:11  <b>add</b> [7] - 41:3, 79:18, 175:11, 177:8, 214:1, 214:18, 218:22  <b>added</b> [1] - 361:20  <b>adding</b> [1] - 307:13  <b>addition</b> [4] - 82:9, 245:2, 245:16, 336:8  <b>additional</b> [10] - 82:7, 168:1, 223:8, 226:12, 227:7, 227:18, 238:17, 238:21, 307:13  <b>additionally</b> [3] - 352:7, 352:22, 363:6</p>	<p><b>address</b> [4] - 21:1, 123:24, 223:9, 246:22  <b>addressed</b> [2] - 17:7, 323:22  <b>adequacy</b> [1] - 258:21  <b>adequate</b> [7] - 38:2, 62:3, 124:10, 124:12, 124:15, 196:7, 276:7  <b>adequately</b> [1] - 17:7  <b>adhere</b> [1] - 47:20  <b>adjoining</b> [1] - 355:3  <b>adjourn</b> [4] - 255:6, 366:8, 370:19, 370:24  <b>adjourning</b> [2] - 363:18, 364:11  <b>adjudicatory</b> [2] - 214:3, 214:6  <b>adjusted</b> [1] - 198:3  <b>Adjustments</b> [1] - 196:23  <b>admin</b> [1] - 245:11  <b>admini</b> [1] - 25:13  <b>administer</b> [1] - 146:18  <b>administered</b> [22] - 23:1, 43:4, 46:3, 46:10, 50:17, 51:8, 51:20, 54:23, 55:6, 145:6, 150:8, 150:24, 157:2, 169:10, 171:1, 171:4, 172:17, 186:22, 211:9, 268:24, 331:24, 345:22  <b>administration</b> [4] - 143:13, 146:15, 146:24, 221:18  <b>Administrative</b> [4] - 9:23, 11:11, 265:16, 323:23  <b>administrative</b> [21] - 13:20, 25:13, 35:13, 62:7, 101:3, 111:10, 131:6, 131:10, 179:2, 179:8, 179:11, 217:16, 233:8, 234:11, 254:8, 254:9, 278:5, 278:7, 287:14, 303:23, 321:17  <b>administratively</b> [1] - 35:4  <b>administrator</b> [1] - 131:5  <b>administrators</b> [2] - 131:1, 131:3  <b>admission</b> [2] - 243:4, 243:13  <b>admit</b> [2] - 175:15, 194:2</p>	<p><b>ADMITTED</b> [1] - 6:1  <b>admitted</b> [13] - 63:16, 63:18, 175:19, 175:20, 177:17, 177:18, 179:13, 179:14, 188:23, 229:14, 244:18, 246:10, 254:24  <b>adopt</b> [8] - 174:9, 213:6, 244:5, 252:9, 260:17, 297:21, 298:4, 307:7  <b>adopted</b> [1] - 214:5  <b>Adopted</b> [1] - 10:8  <b>Adrian</b> [2] - 10:4, 315:3  <b>advance</b> [1] - 216:17  <b>advantage</b> [5] - 363:17, 365:4, 366:20, 366:21, 367:1  <b>advocates</b> [1] - 336:2  <b>affected</b> [3] - 48:6, 348:19  <b>affects</b> [1] - 48:4  <b>Affidavit</b> [1] - 9:4  <b>affidavits</b> [1] - 276:23  <b>affront</b> [1] - 367:2  <b>afield</b> [1] - 160:11  <b>afternoon</b> [13] - 17:12, 17:18, 172:16, 173:6, 176:6, 176:7, 211:15, 211:16, 241:24, 241:25, 285:9, 285:10, 349:11  <b>ag</b> [5] - 263:15, 264:4, 299:17, 301:20, 350:5  <b>age</b> [2] - 87:23, 307:23  <b>agencies</b> [1] - 149:11  <b>agency</b> [10] - 103:12, 182:20, 183:1, 219:10, 325:22, 326:16, 336:10, 337:12, 338:2, 338:18  <b>ago</b> [14] - 38:13, 118:20, 118:22, 128:10, 160:11, 191:15, 208:18, 214:5, 222:11, 237:8, 249:24, 325:8, 343:6, 350:11  <b>AGO</b> [1] - 7:11  <b>AGO/FRER</b> [1] - 254:24  <b>agree</b> [10] - 69:19, 178:6, 200:8, 289:24,</p>	<p>290:8, 290:9, 303:12, 303:24, 308:3, 310:19  <b>agreed</b> [3] - 14:25, 231:23, 232:14  <b>agreeing</b> [1] - 293:2  <b>agreement</b> [2] - 118:16, 287:6  <b>Agricultural</b> [2] - 8:17, 190:8  <b>agricultural</b> [6] - 121:13, 121:14, 239:10, 263:9, 272:14, 333:3  <b>agricultural-type</b> [1] - 263:9  <b>Agriculture</b> [2] - 95:24, 342:9  <b>agriculture</b> [2] - 349:24, 350:3  <b>ahead</b> [21] - 27:25, 33:10, 100:23, 103:5, 104:17, 108:2, 112:1, 114:12, 124:4, 172:19, 179:22, 189:9, 197:14, 201:25, 219:14, 222:12, 233:3, 242:24, 268:17, 325:25, 370:8  <b>aim</b> [1] - 366:6  <b>aisle</b> [1] - 363:16  <b>alarmed</b> [1] - 352:10  <b>alarming</b> [1] - 353:11  <b>Albuquerque</b> [1] - 2:14  <b>alert</b> [1] - 187:25  <b>alive</b> [2] - 345:9, 359:2  <b>Alliance</b> [8] - 3:8, 3:10, 16:20, 187:15, 190:2, 190:3, 332:6, 346:25  <b>allotted</b> [1] - 237:18  <b>allow</b> [6] - 216:14, 253:4, 349:4, 355:15, 360:15, 367:5  <b>allowed</b> [17] - 66:21, 71:20, 72:8, 72:10, 72:21, 79:9, 88:7, 216:15, 220:13, 225:8, 240:9, 248:21, 273:12, 313:11, 345:5, 360:17, 368:6  <b>allowing</b> [6] - 21:8, 160:19, 201:12, 205:5, 365:14, 370:17  <b>allows</b> [5] - 88:17, 180:3, 225:3, 225:5, 341:13  <b>alluvial</b> [1] - 356:5</p>	<p><b>almost</b> [1] - 365:1  <b>alone</b> [1] - 42:5  <b>altered</b> [1] - 174:14  <b>altogether</b> [1] - 44:1  <b>AM</b> [1] - 1:17  <b>amend</b> [1] - 59:1  <b>amended</b> [2] - 81:13, 245:4  <b>amendment</b> [3] - 59:7, 81:20, 82:4  <b>America</b> [2] - 139:9, 158:19  <b>American</b> [8] - 26:11, 26:12, 66:23, 117:21, 335:17, 336:4, 346:24, 354:11  <b>Americans</b> [3] - 209:6, 344:13, 344:20  <b>aminoglycosides</b> [1] - 50:24  <b>amount</b> [31] - 30:6, 89:1, 89:2, 99:5, 102:1, 109:12, 110:14, 110:20, 110:21, 111:1, 115:10, 123:24, 124:2, 124:15, 124:19, 128:7, 135:12, 182:17, 182:24, 194:25, 233:23, 236:12, 236:13, 280:11, 283:10, 284:7, 292:1, 292:20, 338:15, 363:22  <b>amounts</b> [2] - 40:25, 139:20  <b>amoxicillin</b> [2] - 251:7, 274:20  <b>ample</b> [1] - 252:6  <b>analyses</b> [1] - 254:8  <b>analysis</b> [1] - 190:4  <b>Analytical</b> [2] - 7:5, 7:7  <b>analyzing</b> [1] - 158:24  <b>AND</b> [3] - 4:3, 7:11, 23:6  <b>animal</b> [65] - 23:19, 26:7, 27:12, 27:23, 42:14, 43:8, 43:10, 45:19, 45:22, 47:23, 48:9, 50:15, 50:19, 51:1, 51:18, 51:24, 54:1, 56:13, 58:6, 58:7, 58:10, 71:8, 88:2, 89:1, 98:9, 110:9, 114:24, 115:9, 136:9, 143:24, 144:1, 144:2, 144:4, 150:24,</p>
--	---	--	---	--

KATHY TOWNSEND COURT REPORTERS

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(505) 243-5018 - Fax (505) 243-3606

<p>155:24, 156:2, 156:3, 164:21, 165:1, 169:8, 169:15, 169:16, 209:1, 209:2, 218:23, 235:24, 237:10, 237:12, 264:19, 268:1, 269:18, 270:23, 271:1, 271:4, 272:17, 276:13, 279:3, 280:12, 282:6, 282:8, 284:13, 284:19, 284:23, 284:24, 314:19</p> <p><b>Animal</b> [5] - 8:15, 8:18, 9:9, 332:6, 351:6</p> <p><b>animal's</b> [2] - 51:9, 51:11</p> <p><b>Animals</b> [1] - 335:18</p> <p><b>animals</b> [79] - 26:9, 26:15, 38:24, 39:1, 39:19, 41:1, 41:9, 43:5, 43:7, 47:14, 51:5, 57:15, 87:11, 87:21, 99:4, 116:4, 128:18, 132:6, 138:18, 140:6, 140:17, 141:10, 143:1, 144:10, 146:16, 146:24, 148:5, 148:15, 159:19, 159:24, 160:3, 161:8, 163:2, 166:17, 215:15, 218:10, 219:25, 220:14, 221:3, 225:23, 226:11, 226:16, 226:21, 227:5, 228:7, 228:9, 233:11, 233:22, 234:13, 236:7, 250:16, 264:14, 266:8, 266:24, 268:24, 270:5, 270:7, 272:14, 273:3, 273:6, 273:13, 273:22, 280:11, 280:22, 282:7, 282:25, 283:6, 283:13, 286:22, 292:7, 333:23, 334:18, 336:13, 336:16, 337:2, 338:12, 338:14</p> <p><b>announce</b> [1] - 328:13</p> <p><b>announced</b> [2] - 194:19, 342:3</p> <p><b>announcement</b> [2] - 134:20, 365:20</p> <p><b>annual</b> [2] - 184:3,</p>	<p>184:5</p> <p><b>annually</b> [1] - 184:7</p> <p><b>answer</b> [20] - 13:7, 64:2, 83:16, 92:14, 92:16, 99:15, 104:20, 105:13, 110:3, 110:5, 110:6, 110:12, 117:12, 120:10, 158:7, 208:11, 265:24, 265:25, 266:4, 282:2</p> <p><b>answered</b> [13] - 103:7, 107:25, 110:8, 151:12, 153:11, 157:21, 158:6, 161:11, 166:3, 229:10, 229:14, 238:7, 268:10</p> <p><b>answering</b> [2] - 153:2, 219:16</p> <p><b>answers</b> [3] - 92:19, 141:19, 283:25</p> <p><b>antemortem</b> [1] - 98:4</p> <p><b>antibiotic</b> [5] - 48:7, 48:8, 49:8, 251:7, 274:22</p> <p><b>antibiotics</b> [14] - 46:15, 46:18, 47:2, 48:2, 50:23, 50:25, 52:14, 53:9, 150:19, 196:1, 196:2, 218:8, 219:23, 272:15</p> <p><b>anticipate</b> [6] - 118:8, 330:4, 361:9, 361:15, 361:25, 363:3</p> <p><b>antihistamines</b> [4] - 46:17, 47:2, 50:24, 52:15</p> <p><b>antiinflammatories</b> [4] - 50:23, 52:15, 53:9, 150:19</p> <p><b>antiinflammatory</b> [2] - 52:3, 84:16</p> <p><b>antimicrobial</b> [1] - 116:15</p> <p><b>antiprostaglandins</b> [1] - 52:16</p> <p><b>anyhow</b> [1] - 198:2</p> <p><b>anytime</b> [3] - 25:20, 56:24, 87:24</p> <p><b>anyway</b> [2] - 255:10, 318:1</p> <p><b>anyways</b> [1] - 258:20</p> <p><b>apologies</b> [3] - 78:2, 93:24, 130:14</p> <p><b>apologize</b> [18] - 38:15, 61:22, 101:25, 102:12, 119:22, 120:6, 120:7, 122:19,</p>	<p>178:23, 187:21, 208:3, 228:5, 230:6, 264:8, 292:25, 299:25, 302:24, 327:24</p> <p><b>appalled</b> [1] - 355:6</p> <p><b>apparent</b> [2] - 19:18, 222:9</p> <p><b>Appeals</b> [1] - 253:5</p> <p><b>appear</b> [3] - 32:12, 89:14, 326:22</p> <p><b>appearance</b> [2] - 17:10, 19:21</p> <p><b>appearances</b> [1] - 15:8</p> <p><b>appearing</b> [2] - 267:20, 272:4</p> <p><b>Applicant</b> [1] - 2:11</p> <p><b>applicant</b> [14] - 11:15, 15:25, 22:16, 24:6, 29:14, 63:12, 110:17, 110:23, 216:5, 221:4, 222:6, 222:16, 303:20, 321:18</p> <p><b>applicant's</b> [5] - 21:1, 63:21, 93:14, 167:2, 171:10</p> <p><b>applicants</b> [1] - 168:13</p> <p><b>APPLICATION</b> [1] - 1:5</p> <p><b>application</b> [52] - 11:17, 29:15, 34:20, 34:22, 34:24, 35:2, 59:1, 75:24, 82:3, 99:8, 99:20, 102:2, 103:8, 104:19, 110:23, 111:3, 128:21, 131:13, 132:21, 133:22, 134:4, 134:13, 167:13, 180:3, 181:25, 183:15, 215:2, 216:6, 216:16, 216:24, 217:5, 217:16, 217:19, 217:23, 220:25, 224:24, 226:2, 227:6, 230:24, 231:21, 232:19, 234:8, 237:24, 238:1, 265:6, 278:17, 302:19, 303:9, 308:8, 324:13, 336:11</p> <p><b>Application</b> [4] - 8:18, 8:25, 11:5, 100:20</p> <p><b>applications</b> [10] - 133:15, 215:18,</p>	<p>217:7, 217:10, 217:20, 221:1, 226:14, 237:3, 265:4, 268:4</p> <p><b>applied</b> [7] - 27:10, 98:25, 102:16, 102:24, 143:23, 275:11, 275:12</p> <p><b>applies</b> [4] - 247:4, 260:11, 266:9, 266:10</p> <p><b>apply</b> [8] - 51:13, 152:20, 152:21, 170:5, 190:21, 215:23, 216:9, 260:11</p> <p><b>applying</b> [3] - 95:20, 110:24, 236:20</p> <p><b>appointed</b> [1] - 260:6</p> <p><b>appreciate</b> [9] - 74:21, 94:3, 142:16, 189:11, 201:12, 214:11, 318:22, 334:8, 361:10</p> <p><b>appreciation</b> [2] - 21:25, 22:8</p> <p><b>approach</b> [1] - 100:3</p> <p><b>approached</b> [3] - 72:3, 72:4, 72:6</p> <p><b>appropriate</b> [18] - 14:10, 18:3, 63:24, 160:14, 160:24, 163:23, 210:19, 221:8, 222:7, 222:19, 224:14, 232:3, 232:6, 232:23, 244:3, 246:8, 247:8, 254:14</p> <p><b>approval</b> [3] - 30:11, 295:25, 296:17</p> <p><b>approvals</b> [1] - 240:9</p> <p><b>approved</b> [3] - 144:22, 144:23, 272:23</p> <p><b>April</b> [2] - 95:18, 342:5</p> <p><b>aprons</b> [1] - 98:23</p> <p><b>Aquifer</b> [1] - 192:11</p> <p><b>aquifer</b> [4] - 119:20, 192:10, 192:13, 192:14</p> <p><b>AR</b> [8] - 7:14, 7:16, 7:17, 7:19, 99:25, 101:21, 127:12, 324:18</p> <p><b>area</b> [33] - 18:15, 32:7, 32:21, 52:24, 52:25, 67:7, 69:2, 69:10, 124:1, 157:9, 192:6, 201:8, 222:7, 223:24, 320:14, 353:22, 354:4, 354:24, 356:3,</p>	<p>356:23, 356:24, 357:4, 357:12, 357:24, 358:4, 358:6, 358:10, 358:11, 358:12, 358:18, 358:23, 358:25</p> <p><b>areas</b> [6] - 27:6, 60:16, 149:6, 154:16, 355:21, 358:7</p> <p><b>argue</b> [1] - 272:8</p> <p><b>arguendo</b> [1] - 28:14</p> <p><b>argument</b> [4] - 28:13, 28:14, 58:24, 317:20</p> <p><b>argumentative</b> [4] - 91:23, 114:5, 161:9, 227:11</p> <p><b>arguments</b> [1] - 285:15</p> <p><b>Ari</b> [3] - 16:14, 286:4, 286:5</p> <p><b>ARI</b> [1] - 2:17</p> <p><b>Arizona</b> [1] - 346:9</p> <p><b>Arkansas</b> [1] - 354:14</p> <p><b>arm's</b> [1] - 333:10</p> <p><b>arm's-length</b> [1] - 333:10</p> <p><b>arms</b> [1] - 349:21</p> <p><b>arose</b> [1] - 124:14</p> <p><b>arrangements</b> [2] - 12:25, 367:13</p> <p><b>arrive</b> [1] - 172:10</p> <p><b>arrived</b> [2] - 228:10, 282:9</p> <p><b>arrives</b> [1] - 156:3</p> <p><b>arriving</b> [1] - 250:7</p> <p><b>Article</b> [1] - 39:6</p> <p><b>article</b> [11] - 39:7, 190:7, 244:3, 244:6, 244:10, 244:11, 244:19, 245:13, 245:14, 246:12, 246:16</p> <p><b>articles</b> [2] - 136:8, 333:22</p> <p><b>articulate</b> [1] - 240:23</p> <p><b>articulated</b> [1] - 238:10</p> <p><b>artificial</b> [1] - 356:21</p> <p><b>as-builts</b> [1] - 257:2</p> <p><b>ASAP</b> [1] - 350:18</p> <p><b>ascertain</b> [1] - 148:17</p> <p><b>ascertained</b> [1] - 75:22</p> <p><b>ASHCRAFT</b> [36] - 4:2, 4:9, 23:6, 23:21, 27:17, 29:25, 30:14,</p>
---	---	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>30:19, 31:4, 31:7, 31:20, 32:9, 32:18, 33:9, 33:12, 33:17, 33:24, 34:5, 38:2, 38:11, 39:22, 63:4, 67:21, 69:21, 74:20, 75:1, 75:8, 78:10, 78:19, 79:13, 94:9, 94:11, 119:11, 129:24, 130:12, 130:15</p> <p><b>Ashcraft</b> [31] - 6:8, 23:2, 23:21, 24:3, 27:15, 29:21, 36:16, 39:12, 65:4, 67:19, 69:19, 74:18, 74:23, 77:15, 79:11, 93:25, 94:7, 94:16, 109:3, 109:4, 119:10, 119:13, 121:12, 121:17, 125:2, 127:13, 127:23, 130:2, 130:7, 130:16, 130:17</p> <p><b>aside</b> [2] - 59:10, 368:5</p> <p><b>ASPCA</b> [3] - 335:19, 335:23, 338:22</p> <p><b>aspect</b> [1] - 299:22</p> <p><b>aspects</b> [1] - 187:11</p> <p><b>assertion</b> [1] - 264:5</p> <p><b>asses</b> [2] - 39:2, 264:21</p> <p><b>assessed</b> [1] - 316:12</p> <p><b>assessment</b> [4] - 69:20, 262:17, 269:19, 271:18</p> <p><b>assessments</b> [1] - 279:9</p> <p><b>assistance</b> [6] - 62:8, 62:9, 131:6, 131:11, 133:2, 228:24</p> <p><b>assistant</b> [1] - 188:5</p> <p><b>Assistant</b> [3] - 2:8, 2:18, 15:20</p> <p><b>assistant's</b> [1] - 25:14</p> <p><b>assisted</b> [5] - 33:15, 129:12, 129:16, 132:24, 207:2</p> <p><b>associated</b> [6] - 182:3, 183:4, 183:5, 183:16, 262:9, 267:1</p> <p><b>Association</b> [6] - 26:12, 339:17, 340:13, 340:22, 342:6</p> <p><b>associations</b> [2] - 26:6, 351:21</p> <p><b>assume</b> [13] - 20:10,</p>	<p>52:7, 54:15, 138:19, 157:4, 163:10, 163:19, 164:10, 166:10, 166:15, 277:13, 281:17, 327:2</p> <p><b>assuming</b> [3] - 88:10, 163:4, 321:23</p> <p><b>assumption</b> [4] - 164:11, 282:20, 283:5, 306:14</p> <p><b>assurance/quality</b> [3] - 316:15, 316:23, 317:5</p> <p><b>assure</b> [2] - 14:7, 204:25</p> <p><b>assures</b> [1] - 159:7</p> <p><b>ASTM</b> [1] - 76:5</p> <p><b>astray</b> [1] - 325:12</p> <p><b>Atkins</b> [1] - 127:5</p> <p><b>Attached</b> [2] - 7:3, 9:3</p> <p><b>attaches</b> [1] - 100:19</p> <p><b>attachment</b> [1] - 196:7</p> <p><b>attending</b> [1] - 288:23</p> <p><b>attention</b> [7] - 17:19, 77:1, 77:6, 78:25, 146:14, 146:22, 289:17</p> <p><b>attenuated</b> [1] - 210:13</p> <p><b>attested</b> [1] - 227:15</p> <p><b>Attorney</b> [17] - 2:13, 2:18, 11:19, 16:14, 17:10, 18:11, 18:12, 19:21, 20:22, 64:1, 211:21, 286:6, 287:3, 287:5, 321:1, 321:2, 366:22</p> <p><b>attorney</b> [5] - 369:14, 369:21, 369:25, 372:10, 372:13</p> <p><b>attorneys</b> [3] - 252:8, 286:1, 329:9</p> <p><b>Attorneys</b> [1] - 3:5</p> <p><b>attribute</b> [1] - 169:14</p> <p><b>attributed</b> [1] - 167:19</p> <p><b>audibly</b> [1] - 105:13</p> <p><b>audience</b> [1] - 15:16</p> <p><b>August</b> [3] - 35:6, 100:15, 100:16</p> <p><b>authenticated</b> [1] - 245:22</p> <p><b>authored</b> [1] - 136:8</p> <p><b>authority</b> [7] - 181:17, 182:12, 224:22, 295:14, 295:19, 298:14,</p>	<p>321:21</p> <p><b>authorized</b> [1] - 181:10</p> <p><b>automated</b> [1] - 204:21</p> <p><b>automation</b> [1] - 204:20</p> <p><b>autopsied</b> [1] - 54:2</p> <p><b>autopsies</b> [1] - 42:8</p> <p><b>autopsy</b> [1] - 42:9</p> <p><b>Available</b> [1] - 9:7</p> <p><b>available</b> [4] - 96:7, 189:21, 209:9, 252:12</p> <p><b>average</b> [11] - 41:8, 41:9, 42:1, 106:14, 128:11, 231:12, 277:14, 277:17, 278:20, 278:24, 280:19</p> <p><b>averages</b> [3] - 195:5, 195:6, 280:19</p> <p><b>avermectin</b> [1] - 251:8</p> <p><b>avoid</b> [1] - 329:2</p> <p><b>aware</b> [45] - 35:9, 59:11, 59:25, 62:17, 76:2, 76:18, 76:23, 82:11, 85:20, 88:8, 89:3, 89:24, 90:12, 108:15, 108:16, 108:22, 112:25, 124:14, 133:23, 145:9, 151:17, 151:23, 152:14, 153:9, 154:6, 156:10, 158:24, 161:6, 161:13, 161:16, 163:5, 164:24, 166:16, 181:2, 181:5, 182:6, 206:8, 207:13, 209:1, 209:13, 234:5, 309:8, 324:9, 342:22, 351:12</p> <p><b>awkward</b> [1] - 158:4</p>	<p>310:15, 317:7</p> <p><b>backyard</b> [1] - 164:3</p> <p><b>Bacon</b> [1] - 348:7</p> <p><b>bacteria</b> [1] - 196:2</p> <p><b>bad</b> [2] - 197:15, 342:19</p> <p><b>badger</b> [1] - 354:1</p> <p><b>bag</b> [1] - 43:21</p> <p><b>ban</b> [1] - 336:16</p> <p><b>Banamine</b> [1] - 251:16</p> <p><b>bank</b> [1] - 199:23</p> <p><b>bankrupt</b> [1] - 199:8</p> <p><b>Banned</b> [1] - 7:22</p> <p><b>banned</b> [2] - 220:12, 248:12</p> <p><b>banning</b> [1] - 194:8</p> <p><b>barn</b> [1] - 48:23</p> <p><b>barrels</b> [2] - 98:19, 116:11</p> <p><b>barring</b> [1] - 370:16</p> <p><b>Barron</b> [1] - 304:8</p> <p><b>base</b> [6] - 128:6, 135:23, 155:10, 164:11, 202:16, 273:23</p> <p><b>based</b> [85] - 34:5, 34:9, 42:7, 42:20, 43:25, 50:13, 50:14, 69:25, 80:20, 81:16, 83:2, 83:10, 99:1, 105:8, 119:18, 120:20, 126:21, 127:3, 130:7, 140:7, 144:14, 156:25, 161:25, 162:2, 162:23, 162:25, 167:2, 181:10, 182:11, 184:18, 184:23, 190:18, 201:20, 201:21, 217:4, 222:3, 225:1, 225:21, 226:8, 227:3, 235:20, 235:24, 237:2, 239:9, 253:20, 262:8, 262:10, 262:11, 262:12, 262:16, 262:17, 262:18, 263:2, 265:21, 266:22, 267:14, 270:14, 270:16, 270:24, 271:1, 271:2, 272:5, 273:25, 279:7, 279:18, 280:13, 280:18, 280:21, 282:19, 282:21, 283:5, 292:2, 294:16, 294:22, 300:9, 301:9, 302:2, 306:7, 306:24,</p>	<p>308:15, 315:3, 316:3, 338:19, 349:14, 369:20</p> <p><b>bases</b> [1] - 245:20</p> <p><b>basing</b> [2] - 266:22, 269:1</p> <p><b>basis</b> [28] - 20:24, 75:5, 120:19, 134:11, 134:12, 142:25, 149:25, 155:15, 159:5, 160:19, 162:20, 184:3, 206:22, 242:6, 246:10, 246:20, 248:3, 253:16, 253:17, 259:12, 261:23, 268:25, 271:6, 272:19, 276:25, 289:21, 317:20, 336:9</p> <p><b>Bates</b> [4] - 229:20, 230:15, 278:5, 325:2</p> <p><b>Bates-stamped</b> [1] - 325:2</p> <p><b>bathtubs</b> [1] - 197:22</p> <p><b>battles</b> [1] - 345:4</p> <p><b>BE</b> [1] - 1:13</p> <p><b>bear</b> [4] - 192:9, 234:14, 302:20, 311:18</p> <p><b>bearing</b> [1] - 113:12</p> <p><b>beat</b> [1] - 194:12</p> <p><b>beautiful</b> [1] - 22:14</p> <p><b>became</b> [2] - 34:14, 34:18</p> <p><b>become</b> [7] - 145:3, 169:11, 171:5, 189:4, 205:5, 309:7, 336:14</p> <p><b>becomes</b> [1] - 13:1</p> <p><b>becoming</b> [3] - 145:6, 316:1, 366:18</p> <p><b>beef</b> [6] - 43:15, 46:14, 54:8, 149:12, 155:21, 291:6</p> <p><b>BEFORE</b> [1] - 1:2</p> <p><b>beg</b> [1] - 86:22</p> <p><b>began</b> [1] - 191:18</p> <p><b>begin</b> [7] - 21:1, 89:13, 93:13, 108:24, 172:13, 201:18, 255:11</p> <p><b>beginning</b> [3] - 104:13, 196:8, 242:3</p> <p><b>begins</b> [3] - 89:13, 100:16, 255:5</p> <p><b>behalf</b> [10] - 15:10, 15:25, 16:5, 86:9, 211:20, 232:4, 239:16, 287:19, 335:19, 338:21</p>
<b>B</b>				
<p><b>B.2</b> [1] - 134:4</p> <p><b>bachelor's</b> [1] - 214:16</p> <p><b>background</b> [17] - 25:7, 25:10, 26:5, 27:16, 29:22, 213:10, 214:14, 243:24, 244:1, 254:2, 254:4, 268:1, 268:3, 269:4, 270:12, 291:18, 309:20</p> <p><b>backtracking</b> [2] -</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>behavior</b> [3] - 45:16, 45:18, 284:24</p> <p><b>behaviorally</b> [1] - 45:11</p> <p><b>behind</b> [10] - 38:5, 43:19, 43:25, 45:2, 51:7, 191:13, 192:1, 198:1, 364:23, 369:13</p> <p><b>belabor</b> [3] - 123:18, 131:9, 294:19</p> <p><b>Belgium</b> [2] - 117:8, 193:17</p> <p><b>belief</b> [3] - 61:5, 135:23, 261:23</p> <p><b>believes</b> [1] - 350:1</p> <p><b>belong</b> [1] - 26:11</p> <p><b>beloved</b> [1] - 346:20</p> <p><b>below</b> [7] - 19:15, 32:1, 32:23, 69:7, 241:5, 310:7, 362:21</p> <p><b>below-grade</b> [1] - 241:5</p> <p><b>Beltex</b> [8] - 96:20, 96:24, 112:9, 112:15, 116:25, 117:1, 118:20, 118:24</p> <p><b>bench</b> [1] - 76:3</p> <p><b>benchmark</b> [2] - 120:15, 121:3</p> <p><b>Bend</b> [1] - 356:19</p> <p><b>beneficial</b> [1] - 358:7</p> <p><b>benefit</b> [1] - 120:10</p> <p><b>berm</b> [2] - 67:17, 313:12</p> <p><b>berms</b> [5] - 313:13, 313:22, 313:23, 314:5, 314:6</p> <p><b>BERNALILLO</b> [1] - 372:3</p> <p><b>beside</b> [1] - 292:21</p> <p><b>Best</b> [1] - 9:7</p> <p><b>best</b> [5] - 110:11, 149:4, 238:17, 293:16, 329:18</p> <p><b>bet</b> [1] - 233:17</p> <p><b>beta</b> [1] - 48:12</p> <p><b>beta-lactams</b> [1] - 48:12</p> <p><b>better</b> [9] - 52:25, 61:21, 74:10, 83:18, 136:6, 196:4, 201:5, 275:23, 276:14</p> <p><b>between</b> [39] - 19:23, 40:23, 41:11, 43:1, 43:8, 44:11, 46:8, 47:3, 47:6, 58:6, 59:12, 67:17, 68:8, 73:19, 81:13, 97:15, 102:12, 104:16, 154:16, 155:4,</p>	<p>160:17, 177:2, 218:2, 253:3, 265:19, 266:2, 266:8, 280:24, 280:25, 287:4, 303:20, 310:5, 310:7, 325:17, 326:7, 357:4, 357:24, 358:6, 363:5</p> <p><b>BEVERLY</b> [2] - 5:12, 346:2</p> <p><b>Beverly</b> [2] - 331:7, 346:5</p> <p><b>beyond</b> [5] - 37:8, 163:1, 202:23, 207:11, 357:21</p> <p><b>BIERNOFF</b> [80] - 2:17, 16:12, 20:4, 210:8, 211:6, 211:14, 213:1, 213:4, 219:2, 219:15, 219:18, 220:8, 221:21, 222:13, 223:5, 223:18, 224:12, 228:18, 228:22, 229:4, 229:18, 229:22, 229:24, 230:7, 230:10, 230:18, 231:6, 232:1, 232:9, 233:4, 233:6, 240:14, 240:18, 240:20, 241:20, 243:5, 243:8, 243:11, 243:18, 243:21, 244:15, 246:1, 246:25, 249:1, 249:4, 249:7, 249:10, 249:16, 249:23, 250:4, 250:18, 250:21, 250:24, 251:5, 251:19, 252:4, 255:4, 255:15, 268:9, 277:23, 281:24, 284:16, 294:23, 311:25, 323:1, 323:15, 324:19, 325:3, 325:7, 325:19, 327:11, 330:2, 330:10, 361:13, 363:15, 364:17, 365:2, 365:13, 365:16, 371:1</p> <p><b>Biernoff</b> [26] - 5:3, 16:11, 16:14, 17:13, 210:7, 219:1, 221:20, 223:3, 228:15, 231:25, 232:25, 233:3, 241:21, 243:3, 245:25, 248:24, 252:17, 253:2, 286:4, 286:5, 322:24, 323:14, 327:10,</p>	<p>328:3, 330:1, 363:14</p> <p><b>big</b> [8] - 109:16, 109:20, 154:15, 194:3, 194:4, 347:25, 350:10</p> <p><b>biggest</b> [5] - 48:3, 48:4, 263:6, 263:8</p> <p><b>bill</b> [1] - 66:2</p> <p><b>Bill</b> [1] - 181:7</p> <p><b>bills</b> [1] - 252:1</p> <p><b>biochemical</b> [2] - 150:7, 195:11</p> <p><b>biofuel</b> [4] - 208:16, 208:17, 208:22, 209:4</p> <p><b>biography</b> [2] - 222:8, 268:12</p> <p><b>Biological</b> [1] - 358:2</p> <p><b>biological</b> [1] - 150:7</p> <p><b>biosolids</b> [4] - 311:1, 311:2, 311:7, 311:11</p> <p><b>birds</b> [6] - 353:24, 354:4, 354:5, 354:6, 354:9, 355:13</p> <p><b>biscuits</b> [2] - 44:3, 44:4</p> <p><b>bison</b> [1] - 39:3</p> <p><b>bit</b> [45] - 13:6, 25:2, 25:6, 25:9, 26:5, 28:1, 29:22, 30:17, 34:13, 34:15, 36:17, 40:6, 43:5, 46:7, 51:19, 51:23, 54:20, 56:18, 56:20, 60:10, 85:11, 93:2, 106:13, 106:14, 137:25, 160:11, 169:5, 170:4, 187:6, 191:25, 206:25, 222:23, 224:13, 231:8, 237:11, 256:2, 262:1, 271:19, 290:6, 306:13, 310:16, 356:23, 365:9, 366:17, 367:22</p> <p><b>Bitter</b> [7] - 355:20, 356:16, 356:20, 357:4, 357:24, 358:6, 358:9</p> <p><b>BLACH</b> [70] - 4:3, 4:13, 23:6, 23:19, 26:7, 27:2, 27:8, 27:11, 27:13, 40:11, 40:14, 40:16, 40:18, 40:20, 41:6, 43:9, 44:18, 44:22, 44:24, 45:14, 45:18, 45:22, 46:6, 46:13, 47:12, 49:18, 49:21, 49:23, 49:25, 50:11, 50:20, 51:12, 52:2, 53:24, 55:5, 55:9, 62:22,</p>	<p>84:10, 84:13, 84:16, 84:18, 84:20, 84:22, 85:1, 85:4, 85:9, 85:18, 87:14, 87:24, 88:4, 88:15, 89:7, 89:15, 89:19, 89:23, 90:1, 90:4, 90:7, 90:10, 90:13, 90:17, 136:1, 152:13, 169:17, 170:2, 170:16, 170:20, 170:24, 171:2, 171:6</p> <p><b>Blach</b> [36] - 6:10, 23:2, 23:19, 24:3, 26:4, 39:25, 62:17, 72:24, 74:21, 84:2, 87:6, 110:11, 110:14, 110:16, 110:22, 136:3, 136:5, 136:8, 142:17, 143:4, 148:18, 149:10, 152:11, 165:25, 166:4, 166:21, 169:5, 172:1, 247:20, 273:7, 284:23, 333:14, 334:8, 363:6, 364:4, 364:6</p> <p><b>blach</b> [1] - 136:4</p> <p><b>Blach's</b> [1] - 148:19</p> <p><b>Black</b> [1] - 356:19</p> <p><b>black</b> [1] - 354:7</p> <p><b>black-throated</b> [1] - 354:7</p> <p><b>Blair</b> [1] - 15:25</p> <p><b>BLAIR</b> [1] - 2:12</p> <p><b>blasted</b> [1] - 208:19</p> <p><b>bleed</b> [2] - 98:14</p> <p><b>bleeding</b> [2] - 98:7, 98:12</p> <p><b>BLM</b> [1] - 346:15</p> <p><b>blood</b> [42] - 40:25, 41:6, 41:9, 41:12, 41:17, 41:18, 41:20, 51:10, 51:25, 53:22, 53:24, 54:25, 55:1, 55:8, 55:11, 62:18, 98:16, 98:18, 98:21, 106:14, 106:18, 107:22, 115:25, 136:17, 159:9, 182:17, 182:22, 195:25, 196:1, 198:6, 198:10, 199:17, 199:21, 199:23, 206:17, 206:18, 206:19, 355:2, 355:16, 357:19, 367:3</p> <p><b>blotched</b> [1] - 354:19</p> <p><b>blowing</b> [1] - 313:20</p> <p><b>Blue</b> [2] - 251:18,</p>	<p>355:20</p> <p><b>Blue-Kote</b> [1] - 251:18</p> <p><b>bluntnose</b> [4] - 354:14, 357:1, 358:1, 358:8</p> <p><b>board</b> [1] - 339:13</p> <p><b>Board</b> [4] - 195:16, 196:23, 342:8, 355:5</p> <p><b>boards</b> [1] - 203:2</p> <p><b>bobby</b> [1] - 65:16</p> <p><b>bobcat</b> [1] - 353:25</p> <p><b>body</b> [12] - 41:9, 106:17, 140:2, 154:9, 154:12, 159:3, 159:8, 159:15, 162:4, 260:14, 329:13</p> <p><b>boilerplate</b> [2] - 308:2, 313:1</p> <p><b>Bond</b> [1] - 10:13</p> <p><b>boning</b> [1] - 97:17</p> <p><b>books</b> [1] - 190:13</p> <p><b>border</b> [3] - 198:24, 340:13, 341:25</p> <p><b>borders</b> [1] - 198:21</p> <p><b>borrow</b> [1] - 64:17</p> <p><b>bottom</b> [6] - 127:24, 196:7, 212:12, 278:6, 306:13, 357:17</p> <p><b>Bottomless</b> [4] - 356:22, 357:5, 357:24, 358:6</p> <p><b>bought</b> [1] - 199:11</p> <p><b>Boulevard</b> [1] - 2:13</p> <p><b>bound</b> [3] - 54:22, 231:23, 260:6</p> <p><b>Bouvery</b> [9] - 112:5, 112:10, 112:20, 112:25, 114:1, 114:18, 116:25, 117:16, 117:25</p> <p><b>bovine</b> [2] - 154:9, 154:13</p> <p><b>Box</b> [1] - 3:11</p> <p><b>box</b> [2] - 331:11, 354:19</p> <p><b>boxes</b> [2] - 87:10, 87:19</p> <p><b>branch</b> [1] - 197:21</p> <p><b>branches</b> [7] - 21:5, 21:9, 21:14, 21:15, 21:17, 197:20</p> <p><b>break</b> [26] - 13:13, 13:14, 13:22, 13:24, 53:25, 56:25, 93:6, 93:10, 101:5, 130:2, 160:24, 170:5, 172:4, 255:10, 255:11, 255:18, 312:19, 334:3, 359:22,</p>
--	--	--	---	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>360:15, 360:20, 362:2, 362:4, 362:14, 362:16 <b>breakdown</b> [1] - 62:19 <b>breaks</b> [1] - 13:12 <b>breathing</b> [1] - 154:23 <b>breeding</b> [2] - 26:17, 45:3 <b>bridled</b> [1] - 332:11 <b>brief</b> [4] - 15:1, 167:4, 179:24, 215:13 <b>briefly</b> [6] - 97:24, 168:10, 174:20, 219:7, 323:10, 370:20 <b>bring</b> [7] - 33:20, 98:6, 232:23, 238:18, 341:13, 355:10, 363:8 <b>bringing</b> [1] - 194:20 <b>broad</b> [2] - 11:14, 202:1 <b>broadest</b> [1] - 20:18 <b>broke</b> [2] - 93:12, 255:20 <b>broken</b> [3] - 179:10, 194:21, 333:25 <b>brought</b> [4] - 13:10, 182:16, 194:22, 289:17 <b>Brown</b> [2] - 10:4, 315:4 <b>BRUCE</b> [1] - 3:3 <b>Bruce</b> [1] - 16:5 <b>budget</b> [1] - 191:4 <b>buffer</b> [1] - 314:3 <b>bug</b> [2] - 194:20 <b>build</b> [2] - 72:16, 124:20 <b>building</b> [12] - 27:22, 30:4, 66:25, 68:8, 360:19, 362:22, 365:9, 365:21, 367:19, 367:20, 370:12, 370:14 <b>Building</b> [2] - 2:4, 2:9 <b>built</b> [13] - 30:11, 30:14, 31:13, 32:23, 65:12, 67:16, 67:20, 124:6, 125:8, 125:12, 198:19, 198:23, 312:22 <b>builts</b> [1] - 257:2 <b>bull</b> [1] - 41:15 <b>bunch</b> [2] - 264:16, 361:20 <b>burden</b> [3] - 11:15, 29:14, 29:18 <b>BUREAU</b> [1] - 6:15</p>	<p><b>bureau</b> [1] - 179:14 <b>Bureau</b> [50] - 11:9, 13:21, 13:25, 25:12, 35:21, 103:3, 103:11, 173:12, 175:1, 175:2, 175:20, 176:12, 176:13, 176:16, 176:18, 177:18, 178:1, 184:22, 212:14, 213:20, 213:21, 256:8, 256:17, 257:1, 257:3, 257:6, 257:17, 258:9, 258:10, 258:22, 260:16, 261:4, 261:7, 261:9, 261:13, 265:17, 277:3, 279:2, 287:17, 288:2, 304:16, 306:17, 307:18, 308:15, 320:7, 321:11, 321:24, 326:12, 340:22, 342:7 <b>Bureau's</b> [2] - 35:20, 231:3 <b>buried</b> [2] - 67:10, 67:15 <b>burned</b> [2] - 193:17, 193:19 <b>business</b> [32] - 13:11, 40:9, 47:17, 47:25, 73:25, 74:1, 117:24, 118:1, 121:14, 122:14, 125:17, 181:21, 198:7, 221:6, 221:9, 222:6, 222:17, 222:18, 222:20, 222:24, 231:12, 290:2, 333:9, 348:11, 349:16, 349:21, 350:3, 350:7, 350:13, 350:16, 367:6 <b>businesses</b> [2] - 345:14, 348:16 <b>Butazolidin</b> [5] - 52:3, 53:10, 84:14, 87:15, 88:17 <b>Butazolidins</b> [1] - 46:17 <b>butcher</b> [1] - 291:1 <b>bute</b> [1] - 84:10 <b>Bute</b> [11] - 51:22, 52:2, 54:23, 55:3, 84:11, 88:6, 88:12, 88:13, 170:23, 207:6 <b>BUTE</b> [1] - 84:13 <b>buterol</b> [3] - 84:3, 84:9, 85:14 <b>Butoxy</b> [1] - 251:9</p>	<p><b>buyers</b> [1] - 341:19 <b>bwagman@</b> <b>schiffhardin.com</b> [1] - 3:7 <b>BY</b> [29] - 64:22, 87:5, 94:20, 95:10, 114:20, 119:12, 120:9, 121:12, 130:20, 136:2, 152:14, 167:6, 173:5, 176:5, 180:2, 183:20, 202:6, 211:14, 213:4, 220:8, 224:12, 233:6, 255:24, 266:17, 285:8, 295:9, 312:15, 323:17, 325:14 <b>By-products</b> [1] - 9:9 <b>byproduct</b> [1] - 298:6 <b>byproducts</b> [6] - 157:6, 158:25, 193:4, 209:2, 209:11, 336:19</p> <p style="text-align: center;"><b>C</b></p> <p><b>Cabinet</b> [3] - 222:2, 253:5, 258:14 <b>Cable</b> [1] - 205:2 <b>cabl</b> [1] - 205:4 <b>CAFO</b> [1] - 270:23 <b>caked</b> [1] - 43:20 <b>calculated</b> [2] - 73:3, 280:24 <b>calculation</b> [2] - 282:7, 306:15 <b>calculations</b> [6] - 128:20, 129:4, 225:25, 233:25, 279:17, 306:9 <b>Calculations</b> [2] - 229:2, 229:25 <b>calibrated</b> [7] - 75:18, 75:19, 76:3, 76:7, 76:13, 76:17, 76:20 <b>calibration</b> [1] - 77:7 <b>California</b> [1] - 3:6 <b>calves</b> [1] - 65:16 <b>camelids</b> [2] - 39:3, 55:18 <b>campaign</b> [1] - 351:6 <b>Canada</b> [7] - 66:14, 66:19, 112:5, 117:21, 282:11, 334:13, 346:17 <b>Canadian</b> [2] - 113:11, 114:8 <b>cancel</b> [1] - 361:1 <b>cannot</b> [9] - 53:12,</p>	<p>55:22, 71:8, 95:21, 105:5, 105:7, 145:3, 253:18, 348:22 <b>capabilities</b> [1] - 296:11 <b>capable</b> [1] - 76:12 <b>Capacity</b> [1] - 7:8 <b>capacity</b> [15] - 18:23, 19:24, 21:10, 23:12, 25:5, 25:14, 25:17, 25:24, 27:19, 32:24, 174:2, 256:8, 279:18, 366:24 <b>Cape</b> [1] - 343:9 <b>capital</b> [1] - 334:21 <b>captain</b> [1] - 367:21 <b>captivity</b> [1] - 39:1 <b>carcass</b> [5] - 42:12, 114:22, 116:7, 161:21, 166:7 <b>carcasses</b> [2] - 38:25, 337:23 <b>carcinogens</b> [2] - 90:6, 90:8 <b>cards</b> [2] - 13:11, 88:13 <b>care</b> [4] - 124:23, 343:1, 359:1, 369:23 <b>career</b> [3] - 36:24, 138:5, 307:17 <b>carefully</b> [1] - 149:3 <b>Caren</b> [1] - 342:5 <b>Carlsbad</b> [1] - 358:2 <b>Carolina</b> [1] - 343:6 <b>Carolyn</b> [2] - 330:17, 335:16 <b>CAROLYN</b> [2] - 5:9, 335:11 <b>carp</b> [1] - 354:17 <b>carries</b> [2] - 86:16, 351:20 <b>carry</b> [1] - 276:1 <b>CARTER</b> [10] - 5:14, 5:15, 331:10, 331:13, 331:16, 331:18, 351:1, 351:4, 353:17, 353:20 <b>Carter</b> [15] - 331:11, 331:13, 331:14, 331:16, 331:18, 331:19, 345:20, 345:22, 345:23, 350:22, 351:5, 353:15, 353:16, 359:10 <b>case</b> [37] - 12:1, 12:2, 12:9, 12:11, 12:14, 12:15, 14:2, 29:15, 44:7, 68:11, 121:2, 122:8, 128:16,</p>	<p>131:13, 174:11, 184:14, 184:15, 197:2, 214:9, 216:21, 223:2, 233:11, 253:14, 260:22, 261:5, 285:18, 285:23, 287:12, 327:14, 327:20, 330:16, 341:5, 359:13, 359:20, 365:23, 369:3, 370:3 <b>cases</b> [5] - 24:2, 41:15, 198:21, 262:21, 263:17 <b>casing</b> [3] - 119:17, 120:13 <b>Cassie</b> [1] - 211:23 <b>catastrophic</b> [2] - 69:8, 357:9 <b>catch</b> [3] - 118:23, 305:25, 306:2 <b>catches</b> [2] - 79:24, 80:2 <b>category</b> [2] - 254:22, 265:6 <b>catfish</b> [1] - 354:17 <b>Cattle</b> [3] - 340:12, 340:21, 342:5 <b>cattle</b> [94] - 26:10, 26:21, 26:25, 39:2, 40:18, 40:19, 40:20, 40:21, 40:24, 41:22, 42:8, 43:24, 46:4, 46:24, 47:4, 47:6, 47:10, 50:16, 52:14, 52:19, 54:7, 54:8, 55:14, 55:18, 55:21, 55:22, 56:1, 57:21, 65:16, 81:2, 84:18, 87:7, 87:15, 87:23, 97:7, 97:8, 102:23, 107:6, 138:24, 149:24, 150:2, 150:5, 150:17, 152:20, 152:21, 157:7, 162:1, 163:12, 163:25, 193:13, 196:17, 197:4, 198:18, 198:19, 202:8, 202:10, 203:9, 203:17, 204:15, 204:16, 215:4, 217:14, 218:3, 235:25, 236:12, 236:14, 236:25, 265:10, 265:19, 266:3, 266:20, 267:3, 267:10, 272:14, 272:22, 273:8, 274:3, 274:9, 274:12,</p>
---	--	--	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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<p>274:14, 275:2, 275:6, 276:12, 277:19, 283:10, 292:2, 336:14, 337:2</p> <p><b>catwalk</b> [1] - 104:6</p> <p><b>caused</b> [2] - 191:2, 316:6</p> <p><b>causing</b> [3] - 272:20, 272:21, 308:13</p> <p><b>caustic</b> [3] - 62:19, 192:2, 263:4</p> <p><b>caution</b> [2] - 148:24, 329:9</p> <p><b>cautious</b> [1] - 142:19</p> <p><b>Cavel</b> [7] - 193:16, 198:14, 199:1, 199:10, 203:14, 203:20</p> <p><b>CCR</b> [1] - 372:19</p> <p><b>cease</b> [3] - 95:14, 95:16, 95:19</p> <p><b>cecum</b> [2] - 42:16, 42:19</p> <p><b>CEO</b> [1] - 130:21</p> <p><b>cephalosporins</b> [1] - 48:13</p> <p><b>certain</b> [13] - 19:9, 47:19, 53:8, 82:15, 89:1, 89:2, 143:14, 181:17, 304:6, 314:2, 315:17, 317:1, 321:21</p> <p><b>certainly</b> [28] - 13:21, 13:24, 21:13, 24:11, 110:16, 110:21, 113:16, 113:19, 114:11, 142:16, 149:7, 188:3, 210:12, 221:25, 232:5, 243:25, 246:7, 246:13, 246:17, 247:24, 251:24, 252:11, 254:17, 291:5, 328:25, 364:3, 365:16, 368:15</p> <p><b>certificate</b> [1] - 139:11</p> <p><b>certificates</b> [1] - 138:16</p> <p><b>certifications</b> [1] - 30:25</p> <p><b>certified</b> [4] - 30:23, 63:5, 80:23, 290:17</p> <p><b>certify</b> [3] - 126:22, 127:3, 372:5</p> <p><b>cervidae</b> [1] - 39:4</p> <p><b>cetera</b> [3] - 269:9, 291:7, 341:15</p> <p><b>CFIA</b> [2] - 199:7, 199:14</p> <p><b>CFR</b> [1] - 105:6</p>	<p><b>chain</b> [3] - 206:16, 341:10, 343:19</p> <p><b>Chair</b> [4] - 18:2, 22:19, 38:14, 329:8</p> <p><b>challenged</b> [1] - 196:25</p> <p><b>challenges</b> [1] - 17:22</p> <p><b>chance</b> [10] - 12:8, 85:2, 85:8, 200:21, 208:6, 240:22, 272:12, 303:19, 359:6, 365:8</p> <p><b>chances</b> [1] - 333:5</p> <p><b>change</b> [21] - 17:20, 20:3, 20:4, 47:14, 47:15, 61:14, 82:2, 104:1, 104:4, 104:7, 104:9, 134:16, 135:12, 135:13, 168:25, 180:19, 182:11, 330:12, 369:5, 369:10, 369:19</p> <p><b>changed</b> [19] - 17:14, 29:19, 40:2, 59:9, 59:12, 59:14, 59:17, 59:20, 61:4, 61:11, 174:13, 177:6, 180:16, 180:17, 180:19, 285:14, 285:18, 330:14, 359:11</p> <p><b>changes</b> [11] - 56:4, 104:10, 175:5, 175:10, 184:8, 212:4, 213:5, 213:6, 226:14, 226:15, 285:20</p> <p><b>changing</b> [2] - 81:25, 308:3</p> <p><b>channel</b> [1] - 354:17</p> <p><b>Chapter</b> [1] - 39:6</p> <p><b>characterization</b> [2] - 113:9, 152:5</p> <p><b>characterize</b> [2] - 223:19, 231:17</p> <p><b>charge</b> [1] - 304:15</p> <p><b>Chaves</b> [8] - 1:15, 22:1, 22:2, 65:11, 334:12, 334:21, 349:15, 349:23</p> <p><b>check</b> [8] - 49:13, 53:19, 88:22, 125:18, 141:15, 184:9, 331:10</p> <p><b>check-out</b> [2] - 125:18</p> <p><b>checked</b> [8] - 30:12, 30:22, 125:9, 125:10, 125:11, 126:17, 331:4</p> <p><b>checking</b> [2] - 206:13, 333:1</p>	<p><b>checks</b> [1] - 98:5</p> <p><b>cheese</b> [1] - 141:1</p> <p><b>chemical</b> [6] - 194:22, 195:11, 224:16, 262:22, 297:22, 340:4</p> <p><b>chemicals</b> [30] - 136:16, 196:1, 205:3, 220:3, 239:1, 249:13, 250:14, 251:17, 252:2, 267:17, 267:19, 267:23, 269:3, 269:24, 271:12, 271:15, 272:1, 272:4, 273:4, 273:5, 273:8, 273:11, 273:21, 275:19, 275:21, 276:18, 296:20, 297:17, 301:14</p> <p><b>chemist</b> [2] - 291:14, 291:19</p> <p><b>chemistry</b> [1] - 265:21</p> <p><b>CHET</b> [4] - 4:2, 4:11, 23:5, 130:19</p> <p><b>Chet</b> [2] - 6:5, 23:17</p> <p><b>Chicago</b> [1] - 198:22</p> <p><b>chickens</b> [1] - 341:15</p> <p><b>chief</b> [24] - 175:1, 176:15, 176:17, 212:14, 213:20, 256:8, 256:17, 257:1, 257:17, 258:9, 258:10, 258:22, 260:16, 261:13, 265:17, 277:3, 279:2, 287:17, 308:15, 318:25, 320:8, 321:11, 321:24, 326:12</p> <p><b>child</b> [1] - 192:16</p> <p><b>children</b> [2] - 355:13, 355:14</p> <p><b>chime</b> [2] - 65:4, 77:15</p> <p><b>chloride</b> [1] - 301:25</p> <p><b>chlorides</b> [2] - 32:4, 83:25</p> <p><b>Christmas</b> [1] - 198:2</p> <p><b>chronic</b> [1] - 44:7</p> <p><b>chub</b> [1] - 354:16</p> <p><b>chuckle</b> [1] - 262:25</p> <p><b>Cincinnati</b> [2] - 191:14, 191:16</p> <p><b>Cisneros</b> [1] - 16:7</p> <p><b>CISNEROS</b> [2] - 3:4, 16:10</p>	<p><b>citation</b> [4] - 29:10, 152:3, 189:23, 324:20</p> <p><b>cite</b> [4] - 150:12, 150:22, 152:18, 153:3</p> <p><b>cited</b> [1] - 315:17</p> <p><b>cities</b> [1] - 319:7</p> <p><b>citizen</b> [1] - 344:6</p> <p><b>Citizens</b> [1] - 339:12</p> <p><b>citizens</b> [3] - 344:8, 347:7, 349:3</p> <p><b>city</b> [1] - 348:12</p> <p><b>CI</b> [2] - 82:23, 83:24</p> <p><b>clarification</b> [2] - 32:14, 232:24</p> <p><b>clarify</b> [4] - 79:3, 152:11, 167:17, 231:8</p> <p><b>clarifying</b> [1] - 324:17</p> <p><b>clarity</b> [1] - 100:23</p> <p><b>class</b> [1] - 28:17</p> <p><b>Class</b> [1] - 52:23</p> <p><b>classified</b> [2] - 264:19, 267:4</p> <p><b>classify</b> [1] - 265:11</p> <p><b>Claude</b> [1] - 112:5</p> <p><b>clause</b> [1] - 240:8</p> <p><b>clay</b> [2] - 215:10, 306:12</p> <p><b>clay-lined</b> [1] - 215:10</p> <p><b>Clean</b> [1] - 297:3</p> <p><b>clean</b> [20] - 43:6, 44:17, 45:1, 49:11, 114:21, 115:11, 115:18, 116:3, 141:16, 155:22, 165:22, 166:7, 166:12, 280:11, 283:20, 332:19, 344:17, 356:7, 357:18, 359:5</p> <p><b>cleaned</b> [1] - 115:25</p> <p><b>cleaner</b> [4] - 43:7, 115:7, 115:8</p> <p><b>cleaning</b> [5] - 116:5, 116:6, 166:1, 166:17, 281:5</p> <p><b>cleanliness</b> [15] - 27:6, 43:5, 43:10, 44:12, 45:12, 45:17, 45:21, 280:9, 280:10, 282:6, 284:13, 284:19, 284:24</p> <p><b>cleanup</b> [1] - 58:8</p> <p><b>clear</b> [17] - 43:21, 47:21, 48:9, 48:25, 81:13, 86:24, 99:11, 116:24, 143:12, 147:14, 155:22, 163:3, 199:19, 225:4,</p>	<p>239:22, 312:6, 339:19</p> <p><b>cleared</b> [1] - 155:24</p> <p><b>clearing</b> [1] - 159:6</p> <p><b>clearly</b> [4] - 221:2, 222:9, 224:22, 368:15</p> <p><b>Clearly</b> [1] - 314:18</p> <p><b>Clenbuterol</b> [2] - 87:12, 87:14</p> <p><b>Clerk</b> [4] - 11:8, 13:3, 13:4, 328:25</p> <p><b>Clerk's</b> [2] - 13:23, 278:8</p> <p><b>clients</b> [1] - 362:2</p> <p><b>clog</b> [1] - 197:21</p> <p><b>close</b> [9] - 15:4, 58:25, 109:24, 191:16, 198:16, 200:2, 306:18, 359:16, 362:23</p> <p><b>closed</b> [14] - 14:21, 14:22, 67:15, 195:15, 196:24, 198:14, 198:21, 199:7, 199:8, 199:9, 199:14, 350:11, 360:19</p> <p><b>closer</b> [1] - 173:18</p> <p><b>co</b> [1] - 240:16</p> <p><b>co-counsel</b> [1] - 240:16</p> <p><b>coachwhip</b> [1] - 354:20</p> <p><b>Coalition</b> [1] - 336:1</p> <p><b>code</b> [7] - 38:20, 258:23, 260:7, 264:6, 266:2, 266:18, 345:4</p> <p><b>Code</b> [5] - 11:12, 38:18, 145:10, 264:14, 265:16</p> <p><b>Cohort</b> [1] - 370:17</p> <p><b>Cold</b> [1] - 191:17</p> <p><b>Colella</b> [1] - 8:6</p> <p><b>collapse</b> [2] - 357:12, 357:17</p> <p><b>collect</b> [1] - 328:20</p> <p><b>collected</b> [2] - 133:1, 356:16</p> <p><b>collects</b> [1] - 36:9</p> <p><b>colon</b> [3] - 42:16, 42:19, 42:22</p> <p><b>column</b> [4] - 101:12, 119:18, 119:19, 230:2</p> <p><b>columns</b> [1] - 195:8</p> <p><b>combination</b> [1] - 187:8</p> <p><b>combined</b> [2] - 31:21, 124:24</p> <p><b>coming</b> [19] - 68:18, 70:7, 74:24, 79:24, 80:2, 80:3, 80:6, 123:24, 128:8,</p>
--	---	--	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>141:15, 170:12, 198:14, 199:15, 292:8, 292:20, 314:1, 332:9, 361:3, 370:14</p> <p><b>commence</b> [1] - 367:11</p> <p><b>commend</b> [1] - 351:10</p> <p><b>comment</b> [40] - 12:3, 12:9, 12:12, 12:13, 12:16, 16:24, 327:23, 328:14, 328:15, 328:23, 329:4, 329:22, 329:23, 329:25, 330:5, 330:15, 332:4, 335:13, 339:6, 339:10, 339:24, 339:25, 340:1, 340:9, 341:3, 344:4, 346:4, 349:10, 351:3, 353:19, 359:12, 361:19, 368:7, 368:11, 368:16, 368:17, 368:18, 368:22</p> <p><b>Comment</b> [1] - 5:7</p> <p><b>commenters</b> [1] - 330:8</p> <p><b>Comments</b> [1] - 6:12</p> <p><b>comments</b> [23] - 14:13, 14:15, 14:19, 14:22, 14:24, 28:7, 35:10, 35:11, 60:5, 60:7, 60:10, 60:12, 196:17, 328:18, 328:25, 335:5, 344:8, 344:11, 348:24, 349:13, 359:17</p> <p><b>commercial</b> [4] - 81:8, 132:10, 133:16, 133:19</p> <p><b>commercially</b> [1] - 48:7</p> <p><b>commingled</b> [2] - 167:24, 167:25</p> <p><b>Commission</b> [25] - 25:18, 88:18, 156:17, 213:15, 213:24, 214:9, 214:20, 214:21, 216:7, 216:14, 235:13, 235:22, 237:16, 259:22, 260:4, 260:5, 260:21, 266:7, 282:17, 297:21, 298:15, 309:1, 350:1, 372:20</p> <p><b>Commissioner</b> [3] - 330:22, 349:16,</p>	<p>350:20</p> <p><b>Commissioners</b> [1] - 22:1</p> <p><b>commissioners</b> [1] - 349:18</p> <p><b>committed</b> [2] - 197:7, 335:23</p> <p><b>commodity</b> [1] - 347:14</p> <p><b>common</b> [10] - 36:20, 67:8, 67:18, 120:4, 168:22, 288:24, 322:2, 349:14, 353:24, 354:8</p> <p><b>commonly</b> [8] - 50:17, 51:8, 51:22, 52:1, 60:25, 209:1, 209:6, 272:15</p> <p><b>Commonly</b> [2] - 7:22, 248:13</p> <p><b>commonplace</b> [2] - 326:22, 350:4</p> <p><b>communicated</b> [1] - 226:10</p> <p><b>communication</b> [1] - 104:16</p> <p><b>communities</b> [2] - 201:9, 319:2</p> <p><b>community</b> [6] - 289:20, 348:9, 348:14, 348:19, 350:2, 350:5</p> <p><b>companies</b> [2] - 140:10, 347:22</p> <p><b>companion</b> [1] - 332:12</p> <p><b>COMPANY</b> [1] - 1:5</p> <p><b>company</b> [11] - 117:8, 118:11, 118:14, 140:8, 140:13, 155:19, 199:8, 199:10, 204:23, 332:15</p> <p><b>Company</b> [10] - 11:5, 23:16, 36:19, 62:5, 167:25, 265:1, 314:20, 324:10, 335:22, 349:20</p> <p><b>Company's</b> [1] - 38:7</p> <p><b>company's</b> [2] - 352:13, 353:6</p> <p><b>comparable</b> [4] - 107:2, 237:15, 282:17, 282:18</p> <p><b>compare</b> [1] - 225:7</p> <p><b>compared</b> [3] - 126:10, 282:16, 322:6</p> <p><b>comparison</b> [5] - 42:17, 42:24, 73:19, 149:23, 299:20</p>	<p><b>compartments</b> [1] - 42:5</p> <p><b>compensated</b> [2] - 137:3, 137:6</p> <p><b>complete</b> [7] - 35:4, 58:7, 58:8, 116:20, 212:18, 212:24, 242:7</p> <p><b>completed</b> [4] - 29:1, 31:1, 126:16, 257:3</p> <p><b>completely</b> [3] - 154:20, 243:11, 334:23</p> <p><b>completing</b> [1] - 33:15</p> <p><b>complex</b> [2] - 191:14, 191:16</p> <p><b>compliance</b> [24] - 56:19, 156:11, 168:2, 194:13, 195:7, 197:13, 216:18, 217:1, 238:12, 238:19, 279:13, 289:7, 301:12, 308:22, 322:2, 322:4, 322:5, 322:7, 322:17, 323:19, 326:13, 327:5, 327:6, 327:7</p> <p><b>Compliance</b> [3] - 6:21, 9:10, 9:23</p> <p><b>comply</b> [7] - 60:14, 77:9, 78:6, 82:17, 347:24, 359:5</p> <p><b>complying</b> [2] - 322:12, 353:3</p> <p><b>component</b> [1] - 83:11</p> <p><b>components</b> [6] - 72:16, 72:19, 110:9, 192:2, 262:24</p> <p><b>compost</b> [4] - 57:8, 72:2, 98:20, 118:6</p> <p><b>composted</b> [1] - 71:17</p> <p><b>composting</b> [4] - 71:20, 71:22, 72:10, 118:5</p> <p><b>compound</b> [2] - 263:23, 277:24</p> <p><b>compounded</b> [1] - 48:8</p> <p><b>compounds</b> [12] - 89:21, 194:21, 239:11, 239:20, 250:9, 250:11, 262:9, 262:23, 263:3, 269:12, 273:2, 340:15</p> <p><b>comprehensive</b> [1] - 122:3</p> <p><b>compromise</b> [3] - 368:2, 369:24, 370:12</p>	<p><b>computation</b> [1] - 277:18</p> <p><b>concentration</b> [3] - 136:13, 145:20, 297:24</p> <p><b>concentrations</b> [3] - 300:3, 309:21, 310:10</p> <p><b>concern</b> [25] - 60:18, 69:11, 77:14, 108:5, 181:8, 239:18, 240:2, 244:6, 250:12, 253:23, 279:19, 297:13, 297:14, 301:19, 305:17, 305:21, 305:22, 309:19, 337:25, 340:17, 341:8, 342:11, 345:3, 356:25, 363:25</p> <p><b>concerned</b> [19] - 45:20, 45:21, 45:23, 128:18, 128:19, 181:13, 223:15, 254:15, 297:9, 341:8, 344:6, 344:17, 344:22, 351:14, 363:15, 363:20, 364:22, 365:3, 365:7</p> <p><b>concerning</b> [6] - 17:3, 146:15, 146:23, 243:16, 257:7, 337:10</p> <p><b>concerns</b> [11] - 237:23, 237:25, 238:10, 263:15, 275:11, 279:8, 292:14, 340:17, 347:1, 352:4, 359:5</p> <p><b>conclude</b> [1] - 366:5</p> <p><b>concluded</b> [1] - 12:2</p> <p><b>concludes</b> [1] - 201:11</p> <p><b>concluding</b> [1] - 364:4</p> <p><b>conclusion</b> [11] - 17:14, 128:6, 244:20, 245:7, 254:5, 267:13, 267:14, 269:5, 270:2, 272:24, 314:23</p> <p><b>conclusions</b> [6] - 235:17, 244:13, 247:12, 250:7, 253:9, 254:12</p> <p><b>concrete</b> [10] - 36:9, 67:9, 174:22, 241:5, 241:7, 241:15, 241:19, 307:15, 311:4, 311:12</p> <p><b>concur</b> [2] - 343:17, 343:18</p> <p><b>condemned</b> [4] -</p>	<p>49:15, 49:22, 50:7, 169:15</p> <p><b>condition</b> [16] - 76:21, 77:1, 77:13, 78:25, 79:7, 82:13, 82:21, 83:7, 167:22, 169:3, 175:11, 175:12, 177:8, 307:8, 313:14, 313:16</p> <p><b>Conditions</b> [1] - 7:3</p> <p><b>conditions</b> [13] - 40:4, 78:2, 168:18, 184:9, 198:4, 216:19, 216:21, 217:2, 238:25, 308:3, 311:5, 312:16, 312:21</p> <p><b>conduct</b> [4] - 78:3, 242:19, 254:12, 353:10</p> <p><b>conducted</b> [4] - 11:10, 221:7, 222:18, 319:12</p> <p><b>conducting</b> [4] - 221:5, 222:17, 222:24, 243:25</p> <p><b>confer</b> [2] - 240:16, 362:2</p> <p><b>conferred</b> [1] - 365:21</p> <p><b>Confers</b> [2] - 240:19, 318:20</p> <p><b>confident</b> [2] - 58:22, 103:23</p> <p><b>confirm</b> [2] - 157:20, 252:9</p> <p><b>confirmed</b> [2] - 209:9, 352:9</p> <p><b>conflict</b> [5] - 18:17, 18:25, 19:18, 19:22, 242:4</p> <p><b>confused</b> [1] - 263:21</p> <p><b>connection</b> [2] - 95:11, 336:1</p> <p><b>Conner</b> [1] - 8:10</p> <p><b>consensus</b> [1] - 21:24</p> <p><b>consequences</b> [2] - 191:10, 201:8</p> <p><b>Conservation</b> [3] - 27:18, 213:18, 214:21</p> <p><b>consider</b> [9] - 111:6, 113:21, 132:9, 146:7, 147:3, 183:1, 244:3, 250:6, 266:25</p> <p><b>considerably</b> [2] - 42:3, 43:2</p> <p><b>consideration</b> [4] - 293:3, 312:4, 351:13, 370:1</p>
---	---	--	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>considerations</b> [2] - 305:14, 317:16</p> <p><b>considered</b> [18] - 17:12, 17:17, 31:8, 41:17, 62:16, 90:6, 113:20, 138:5, 174:11, 205:24, 219:10, 243:23, 246:9, 248:4, 252:12, 252:13, 351:16, 358:16</p> <p><b>considering</b> [5] - 175:10, 239:7, 281:15, 307:24, 352:12</p> <p><b>consistent</b> [6] - 62:14, 80:14, 80:18, 237:4, 308:5, 308:8</p> <p><b>constantly</b> [3] - 57:10, 91:15, 169:21</p> <p><b>constituent</b> [1] - 309:13</p> <p><b>constituents</b> [12] - 83:1, 83:5, 181:17, 298:5, 301:9, 301:11, 301:12, 301:18, 302:5, 309:16, 309:17, 309:25</p> <p><b>Constitution</b> [1] - 21:16</p> <p><b>constructed</b> [6] - 62:25, 63:1, 198:17, 256:25, 260:19, 316:24</p> <p><b>Construction</b> [1] - 7:3</p> <p><b>construction</b> [5] - 125:2, 256:21, 316:16, 316:20, 317:6</p> <p><b>consult</b> [2] - 220:9, 235:9</p> <p><b>consultant</b> [6] - 23:22, 27:21, 130:24, 190:17, 286:25, 320:23</p> <p><b>consultants</b> [1] - 304:6</p> <p><b>consulted</b> [3] - 62:3, 247:5, 291:20</p> <p><b>Consulting</b> [3] - 121:18, 125:2, 127:13</p> <p><b>consulting</b> [2] - 121:20, 122:13</p> <p><b>consume</b> [1] - 366:14</p> <p><b>consumer</b> [2] - 141:4, 141:7</p> <p><b>consumers</b> [1] - 353:3</p> <p><b>consumption</b> [14] -</p>	<p>88:3, 145:20, 149:13, 155:8, 155:13, 164:22, 165:2, 165:6, 165:10, 169:8, 169:9, 169:11, 194:9, 250:17</p> <p><b>contact</b> [5] - 12:24, 57:22, 58:18, 281:8, 289:3</p> <p><b>contacted</b> [3] - 124:16, 285:24, 286:4</p> <p><b>contain</b> [8] - 87:10, 124:12, 124:15, 129:5, 236:17, 295:16, 338:4, 355:11</p> <p><b>contained</b> [6] - 41:1, 179:8, 195:25, 244:2, 252:7, 302:13</p> <p><b>container</b> [1] - 317:2</p> <p><b>containment</b> [1] - 340:24</p> <p><b>contains</b> [1] - 36:12</p> <p><b>contaminant</b> [7] - 50:18, 51:9, 106:18, 274:23, 276:5, 276:14, 306:19</p> <p><b>contaminants</b> [15] - 36:12, 182:3, 182:11, 182:23, 204:23, 224:3, 224:5, 241:14, 266:22, 266:25, 269:8, 272:10, 272:13, 276:21, 290:4</p> <p><b>contaminate</b> [3] - 48:20, 49:3, 275:24</p> <p><b>contaminated</b> [13] - 49:7, 116:10, 116:13, 191:24, 192:4, 192:11, 192:15, 193:8, 308:24, 334:15, 343:9, 344:23</p> <p><b>contaminating</b> [2] - 113:18, 164:23</p> <p><b>contamination</b> [29] - 70:6, 70:7, 107:21, 113:1, 114:8, 116:7, 136:19, 157:6, 157:10, 157:18, 182:21, 219:9, 220:6, 238:3, 239:10, 271:8, 291:21, 291:22, 294:4, 299:17, 300:10, 305:19, 315:1, 316:6, 317:13, 318:3, 318:10, 334:12, 352:5</p> <p><b>contemplated</b> [3] - 128:21, 364:13, 364:15</p> <p><b>contemporary</b> [2] - 217:5, 217:15</p>	<p><b>content</b> [2] - 247:13, 248:1</p> <p><b>contention</b> [1] - 110:25</p> <p><b>contents</b> [1] - 252:10</p> <p><b>continual</b> [1] - 358:16</p> <p><b>continue</b> [7] - 12:15, 14:12, 65:14, 216:15, 232:25, 364:19</p> <p><b>continued</b> [1] - 337:19</p> <p><b>CONTINUED</b> [6] - 3:1, 5:1, 7:1, 8:1, 9:1, 10:1</p> <p><b>continuing</b> [2] - 20:6, 169:20</p> <p><b>continuous</b> [1] - 75:6</p> <p><b>contour</b> [1] - 78:4</p> <p><b>contours</b> [1] - 148:18</p> <p><b>contract</b> [3] - 73:14, 199:2, 287:4</p> <p><b>contracted</b> [3] - 117:13, 117:14, 198:25</p> <p><b>contracts</b> [1] - 117:7</p> <p><b>contrary</b> [1] - 286:16</p> <p><b>contravention</b> [1] - 18:16</p> <p><b>contribute</b> [1] - 271:7</p> <p><b>control</b> [3] - 316:15, 316:23, 317:5</p> <p><b>Control</b> [13] - 9:6, 25:18, 213:15, 213:24, 214:9, 214:20, 216:7, 216:14, 259:22, 260:4, 260:5, 266:7, 309:1</p> <p><b>controlled</b> [3] - 52:25, 53:1, 194:3</p> <p><b>controls</b> [1] - 190:22</p> <p><b>conversation</b> [4] - 29:13, 73:18, 288:6, 362:19</p> <p><b>conversations</b> [6] - 117:9, 117:16, 117:17, 117:20, 295:11, 329:22</p> <p><b>conversions</b> [2] - 235:19, 235:21</p> <p><b>converted</b> [3] - 196:16, 197:3, 203:7</p> <p><b>conviction</b> [2] - 28:23, 28:25</p> <p><b>convictions</b> [6] - 28:8, 28:10, 28:12,</p>	<p>28:18, 29:4, 29:6</p> <p><b>cook</b> [1] - 209:7</p> <p><b>Cook</b> [2] - 30:7, 125:5</p> <p><b>cool</b> [1] - 48:22</p> <p><b>coolers</b> [1] - 116:16</p> <p><b>cooling</b> [1] - 141:17</p> <p><b>coordinate</b> [1] - 370:20</p> <p><b>coordinator</b> [1] - 351:7</p> <p><b>copies</b> [3] - 212:23, 278:4, 325:12</p> <p><b>copper</b> [7] - 263:11, 266:16, 299:20, 299:23, 300:1, 300:4, 315:16</p> <p><b>Copper</b> [3] - 239:14, 261:22, 315:4</p> <p><b>copy</b> [12] - 12:23, 100:6, 100:8, 101:2, 101:3, 101:6, 101:8, 138:2, 212:19, 242:7, 278:6</p> <p><b>Cordova</b> [1] - 211:23</p> <p><b>corner</b> [1] - 31:15</p> <p><b>corporation</b> [1] - 193:17</p> <p><b>Corporation</b> [1] - 205:2</p> <p><b>Corps</b> [1] - 346:7</p> <p><b>correct</b> [227] - 12:7, 17:5, 32:16, 32:17, 33:16, 33:17, 46:5, 56:9, 56:10, 60:6, 61:1, 67:21, 68:5, 68:10, 68:12, 70:25, 72:22, 72:23, 76:8, 77:19, 79:10, 80:4, 80:16, 80:24, 80:25, 81:16, 89:17, 89:21, 90:16, 95:12, 96:2, 96:5, 98:10, 99:1, 102:16, 102:19, 102:22, 102:25, 103:24, 104:3, 105:19, 105:23, 106:3, 106:6, 106:9, 106:15, 106:19, 108:18, 114:23, 115:2, 115:19, 116:4, 116:22, 121:15, 121:16, 122:14, 122:21, 122:22, 122:24, 122:25, 123:2, 123:3, 125:22, 127:3, 128:4, 128:5, 128:22, 129:14, 129:15, 130:22, 130:23, 130:25,</p>	<p>131:15, 132:7, 132:22, 132:23, 134:6, 134:7, 134:9, 134:10, 136:9, 138:20, 139:13, 141:22, 143:9, 143:15, 143:18, 143:21, 143:22, 143:24, 144:3, 144:8, 144:11, 144:12, 144:15, 144:18, 144:21, 145:3, 145:7, 145:8, 148:5, 148:8, 148:9, 149:5, 149:15, 149:20, 152:5, 153:19, 154:1, 154:4, 156:18, 156:19, 156:21, 156:24, 157:24, 158:7, 159:22, 165:10, 165:15, 165:19, 166:8, 166:11, 166:14, 166:15, 170:1, 173:22, 173:23, 175:9, 179:6, 180:4, 180:5, 180:9, 180:10, 180:12, 180:14, 181:18, 181:19, 183:8, 183:14, 183:23, 183:24, 194:19, 205:8, 205:25, 221:19, 225:20, 226:19, 238:20, 248:11, 250:3, 257:1, 257:6, 260:8, 260:16, 260:17, 260:18, 260:23, 261:8, 261:17, 261:20, 265:2, 269:18, 277:1, 280:7, 280:17, 281:1, 282:20, 284:15, 287:18, 287:20, 287:21, 288:3, 290:2, 292:8, 292:15, 293:8, 293:15, 293:19, 294:21, 295:20, 297:13, 297:18, 297:23, 297:25, 298:3, 298:22, 298:23, 299:1, 299:2, 299:3, 299:14, 299:21, 300:5, 300:13, 301:2, 301:8, 301:13, 301:18, 301:22, 303:3, 304:25, 305:2, 305:11, 305:18, 305:20, 307:10, 309:14, 310:4, 310:8, 310:21, 310:24,</p>
--	--	--	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>312:24, 312:25, 313:2, 313:24, 314:10, 315:13, 315:20, 315:21, 315:24, 316:25, 317:23, 317:24, 318:1, 334:24 <b>corrected</b> [1] - 326:20 <b>correctly</b> [6] - 30:25, 125:14, 126:23, 127:4, 133:11, 223:14 <b>correspondence</b> [3] - 303:20, 303:22, 322:19 <b>costs</b> [2] - 191:7, 191:8 <b>cottontail</b> [1] - 354:1 <b>council</b> [1] - 348:12 <b>counsel</b> [2] - 17:2, 58:20, 170:6, 212:25, 223:7, 232:3, 240:16, 240:21, 242:20, 242:24, 247:25, 249:13, 277:25, 349:12, 359:19, 361:15, 362:9, 363:16, 369:17, 372:10, 372:13 <b>Counsel</b> [5] - 2:7, 2:8, 15:20, 172:15, 324:19 <b>counsel's</b> [1] - 33:5 <b>count</b> [3] - 230:25, 231:3, 326:1 <b>counting</b> [3] - 143:13, 230:19, 344:16 <b>countries</b> [2] - 139:10, 281:20 <b>country</b> [5] - 20:19, 164:3, 339:13, 339:14, 357:15 <b>COUNTY</b> [1] - 372:3 <b>County</b> [8] - 1:15, 22:1, 22:2, 65:11, 334:12, 334:21, 349:15, 349:23 <b>county</b> [6] - 65:11, 333:24, 334:18, 349:20, 349:22, 350:2 <b>couple</b> [10] - 17:4, 65:24, 70:10, 154:15, 212:6, 221:15, 295:4, 296:12, 302:6, 363:4 <b>course</b> [20] - 28:7, 46:23, 49:15, 50:6, 57:23, 60:16, 78:21, 97:5, 135:15, 169:19, 169:25, 197:3, 201:3,</p>	<p>205:14, 206:20, 273:17, 275:16, 308:11, 320:11, 365:23 <b>Court</b> [14] - 12:22, 19:8, 25:20, 25:22, 148:24, 177:4, 187:24, 208:5, 219:18, 227:12, 227:13, 249:19, 253:5, 303:1 <b>court</b> [13] - 25:9, 93:19, 105:14, 127:20, 187:7, 196:25, 197:1, 254:20, 328:18, 335:9, 344:9, 359:18, 370:21 <b>courtesy</b> [2] - 15:16, 188:24 <b>courthouse</b> [3] - 22:2, 22:14, 370:17 <b>Courthouse</b> [1] - 1:15 <b>courtroom</b> [1] - 14:10 <b>courts</b> [1] - 194:11 <b>cover</b> [7] - 85:11, 119:23, 177:23, 191:5, 237:17, 308:19 <b>cover-ups</b> [1] - 191:5 <b>covered</b> [2] - 246:5, 294:25 <b>covering</b> [1] - 174:6 <b>cow</b> [65] - 41:13, 42:4, 42:9, 42:17, 42:20, 42:21, 43:1, 43:2, 43:11, 43:14, 44:5, 44:10, 44:12, 44:18, 45:8, 45:24, 46:14, 47:19, 48:10, 48:11, 48:14, 48:15, 48:16, 48:19, 48:21, 49:4, 49:9, 49:11, 49:16, 49:19, 49:20, 49:21, 49:23, 50:7, 95:11, 95:14, 96:1, 96:25, 97:1, 98:1, 98:2, 109:16, 132:19, 141:16, 142:1, 155:4, 160:5, 165:14, 165:22, 196:15, 203:7, 277:4, 277:6, 277:11, 277:14, 278:25, 279:3, 284:4, 284:6, 304:21, 337:23, 341:11 <b>Cowan</b> [1] - 342:5 <b>cows</b> [62] - 43:4, 43:18, 43:22, 45:12,</p>	<p>46:21, 47:17, 48:1, 50:3, 99:1, 99:2, 99:21, 102:22, 104:12, 105:23, 106:9, 106:13, 106:14, 107:4, 107:5, 107:6, 107:9, 109:13, 109:17, 109:24, 114:21, 115:6, 123:11, 123:16, 128:21, 128:23, 132:15, 135:10, 138:19, 141:14, 150:8, 151:19, 152:16, 153:10, 153:17, 153:22, 153:25, 162:5, 162:6, 192:25, 198:22, 215:18, 219:8, 223:4, 226:7, 233:25, 234:6, 265:5, 265:8, 277:9, 278:16, 278:19, 278:21, 278:24, 280:6, 280:7, 281:6 <b>Cows</b> [2] - 101:15, 230:4 <b>coyote</b> [1] - 353:25 <b>cracks</b> [1] - 241:7 <b>cranes</b> [1] - 354:5 <b>cranky</b> [1] - 366:17 <b>create</b> [3] - 208:19, 313:21, 340:17 <b>creates</b> [2] - 348:17, 350:7 <b>creatures</b> [1] - 353:22 <b>credibility</b> [2] - 19:1, 248:18 <b>credible</b> [2] - 254:1, 254:6 <b>Creek</b> [1] - 356:13 <b>creaks</b> [1] - 356:14 <b>crime</b> [1] - 348:19 <b>criminal</b> [3] - 28:7, 28:10, 28:12 <b>crisp</b> [1] - 304:10 <b>crissal</b> [1] - 354:7 <b>criteria</b> [4] - 60:17, 125:7, 295:25, 296:17 <b>critical</b> [8] - 279:5, 300:5, 356:24, 357:3, 357:12, 357:17, 358:6 <b>criticism</b> [1] - 191:18 <b>Cross</b> [12] - 4:5, 4:6, 4:8, 4:10, 4:12, 4:14, 4:18, 4:21, 4:24, 5:4, 5:5, 5:6 <b>cross</b> [16] - 64:13, 65:5, 93:4, 93:13, 111:24, 130:2,</p>	<p>177:20, 178:12, 178:16, 186:3, 210:19, 246:20, 248:17, 254:13, 255:1, 255:8 <b>CROSS</b> [12] - 64:22, 87:5, 94:19, 119:11, 130:19, 136:1, 180:1, 183:19, 202:5, 255:23, 285:7, 323:16 <b>cross-exam</b> [1] - 178:12 <b>cross-examination</b> [11] - 64:13, 93:4, 93:13, 111:24, 130:2, 178:16, 210:19, 246:20, 254:13, 255:1, 255:8 <b>cross-examine</b> [1] - 248:17 <b>cross-examining</b> [1] - 186:3 <b>crowd</b> [1] - 328:19 <b>Crown</b> [8] - 196:11, 196:15, 196:24, 197:7, 203:9, 203:16, 207:20 <b>crowned</b> [1] - 354:6 <b>Cruelty</b> [1] - 335:18 <b>cruelty</b> [1] - 336:9 <b>current</b> [11] - 34:24, 60:3, 61:10, 61:23, 71:19, 77:2, 173:22, 176:25, 221:14, 248:14, 312:8 <b>custom</b> [4] - 81:10, 132:2, 132:3, 132:5 <b>customers</b> [1] - 106:2 <b>cut</b> [1] - 116:9 <b>cutting</b> [2] - 97:17, 270:6 <b>cycle</b> [1] - 306:22 <b>Cynthia</b> [1] - 8:9</p>	<p>214:4, 288:10, 299:9, 316:14, 316:22 <b>dairy</b> [75] - 23:21, 26:20, 26:21, 27:20, 37:15, 39:16, 40:20, 40:21, 40:24, 41:13, 41:22, 42:9, 42:20, 43:11, 43:18, 43:24, 45:24, 46:4, 46:14, 47:17, 47:25, 48:3, 48:5, 49:4, 49:16, 49:20, 49:21, 49:23, 50:2, 50:16, 52:19, 54:8, 55:14, 65:16, 73:19, 73:20, 73:21, 80:21, 87:23, 107:4, 107:6, 109:16, 121:20, 122:14, 122:16, 122:21, 149:10, 153:23, 153:24, 224:7, 256:9, 259:20, 260:9, 260:11, 263:9, 272:10, 272:13, 272:22, 274:12, 280:6, 280:7, 293:14, 299:7, 299:11, 299:23, 302:1, 315:2, 315:14, 315:19, 315:23, 316:5, 333:3, 333:4 <b>Dallas</b> [10] - 72:15, 118:11, 196:11, 196:15, 196:24, 197:6, 203:9, 203:15, 207:20 <b>damage</b> [5] - 62:20, 69:3, 69:8, 90:20, 262:14 <b>dang</b> [1] - 343:16 <b>dangerous</b> [7] - 84:25, 141:3, 141:6, 205:3, 337:5, 338:4, 345:13 <b>Dangerous</b> [2] - 7:22, 248:12 <b>data</b> [14] - 190:3, 190:19, 235:21, 282:21, 282:22, 282:24, 282:25, 283:2, 283:3, 302:9, 302:14, 318:5 <b>Data</b> [2] - 7:5, 7:7 <b>date</b> [9] - 128:7, 143:12, 171:20, 174:15, 212:9, 297:11, 305:3, 352:8 <b>dated</b> [4] - 100:15, 127:22, 230:23, 324:23</p>
<b>D</b>				
<p><b>daily</b> [8] - 118:6, 135:5, 146:2, 180:8, 181:11, 181:14, 225:6, 279:9 <b>dairies</b> [14] - 27:19, 27:23, 37:9, 37:13, 68:4, 153:23, 259:22, 260:13, 261:3, 266:16, 320:3, 322:14, 322:15, 325:18 <b>Dairy</b> [6] - 49:19,</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>dates</b> [1] - 31:23  <b>datum</b> [5] - 120:5, 120:14, 120:15, 120:20  <b>Daubert</b> [4] - 253:17, 253:25, 254:5, 254:8  <b>day-to-day</b> [1] - 169:21  <b>days</b> [25] - 48:9, 49:9, 53:13, 54:23, 55:11, 57:17, 88:16, 97:13, 118:10, 142:1, 143:14, 161:20, 162:2, 162:9, 162:17, 162:22, 163:9, 164:9, 164:14, 216:16, 235:3, 302:21, 302:22, 364:16, 368:10  <b>DE</b> [70] - 4:2, 4:7, 23:5, 23:15, 28:11, 28:16, 28:20, 28:25, 29:5, 29:8, 29:11, 55:20, 56:3, 56:6, 56:10, 56:14, 57:3, 58:3, 58:5, 58:16, 59:6, 59:14, 59:24, 65:9, 65:22, 66:22, 70:3, 70:20, 71:2, 71:4, 71:6, 71:11, 71:13, 71:16, 71:22, 72:1, 72:6, 72:10, 72:13, 73:2, 73:6, 73:8, 73:14, 74:12, 74:17, 76:14, 76:20, 76:23, 77:10, 77:20, 78:5, 78:8, 79:2, 79:21, 80:10, 82:12, 82:19, 91:4, 91:9, 91:14, 92:18, 94:19, 95:5, 95:6, 167:14, 167:16, 167:20, 168:3, 168:9, 330:24  <b>De</b> [65] - 6:4, 9:4, 23:1, 23:15, 24:4, 25:4, 64:23, 69:25, 70:11, 73:1, 74:10, 74:11, 76:12, 77:8, 77:12, 78:24, 79:20, 82:7, 88:10, 90:25, 91:3, 94:18, 99:24, 100:18, 101:11, 108:4, 111:13, 112:3, 113:21, 119:8, 122:10, 123:5, 133:6, 134:25, 166:1, 172:1, 181:3, 193:4, 193:23, 196:12, 198:7, 199:3, 200:6, 206:5, 227:21, 229:10, 229:14,</p>	<p>230:23, 232:2, 232:4, 232:5, 232:22, 232:23, 279:20, 282:10, 332:10, 332:20, 333:4, 334:16, 346:19, 350:12, 356:18, 357:9, 359:8  <b>dead</b> [2] - 345:6, 348:16  <b>deal</b> [11] - 26:10, 45:3, 62:13, 74:3, 91:1, 195:16, 311:6, 346:8, 347:25, 348:1, 348:10  <b>dealing</b> [3] - 47:25, 141:11, 287:9  <b>deals</b> [2] - 28:7, 242:8  <b>dealt</b> [3] - 257:17, 257:18, 300:2  <b>death</b> [1] - 333:25  <b>debate</b> [1] - 59:10  <b>Deborah</b> [1] - 211:24  <b>decay</b> [2] - 89:4, 89:13  <b>December</b> [4] - 30:12, 125:19, 126:17  <b>decent</b> [1] - 368:1  <b>decide</b> [5] - 65:20, 106:21, 261:5, 327:21, 328:8  <b>decided</b> [4] - 11:22, 185:15, 260:21, 330:13  <b>decision</b> [10] - 13:15, 13:19, 20:15, 191:2, 260:2, 260:3, 260:7, 260:13, 328:13, 365:24  <b>decision-making</b> [1] - 260:13  <b>decisions</b> [1] - 257:13  <b>declaration</b> [5] - 137:10, 137:12, 137:24, 139:15, 147:6  <b>Declaration</b> [13] - 7:24, 8:2, 8:3, 8:4, 8:5, 8:6, 8:7, 8:8, 8:9, 8:10, 8:11, 8:12, 8:13  <b>declarations</b> [9] - 158:17, 158:22, 267:18, 274:17, 275:18, 276:16, 276:17, 276:19, 276:23  <b>declared</b> [1] - 35:4  <b>decontaminate</b> [1] - 192:13</p>	<p><b>decontamination</b> [1] - 190:16  <b>decorations</b> [1] - 198:2  <b>deemed</b> [1] - 30:3  <b>deep</b> [2] - 259:18, 358:24  <b>deeply</b> [3] - 160:18, 206:24, 351:14  <b>deer</b> [2] - 353:25, 354:2  <b>defects</b> [1] - 262:12  <b>defend</b> [3] - 355:6, 356:7, 357:21  <b>defending</b> [1] - 358:13  <b>defense</b> [1] - 69:13  <b>defense's</b> [1] - 352:9  <b>deference</b> [1] - 94:2  <b>define</b> [1] - 183:25  <b>defined</b> [3] - 36:15, 38:17, 39:7  <b>definitely</b> [10] - 44:18, 45:8, 59:6, 66:3, 66:15, 112:24, 179:11, 291:8, 366:15, 368:11  <b>definition</b> [9] - 55:19, 205:7, 205:15, 205:16, 205:18, 264:9, 268:14, 296:16  <b>definitions</b> [1] - 296:8  <b>degradation</b> [4] - 262:22, 263:6, 263:8, 264:4  <b>degree</b> [2] - 121:13, 340:2  <b>DeKalb</b> [1] - 199:1  <b>delegation</b> [1] - 321:20  <b>delicate</b> [1] - 15:3  <b>delightful</b> [1] - 198:1  <b>demand</b> [2] - 195:11  <b>demand</b> [1] - 199:14  <b>Deming</b> [1] - 346:9  <b>demonstrated</b> [2] - 252:6, 353:7  <b>demonstration</b> [3] - 261:1, 266:11, 300:9  <b>demonstrations</b> [1] - 14:9  <b>demonstrative</b> [3] - 188:16, 188:22, 299:15  <b>denial</b> [2] - 111:4, 238:14  <b>denied</b> [7] - 17:15, 61:5, 104:21, 104:22,</p>	<p>104:23, 238:11, 344:25  <b>Denver</b> [3] - 66:6, 346:6  <b>deny</b> [2] - 336:10, 353:12  <b>Department</b> [92] - 2:3, 7:21, 11:3, 11:17, 15:9, 15:11, 15:15, 15:20, 17:20, 19:4, 29:17, 30:4, 35:3, 35:9, 59:1, 59:3, 60:4, 60:12, 64:10, 72:4, 82:9, 82:16, 83:14, 85:17, 95:24, 113:20, 125:13, 131:8, 134:3, 173:12, 173:14, 173:15, 176:12, 177:24, 178:16, 181:16, 183:13, 195:17, 209:22, 212:14, 213:18, 214:3, 216:2, 216:4, 216:25, 217:23, 223:15, 223:20, 224:15, 224:21, 226:10, 233:22, 234:17, 239:13, 256:3, 256:23, 259:19, 262:3, 265:19, 279:22, 280:1, 287:8, 289:21, 292:5, 292:19, 297:17, 298:10, 298:17, 303:21, 304:2, 304:15, 305:1, 305:22, 308:5, 308:12, 309:5, 309:6, 309:11, 310:18, 312:22, 316:2, 317:9, 321:22, 323:22, 324:6, 325:1, 338:24, 342:9, 352:12, 356:6, 358:13, 363:6  <b>DEPARTMENT</b> [1] - 2:6  <b>department</b> [1] - 297:16  <b>Department's</b> [4] - 17:23, 238:1, 308:14, 311:24  <b>depth</b> [4] - 117:7, 120:16, 238:2, 352:2  <b>depths</b> [2] - 257:21, 257:25  <b>derivatives</b> [1] - 48:13  <b>derived</b> [2] - 277:21, 278:20  <b>describe</b> [9] - 34:15,</p>	<p>66:25, 81:20, 82:25, 83:20, 84:4, 84:8, 97:24, 109:15  <b>described</b> [5] - 39:19, 43:12, 64:9, 67:20, 156:14  <b>describes</b> [1] - 264:14  <b>deserve</b> [1] - 350:17  <b>design</b> [7] - 37:19, 79:12, 79:14, 124:4, 125:5, 125:17, 128:16  <b>designate</b> [1] - 102:7  <b>designated</b> [1] - 297:24  <b>designed</b> [8] - 30:6, 30:10, 124:4, 124:23, 125:7, 129:11, 193:12, 193:24  <b>designing</b> [1] - 37:6  <b>desirable</b> [1] - 348:14  <b>desire</b> [2] - 12:15, 134:16  <b>destination</b> [2] - 209:11, 209:13  <b>destine</b> [2] - 123:11, 132:15  <b>destroying</b> [1] - 192:3  <b>destroys</b> [1] - 18:25  <b>detail</b> [3] - 238:23, 240:25, 294:25  <b>detailed</b> [2] - 218:5, 219:20  <b>details</b> [1] - 202:20  <b>detectable</b> [1] - 139:19  <b>detecting</b> [1] - 54:12  <b>detection</b> [3] - 174:22, 175:12, 306:19  <b>deteriorate</b> [1] - 263:3  <b>determination</b> [3] - 204:3, 220:10, 222:3  <b>determine</b> [14] - 17:6, 78:4, 119:13, 119:17, 119:18, 120:19, 120:21, 121:1, 140:3, 144:2, 181:22, 276:14, 291:12, 291:16  <b>determined</b> [2] - 75:4, 77:21  <b>determining</b> [3] - 57:23, 276:9, 281:7  <b>developed</b> [1] - 191:13  <b>developing</b> [1] -</p>
---	--	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>247:15  <b>development</b> [2] - 348:17, 348:21  <b>dewormers</b> [1] - 251:15  <b>diagram</b> [1] - 67:1  <b>dialogue</b> [1] - 208:12  <b>diarrhea</b> [2] - 43:13, 44:6  <b>Dick</b> [1] - 8:12  <b>dictate</b> [1] - 37:18  <b>diet</b> [1] - 43:16  <b>difference</b> [27] - 39:14, 39:20, 40:3, 40:23, 43:9, 44:11, 45:11, 45:16, 73:19, 81:8, 81:13, 81:21, 97:14, 103:24, 111:9, 155:3, 217:9, 237:13, 263:10, 280:23, 281:3, 281:4, 283:8, 284:7, 284:9, 284:11, 310:5  <b>differences</b> [13] - 26:25, 46:8, 46:9, 110:14, 218:2, 218:4, 219:8, 219:11, 223:15, 267:8, 282:7, 308:7, 310:6  <b>different</b> [75] - 19:10, 21:9, 26:21, 27:21, 39:18, 42:13, 44:1, 46:22, 49:5, 52:12, 73:24, 73:25, 74:2, 75:2, 75:3, 91:18, 105:22, 105:24, 106:2, 106:5, 106:9, 115:5, 123:10, 123:15, 132:14, 132:19, 151:19, 151:20, 152:16, 152:19, 153:11, 154:20, 154:22, 154:23, 180:22, 181:23, 204:21, 205:19, 217:6, 221:6, 222:17, 223:16, 226:21, 228:1, 247:24, 251:9, 251:11, 251:15, 254:16, 261:3, 262:23, 266:20, 266:24, 266:25, 267:9, 273:4, 280:20, 280:25, 283:12, 290:4, 293:8, 293:9, 293:12, 295:22, 295:25, 296:13, 305:10, 305:14, 312:7, 317:16,</p>	<p>336:13, 336:22, 347:1, 357:16  <b>differentiate</b> [1] - 271:3  <b>differentiates</b> [2] - 265:18, 266:2  <b>differently</b> [1] - 293:9  <b>difficult</b> [4] - 302:8, 309:22, 348:9, 360:23  <b>diflubenzuron</b> [1] - 251:10  <b>dig</b> [2] - 191:24, 358:21  <b>digestive</b> [2] - 45:6, 154:20  <b>digging</b> [1] - 190:19  <b>diligence</b> [1] - 182:18  <b>diligent</b> [1] - 205:4  <b>diminish</b> [1] - 366:23  <b>dinner</b> [6] - 13:14, 359:22, 360:15, 360:20, 365:11  <b>dipropyl</b> [1] - 251:11  <b>dire</b> [7] - 23:24, 24:21, 25:3, 252:22, 252:23, 253:1, 255:1  <b>DIRECT</b> [5] - 23:9, 173:4, 176:4, 187:4, 211:13  <b>Direct</b> [7] - 4:4, 4:17, 4:20, 4:23, 5:3, 6:19, 6:24  <b>direct</b> [19] - 11:23, 12:1, 64:13, 78:25, 135:21, 136:24, 172:3, 178:11, 207:18, 207:22, 207:23, 208:4, 208:5, 213:12, 258:8, 298:10, 298:12, 328:18, 336:1  <b>directed</b> [1] - 74:10  <b>direction</b> [9] - 77:15, 77:18, 77:23, 78:4, 121:1, 142:15, 142:25, 318:7, 352:7  <b>Direction</b> [1] - 7:6  <b>directly</b> [17] - 12:25, 111:2, 111:5, 189:2, 192:9, 192:19, 198:1, 202:21, 239:6, 239:7, 315:6, 356:1, 356:3, 356:5, 356:17, 357:8, 358:5  <b>dirty</b> [1] - 283:16  <b>dirty</b> [3] - 109:19, 283:21  <b>disagree</b> [6] -</p>	<p>113:16, 158:21, 246:7, 260:1, 303:12, 303:24  <b>disagreed</b> [1] - 259:25  <b>disagreement</b> [1] - 247:20  <b>disappear</b> [1] - 88:25  <b>disappeared</b> [1] - 193:24  <b>Discharge</b> [10] - 6:11, 6:12, 7:2, 8:23, 8:24, 10:7, 11:6, 11:7, 100:19, 319:21  <b>DISCHARGE</b> [1] - 1:6  <b>discharge</b> [80] - 25:12, 25:14, 27:21, 34:4, 36:12, 37:16, 37:18, 38:1, 38:9, 39:15, 55:25, 56:8, 56:11, 56:25, 58:1, 58:2, 60:3, 61:18, 61:24, 61:25, 62:12, 67:24, 68:9, 75:14, 95:11, 102:1, 107:14, 111:21, 112:11, 113:12, 123:15, 132:18, 134:5, 180:4, 180:7, 180:8, 180:12, 180:13, 180:14, 181:11, 181:14, 181:23, 181:24, 182:15, 183:8, 183:14, 195:13, 197:7, 197:21, 205:5, 214:24, 216:15, 217:20, 217:24, 224:25, 225:6, 234:1, 235:5, 235:15, 235:23, 240:10, 266:19, 266:23, 279:4, 279:6, 279:7, 279:9, 279:23, 287:24, 290:3, 292:6, 292:12, 293:12, 317:22, 319:1, 319:8, 337:11, 337:20, 338:25, 353:13  <b>discharged</b> [9] - 36:6, 91:19, 204:24, 220:4, 220:17, 267:9, 292:1, 317:23, 336:20  <b>discharges</b> [13] - 129:6, 213:23, 223:16, 223:17, 224:11, 225:8, 238:3, 269:20, 296:20, 296:21, 297:6, 297:7, 309:13</p>	<p><b>discharging</b> [4] - 37:1, 57:12, 182:25, 199:23  <b>disclosed</b> [1] - 338:20  <b>disclosure</b> [2] - 253:7, 254:11  <b>discover</b> [1] - 326:17  <b>discovering</b> [1] - 272:1  <b>discovers</b> [1] - 246:17  <b>discretion</b> [1] - 259:6  <b>discuss</b> [9] - 21:4, 40:6, 41:4, 77:2, 117:24, 219:7, 240:22, 284:22, 359:25  <b>discussed</b> [22] - 40:1, 51:17, 56:15, 60:7, 103:10, 111:18, 117:1, 164:25, 167:22, 170:18, 218:7, 219:22, 226:2, 242:7, 261:22, 279:25, 315:22, 337:8, 337:12, 337:22, 338:5  <b>discusses</b> [1] - 324:5  <b>discussing</b> [4] - 60:17, 110:9, 267:16, 315:18  <b>discussion</b> [4] - 212:2, 226:13, 295:15, 323:18  <b>discussions</b> [4] - 57:25, 116:25, 151:8, 282:11  <b>disease</b> [3] - 340:19, 341:1, 341:18  <b>diseases</b> [3] - 26:21, 46:22, 138:17  <b>dismembered</b> [1] - 345:9  <b>displays</b> [1] - 14:9  <b>disposal</b> [7] - 36:11, 196:22, 199:6, 200:5, 203:11, 206:18, 311:7  <b>disposed</b> [1] - 71:18  <b>dispute</b> [1] - 88:21  <b>disregard</b> [2] - 337:7, 356:7  <b>dissolved</b> [4] - 83:23, 263:16, 301:22, 301:24  <b>distance</b> [2] - 256:12, 313:10  <b>distinct</b> [1] - 81:16  <b>distinction</b> [3] -</p>	<p>253:3, 253:10, 265:20  <b>distinctions</b> [1] - 154:16  <b>distinguish</b> [2] - 97:14, 266:7  <b>distinguished</b> [2] - 210:21  <b>distress</b> [1] - 340:16  <b>District</b> [4] - 25:22, 66:6, 249:19, 349:16  <b>diuretic</b> [1] - 53:7  <b>Division</b> [3] - 2:18, 213:18, 295:13  <b>docketed</b> [1] - 11:7  <b>doctor</b> [3] - 291:15, 294:20  <b>Document</b> [2] - 9:7, 111:10  <b>document</b> [29] - 38:12, 100:2, 101:21, 153:14, 212:9, 212:18, 228:16, 229:11, 230:9, 230:10, 230:15, 230:20, 230:22, 232:13, 233:12, 234:4, 234:16, 234:22, 234:23, 248:25, 252:7, 252:10, 253:12, 253:18, 253:19, 254:1, 289:8, 302:25  <b>Documentation</b> [1] - 7:6  <b>documents</b> [16] - 151:18, 152:4, 152:6, 152:15, 152:18, 153:2, 153:4, 153:5, 153:10, 234:10, 245:22, 253:21, 254:15, 287:14, 294:17, 294:22  <b>DOD</b> [1] - 190:14  <b>DOE</b> [1] - 190:14  <b>dollars</b> [1] - 199:9  <b>domestic</b> [8] - 38:24, 74:6, 79:8, 79:15, 80:6, 167:22, 167:23, 175:13  <b>domesticated</b> [1] - 38:24  <b>done</b> [50] - 26:19, 30:25, 31:18, 31:20, 42:8, 42:10, 78:19, 78:20, 81:7, 82:4, 97:2, 102:11, 102:12, 102:14, 106:9, 125:14, 125:15, 125:19, 127:5, 129:19, 139:7,</p>
--	---	--	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>160:22, 166:23, 182:13, 191:8, 207:8, 257:5, 257:9, 257:15, 258:5, 258:14, 261:7, 261:9, 280:14, 290:12, 306:17, 315:12, 315:14, 319:12, 319:17, 320:1, 320:7, 320:9, 321:19, 332:18, 333:12, 341:3, 350:5, 350:14, 364:7</p> <p><b>door</b> [3] - 97:22, 355:17, 362:23</p> <p><b>doors</b> [3] - 65:25, 333:9, 350:18</p> <p><b>dosage</b> [9] - 47:14, 47:22, 50:13, 50:14, 138:8, 139:24, 140:7, 162:3</p> <p><b>dose</b> [3] - 55:9, 55:10, 139:23</p> <p><b>double</b> [8] - 239:3, 258:6, 259:5, 259:23, 298:21, 299:1, 315:11, 343:17</p> <p><b>double-lined</b> [5] - 239:3, 258:6, 259:5, 259:23, 298:21</p> <p><b>double-liner</b> [1] - 315:11</p> <p><b>doves</b> [1] - 354:6</p> <p><b>down</b> [34] - 29:18, 36:1, 43:19, 43:21, 44:9, 53:25, 89:5, 91:1, 91:2, 91:12, 92:11, 92:17, 98:13, 114:25, 115:1, 169:10, 170:6, 193:7, 193:17, 193:19, 193:25, 194:8, 194:9, 194:21, 195:15, 197:19, 198:10, 208:13, 222:23, 234:20, 236:3, 306:8, 360:18, 362:21</p> <p><b>downgrade</b> [2] - 70:5, 70:6</p> <p><b>downgradient</b> [8] - 31:9, 32:6, 69:16, 126:11, 126:18, 241:15, 241:18, 270:22</p> <p><b>downside</b> [1] - 70:9</p> <p><b>downstream</b> [1] - 69:16</p> <p><b>DP</b> [2] - 11:7, 322:3</p> <p><b>DP-236</b> [7] - 1:6, 6:11, 6:13, 33:16, 34:16, 214:25, 324:10</p>	<p><b>DR</b> [61] - 23:19, 26:7, 27:2, 27:8, 27:11, 27:13, 40:11, 40:14, 40:16, 40:18, 40:20, 41:6, 43:9, 44:18, 44:22, 44:24, 45:14, 45:18, 45:22, 46:6, 46:13, 47:12, 49:18, 49:21, 49:23, 49:25, 50:11, 50:20, 51:12, 52:2, 53:24, 55:5, 55:9, 62:22, 84:10, 84:13, 84:16, 84:18, 84:20, 84:22, 85:1, 85:4, 85:9, 85:18, 88:4, 88:15, 89:7, 89:19, 89:23, 90:1, 90:4, 90:13, 90:17, 152:13, 169:17, 170:2, 170:16, 170:20, 170:24, 171:2, 171:6</p> <p><b>Dr</b> [32] - 23:2, 24:3, 26:4, 39:25, 62:17, 72:24, 74:21, 84:2, 87:6, 110:14, 110:16, 110:22, 136:3, 136:8, 142:17, 143:4, 148:18, 148:19, 149:10, 152:11, 165:25, 166:21, 169:5, 207:2, 247:20, 273:7, 284:23, 333:14, 339:14, 363:6, 364:4, 364:6</p> <p><b>draft</b> [22] - 29:17, 35:21, 60:3, 60:5, 60:8, 60:17, 61:17, 61:23, 62:14, 80:13, 175:6, 175:8, 175:11, 177:9, 178:7, 224:25, 225:2, 305:23, 311:23, 312:3, 312:5, 335:21</p> <p><b>Draft</b> [3] - 6:11, 6:12, 7:2</p> <p><b>Dragonfly</b> [1] - 355:24</p> <p><b>drain</b> [1] - 67:8</p> <p><b>drainage</b> [1] - 198:11</p> <p><b>drains</b> [4] - 98:16, 98:21, 98:24, 354:25</p> <p><b>draw</b> [3] - 253:3, 253:10, 314:23</p> <p><b>Drawer</b> [1] - 2:19</p> <p><b>drawn</b> [1] - 244:11</p> <p><b>drill</b> [1] - 192:12</p> <p><b>Driller's</b> [1] - 7:13</p> <p><b>driller's</b> [1] - 7:15</p> <p><b>Drive</b> [2] - 2:4, 2:9</p>	<p><b>drop</b> [1] - 41:18</p> <p><b>drought</b> [1] - 344:17</p> <p><b>drug</b> [33] - 49:8, 50:22, 50:25, 51:12, 51:14, 52:3, 52:24, 55:6, 84:16, 88:19, 89:13, 136:13, 140:1, 140:4, 140:12, 140:18, 140:20, 141:5, 142:1, 143:13, 143:24, 144:2, 144:3, 150:9, 153:7, 156:16, 164:15, 165:9, 169:10, 201:4, 239:20, 274:25, 341:2</p> <p><b>drug-free</b> [1] - 141:5</p> <p><b>drugged</b> [2] - 144:5, 355:16</p> <p><b>drugs</b> [115] - 43:3, 46:2, 46:20, 46:21, 47:2, 51:20, 52:1, 52:16, 52:17, 52:21, 52:22, 53:10, 53:12, 54:12, 54:14, 84:24, 85:6, 85:9, 85:14, 85:21, 87:7, 88:25, 89:7, 89:11, 89:12, 89:16, 123:11, 132:14, 140:5, 140:15, 140:22, 141:2, 141:3, 141:6, 143:1, 144:7, 144:10, 144:13, 145:10, 145:13, 146:15, 146:24, 150:8, 150:25, 151:19, 151:20, 152:16, 152:19, 153:11, 153:25, 157:2, 157:22, 158:2, 158:8, 158:12, 158:19, 159:8, 159:19, 159:24, 161:7, 161:25, 162:2, 162:9, 162:24, 163:9, 163:22, 164:24, 165:3, 165:8, 169:22, 170:12, 170:14, 170:15, 170:17, 171:1, 171:4, 193:8, 200:10, 200:18, 206:19, 217:11, 218:9, 219:24, 220:19, 220:24, 221:2, 224:16, 249:15, 249:22, 250:1, 250:14, 250:15, 250:19, 250:25, 251:22, 267:8, 267:17,</p>	<p>268:23, 270:7, 275:6, 275:7, 275:15, 294:3, 297:5, 317:17, 333:19, 334:6, 334:7, 336:15, 336:18, 336:25, 337:3</p> <p><b>dry</b> [1] - 47:19</p> <p><b>duck</b> [1] - 329:22</p> <p><b>ducks</b> [1] - 354:5</p> <p><b>due</b> [8] - 34:20, 93:24, 182:17, 217:10, 238:24, 289:7, 340:18, 370:7</p> <p><b>duly</b> [14] - 23:7, 173:2, 176:2, 187:2, 211:11, 332:3, 335:12, 339:5, 344:3, 346:3, 349:9, 351:2, 353:18, 372:7</p> <p><b>dumped</b> [1] - 342:12</p> <p><b>dumping</b> [1] - 341:19</p> <p><b>dumps</b> [2] - 337:23, 357:10</p> <p><b>DUNN</b> [234] - 2:12, 15:23, 18:2, 18:6, 18:10, 21:3, 21:21, 22:12, 22:19, 22:25, 23:3, 23:10, 23:23, 25:2, 25:20, 25:23, 26:3, 26:24, 27:5, 27:9, 27:12, 27:14, 27:25, 28:13, 28:18, 28:22, 29:3, 29:6, 29:9, 29:12, 30:13, 30:17, 31:2, 31:18, 32:8, 32:14, 33:1, 33:10, 33:13, 33:21, 33:25, 34:11, 35:7, 35:15, 35:19, 35:24, 36:3, 36:16, 36:25, 37:7, 37:20, 37:23, 38:6, 38:12, 38:17, 38:22, 39:9, 39:11, 39:24, 40:12, 40:15, 40:17, 40:19, 40:22, 43:3, 44:14, 44:19, 44:23, 45:10, 45:15, 45:19, 46:1, 46:7, 47:5, 49:16, 49:19, 49:22, 49:24, 50:10, 50:16, 51:3, 51:19, 53:21, 54:19, 55:6, 55:12, 55:24, 56:4, 56:7, 56:11, 56:15, 57:22, 58:4, 58:12, 58:24, 59:8, 59:21, 59:25, 60:9, 60:24, 61:3, 61:9, 61:16, 61:22, 62:2, 62:17, 62:23, 63:6, 91:23,</p>	<p>93:22, 93:24, 99:11, 100:3, 100:6, 100:22, 101:1, 101:9, 107:10, 107:12, 110:4, 111:12, 113:5, 113:8, 114:2, 130:9, 151:2, 151:4, 151:6, 152:1, 152:3, 158:6, 160:8, 160:10, 161:9, 167:4, 167:6, 167:7, 167:15, 167:17, 167:21, 168:5, 168:10, 168:21, 168:25, 169:5, 169:18, 170:7, 170:9, 170:17, 170:21, 170:25, 171:3, 171:7, 171:18, 171:22, 178:3, 178:13, 185:7, 185:12, 185:25, 186:2, 188:14, 188:25, 201:17, 202:6, 208:10, 208:14, 208:15, 209:16, 218:21, 227:8, 227:10, 227:23, 228:4, 229:3, 229:21, 229:23, 230:5, 230:9, 231:8, 231:11, 231:17, 232:8, 232:11, 232:17, 241:24, 242:1, 242:20, 242:23, 243:2, 244:21, 248:7, 248:14, 252:19, 252:21, 253:13, 253:23, 253:25, 255:2, 255:12, 255:22, 255:24, 265:23, 266:17, 268:13, 268:19, 278:10, 278:13, 282:5, 284:5, 284:22, 285:3, 323:10, 323:17, 324:18, 324:21, 325:5, 325:9, 325:11, 325:14, 326:2, 327:8, 328:11, 329:8, 330:20, 330:25, 359:24, 362:1, 362:6, 363:3, 363:12, 366:12, 369:8, 369:12</p> <p><b>Dunn</b> [75] - 4:4, 4:15, 4:24, 5:4, 5:6, 15:22, 15:25, 18:1, 22:18, 25:1, 63:8, 63:19, 64:17, 70:13, 73:18, 78:3, 91:22, 93:23, 99:10, 100:5, 100:21,</p>
--	---	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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<p>101:6, 107:11, 111:11, 113:7, 130:8, 151:5, 152:2, 152:25, 160:9, 167:3, 171:8, 171:17, 178:1, 185:6, 186:1, 188:13, 201:16, 208:4, 208:5, 209:17, 218:20, 227:9, 228:12, 232:10, 241:22, 243:16, 244:18, 248:6, 252:18, 253:24, 254:25, 255:5, 255:8, 255:20, 268:11, 278:9, 283:24, 284:17, 290:5, 290:16, 292:3, 294:25, 328:10, 329:7, 330:19, 347:22, 359:21, 361:2, 361:25, 362:11, 363:2, 364:2, 366:11, 369:23</p> <p><b>Dunn's</b> [2] - 246:4, 363:21</p> <p><b>duration</b> [6] - 47:15, 47:23, 50:15, 51:11, 139:25, 140:1</p> <p><b>during</b> [21] - 19:10, 19:14, 25:16, 88:16, 91:10, 92:7, 117:11, 118:19, 191:17, 197:11, 214:2, 215:15, 215:20, 221:17, 221:18, 256:20, 295:11, 299:5, 308:10, 320:11</p> <p><b>During</b> [1] - 318:24</p> <p><b>DVM</b> [4] - 4:3, 4:13, 6:10, 136:1</p>	<p><b>economic</b> [1] - 348:17</p> <p><b>economical</b> [1] - 48:4</p> <p><b>economics</b> [1] - 121:13</p> <p><b>economy</b> [2] - 65:22, 342:19</p> <p><b>ED</b> [1] - 30:10</p> <p><b>edges</b> [1] - 354:13</p> <p><b>edible</b> [2] - 47:21, 50:5</p> <p><b>educate</b> [3] - 49:2, 247:8, 347:7</p> <p><b>education</b> [5] - 121:22, 122:6, 169:20, 268:7, 268:20</p> <p><b>educational</b> [2] - 213:10, 214:14</p> <p><b>EFC</b> [1] - 198:20</p> <p><b>effect</b> [4] - 84:9, 90:7, 239:21, 256:22</p> <p><b>effectively</b> [1] - 253:7</p> <p><b>effects</b> [7] - 239:1, 239:23, 239:25, 240:3, 250:9, 279:10, 297:25</p> <p><b>efficiencies</b> [1] - 135:19</p> <p><b>efficiency</b> [3] - 100:22, 135:24, 242:8</p> <p><b>Efficiency</b> [2] - 8:20, 212:21</p> <p><b>efficient</b> [1] - 293:15</p> <p><b>effort</b> [2] - 366:4, 366:9</p> <p><b>eight</b> [5] - 109:6, 149:22, 163:1, 191:14, 357:11</p> <p><b>EIS</b> [1] - 358:2</p> <p><b>either</b> [19] - 12:18, 17:21, 37:10, 37:23, 81:25, 83:5, 89:8, 106:13, 111:21, 123:2, 124:19, 234:7, 265:16, 286:22, 341:5, 359:16, 368:21</p> <p><b>elaborate</b> [2] - 174:19, 293:7</p> <p><b>Eldridge</b> [1] - 197:25</p> <p><b>electrical</b> [1] - 190:12</p> <p><b>electricity</b> [1] - 208:20</p> <p><b>electromagnetic</b> [2] - 75:17, 76:2</p> <p><b>electronic</b> [1] - 75:9</p> <p><b>elevated</b> [2] - 36:13, 309:21</p>	<p><b>elevation</b> [3] - 78:3, 313:11, 318:6</p> <p><b>elicit</b> [1] - 107:19</p> <p><b>elicited</b> [2] - 228:17, 363:23</p> <p><b>eligible</b> [1] - 360:5</p> <p><b>elsewhere</b> [2] - 348:21, 366:2</p> <p><b>embarking</b> [1] - 222:6</p> <p><b>emerging</b> [1] - 269:24</p> <p><b>emotion</b> [1] - 348:22</p> <p><b>employed</b> [8] - 65:15, 173:10, 173:13, 176:10, 176:11, 176:23, 372:11, 372:14</p> <p><b>employee</b> [3] - 18:21, 213:16, 372:13</p> <p><b>employees</b> [9] - 57:9, 65:15, 98:22, 102:7, 102:9, 107:1, 153:24, 332:23</p> <p><b>employment</b> [1] - 212:13</p> <p><b>emus</b> [1] - 39:3</p> <p><b>enact</b> [1] - 298:2</p> <p><b>encloses</b> [1] - 100:18</p> <p><b>encountered</b> [2] - 61:13, 80:15</p> <p><b>encouraged</b> [3] - 66:5, 66:6, 96:4</p> <p><b>end</b> [25] - 11:25, 30:11, 115:3, 116:14, 116:20, 122:1, 145:21, 166:13, 188:6, 206:16, 206:19, 209:10, 209:13, 209:14, 213:19, 231:4, 236:19, 271:15, 274:1, 275:22, 327:14, 341:6, 367:14</p> <p><b>end-product</b> [1] - 209:10</p> <p><b>end-products</b> [1] - 209:14</p> <p><b>endangered</b> [5] - 354:22, 355:9, 355:22, 356:10, 356:12</p> <p><b>endeavor</b> [1] - 350:17</p> <p><b>ended</b> [1] - 222:11</p> <p><b>endemic</b> [2] - 354:22, 355:9</p> <p><b>ending</b> [2] - 91:19, 352:18</p>	<p><b>endorsed</b> [1] - 355:16</p> <p><b>ends</b> [7] - 54:24, 142:2, 163:20, 198:25, 255:2, 270:8, 274:18</p> <p><b>enforce</b> [1] - 345:4</p> <p><b>enforced</b> [2] - 143:18, 143:21</p> <p><b>enforcement</b> [8] - 19:16, 21:19, 189:21, 296:10, 321:10, 321:15, 321:16, 321:24</p> <p><b>Enforcement</b> [1] - 9:14</p> <p><b>engage</b> [1] - 105:21</p> <p><b>engagements</b> [3] - 363:7, 364:4, 364:5</p> <p><b>engineer</b> [12] - 30:7, 30:24, 125:4, 125:22, 126:25, 131:21, 190:11, 190:12, 204:6, 239:15, 262:4, 340:5</p> <p><b>engineering</b> [2] - 190:18, 316:15</p> <p><b>Engineering</b> [1] - 127:6</p> <p><b>engineers</b> [1] - 119:15</p> <p><b>enjoy</b> [2] - 22:13, 349:2</p> <p><b>enrichment</b> [2] - 223:25, 305:8</p> <p><b>ensure</b> [7] - 70:3, 70:5, 139:19, 149:12, 159:3, 159:15, 239:4</p> <p><b>ensures</b> [2] - 155:8, 155:12</p> <p><b>ensuring</b> [1] - 156:10</p> <p><b>entail</b> [1] - 96:18</p> <p><b>entails</b> [1] - 97:16</p> <p><b>enter</b> [2] - 276:15, 338:7</p> <p><b>entered</b> [2] - 127:20, 177:14</p> <p><b>entering</b> [1] - 117:24</p> <p><b>enteritis</b> [1] - 44:7</p> <p><b>enterprise</b> [2] - 221:6, 222:17</p> <p><b>enterprises</b> [2] - 37:11, 37:21</p> <p><b>entire</b> [8] - 12:1, 100:2, 112:13, 163:22, 192:4, 307:5, 333:21, 340:15</p> <p><b>entirely</b> [3] - 40:20, 42:13, 271:24</p> <p><b>entirety</b> [1] - 325:5</p>	<p><b>entities</b> [3] - 325:17, 326:23, 327:6</p> <p><b>entitled</b> [1] - 232:5</p> <p><b>entry</b> [4] - 17:9, 75:3, 341:22</p> <p><b>EnviroCompliance</b> [2] - 23:18, 130:22</p> <p><b>environment</b> [23] - 34:2, 34:4, 61:7, 61:12, 61:17, 61:24, 62:21, 106:19, 113:18, 157:6, 164:23, 184:18, 258:16, 258:17, 271:13, 275:24, 276:3, 279:15, 337:5, 337:8, 338:7, 338:24, 348:18</p> <p><b>ENVIRONMENT</b> [2] - 1:2, 2:6</p> <p><b>Environment</b> [26] - 2:3, 11:3, 15:11, 15:20, 30:3, 85:17, 125:13, 131:8, 173:12, 173:14, 176:11, 209:22, 212:13, 213:17, 216:2, 217:22, 224:14, 226:10, 233:21, 234:17, 265:19, 297:16, 298:10, 311:23, 338:23, 352:12</p> <p><b>Environmental</b> [4] - 8:14, 355:5, 356:6, 358:13</p> <p><b>environmental</b> [13] - 18:14, 57:2, 130:24, 157:10, 191:9, 207:14, 207:16, 337:25, 350:6, 351:15, 352:14, 356:24, 357:20</p> <p><b>envision</b> [1] - 355:1</p> <p><b>EPA</b> [5] - 296:19, 296:25, 297:6, 297:11, 319:10</p> <p><b>equates</b> [1] - 236:3</p> <p><b>equine</b> [25] - 51:5, 52:6, 57:19, 57:24, 58:18, 66:3, 81:2, 85:9, 95:20, 154:10, 154:12, 161:18, 161:19, 164:21, 170:11, 187:11, 189:18, 190:6, 193:4, 251:13, 276:11, 351:5, 351:15, 351:19, 351:23</p> <p><b>Equine</b> [15] - 3:2,</p>
<b>E</b>				
<p><b>E-mail</b> [1] - 9:2</p> <p><b>early</b> [5] - 303:17, 306:19, 316:2, 316:8, 361:11</p> <p><b>Earth</b> [2] - 320:16, 355:3</p> <p><b>ease</b> [1] - 179:10</p> <p><b>easier</b> [4] - 99:15, 99:18, 107:5, 107:18</p> <p><b>easiest</b> [1] - 119:15</p> <p><b>east</b> [3] - 31:16, 78:16, 126:14</p> <p><b>Easter</b> [1] - 193:19</p> <p><b>eastern</b> [1] - 354:19</p> <p><b>eat</b> [4] - 42:21, 42:24, 43:12, 366:18</p> <p><b>eating</b> [1] - 44:2</p>				

KATHY TOWNSEND COURT REPORTERS

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(505) 243-5018 - Fax (505) 243-3606

<p>3:8, 3:10, 11:20, 16:5, 16:20, 26:12, 187:15, 190:2, 190:3, 190:8, 211:21, 339:12, 341:21, 351:7</p> <p><b>equines</b> [12] - 40:6, 40:7, 40:10, 73:11, 85:7, 148:15, 157:23, 202:9, 205:24, 264:18, 264:22, 265:6</p> <p><b>equipment</b> [3] - 116:17, 116:21, 185:20</p> <p><b>Eric</b> [3] - 112:9, 118:19, 118:25</p> <p><b>error</b> [2] - 212:14, 259:2</p> <p><b>errors</b> [1] - 212:6</p> <p><b>especially</b> [17] - 221:1, 223:17, 224:10, 226:1, 238:12, 239:5, 242:13, 259:15, 259:18, 261:5, 307:24, 311:8, 316:12, 322:9, 348:5, 352:5, 354:12</p> <p><b>esq.com</b> [1] - 2:15</p> <p><b>essentially</b> [5] - 131:1, 239:20, 269:7, 313:20, 314:3</p> <p><b>establish</b> [4] - 142:25, 157:21, 249:3, 249:24</p> <p><b>established</b> [1] - 156:12</p> <p><b>establishing</b> [1] - 219:4</p> <p><b>estimate</b> [6] - 44:19, 44:21, 93:3, 231:12, 361:15, 363:21</p> <p><b>estimated</b> [1] - 231:21</p> <p><b>estimation</b> [3] - 41:23, 325:16, 326:3</p> <p><b>et</b> [3] - 269:9, 291:7, 341:15</p> <p><b>Europe</b> [1] - 139:8</p> <p><b>European</b> [5] - 235:12, 235:22, 237:15, 282:16, 341:21</p> <p><b>euthanized</b> [2] - 54:1, 334:4</p> <p><b>evaluate</b> [5] - 202:10, 224:2, 261:4, 269:9, 269:10</p> <p><b>evaluated</b> [1] - 204:11</p> <p><b>evaluating</b> [2] -</p>	<p>224:19, 243:23</p> <p><b>evaluation</b> [2] - 182:20, 294:17</p> <p><b>evaluations</b> [2] - 203:1</p> <p><b>evaporate</b> [1] - 30:8</p> <p><b>evaporated</b> [1] - 310:21</p> <p><b>evaporating</b> [3] - 91:8, 91:9, 91:11</p> <p><b>evaporation</b> [12] - 36:12, 67:19, 68:2, 68:3, 91:20, 124:5, 124:25, 126:22, 129:5, 199:5, 233:25, 336:20</p> <p><b>Evaporation</b> [2] - 229:2, 229:25</p> <p><b>evaporative</b> [1] - 318:12</p> <p><b>evening</b> [3] - 285:9, 364:21, 365:8</p> <p><b>event</b> [2] - 69:9, 108:1</p> <p><b>eventually</b> [4] - 13:1, 55:17, 65:14, 138:21</p> <p><b>evidence</b> [19] - 12:6, 113:8, 148:22, 183:6, 183:12, 187:9, 200:1, 201:7, 215:19, 227:4, 227:11, 231:19, 233:9, 233:19, 233:20, 234:5, 246:21, 253:15, 276:20</p> <p><b>evidenced</b> [1] - 293:13</p> <p><b>evident</b> [1] - 304:5</p> <p><b>evidentiary</b> [3] - 11:13, 13:16, 14:6</p> <p><b>exacerbated</b> [1] - 191:3</p> <p><b>exact</b> [7] - 25:19, 110:20, 272:3, 284:2, 303:15, 316:16, 320:15</p> <p><b>exactly</b> [12] - 21:12, 65:1, 77:17, 155:16, 203:8, 239:23, 243:25, 299:23, 300:18, 307:21, 312:13, 314:16</p> <p><b>exam</b> [1] - 178:12</p> <p><b>examination</b> [17] - 11:23, 64:13, 64:14, 65:5, 93:4, 93:13, 111:24, 130:2, 177:21, 178:16, 210:19, 211:6, 246:20, 249:2,</p>	<p>254:13, 255:1, 255:8</p> <p><b>EXAMINATION</b> [17] - 23:9, 64:22, 87:5, 94:19, 119:11, 130:19, 136:1, 167:6, 173:4, 176:4, 180:1, 183:19, 202:5, 211:13, 255:23, 285:7, 323:16</p> <p><b>Examination</b> [17] - 4:4, 4:5, 4:6, 4:8, 4:10, 4:12, 4:14, 4:15, 4:17, 4:18, 4:20, 4:21, 4:24, 5:3, 5:4, 5:5, 5:6</p> <p><b>examine</b> [3] - 45:8, 236:5, 248:17</p> <p><b>examiners</b> [1] - 92:4</p> <p><b>examining</b> [1] - 186:3</p> <p><b>example</b> [10] - 142:23, 144:20, 191:6, 202:13, 204:20, 210:13, 210:14, 237:7, 242:6, 304:8</p> <p><b>examples</b> [6] - 25:7, 131:10, 193:9, 200:24, 201:1, 250:25</p> <p><b>exceed</b> [4] - 58:13, 59:3, 227:17, 227:18</p> <p><b>exceedance</b> [1] - 266:12</p> <p><b>exceedances</b> [1] - 302:6</p> <p><b>exceeded</b> [7] - 32:5, 32:6, 56:16, 56:23, 225:9, 225:15, 302:4</p> <p><b>exceeding</b> [4] - 279:12, 279:21, 309:12, 338:15</p> <p><b>excellent</b> [1] - 16:23</p> <p><b>exceptions</b> [3] - 266:15, 296:24, 296:25</p> <p><b>Excerpted</b> [1] - 9:5</p> <p><b>excess</b> [4] - 42:6, 282:9, 313:24, 337:16</p> <p><b>exclude</b> [3] - 20:24, 210:24, 245:18</p> <p><b>excluded</b> [1] - 360:16</p> <p><b>exclusion</b> [2] - 20:22, 21:20</p> <p><b>excrement</b> [1] - 43:12</p> <p><b>excuse</b> [12] - 33:2, 104:24, 110:11, 129:25, 130:1, 142:4, 171:9, 218:14, 229:22, 296:5,</p>	<p>319:23, 350:9</p> <p><b>excused</b> [4] - 130:11, 130:17, 172:2, 364:6</p> <p><b>exercise</b> [1] - 259:7</p> <p><b>exercised</b> [1] - 259:8</p> <p><b>exhibit</b> [14] - 158:12, 177:23, 179:10, 220:24, 246:10, 246:21, 247:21, 247:22, 248:2, 248:3, 249:11, 249:12, 254:6, 297:5</p> <p><b>EXHIBIT</b> [3] - 6:2, 6:15, 7:11</p> <p><b>Exhibit</b> [18] - 35:21, 175:20, 177:18, 212:8, 212:11, 212:17, 212:24, 220:22, 231:3, 243:22, 245:14, 247:17, 248:9, 267:16, 294:8, 303:4, 312:12, 312:16</p> <p><b>exhibits</b> [16] - 63:10, 178:25, 188:15, 188:22, 242:18, 243:4, 243:7, 243:14, 243:22, 247:2, 247:11, 247:13, 267:16, 270:21, 324:17, 325:3</p> <p><b>Exhibits</b> [7] - 63:18, 179:14, 218:5, 219:21, 220:11, 254:24, 267:21</p> <p><b>exist</b> [2] - 201:2, 273:9</p> <p><b>existence</b> [2] - 66:12, 152:23</p> <p><b>existing</b> [6] - 83:7, 124:24, 126:6, 126:14, 174:22, 265:16</p> <p><b>exists</b> [1] - 216:12</p> <p><b>exotic</b> [1] - 39:1</p> <p><b>expand</b> [4] - 21:6, 128:17, 262:1, 338:18</p> <p><b>expanding</b> [2] - 37:7, 241:12</p> <p><b>expect</b> [13] - 13:18, 15:2, 46:11, 47:8, 54:25, 55:7, 56:11, 57:2, 58:2, 278:23, 284:7, 284:9, 284:11</p> <p><b>expected</b> [1] - 234:1</p> <p><b>expedite</b> [1] - 100:14</p> <p><b>expeditiously</b> [1] - 143:9</p> <p><b>expensive</b> [1] -</p>	<p>348:18</p> <p><b>experience</b> [55] - 27:3, 39:12, 39:20, 39:22, 39:23, 43:8, 52:10, 62:6, 62:11, 62:12, 68:21, 69:7, 81:22, 83:2, 83:14, 85:22, 90:22, 103:19, 122:23, 123:1, 127:3, 131:23, 132:2, 136:25, 137:21, 138:22, 151:9, 153:6, 157:12, 162:23, 164:13, 164:16, 168:11, 190:13, 197:25, 206:1, 206:2, 206:3, 214:12, 214:19, 220:25, 222:4, 222:10, 223:21, 251:23, 251:25, 259:10, 268:6, 279:1, 287:8, 293:10, 307:17, 308:15, 347:17</p> <p><b>experiences</b> [1] - 52:5</p> <p><b>expert</b> [24] - 25:8, 25:9, 25:23, 25:25, 161:17, 170:10, 170:11, 201:22, 214:2, 218:23, 248:20, 253:20, 253:25, 254:2, 262:3, 274:13, 275:5, 275:16, 280:9, 282:8, 284:13, 284:19, 315:3, 336:6</p> <p><b>expert's</b> [1] - 204:4</p> <p><b>expertise</b> [8] - 18:15, 126:21, 157:9, 166:9, 168:19, 187:8, 189:16, 190:15</p> <p><b>experts</b> [6] - 18:16, 24:2, 24:9, 24:11, 195:22, 362:3</p> <p><b>expiration</b> [3] - 216:3, 216:10, 216:17</p> <p><b>expired</b> [11] - 96:2, 102:19, 102:20, 133:24, 215:25, 216:12, 217:1, 217:3, 289:17, 327:4, 337:19</p> <p><b>Expires</b> [2] - 372:19, 372:20</p> <p><b>explain</b> [14] - 98:2, 116:8, 131:2, 131:4, 137:25, 138:9, 139:21, 147:23, 161:23, 163:13, 163:15, 233:10,</p>
--	--	---	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>233:21, 292:17  <b>explained</b> [1] - 141:12  <b>explains</b> [1] - 154:25  <b>explanation</b> [1] - 196:4  <b>explore</b> [3] - 160:19, 219:10, 364:24  <b>exponential</b> [1] - 89:3  <b>exposed</b> [2] - 263:7  <b>exposure</b> [1] - 220:6  <b>express</b> [2] - 22:6, 337:25  <b>expressed</b> [5] - 60:18, 72:21, 263:5, 349:18, 368:4  <b>expression</b> [2] - 14:5, 22:8  <b>expressly</b> [1] - 14:17  <b>extended</b> [1] - 241:6  <b>extension</b> [1] - 30:17  <b>extensive</b> [7] - 85:6, 85:9, 168:11, 222:4, 223:23, 235:14, 285:12  <b>extensively</b> [1] - 320:17  <b>extent</b> [7] - 92:6, 179:7, 210:18, 210:20, 254:17, 308:6, 368:6  <b>extrapolate</b> [1] - 281:23  <b>extrapolated</b> [1] - 280:18  <b>extrapolating</b> [1] - 281:7  <b>extreme</b> [1] - 337:25  <b>extremely</b> [1] - 322:17  <b>eyes</b> [1] - 15:4</p>	<p>206:15, 224:6, 235:14, 235:16, 239:10, 239:12, 256:10, 258:15, 259:6, 259:20, 260:9, 260:12, 260:25, 261:1, 263:9, 263:15, 264:4, 270:23, 270:25, 281:9, 290:14, 290:25, 293:9, 293:14, 296:24, 299:12, 299:17, 300:5, 300:7, 300:8, 301:15, 301:21, 302:1, 304:18, 304:23, 309:7, 315:2, 315:23, 316:5, 317:19, 319:1, 319:2, 322:3, 322:7, 322:9, 322:11, 327:3  <b>facility</b> [181] - 22:4, 26:1, 28:4, 30:5, 31:9, 35:1, 36:7, 36:8, 37:19, 39:21, 46:12, 55:16, 55:21, 55:23, 56:21, 57:9, 57:14, 58:9, 59:11, 59:12, 59:22, 60:15, 61:9, 62:10, 62:11, 65:1, 65:3, 65:7, 65:9, 65:12, 65:18, 66:25, 67:1, 67:8, 68:19, 70:18, 70:19, 70:21, 70:24, 71:20, 73:19, 73:20, 73:21, 74:13, 74:24, 75:5, 75:13, 79:6, 79:12, 79:14, 79:25, 80:6, 80:13, 81:9, 82:10, 82:22, 97:12, 98:1, 98:6, 102:6, 104:1, 104:4, 104:12, 104:15, 105:2, 105:7, 106:24, 108:12, 108:18, 112:11, 112:20, 113:12, 114:8, 116:21, 117:1, 117:6, 117:22, 124:8, 124:19, 124:20, 126:13, 128:8, 128:13, 138:6, 160:4, 167:24, 174:5, 181:21, 181:23, 182:2, 183:22, 184:3, 192:3, 192:4, 192:10, 193:19, 205:11, 206:6, 206:10, 206:12, 210:20, 215:11, 217:24, 223:22, 223:24, 223:25, 224:2, 224:4,</p>	<p>234:20, 241:6, 241:17, 256:16, 258:6, 260:11, 265:2, 265:11, 265:12, 266:20, 271:16, 282:15, 290:21, 290:23, 292:8, 292:21, 293:11, 293:12, 298:25, 299:6, 299:7, 299:24, 301:7, 302:3, 302:7, 302:11, 302:15, 304:7, 304:9, 304:13, 304:23, 305:7, 305:8, 305:11, 305:13, 305:15, 306:6, 306:11, 307:1, 307:19, 308:4, 308:6, 308:7, 308:13, 309:12, 309:20, 310:17, 315:14, 317:18, 318:4, 318:6, 319:25, 320:2, 320:12, 320:13, 320:18, 320:19, 322:9, 324:10, 324:15, 333:4, 333:8, 333:16, 334:17, 337:23, 356:18, 365:19  <b>facility's</b> [1] - 324:12  <b>facility-wise</b> [1] - 59:11  <b>fact</b> [28] - 88:13, 88:22, 107:20, 111:19, 111:20, 111:22, 135:1, 144:13, 179:9, 193:14, 195:25, 200:12, 202:8, 206:5, 239:25, 251:22, 261:21, 267:3, 270:18, 275:13, 278:4, 283:5, 289:6, 329:11, 334:8, 343:18, 369:5, 369:20  <b>Fact</b> [1] - 8:22  <b>factor</b> [3] - 48:4, 135:15, 309:24  <b>factories</b> [2] - 190:22, 190:23  <b>factors</b> [1] - 312:5  <b>factory</b> [1] - 76:3  <b>facts</b> [8] - 111:15, 111:19, 113:8, 219:4, 282:20, 347:8, 353:5  <b>factual</b> [4] - 24:5, 25:5, 25:24, 204:3  <b>failed</b> [2] - 216:9, 352:19</p>	<p><b>failing</b> [1] - 337:14  <b>failure</b> [4] - 313:22, 326:14, 356:8, 359:4  <b>failures</b> [1] - 315:5  <b>fair</b> [8] - 110:13, 147:11, 149:17, 182:4, 203:23, 209:8, 289:8, 323:13  <b>fairly</b> [6] - 36:18, 36:20, 80:14, 143:8, 222:9, 313:1  <b>fairness</b> [1] - 366:3  <b>fall</b> [6] - 205:11, 264:18, 264:19, 265:6, 319:8, 343:13  <b>fallacies</b> [1] - 339:20  <b>fallen</b> [1] - 191:20  <b>falls</b> [2] - 55:19, 357:18  <b>familiar</b> [37] - 26:24, 27:6, 27:9, 37:9, 37:10, 37:12, 40:9, 40:11, 46:2, 127:10, 156:14, 169:25, 170:12, 170:14, 205:21, 208:15, 209:5, 220:23, 250:1, 250:20, 250:22, 251:6, 251:23, 252:13, 262:24, 263:2, 264:6, 264:10, 264:11, 264:12, 267:3, 273:20, 274:16, 278:13, 304:19, 320:13  <b>familiarity</b> [1] - 250:13  <b>family</b> [2] - 350:12, 350:16  <b>far</b> [20] - 33:24, 38:3, 39:13, 46:13, 57:12, 110:22, 110:25, 147:1, 148:20, 160:11, 180:13, 231:11, 246:11, 254:15, 256:12, 276:1, 282:9, 313:17, 366:4, 370:4  <b>farm</b> [4] - 38:25, 122:21, 343:6, 343:7  <b>farmed</b> [1] - 39:4  <b>Farms</b> [6] - 188:10, 198:13, 198:17, 199:21, 199:25, 200:5  <b>farms</b> [4] - 26:17, 45:4, 122:14, 122:16  <b>Farnam</b> [1] - 251:8  <b>fashion</b> [1] - 14:8  <b>fast</b> [3] - 120:24, 208:13, 227:19</p>	<p><b>Fate</b> [1] - 8:14  <b>fate</b> [1] - 267:22  <b>FDA</b> [5] - 49:12, 160:14, 205:15, 205:17, 205:20  <b>Fe</b> [3] - 2:5, 2:10, 2:19  <b>fear</b> [1] - 201:7  <b>Fear</b> [1] - 343:9  <b>feasible</b> [2] - 201:3, 204:9  <b>February</b> [5] - 13:19, 31:12, 125:21, 234:11, 234:18  <b>fed</b> [3] - 45:25, 164:5, 334:7  <b>federal</b> [11] - 55:20, 105:8, 105:18, 138:15, 144:15, 145:5, 194:10, 352:24, 353:4, 356:9, 356:12  <b>Federal</b> [2] - 25:20, 145:10  <b>federally</b> [2] - 356:9, 357:2  <b>feed</b> [6] - 37:13, 42:20, 163:25, 341:10, 359:2, 359:3  <b>feedlot</b> [1] - 39:16  <b>feedlots</b> [3] - 37:9, 163:12, 163:16  <b>feelings</b> [3] - 14:3, 14:4, 286:19  <b>fees</b> [1] - 287:2  <b>feet</b> [5] - 71:7, 76:15, 313:9, 352:3, 358:24  <b>Felicia</b> [1] - 11:2  <b>FELICIA</b> [2] - 1:14, 2:3  <b>fellow</b> [1] - 349:18  <b>felony</b> [2] - 28:25, 29:3  <b>fenbendazole</b> [1] - 251:14  <b>fence</b> [1] - 354:19  <b>Fernald</b> [3] - 191:13, 210:14  <b>fertilizer</b> [2] - 206:18, 206:20  <b>fever</b> [1] - 150:17  <b>few</b> [28] - 28:2, 33:19, 43:22, 80:17, 80:19, 109:4, 123:23, 131:10, 137:25, 139:8, 178:18, 185:18, 186:13, 187:7, 198:19, 205:2, 214:5, 250:24, 255:7, 318:21, 325:8,</p>
<b>F</b>				
<p><b>face</b> [1] - 217:17  <b>Facebook</b> [3] - 347:2, 347:3, 348:24  <b>faced</b> [1] - 350:10  <b>facet</b> [1] - 351:23  <b>facilities</b> [70] - 27:23, 37:9, 57:23, 58:19, 60:23, 60:24, 62:2, 62:4, 62:7, 66:18, 75:4, 80:14, 81:2, 106:24, 107:2, 183:4, 183:23, 184:8, 184:12, 184:15, 184:17, 204:13,</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>328:15, 336:24, 347:6, 353:21, 360:1, 361:23, 364:20 <b>field</b> [5] - 24:9, 168:6, 234:16, 269:24, 321:18 <b>fields</b> [2] - 24:10, 248:21 <b>fifth</b> [2] - 101:12, 348:8 <b>figure</b> [4] - 111:9, 143:5, 226:21, 272:3 <b>figuring</b> [1] - 41:16 <b>file</b> [3] - 13:23, 188:25, 278:8 <b>File</b> [1] - 7:17 <b>filed</b> [7] - 35:8, 177:23, 187:24, 212:4, 213:7, 245:4, 285:17 <b>filing</b> [1] - 174:14 <b>filled</b> [3] - 331:5, 355:2, 355:15 <b>filthy</b> [4] - 43:19, 43:24, 45:24, 342:19 <b>final</b> [1] - 116:15 <b>Final</b> [1] - 6:22 <b>finally</b> [4] - 17:16, 200:3, 200:23, 329:2 <b>financially</b> [1] - 372:14 <b>findings</b> [2] - 244:5, 305:23 <b>fine</b> [22] - 22:23, 64:15, 92:12, 95:9, 165:12, 170:9, 178:13, 179:10, 186:6, 194:18, 195:2, 208:10, 231:21, 238:8, 242:24, 243:2, 244:21, 278:10, 293:5, 334:2, 334:20, 360:24 <b>fined</b> [2] - 194:24, 195:13 <b>fines</b> [1] - 195:14 <b>finish</b> [6] - 12:8, 12:11, 12:17, 141:13, 208:8, 283:24 <b>finished</b> [1] - 255:8 <b>finishing</b> [2] - 67:18, 361:10 <b>finite</b> [1] - 364:6 <b>first</b> [60] - 11:15, 11:23, 15:9, 23:7, 28:6, 32:23, 36:10, 51:6, 64:10, 67:15, 68:23, 70:15, 96:8, 97:25, 98:9, 103:10, 106:21, 107:17,</p>	<p>126:6, 134:17, 134:24, 142:9, 147:10, 173:2, 176:2, 180:21, 180:25, 181:6, 185:17, 186:16, 187:2, 187:12, 187:15, 189:11, 194:16, 194:18, 211:11, 215:2, 245:10, 246:3, 256:2, 291:23, 300:16, 331:20, 332:3, 332:8, 335:12, 336:12, 339:5, 344:3, 346:3, 347:18, 349:9, 351:2, 353:18, 362:17, 363:20, 366:12, 370:2 <b>fish</b> [8] - 354:13, 354:16, 354:22, 355:9, 355:13, 355:22, 359:2, 359:3 <b>fit</b> [3] - 65:5, 77:16, 364:8 <b>Fitch</b> [1] - 8:11 <b>fits</b> [1] - 78:15 <b>five</b> [11] - 53:13, 53:18, 78:25, 79:7, 106:16, 214:22, 229:6, 330:8, 330:9, 331:2, 352:15 <b>fix</b> [1] - 195:19 <b>flag</b> [1] - 363:24 <b>flaunting</b> [1] - 352:13 <b>flesh</b> [3] - 51:9, 136:16, 224:17 <b>flickers</b> [1] - 354:8 <b>flights</b> [1] - 367:13 <b>flip</b> [1] - 101:20 <b>floor</b> [6] - 67:7, 115:2, 115:4, 115:11, 116:4, 166:13 <b>Floor</b> [1] - 3:6 <b>floors</b> [1] - 115:5 <b>Flow</b> [1] - 7:6 <b>flow</b> [13] - 37:5, 75:7, 77:18, 77:23, 78:4, 121:1, 124:8, 124:19, 313:24, 352:8, 358:4, 358:16, 358:19 <b>flowing</b> [2] - 36:10, 338:3 <b>flows</b> [2] - 59:18, 358:15 <b>fluid</b> [1] - 315:7 <b>fluids</b> [3] - 159:4, 159:15, 162:4 <b>fly</b> [3] - 251:10, 251:11, 251:13 <b>flying</b> [1] - 367:12</p>	<p><b>Flynn</b> [2] - 13:19, 20:15 <b>Flynn's</b> [1] - 20:17 <b>focus</b> [3] - 29:20, 94:2, 162:18 <b>folded</b> [1] - 156:20 <b>folded</b> [2] - 115:22, 115:24 <b>folks</b> [2] - 349:14, 361:20 <b>follow</b> [8] - 127:6, 167:3, 184:24, 185:1, 250:5, 253:14, 260:15, 322:25 <b>follow-up</b> [6] - 167:3, 184:24, 185:1, 250:5, 253:14, 322:25 <b>followed</b> [1] - 139:25 <b>following</b> [2] - 336:11, 370:3 <b>follows</b> [13] - 23:8, 173:3, 176:3, 187:3, 211:12, 332:4, 335:13, 339:6, 344:4, 346:4, 349:10, 351:3, 353:19 <b>food</b> [50] - 140:5, 140:6, 140:17, 144:14, 144:21, 145:3, 145:12, 145:16, 146:9, 146:16, 146:24, 147:1, 147:4, 148:1, 148:5, 148:8, 148:14, 149:7, 149:15, 154:3, 154:7, 156:21, 160:12, 160:15, 169:16, 171:5, 206:16, 218:10, 218:16, 218:17, 219:25, 221:3, 273:2, 273:6, 273:12, 273:22, 274:5, 333:18, 334:10, 334:13, 336:13, 336:14, 336:17, 337:1, 341:10, 343:19, 347:14, 352:24, 366:14 <b>food-producing</b> [3] - 140:5, 140:6, 140:17 <b>footed</b> [1] - 354:2 <b>FOR</b> [2] - 1:5, 2:6 <b>forbidden</b> [2] - 87:21, 87:22 <b>force</b> [1] - 197:19 <b>foregoing</b> [2] - 372:5, 372:6 <b>foreign</b> [2] - 54:4, 162:12</p>	<p><b>foreseeable</b> [1] - 192:6 <b>forever</b> [3] - 51:11, 169:15, 347:12 <b>forfeited</b> [1] - 353:9 <b>forget</b> [1] - 72:24 <b>forgive</b> [1] - 292:4 <b>forgo</b> [1] - 63:24 <b>forgot</b> [2] - 264:8, 344:11 <b>Form</b> [1] - 10:7 <b>form</b> [5] - 20:24, 44:15, 61:20, 271:6, 294:5 <b>formal</b> [4] - 254:7, 268:7, 268:19, 269:4 <b>format</b> [1] - 219:6 <b>formation</b> [2] - 244:23, 294:18 <b>formed</b> [4] - 269:17, 277:25, 294:21, 346:23 <b>former</b> [5] - 18:20, 18:21, 96:20, 247:6, 339:15 <b>forming</b> [3] - 203:3, 276:25, 357:13 <b>forms</b> [3] - 14:5, 268:25, 272:19 <b>formulate</b> [1] - 294:15 <b>Fort</b> [1] - 96:19 <b>forth</b> [16] - 22:21, 27:22, 29:16, 32:11, 34:9, 54:4, 60:17, 78:11, 78:15, 80:2, 86:6, 97:17, 98:8, 120:21, 120:24, 125:15 <b>forward</b> [1] - 64:16 <b>foundation</b> [2] - 248:23, 253:4 <b>founding</b> [1] - 190:1 <b>four</b> [24] - 13:18, 31:12, 31:20, 32:1, 42:5, 48:9, 53:12, 53:17, 78:14, 101:12, 121:3, 121:6, 126:4, 126:18, 139:2, 176:19, 231:1, 330:8, 331:20, 345:19, 348:12, 352:2, 352:24, 358:23 <b>fourth</b> [1] - 35:25 <b>fox</b> [1] - 353:25 <b>frame</b> [3] - 31:21, 215:16, 215:21 <b>France</b> [1] - 334:13 <b>Francis</b> [2] - 2:4, 2:9 <b>Francisco</b> [1] - 3:6</p>	<p><b>free</b> [16] - 13:22, 48:25, 50:9, 140:18, 140:19, 140:22, 141:2, 141:5, 159:4, 159:16, 161:19, 161:21, 162:15, 162:21, 163:2, 195:15 <b>freeboard</b> [3] - 313:7, 313:10 <b>freely</b> [1] - 189:21 <b>frequent</b> [1] - 184:11 <b>FRER</b> [2] - 7:11, 320:22 <b>Friday</b> [5] - 17:2, 17:11, 17:18, 20:13, 21:5 <b>Friedlander</b> [1] - 339:15 <b>front</b> [9] - 25:17, 101:20, 191:2, 193:21, 214:8, 253:11, 324:5, 325:15, 336:2 <b>Front</b> [4] - 3:2, 11:20, 16:5, 211:21 <b>FS-027-02</b> [1] - 8:22 <b>FSIS</b> [4] - 7:20, 9:20, 9:21, 9:22 <b>FSIS/USDA</b> [1] - 218:17 <b>fuel</b> [1] - 223:25 <b>fulfill</b> [3] - 30:2, 123:21, 355:4 <b>full</b> [8] - 23:11, 44:9, 91:2, 108:19, 109:20, 173:7, 213:12, 306:22 <b>fuller</b> [1] - 245:13 <b>fullness</b> [1] - 124:17 <b>fully</b> [2] - 209:13, 316:12 <b>functioning</b> [3] - 32:12, 34:10, 126:7 <b>Fund</b> [1] - 351:7 <b>fungicides</b> [1] - 46:3 <b>furnace</b> [2] - 191:20, 208:19 <b>FURTHER</b> [1] - 323:16 <b>future</b> [4] - 56:1, 192:7, 192:22, 337:25</p>
<b>G</b>				
<p><b>Gail</b> [1] - 8:8 <b>gain</b> [1] - 363:17 <b>gallons</b> [49] - 36:5, 48:19, 56:12, 56:17, 57:13, 57:16, 57:18, 58:6, 58:10, 58:13,</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>58:17, 58:23, 72:22, 72:25, 73:4, 91:2, 91:6, 91:16, 102:3, 112:13, 124:5, 124:12, 124:25, 128:3, 129:6, 134:5, 167:10, 180:9, 181:12, 181:13, 225:6, 225:18, 225:19, 227:14, 228:6, 234:25, 235:4, 235:6, 236:1, 236:4, 236:22, 237:9, 237:10, 237:12, 279:4, 279:12, 281:22, 344:19</p> <p><b>gambusia</b> [3] - 354:21, 355:8, 356:9</p> <p><b>gas</b> [1] - 319:18</p> <p><b>gated</b> [1] - 138:6</p> <p><b>geese</b> [1] - 354:5</p> <p><b>General</b> [10] - 2:7, 2:8, 2:18, 15:20, 18:11, 18:12, 20:22, 64:1, 211:21, 287:5</p> <p><b>general</b> [21] - 14:2, 23:16, 27:5, 40:13, 51:21, 65:2, 65:6, 67:1, 69:20, 77:3, 92:3, 120:22, 121:7, 174:7, 292:10, 296:25, 302:16, 306:24, 308:1, 313:14, 318:9</p> <p><b>General's</b> [9] - 11:19, 16:15, 17:10, 19:21, 286:6, 287:3, 321:1, 321:3, 366:23</p> <p><b>generally</b> [12] - 89:16, 168:12, 176:18, 176:19, 222:5, 236:3, 247:3, 279:2, 301:13, 313:18, 321:10, 321:13</p> <p><b>generate</b> [4] - 110:25, 233:23, 283:10, 314:2</p> <p><b>generated</b> [17] - 14:3, 30:8, 32:25, 36:7, 89:21, 135:12, 224:3, 224:6, 224:21, 235:10, 235:22, 235:23, 235:25, 236:6, 236:24, 236:25, 277:16</p> <p><b>generating</b> [5] - 226:12, 227:7, 237:9, 237:10, 283:14</p> <p><b>generation</b> [9] -</p>	<p>235:25, 236:8, 236:14, 236:20, 237:4, 280:14, 281:5, 348:8, 355:14</p> <p><b>gentian</b> [1] - 251:17</p> <p><b>gentleman</b> [4] - 112:9, 112:15, 118:24, 332:10</p> <p><b>gentlemen</b> [1] - 64:19</p> <p><b>geochemistry</b> [2] - 291:17, 291:18</p> <p><b>geologist</b> [7] - 126:1, 131:17, 168:13, 168:16, 169:2, 269:16, 276:4</p> <p><b>geology</b> [2] - 157:14, 214:16</p> <p><b>George</b> [4] - 287:19, 287:22, 287:23, 288:20</p> <p><b>geoscientist</b> [2] - 173:11, 173:22</p> <p><b>given</b> [45] - 12:10, 17:11, 49:8, 52:22, 52:23, 88:19, 91:18, 120:17, 142:1, 143:24, 144:2, 144:3, 144:10, 146:15, 153:25, 156:16, 157:22, 158:19, 160:4, 161:8, 164:6, 165:2, 169:15, 170:22, 194:18, 207:6, 218:10, 219:25, 220:13, 220:19, 237:8, 249:14, 254:14, 257:4, 267:18, 267:19, 273:2, 273:5, 273:12, 275:18, 275:19, 336:25, 359:6, 372:9</p> <p><b>Given</b> [2] - 7:23, 248:13</p> <p><b>glad</b> [5] - 191:3, 204:10, 223:5, 228:24, 249:4</p> <p><b>glance</b> [1] - 325:17</p> <p><b>glasses</b> [1] - 79:2</p> <p><b>gloves</b> [1] - 45:9</p> <p><b>glycol</b> [1] - 251:9</p> <p><b>goat</b> [1] - 51:16</p> <p><b>goats</b> [5] - 39:2, 46:14, 55:18, 55:21, 65:17</p> <p><b>Google</b> [2] - 320:16, 355:3</p> <p><b>government</b> [7] - 21:9, 21:10, 21:16,</p>	<p>213:17, 213:20, 247:24, 349:20</p> <p><b>Government</b> [1] - 21:14</p> <p><b>governments</b> [1] - 21:5</p> <p><b>Governor</b> [1] - 342:7</p> <p><b>GPS'ed</b> [1] - 78:11</p> <p><b>grab</b> [1] - 45:7</p> <p><b>grade</b> [1] - 241:5</p> <p><b>gradient</b> [2] - 119:14, 318:8</p> <p><b>gram</b> [1] - 54:10</p> <p><b>grandchildren</b> [1] - 355:14</p> <p><b>grant</b> [2] - 95:21, 95:23</p> <p><b>granted</b> [2] - 238:16, 351:18</p> <p><b>graphic</b> [5] - 15:1, 15:2, 188:11, 199:15, 200:4</p> <p><b>grasshopper</b> [1] - 354:2</p> <p><b>grave</b> [3] - 340:17, 342:11</p> <p><b>gravel</b> [1] - 306:13</p> <p><b>gray</b> [1] - 353:25</p> <p><b>Great</b> [1] - 192:11</p> <p><b>great</b> [12] - 26:10, 42:25, 74:3, 91:1, 102:10, 115:17, 151:16, 153:16, 155:2, 155:5, 183:18, 346:8</p> <p><b>greater</b> [6] - 107:21, 129:6, 129:7, 226:6, 272:25, 275:7</p> <p><b>Gross</b> [1] - 211:23</p> <p><b>GROUND</b> [1] - 1:6</p> <p><b>ground</b> [5] - 102:8, 108:21, 196:6, 237:17, 294:24</p> <p><b>grounds</b> [2] - 111:4, 209:23</p> <p><b>groundwater</b> [80] - 31:19, 38:1, 38:9, 61:18, 61:25, 62:4, 62:12, 62:16, 63:3, 68:9, 69:17, 70:8, 77:14, 77:18, 78:3, 79:6, 83:4, 83:6, 83:11, 106:20, 107:16, 219:9, 220:6, 224:11, 238:2, 238:3, 238:24, 239:2, 239:5, 239:7, 239:8, 239:10, 241:13, 256:13, 257:21, 257:25, 258:1, 259:16,</p>	<p>259:18, 259:19, 260:22, 261:2, 265:18, 266:19, 271:14, 274:24, 291:10, 291:17, 291:18, 291:22, 295:24, 296:20, 296:22, 296:23, 297:1, 299:16, 302:4, 305:19, 306:6, 306:23, 307:6, 307:25, 309:20, 310:7, 310:11, 314:21, 315:1, 316:6, 317:13, 319:13, 320:1, 320:6, 324:11, 326:23, 335:22, 352:1, 352:5, 352:7, 352:19, 358:19</p> <p><b>Groundwater</b> [26] - 7:4, 7:6, 11:6, 11:8, 13:21, 25:12, 85:16, 85:18, 100:17, 100:19, 103:3, 173:11, 175:2, 176:12, 176:13, 176:15, 176:17, 213:21, 256:8, 277:3, 279:2, 288:1, 295:12, 307:18, 318:25, 326:12</p> <p><b>group</b> [7] - 11:20, 321:2, 339:13, 339:16, 342:2, 342:15, 346:24</p> <p><b>groups</b> [1] - 347:1</p> <p><b>Grover</b> [1] - 8:5</p> <p><b>Growers</b> [3] - 340:12, 340:21, 342:6</p> <p><b>guess</b> [29] - 15:16, 70:24, 75:10, 80:7, 86:15, 106:20, 122:1, 123:22, 125:2, 244:9, 244:15, 251:12, 251:17, 253:3, 264:21, 281:5, 282:19, 285:11, 286:13, 288:13, 289:19, 309:15, 318:2, 320:11, 321:8, 322:8, 327:18, 329:16, 363:20</p> <p><b>guessing</b> [2] - 181:1, 288:11</p> <p><b>guidance</b> [1] - 229:18</p> <p><b>guideline</b> [1] - 76:5</p> <p><b>guidelines</b> [1] - 127:7</p> <p><b>guts</b> [2] - 71:7,</p>	<p>357:19</p> <p><b>guys</b> [2] - 54:21, 346:20</p> <p><b>GWB</b> [3] - 1:3, 11:8</p> <p><b>GWQB</b> [1] - 324:12</p> <p><b>gypsum</b> [3] - 355:19, 356:14, 356:21</p> <p style="text-align: center;"><b>H</b></p> <p><b>H-u-g-h-e-s</b> [1] - 346:6</p> <p><b>habitat</b> [5] - 357:3, 358:8, 358:16, 358:25</p> <p><b>Hagerman</b> [1] - 358:9</p> <p><b>half</b> [14] - 65:10, 89:8, 89:9, 89:12, 90:2, 118:20, 118:22, 139:16, 140:1, 169:24, 170:13, 352:20</p> <p><b>half-life</b> [7] - 89:8, 89:9, 89:12, 90:2, 140:1</p> <p><b>half-lives</b> [3] - 139:16, 169:24, 170:13</p> <p><b>halfway</b> [2] - 89:5, 277:11</p> <p><b>hammer</b> [1] - 292:4</p> <p><b>hand</b> [2] - 13:5, 100:8</p> <p><b>handed</b> [1] - 101:21</p> <p><b>handle</b> [7] - 32:24, 107:6, 107:9, 124:21, 124:24, 202:8, 367:6</p> <p><b>handled</b> [2] - 46:10, 182:19</p> <p><b>handles</b> [2] - 288:2, 333:3</p> <p><b>handling</b> [2] - 74:3, 332:17</p> <p><b>hands</b> [4] - 20:17, 116:19, 347:20, 359:14</p> <p><b>hang</b> [1] - 98:13</p> <p><b>Hanning</b> [1] - 100:17</p> <p><b>happy</b> [4] - 127:12, 168:8, 208:10, 229:13</p> <p><b>hard</b> [4] - 66:4, 227:19, 340:5, 345:8</p> <p><b>hard-and-fast</b> [1] - 227:19</p> <p><b>harder</b> [2] - 107:9, 107:20</p> <p><b>Hardin</b> [1] - 3:4</p> <p><b>harm</b> [2] - 34:2, 57:2</p> <p><b>Harold</b> [2] - 2:4, 2:9</p>
---	---	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>harrier</b> [1] - 354:10  <b>haul</b> [3] - 198:8,  198:9, 340:23  <b>hawk</b> [1] - 354:10  <b>hazard</b> [1] - 296:16  <b>hazardous</b> [2] -  240:1, 296:24  <b>HDPE</b> [3] - 30:15,  30:18, 69:6  <b>head</b> [19] - 46:11,  73:3, 73:15, 79:11,  97:10, 97:13, 107:1,  142:22, 167:9,  167:11, 167:12,  225:23, 234:21,  235:4, 235:6, 237:9,  273:15, 332:13  <b>headed</b> [1] - 253:1  <b>heads</b> [2] - 73:11  <b>Health</b> [1] - 7:21  <b>health</b> [10] - 84:25,  138:15, 139:6,  139:11, 224:11,  240:3, 240:12, 250:9,  296:17, 297:25  <b>hear</b> [15] - 15:17,  23:12, 33:7, 52:22,  86:15, 106:15,  110:13, 121:9, 200:8,  226:20, 243:11,  273:7, 279:20, 312:1,  360:12  <b>heard</b> [34] - 29:14,  106:12, 106:16,  177:7, 180:24, 189:7,  200:19, 202:21,  205:7, 205:22, 206:5,  219:12, 226:23,  243:15, 247:19,  248:2, 264:11,  273:10, 280:2, 282:9,  295:4, 301:16, 307:7,  336:23, 337:18,  339:20, 342:23,  343:12, 347:5, 352:1,  352:8, 364:9  <b>hearing</b> [45] - 1:14,  11:10, 11:13, 11:14,  13:8, 13:16, 15:3,  15:6, 18:4, 22:5,  24:12, 25:8, 33:4,  111:21, 113:10,  122:9, 122:11, 123:9,  135:2, 142:22,  142:23, 146:6,  148:23, 156:15,  177:17, 192:20,  196:25, 202:1, 214:6,  214:8, 283:13, 286:1,  286:3, 286:7, 334:24,</p>	<p>347:16, 351:11,  365:5, 365:15,  366:18, 368:9,  368:10, 368:23, 372:5  <b>Hearing</b> [119] - 1:15,  6:16, 11:2, 11:8, 13:2,  13:4, 13:23, 15:12,  15:23, 16:3, 16:12,  16:18, 19:6, 20:4,  20:11, 21:3, 21:23,  23:3, 23:23, 24:17,  33:2, 38:14, 63:13,  63:22, 64:9, 64:20,  77:1, 85:24, 86:7,  86:14, 93:16, 93:22,  94:14, 100:3, 100:11,  101:1, 107:10, 108:3,  110:4, 110:15, 111:5,  112:2, 113:5, 113:20,  130:5, 143:10, 149:5,  151:4, 152:17,  152:25, 160:8,  160:23, 165:24,  166:23, 171:15,  171:18, 172:13,  172:21, 175:14,  177:13, 178:19,  178:20, 179:5,  179:23, 184:20,  185:7, 185:25,  201:17, 208:1,  209:21, 210:5, 211:1,  211:17, 212:25,  213:1, 213:9, 215:1,  217:6, 218:18, 219:2,  221:22, 227:8, 229:1,  229:7, 230:14, 231:2,  231:9, 231:14, 232:1,  233:4, 240:15,  240:24, 242:2, 243:5,  243:12, 245:3,  245:17, 246:1, 248:7,  249:11, 252:5,  252:19, 255:4, 255:5,  255:12, 255:22,  265:23, 278:7, 295:7,  323:18, 328:24,  330:2, 335:3, 335:14,  351:4, 361:8, 362:20,  367:9, 371:2  <b>HEARING</b> [1] - 2:2  <b>hearings</b> [9] - 21:18,  25:17, 210:22, 214:3,  214:4, 214:10,  239:15, 315:4  <b>hearsay</b> [6] - 114:2,  114:4, 114:10,  201:20, 245:21  <b>heart</b> [1] - 350:17  <b>heavy</b> [2] - 30:21,</p>	<p>109:21  <b>heifer</b> [1] - 47:18  <b>height</b> [2] - 119:17,  119:19  <b>heightened</b> [1] -  352:6  <b>held</b> [5] - 93:9,  172:5, 255:17, 336:5,  362:13  <b>hello</b> [4] - 16:9,  16:10, 255:25, 256:1  <b>help</b> [6] - 33:18,  42:12, 104:10,  124:23, 137:25,  185:19  <b>helped</b> [2] - 34:22,  60:5  <b>helpful</b> [2] - 228:23,  361:14  <b>herds</b> [2] - 141:10,  153:18  <b>herdsman</b> [1] - 48:11  <b>herdsmen</b> [1] - 49:2  <b>hereby</b> [2] - 174:9,  372:5  <b>hereto</b> [1] - 372:14  <b>herptiles</b> [1] - 354:18  <b>hi</b> [1] - 346:5  <b>hide</b> [6] - 109:19,  115:18, 115:20,  115:21, 115:22  <b>high</b> [14] - 42:21,  43:16, 184:4, 193:22,  199:19, 238:2, 291:2,  299:16, 300:3, 314:9,  314:18, 315:1, 338:4,  340:2  <b>high-tech</b> [1] -  193:22  <b>higher</b> [10] - 32:20,  37:17, 121:7, 184:15,  236:11, 241:16,  310:9, 315:8, 317:4,  317:18  <b>highest</b> [3] - 120:21,  120:25, 313:10  <b>highly</b> [1] - 223:1  <b>Hilary</b> [1] - 7:24  <b>himself</b> [2] - 110:23,  332:22  <b>hired</b> [3] - 199:12,  286:24, 286:25  <b>historical</b> [1] - 24:5  <b>historically</b> [1] -  353:1  <b>history</b> [20] - 28:3,  56:18, 56:20, 200:9,  214:24, 225:22,  237:5, 238:13, 239:9,  322:4, 322:6, 322:7,</p>	<p>322:17, 323:19,  326:20, 337:7,  347:11, 347:12,  352:13, 359:4  <b>hit</b> [4] - 65:23, 333:6,  365:10, 366:12  <b>Hobbs</b> [2] - 223:24,  305:9  <b>Hoffman</b> [1] - 8:7  <b>hog</b> [1] - 343:6  <b>hognose</b> [1] - 354:20  <b>hogs</b> [2] - 65:17,  215:5  <b>hold</b> [9] - 88:24,  131:7, 142:4, 173:25,  176:14, 187:18,  197:18, 231:16  <b>holders</b> [1] - 25:15  <b>holding</b> [2] - 346:15,  351:10  <b>holds</b> [1] - 353:7  <b>HOLLAND</b> [49] - 3:9,  4:22, 16:18, 86:13,  86:19, 86:22, 87:2,  87:5, 87:6, 87:18,  88:2, 88:5, 88:21,  89:10, 89:16, 89:20,  89:24, 90:2, 90:5,  90:9, 90:11, 90:14,  90:18, 90:24, 91:8,  91:10, 91:15, 92:1,  92:5, 92:9, 92:13,  92:16, 92:19, 179:19,  185:19, 185:24,  186:10, 186:14,  186:16, 186:21,  187:1, 187:5, 188:2,  188:5, 188:9, 188:18,  189:10, 210:11, 323:6  <b>Holland</b> [30] - 4:6,  11:21, 16:17, 16:20,  17:2, 86:8, 86:17,  91:21, 92:3, 92:23,  139:17, 179:16,  179:17, 179:20,  185:16, 185:17,  186:22, 187:20,  188:4, 188:15, 189:8,  201:13, 202:7,  208:15, 209:19,  210:2, 210:10, 323:2,  348:3, 348:7  <b>Holly</b> [1] - 8:6  <b>home</b> [8] - 163:20,  184:16, 292:4,  340:16, 346:6,  353:24, 354:13, 367:5  <b>Homes</b> [1] - 335:25  <b>homework</b> [1] -  66:11</p>	<p><b>honest</b> [2] - 245:6,  329:12  <b>Honor</b> [53] - 24:8,  24:20, 61:19, 63:15,  64:15, 85:13, 86:2,  92:21, 92:25, 94:6,  100:9, 114:9, 130:9,  142:3, 142:6, 142:25,  148:13, 149:4, 152:1,  166:23, 170:3,  171:13, 172:9,  172:20, 175:14,  177:19, 178:3, 210:8,  218:12, 221:10,  222:21, 228:19,  228:22, 232:8, 245:2,  253:13, 253:23,  255:3, 255:6, 285:6,  294:24, 295:6,  324:16, 327:24,  339:7, 342:17,  343:23, 349:11,  359:24, 360:24,  362:8, 363:15, 368:4  <b>Honor's</b> [1] - 365:24  <b>hope</b> [6] - 21:24,  188:3, 221:23, 330:9,  349:1, 349:3  <b>hopefully</b> [1] - 142:7  <b>hoping</b> [2] - 244:16,  333:7  <b>horse</b> [129] - 41:10,  42:2, 42:13, 42:24,  43:1, 43:2, 44:1, 44:2,  44:4, 44:12, 45:24,  49:14, 49:22, 51:14,  51:15, 53:13, 53:25,  54:22, 58:4, 59:10,  62:18, 87:8, 89:1,  97:2, 103:20, 103:21,  103:22, 105:21,  109:21, 112:5,  112:11, 112:13,  114:22, 115:15,  117:2, 118:7, 123:2,  123:15, 131:23,  132:18, 136:11,  136:16, 136:17,  136:20, 137:21,  144:25, 145:2, 145:5,  146:8, 149:17,  150:17, 155:4,  158:25, 163:16,  163:17, 163:20,  163:22, 165:9,  165:14, 165:23,  182:5, 182:6, 182:9,  182:14, 182:15,  182:21, 187:9,  187:10, 189:25,</p>
--	--	---	---	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>192:18, 194:8, 200:12, 200:25, 204:16, 206:3, 206:12, 207:3, 217:24, 220:16, 224:17, 236:21, 236:24, 248:15, 270:24, 271:16, 272:6, 272:20, 273:21, 281:8, 281:23, 283:21, 284:4, 284:6, 286:9, 286:13, 286:16, 290:10, 290:20, 291:21, 305:13, 332:11, 332:12, 335:23, 335:24, 336:2, 336:3, 337:2, 337:4, 342:3, 343:19, 344:13, 344:16, 346:11, 347:1, 347:2, 347:8, 347:17, 348:10, 348:13, 348:14, 348:17, 349:14, 350:11, 353:10 <b>Horse</b> [2] - 339:17, 346:24 <b>horse's</b> [2] - 51:15, 55:1 <b>Horses</b> [3] - 7:23, 248:13, 335:25 <b>horses</b> [259] - 26:10, 26:16, 26:25, 39:2, 40:24, 42:9, 43:4, 44:25, 45:3, 45:7, 45:12, 46:3, 46:15, 46:21, 46:23, 47:3, 47:6, 47:8, 47:9, 49:25, 51:4, 51:8, 51:20, 52:1, 52:10, 52:20, 53:2, 53:15, 53:18, 54:6, 54:9, 54:16, 55:14, 55:22, 57:19, 58:14, 66:8, 66:10, 66:13, 66:21, 66:23, 84:17, 84:18, 85:6, 87:7, 87:8, 87:16, 88:11, 96:5, 96:9, 96:12, 96:17, 97:6, 102:25, 103:4, 103:11, 104:2, 104:12, 106:12, 106:13, 106:22, 107:5, 107:8, 107:20, 107:22, 108:6, 108:24, 109:9, 109:10, 109:12, 109:21, 109:23, 110:18, 113:19, 114:20, 115:5, 117:5,</p>	<p>117:21, 122:24, 123:6, 123:10, 132:13, 134:18, 135:1, 136:14, 137:14, 137:17, 139:4, 139:7, 139:12, 144:14, 144:21, 144:23, 145:11, 145:24, 146:2, 146:7, 146:14, 146:19, 146:20, 146:24, 147:1, 147:2, 147:3, 147:11, 147:22, 147:24, 148:1, 148:5, 148:8, 148:10, 149:6, 149:15, 149:18, 149:24, 150:2, 150:5, 150:7, 151:19, 152:16, 152:20, 152:21, 153:10, 154:3, 154:6, 156:11, 156:14, 156:17, 157:3, 157:7, 158:19, 161:14, 162:1, 162:5, 162:16, 162:20, 163:4, 163:5, 163:7, 163:8, 163:24, 164:1, 164:2, 164:4, 164:17, 170:22, 170:25, 171:3, 180:23, 181:4, 181:12, 181:13, 189:25, 193:13, 193:24, 196:16, 197:4, 203:7, 203:10, 205:19, 210:17, 215:20, 217:8, 217:11, 217:18, 218:2, 218:10, 219:8, 219:25, 220:13, 220:19, 220:20, 220:21, 223:4, 236:16, 236:17, 237:12, 249:14, 249:25, 250:15, 252:3, 264:21, 265:19, 266:3, 266:20, 267:4, 267:9, 267:18, 267:19, 268:4, 268:5, 271:7, 271:15, 272:25, 273:3, 273:8, 273:12, 273:24, 274:15, 274:18, 275:2, 275:6, 275:7, 275:12, 275:19, 277:19, 280:3, 280:8, 280:16, 280:17, 280:18, 282:22, 283:1, 283:2, 283:3, 283:6, 283:16, 286:11, 286:14, 286:20, 291:22,</p>	<p>292:1, 294:2, 333:15, 333:17, 333:18, 334:2, 334:6, 334:10, 334:20, 336:12, 336:14, 336:22, 337:3, 340:14, 340:15, 340:17, 341:19, 341:23, 342:12, 342:18, 342:20, 342:24, 343:2, 345:7, 345:8, 346:14, 346:15, 347:10, 347:13, 347:18, 353:21, 355:16 <b>horses'</b> [1] - 348:20 <b>hospital</b> [1] - 319:2 <b>hot</b> [1] - 317:25 <b>hour</b> [7] - 1:16, 93:5, 160:21, 364:3, 365:11, 366:5, 367:11 <b>hours</b> [7] - 13:13, 43:22, 361:23, 363:4, 363:21, 364:1, 364:20 <b>huge</b> [8] - 42:4, 42:19, 43:9, 109:19, 300:4 <b>Hughes</b> [7] - 331:7, 343:22, 345:20, 345:22, 345:25, 346:5, 349:6 <b>HUGHES</b> [5] - 5:12, 343:23, 346:1, 346:2, 346:5 <b>human</b> [20] - 84:25, 88:3, 145:20, 149:13, 164:22, 165:2, 165:6, 165:9, 169:8, 169:9, 169:11, 194:8, 240:1, 240:3, 240:12, 250:9, 250:16, 341:10, 350:8, 350:9 <b>humane</b> [2] - 350:9 <b>humanely</b> [2] - 334:1, 334:4 <b>humans</b> [7] - 155:8, 155:13, 239:21, 239:25, 275:3, 275:4, 341:14 <b>Humphreys</b> [1] - 125:9 <b>hundred</b> [3] - 41:25, 97:10, 237:9 <b>hundreds</b> [1] - 42:7 <b>hungry</b> [1] - 365:12 <b>hurricane</b> [1] - 343:7 <b>hydraulic</b> [2] - 119:13, 318:7 <b>hydrogeologist</b> [3] - 168:13, 269:16,</p>	<p>284:14 <b>hydrologic</b> [1] - 78:23 <b>hydrologist</b> [10] - 119:22, 125:24, 131:14, 168:16, 169:1, 244:2, 276:5, 284:14, 305:17, 306:5 <b>hydrology</b> [2] - 157:12, 214:17 <b>hypersensitive</b> [2] - 90:12, 90:15 <b>hypothesis</b> [1] - 306:25 <b>hypothesizing</b> [1] - 317:21 <b>hypothetical</b> [2] - 54:19, 163:19</p>	<p>312:8, 312:9 <b>implicated</b> [1] - 240:4 <b>implication</b> [2] - 216:11, 366:18 <b>implications</b> [2] - 219:9, 329:10 <b>important</b> [8] - 49:1, 50:12, 110:21, 180:7, 189:13, 228:13, 358:19, 366:13 <b>imposed</b> [1] - 139:3 <b>impoundment</b> [21] - 69:16, 215:8, 215:11, 215:12, 220:7, 234:3, 239:19, 240:7, 241:17, 256:22, 260:20, 270:9, 274:2, 274:19, 307:3, 307:4, 307:6, 309:23, 310:10, 311:3, 314:4 <b>impoundments</b> [27] - 36:11, 68:7, 68:18, 68:25, 79:6, 79:9, 220:4, 220:17, 239:3, 239:6, 257:8, 257:22, 258:1, 259:3, 259:12, 261:14, 261:24, 280:1, 299:18, 306:18, 310:6, 310:21, 314:9, 314:19, 314:20, 315:16, 316:13 <b>impounds</b> [1] - 356:21 <b>impression</b> [1] - 79:15 <b>improper</b> [2] - 111:24, 148:24 <b>improve</b> [1] - 60:13 <b>IN</b> [1] - 1:5 <b>inadequate</b> [1] - 37:25 <b>inadmissible</b> [1] - 201:20 <b>inadvertent</b> [1] - 246:13 <b>Inc</b> [3] - 3:8, 3:10, 130:22 <b>inches</b> [1] - 357:11 <b>incidental</b> [1] - 116:7 <b>incidentally</b> [1] - 196:14 <b>include</b> [6] - 16:24, 236:15, 241:13, 255:1, 308:20, 354:18 <b>included</b> [10] - 30:4, 122:4, 214:4, 239:2, 280:16, 280:17, 307:12, 311:23,</p>
<b>I</b>				
<p><b>icon</b> [1] - 347:10 <b>idea</b> [8] - 61:4, 65:6, 96:6, 96:7, 96:11, 96:13, 133:14, 334:9 <b>identical</b> [1] - 157:7 <b>identifiable</b> [1] - 230:20 <b>identified</b> [1] - 75:25 <b>identity</b> [1] - 20:14 <b>Il</b> [1] - 294:11 <b>illegally</b> [1] - 337:22 <b>Illinois</b> [2] - 194:8, 194:12 <b>illnesses</b> [1] - 52:13 <b>illuminate</b> [2] - 60:9, 323:11 <b>illuminating</b> [1] - 329:11 <b>images</b> [3] - 15:1, 15:2, 15:5 <b>imagine</b> [1] - 163:7 <b>immediately</b> [3] - 15:18, 57:11, 69:4 <b>impact</b> [2] - 261:2, 291:10 <b>impacts</b> [4] - 240:12, 261:5, 309:23, 309:24 <b>impair</b> [1] - 369:18 <b>impeachable</b> [1] - 113:19 <b>impeaching</b> [1] - 114:11 <b>impeachment</b> [3] - 107:19, 114:10, 148:21 <b>implement</b> [1] - 54:16 <b>implementation</b> [2] -</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>312:3, 312:9  <b>includes</b> [4] - 39:1, 176:20, 189:19, 211:22  <b>including</b> [8] - 38:25, 52:21, 190:7, 260:16, 339:14, 353:24, 354:5, 354:10  <b>incomplete</b> [2] - 246:12, 302:13  <b>incomprehensible</b> [1] - 338:13  <b>incorrect</b> [2] - 292:5, 292:9  <b>increase</b> [3] - 32:11, 82:1, 279:17  <b>increasing</b> [1] - 194:25  <b>indeed</b> [2] - 189:13, 365:23  <b>Independence</b> [1] - 356:13  <b>independent</b> [3] - 291:12, 319:12, 320:1  <b>independently</b> [1] - 253:19  <b>Indians</b> [1] - 342:19  <b>indicate</b> [6] - 20:6, 183:16, 211:17, 217:17, 238:16, 311:16  <b>indicated</b> [18] - 79:5, 87:6, 90:19, 143:4, 173:21, 199:3, 200:6, 206:9, 225:23, 237:23, 286:8, 287:9, 298:2, 299:3, 300:15, 301:10, 332:21, 333:15  <b>indicates</b> [2] - 221:24, 234:6  <b>indicating</b> [2] - 88:14, 226:21  <b>indication</b> [4] - 226:9, 233:8, 275:23, 277:18  <b>indicator</b> [1] - 301:14  <b>indicators</b> [3] - 301:18, 318:15, 318:16  <b>indirect</b> [2] - 189:13, 207:18  <b>individual</b> [2] - 11:20, 247:2  <b>individually</b> [1] - 48:14  <b>individuals</b> [1] - 16:6  <b>indulged</b> [1] - 14:11  <b>indulgence</b> [1] - 363:8</p>	<p><b>industrialized</b> [1] - 351:19  <b>Industries</b> [2] - 9:9, 30:23  <b>industries</b> [1] - 266:25  <b>industry</b> [11] - 63:2, 63:3, 149:10, 193:22, 247:9, 267:1, 267:5, 272:10, 280:15, 322:10, 351:19  <b>INERY</b> [3] - 5:8, 332:2, 332:5  <b>influenza</b> [1] - 251:13  <b>inform</b> [3] - 103:2, 338:18, 347:7  <b>informal</b> [2] - 321:15, 322:18  <b>information</b> [38] - 34:23, 42:7, 73:10, 110:19, 111:14, 111:15, 111:25, 112:4, 112:7, 112:16, 113:22, 113:25, 142:9, 182:10, 213:12, 227:18, 237:15, 239:22, 244:1, 244:23, 252:7, 252:11, 267:15, 269:13, 269:22, 270:17, 280:13, 281:21, 308:13, 315:19, 318:8, 324:23, 324:24, 327:18, 342:1, 342:24, 347:3  <b>informed</b> [4] - 93:25, 135:9, 369:4, 370:8  <b>informs</b> [1] - 336:3  <b>ingestion</b> [1] - 240:1  <b>inhabit</b> [1] - 192:6  <b>inherent</b> [2] - 262:13, 336:9  <b>inherently</b> [1] - 73:24  <b>inhumane</b> [1] - 286:21  <b>initial</b> [2] - 312:5, 363:23  <b>injected</b> [2] - 48:7, 48:8  <b>Injunction</b> [1] - 10:12  <b>inorganic</b> [1] - 262:8  <b>inorganics</b> [1] - 263:16  <b>inquire</b> [3] - 221:8, 222:19, 224:15  <b>inquiry</b> [4] - 222:7, 252:14, 252:22, 252:23</p>	<p><b>insecticides</b> [1] - 50:23  <b>inside</b> [2] - 292:23, 310:6  <b>insisting</b> [1] - 197:1  <b>inspected</b> [2] - 241:8, 261:18  <b>inspection</b> [11] - 95:21, 95:23, 98:4, 104:7, 138:16, 234:12, 234:17, 234:19, 234:24, 340:11, 341:17  <b>inspections</b> [10] - 57:5, 68:25, 183:22, 184:5, 184:12, 194:12, 319:12, 321:18, 322:18, 352:22  <b>inspectors</b> [1] - 194:10  <b>install</b> [5] - 72:18, 104:6, 168:1, 197:19, 316:5  <b>installation</b> [4] - 69:15, 215:7, 239:3, 241:14  <b>installed</b> [10] - 30:23, 32:24, 34:8, 59:19, 75:25, 126:7, 126:22, 127:4, 300:18, 316:22  <b>installing</b> [3] - 126:3, 300:16, 315:24  <b>instance</b> [12] - 49:17, 54:22, 61:13, 131:12, 182:23, 190:20, 205:1, 206:17, 260:14, 261:8, 272:21, 275:3  <b>instances</b> [4] - 56:23, 259:5, 308:2, 352:16  <b>instead</b> [6] - 223:10, 265:9, 342:16, 363:9, 367:16, 370:9  <b>institute</b> [1] - 293:17  <b>institutions</b> [1] - 326:11  <b>instruct</b> [1] - 76:25  <b>instructed</b> [1] - 289:7  <b>instruction</b> [2] - 92:3, 370:16  <b>instructions</b> [1] - 153:6  <b>insufficient</b> [1] - 258:10  <b>Integrated</b> [1] - 9:5  <b>integrity</b> [4] - 31:17, 69:12, 126:19, 314:5</p>	<p><b>intend</b> [6] - 24:10, 56:7, 110:16, 188:14, 188:15, 328:9  <b>intended</b> [9] - 87:11, 107:22, 169:7, 169:9, 169:11, 171:5, 225:24, 250:16, 305:25  <b>intending</b> [3] - 135:1, 135:10, 181:3  <b>intends</b> [2] - 200:7, 338:25  <b>intent</b> [2] - 63:11, 310:22  <b>Intent</b> [2] - 8:23, 10:7  <b>intention</b> [7] - 55:15, 103:3, 134:18, 142:24, 222:5, 228:8, 338:11  <b>interchangeable</b> [1] - 47:3  <b>interest</b> [5] - 18:17, 19:13, 242:4, 353:2, 365:1  <b>interested</b> [1] - 372:14  <b>interests</b> [1] - 327:11  <b>International</b> [1] - 88:19  <b>internationally</b> [2] - 139:4, 139:7  <b>internet</b> [2] - 332:9, 346:19  <b>interpret</b> [1] - 234:4  <b>interpretation</b> [1] - 17:23  <b>interpreting</b> [1] - 169:12  <b>interrupt</b> [2] - 207:9, 299:25  <b>interrupting</b> [1] - 208:6  <b>interviewed</b> [2] - 134:15, 197:24  <b>interviews</b> [1] - 34:25  <b>intestinal</b> [4] - 42:15, 42:16, 42:18, 42:22  <b>intestines</b> [4] - 42:25, 71:6, 109:20, 110:9  <b>introduce</b> [1] - 219:3  <b>introduced</b> [1] - 179:3  <b>Introduction</b> [1] - 35:25  <b>investigate</b> [2] - 181:22, 222:25  <b>investigating</b> [1] - 333:1</p>	<p><b>investigation</b> [1] - 182:13  <b>investigations</b> [3] - 189:18, 189:20, 191:22  <b>investigators</b> [1] - 199:18  <b>invite</b> [8] - 12:3, 12:9, 12:12, 14:17, 22:16, 101:5, 368:18, 368:21  <b>invited</b> [1] - 12:4  <b>inviting</b> [1] - 12:13  <b>involved</b> [10] - 22:5, 29:23, 34:14, 34:18, 78:12, 110:22, 132:10, 182:6, 182:9, 285:23  <b>involvement</b> [6] - 19:14, 34:16, 174:7, 289:13, 289:15, 336:8  <b>involving</b> [1] - 27:22  <b>IPRA</b> [1] - 324:6  <b>ironically</b> [1] - 192:16  <b>irrelevant</b> [1] - 244:22  <b>isocinchomeronate</b> [1] - 251:12  <b>isolated</b> [1] - 356:21  <b>issuance</b> [6] - 59:12, 256:6, 288:6, 288:15, 305:3, 337:9  <b>issue</b> [38] - 14:4, 29:16, 57:11, 59:4, 75:24, 77:8, 80:8, 88:9, 104:8, 190:15, 194:10, 207:14, 221:16, 238:13, 248:9, 256:16, 258:11, 262:7, 263:6, 265:22, 269:21, 279:14, 279:23, 286:23, 289:16, 295:10, 304:22, 308:11, 322:15, 327:7, 336:8, 341:18, 342:16, 346:12, 350:15, 369:6, 369:23  <b>issued</b> [19] - 17:13, 29:17, 40:4, 59:9, 60:3, 61:13, 80:13, 82:5, 123:23, 133:24, 139:11, 168:20, 216:4, 258:20, 261:10, 261:13, 287:16, 302:17, 302:21  <b>Issued</b> [1] - 9:24  <b>issues</b> [26] - 20:25,</p>
---	---	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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<p>26:1, 27:5, 28:2, 213:13, 218:17, 241:3, 241:19, 257:7, 257:18, 258:18, 258:19, 258:21, 263:14, 270:19, 286:19, 288:10, 288:19, 289:7, 293:21, 296:22, 297:2, 322:2, 327:5, 327:6, 336:3 <b>issuing</b> [2] - 304:16, 319:10 <b>IT</b> [1] - 1:13 <b>italicized</b> [2] - 324:7, 324:9 <b>item</b> [1] - 28:6 <b>items</b> [6] - 28:5, 33:19, 35:14, 142:18, 182:18, 309:4 <b>itself</b> [9] - 43:11, 45:17, 48:10, 199:8, 217:19, 239:13, 265:13, 267:2, 279:5 <b>IV</b> [1] - 52:23 <b>Ivercare</b> [1] - 251:8</p>	<p><b>jurisdiction</b> [1] - 20:16 <b>justice</b> [1] - 19:19 <b>justifies</b> [1] - 364:10</p> <p style="text-align: center;"><b>K</b></p> <p><b>karst</b> [2] - 357:12, 357:13 <b>karsts</b> [2] - 355:10, 355:11 <b>Katherine</b> [1] - 16:7 <b>KATHERINE</b> [1] - 3:4 <b>Kathy</b> [3] - 12:22, 372:4 <b>Kaufman</b> [3] - 345:11, 348:7, 348:9 <b>keep</b> [8] - 65:25, 161:2, 161:4, 184:7, 207:22, 334:16, 343:15, 359:1 <b>keeping</b> [5] - 237:19, 246:20, 258:23, 258:24, 260:20 <b>keeps</b> [1] - 198:2 <b>Kendall</b> [3] - 15:10, 17:6, 209:20 <b>KENDALL</b> [4] - 2:7, 15:10, 209:21, 210:1 <b>Kenny</b> [1] - 370:17 <b>Kentucky</b> [1] - 190:8 <b>kestrel</b> [1] - 354:11 <b>KEVIN</b> [1] - 2:8 <b>Kevin</b> [1] - 15:19 <b>kidney</b> [2] - 49:13, 54:3 <b>kill</b> [7] - 67:7, 196:2, 234:20, 277:10, 277:11, 334:18, 341:19 <b>killed</b> [2] - 107:23, 345:7 <b>killifish</b> [1] - 354:16 <b>killing</b> [5] - 97:19, 97:20, 115:2, 334:19, 334:21 <b>Kim</b> [2] - 172:9, 312:4 <b>KIMBERLY</b> [3] - 4:16, 173:1, 180:1 <b>Kimberly</b> [3] - 6:23, 6:24, 173:9 <b>kind</b> [43] - 27:15, 29:12, 36:17, 40:19, 44:2, 48:10, 50:2, 51:3, 51:6, 53:10, 53:12, 53:23, 56:20, 94:2, 133:3, 134:20, 141:22, 163:5,</p>	<p>163:24, 180:25, 181:20, 181:21, 184:10, 211:5, 215:13, 221:6, 222:17, 235:24, 243:25, 286:18, 288:10, 298:6, 299:13, 314:1, 318:4, 320:25, 321:21, 323:10, 326:22, 334:6, 344:13, 349:14 <b>kinds</b> [3] - 204:19, 247:7, 247:23 <b>kingbirds</b> [1] - 354:8 <b>KIRBY</b> [4] - 4:16, 173:1, 173:19, 180:1 <b>Kirby</b> [18] - 6:23, 6:24, 9:2, 127:8, 172:9, 172:17, 173:7, 173:9, 173:17, 175:3, 175:16, 177:7, 177:10, 177:20, 179:1, 180:3, 185:5, 230:13 <b>Kirby's</b> [2] - 312:4, 312:10 <b>kitchens</b> [1] - 74:6 <b>Kjeldahl</b> [3] - 83:9, 301:17, 301:23 <b>knife</b> [1] - 116:9 <b>knock</b> [1] - 104:8 <b>knocking</b> [1] - 98:7 <b>knowing</b> [2] - 133:2, 370:13 <b>knowledge</b> [38] - 33:21, 45:13, 45:15, 68:1, 75:19, 76:12, 77:19, 80:20, 81:4, 83:10, 85:16, 111:16, 111:18, 113:11, 113:17, 114:15, 126:21, 145:22, 164:19, 187:9, 190:18, 201:22, 202:16, 202:18, 207:18, 207:19, 207:22, 207:23, 217:22, 217:25, 220:19, 249:21, 268:4, 270:11, 275:18, 294:16, 304:24, 316:3 <b>knowledge-based</b> [1] - 190:18 <b>knowledgeable</b> [1] - 139:2 <b>known</b> [3] - 41:8, 281:8, 294:2 <b>knows</b> [1] - 95:7 <b>Kote</b> [1] - 251:18</p>	<p><b>Krystle</b> [1] - 211:24 <b>KYLE</b> [2] - 5:13, 349:8</p> <p style="text-align: center;"><b>L</b></p> <p><b>label</b> [5] - 52:9, 87:25, 140:12, 143:5, 169:7 <b>labeling</b> [1] - 153:6 <b>labels</b> [3] - 221:1, 250:15, 273:20 <b>lack</b> [2] - 194:9, 269:22 <b>lactams</b> [1] - 48:12 <b>Lagoon</b> [1] - 7:8 <b>lagoon</b> [25] - 32:16, 32:19, 34:3, 57:7, 59:19, 62:20, 70:18, 70:19, 70:21, 71:10, 74:15, 91:7, 108:20, 256:13, 298:21, 305:19, 343:8, 343:12, 343:13, 350:4, 355:2, 355:3, 355:15, 356:3, 358:21 <b>lagoons</b> [24] - 36:19, 37:25, 38:7, 59:5, 62:25, 68:20, 68:22, 70:4, 70:22, 74:8, 74:25, 91:5, 108:5, 108:9, 108:11, 108:18, 300:13, 313:7, 336:20, 338:3, 338:5, 338:6, 338:9, 356:5 <b>laid</b> [1] - 238:23 <b>Lake</b> [8] - 355:20, 356:16, 356:19, 356:20, 357:4, 357:24, 358:6, 358:9 <b>Lakes</b> [5] - 356:22, 357:5, 357:24, 358:6 <b>lamenesses</b> [1] - 52:13 <b>land</b> [3] - 39:5, 78:16, 82:2 <b>Land</b> [1] - 8:18 <b>lands</b> [1] - 353:23 <b>language</b> [3] - 17:23, 20:23, 313:2 <b>lapsed</b> [1] - 324:12 <b>large</b> [20] - 23:19, 26:7, 26:9, 26:15, 26:16, 27:12, 41:24, 42:16, 42:19, 42:22, 81:5, 136:9, 150:16, 184:15, 184:17, 236:10, 267:18,</p>	<p>268:1, 273:2 <b>largely</b> [2] - 215:17, 217:10 <b>larger</b> [5] - 37:16, 227:5, 246:23, 247:4, 281:4 <b>largest</b> [1] - 356:19 <b>Larson</b> [1] - 8:2 <b>Lasix</b> [1] - 53:7 <b>last</b> [29] - 21:5, 26:20, 26:22, 27:20, 28:10, 28:12, 28:15, 28:17, 29:7, 59:9, 59:12, 59:19, 59:21, 62:23, 67:23, 148:17, 200:23, 231:4, 294:9, 294:10, 294:11, 314:18, 320:21, 337:11, 337:19, 338:13, 347:6, 350:11, 352:24 <b>lasts</b> [1] - 13:18 <b>late</b> [4] - 94:13, 191:18, 324:13, 360:25 <b>latter</b> [1] - 253:11 <b>law</b> [17] - 56:4, 105:18, 144:15, 145:5, 154:10, 155:17, 189:20, 194:8, 194:12, 260:22, 267:6, 289:21, 337:24, 352:14, 353:4, 370:3 <b>Law</b> [3] - 2:13, 3:5, 190:9 <b>laws</b> [3] - 146:15, 146:23, 184:13 <b>lay</b> [1] - 310:3 <b>laying</b> [1] - 253:4 <b>laymen's</b> [1] - 84:5 <b>layout</b> [4] - 67:2, 67:6, 79:12, 79:14 <b>lead</b> [5] - 38:7, 183:7, 183:13, 294:3, 348:15 <b>leader</b> [1] - 335:25 <b>leaders</b> [1] - 257:15 <b>leading</b> [1] - 170:4 <b>leak</b> [18] - 68:6, 68:17, 174:22, 175:11, 241:16, 262:5, 262:12, 305:18, 307:2, 307:8, 310:19, 314:10, 315:5, 315:10, 317:1, 317:2, 317:10, 317:12 <b>leakage</b> [4] - 239:16, 305:25, 306:1, 306:2 <b>leaking</b> [2] - 68:22, 318:16</p>
<b>J</b>				
<p><b>jackrabbit</b> [1] - 354:1 <b>January</b> [1] - 126:17 <b>JEFFREY</b> [1] - 2:7 <b>Jeffrey</b> [1] - 15:10 <b>Jennifer</b> [1] - 7:9 <b>JERRY</b> [3] - 4:19, 176:1, 183:19 <b>Jerry</b> [4] - 6:18, 6:19, 175:1, 176:9 <b>jibing</b> [1] - 192:23 <b>Jo</b> [2] - 330:17, 332:5 <b>JO</b> [2] - 5:8, 332:2 <b>Joanne</b> [1] - 8:3 <b>job</b> [4] - 14:7, 156:7, 341:4, 350:14 <b>jobs</b> [3] - 345:13, 350:8 <b>JOHN</b> [3] - 3:9, 4:22, 187:1 <b>John</b> [1] - 16:20 <b>join</b> [7] - 19:4, 20:9, 22:8, 22:10, 209:22, 218:20, 218:21 <b>joined</b> [1] - 320:25 <b>Journal</b> [1] - 190:8 <b>judgment</b> [2] - 259:7 <b>jugular</b> [1] - 98:14 <b>June</b> [6] - 35:2, 35:3, 35:4, 132:22, 302:22, 303:17</p>				

KATHY TOWNSEND COURT REPORTERS

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<p><b>leaks</b> [5] - 241:7, 241:8, 259:14, 299:13, 316:19</p> <p><b>lean</b> [1] - 109:21</p> <p><b>leap</b> [1] - 268:23</p> <p><b>learn</b> [4] - 134:1, 134:17, 180:21, 181:6</p> <p><b>learned</b> [2] - 58:14, 134:22</p> <p><b>learning</b> [1] - 169:22</p> <p><b>learns</b> [1] - 308:13</p> <p><b>leased</b> [2] - 65:13, 199:11</p> <p><b>least</b> [21] - 63:24, 68:13, 82:8, 108:17, 163:9, 216:16, 226:5, 247:9, 247:19, 249:21, 291:17, 297:16, 302:1, 304:1, 305:25, 307:9, 348:13, 352:17, 352:23, 363:4, 366:6</p> <p><b>leave</b> [3] - 13:8, 94:8, 362:21</p> <p><b>leaves</b> [1] - 42:18</p> <p><b>leaving</b> [2] - 59:10, 66:25</p> <p><b>left</b> [7] - 23:11, 159:8, 199:1, 310:24, 311:1, 311:7, 316:4</p> <p><b>leg</b> [1] - 98:13</p> <p><b>legal</b> [5] - 16:23, 18:13, 187:5, 337:17, 345:4</p> <p><b>legislative</b> [1] - 335:17</p> <p><b>legislature</b> [2] - 38:15, 298:9</p> <p><b>legitimate</b> [1] - 363:19</p> <p><b>legs</b> [3] - 44:9, 333:25, 334:3</p> <p><b>lends</b> [1] - 45:17</p> <p><b>length</b> [5] - 93:3, 307:6, 311:9, 333:6, 333:10</p> <p><b>lengthy</b> [1] - 13:17</p> <p><b>Leonard</b> [2] - 6:9, 23:19</p> <p><b>LEONARD</b> [4] - 4:3, 4:13, 23:6, 136:1</p> <p><b>LES</b> [2] - 223:24, 305:6</p> <p><b>less</b> [11] - 42:3, 45:21, 47:6, 128:3, 234:25, 237:7, 237:11, 259:17, 283:15, 300:2, 356:1</p> <p><b>Lester</b> [1] - 339:14</p> <p><b>Letter</b> [5] - 6:20,</p>	<p>7:20, 9:10, 9:12, 9:16</p> <p><b>letter</b> [12] - 88:14, 100:16, 101:22, 127:8, 127:10, 127:13, 128:2, 324:8, 325:20, 342:7, 342:10, 348:6</p> <p><b>letterhead</b> [2] - 118:16, 127:14</p> <p><b>letters</b> [1] - 323:21</p> <p><b>letting</b> [1] - 22:1</p> <p><b>level</b> [15] - 69:7, 78:13, 78:14, 90:15, 91:4, 120:19, 145:19, 238:10, 257:17, 257:18, 307:20, 315:8, 316:23, 317:18, 358:23</p> <p><b>levels</b> [7] - 31:24, 53:8, 136:16, 247:24, 318:12, 338:4, 343:13</p> <p><b>License</b> [1] - 372:19</p> <p><b>licensed</b> [3] - 110:8, 151:10, 369:21</p> <p><b>life</b> [15] - 51:2, 51:11, 51:15, 51:18, 87:9, 89:8, 89:9, 89:12, 90:2, 140:1, 164:21, 204:12, 275:22</p> <p><b>lifetime</b> [1] - 26:13</p> <p><b>lift</b> [1] - 42:11</p> <p><b>light</b> [1] - 338:10</p> <p><b>lightly</b> [1] - 351:24</p> <p><b>likelihood</b> [1] - 107:21</p> <p><b>likely</b> [5] - 217:13, 272:9, 283:19, 289:10, 338:9</p> <p><b>limit</b> [6] - 17:16, 218:18, 279:25, 297:25, 338:16, 366:23</p> <p><b>limitation</b> [1] - 279:3</p> <p><b>limitations</b> [1] - 156:16</p> <p><b>limited</b> [7] - 15:14, 62:6, 132:1, 275:13, 292:19, 295:19, 361:18</p> <p><b>limits</b> [5] - 114:15, 180:8, 182:19, 336:24, 337:17</p> <p><b>line</b> [16] - 48:15, 49:4, 54:5, 68:23, 69:13, 160:17, 197:20, 294:9, 294:10, 295:2, 323:11, 331:5, 334:23, 357:8, 359:8</p> <p><b>lined</b> [23] - 30:15,</p>	<p>36:11, 215:7, 215:10, 215:11, 239:3, 239:19, 256:21, 257:21, 257:25, 258:5, 258:6, 259:2, 259:5, 259:12, 259:23, 260:19, 260:25, 261:24, 298:21, 300:11, 300:13, 300:14</p> <p><b>liner</b> [22] - 30:24, 31:17, 32:9, 32:10, 32:12, 32:23, 57:1, 69:2, 69:3, 69:12, 125:11, 125:14, 262:20, 262:21, 263:4, 299:1, 301:3, 315:6, 315:11, 317:11</p> <p><b>liners</b> [40] - 32:15, 57:4, 57:6, 62:20, 68:6, 69:5, 69:6, 90:21, 239:14, 239:17, 256:13, 258:22, 258:23, 262:5, 262:12, 262:13, 262:14, 262:18, 263:7, 263:19, 263:25, 264:5, 279:10, 300:12, 300:14, 300:16, 300:17, 301:1, 307:9, 310:6, 315:5, 315:7, 315:8, 315:24, 316:6, 316:16, 316:17, 316:20, 316:21, 343:17</p> <p><b>lines</b> [7] - 39:17, 75:3, 196:12, 203:15, 242:12, 336:2</p> <p><b>lining</b> [4] - 299:14, 299:21, 300:4, 300:6</p> <p><b>link</b> [1] - 342:13</p> <p><b>linked</b> [3] - 296:15, 296:16, 314:25</p> <p><b>liquid</b> [1] - 341:6</p> <p><b>LISA</b> [2] - 5:11, 344:2</p> <p><b>Lisa</b> [2] - 330:18, 344:5</p> <p><b>list</b> [34] - 39:18, 84:24, 85:6, 157:22, 158:2, 158:8, 158:12, 158:13, 158:14, 158:15, 183:5, 205:13, 220:12, 220:22, 233:25, 248:10, 249:13, 249:17, 249:20, 250:2, 250:6, 250:12, 250:25, 251:24,</p>	<p>264:14, 264:15, 264:18, 269:11, 273:1, 274:10, 274:16, 296:19, 298:7, 347:22</p> <p><b>listed</b> [16] - 63:10, 220:24, 227:6, 251:17, 264:24, 273:16, 278:16, 325:18, 327:6, 330:8, 354:21, 355:8, 356:10, 357:1, 357:2</p> <p><b>listening</b> [3] - 149:3, 310:3, 343:4</p> <p><b>listing</b> [1] - 356:12</p> <p><b>lists</b> [6] - 212:8, 212:9, 212:14, 267:17, 324:1, 325:14</p> <p><b>literature</b> [1] - 220:9</p> <p><b>liters</b> [1] - 235:20</p> <p><b>Litigation</b> [1] - 2:18</p> <p><b>litmus</b> [3] - 48:11, 48:14, 141:15</p> <p><b>Littlewolf</b> [1] - 211:23</p> <p><b>live</b> [12] - 235:24, 236:22, 249:2, 280:21, 280:25, 282:25, 283:7, 283:9, 353:22, 355:12, 355:23</p> <p><b>lived</b> [1] - 197:25</p> <p><b>liver</b> [2] - 54:3, 89:17</p> <p><b>lives</b> [4] - 139:16, 163:22, 169:24, 170:13</p> <p><b>Livestock</b> [5] - 38:18, 264:13, 340:22, 342:6, 342:8</p> <p><b>livestock</b> [52] - 27:1, 27:10, 27:12, 36:5, 36:20, 36:23, 37:8, 38:13, 38:17, 39:14, 39:15, 39:19, 51:1, 51:16, 55:13, 55:14, 55:15, 56:8, 59:11, 84:20, 84:21, 98:5, 138:16, 180:18, 180:22, 205:7, 205:14, 205:20, 205:24, 206:2, 256:7, 262:10, 262:24, 263:2, 263:11, 264:9, 264:15, 264:19, 265:2, 265:12, 265:13, 266:19, 267:4, 290:6, 290:9, 290:23, 291:3, 340:18, 341:10, 341:15</p>	<p><b>livestock-based</b> [1] - 263:2</p> <p><b>livestock-wise</b> [1] - 59:11</p> <p><b>lizard</b> [2] - 354:19</p> <p><b>LLC</b> [1] - 324:10</p> <p><b>LLP</b> [1] - 3:4</p> <p><b>loaded</b> [1] - 340:25</p> <p><b>local</b> [2] - 88:7, 369:17</p> <p><b>locate</b> [1] - 306:17</p> <p><b>located</b> [3] - 65:1, 65:8, 65:9</p> <p><b>location</b> [8] - 68:8, 82:2, 132:8, 306:23, 308:4, 320:4, 320:15, 350:13</p> <p><b>lodge</b> [4] - 189:2, 201:18, 242:5, 242:15</p> <p><b>Log</b> [1] - 9:14</p> <p><b>logical</b> [1] - 271:18</p> <p><b>logistically</b> [1] - 360:23</p> <p><b>logs</b> [1] - 135:5</p> <p><b>Logos</b> [2] - 7:13, 7:15</p> <p><b>Loney</b> [3] - 6:7, 23:21, 127:23</p> <p><b>LONEY</b> [4] - 4:2, 4:9, 23:6, 119:11</p> <p><b>long-standing</b> [2] - 151:9, 169:13</p> <p><b>long-term</b> [1] - 191:9</p> <p><b>long-time</b> [1] - 339:17</p> <p><b>look</b> [51] - 13:22, 13:24, 32:22, 35:19, 43:23, 59:2, 69:2, 77:25, 79:23, 100:7, 101:5, 101:12, 123:4, 123:9, 123:14, 157:22, 158:2, 158:8, 158:13, 158:15, 158:17, 181:25, 187:12, 188:9, 191:11, 193:16, 193:22, 196:11, 203:3, 204:8, 223:15, 223:23, 224:2, 224:9, 229:19, 230:21, 236:24, 236:25, 241:14, 246:16, 247:8, 269:23, 273:1, 276:5, 283:9, 302:25, 303:19, 309:16, 323:24, 323:25, 343:12</p> <p><b>looked</b> [36] - 30:5, 31:6, 35:13, 58:25, 66:3, 66:11, 66:13, 76:16, 106:25,</p>
---	---	---	---	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>128:14, 132:13, 132:17, 158:14, 193:21, 203:6, 207:4, 228:5, 235:12, 236:8, 236:18, 253:8, 254:11, 254:18, 269:14, 270:17, 270:20, 280:1, 287:13, 302:3, 303:22, 305:14, 305:15, 320:11, 320:17, 332:12, 334:6</p> <p><b>looking</b> [45] - 35:25, 60:11, 64:3, 66:15, 77:13, 82:22, 127:21, 169:21, 230:15, 230:21, 230:22, 233:2, 234:1, 235:13, 235:21, 245:6, 250:8, 250:12, 252:2, 269:2, 269:7, 270:6, 270:18, 270:22, 273:3, 277:12, 277:15, 280:3, 280:22, 288:18, 293:25, 297:9, 302:8, 303:2, 307:22, 311:21, 312:8, 312:15, 320:19, 321:25, 324:17, 324:21, 325:4, 363:17, 363:21</p> <p><b>looks</b> [6] - 196:13, 229:4, 230:2, 234:15, 237:6, 267:21</p> <p><b>loose</b> [3] - 43:14, 43:15, 44:4</p> <p><b>LOS</b> [70] - 4:2, 4:7, 23:5, 23:15, 28:11, 28:16, 28:20, 28:25, 29:5, 29:8, 29:11, 55:20, 56:3, 56:6, 56:10, 56:14, 57:3, 58:3, 58:5, 58:16, 59:6, 59:14, 59:24, 65:9, 65:22, 66:22, 70:3, 70:20, 71:2, 71:4, 71:6, 71:11, 71:13, 71:16, 71:22, 72:1, 72:6, 72:10, 72:13, 73:2, 73:6, 73:8, 73:14, 74:12, 74:17, 76:14, 76:20, 76:23, 77:10, 77:20, 78:5, 78:8, 79:2, 79:21, 80:10, 82:12, 82:19, 91:4, 91:9, 91:14, 92:18, 94:19, 95:5, 95:6, 167:14, 167:16, 167:20, 168:3, 168:9, 330:24</p>	<p><b>Los</b> [65] - 6:4, 9:4, 23:1, 23:15, 24:4, 25:4, 64:23, 69:25, 70:11, 73:1, 74:10, 74:11, 76:12, 77:8, 77:12, 78:24, 79:20, 82:7, 88:10, 90:25, 91:3, 94:18, 99:24, 100:18, 101:11, 108:4, 111:13, 112:3, 113:21, 119:8, 122:10, 123:5, 133:6, 134:25, 166:1, 172:1, 181:3, 193:4, 193:23, 196:12, 198:7, 199:3, 200:6, 206:5, 227:21, 229:10, 229:14, 230:23, 232:2, 232:4, 232:5, 232:22, 232:23, 279:20, 282:10, 332:10, 332:20, 333:4, 334:16, 346:19, 350:12, 356:18, 357:9, 359:8</p> <p><b>losses</b> [1] - 199:9</p> <p><b>lost</b> [1] - 50:8</p> <p><b>love</b> [1] - 343:7</p> <p><b>low</b> [6] - 37:5, 236:19, 300:3, 345:13, 367:2</p> <p><b>low-flow</b> [1] - 37:5</p> <p><b>low-paying</b> [1] - 345:13</p> <p><b>lower</b> [2] - 236:10, 280:19</p> <p><b>lowest</b> [5] - 31:25, 78:13, 120:25, 121:5</p> <p><b>luck</b> [1] - 193:5</p> <p><b>lumped</b> [1] - 162:5</p> <p><b>lunch</b> [10] - 13:13, 94:1, 94:7, 94:9, 94:12, 94:17, 119:10, 129:22, 129:23, 172:4</p> <p style="text-align: center;"><b>M</b></p> <p><b>Ma'am</b> [1] - 178:13</p> <p><b>ma'am</b> [4] - 148:21, 172:8, 328:11, 363:12</p> <p><b>machine</b> [1] - 372:8</p> <p><b>machines</b> [1] - 190:20</p> <p><b>mad</b> [1] - 341:11</p> <p><b>Madam</b> [97] - 15:12, 15:23, 16:3, 16:12, 16:18, 18:2, 19:6, 20:4, 20:11, 21:3, 21:23, 22:19, 23:3,</p>	<p>23:23, 24:17, 33:2, 38:14, 63:13, 63:22, 64:20, 85:24, 86:7, 86:13, 93:16, 93:22, 94:14, 100:3, 100:11, 107:10, 108:3, 110:4, 110:15, 112:2, 113:5, 130:5, 143:10, 149:5, 151:4, 160:8, 160:23, 165:24, 166:23, 171:15, 171:18, 172:12, 172:20, 175:14, 177:12, 178:18, 178:20, 179:23, 184:20, 185:7, 185:25, 201:17, 208:1, 209:21, 210:5, 211:1, 213:1, 219:2, 219:18, 221:21, 227:8, 229:1, 229:7, 230:14, 231:2, 231:9, 231:14, 232:1, 233:4, 240:15, 242:2, 243:5, 243:12, 245:3, 245:16, 246:1, 248:7, 252:5, 252:19, 255:4, 255:12, 255:22, 265:23, 295:7, 329:8, 330:2, 335:3, 335:14, 344:1, 351:4, 361:8, 362:20, 367:9, 371:2</p> <p><b>Madam's</b> [1] - 82:14</p> <p><b>magically</b> [1] - 89:4</p> <p><b>Magistrate's</b> [1] - 10:12</p> <p><b>magnitude</b> [1] - 318:7</p> <p><b>magno</b> [1] - 75:6</p> <p><b>mail</b> [1] - 9:2</p> <p><b>main</b> [4] - 206:17, 237:25, 241:19, 302:4</p> <p><b>maintain</b> [7] - 27:23, 31:17, 33:19, 64:8, 70:8, 124:2, 124:7</p> <p><b>maintained</b> [5] - 13:20, 13:25, 91:5, 126:20, 267:25</p> <p><b>maintaining</b> [3] - 69:12, 313:9, 317:15</p> <p><b>major</b> [7] - 203:18, 281:3, 292:11, 292:14, 293:2, 308:16, 347:11</p> <p><b>majority</b> [5] - 116:5, 116:6, 303:25, 319:6, 353:11</p> <p><b>Malaga</b> [1] - 356:18</p> <p><b>male</b> [1] - 41:15</p> <p><b>mammals</b> [1] - 353:24</p>	<p><b>man</b> [3] - 355:4, 355:17, 358:20</p> <p><b>manage</b> [1] - 310:24</p> <p><b>managed</b> [1] - 26:16</p> <p><b>management</b> [5] - 122:3, 270:23, 293:17, 353:1</p> <p><b>manager</b> [7] - 23:16, 24:5, 287:23, 288:3, 321:20, 335:17, 351:6</p> <p><b>managers</b> [3] - 257:16, 288:18, 340:18</p> <p><b>managing</b> [1] - 320:10</p> <p><b>mandatory</b> [1] - 159:6</p> <p><b>manner</b> [1] - 312:23</p> <p><b>mannerisms</b> [1] - 27:5</p> <p><b>manual</b> [1] - 105:6</p> <p><b>Manure</b> [1] - 8:18</p> <p><b>manure</b> [12] - 43:13, 43:20, 44:3, 44:8, 44:9, 80:2, 107:22, 109:20, 200:12, 200:16, 357:19</p> <p><b>map</b> [2] - 78:22, 78:23</p> <p><b>maps</b> [2] - 318:6, 320:12</p> <p><b>march</b> [1] - 365:10</p> <p><b>March</b> [10] - 31:11, 31:22, 78:12, 126:15, 127:9, 127:14, 127:22, 127:23, 196:23, 234:22</p> <p><b>Marine</b> [1] - 346:7</p> <p><b>Marini</b> [1] - 207:2</p> <p><b>market</b> [1] - 193:3</p> <p><b>Market</b> [1] - 3:5</p> <p><b>Mary</b> [1] - 304:8</p> <p><b>master's</b> [1] - 214:17</p> <p><b>mastitis</b> [2] - 48:2, 48:5</p> <p><b>material</b> [15] - 30:22, 71:21, 74:7, 111:2, 120:23, 168:25, 191:25, 200:7, 206:7, 210:12, 210:14, 210:15, 246:9, 306:9, 315:6</p> <p><b>materially</b> [1] - 81:24</p> <p><b>materials</b> [12] - 22:21, 190:21, 200:10, 200:11, 204:19, 204:22, 247:5, 247:7, 248:4, 264:3, 276:23</p> <p><b>Matter</b> [1] - 11:5</p>	<p><b>MATTER</b> [1] - 1:5</p> <p><b>matter</b> [19] - 1:14, 17:25, 18:10, 20:15, 51:10, 56:12, 87:13, 113:9, 142:13, 174:3, 174:7, 177:4, 217:17, 218:19, 254:16, 262:19, 318:2, 336:5, 372:12</p> <p><b>matters</b> [2] - 18:22, 189:18</p> <p><b>Maura</b> [1] - 100:16</p> <p><b>maximize</b> [1] - 190:23</p> <p><b>maximum</b> [8] - 180:8, 180:13, 181:11, 181:14, 225:5, 279:9, 308:6, 368:6</p> <p><b>Mayor</b> [1] - 348:7</p> <p><b>mayor</b> [1] - 348:12</p> <p><b>MC</b> [3] - 5:8, 332:2, 332:5</p> <p><b>McGrath</b> [2] - 10:2, 315:18</p> <p><b>McInery</b> [4] - 330:17, 331:24, 332:5, 335:1</p> <p><b>mclnery</b> [1] - 331:22</p> <p><b>meadowlarks</b> [1] - 354:7</p> <p><b>meal</b> [1] - 206:17</p> <p><b>meals</b> [1] - 209:7</p> <p><b>mean</b> [31] - 43:13, 74:1, 75:21, 80:20, 91:6, 94:10, 116:8, 135:4, 140:25, 147:22, 148:15, 156:1, 169:14, 181:24, 202:25, 209:7, 221:17, 222:23, 265:7, 274:8, 274:13, 292:11, 298:14, 299:25, 302:2, 304:16, 319:6, 321:12, 347:10, 361:5, 362:9</p> <p><b>meaning</b> [3] - 39:7, 332:18, 347:18</p> <p><b>means</b> [11] - 17:24, 17:25, 28:14, 38:23, 107:20, 138:9, 138:10, 161:23, 232:19, 329:17, 334:5</p> <p><b>meant</b> [4] - 49:16, 119:23, 202:11, 278:3</p> <p><b>measure</b> [3] - 120:16, 357:23, 357:25</p> <p><b>measured</b> [2] - 31:24, 74:24</p>
--	---	---	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p><b>measures</b> [2] - 238:22, 352:25</p> <p><b>Meat</b> [83] - 8:24, 9:11, 9:13, 9:15, 9:17, 9:19, 9:24, 11:5, 15:14, 23:16, 36:18, 38:7, 43:23, 62:4, 97:6, 104:2, 122:21, 128:2, 129:12, 129:16, 129:19, 133:12, 133:23, 135:9, 137:17, 137:19, 167:25, 183:6, 183:12, 183:23, 209:23, 215:15, 215:20, 215:23, 216:8, 216:22, 217:17, 225:23, 226:10, 226:14, 226:21, 227:4, 233:9, 233:21, 234:7, 243:24, 265:1, 272:22, 287:10, 289:1, 289:14, 289:16, 300:12, 314:20, 319:14, 319:19, 319:20, 319:25, 322:2, 322:6, 324:10, 335:22, 337:11, 337:22, 338:2, 338:13, 338:17, 338:25, 345:1, 345:5, 349:20, 352:2, 352:11, 352:16, 352:19, 352:23, 353:1, 353:6, 353:13, 355:1, 356:4, 357:14, 358:21</p> <p><b>meat</b> [23] - 47:21, 49:6, 50:4, 50:18, 51:9, 52:10, 87:21, 106:5, 140:19, 141:1, 142:12, 145:7, 155:8, 155:13, 155:21, 207:3, 220:14, 337:4, 343:19, 345:6, 350:12</p> <p><b>MEAT</b> [1] - 1:5</p> <p><b>Meat's</b> [18] - 7:18, 10:10, 55:15, 134:18, 217:5, 225:8, 226:18, 237:3, 237:5, 237:24, 247:18, 336:10, 336:19, 337:7, 337:18, 338:3, 338:10, 359:4</p> <p><b>Meats</b> [5] - 201:5, 342:2, 347:16, 347:20, 347:24</p> <p><b>mechanisms</b> [1] - 272:3</p>	<p><b>meclizines</b> [1] - 46:16</p> <p><b>media</b> [6] - 73:9, 134:22, 134:23, 135:2, 180:25, 337:22</p> <p><b>Mediation</b> [1] - 176:21</p> <p><b>Medical</b> [1] - 26:11</p> <p><b>medicate</b> [7] - 52:12, 145:24, 146:2, 146:7, 146:14, 146:18, 146:20</p> <p><b>medicated</b> [1] - 147:2</p> <p><b>medicating</b> [1] - 146:8</p> <p><b>medication</b> [5] - 53:6, 84:6, 147:10, 150:18, 164:20</p> <p><b>medications</b> [14] - 138:7, 147:7, 147:8, 147:9, 147:19, 147:20, 147:21, 147:25, 161:20, 162:16, 162:21, 164:6, 164:8, 169:24</p> <p><b>medicine</b> [13] - 136:9, 138:11, 154:12, 154:13, 161:18, 170:11, 218:23, 219:4, 268:8, 268:20, 280:10, 291:15, 294:20</p> <p><b>medicines</b> [2] - 159:2, 159:14</p> <p><b>meet</b> [4] - 31:3, 76:4, 138:6, 198:25</p> <p><b>meeting</b> [2] - 187:17, 370:4</p> <p><b>meetings</b> [6] - 288:14, 288:16, 288:17, 288:21, 288:22, 349:19</p> <p><b>member</b> [2] - 26:13, 103:11</p> <p><b>members</b> [3] - 339:13, 339:14, 351:8</p> <p><b>memorandum</b> [1] - 17:12</p> <p><b>memory</b> [2] - 21:15, 253:15</p> <p><b>mention</b> [2] - 214:13, 226:6</p> <p><b>mentioned</b> [18] - 13:5, 38:13, 51:22, 66:17, 123:25, 128:24, 139:23, 167:7, 177:11, 213:6, 215:4, 218:1, 229:1, 240:2, 251:22,</p>	<p>274:20, 305:6, 336:12</p> <p><b>merely</b> [2] - 148:17, 365:4</p> <p><b>met</b> [2] - 33:23, 216:21</p> <p><b>metabolites</b> [2] - 89:12, 89:13</p> <p><b>metabolized</b> [2] - 89:17, 89:20</p> <p><b>metabolizes</b> [1] - 89:25</p> <p><b>metals</b> [1] - 263:17</p> <p><b>meter</b> [13] - 59:17, 75:6, 75:7, 75:13, 75:17, 75:19, 75:21, 75:25, 76:7, 76:11, 77:6, 128:9, 128:15</p> <p><b>metered</b> [1] - 77:4</p> <p><b>meters</b> [2] - 75:2, 76:2</p> <p><b>method</b> [1] - 77:6</p> <p><b>methods</b> [1] - 197:16</p> <p><b>metric</b> [2] - 235:20, 236:2</p> <p><b>Mexicans</b> [2] - 351:22, 353:11</p> <p><b>MEXICO</b> [4] - 1:1, 1:6, 2:6, 372:1</p> <p><b>Mexico</b> [85] - 1:16, 2:3, 2:5, 2:10, 2:14, 2:16, 2:19, 3:2, 7:20, 11:3, 11:11, 15:11, 16:14, 17:10, 18:21, 18:22, 19:23, 21:14, 22:3, 25:12, 36:21, 37:15, 39:5, 66:14, 66:19, 81:3, 82:9, 85:16, 121:14, 125:5, 131:8, 151:10, 173:12, 173:14, 176:11, 205:8, 205:16, 205:18, 205:22, 205:25, 209:22, 211:21, 212:13, 213:17, 213:18, 247:10, 264:20, 290:11, 290:18, 295:12, 297:1, 297:2, 297:15, 297:16, 305:9, 311:23, 332:7, 333:3, 335:20, 338:23, 339:18, 340:12, 340:13, 340:16, 340:21, 340:22, 341:20, 341:22, 341:23, 342:7, 342:13, 346:9, 346:17, 348:5, 349:17, 349:24,</p>	<p>351:6, 351:20, 352:12, 354:22, 356:8, 356:11, 357:1, 369:21</p> <p><b>Mexico's</b> [2] - 340:13, 353:8</p> <p><b>Miami</b> [2] - 192:11, 192:15</p> <p><b>Michael</b> [1] - 8:5</p> <p><b>Michelle</b> [1] - 8:10</p> <p><b>microgram</b> [2] - 54:11, 54:13</p> <p><b>micrograms</b> [1] - 54:9</p> <p><b>micrometer</b> [2] - 75:8, 75:10</p> <p><b>microphone</b> [5] - 33:5, 64:17, 120:7, 136:6, 173:18</p> <p><b>microphones</b> [2] - 15:14, 15:15</p> <p><b>mid-'90s</b> [1] - 191:23</p> <p><b>middle</b> [2] - 219:16, 288:10</p> <p><b>might</b> [50] - 25:3, 44:20, 52:24, 54:5, 55:18, 58:25, 60:8, 61:21, 67:13, 74:10, 82:4, 91:1, 99:15, 100:6, 103:16, 104:14, 108:25, 113:24, 117:12, 120:10, 150:20, 160:24, 167:8, 179:9, 186:2, 187:23, 199:16, 223:16, 224:16, 224:20, 232:8, 261:24, 262:22, 270:7, 274:1, 275:21, 288:20, 298:6, 303:17, 309:17, 310:20, 311:1, 317:21, 318:11, 323:3, 343:15, 362:9, 362:11, 367:12</p> <p><b>migrate</b> [2] - 224:17, 271:12</p> <p><b>migrates</b> [1] - 276:10</p> <p><b>migrating</b> [1] - 240:7</p> <p><b>migration</b> [1] - 276:5</p> <p><b>migratory</b> [1] - 354:4</p> <p><b>mile</b> [3] - 356:1, 357:6, 358:17</p> <p><b>miles</b> [3] - 65:10, 191:15, 355:1</p> <p><b>milk</b> [14] - 47:21, 48:1, 48:21, 49:3, 50:4, 50:8, 50:18, 141:1, 141:13,</p>	<p>141:15, 141:22, 149:12</p> <p><b>milking</b> [1] - 47:18</p> <p><b>mill</b> [1] - 191:17</p> <p><b>milligram</b> [1] - 54:10</p> <p><b>milligrams</b> [1] - 54:9</p> <p><b>million</b> [1] - 199:9</p> <p><b>mind</b> [11] - 17:21, 26:5, 40:22, 115:6, 285:23, 329:11, 329:16, 330:12, 330:14, 330:25, 359:12</p> <p><b>mindful</b> [1] - 237:18</p> <p><b>mine</b> [6] - 94:24, 202:25, 204:6, 230:12, 299:23, 313:6</p> <p><b>Mine</b> [1] - 239:14</p> <p><b>Miner</b> [1] - 8:13</p> <p><b>mines</b> [3] - 266:16, 300:1, 315:16</p> <p><b>minimum</b> [1] - 313:9</p> <p><b>Mining</b> [1] - 176:20</p> <p><b>mining</b> [4] - 262:9, 266:8, 299:20, 322:10</p> <p><b>Minnesota</b> [1] - 357:16</p> <p><b>minnow</b> [2] - 354:15, 354:16</p> <p><b>minor</b> [3] - 29:9, 212:6, 213:6</p> <p><b>minute</b> [6] - 38:13, 59:10, 154:24, 197:2, 267:12, 334:11</p> <p><b>minutes</b> [12] - 13:12, 93:1, 93:7, 160:25, 185:18, 186:13, 255:7, 255:9, 255:14, 325:8, 362:5, 362:12</p> <p><b>mischaracterization</b> [2] - 231:19, 232:15</p> <p><b>mischaracterizing</b> [1] - 227:11</p> <p><b>misdeemeanor</b> [1] - 28:17</p> <p><b>misleading</b> [1] - 366:19</p> <p><b>misrepresentation</b> [1] - 111:3</p> <p><b>miss</b> [2] - 184:4, 333:6</p> <p><b>missed</b> [1] - 310:2</p> <p><b>missing</b> [2] - 225:12, 318:9</p> <p><b>mistake</b> [1] - 246:14</p> <p><b>misunderstanding</b> [1] - 264:2</p> <p><b>misunderstood</b> [1] - 153:8</p> <p><b>mixed</b> [2] - 192:1,</p>
---	---	--	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

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<p>286:18  <b>mobile</b> [1] - 184:16  <b>mocking</b> [1] - 354:6  <b>modern</b> [2] - 193:18, 193:20  <b>modification</b> [2] - 175:6, 308:18  <b>modified</b> [3] - 81:14, 81:20, 81:23  <b>Modify</b> [1] - 10:11  <b>moment</b> [20] - 74:22, 85:23, 86:17, 86:18, 91:21, 130:3, 172:10, 211:4, 224:13, 224:25, 228:15, 229:17, 240:15, 249:24, 251:1, 297:22, 311:19, 318:4, 318:18, 327:19  <b>Monday</b> [1] - 142:1  <b>money</b> [5] - 194:25, 195:22, 334:16, 343:15, 346:8  <b>monitor</b> [9] - 31:5, 59:16, 83:14, 102:8, 141:10, 143:12, 153:25, 301:12, 332:22  <b>monitored</b> [11] - 138:17, 141:9, 141:14, 141:17, 141:20, 162:6, 162:8, 162:11, 163:21, 309:25, 355:4  <b>Monitoring</b> [2] - 7:4, 7:19  <b>monitoring</b> [61] - 31:7, 31:10, 31:11, 31:14, 34:3, 34:7, 62:8, 63:1, 69:15, 69:23, 70:1, 82:9, 82:17, 82:21, 83:4, 102:5, 119:25, 120:3, 120:14, 125:21, 126:4, 126:6, 126:9, 126:10, 127:2, 127:5, 129:13, 168:7, 225:11, 225:12, 241:13, 241:15, 241:18, 271:25, 301:6, 301:11, 302:2, 302:11, 302:13, 304:7, 304:9, 304:12, 305:24, 306:10, 307:4, 307:13, 309:17, 310:5, 310:20, 311:6, 311:13, 311:16, 317:12, 319:13, 320:6, 320:8, 320:10,</p>	<p>322:12, 337:15, 343:18, 352:19  <b>monsoon</b> [1] - 357:10  <b>month</b> [3] - 194:13, 195:2, 195:7  <b>monthly</b> [2] - 68:24, 77:3  <b>months</b> [4] - 13:18, 128:11, 199:13, 208:25  <b>morning</b> [27] - 11:1, 12:16, 15:12, 15:23, 16:3, 16:12, 16:18, 51:17, 64:19, 154:19, 218:8, 219:23, 227:2, 232:23, 283:13, 352:9, 354:6, 359:23, 359:25, 361:4, 362:7, 362:25, 363:9, 363:11, 363:18, 366:8, 367:5  <b>morning's</b> [1] - 226:17  <b>mortified</b> [1] - 346:22  <b>mosquito</b> [1] - 354:16  <b>most</b> [34] - 22:20, 44:25, 69:10, 89:7, 90:19, 119:15, 139:8, 140:5, 140:16, 158:18, 164:1, 191:1, 193:6, 193:20, 194:2, 201:3, 217:13, 262:21, 279:5, 283:19, 302:8, 308:1, 308:2, 312:7, 312:10, 315:23, 322:2, 347:15, 347:21, 350:8, 350:9, 358:7, 366:14  <b>mostly</b> [9] - 40:20, 40:21, 43:13, 84:10, 256:9, 309:19, 319:18, 320:18, 326:5  <b>motion</b> [9] - 17:6, 17:9, 17:13, 17:15, 17:16, 19:5, 22:10, 245:18, 369:17  <b>Motion</b> [1] - 10:10  <b>motions</b> [6] - 17:4, 20:3, 20:7, 142:6, 245:23, 314:8  <b>motivation</b> [1] - 364:25  <b>mouse</b> [3] - 354:2  <b>move</b> [14] - 23:25, 64:16, 149:22, 160:14, 175:22,</p>	<p>177:13, 243:3, 243:13, 289:18, 295:6, 306:6, 306:23, 307:1, 334:22  <b>moved</b> [2] - 179:9, 328:3  <b>movement</b> [1] - 139:3  <b>moves</b> [1] - 120:24  <b>Moving</b> [1] - 149:9  <b>moving</b> [4] - 108:6, 143:8, 237:19, 327:11  <b>MR</b> [809] - 2:7, 2:8, 2:12, 2:17, 3:3, 3:9, 15:10, 15:12, 15:23, 16:3, 16:12, 16:18, 18:2, 18:6, 18:10, 19:6, 20:4, 20:11, 21:3, 21:21, 21:23, 22:10, 22:12, 22:19, 22:25, 23:3, 23:10, 23:15, 23:17, 23:21, 23:23, 24:8, 24:17, 24:20, 25:2, 25:11, 25:20, 25:22, 25:23, 25:25, 26:3, 26:24, 27:5, 27:9, 27:12, 27:14, 27:17, 27:25, 28:11, 28:13, 28:16, 28:18, 28:20, 28:22, 28:25, 29:3, 29:5, 29:6, 29:8, 29:9, 29:11, 29:12, 29:25, 30:13, 30:14, 30:17, 30:19, 31:2, 31:4, 31:7, 31:18, 31:20, 32:8, 32:9, 32:14, 32:18, 33:1, 33:2, 33:9, 33:10, 33:12, 33:13, 33:17, 33:21, 33:24, 33:25, 34:5, 34:11, 34:17, 35:7, 35:9, 35:15, 35:17, 35:19, 35:23, 35:24, 36:2, 36:3, 36:4, 36:16, 36:22, 36:25, 37:1, 37:7, 37:12, 37:20, 37:22, 37:23, 38:2, 38:6, 38:10, 38:11, 38:12, 38:17, 38:21, 38:22, 38:23, 39:9, 39:10, 39:11, 39:22, 39:23, 39:24, 40:12, 40:15, 40:17, 40:19, 40:22, 43:3, 44:14, 44:19, 44:23, 45:10, 45:15, 45:19, 46:1, 46:7, 47:5, 49:16, 49:19, 49:22, 49:24, 50:10, 50:16,</p>	<p>51:3, 51:19, 53:21, 54:19, 55:6, 55:12, 55:20, 55:24, 56:3, 56:4, 56:6, 56:7, 56:10, 56:11, 56:14, 56:15, 57:3, 57:22, 58:3, 58:4, 58:5, 58:12, 58:16, 58:24, 59:6, 59:8, 59:14, 59:21, 59:24, 59:25, 60:7, 60:9, 60:13, 60:24, 61:2, 61:3, 61:8, 61:9, 61:15, 61:16, 61:19, 61:22, 62:1, 62:2, 62:6, 62:17, 62:23, 63:4, 63:6, 63:13, 63:15, 63:22, 64:8, 64:15, 64:19, 64:22, 64:23, 65:9, 65:19, 65:22, 66:17, 66:22, 66:24, 67:3, 67:4, 67:5, 67:11, 67:12, 67:21, 67:22, 67:23, 68:1, 68:5, 68:11, 68:13, 68:14, 68:15, 68:23, 69:19, 69:21, 69:23, 70:3, 70:10, 70:20, 70:23, 71:2, 71:3, 71:4, 71:5, 71:6, 71:9, 71:11, 71:12, 71:13, 71:14, 71:16, 71:19, 71:22, 71:23, 72:1, 72:3, 72:6, 72:8, 72:10, 72:11, 72:13, 72:20, 72:23, 72:24, 73:2, 73:3, 73:6, 73:7, 73:8, 73:9, 73:14, 73:16, 73:22, 73:23, 73:25, 74:5, 74:9, 74:11, 74:12, 74:16, 74:17, 74:18, 74:20, 74:21, 75:1, 75:6, 75:8, 75:12, 75:14, 75:15, 75:16, 75:18, 75:20, 76:6, 76:9, 76:11, 76:14, 76:18, 76:20, 76:21, 76:23, 76:25, 77:10, 77:11, 77:20, 77:25, 78:5, 78:6, 78:8, 78:10, 78:18, 78:19, 78:24, 79:2, 79:3, 79:13, 79:17, 79:19, 79:20, 79:21, 80:7, 80:10, 80:11, 80:17, 80:19, 80:25, 81:1, 81:4, 81:11, 81:18, 81:19, 81:22, 82:6, 82:12, 82:13, 82:19, 82:20, 82:24, 82:25, 83:3,</p>	<p>83:8, 83:9, 83:10, 83:12, 83:13, 83:15, 83:17, 83:19, 83:20, 83:21, 83:22, 83:23, 83:24, 83:25, 84:1, 84:12, 84:15, 84:17, 84:19, 84:21, 84:23, 85:2, 85:5, 85:10, 85:20, 85:22, 85:23, 86:1, 86:7, 86:13, 86:19, 86:22, 87:2, 87:5, 87:6, 87:14, 87:18, 87:24, 88:2, 88:5, 88:21, 89:10, 89:15, 89:16, 89:20, 89:24, 90:2, 90:5, 90:7, 90:9, 90:10, 90:11, 90:14, 90:18, 90:22, 90:24, 91:4, 91:8, 91:9, 91:10, 91:14, 91:15, 91:23, 92:1, 92:5, 92:9, 92:13, 92:16, 92:18, 92:19, 92:25, 93:5, 93:16, 93:19, 93:22, 93:24, 94:6, 94:9, 94:10, 94:11, 94:12, 94:19, 94:20, 95:6, 95:8, 95:10, 99:11, 99:18, 99:19, 100:3, 100:6, 100:8, 100:11, 100:22, 100:25, 101:1, 101:9, 101:11, 107:10, 107:12, 107:17, 108:3, 108:4, 110:4, 110:15, 111:12, 112:2, 112:3, 113:5, 113:8, 113:16, 114:2, 114:9, 114:13, 114:17, 114:20, 119:8, 119:12, 120:6, 120:9, 121:9, 121:10, 121:11, 121:12, 129:22, 129:24, 130:5, 130:9, 130:12, 130:14, 130:15, 130:20, 135:25, 136:2, 142:3, 142:6, 142:24, 143:4, 143:10, 143:11, 145:23, 145:24, 148:13, 148:21, 149:4, 149:9, 151:2, 151:4, 151:6, 151:14, 151:16, 151:17, 152:1, 152:3, 152:14, 158:6, 160:8, 160:10, 160:23, 161:5, 161:6, 161:9, 161:12, 161:13, 165:24, 166:6, 166:20, 167:4,</p>
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167:6, 167:7, 167:14, 167:15, 167:16, 167:20, 167:21, 168:3, 168:5, 168:9, 168:10, 168:15, 168:21, 168:23, 168:25, 169:3, 169:5, 169:18, 170:3, 170:7, 170:9, 170:17, 170:21, 170:25, 171:3, 171:7, 171:13, 171:15, 171:18, 171:22, 171:25, 172:8, 172:12, 172:15, 172:20, 173:5, 173:21, 175:14, 175:21, 176:5, 177:12, 177:16, 177:19, 178:3, 178:13, 178:18, 178:20, 178:22, 179:17, 179:19, 179:23, 180:2, 183:18, 183:20, 184:19, 184:25, 185:7, 185:12, 185:16, 185:19, 185:24, 185:25, 186:2, 186:10, 186:14, 186:16, 186:21, 187:5, 187:20, 188:2, 188:4, 188:5, 188:9, 188:14, 188:18, 188:25, 189:10, 201:17, 202:6, 208:1, 208:3, 208:10, 208:14, 208:15, 209:16, 209:21, 210:1, 210:5, 210:8, 210:11, 211:1, 211:4, 211:6, 211:14, 213:1, 213:4, 218:12, 218:15, 218:21, 219:2, 219:15, 219:18, 220:2, 220:8, 221:10, 221:21, 222:13, 222:21, 223:5, 223:13, 223:18, 223:19, 224:12, 227:8, 227:10, 227:23, 228:4, 228:18, 228:22, 229:3, 229:4, 229:7, 229:9, 229:18, 229:21, 229:22, 229:23, 229:24, 230:5, 230:7, 230:9, 230:10, 230:14, 230:17, 230:18, 231:2, 231:6, 231:8,	231:11, 231:14, 231:17, 232:1, 232:8, 232:9, 232:11, 232:17, 233:4, 233:6, 240:14, 240:18, 240:20, 241:20, 241:24, 241:25, 242:1, 242:20, 242:23, 243:2, 243:5, 243:8, 243:11, 243:18, 243:21, 244:15, 244:21, 245:2, 245:16, 246:1, 246:25, 248:7, 248:14, 249:1, 249:4, 249:7, 249:10, 249:12, 249:16, 249:18, 249:23, 250:3, 250:4, 250:8, 250:18, 250:20, 250:21, 250:23, 250:24, 251:2, 251:5, 251:6, 251:19, 251:25, 252:4, 252:19, 252:21, 253:13, 253:23, 253:25, 255:2, 255:4, 255:12, 255:15, 255:22, 255:24, 265:23, 266:6, 266:17, 268:9, 268:13, 268:18, 268:19, 277:23, 278:10, 278:13, 281:24, 282:4, 282:5, 284:1, 284:5, 284:16, 284:22, 285:3, 285:6, 285:8, 294:9, 294:23, 295:6, 295:9, 311:25, 312:2, 312:11, 312:13, 312:14, 312:15, 318:17, 318:21, 318:24, 321:4, 321:12, 322:8, 322:14, 322:23, 323:1, 323:6, 323:10, 323:15, 323:17, 324:16, 324:18, 324:19, 324:21, 325:3, 325:5, 325:7, 325:9, 325:10, 325:13, 325:14, 325:19, 326:1, 326:2, 327:8, 327:11, 327:17, 327:24, 328:4, 328:11, 329:8, 330:2, 330:10, 330:20, 330:24, 330:25, 331:10, 331:13, 343:23, 349:11, 350:21,	351:4, 359:24, 360:5, 360:8, 360:14, 360:24, 361:5, 361:8, 361:13, 362:1, 362:6, 362:8, 362:20, 363:3, 363:12, 363:15, 364:17, 365:2, 365:13, 365:16, 366:12, 367:9, 368:4, 368:14, 368:19, 368:24, 369:1, 369:7, 369:8, 369:12, 370:16, 370:23, 246:25, 248:7, 248:14, 249:1, 249:4, 249:7, 249:10, 249:12, 249:16, 249:18, 249:23, 250:3, 250:4, 250:8, 250:18, 250:20, 250:21, 250:23, 250:24, 251:2, 251:5, 251:6, 251:19, 251:25, 252:4, 252:19, 252:21, 253:13, 253:23, 253:25, 255:2, 255:4, 255:12, 255:15, 255:22, 255:24, 265:23, 266:6, 266:17, 268:9, 268:13, 268:18, 268:19, 277:23, 278:10, 278:13, 281:24, 282:4, 282:5, 284:1, 284:5, 284:16, 284:22, 285:3, 285:6, 285:8, 294:9, 294:23, 295:6, 295:9, 311:25, 312:2, 312:11, 312:13, 312:14, 312:15, 318:17, 318:21, 318:24, 321:4, 321:12, 322:8, 322:14, 322:23, 323:1, 323:6, 323:10, 323:15, 323:17, 324:16, 324:18, 324:19, 324:21, 325:3, 325:5, 325:7, 325:9, 325:10, 325:13, 325:14, 325:19, 326:1, 326:2, 327:8, 327:11, 327:17, 327:24, 328:4, 328:11, 329:8, 330:2, 330:10, 330:20, 330:24, 330:25, 331:10, 331:13, 343:23, 349:11, 350:21,	MS [330] - 2:3, 3:4, 11:1, 15:21, 16:1, 16:9, 16:10, 16:11, 16:16, 16:21, 18:5, 18:8, 19:3, 20:2, 20:8, 20:12, 21:11, 21:22, 22:7, 22:11, 22:13, 22:23, 23:4, 24:7, 24:13, 24:18, 24:24, 31:5, 33:8, 38:16, 63:8, 63:14, 63:16, 63:19, 64:6, 64:11, 64:18, 85:25, 86:3, 86:11, 86:17, 86:21, 86:23, 87:4, 91:21, 91:25, 92:2, 92:6, 92:12, 92:14, 92:22, 93:3, 93:6, 93:10, 93:18, 93:21, 93:23, 94:4, 95:5, 99:10, 99:17, 100:5, 100:10, 100:21, 101:4, 101:10, 107:11, 107:15, 107:24, 110:13, 111:7, 111:23, 113:6, 113:14, 114:3, 114:12, 114:14, 114:19, 120:8, 129:25, 130:6, 130:10, 130:13, 130:16, 142:4, 142:20, 143:3, 143:7, 145:21, 148:16, 149:1, 151:3, 151:5, 151:13, 151:15, 152:2, 152:10, 160:9, 160:16, 161:2, 161:10, 166:5, 166:25, 167:5, 170:8, 171:8, 171:14, 171:16, 171:21, 171:23, 172:1, 172:6, 172:11, 172:14, 172:19, 173:17, 173:19, 173:20, 175:18, 177:15,	177:17, 177:25, 178:10, 178:14, 178:21, 179:6, 179:15, 179:20, 184:21, 185:3, 185:10, 185:13, 185:17, 185:23, 186:1, 186:8, 186:12, 186:15, 186:18, 186:20, 186:23, 187:18, 188:8, 188:12, 188:21, 189:6, 201:13, 202:4, 204:2, 208:2, 208:9, 208:12, 209:17, 209:25, 210:3, 210:7, 210:9, 210:12, 211:3, 211:8, 213:3, 218:13, 218:20, 218:25, 219:12, 219:17, 219:20, 221:20, 222:8, 222:15, 223:2, 223:11, 227:9, 227:21, 228:3, 228:12, 228:20, 229:6, 229:8, 229:16, 230:12, 231:7, 231:10, 231:16, 231:24, 232:10, 232:16, 232:21, 240:17, 241:21, 242:17, 242:22, 242:25, 243:3, 243:7, 243:9, 243:15, 243:19, 244:8, 244:17, 244:25, 245:15, 245:24, 246:24, 248:6, 248:12, 248:23, 249:3, 249:6, 249:9, 252:16, 252:20, 252:25, 253:22, 253:24, 254:7, 254:25, 255:9, 255:13, 255:16, 255:18, 266:4, 268:11, 268:16, 278:2, 278:11, 282:1, 283:24, 285:1, 285:4, 295:3, 295:8, 318:19, 321:7, 321:25, 322:13, 322:22, 322:24, 323:4, 323:8, 323:13, 325:2, 325:23, 327:9, 327:15, 327:18, 328:2, 328:5, 328:12, 329:15, 330:7, 330:12, 331:1, 331:3, 331:7, 331:12, 331:14, 331:16,	331:17, 331:18, 331:19, 332:1, 332:5, 335:1, 335:3, 335:7, 335:8, 335:9, 335:10, 335:14, 339:2, 339:7, 339:23, 339:25, 340:1, 340:4, 340:6, 340:7, 340:8, 340:10, 343:21, 343:25, 344:1, 344:5, 344:9, 344:11, 345:18, 345:24, 346:1, 346:5, 349:6, 350:20, 350:22, 353:15, 353:20, 359:10, 360:3, 360:7, 360:11, 360:12, 360:17, 360:21, 361:3, 361:6, 361:12, 361:24, 362:4, 362:11, 362:14, 363:1, 363:10, 363:13, 364:14, 364:25, 365:3, 365:14, 366:10, 367:7, 367:16, 367:18, 367:25, 368:13, 368:17, 368:20, 368:25, 369:2, 369:11, 369:22, 370:22, 370:24 <b>muck</b> [2] - 199:6, 199:17 <b>mucking</b> [1] - 198:6 <b>mud</b> [1] - 354:18 <b>mule</b> [1] - 353:25 <b>mules</b> [1] - 39:2 <b>multi</b> [1] - 368:22 <b>multi-day</b> [1] - 368:22 <b>multiple</b> [3] - 113:1, 247:23, 337:23 <b>multiplier</b> [2] - 135:15, 135:21 <b>murder</b> [1] - 191:21 <b>Murphy</b> [1] - 8:12 <b>mushrooms</b> [2] - 200:17, 200:18 <b>must</b> [8] - 52:20, 164:4, 253:19, 254:19, 260:25, 261:1, 312:23, 332:18 <b>MW</b> [3] - 7:3, 7:13, 7:15 <b>myth</b> [1] - 197:23
				<b>N</b>	
				<b>name</b> [26] - 11:2, 12:7, 14:17, 15:19,	

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>23:11, 118:14, 118:15, 118:17, 118:23, 118:24, 133:11, 173:7, 176:8, 251:4, 315:18, 324:14, 331:3, 331:12, 331:13, 332:5, 335:16, 339:7, 344:5, 349:15, 351:5, 356:1</p> <p><b>names</b> [4] - 84:6, 133:4, 328:16, 361:20</p> <p><b>narcotic</b> [1] - 52:24</p> <p><b>nation</b> [2] - 340:15, 350:10</p> <p><b>national</b> [2] - 339:12, 347:10</p> <p><b>National</b> [4] - 355:20, 356:17, 356:20, 357:4</p> <p><b>nationwide</b> [1] - 350:2</p> <p><b>Native</b> [1] - 209:6</p> <p><b>natural</b> [3] - 45:23, 309:24, 355:22</p> <p><b>Natural</b> [7] - 188:10, 190:8, 198:13, 198:17, 199:21, 199:25, 200:5</p> <p><b>naturally</b> [1] - 83:6</p> <p><b>nature</b> [14] - 43:13, 73:24, 123:14, 132:17, 148:23, 167:13, 187:25, 192:5, 201:22, 221:8, 222:20, 239:8, 256:11, 307:25</p> <p><b>Nauwelaers</b> [5] - 112:9, 118:19, 118:25, 119:2, 119:4</p> <p><b>NAUWLER</b> [1] - 119:4</p> <p><b>near</b> [3] - 42:24, 161:7, 307:3</p> <p><b>nearby</b> [3] - 192:15, 320:19, 353:3</p> <p><b>nearing</b> [1] - 124:17</p> <p><b>nearly</b> [2] - 60:22, 160:22</p> <p><b>necessarily</b> [12] - 24:9, 108:21, 135:21, 169:23, 170:25, 180:19, 181:9, 221:15, 244:9, 256:6, 257:11, 297:20</p> <p><b>necessary</b> [13] - 30:3, 33:15, 168:2, 168:15, 168:24, 196:21, 232:25, 241:9, 298:17, 334:16, 364:16,</p>	<p>364:19, 368:12</p> <p><b>necessitate</b> [1] - 169:1</p> <p><b>necropsies</b> [1] - 42:8</p> <p><b>need</b> [51] - 20:25, 44:20, 44:25, 45:1, 47:11, 79:2, 80:8, 93:25, 94:7, 100:6, 105:13, 110:3, 110:6, 111:5, 114:21, 115:1, 115:18, 116:17, 127:20, 138:2, 155:23, 158:5, 165:25, 166:7, 166:12, 169:1, 179:8, 185:18, 186:12, 186:18, 186:20, 188:22, 230:8, 251:1, 279:8, 281:23, 293:21, 312:19, 322:20, 329:12, 330:15, 332:17, 343:1, 355:12, 359:1, 359:5, 362:1, 363:6, 363:19, 366:2, 370:5</p> <p><b>needed</b> [7] - 34:19, 108:20, 168:4, 227:17, 261:7, 289:4, 365:19</p> <p><b>needless</b> [1] - 142:9</p> <p><b>needn't</b> [1] - 244:18</p> <p><b>needs</b> [7] - 192:20, 280:11, 358:25, 363:7, 363:10, 364:6, 366:16</p> <p><b>negative</b> [2] - 240:3, 351:21</p> <p><b>neglect</b> [1] - 187:11</p> <p><b>neglected</b> [1] - 333:24</p> <p><b>negligence</b> [1] - 352:13</p> <p><b>neighborhood</b> [1] - 197:22</p> <p><b>neighboring</b> [1] - 240:13</p> <p><b>network</b> [1] - 336:1</p> <p><b>never</b> [21] - 39:4, 51:11, 76:16, 103:21, 103:22, 108:11, 115:14, 128:23, 191:20, 192:6, 197:13, 202:12, 202:13, 202:15, 202:17, 224:1, 226:5, 267:25, 289:15, 330:25, 365:1</p> <p><b>NEW</b> [4] - 1:1, 1:6, 2:6, 372:1</p> <p><b>new</b> [33] - 30:4,</p>	<p>31:16, 32:2, 35:21, 40:4, 124:20, 125:3, 126:5, 153:7, 161:14, 181:20, 181:21, 181:23, 181:24, 194:20, 194:22, 221:5, 221:8, 222:6, 222:17, 222:20, 222:25, 223:17, 223:21, 247:9, 290:2, 290:3, 308:12, 308:19, 316:14, 349:21, 361:20</p> <p><b>New</b> [84] - 1:16, 2:3, 2:5, 2:10, 2:14, 2:16, 2:19, 3:2, 7:20, 11:3, 11:11, 15:11, 16:14, 17:10, 18:21, 18:22, 19:23, 21:14, 22:3, 25:12, 36:21, 37:15, 39:5, 81:3, 82:8, 85:16, 121:14, 125:5, 131:8, 151:10, 173:12, 173:14, 176:11, 205:8, 205:16, 205:18, 205:22, 205:25, 209:21, 211:20, 212:13, 213:17, 213:18, 247:9, 264:20, 290:11, 290:18, 295:12, 297:1, 297:2, 297:15, 297:16, 305:9, 311:23, 332:7, 333:2, 335:20, 338:22, 338:23, 339:18, 340:12, 340:13, 340:16, 340:21, 340:22, 341:19, 341:22, 342:7, 342:12, 346:8, 348:5, 349:17, 349:24, 351:6, 351:20, 351:21, 352:12, 353:8, 353:11, 354:21, 356:8, 356:11, 357:1, 369:21</p> <p><b>Newberry</b> [1] - 8:9</p> <p><b>news</b> [2] - 134:20, 339:21</p> <p><b>newspaper</b> [1] - 333:22</p> <p><b>next</b> [37] - 11:18, 17:9, 32:1, 68:16, 78:14, 91:2, 121:6, 124:6, 189:24, 190:10, 190:24, 191:11, 192:17, 193:15, 193:18,</p>	<p>194:6, 194:15, 194:23, 194:24, 194:25, 195:3, 195:18, 196:10, 196:14, 197:5, 198:12, 200:3, 210:25, 300:21, 307:4, 320:20, 343:24, 345:19, 355:14, 355:17, 361:23, 368:9</p> <p><b>nice</b> [3] - 199:1, 319:24, 345:15</p> <p><b>night</b> [2] - 360:25, 370:25</p> <p><b>nighthawks</b> [1] - 354:9</p> <p><b>nine</b> [1] - 208:24</p> <p><b>nitrate</b> [4] - 83:21, 301:21, 318:3, 318:10</p> <p><b>nitrates</b> [1] - 32:3</p> <p><b>nitrogen</b> [8] - 83:9, 83:21, 239:11, 301:17, 301:19, 301:23, 317:23, 317:25</p> <p><b>NMAC</b> [5] - 10:6, 10:8, 36:14, 36:15, 183:2</p> <p><b>NMED</b> [27] - 7:14, 7:16, 7:17, 7:19, 9:10, 9:12, 9:14, 9:16, 9:18, 9:24, 30:11, 99:1, 100:19, 103:2, 108:16, 127:7, 127:8, 129:2, 181:21, 183:7, 183:22, 312:11, 351:10, 352:16, 352:20, 353:5, 353:12</p> <p><b>NMED's</b> [1] - 315:3</p> <p><b>NMSA</b> [2] - 38:18, 39:6</p> <p><b>NO3-N</b> [2] - 82:23, 83:20</p> <p><b>nobody</b> [2] - 163:21, 193:25</p> <p><b>NOI</b> [3] - 212:8, 294:8, 312:10</p> <p><b>noise</b> [1] - 345:6</p> <p><b>Nolin</b> [1] - 119:1</p> <p><b>non</b> [1] - 369:20</p> <p><b>Noncompliance</b> [2] - 9:12, 9:16</p> <p><b>noncompliance</b> [6] - 134:2, 304:4, 321:19, 322:19, 347:23, 352:17</p> <p><b>none</b> [8] - 32:10, 53:6, 62:22, 63:13, 63:15, 177:17, 210:8,</p>	<p>252:8</p> <p><b>nonprofit</b> [3] - 187:16, 189:17, 339:17</p> <p><b>nontechnical</b> [2] - 329:3, 340:8</p> <p><b>noon</b> [2] - 94:10, 94:11</p> <p><b>normal</b> [5] - 37:14, 55:10, 63:3, 78:15, 120:12</p> <p><b>North</b> [1] - 343:6</p> <p><b>north</b> [1] - 357:5</p> <p><b>Northeast</b> [1] - 2:13</p> <p><b>northeast</b> [2] - 31:15, 78:17</p> <p><b>northern</b> [3] - 198:22, 354:8, 354:10</p> <p><b>northwest</b> [1] - 191:14</p> <p><b>NOTARY</b> [1] - 372:18</p> <p><b>Note</b> [1] - 7:17</p> <p><b>note</b> [2] - 247:17, 325:20</p> <p><b>noted</b> [6] - 57:11, 75:24, 108:17, 202:3, 216:25, 337:21</p> <p><b>notes</b> [2] - 234:19, 244:22</p> <p><b>nothing</b> [11] - 59:14, 59:17, 59:20, 61:4, 61:11, 68:22, 177:10, 183:15, 203:13, 285:14, 311:16</p> <p><b>Notice</b> [8] - 6:16, 8:23, 9:12, 9:18, 9:20, 9:21, 9:22, 10:7</p> <p><b>notice</b> [13] - 35:5, 63:11, 81:23, 93:1, 102:18, 128:14, 134:2, 216:4, 287:15, 326:13, 326:17, 369:10</p> <p><b>notices</b> [2] - 321:19, 322:19</p> <p><b>notified</b> [2] - 34:19, 303:25</p> <p><b>notify</b> [1] - 15:18</p> <p><b>notifying</b> [1] - 352:16</p> <p><b>noting</b> [1] - 143:12</p> <p><b>notwithstanding</b> [1] - 278:4</p> <p><b>NOV</b> [2] - 288:7, 302:17</p> <p><b>November</b> [4] - 30:12, 66:1, 95:18, 96:10</p> <p><b>NOVs</b> [2] - 288:15, 288:25</p> <p><b>nowadays</b> [1] -</p>
---	--	--	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>120:4  <b>nowhere</b> [1] - 356:15  <b>NPDES</b> [1] - 319:9  <b>NRCS</b> [5] - 27:17,  121:25, 125:6  <b>NSAIDs</b> [1] - 251:15  <b>nuclear</b> [2] - 198:6,  223:25  <b>number</b> [107] - 14:3,  14:5, 25:18, 25:19,  31:10, 31:11, 31:12,  31:25, 32:1, 34:7,  35:20, 43:22, 52:4,  62:12, 62:15, 65:13,  69:14, 78:13, 78:14,  78:25, 79:7, 81:5,  97:7, 97:8, 99:7,  121:3, 121:5, 121:6,  126:12, 126:18,  128:18, 128:23,  131:7, 132:6, 141:25,  143:14, 145:13,  167:9, 167:11,  203:17, 218:7, 218:8,  219:22, 219:23,  227:5, 227:14,  227:19, 227:22,  228:2, 228:7, 228:11,  228:16, 228:21,  228:25, 229:3, 229:5,  229:11, 229:20,  229:25, 230:15,  231:13, 231:18,  231:21, 231:23,  232:3, 232:12,  232:13, 232:18,  233:2, 233:25, 234:6,  234:13, 235:23,  239:12, 243:16,  245:3, 250:1, 250:13,  267:18, 273:2,  273:19, 277:8, 277:9,  277:16, 277:19,  278:14, 278:19,  278:21, 278:24,  280:4, 282:9, 284:3,  292:7, 292:22,  293:11, 316:21,  324:14, 325:2, 326:2,  340:15, 349:23  <b>Number</b> [1] - 372:19  <b>numbered</b> [1] -  100:13  <b>numbers</b> [17] -  66:12, 112:10,  112:12, 112:14,  167:8, 227:24,  236:21, 237:14,  245:7, 278:6, 282:16,  282:18, 316:7, 316:9,</p>	<p>338:19, 342:16  <b>numerous</b> [6] -  25:14, 27:18, 122:2,  136:8, 297:5, 357:15  <b>nutrient</b> [2] - 122:2,  122:3</p> <p style="text-align: center;"><b>O</b></p> <p><b>O'DOWD</b> [7] - 5:10,  339:4, 339:7, 339:25,  340:4, 340:7, 340:10  <b>O'Dowd</b> [6] - 330:18,  331:22, 331:25,  339:3, 339:8, 343:21  <b>O'-D-o-w-d</b> [1] -  339:8  <b>Oath</b> [7] - 23:1,  172:17, 186:15,  186:22, 211:9,  331:24, 345:22  <b>oath</b> [15] - 23:7,  173:2, 176:2, 187:2,  211:11, 329:6,  329:16, 332:3,  335:12, 339:5, 344:3,  346:3, 349:9, 351:2,  353:18  <b>Obama</b> [1] - 66:2  <b>object</b> [16] - 24:23,  61:19, 107:13, 113:8,  114:2, 170:3, 221:10,  222:21, 229:9,  231:15, 245:3, 245:8,  268:9, 277:23,  281:24, 284:16  <b>objected</b> [1] - 244:22  <b>objection</b> [27] -  18:19, 19:22, 23:24,  91:22, 114:4, 148:14,  160:10, 160:13,  161:9, 171:25,  188:25, 189:3, 189:5,  218:12, 231:11,  242:5, 242:15,  243:16, 243:20,  245:21, 246:4, 246:7,  246:11, 246:23,  294:23, 317:8, 325:19  <b>Objection</b> [1] - 10:11  <b>objections</b> [20] -  18:4, 19:7, 19:11,  24:7, 24:19, 35:8,  35:11, 63:10, 63:14,  142:7, 175:16,  175:18, 177:12,  177:15, 201:19,  208:7, 209:23, 223:8,  223:10, 242:3  <b>obligations</b> [2] -</p>	<p>30:3, 123:21  <b>observations</b> [2] -  210:20, 328:15  <b>observe</b> [2] - 369:8,  369:9  <b>Observers</b> [1] -  339:17  <b>obtain</b> [3] - 12:23,  72:4, 231:19  <b>obtained</b> [4] -  111:16, 111:18,  249:11, 249:12  <b>obviously</b> [3] - 69:4,  106:8, 280:23  <b>occasion</b> [1] - 25:16  <b>occasional</b> [1] - 36:8  <b>occasionally</b> [1] -  139:7  <b>occasions</b> [2] -  108:17, 352:23  <b>occur</b> [14] - 67:1,  150:7, 157:8, 200:20,  223:16, 262:14,  262:23, 265:21,  298:8, 305:19,  308:17, 309:3,  309:10, 316:19  <b>occurred</b> [11] -  213:16, 214:10,  215:3, 282:15,  286:21, 300:22,  302:7, 306:3, 307:22,  315:2, 317:14  <b>occurrence</b> [1] -  355:21  <b>occurring</b> [3] - 83:6,  317:10, 320:9  <b>occurs</b> [3] - 90:20,  263:8, 302:1  <b>October</b> [6] - 1:13,  212:15, 212:16,  256:18  <b>odors</b> [1] - 194:3  <b>OF</b> [17] - 1:1, 1:2,  1:5, 1:5, 1:6, 1:12,  64:22, 87:5, 94:19,  119:11, 130:19,  136:1, 167:6, 180:1,  183:19, 372:1, 372:3  <b>off-label</b> [1] - 87:25  <b>off-site</b> [1] - 30:9  <b>offal</b> [27] - 41:21,  41:23, 42:3, 43:1,  43:23, 71:1, 71:3,  71:4, 71:11, 71:15,  71:16, 72:12, 109:12,  109:19, 110:14,  110:21, 111:1,  116:10, 118:2, 118:3,  118:5, 118:8, 182:17,</p>	<p>182:22, 193:7,  206:10, 341:6  <b>offensive</b> [1] -  369:25  <b>offer</b> [9] - 19:9,  21:25, 24:14, 248:19,  253:20, 254:2, 289:5,  317:18, 349:3  <b>offered</b> [7] - 11:23,  11:25, 12:1, 24:4,  24:15, 25:23, 206:4  <b>offering</b> [1] - 329:2  <b>offhand</b> [2] - 118:15,  118:17  <b>office</b> [3] - 13:2,  16:8, 325:1  <b>Office</b> [10] - 11:19,  16:15, 17:10, 22:3,  66:6, 286:6, 287:3,  321:1, 321:3, 366:23  <b>officer</b> [5] - 18:13,  18:14, 18:20, 190:1,  372:4  <b>Officer</b> [111] - 1:15,  11:3, 15:13, 15:24,  16:4, 16:13, 16:19,  19:6, 20:5, 20:11,  21:3, 21:23, 23:3,  23:23, 24:17, 33:2,  38:14, 63:13, 63:22,  64:9, 64:20, 85:24,  86:7, 86:14, 93:16,  93:22, 94:14, 100:4,  100:11, 107:10,  108:3, 110:4, 110:15,  111:5, 112:2, 113:5,  113:20, 130:5,  143:10, 149:5, 151:4,  152:17, 153:1, 160:8,  160:23, 165:24,  166:24, 171:15,  171:18, 172:13,  172:21, 175:15,  177:13, 178:19,  178:20, 179:5,  179:23, 184:20,  185:7, 185:25,  201:17, 208:1,  209:21, 210:6, 211:1,  211:17, 212:25,  213:1, 213:9, 215:1,  217:6, 218:18, 219:2,  221:22, 227:8, 229:2,  229:7, 230:14, 231:2,  231:9, 231:14, 232:1,  233:5, 240:15,  240:24, 242:2, 243:6,  243:12, 245:3,  245:17, 246:2, 248:8,  249:11, 252:5,</p>	<p>252:19, 255:4, 255:6,  255:12, 255:22,  265:23, 295:7,  323:19, 330:2, 335:4,  335:14, 344:1, 351:4,  361:8, 362:20, 367:9,  371:3  <b>OFFICER</b> [2] - 2:2,  367:20  <b>Officer's</b> [2] - 77:1,  101:2  <b>official</b> [2] - 18:23,  325:22  <b>officially</b> [1] - 179:3  <b>often</b> [6] - 43:22,  102:11, 118:2, 118:8,  191:4, 206:16  <b>oil</b> [1] - 319:18  <b>Oil</b> [2] - 213:18,  214:21  <b>ointment</b> [1] - 251:18  <b>old</b> [4] - 107:6,  113:23, 190:11, 252:1  <b>older</b> [1] - 316:13  <b>olson</b> [1] - 352:15  <b>Olson</b> [63] - 7:12,  17:17, 18:19, 19:14,  20:24, 158:11,  174:17, 175:4, 181:7,  211:2, 211:3, 211:9,  211:15, 213:4,  218:14, 218:22,  219:6, 219:13,  219:15, 220:8,  221:12, 221:24,  221:25, 222:10,  223:11, 233:1, 233:7,  240:20, 241:23,  241:24, 243:23,  244:5, 244:20, 246:8,  246:16, 247:5,  247:11, 248:1, 248:4,  248:25, 249:5,  249:10, 252:9,  252:13, 254:11,  254:18, 255:21,  266:5, 267:24,  278:11, 282:2, 285:2,  285:5, 285:9, 292:4,  318:22, 321:9,  322:25, 323:9,  327:12, 327:16,  328:1, 352:1  <b>OLSON</b> [28] - 5:2,  211:10, 220:2,  223:13, 223:19,  230:17, 241:25,  249:12, 249:18,  250:3, 250:8, 250:20,  250:23, 251:2, 251:6,</p>
--	--	--	--	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>251:25, 266:6, 268:18, 282:4, 284:1, 312:11, 312:14, 321:12, 322:8, 322:14, 322:23, 326:1, 327:17</p> <p><b>Olson's</b> [11] - 19:12, 19:19, 157:23, 158:9, 219:3, 222:3, 245:19, 253:8, 254:14, 325:21, 352:4</p> <p><b>once</b> [11] - 14:21, 150:24, 169:14, 204:2, 287:13, 303:25, 309:7, 310:17, 315:14, 328:21, 344:23</p> <p><b>one</b> [136] - 13:6, 17:1, 28:16, 28:21, 31:10, 31:15, 31:25, 32:21, 34:7, 40:1, 43:6, 43:17, 43:18, 44:16, 45:20, 48:16, 48:19, 51:22, 56:15, 62:23, 67:19, 78:2, 79:24, 80:1, 80:5, 82:7, 82:21, 88:24, 91:2, 91:7, 94:15, 98:13, 100:23, 101:12, 117:11, 121:5, 121:7, 125:16, 125:18, 126:4, 126:12, 128:11, 128:13, 132:12, 133:17, 133:18, 154:21, 154:22, 154:24, 187:18, 188:10, 191:6, 192:8, 194:22, 195:23, 197:17, 197:18, 199:16, 199:18, 200:4, 203:12, 203:13, 204:10, 206:17, 209:8, 212:11, 214:7, 217:16, 223:21, 224:1, 228:12, 229:5, 229:25, 230:1, 230:25, 243:22, 245:21, 247:17, 250:5, 257:20, 258:2, 270:21, 285:11, 285:24, 286:1, 293:10, 295:23, 298:20, 298:25, 300:17, 301:3, 304:8, 304:19, 304:20, 304:21, 307:7, 308:12, 308:18, 312:8, 312:9, 312:11, 314:8, 315:12,</p>	<p>315:14, 321:8, 321:23, 324:20, 325:9, 325:10, 325:12, 326:5, 326:20, 330:7, 331:3, 333:2, 333:13, 339:11, 342:2, 348:6, 348:11, 349:23, 356:1, 357:11, 365:3, 366:15, 366:21, 368:21</p> <p><b>One</b> [1] - 3:5</p> <p><b>one's</b> [1] - 247:8</p> <p><b>one-acre</b> [1] - 91:7</p> <p><b>ones</b> [17] - 47:12, 51:21, 156:14, 225:11, 225:14, 273:14, 273:19, 273:23, 274:8, 274:9, 274:11, 274:12, 274:14, 275:8, 318:16, 355:22</p> <p><b>open</b> [13] - 65:25, 177:20, 333:9, 334:17, 345:5, 349:21, 350:3, 350:16, 350:18, 367:18, 367:20, 368:16, 370:12</p> <p><b>opened</b> [2] - 196:19, 210:17</p> <p><b>opening</b> [7] - 333:7, 342:3, 346:21, 349:19, 350:7, 355:7, 356:7</p> <p><b>operate</b> [5] - 59:22, 60:15, 121:17, 234:4, 337:19</p> <p><b>operated</b> [5] - 194:7, 198:18, 290:20, 290:23, 338:13</p> <p><b>operating</b> [8] - 59:21, 61:9, 61:11, 96:25, 102:13, 199:8, 216:19, 281:8</p> <p><b>operation</b> [23] - 95:12, 96:2, 118:7, 135:20, 181:20, 183:7, 183:13, 190:23, 193:23, 196:13, 197:6, 197:13, 198:18, 199:12, 207:21, 221:9, 222:6, 222:20, 222:24, 222:25, 226:15, 243:25, 310:22</p> <p><b>operational</b> [2] - 76:1, 257:18</p> <p><b>operations</b> [26] -</p>	<p>65:2, 65:3, 65:20, 95:14, 95:16, 95:19, 103:24, 103:25, 169:21, 182:14, 182:22, 192:18, 193:13, 203:6, 210:20, 220:16, 224:17, 235:11, 236:6, 252:15, 272:17, 281:5, 336:19, 337:5, 338:19, 353:6</p> <p><b>Operations</b> [1] - 358:2</p> <p><b>operator</b> [3] - 69:1, 117:2, 290:18</p> <p><b>operator's</b> [1] - 69:1</p> <p><b>operators</b> [3] - 34:25, 81:10, 190:21</p> <p><b>opine</b> [3] - 221:17, 248:15, 248:21</p> <p><b>opining</b> [1] - 275:5</p> <p><b>Opinion</b> [1] - 358:2</p> <p><b>opinion</b> [40] - 33:25, 44:15, 59:23, 61:16, 61:20, 61:22, 61:23, 62:1, 62:3, 150:13, 150:15, 150:23, 161:17, 163:2, 201:22, 203:3, 204:4, 206:22, 221:4, 221:13, 221:25, 222:15, 224:14, 238:11, 244:24, 248:19, 253:20, 269:17, 270:14, 270:16, 272:20, 276:7, 276:25, 283:18, 294:5, 294:15, 294:18, 294:21, 334:5</p> <p><b>opinions</b> [3] - 19:25, 24:15, 270:14</p> <p><b>opponents</b> [2] - 178:15, 228:14</p> <p><b>opportunities</b> [1] - 247:25</p> <p><b>opportunity</b> [12] - 15:4, 23:24, 66:1, 178:12, 241:2, 246:15, 254:1, 323:2, 327:13, 327:20, 328:8, 335:15</p> <p><b>oppose</b> [2] - 286:16, 344:13</p> <p><b>opposed</b> [4] - 114:21, 165:14, 253:7, 351:22</p> <p><b>opposes</b> [1] - 335:24</p> <p><b>opposing</b> [1] - 86:25</p>	<p><b>opposite</b> [1] - 348:16</p> <p><b>opposition</b> [3] - 20:3, 20:6, 336:8</p> <p><b>Optical</b> [1] - 205:2</p> <p><b>optical</b> [1] - 205:4</p> <p><b>options</b> [2] - 209:9, 309:11</p> <p><b>order</b> [14] - 11:21, 12:4, 59:3, 64:8, 64:13, 86:6, 104:2, 185:15, 238:18, 308:22, 328:16, 330:17, 331:21, 368:9</p> <p><b>Order</b> [4] - 6:21, 6:22, 9:23, 10:12</p> <p><b>ordered</b> [2] - 196:24, 199:7</p> <p><b>orderly</b> [1] - 14:8</p> <p><b>ordinances</b> [1] - 196:21</p> <p><b>ordinarily</b> [1] - 365:10</p> <p><b>ore</b> [1] - 191:17</p> <p><b>organ</b> [1] - 200:4</p> <p><b>organic</b> [3] - 262:10, 263:23, 264:3</p> <p><b>organization</b> [3] - 189:17, 195:21, 351:9</p> <p><b>organizations</b> [1] - 26:14</p> <p><b>oriented</b> [1] - 348:16</p> <p><b>original</b> [9] - 89:13, 98:25, 99:11, 123:25, 124:9, 124:11, 191:8, 203:15, 226:2</p> <p><b>originally</b> [8] - 121:4, 124:3, 128:14, 286:3, 287:12, 313:25, 364:13, 364:15</p> <p><b>Orth</b> [1] - 11:2</p> <p><b>ORTH</b> [301] - 1:15, 2:3, 11:1, 15:21, 16:1, 16:9, 16:11, 16:16, 16:21, 18:5, 18:8, 19:3, 20:2, 20:8, 20:12, 21:11, 21:22, 22:7, 22:11, 22:13, 22:23, 23:4, 24:7, 24:13, 24:18, 24:24, 31:5, 33:8, 38:16, 63:8, 63:14, 63:16, 63:19, 64:6, 64:11, 64:18, 85:25, 86:3, 86:11, 86:17, 86:21, 86:23, 87:4, 91:21, 91:25, 92:2, 92:6, 92:12, 92:14, 92:22, 93:3, 93:6, 93:10, 93:21, 93:23, 94:4, 99:10, 99:17, 100:5,</p>	<p>100:10, 100:21, 101:4, 101:10, 107:11, 107:15, 107:24, 110:13, 111:7, 111:23, 113:6, 113:14, 114:3, 114:12, 114:14, 114:19, 120:8, 129:25, 130:6, 130:10, 130:13, 130:16, 130:18, 142:4, 142:20, 143:3, 143:7, 145:21, 148:16, 149:1, 151:3, 151:5, 151:13, 151:15, 152:2, 152:10, 160:9, 160:16, 161:2, 161:10, 166:5, 166:25, 167:5, 170:8, 171:8, 171:14, 171:16, 171:21, 171:23, 172:1, 172:6, 172:11, 172:14, 172:19, 173:17, 173:20, 175:18, 177:15, 177:17, 177:25, 178:10, 178:14, 178:21, 179:6, 179:15, 179:20, 184:21, 185:3, 185:10, 185:13, 185:17, 185:23, 186:1, 186:8, 186:12, 186:15, 186:20, 186:23, 187:18, 188:8, 188:12, 188:21, 189:6, 201:13, 202:4, 208:2, 208:9, 208:12, 209:17, 209:25, 210:3, 210:7, 210:9, 210:12, 211:3, 211:8, 213:3, 218:13, 218:20, 218:25, 219:12, 219:17, 221:20, 222:8, 223:2, 223:11, 227:9, 227:21, 228:3, 228:12, 228:20, 229:6, 229:8, 229:16, 230:12, 231:7, 231:10, 231:16, 231:24, 232:10, 232:16, 232:21, 240:17, 241:21, 242:17, 242:22, 242:25, 243:3, 243:7, 243:9, 243:15, 243:19, 244:8, 244:17, 244:25,</p>
--	--	---	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>245:15, 245:24, 246:24, 248:6, 248:12, 248:23, 249:3, 249:6, 249:9, 252:16, 252:20, 252:25, 253:22, 253:24, 254:7, 254:25, 255:9, 255:13, 255:16, 255:18, 266:4, 268:11, 268:16, 278:2, 278:11, 282:1, 283:24, 285:1, 285:4, 295:3, 295:8, 318:19, 321:7, 321:25, 322:13, 322:22, 322:24, 323:4, 323:8, 323:13, 325:2, 325:23, 327:9, 327:15, 327:18, 328:2, 328:5, 328:12, 329:15, 330:7, 330:12, 331:1, 331:7, 331:12, 331:14, 331:17, 331:19, 332:1, 335:1, 335:7, 335:9, 339:2, 339:23, 340:1, 340:6, 340:8, 343:21, 343:25, 344:9, 345:18, 345:24, 349:6, 350:20, 350:22, 353:15, 359:10, 360:3, 360:7, 360:11, 360:21, 361:3, 361:6, 361:12, 361:24, 362:4, 362:11, 362:14, 363:1, 363:10, 363:13, 364:14, 364:25, 365:3, 365:14, 366:10, 367:7, 367:16, 367:25, 368:13, 368:17, 368:20, 368:25, 369:2, 369:11, 369:22, 370:22, 370:24</p> <p><b>ostriches</b> [1] - 39:3 <b>otherwise</b> [3] - 14:17, 143:2, 291:14 <b>ourselves</b> [2] - 49:3, 72:16 <b>out-of-state</b> [2] - 369:14, 369:20 <b>outbursts</b> [1] - 14:9 <b>outcry</b> [1] - 348:25 <b>outdoor</b> [1] - 203:16 <b>outline</b> [2] - 11:14, 238:21</p>	<p><b>outlines</b> [1] - 352:15 <b>outpour</b> [1] - 348:22 <b>outright</b> [1] - 352:13 <b>outside</b> [10] - 57:8, 66:21, 67:10, 113:24, 179:4, 182:22, 203:13, 289:16, 337:23 <b>overall</b> [1] - 294:18 <b>overflow</b> [9] - 108:5, 108:8, 108:11, 108:13, 108:14, 108:17, 124:18, 338:6, 343:8 <b>overflowing</b> [3] - 108:21, 195:23, 338:9 <b>overhead</b> [1] - 320:12 <b>oversaw</b> [1] - 256:4 <b>oversee</b> [2] - 176:19, 256:6 <b>overseen</b> [2] - 261:14, 261:16 <b>oversight</b> [3] - 213:22, 333:1, 333:10 <b>Oversight</b> [1] - 176:21 <b>overtop</b> [1] - 314:4 <b>overtopping</b> [2] - 313:12, 313:21 <b>overview</b> [1] - 214:11 <b>overwhelming</b> [1] - 200:2 <b>own</b> [8] - 18:24, 79:16, 92:7, 121:17, 181:22, 247:18, 268:5, 270:16 <b>owned</b> [2] - 87:8, 193:16 <b>owner</b> [11] - 30:1, 87:8, 96:20, 96:24, 97:2, 117:1, 189:25, 286:9, 286:13, 348:11, 349:16 <b>owners</b> [9] - 34:25, 132:25, 133:5, 147:3, 149:17, 153:18, 153:24, 337:2, 340:18 <b>owning</b> [2] - 268:4, 286:13 <b>owns</b> [1] - 355:17 <b>Oxbow</b> [1] - 356:21 <b>oxygen</b> [2] - 195:10, 195:11 <b>oxyphenbutazone</b> [2] - 89:25, 90:3</p>	<p style="text-align: center;"><b>P</b></p> <p><b>packing</b> [1] - 81:8 <b>page</b> [30] - 14:1, 100:12, 127:25, 212:8, 212:11, 212:12, 229:3, 229:5, 229:23, 229:25, 230:1, 230:5, 230:9, 230:23, 230:25, 231:4, 233:2, 245:6, 278:8, 294:1, 294:7, 294:12, 314:12, 314:14, 314:17, 321:25, 326:5, 326:6, 331:4 <b>page-and-three- quarter</b> [1] - 326:6 <b>pages</b> [7] - 231:1, 231:4, 245:5, 245:10, 325:3, 326:5, 347:2 <b>paid</b> [7] - 17:19, 122:8, 133:8, 133:10, 137:9, 286:25, 321:2 <b>pain</b> [1] - 46:17 <b>palpate</b> [1] - 45:6 <b>palpations</b> [1] - 45:5 <b>panel</b> [12] - 63:21, 65:5, 86:18, 87:1, 87:3, 93:14, 94:15, 167:2, 171:10, 178:2, 178:17, 184:22 <b>Panel</b> [1] - 4:15 <b>PANEL</b> [3] - 64:22, 87:5, 167:6 <b>paper</b> [6] - 35:5, 207:2, 212:20, 342:17, 342:23 <b>paragraph</b> [15] - 35:23, 35:24, 36:1, 36:2, 38:21, 78:1, 138:4, 139:2, 147:6, 148:4, 148:19, 149:9, 149:20, 149:22, 348:6 <b>parameters</b> [2] - 82:21, 309:13 <b>Parasol</b> [1] - 299:9 <b>pardon</b> [11] - 49:18, 85:1, 86:22, 137:5, 143:19, 143:25, 144:9, 145:4, 146:1, 147:12, 163:14 <b>parent</b> [1] - 199:10 <b>park</b> [1] - 184:17 <b>Park</b> [2] - 356:23, 357:5 <b>Parker</b> [1] - 8:4 <b>parking</b> [2] - 199:25 <b>part</b> [36] - 14:22,</p>	<p>15:2, 24:1, 30:1, 40:13, 105:6, 116:10, 162:18, 179:1, 179:12, 189:4, 194:2, 196:3, 198:19, 200:1, 205:5, 224:21, 247:13, 247:22, 248:5, 252:14, 253:8, 264:13, 267:5, 278:7, 279:6, 281:25, 288:1, 294:16, 304:1, 310:1, 324:6, 329:13, 354:24, 366:22, 369:16 <b>Part</b> [1] - 134:4 <b>partial</b> [2] - 212:19 <b>participate</b> [5] - 14:16, 20:21, 21:10, 21:17, 202:2 <b>participated</b> [1] - 17:3 <b>participating</b> [1] - 320:25 <b>participation</b> [2] - 12:7, 20:20 <b>particular</b> [15] - 32:20, 35:10, 38:6, 40:7, 71:8, 88:1, 121:2, 125:20, 128:7, 140:4, 162:18, 203:10, 223:8, 244:11, 280:12 <b>particularly</b> [5] - 17:24, 87:12, 196:1, 197:15, 338:9 <b>parties</b> [27] - 11:21, 11:25, 12:1, 12:14, 14:25, 16:22, 17:1, 22:4, 22:5, 63:9, 64:5, 85:3, 86:5, 86:10, 86:25, 185:14, 201:15, 211:18, 285:24, 327:19, 328:7, 329:20, 329:21, 329:24, 369:4, 372:11, 372:14 <b>partly</b> [1] - 190:4 <b>partner</b> [2] - 94:24, 95:2 <b>parts</b> [2] - 54:10, 284:25 <b>party</b> [2] - 17:7, 320:25 <b>pass</b> [8] - 62:24, 63:6, 63:25, 86:1, 212:24, 240:20, 285:3, 321:5 <b>past</b> [26] - 28:3, 28:7, 28:9, 29:24, 34:20, 56:17, 81:7, 108:9,</p>	<p>160:14, 189:15, 190:19, 192:21, 192:24, 197:21, 207:15, 217:7, 222:4, 225:8, 228:1, 228:2, 231:1, 237:5, 279:1, 306:23, 307:1, 359:4 <b>patents</b> [1] - 190:13 <b>pathetic</b> [1] - 355:18 <b>PATIENCE</b> [3] - 5:10, 339:4, 339:8 <b>Patience</b> [2] - 330:17, 339:7 <b>patties</b> [1] - 43:14 <b>Paula</b> [1] - 44:5 <b>Paula</b> [1] - 348:7 <b>pause</b> [1] - 246:18 <b>Pavlis</b> [1] - 8:3 <b>pay</b> [5] - 146:14, 146:22, 195:14, 345:3, 349:22 <b>paying</b> [2] - 287:2, 345:13 <b>payment</b> [1] - 12:25 <b>PE</b> [2] - 125:5, 125:10 <b>Pecos</b> [17] - 43:23, 133:11, 319:22, 319:24, 353:23, 354:12, 354:14, 354:15, 354:21, 354:24, 354:25, 355:8, 356:10, 356:14, 358:8, 358:17 <b>Peggy</b> [1] - 8:2 <b>pending</b> [5] - 72:17, 175:15, 177:12, 194:10, 233:7 <b>penicillin</b> [1] - 48:13 <b>pens</b> [3] - 36:8, 80:3, 346:15 <b>people</b> [31] - 14:4, 57:8, 57:10, 90:11, 101:5, 192:6, 193:9, 197:23, 197:24, 199:12, 200:20, 201:9, 202:2, 264:17, 270:1, 270:15, 276:24, 293:16, 310:3, 332:14, 332:16, 332:21, 342:19, 345:19, 349:22, 357:20, 360:18, 365:8, 365:14, 366:1, 367:22 <b>per</b> [81] - 36:5, 37:16, 54:10, 56:12, 57:13, 57:15, 57:16, 57:18, 58:4, 58:6, 58:7, 58:10, 58:11, 58:13,</p>
--	---	--	--	--

KATHY TOWNSEND COURT REPORTERS

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(505) 243-5018 - Fax (505) 243-3606

<p>58:17, 58:23, 72:22, 73:4, 73:11, 73:15, 97:7, 97:13, 99:1, 99:2, 99:21, 101:15, 102:1, 102:3, 106:22, 107:1, 112:11, 112:13, 124:5, 124:25, 128:3, 128:12, 128:21, 129:3, 129:6, 134:5, 154:24, 180:4, 180:9, 181:4, 181:12, 181:13, 225:6, 225:19, 226:7, 227:14, 228:7, 228:9, 230:4, 233:25, 234:14, 234:21, 234:25, 235:3, 235:4, 235:6, 235:23, 236:1, 236:2, 236:4, 236:22, 237:9, 237:10, 237:12, 278:24, 279:2, 279:3, 279:4, 279:12, 281:22, 291:19, 325:20, 326:4</p> <p><b>percent</b> [17] - 41:8, 41:11, 41:16, 41:17, 76:7, 106:16, 106:17, 225:10, 225:15, 299:12, 299:13, 302:10, 344:12, 344:20, 351:21, 352:20</p> <p><b>percentage</b> [2] - 160:3, 299:12</p> <p><b>perennial</b> [1] - 358:15</p> <p><b>perfect</b> [1] - 81:4</p> <p><b>perfectly</b> [1] - 246:8</p> <p><b>perforations</b> [1] - 315:6</p> <p><b>perform</b> [1] - 129:4</p> <p><b>performance</b> [3] - 190:20, 190:21</p> <p><b>performs</b> [1] - 183:22</p> <p><b>perhaps</b> [8] - 30:17, 255:7, 329:8, 340:23, 340:25, 341:6, 363:16, 364:7</p> <p><b>period</b> [30] - 33:14, 34:14, 51:24, 55:2, 55:3, 69:6, 78:21, 82:15, 89:8, 91:10, 91:19, 94:1, 95:1, 99:14, 124:20, 197:6, 197:12, 214:22, 256:20, 259:3, 261:19, 302:15, 303:13, 304:3, 317:1,</p>	<p>317:3, 347:12, 352:18, 364:6</p> <p><b>periods</b> [2] - 225:13, 241:7</p> <p><b>permanent</b> [1] - 50:18</p> <p><b>permanently</b> [2] - 164:22, 165:1</p> <p><b>permeabilities</b> [1] - 262:13</p> <p><b>permeability</b> [2] - 306:9, 306:15</p> <p><b>permissible</b> [7] - 64:5, 114:11, 147:8, 147:20, 147:25, 148:1, 148:25</p> <p><b>permission</b> [3] - 64:20, 172:12, 175:21</p> <p><b>Permit</b> [9] - 6:11, 6:12, 7:2, 8:24, 11:6, 11:7, 100:19, 230:3, 319:21</p> <p><b>PERMIT</b> [1] - 1:6</p> <p><b>permit</b> [199] - 11:17, 25:14, 29:18, 29:20, 30:20, 33:20, 34:4, 34:19, 34:23, 34:24, 35:11, 35:15, 35:18, 35:21, 40:2, 40:4, 40:5, 55:25, 56:8, 59:2, 59:9, 59:13, 59:21, 60:2, 60:3, 60:8, 60:14, 60:15, 60:17, 61:5, 61:10, 61:17, 61:24, 62:14, 68:24, 72:2, 72:5, 72:21, 75:23, 76:6, 76:10, 76:18, 77:1, 77:2, 77:5, 77:8, 77:13, 78:1, 78:25, 79:1, 79:7, 80:8, 80:9, 80:12, 80:13, 81:3, 81:13, 81:14, 81:20, 81:23, 81:25, 82:4, 82:8, 82:13, 82:20, 95:10, 96:1, 98:25, 99:12, 99:19, 99:25, 101:13, 102:2, 102:15, 102:18, 102:22, 107:14, 110:24, 111:4, 123:22, 128:21, 132:21, 133:15, 133:22, 133:23, 134:4, 134:8, 149:7, 167:22, 168:2, 168:14, 168:17, 168:18, 168:19, 169:4, 174:4, 175:6, 175:8, 175:11, 177:9,</p>	<p>178:7, 180:3, 180:8, 180:12, 180:20, 182:19, 184:9, 197:8, 207:9, 214:25, 215:2, 215:6, 215:9, 215:24, 215:25, 216:3, 216:10, 216:11, 216:14, 216:17, 216:19, 216:24, 217:2, 217:5, 217:15, 217:21, 221:4, 221:7, 222:6, 222:16, 222:19, 224:24, 224:25, 225:3, 225:5, 225:22, 226:1, 226:22, 228:6, 233:13, 237:3, 237:24, 238:11, 238:14, 238:16, 240:9, 261:10, 261:12, 265:1, 265:11, 265:13, 266:19, 272:23, 278:17, 279:3, 279:5, 279:6, 279:7, 279:11, 279:13, 289:17, 292:11, 292:15, 293:3, 296:1, 300:19, 304:20, 305:1, 305:23, 308:11, 308:19, 308:20, 309:16, 311:6, 311:23, 312:3, 312:5, 313:14, 313:16, 319:9, 324:12, 324:14, 335:22, 336:11, 337:9, 337:11, 337:14, 337:19, 338:2, 350:15, 351:11, 351:17, 352:11</p> <p><b>permit's</b> [1] - 338:16</p> <p><b>permits</b> [45] - 25:12, 27:21, 62:13, 62:15, 80:13, 80:21, 81:23, 99:14, 131:7, 168:11, 175:13, 181:10, 210:21, 225:4, 225:8, 226:6, 237:3, 256:4, 256:7, 257:20, 257:24, 258:19, 265:4, 265:9, 265:10, 287:25, 288:2, 288:14, 288:25, 295:13, 304:16, 304:17, 304:22, 308:1, 310:13, 311:9, 312:7, 322:3, 326:24, 326:25, 327:4, 350:4, 353:13</p> <p><b>permitted</b> [11] - 53:7,</p>	<p>215:3, 223:23, 225:9, 225:15, 225:17, 258:3, 258:5, 258:7, 300:9, 324:11</p> <p><b>permittee</b> [3] - 19:17, 238:18, 312:23</p> <p><b>permittees</b> [1] - 131:7</p> <p><b>permitting</b> [14] - 20:19, 20:21, 21:17, 26:1, 29:23, 210:22, 213:23, 221:13, 237:5, 258:15, 259:2, 266:19, 351:12, 351:15</p> <p><b>persist</b> [1] - 356:22</p> <p><b>person</b> [6] - 20:14, 90:15, 125:9, 249:24, 276:11, 310:23</p> <p><b>personal</b> [13] - 136:25, 153:5, 162:23, 164:13, 220:18, 220:25, 249:21, 250:13, 251:23, 251:25, 268:3, 275:17, 294:16</p> <p><b>personally</b> [12] - 125:1, 201:10, 220:23, 249:20, 249:25, 250:21, 259:4, 286:14, 319:11, 320:9, 366:15, 372:7</p> <p><b>pertain</b> [1] - 189:2</p> <p><b>pesticides</b> [1] - 46:4</p> <p><b>petition</b> [1] - 344:25</p> <p><b>petitions</b> [1] - 344:15</p> <p><b>pH</b> [1] - 195:11</p> <p><b>pharmaceutical</b> [11] - 140:8, 140:10, 140:13, 150:4, 151:1, 155:18, 162:24, 270:12, 276:12, 276:13</p> <p><b>Pharmaceuticals</b> [4] - 8:14, 8:16, 8:20, 212:22</p> <p><b>pharmaceuticals</b> [25] - 27:10, 40:25, 46:2, 46:14, 84:3, 150:1, 153:7, 169:22, 218:17, 218:24, 242:9, 248:10, 248:15, 249:14, 269:25, 270:22, 272:13, 291:10, 295:10, 295:15, 297:4, 317:17, 317:22, 319:1, 319:3</p> <p><b>pharmacology</b> [3] -</p>	<p>268:8, 268:21, 269:5</p> <p><b>phenylbutazone</b> [9] - 87:12, 87:20, 87:25, 89:25, 90:3, 144:20, 145:2, 145:6, 207:3</p> <p><b>Phil</b> [5] - 331:11, 331:13, 331:14, 331:19, 351:5</p> <p><b>PHIL</b> [2] - 5:14, 351:1</p> <p><b>Phone</b> [1] - 9:14</p> <p><b>phone</b> [1] - 326:18</p> <p><b>photograph</b> [1] - 346:13</p> <p><b>photographer</b> [1] - 346:13</p> <p><b>photographs</b> [1] - 187:23</p> <p><b>phrase</b> [1] - 253:2</p> <p><b>phrased</b> [1] - 221:23</p> <p><b>phrasing</b> [1] - 244:16</p> <p><b>pHs</b> [1] - 300:3</p> <p><b>physical</b> [1] - 69:9</p> <p><b>physiologically</b> [1] - 155:3</p> <p><b>physiology</b> [7] - 26:25, 40:23, 154:17, 218:23, 268:2, 282:8, 284:13</p> <p><b>pick</b> [9] - 12:16, 48:24, 53:17, 54:20, 74:18, 121:5, 359:23, 359:24, 362:24</p> <p><b>picked</b> [4] - 118:2, 118:9, 296:12, 296:13</p> <p><b>picking</b> [2] - 118:12, 333:23</p> <p><b>picogram</b> [1] - 54:13</p> <p><b>picture</b> [3] - 109:16, 196:14, 199:15</p> <p><b>pictures</b> [2] - 189:1, 194:1</p> <p><b>piece</b> [6] - 116:9, 116:13, 141:1, 234:10, 262:6, 343:3</p> <p><b>pig</b> [4] - 283:21, 284:3, 284:6, 343:6</p> <p><b>piggybacking</b> [1] - 361:13</p> <p><b>pigs</b> [7] - 236:9, 236:13, 281:6, 283:9, 283:16, 341:15, 343:7</p> <p><b>pile</b> [1] - 98:20</p> <p><b>pipe</b> [1] - 203:16</p> <p><b>pipeline</b> [2] - 67:15</p> <p><b>pipng</b> [1] - 68:7</p> <p><b>place</b> [9] - 59:16, 69:9, 116:12, 241:6, 298:7, 348:20, 355:7, 355:17, 356:7</p> <p><b>placed</b> [2] - 40:4,</p>
---	---	---	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>242:2  <b>placement</b> [1] - 215:10  <b>places</b> [5] - 66:18, 66:20, 106:5, 303:6, 306:11  <b>plains</b> [2] - 354:15, 354:16  <b>Plaintiffs'</b> [1] - 10:10  <b>plan</b> [3] - 227:16, 231:12, 278:19  <b>planned</b> [1] - 34:10  <b>planning</b> [3] - 102:21, 330:6, 361:16  <b>plans</b> [4] - 118:7, 122:3, 122:4, 338:18  <b>plant</b> [54] - 34:18, 37:5, 37:6, 40:8, 50:6, 54:15, 66:7, 67:10, 71:17, 72:14, 72:17, 72:18, 94:25, 96:19, 96:20, 96:24, 113:2, 113:13, 132:25, 133:4, 194:17, 195:4, 195:8, 195:18, 196:15, 196:17, 196:25, 197:15, 197:22, 198:1, 198:4, 198:23, 199:1, 200:25, 202:19, 203:12, 203:15, 207:5, 207:19, 208:17, 224:7, 282:11, 290:17, 346:21, 347:8, 348:10, 348:13, 348:15, 348:17, 350:11, 350:16  <b>plants</b> [16] - 54:8, 66:11, 187:10, 193:6, 193:7, 194:4, 200:9, 200:14, 203:4, 205:10, 205:11, 206:21, 207:14, 208:16, 270:1, 319:8  <b>plastic</b> [6] - 30:16, 30:21, 30:23, 263:4  <b>plastics</b> [1] - 62:20  <b>plausible</b> [1] - 364:3  <b>played</b> [1] - 192:16  <b>plays</b> [1] - 282:6  <b>pleading</b> [1] - 13:23  <b>pleases</b> [1] - 19:8  <b>pleasure</b> [1] - 242:23  <b>plenty</b> [1] - 247:25  <b>plus</b> [5] - 36:19, 41:24, 42:16, 344:19, 365:7  <b>PM</b> [1] - 371:4  <b>PO</b> [2] - 2:19, 3:11</p>	<p><b>podium</b> [8] - 12:19, 14:13, 22:22, 93:17, 93:20, 185:21, 249:8, 328:17  <b>point</b> [79] - 18:18, 21:12, 29:24, 31:19, 32:15, 35:8, 67:24, 85:12, 91:17, 99:20, 100:1, 114:5, 120:4, 120:5, 120:14, 120:15, 120:20, 141:24, 142:14, 144:24, 145:22, 148:15, 149:21, 156:1, 171:5, 181:2, 188:10, 189:3, 191:7, 191:24, 192:5, 197:10, 199:19, 201:11, 210:18, 216:12, 217:9, 222:22, 223:3, 225:22, 226:16, 228:24, 229:13, 230:17, 232:12, 234:21, 237:11, 242:16, 258:11, 260:23, 263:23, 265:15, 266:1, 268:15, 270:13, 272:2, 276:10, 278:3, 279:20, 287:10, 294:6, 294:19, 310:19, 311:22, 318:9, 320:10, 327:19, 327:20, 330:22, 333:14, 334:11, 360:22, 365:24, 366:13, 366:15, 370:2, 370:15  <b>pointed</b> [3] - 111:9, 254:5, 347:22  <b>points</b> [3] - 92:6, 92:7, 228:13  <b>Police</b> [1] - 22:3  <b>POLICE</b> [1] - 367:20  <b>police</b> [2] - 370:18, 370:21  <b>policy</b> [2] - 221:16, 221:18  <b>political</b> [2] - 191:3, 258:25  <b>poll</b> [1] - 351:23  <b>pollutant</b> [1] - 298:7  <b>pollutants</b> [1] - 36:14, 183:2, 183:5, 183:8, 183:14, 183:16, 224:20, 295:16, 296:2, 296:6, 296:8  <b>pollute</b> [2] - 358:14,</p>	<p>359:6  <b>polluted</b> [1] - 345:5  <b>pollution</b> [5] - 202:19, 308:14, 309:2, 314:21, 345:6  <b>Pollution</b> [4] - 9:6, 100:17, 176:21, 287:24  <b>polypropylene</b> [1] - 251:9  <b>pond</b> [41] - 30:5, 30:6, 30:10, 30:14, 31:13, 31:14, 31:16, 32:2, 67:16, 67:19, 123:25, 124:1, 124:6, 124:9, 124:11, 124:23, 124:24, 125:3, 125:6, 125:7, 125:10, 125:12, 125:19, 125:20, 126:5, 126:6, 126:11, 126:14, 126:15, 126:16, 126:19, 126:22, 129:5, 199:5, 313:11, 313:19, 313:20, 318:12, 318:13  <b>ponds</b> [4] - 27:22, 67:18, 90:20, 336:21  <b>poop</b> [1] - 209:7  <b>poor</b> [6] - 32:7, 191:2, 316:19, 318:5, 322:17, 342:18  <b>poorly</b> [1] - 277:25  <b>population</b> [1] - 47:18  <b>populations</b> [2] - 355:23, 356:19  <b>porcupine</b> [1] - 354:1  <b>porous</b> [1] - 120:24  <b>port</b> [2] - 341:22  <b>portion</b> [3] - 292:11, 324:7, 324:9  <b>portions</b> [1] - 245:18  <b>pose</b> [2] - 233:14, 272:25  <b>poses</b> [1] - 263:24  <b>posing</b> [1] - 240:8  <b>position</b> [16] - 20:9, 23:12, 63:25, 69:15, 173:22, 175:4, 176:14, 176:24, 176:25, 177:1, 213:21, 221:12, 246:5, 276:20, 336:3, 336:5  <b>positions</b> [2] - 20:5, 173:24  <b>positive</b> [6] - 48:16,</p>	<p>49:14, 53:14, 54:14, 161:1, 200:18  <b>possibility</b> [3] - 272:11, 272:18, 334:11  <b>possible</b> [7] - 37:4, 135:18, 169:8, 204:8, 306:18, 306:20, 367:11  <b>possibly</b> [5] - 84:25, 135:13, 165:20, 306:1, 338:7  <b>post</b> [1] - 34:13  <b>postdates</b> [1] - 325:21  <b>posthearing</b> [3] - 13:9, 13:17  <b>potential</b> [34] - 34:2, 55:17, 106:18, 136:19, 182:3, 182:14, 182:21, 183:1, 218:11, 220:1, 220:2, 220:5, 224:2, 224:10, 238:2, 238:25, 240:2, 240:6, 240:11, 241:13, 241:16, 259:15, 261:4, 272:9, 274:23, 275:11, 276:14, 291:22, 295:17, 299:16, 314:19, 315:1, 337:9, 340:19  <b>potentially</b> [17] - 11:4, 14:21, 47:8, 55:24, 215:4, 220:15, 267:9, 269:20, 270:5, 272:21, 274:3, 275:24, 276:2, 278:20, 313:22, 315:9, 363:4  <b>potentiometric</b> [1] - 78:22  <b>poultry</b> [2] - 39:3, 341:16  <b>pound</b> [5] - 235:24, 236:22, 284:5, 284:6  <b>pounds</b> [13] - 41:11, 41:14, 41:24, 41:25, 42:1, 42:3, 42:6, 42:21, 48:18, 109:17, 109:18, 236:2, 236:4  <b>pouring</b> [1] - 199:21  <b>POWERS</b> [155] - 2:8, 15:12, 19:6, 21:23, 24:20, 33:2, 61:19, 63:15, 63:22, 64:15, 64:19, 64:22, 64:23, 65:19, 66:17, 66:24, 67:4, 67:11, 67:23, 68:5, 68:13, 68:15,</p>	<p>69:19, 69:23, 70:10, 70:23, 71:3, 71:5, 71:9, 71:12, 71:14, 71:19, 71:23, 72:3, 72:8, 72:11, 72:20, 72:24, 73:3, 73:7, 73:9, 73:16, 73:23, 74:5, 74:11, 74:18, 74:21, 75:6, 75:12, 75:15, 75:18, 76:6, 76:11, 76:18, 76:21, 76:25, 77:11, 77:25, 78:6, 78:18, 78:24, 79:3, 79:17, 79:20, 80:7, 80:11, 80:19, 81:1, 81:11, 81:19, 82:6, 82:13, 82:20, 82:25, 83:8, 83:10, 83:13, 83:17, 83:20, 83:22, 83:24, 84:1, 84:12, 84:15, 84:17, 84:19, 84:21, 84:23, 85:2, 85:5, 85:10, 85:20, 85:23, 86:1, 120:6, 121:10, 142:3, 142:6, 148:13, 148:21, 170:3, 171:25, 172:8, 172:12, 172:15, 172:20, 173:5, 173:21, 175:14, 175:21, 176:5, 177:12, 177:19, 178:20, 178:22, 184:25, 187:20, 188:4, 208:1, 208:3, 218:12, 218:15, 221:10, 222:21, 245:2, 245:16, 285:6, 285:8, 295:6, 295:9, 312:2, 312:13, 312:15, 318:17, 318:21, 318:24, 321:4, 324:16, 327:24, 328:4, 360:5, 360:8, 360:14, 360:24, 361:5, 362:8, 362:20, 368:4, 368:14, 368:19, 368:24, 369:1, 369:7, 370:16, 370:23  <b>Powers</b> [20] - 4:5, 4:17, 4:20, 5:5, 9:2, 15:19, 17:5, 20:2, 21:22, 22:7, 24:24, 33:8, 63:20, 64:12, 86:4, 121:9, 142:5, 149:2, 167:9, 178:21  <b>powers</b> [27] - 120:8, 160:10, 167:7, 170:8, 171:24, 172:6,</p>
---	--	--	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>184:24, 185:11, 187:19, 208:2, 209:18, 218:13, 230:13, 245:1, 246:15, 246:18, 248:2, 285:4, 295:1, 295:4, 311:25, 321:7, 360:4, 360:22, 362:17, 362:18, 368:3</p> <p><b>Powers'</b> [2] - 246:11, 246:22</p> <p><b>powers'</b> [2] - 120:9, 365:20</p> <p><b>practical</b> [2] - 69:11, 151:9</p> <p><b>practically</b> [1] - 355:2</p> <p><b>practice</b> [15] - 26:15, 26:17, 138:10, 138:11, 145:25, 146:2, 168:22, 170:1, 170:21, 288:24, 316:2, 335:25, 336:10, 351:22, 353:10</p> <p><b>practices</b> [2] - 238:17, 293:17</p> <p><b>practitioner</b> [1] - 138:5</p> <p><b>Practitioners</b> [1] - 26:13</p> <p><b>prairies</b> [1] - 43:15</p> <p><b>precedent</b> [1] - 351:12</p> <p><b>preceding</b> [1] - 203:4</p> <p><b>precious</b> [2] - 344:18, 347:14</p> <p><b>precise</b> [1] - 77:18</p> <p><b>predecessors</b> [1] - 201:6</p> <p><b>preexist</b> [1] - 300:8</p> <p><b>prefer</b> [3] - 14:18, 359:24, 362:24</p> <p><b>prefiled</b> [5] - 187:24, 246:13, 285:13, 285:17, 294:7</p> <p><b>prehearing</b> [1] - 210:1</p> <p><b>prejudicial</b> [2] - 201:21, 242:13</p> <p><b>premature</b> [1] - 85:12</p> <p><b>preparation</b> [2] - 131:12, 235:7</p> <p><b>prepare</b> [7] - 34:22, 137:12, 174:6, 177:3, 253:12, 253:14, 327:2</p> <p><b>prepared</b> [10] - 48:7, 64:16, 132:21, 133:16, 133:22,</p>	<p>230:11, 249:13, 318:8, 335:5, 360:25</p> <p><b>preparing</b> [4] - 35:16, 136:23, 137:9, 235:7</p> <p><b>prescribed</b> [2] - 88:1, 150:18</p> <p><b>presence</b> [10] - 18:11, 36:14, 48:12, 51:23, 54:14, 162:11, 207:3, 217:10, 269:2, 337:16</p> <p><b>present</b> [37] - 21:8, 22:17, 34:2, 51:25, 55:10, 56:22, 63:11, 162:3, 212:15, 217:11, 217:13, 220:3, 220:15, 220:16, 224:16, 267:17, 268:24, 269:17, 270:15, 270:18, 271:8, 271:14, 272:13, 273:25, 275:22, 276:3, 276:6, 276:18, 276:21, 323:21, 327:21, 336:18, 344:7, 350:5, 363:19, 366:24, 369:17</p> <p><b>presentation</b> [8] - 21:2, 86:6, 86:14, 185:15, 186:6, 186:9, 189:22, 369:2</p> <p><b>presented</b> [8] - 19:25, 183:6, 183:12, 209:24, 210:13, 245:13, 253:16, 262:5</p> <p><b>presenting</b> [2] - 211:18, 211:20</p> <p><b>presents</b> [1] - 18:17</p> <p><b>preserve</b> [1] - 192:5</p> <p><b>preserving</b> [1] - 353:2</p> <p><b>preside</b> [2] - 256:5, 256:6</p> <p><b>President</b> [2] - 3:10, 66:2</p> <p><b>president</b> [2] - 130:21, 332:6</p> <p><b>pressure</b> [2] - 198:15, 198:20</p> <p><b>pressures</b> [1] - 191:4</p> <p><b>pretty</b> [18] - 18:25, 76:5, 86:16, 103:23, 134:19, 150:9, 193:2, 208:13, 277:10, 277:25, 294:11, 294:25, 304:9, 304:10, 315:23, 333:6</p> <p><b>prevalence</b> [2] -</p>	<p>269:8, 271:12</p> <p><b>prevalent</b> [2] - 274:1, 316:1</p> <p><b>prevalently</b> [1] - 47:7</p> <p><b>prevent</b> [3] - 38:1, 46:22, 313:12</p> <p><b>Prevention</b> [5] - 9:6, 100:17, 176:21, 287:24, 335:18</p> <p><b>previous</b> [20] - 18:24, 25:7, 28:18, 29:19, 32:16, 32:19, 34:24, 35:15, 35:18, 40:8, 60:2, 134:8, 180:12, 203:4, 221:7, 222:19, 227:24, 256:3, 282:10</p> <p><b>previously</b> [10] - 18:23, 95:10, 133:24, 135:11, 223:22, 245:5, 245:10, 245:18, 315:2, 351:20</p> <p><b>prey</b> [1] - 354:9</p> <p><b>primacy</b> [1] - 297:3</p> <p><b>primarily</b> [9] - 26:10, 26:16, 26:22, 60:13, 65:16, 67:12, 89:19, 136:25, 150:2</p> <p><b>primary</b> [1] - 20:16</p> <p><b>prioritize</b> [1] - 184:17</p> <p><b>priority</b> [1] - 184:15</p> <p><b>probability</b> [2] - 314:9, 317:4</p> <p><b>probation</b> [2] - 29:1, 29:2</p> <p><b>probative</b> [2] - 201:21, 242:13</p> <p><b>problem</b> [23] - 45:8, 48:4, 57:6, 74:20, 122:20, 130:15, 194:3, 195:20, 196:21, 197:3, 198:20, 204:7, 206:14, 218:11, 220:1, 220:3, 220:5, 232:17, 247:14, 259:17, 262:18, 304:1, 350:10</p> <p><b>problems</b> [15] - 108:8, 113:1, 124:14, 193:1, 195:12, 196:18, 200:20, 202:19, 203:11, 203:19, 204:7, 210:15, 239:14, 314:5, 348:18</p> <p><b>procedure</b> [2] - 120:12, 161:14</p> <p><b>procedures</b> [2] - 20:19, 127:6</p>	<p><b>proceed</b> [3] - 25:1, 64:21, 232:9</p> <p><b>proceeding</b> [4] - 12:21, 19:11, 240:24, 365:7</p> <p><b>proceedings</b> [13] - 19:14, 19:15, 20:21, 93:12, 187:6, 247:23, 249:19, 254:9, 327:12, 364:10, 368:5, 369:18, 369:19</p> <p><b>Proceedings</b> [1] - 371:4</p> <p><b>PROCEEDINGS</b> [1] - 1:12</p> <p><b>process</b> [40] - 13:10, 13:17, 29:23, 58:11, 58:15, 58:21, 60:21, 61:3, 65:2, 67:16, 70:15, 81:24, 81:25, 96:17, 97:12, 97:15, 97:16, 97:23, 97:25, 98:7, 98:12, 104:10, 109:5, 110:23, 112:13, 115:8, 116:14, 124:22, 125:14, 157:7, 168:22, 204:15, 215:15, 247:14, 263:24, 275:23, 315:16, 370:7</p> <p><b>processed</b> [12] - 41:14, 43:18, 57:14, 140:18, 140:20, 140:21, 141:1, 160:6, 165:22, 191:16, 262:10, 292:7</p> <p><b>processes</b> [3] - 150:7, 205:13, 292:23</p> <p><b>processing</b> [44] - 36:6, 36:20, 36:23, 37:8, 39:15, 39:16, 40:13, 41:10, 44:13, 44:14, 46:12, 49:6, 50:6, 54:7, 54:15, 57:21, 58:9, 67:7, 73:11, 74:7, 79:8, 97:17, 97:19, 150:24, 156:9, 194:21, 195:10, 204:13, 204:17, 205:10, 215:20, 234:14, 265:2, 265:11, 265:12, 279:18, 280:3, 281:9, 290:6, 290:9, 290:23, 291:4, 350:13</p> <p><b>produce</b> [3] - 110:19, 338:14, 351:17</p> <p><b>producers</b> [5] -</p>	<p>153:17, 153:22, 154:3, 156:6, 337:1</p> <p><b>producing</b> [7] - 48:1, 124:13, 128:3, 140:5, 140:6, 140:17, 234:25</p> <p><b>product</b> [5] - 80:5, 140:21, 140:25, 209:10, 251:4</p> <p><b>production</b> [1] - 74:1</p> <p><b>products</b> [8] - 9:9, 111:1, 149:12, 150:4, 206:15, 206:17, 209:14, 341:9</p> <p><b>profession</b> [1] - 154:11</p> <p><b>professional</b> [10] - 30:7, 30:24, 122:23, 195:20, 214:12, 214:19, 239:15, 259:9, 259:11, 262:4</p> <p><b>professionally</b> [1] - 190:5</p> <p><b>profoundly</b> [1] - 348:18</p> <p><b>program</b> [6] - 257:16, 287:23, 288:3, 288:18, 320:10, 321:20</p> <p><b>programmatic</b> [1] - 288:18</p> <p><b>programs</b> [3] - 176:20, 213:22, 297:3</p> <p><b>progression</b> [1] - 271:18</p> <p><b>prohibited</b> [11] - 88:19, 144:14, 145:6, 145:11, 145:14, 145:15, 147:8, 147:20, 164:24, 218:9, 219:24</p> <p><b>prohibitive</b> [5] - 52:21, 87:14, 165:3, 165:8, 169:6</p> <p><b>project</b> [2] - 208:17, 357:22</p> <p><b>projection</b> [1] - 278:23</p> <p><b>projects</b> [2] - 27:22, 190:25</p> <p><b>promote</b> [1] - 345:12</p> <p><b>Proof</b> [1] - 6:16</p> <p><b>proof</b> [2] - 11:15, 19:9</p> <p><b>proper</b> [3] - 148:22, 164:14, 332:20</p> <p><b>properly</b> [8] - 32:12, 126:8, 129:5, 164:5, 251:12, 316:17, 316:24, 333:12</p> <p><b>property</b> [8] -</p>
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KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>195:15, 199:11, 240:8, 240:10, 240:13, 295:18, 357:10</p> <p><b>proportion</b> [1] - 191:8</p> <p><b>proposal</b> [3] - 180:11, 180:16, 180:17</p> <p><b>propose</b> [2] - 298:15, 298:18</p> <p><b>proposed</b> [13] - 65:21, 125:12, 175:6, 180:7, 226:22, 227:25, 231:13, 256:12, 259:21, 259:22, 356:11, 357:22</p> <p><b>proposing</b> [4] - 82:8, 217:8, 234:3, 312:9</p> <p><b>proposition</b> [1] - 247:3</p> <p><b>propounded</b> [1] - 178:7</p> <p><b>proscribed</b> [4] - 68:24, 155:17, 155:18</p> <p><b>prostaglandins</b> [1] - 46:16</p> <p><b>protect</b> [10] - 34:4, 38:8, 61:6, 61:12, 61:17, 61:24, 68:21, 258:16, 260:21, 338:24</p> <p><b>protecting</b> [3] - 62:4, 63:2, 279:14</p> <p><b>Protection</b> [3] - 346:25, 351:6, 351:7</p> <p><b>protection</b> [4] - 68:23, 107:16, 315:9, 317:19</p> <p><b>protective</b> [2] - 62:16, 353:8</p> <p><b>protein</b> [1] - 43:16</p> <p><b>protest</b> [1] - 347:5</p> <p><b>protests</b> [1] - 35:8</p> <p><b>protocol</b> [2] - 64:12, 184:10</p> <p><b>proud</b> [1] - 349:24</p> <p><b>prove</b> [5] - 29:14, 191:6, 191:20, 193:11, 200:24</p> <p><b>proved</b> [2] - 207:5, 344:14</p> <p><b>proven</b> [1] - 357:25</p> <p><b>provide</b> [11] - 18:11, 121:20, 131:6, 131:11, 181:17, 227:4, 227:17, 264:7, 315:8, 324:14, 335:8</p> <p><b>provided</b> [19] - 39:5,</p>	<p>134:2, 178:8, 212:23, 220:22, 233:9, 237:15, 239:16, 262:4, 269:14, 281:2, 332:4, 335:13, 339:6, 344:4, 346:4, 349:10, 351:3, 353:19</p> <p><b>providing</b> [2] - 18:15, 102:5</p> <p><b>province</b> [2] - 296:23, 298:1</p> <p><b>provision</b> [1] - 313:18</p> <p><b>provisions</b> [2] - 216:13, 312:22</p> <p><b>proximate</b> [1] - 236:20</p> <p><b>prudent</b> [3] - 224:9, 224:19, 357:23</p> <p><b>Pruett</b> [1] - 7:9</p> <p><b>PUBLIC</b> [1] - 372:18</p> <p><b>Public</b> [1] - 5:7</p> <p><b>public</b> [62] - 12:3, 12:6, 12:9, 12:12, 12:13, 12:15, 13:2, 16:24, 19:13, 20:20, 28:7, 35:5, 64:25, 81:23, 189:22, 202:24, 203:1, 220:6, 224:11, 260:7, 296:17, 297:25, 324:22, 324:24, 327:23, 327:25, 328:14, 328:15, 328:23, 329:3, 329:10, 329:13, 329:14, 329:15, 329:21, 329:23, 330:5, 330:15, 332:4, 333:7, 333:8, 335:13, 337:6, 339:6, 340:11, 341:18, 344:4, 346:4, 349:10, 349:19, 351:3, 353:19, 359:12, 361:19, 368:6, 368:14, 368:16, 368:17, 368:18, 368:22, 369:8</p> <p><b>public's</b> [1] - 336:4</p> <p><b>Publication</b> [1] - 6:17</p> <p><b>publicly</b> [2] - 252:12, 337:22</p> <p><b>published</b> [3] - 35:5, 153:10, 190:6</p> <p><b>pull</b> [6] - 42:10, 42:12, 54:25, 102:8, 173:17, 320:16</p> <p><b>pulled</b> [1] - 342:10</p> <p><b>pulp</b> [1] - 208:18</p>	<p><b>pump</b> [4] - 192:12, 197:19, 198:8</p> <p><b>pumped</b> [2] - 67:17, 74:17</p> <p><b>punctuated</b> [1] - 347:12</p> <p><b>punctures</b> [1] - 262:14</p> <p><b>pupfish</b> [3] - 354:15, 356:10, 356:12</p> <p><b>purchased</b> [1] - 65:14</p> <p><b>purely</b> [1] - 92:8</p> <p><b>purpose</b> [10] - 67:11, 67:12, 67:23, 69:23, 88:1, 140:14, 140:16, 244:19, 284:20, 316:16</p> <p><b>purposes</b> [16] - 29:12, 39:5, 47:21, 188:16, 219:3, 243:23, 250:6, 265:18, 266:18, 273:6, 274:5, 279:11, 286:7, 299:15, 330:6, 361:16</p> <p><b>pursuant</b> [3] - 11:10, 256:22, 308:19</p> <p><b>purview</b> [1] - 256:24</p> <p><b>push</b> [1] - 292:16</p> <p><b>put</b> [42] - 18:6, 21:6, 30:22, 31:8, 31:11, 31:12, 31:14, 32:19, 48:15, 59:19, 60:17, 66:12, 69:22, 78:11, 91:12, 99:3, 100:23, 101:1, 104:13, 108:20, 116:15, 126:8, 126:15, 126:18, 140:12, 141:16, 141:18, 188:20, 199:10, 199:12, 201:25, 254:21, 256:22, 328:23, 329:16, 334:1, 349:21, 350:16, 351:14, 353:6</p> <p><b>puts</b> [1] - 364:2</p> <p><b>putting</b> [1] - 91:11</p>	<p>284:20, 332:19, 340:3</p> <p><b>qualify</b> [1] - 202:16</p> <p><b>Quality</b> [29] - 25:18, 85:17, 85:19, 103:3, 173:12, 175:2, 176:12, 176:13, 176:15, 176:18, 213:14, 213:21, 213:24, 214:9, 214:20, 216:7, 216:13, 259:22, 260:4, 260:5, 266:7, 288:1, 295:13, 298:16, 307:18, 308:25, 337:13</p> <p><b>quality</b> [16] - 32:7, 82:1, 121:23, 122:2, 122:4, 122:5, 213:13, 266:12, 292:12, 292:21, 316:15, 316:23, 317:5, 320:1, 353:9</p> <p><b>quantity</b> [2] - 82:2, 134:5</p> <p><b>quarter</b> [1] - 326:6</p> <p><b>quarterly</b> [2] - 120:18, 129:13</p> <p><b>quarters</b> [1] - 78:20</p> <p><b>questioned</b> [7] - 23:8, 70:13, 173:3, 176:3, 187:3, 206:11, 211:12</p> <p><b>questioning</b> [9] - 11:24, 12:20, 63:25, 158:4, 186:5, 207:12, 233:1, 242:19, 295:2</p> <p><b>questions</b> [53] - 13:7, 28:4, 29:20, 63:20, 64:2, 70:10, 86:8, 86:9, 86:18, 87:1, 87:2, 92:8, 92:20, 117:12, 122:19, 139:17, 148:17, 165:25, 167:1, 178:1, 178:4, 178:6, 178:18, 179:16, 179:18, 179:19, 179:21, 182:16, 184:20, 184:22, 185:1, 201:15, 209:16, 209:18, 210:2, 210:5, 241:22, 242:1, 243:1, 244:4, 246:16, 268:14, 285:4, 301:16, 318:21, 321:8, 323:3, 323:7, 323:9, 323:11, 328:1, 328:3, 329:19</p> <p><b>quick</b> [5] - 54:19,</p>	<p>213:10, 324:8, 325:17, 330:3</p> <p><b>quicker</b> [1] - 307:5</p> <p><b>quickly</b> [5] - 187:13, 197:11, 214:13, 232:11, 248:7</p> <p><b>quite</b> [19] - 13:6, 43:19, 43:24, 80:21, 130:1, 169:5, 193:23, 205:2, 210:22, 237:14, 250:13, 285:12, 290:7, 301:1, 305:10, 322:11, 326:2, 342:20</p> <p><b>quote</b> [15] - 120:25, 138:4, 139:18, 147:7, 149:10, 149:24, 155:7, 155:12, 157:5, 159:2, 161:17, 164:19, 180:11, 340:16, 352:5</p>
<b>R</b>				
<p><b>raccoon</b> [1] - 354:1</p> <p><b>race</b> [13] - 53:6, 53:17, 54:23, 54:24, 88:6, 88:12, 88:13, 88:17, 88:20</p> <p><b>race-day</b> [4] - 88:6, 88:12, 88:13</p> <p><b>racehorses</b> [5] - 52:12, 52:23, 148:1, 164:1, 355:17</p> <p><b>racetrack</b> [12] - 26:17, 45:4, 52:11, 53:5, 53:16, 54:1, 54:12, 54:17, 147:24, 156:15, 163:20, 334:3</p> <p><b>racetracks</b> [7] - 88:7, 147:2, 147:7, 147:19, 147:23, 148:10, 200:14</p> <p><b>Racing</b> [3] - 88:18, 156:17</p> <p><b>racist</b> [1] - 342:21</p> <p><b>radioactive</b> [1] - 192:2</p> <p><b>rain</b> [2] - 343:15, 357:11</p> <p><b>raining</b> [1] - 340:25</p> <p><b>rains</b> [1] - 343:10</p> <p><b>raise</b> [2] - 137:14, 200:17</p> <p><b>raised</b> [17] - 28:2, 28:6, 38:25, 220:21, 249:25, 258:11, 258:18, 258:19, 258:21, 269:1,</p>				

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>291:24, 294:1, 323:12, 333:18, 336:14, 336:23, 347:11 <b>raising</b> [4] - 154:6, 279:8, 334:10, 334:13 <b>ramifications</b> [1] - 351:17 <b>Ramona</b> [1] - 211:22 <b>ramp</b> [2] - 193:25, 347:19 <b>ran</b> [1] - 198:10 <b>ranch</b> [1] - 38:25 <b>ranches</b> [1] - 333:4 <b>randomly</b> [1] - 53:16 <b>Randy</b> [1] - 8:4 <b>range</b> [4] - 32:4, 236:10, 282:14 <b>Range</b> [4] - 3:2, 11:20, 16:5, 211:21 <b>ranges</b> [4] - 235:23, 235:25, 236:8, 236:19 <b>ranked</b> [1] - 349:23 <b>ranks</b> [1] - 348:15 <b>raptors</b> [1] - 354:9 <b>rarely</b> [1] - 309:5 <b>rate</b> [4] - 184:4, 234:20, 237:3, 348:19 <b>rates</b> [2] - 154:24, 184:2 <b>rather</b> [8] - 22:21, 189:13, 197:11, 197:16, 207:25, 276:10, 328:19, 363:18 <b>rationale</b> [1] - 262:4 <b>reach</b> [8] - 114:15, 244:12, 254:5, 267:13, 269:5, 269:13, 270:2, 272:24 <b>reached</b> [2] - 145:21, 267:14 <b>reaches</b> [2] - 358:4, 358:5 <b>reaching</b> [2] - 244:20, 247:12 <b>reaction</b> [3] - 90:16, 194:22, 195:23 <b>reactions</b> [1] - 90:12 <b>read</b> [23] - 35:22, 36:2, 38:19, 75:5, 147:13, 148:7, 158:20, 195:8, 205:22, 206:24, 219:19, 222:14, 244:20, 246:9, 264:7, 264:15, 276:22, 324:7, 325:8, 339:19, 341:17, 348:24 <b>readily</b> [1] - 230:19</p>	<p><b>reading</b> [3] - 128:15, 312:21, 347:16 <b>readings</b> [1] - 128:10 <b>reads</b> [1] - 147:18 <b>ready</b> [2] - 130:1, 186:13 <b>real</b> [9] - 17:22, 54:14, 62:21, 120:23, 187:13, 190:22, 270:11, 301:19, 324:8 <b>real-time</b> [1] - 190:22 <b>realistic</b> [1] - 361:22 <b>realities</b> [1] - 258:25 <b>reality</b> [1] - 66:6 <b>realize</b> [2] - 44:20, 264:17 <b>realized</b> [1] - 332:8 <b>really</b> [58] - 22:13, 47:12, 50:3, 61:4, 68:8, 73:23, 75:20, 84:6, 92:8, 111:20, 113:12, 125:4, 134:19, 158:23, 180:24, 200:24, 202:20, 206:13, 209:10, 214:13, 228:11, 239:22, 239:24, 242:14, 247:4, 248:16, 262:19, 263:10, 269:21, 275:5, 276:20, 277:8, 277:10, 277:18, 277:24, 278:18, 279:13, 279:23, 281:3, 281:23, 282:5, 284:12, 287:12, 288:8, 291:16, 304:5, 311:13, 316:11, 318:2, 318:5, 318:23, 328:22, 332:22, 340:8, 363:23, 364:18, 364:25, 368:8 <b>reapply</b> [1] - 55:21 <b>rear</b> [1] - 44:9 <b>rearranged</b> [1] - 364:8 <b>reason</b> [13] - 37:24, 56:2, 58:13, 68:7, 124:5, 126:24, 128:13, 140:17, 150:11, 171:9, 201:4, 204:9, 357:21 <b>reasonable</b> [11] - 252:14, 252:21, 252:23, 253:17, 310:23, 357:23, 357:25, 366:5, 369:24, 370:12 <b>reasonably</b> [2] -</p>	<p>80:18, 80:19 <b>reasoning</b> [2] - 21:8, 369:13 <b>reasons</b> [6] - 193:3, 204:8, 336:11, 337:25, 338:21, 364:23 <b>rebuilt</b> [2] - 193:20, 203:14 <b>rebuttal</b> [19] - 11:24, 171:19, 178:6, 178:11, 185:9, 321:6, 327:14, 327:21, 328:9, 359:21, 360:1, 361:9, 361:16, 361:17, 361:25, 363:5, 363:22, 364:2, 365:10 <b>received</b> [10] - 35:3, 35:10, 111:13, 112:7, 121:13, 127:22, 153:11, 200:13, 217:23, 242:7 <b>receiving</b> [1] - 36:8 <b>recent</b> [2] - 253:15, 316:11 <b>Recent</b> [1] - 7:18 <b>recently</b> [7] - 151:18, 152:15, 153:9, 239:14, 312:10, 343:10, 361:21 <b>Recess</b> [3] - 93:9, 255:17, 362:13 <b>recess</b> [1] - 172:5 <b>recessed</b> [1] - 371:4 <b>recession</b> [1] - 65:23 <b>recipient</b> [1] - 340:14 <b>recite</b> [1] - 153:1 <b>recognize</b> [1] - 251:22 <b>recognized</b> [1] - 239:13 <b>recommend</b> [2] - 245:17, 298:21 <b>recommendation</b> [1] - 239:2 <b>recommendations</b> [5] - 241:4, 241:9, 247:15, 307:8, 321:14 <b>recommended</b> [3] - 139:24, 140:7, 259:20 <b>recommending</b> [2] - 238:22, 315:11 <b>recommends</b> [1] - 140:8 <b>reconvening</b> [1] - 363:18 <b>record</b> [68] - 13:2, 13:20, 13:25, 14:6, 14:7, 14:15, 14:21,</p>	<p>14:22, 14:23, 18:7, 19:2, 21:4, 21:7, 24:1, 35:14, 49:24, 81:12, 101:3, 111:10, 133:5, 167:18, 173:8, 176:8, 177:14, 179:2, 179:8, 179:11, 179:12, 187:10, 188:16, 189:4, 189:5, 189:14, 195:4, 202:1, 203:6, 203:18, 215:14, 215:19, 217:16, 226:8, 227:3, 227:20, 228:25, 230:22, 233:8, 233:20, 233:24, 234:6, 234:11, 242:3, 244:21, 245:9, 245:11, 248:5, 254:19, 278:5, 278:7, 287:14, 303:1, 303:23, 304:5, 321:17, 329:13, 340:11, 359:16, 362:5, 372:9 <b>Record</b> [1] - 323:23 <b>recorded</b> [2] - 346:1, 372:8 <b>records</b> [6] - 133:1, 179:7, 190:19, 202:24, 207:5, 341:18 <b>recovered</b> [1] - 192:13 <b>rectal</b> [1] - 45:5 <b>rectally</b> [1] - 45:6 <b>rectify</b> [1] - 282:12 <b>recycle</b> [1] - 293:14 <b>red</b> [3] - 195:5, 195:6, 354:13 <b>redirect</b> [1] - 130:8 <b>Redirect</b> [1] - 4:15 <b>REDIRECT</b> [1] - 167:6 <b>redo</b> [1] - 183:9 <b>reduce</b> [2] - 124:19, 293:18 <b>redundant</b> [2] - 15:5, 41:2 <b>refer</b> [4] - 149:15, 152:4, 251:16, 298:20 <b>Reference</b> [1] - 9:7 <b>reference</b> [10] - 101:2, 177:7, 179:11, 236:15, 236:17, 265:10, 266:14, 296:14, 296:15, 314:8 <b>referenced</b> [10] - 149:20, 175:5, 215:17, 296:10, 298:24, 299:10,</p>	<p>299:19, 307:13, 312:16, 348:8 <b>referencing</b> [1] - 85:15 <b>referred</b> [7] - 52:2, 84:11, 175:7, 178:25, 247:18, 290:1, 357:25 <b>referring</b> [9] - 95:23, 111:8, 138:14, 139:5, 149:14, 225:18, 295:21, 303:4, 357:23 <b>refers</b> [2] - 132:5, 148:10 <b>reflect</b> [6] - 149:6, 150:12, 150:14, 232:22, 254:18, 277:9 <b>reflected</b> [4] - 14:14, 237:25, 305:22, 337:16 <b>reflection</b> [1] - 332:16 <b>reflective</b> [1] - 221:14 <b>reflects</b> [2] - 47:15, 149:8 <b>Refuge</b> [2] - 355:20, 356:17 <b>refused</b> [1] - 358:22 <b>regard</b> [7] - 39:14, 40:7, 41:6, 41:19, 41:21, 138:15, 248:17 <b>regarding</b> [9] - 18:19, 28:5, 175:4, 177:4, 218:16, 235:10, 242:4, 288:14, 342:24 <b>regardless</b> [1] - 12:10 <b>regards</b> [5] - 28:3, 40:24, 82:3, 138:7, 335:21 <b>regimen</b> [1] - 104:7 <b>regroup</b> [1] - 362:12 <b>regs</b> [1] - 368:21 <b>regular</b> [7] - 183:22, 183:25, 288:17, 304:10, 309:9, 311:11, 355:21 <b>regularly</b> [3] - 309:7, 337:14, 346:16 <b>regulate</b> [24] - 99:3, 99:4, 99:5, 153:18, 182:11, 182:12, 182:24, 292:6, 292:22, 295:13, 295:14, 296:19, 296:22, 296:23, 297:1, 297:2, 297:6, 297:8, 297:17, 298:10, 298:13,</p>
---	---	--	---	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>298:15, 318:25, 337:2  <b>regulated</b> [7] - 83:11, 85:15, 85:21, 183:2, 301:9, 322:11, 337:16  <b>regulates</b> [1] - 99:7  <b>regulating</b> [3] - 289:20, 292:20, 297:11  <b>regulation</b> [4] - 104:14, 159:15, 295:10, 311:6  <b>Regulations</b> [2] - 145:11, 213:25  <b>regulations</b> [33] - 11:11, 105:6, 105:9, 117:6, 131:8, 138:6, 138:11, 138:12, 138:14, 139:3, 139:5, 140:11, 142:12, 145:1, 146:23, 147:1, 149:11, 149:14, 149:19, 159:3, 160:12, 166:17, 181:16, 184:13, 218:16, 221:14, 289:22, 296:4, 296:6, 298:2, 300:8, 337:13, 353:8  <b>regulator</b> [3] - 222:4, 222:11, 247:6  <b>regulatory</b> [3] - 81:15, 149:11, 247:23  <b>rehash</b> [2] - 20:5, 246:5  <b>reimbursed</b> [1] - 122:11  <b>rejected</b> [1] - 341:25  <b>relate</b> [2] - 148:5, 148:8  <b>related</b> [5] - 136:9, 187:16, 213:14, 299:11, 372:11  <b>relates</b> [1] - 280:10  <b>relationship</b> [3] - 199:3, 320:22, 320:24  <b>relative</b> [1] - 372:13  <b>release</b> [2] - 239:6, 240:7  <b>released</b> [3] - 220:7, 239:1, 240:11  <b>releases</b> [1] - 239:4  <b>relevance</b> [4] - 107:12, 107:13, 189:3, 365:1  <b>relevancy</b> [3] - 201:19, 209:23, 242:6  <b>relevant</b> [8] - 107:14, 110:17, 111:17, 111:20, 111:21, 210:13, 242:14, 244:1</p>	<p><b>reliable</b> [1] - 113:22  <b>reliance</b> [2] - 113:17, 245:21  <b>relied</b> [6] - 113:22, 153:2, 153:5, 244:12, 254:11, 294:17  <b>relies</b> [2] - 88:17, 181:16  <b>relievers</b> [1] - 46:17  <b>rely</b> [5] - 136:22, 156:6, 156:8, 253:18, 260:7  <b>relying</b> [4] - 151:8, 151:11, 202:24, 276:24  <b>remain</b> [5] - 51:14, 51:15, 51:17, 140:2, 164:20  <b>remains</b> [2] - 50:18, 51:9  <b>remedial</b> [1] - 190:25  <b>remediation</b> [2] - 190:16, 191:7  <b>remedies</b> [1] - 308:14  <b>remember</b> [14] - 31:22, 75:9, 128:9, 128:12, 223:12, 227:21, 248:24, 287:9, 287:13, 288:5, 289:6, 300:24, 302:19, 303:15  <b>REMEMBERED</b> [1] - 1:13  <b>remembering</b> [1] - 21:12  <b>remind</b> [3] - 127:11, 187:22, 188:6  <b>Removal</b> [2] - 8:19, 212:21  <b>removal</b> [2] - 242:8, 311:11  <b>remove</b> [1] - 312:23  <b>removed</b> [3] - 14:11, 118:6, 311:15  <b>removing</b> [1] - 311:14  <b>render</b> [4] - 98:9, 161:21, 165:1, 337:4  <b>rendered</b> [1] - 165:4  <b>renderer</b> [3] - 200:7, 200:8, 341:7  <b>renderers</b> [1] - 200:9  <b>rendering</b> [16] - 71:17, 72:13, 72:14, 72:17, 72:18, 164:21, 193:5, 193:6, 200:14, 206:6, 206:10, 206:11, 206:15, 207:13, 207:19, 341:9</p>	<p><b>renew</b> [13] - 18:3, 18:12, 19:7, 19:11, 19:22, 34:19, 148:14, 160:13, 168:14, 168:16, 168:23, 245:23, 326:14  <b>RENEWAL</b> [1] - 1:5  <b>Renewal</b> [4] - 6:11, 6:13, 8:25, 100:19  <b>renewal</b> [31] - 11:6, 29:15, 29:17, 34:20, 34:23, 35:16, 40:2, 59:13, 61:3, 61:10, 61:13, 75:23, 81:24, 99:25, 103:8, 103:14, 168:12, 168:21, 215:23, 216:5, 216:9, 216:16, 217:20, 227:6, 233:13, 300:20, 305:1, 324:13, 351:11, 352:11  <b>renewals</b> [5] - 60:25, 225:5, 226:1, 288:15, 300:19  <b>renewed</b> [3] - 19:4, 215:6, 215:9  <b>Renewed</b> [2] - 101:13, 230:3  <b>reopened</b> [2] - 194:5, 198:24  <b>repair</b> [1] - 69:4  <b>repeat</b> [4] - 105:15, 212:1, 285:2, 295:1  <b>repeatedly</b> [3] - 322:18, 337:12, 353:7  <b>repellant</b> [1] - 251:13  <b>repetitious</b> [2] - 142:9, 142:17  <b>repetitive</b> [1] - 151:6  <b>rephrase</b> [3] - 161:12, 278:1, 278:10  <b>rephrasing</b> [1] - 247:13  <b>replaced</b> [1] - 241:8  <b>replowing</b> [1] - 261:15  <b>Report</b> [1] - 341:21  <b>report</b> [5] - 200:14, 234:12, 234:17, 234:20, 358:20  <b>reported</b> [1] - 282:14  <b>reporter</b> [7] - 15:17, 93:19, 105:14, 328:18, 335:9, 344:9, 359:18  <b>Reporter</b> [1] - 219:18  <b>Reporters</b> [1] - 12:23  <b>reporting</b> [1] - 62:9  <b>reports</b> [13] - 102:6,</p>	<p>129:13, 129:17, 202:25, 225:11, 225:12, 302:11, 302:12, 311:13, 311:16, 333:22, 337:15  <b>represent</b> [4] - 17:24, 19:25, 100:15, 327:1  <b>representation</b> [4] - 16:23, 17:7, 174:10, 175:17  <b>representative</b> [2] - 69:1, 370:18  <b>represented</b> [3] - 84:25, 265:3, 306:21  <b>representing</b> [7] - 18:20, 232:4, 281:16, 321:2, 339:11, 339:16, 351:8  <b>represents</b> [1] - 19:23  <b>request</b> [13] - 99:25, 104:14, 128:13, 223:7, 256:22, 324:6, 324:22, 324:24, 324:25, 341:18, 362:6, 366:9, 367:10  <b>requested</b> [6] - 15:5, 29:25, 33:18, 245:20, 304:2, 342:2  <b>require</b> [8] - 14:16, 44:16, 76:19, 139:10, 168:19, 299:13, 308:18, 340:2  <b>required</b> [21] - 31:7, 33:19, 33:20, 33:23, 60:19, 71:14, 104:1, 104:7, 127:7, 129:2, 169:23, 215:7, 215:10, 216:18, 298:25, 300:11, 302:11, 307:18, 310:13, 329:21, 337:15  <b>requirement</b> [5] - 30:19, 68:25, 78:7, 126:5, 184:6  <b>requirements</b> [13] - 33:15, 77:7, 77:9, 81:16, 123:22, 139:6, 162:24, 260:10, 298:20, 311:8, 316:13, 322:12, 355:5  <b>requires</b> [4] - 76:6, 81:23, 116:3, 139:9  <b>requiring</b> [1] - 40:3  <b>Requiring</b> [1] - 10:12  <b>requisite</b> [1] - 168:6  <b>Rescue</b> [4] - 3:2,</p>	<p>11:20, 16:6, 211:21  <b>rescues</b> [1] - 336:2  <b>research</b> [6] - 106:23, 182:2, 189:18, 244:11, 253:14, 346:18  <b>researched</b> [1] - 182:18  <b>reservation</b> [1] - 164:4  <b>reservations</b> [1] - 361:1  <b>reserve</b> [7] - 24:20, 24:22, 171:19, 178:5, 185:8, 321:5, 327:13  <b>reside</b> [2] - 335:20, 338:22  <b>resident</b> [1] - 348:11  <b>residents</b> [4] - 201:7, 211:22, 320:23, 353:3  <b>Residents</b> [1] - 3:2  <b>residue</b> [7] - 48:20, 52:10, 55:1, 141:22, 161:21, 163:3, 341:2  <b>residues</b> [8] - 49:14, 52:10, 136:13, 159:4, 159:11, 159:16, 162:13, 201:4  <b>resistant</b> [2] - 262:22, 263:19  <b>resource</b> [2] - 200:21, 344:18  <b>Resources</b> [1] - 190:9  <b>resources</b> [2] - 184:1, 291:13  <b>respect</b> [8] - 123:5, 123:20, 138:18, 166:1, 166:4, 182:5, 182:14, 353:7  <b>respected</b> [1] - 151:9  <b>respectfully</b> [1] - 364:18  <b>respirations</b> [1] - 154:24  <b>respond</b> [3] - 208:6, 216:2, 304:1  <b>responded</b> [2] - 152:17, 304:3  <b>Response</b> [1] - 10:10  <b>response</b> [8] - 150:10, 169:3, 243:19, 245:25, 246:4, 248:9, 324:22, 324:24  <b>responses</b> [3] - 247:1, 324:25, 325:6  <b>responsibilities</b> [1] - 321:22  <b>responsibility</b> [1] -</p>
--	---	---	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>368:20  <b>responsible</b> [5] - 102:5, 213:22, 222:2, 257:12, 257:14  <b>responsive</b> [1] - 327:3  <b>rest</b> [10] - 51:1, 67:7, 86:9, 152:11, 222:1, 242:20, 260:6, 260:15, 327:12, 364:5  <b>restate</b> [2] - 183:9, 312:1  <b>restoration</b> [1] - 357:22  <b>restored</b> [1] - 358:1  <b>restrooms</b> [2] - 74:6, 74:16  <b>resubmit</b> [1] - 302:18  <b>resubmitted</b> [1] - 303:8  <b>result</b> [4] - 238:3, 272:16, 308:23, 336:21  <b>resulted</b> [1] - 191:4  <b>results</b> [3] - 34:6, 302:3, 352:19  <b>Results</b> [1] - 7:19  <b>resume</b> [3] - 212:12, 362:6, 367:4  <b>Resume</b> [4] - 6:18, 6:23, 7:9, 7:12  <b>resumed</b> [1] - 304:4  <b>resuming</b> [1] - 359:19  <b>retain</b> [2] - 168:13, 168:16  <b>retired</b> [3] - 121:25, 125:6, 346:7  <b>retirement</b> [1] - 319:2  <b>return</b> [1] - 359:12  <b>returning</b> [1] - 199:24  <b>reveal</b> [1] - 254:13  <b>review</b> [22] - 35:15, 84:23, 85:2, 85:8, 133:1, 215:14, 217:4, 220:23, 225:1, 225:21, 226:8, 227:3, 233:7, 233:20, 237:2, 245:11, 249:1, 262:8, 294:22, 301:5, 321:10, 351:11  <b>reviewed</b> [6] - 11:17, 35:17, 249:20, 257:9, 257:10, 336:6  <b>reviewer</b> [1] - 174:4  <b>reviewing</b> [4] - 235:18, 247:11, 254:20, 321:13</p>	<p><b>revise</b> [1] - 312:5  <b>Revised</b> [1] - 7:2  <b>revised</b> [9] - 77:2, 77:5, 78:1, 175:8, 175:11, 177:8, 311:22, 311:24, 312:3  <b>Revisions</b> [1] - 10:8  <b>rheas</b> [1] - 39:3  <b>Ricardo</b> [3] - 9:4, 23:15, 100:18  <b>RICARDO</b> [3] - 4:2, 4:7, 23:5  <b>Rick</b> [12] - 6:3, 23:14, 27:25, 29:25, 54:20, 55:13, 94:21, 123:7, 123:19, 133:6, 134:15, 167:7  <b>rid</b> [3] - 193:10, 197:16, 198:5  <b>rights</b> [1] - 293:21  <b>rinse</b> [1] - 116:15  <b>rip</b> [1] - 338:5  <b>riparian</b> [2] - 353:23, 358:25  <b>rise</b> [3] - 238:10, 257:16, 343:13  <b>rising</b> [1] - 343:14  <b>risk</b> [6] - 157:5, 240:8, 240:10, 240:13, 295:17, 307:20  <b>risks</b> [1] - 240:4  <b>river</b> [6] - 199:21, 199:24, 354:17, 355:1, 357:7, 358:18  <b>River</b> [7] - 192:15, 343:9, 353:23, 354:14, 354:24, 354:25, 356:14  <b>rivers</b> [3] - 67:25, 358:4, 359:6  <b>road</b> [1] - 169:11  <b>roadrunners</b> [1] - 354:9  <b>Robert</b> [1] - 197:25  <b>Robey</b> [6] - 29:25, 33:18, 33:22, 94:21, 123:7, 124:17  <b>Robey's</b> [1] - 123:19  <b>rods</b> [1] - 191:17  <b>role</b> [7] - 68:20, 123:20, 123:21, 125:1, 125:4, 126:3, 325:21  <b>roll</b> [1] - 251:13  <b>roll-on</b> [1] - 251:13  <b>Ronald</b> [1] - 8:11  <b>room</b> [3] - 262:25, 329:9, 366:14  <b>rose</b> [1] - 197:22</p>	<p><b>ROSWELL</b> [1] - 1:6  <b>Roswell</b> [20] - 1:16, 3:2, 16:6, 22:14, 26:19, 35:5, 65:10, 118:8, 211:22, 320:23, 332:6, 344:6, 345:5, 346:20, 347:8, 348:5, 349:1, 349:17, 356:13  <b>rotting</b> [1] - 345:6  <b>rough</b> [2] - 44:20, 361:14  <b>roughly</b> [6] - 41:16, 110:20, 135:16, 145:10, 165:13, 330:4  <b>route</b> [1] - 57:24  <b>routine</b> [1] - 193:2  <b>routinely</b> [2] - 275:19, 337:14  <b>row</b> [1] - 48:9  <b>rule</b> [10] - 21:18, 120:22, 121:7, 124:1, 214:4, 214:8, 259:21, 260:3, 260:10, 260:24  <b>Rule</b> [7] - 214:5, 239:15, 261:22, 288:10, 315:4, 316:14, 316:22  <b>rule-making</b> [4] - 21:18, 214:4, 214:8, 260:3  <b>ruled</b> [2] - 18:22, 160:13  <b>rules</b> [19] - 11:13, 14:16, 50:3, 156:17, 156:20, 170:5, 216:7, 216:14, 260:18, 260:20, 261:2, 266:9, 266:15, 266:16, 298:2, 308:9, 308:25, 309:1, 315:19  <b>ruling</b> [1] - 21:5  <b>rumen</b> [4] - 42:4, 42:18, 42:23, 154:21  <b>run</b> [9] - 41:25, 53:14, 139:10, 190:1, 235:6, 291:11, 306:8, 356:2, 356:18  <b>rung</b> [1] - 41:18  <b>Runnels</b> [2] - 2:4, 2:9  <b>running</b> [5] - 103:19, 150:17, 234:21, 235:2, 235:3  <b>runoff</b> [1] - 341:1  <b>runs</b> [2] - 120:23, 356:4  <b>rural</b> [1] - 345:15  <b>RV</b> [1] - 184:16</p>	<p style="text-align: center;"><b>S</b></p> <p><b>sacrifices</b> [1] - 347:13  <b>safe</b> [6] - 22:5, 145:20, 149:12, 155:9, 155:13, 272:5  <b>safety</b> [5] - 142:12, 156:21, 160:12, 352:25, 353:2  <b>Sago</b> [1] - 355:23  <b>sake</b> [7] - 19:18, 28:13, 28:14, 49:24, 58:24, 82:14, 100:22  <b>sale</b> [1] - 114:22  <b>salient</b> [2] - 218:2, 219:8  <b>saliva</b> [1] - 107:22  <b>Sally</b> [11] - 13:4, 13:5, 13:6, 13:7, 13:10, 14:20, 14:24, 328:24, 359:18, 360:11  <b>salted</b> [2] - 115:22, 115:24  <b>salts</b> [1] - 263:17  <b>sample</b> [4] - 159:21, 159:24, 160:1, 203:25  <b>sampled</b> [1] - 120:18  <b>samples</b> [4] - 54:2, 54:3, 83:4  <b>San</b> [1] - 3:6  <b>sanctuary</b> [1] - 190:1  <b>sand</b> [1] - 354:14  <b>sandy</b> [1] - 306:12  <b>Sandy</b> [1] - 211:23  <b>Sanitation</b> [1] - 195:17  <b>Santa</b> [3] - 2:5, 2:10, 2:19  <b>SANTOS</b> [70] - 4:2, 4:7, 23:5, 23:15, 28:11, 28:16, 28:20, 28:25, 29:5, 29:8, 29:11, 55:20, 56:3, 56:6, 56:10, 56:14, 57:3, 58:3, 58:5, 58:16, 59:6, 59:14, 59:24, 65:9, 65:22, 66:22, 70:3, 70:20, 71:2, 71:4, 71:6, 71:11, 71:13, 71:16, 71:22, 72:1, 72:6, 72:10, 72:13, 73:2, 73:6, 73:8, 73:14, 74:12, 74:17, 76:14, 76:20, 76:23, 77:10, 77:20, 78:5, 78:8, 79:2, 79:21, 80:10,</p>	<p>82:12, 82:19, 91:4, 91:9, 91:14, 92:18, 94:19, 95:5, 95:6, 167:14, 167:16, 167:20, 168:3, 168:9, 330:24  <b>Santos</b> [60] - 6:4, 9:4, 23:1, 23:15, 24:4, 25:4, 64:23, 69:25, 70:11, 73:1, 74:10, 74:11, 76:12, 77:8, 77:12, 78:24, 79:20, 82:7, 88:10, 90:25, 91:3, 94:18, 99:24, 100:18, 101:11, 108:4, 111:13, 112:3, 113:21, 119:9, 122:10, 123:5, 133:6, 134:25, 166:1, 172:1, 181:3, 193:5, 198:7, 199:3, 200:6, 206:5, 227:21, 229:10, 229:15, 230:23, 232:2, 232:4, 232:5, 232:22, 232:24, 279:20, 282:10, 332:10, 332:20, 334:16, 346:19, 350:12, 359:8  <b>Santos'</b> [5] - 193:23, 196:12, 333:4, 356:18, 357:10  <b>Sarah</b> [4] - 10:2, 133:6, 134:15, 315:18  <b>satisfactorily</b> [1] - 61:6  <b>saw</b> [3] - 60:2, 277:7, 287:14  <b>sawdust</b> [1] - 208:19  <b>scale</b> [2] - 38:4, 135:20  <b>scales</b> [1] - 135:24  <b>scandals</b> [1] - 191:5  <b>scare</b> [1] - 345:14  <b>scared</b> [1] - 339:9  <b>Schaefer</b> [1] - 211:23  <b>schedule</b> [4] - 94:3, 364:8, 364:12, 364:15  <b>scheduled</b> [1] - 365:6  <b>Schiff</b> [1] - 3:4  <b>SCHNURR</b> [6] - 5:9, 335:3, 335:8, 335:10, 335:11, 335:14  <b>Schnurr</b> [6] - 330:17, 331:22, 331:25, 335:2, 335:16, 339:2  <b>Schoepner</b> [11] - 6:18, 6:19, 174:24, 175:1, 175:22, 176:6,</p>
--	---	--	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>176:9, 177:20, 179:1, 183:21, 185:4</p> <p><b>schoepner</b> [1] - 172:18</p> <p><b>SCHOEPPNER</b> [3] - 4:19, 176:1, 183:19</p> <p><b>Schoepner's</b> [2] - 177:13, 322:1</p> <p><b>school</b> [3] - 169:19, 291:2, 340:2</p> <p><b>Schumann</b> [6] - 287:19, 287:22, 287:23, 288:6, 288:20, 289:6</p> <p><b>science</b> [4] - 214:16, 214:17, 243:24, 284:25</p> <p><b>scientific</b> [3] - 220:9, 253:15, 271:18</p> <p><b>scientifically</b> [1] - 253:19</p> <p><b>scientist</b> [4] - 222:5, 244:2, 247:6, 269:10</p> <p><b>scientists</b> [1] - 341:8</p> <p><b>scope</b> [1] - 207:11</p> <p><b>screaming</b> [1] - 345:7</p> <p><b>screen</b> [1] - 186:4</p> <p><b>se</b> [2] - 291:19, 325:20</p> <p><b>sealed</b> [2] - 76:3, 316:17</p> <p><b>seam</b> [1] - 315:5</p> <p><b>seams</b> [2] - 262:12, 316:18</p> <p><b>seats</b> [1] - 211:5</p> <p><b>second</b> [16] - 69:13, 74:19, 88:24, 94:16, 107:19, 187:18, 195:1, 203:21, 230:2, 234:15, 256:21, 313:5, 336:22, 359:6, 365:5, 369:12</p> <p><b>secondary</b> [1] - 340:24</p> <p><b>SECRETARY</b> [1] - 1:2</p> <p><b>Secretary</b> [13] - 13:18, 20:15, 20:17, 82:5, 222:2, 253:5, 254:20, 258:14, 259:2, 259:6, 259:24, 260:1, 260:2</p> <p><b>Section</b> [11] - 36:13, 38:20, 77:5, 100:17, 176:20, 176:21, 176:22, 230:24, 287:24, 294:11, 314:13</p> <p><b>section</b> [5] - 35:25,</p>	<p>38:20, 288:4, 308:24, 352:9</p> <p><b>secure</b> [1] - 22:5</p> <p><b>security</b> [2] - 360:9, 362:21</p> <p><b>see</b> [62] - 20:22, 21:20, 33:13, 37:14, 37:16, 44:2, 54:25, 57:2, 57:5, 57:6, 57:16, 57:19, 65:4, 73:13, 76:16, 77:16, 79:7, 79:11, 92:9, 101:9, 101:16, 101:18, 109:21, 111:17, 134:21, 148:20, 168:12, 184:8, 186:4, 186:5, 191:25, 192:23, 193:18, 193:21, 195:22, 196:8, 197:2, 223:14, 224:6, 229:21, 238:13, 244:9, 245:7, 281:9, 282:14, 283:8, 294:13, 311:10, 311:12, 320:19, 321:16, 322:16, 328:6, 331:5, 334:14, 334:22, 343:11, 358:10, 359:14, 362:12, 366:4, 367:21</p> <p><b>seeing</b> [8] - 267:15, 269:2, 286:19, 286:21, 309:22, 318:3, 318:10, 333:5</p> <p><b>seem</b> [1] - 239:21</p> <p><b>sees</b> [1] - 309:11</p> <p><b>seldom</b> [3] - 44:2, 44:6, 69:8</p> <p><b>Selected</b> [1] - 8:16</p> <p><b>self</b> [1] - 247:8</p> <p><b>sell</b> [1] - 166:8</p> <p><b>selling</b> [1] - 137:16</p> <p><b>semiannually</b> [1] - 120:19</p> <p><b>send</b> [4] - 188:23, 200:7, 341:12, 342:13</p> <p><b>Send</b> [1] - 7:23</p> <p><b>sense</b> [3] - 277:8, 318:9, 349:14</p> <p><b>sensibilities</b> [1] - 15:3</p> <p><b>sensitive</b> [1] - 187:25</p> <p><b>Sent</b> [1] - 248:13</p> <p><b>sent</b> [7] - 17:13, 30:10, 54:2, 88:3, 217:11, 304:21, 326:13</p> <p><b>sentence</b> [9] - 138:9,</p>	<p>147:11, 147:13, 147:16, 147:18, 147:23, 162:19, 294:12, 314:18</p> <p><b>separate</b> [2] - 154:13, 197:1</p> <p><b>separated</b> [1] - 79:16</p> <p><b>separately</b> [1] - 179:9</p> <p><b>septic</b> [18] - 36:9, 36:19, 37:2, 37:25, 67:9, 70:22, 74:14, 79:16, 79:22, 79:24, 80:1, 80:5, 168:1, 241:5, 307:9, 307:16</p> <p><b>sequences</b> [1] - 300:19</p> <p><b>serial</b> [1] - 223:10</p> <p><b>series</b> [6] - 67:9, 197:9, 201:18, 223:10, 243:22, 308:25</p> <p><b>serious</b> [1] - 101:7</p> <p><b>seriously</b> [2] - 304:14, 352:11</p> <p><b>served</b> [5] - 213:20, 214:2, 214:19, 214:21, 348:12</p> <p><b>serves</b> [1] - 253:15</p> <p><b>service</b> [1] - 213:19</p> <p><b>Service</b> [1] - 27:18</p> <p><b>Services</b> [2] - 23:18, 130:22</p> <p><b>services</b> [3] - 121:20, 131:11, 133:10</p> <p><b>session</b> [1] - 330:5</p> <p><b>set</b> [14] - 21:16, 86:6, 161:14, 178:15, 185:18, 185:19, 186:13, 222:9, 247:4, 314:1, 321:21, 351:12, 368:21</p> <p><b>sets</b> [1] - 11:11</p> <p><b>setting</b> [1] - 239:5</p> <p><b>settings</b> [4] - 259:16, 259:18, 259:19, 336:24</p> <p><b>settle</b> [2] - 67:13, 67:24</p> <p><b>settling</b> [5] - 36:10, 37:2, 68:19, 174:23, 310:18</p> <p><b>seven</b> [12] - 41:8, 41:11, 41:16, 41:17, 65:10, 68:3, 106:17, 109:6, 149:9, 213:20, 358:17</p> <p><b>seven-and-a-half</b> [1] - 65:10</p> <p><b>seven-mile</b> [1] -</p>	<p>358:17</p> <p><b>several</b> [13] - 26:16, 70:13, 102:9, 128:9, 138:17, 214:10, 245:20, 251:14, 285:11, 303:6, 309:3, 363:21, 365:25</p> <p><b>severity</b> [1] - 308:21</p> <p><b>sewer</b> [2] - 197:19, 197:20</p> <p><b>sexually</b> [1] - 348:16</p> <p><b>shaking</b> [1] - 79:11</p> <p><b>shall</b> [8] - 130:4, 172:13, 175:21, 186:12, 242:18, 249:7, 255:11, 362:4</p> <p><b>shallow</b> [9] - 238:1, 238:24, 239:5, 239:8, 259:16, 259:19, 307:25, 352:2, 354:13</p> <p><b>shape</b> [2] - 41:10, 41:13</p> <p><b>share</b> [3] - 15:15, 341:16, 347:3</p> <p><b>sharing</b> [2] - 26:5, 40:22</p> <p><b>Shawsville</b> [1] - 3:11</p> <p><b>sheep</b> [7] - 39:2, 65:17, 215:5, 236:9, 236:11, 281:4, 281:6</p> <p><b>sheet</b> [1] - 330:8</p> <p><b>Sheet</b> [1] - 8:22</p> <p><b>sheets</b> [3] - 12:6, 13:6, 197:9</p> <p><b>shelter</b> [1] - 334:19</p> <p><b>sheriff</b> [4] - 360:6, 360:7, 360:14, 362:19</p> <p><b>Sheriff's</b> [1] - 22:2</p> <p><b>shift</b> [2] - 115:3, 116:20</p> <p><b>shiner</b> [7] - 354:13, 354:14, 354:15, 357:1, 358:1, 358:9</p> <p><b>shiners</b> [1] - 359:1</p> <p><b>ship</b> [1] - 139:6</p> <p><b>shipped</b> [1] - 76:4</p> <p><b>Shirley</b> [1] - 8:7</p> <p><b>shocked</b> [2] - 347:21, 348:25</p> <p><b>short</b> [5] - 86:14, 166:4, 257:21, 304:3, 358:17</p> <p><b>shorten</b> [1] - 161:5</p> <p><b>shorthand</b> [1] - 372:8</p> <p><b>shortly</b> [3] - 199:10, 234:24, 301:6</p> <p><b>shot</b> [1] - 332:12</p> <p><b>show</b> [12] - 18:23, 39:20, 55:4, 99:24,</p>	<p>189:14, 200:10, 203:10, 237:14, 252:11, 278:11, 298:6, 305:25</p> <p><b>showed</b> [7] - 32:11, 38:13, 128:11, 128:15, 203:22, 229:11, 341:23</p> <p><b>showing</b> [9] - 193:11, 228:20, 231:22, 244:19, 271:11, 272:16, 272:19, 311:13, 318:7</p> <p><b>shown</b> [3] - 15:1, 269:22, 353:2</p> <p><b>shows</b> [3] - 210:19, 225:25, 278:21</p> <p><b>shriner</b> [1] - 358:8</p> <p><b>shuffling</b> [1] - 22:21</p> <p><b>shut</b> [2] - 194:7, 194:9</p> <p><b>sic</b> [1] - 62:23</p> <p><b>sic</b> [1] - 119:5</p> <p><b>sickness</b> [1] - 46:23</p> <p><b>side</b> [8] - 31:16, 80:2, 126:13, 126:14, 198:9, 307:3, 354:19, 363:16</p> <p><b>side-blotched</b> [1] - 354:19</p> <p><b>sides</b> [3] - 14:4, 16:24, 291:6</p> <p><b>sign</b> [5] - 12:6, 13:6, 288:24, 289:8, 330:8</p> <p><b>sign-in</b> [3] - 12:6, 13:6, 330:8</p> <p><b>signature</b> [2] - 101:22, 127:24</p> <p><b>signatures</b> [2] - 344:7, 344:14</p> <p><b>signed</b> [10] - 12:4, 12:5, 66:2, 127:23, 151:7, 230:23, 287:19, 288:11, 289:4, 328:16</p> <p><b>significance</b> [1] - 216:8</p> <p><b>significant</b> [9] - 154:9, 154:12, 217:9, 238:13, 239:12, 239:18, 279:17, 280:4, 284:10</p> <p><b>significantly</b> [5] - 174:13, 174:16, 177:6, 236:11, 318:13</p> <p><b>signing</b> [1] - 321:21</p> <p><b>silty</b> [1] - 306:11</p> <p><b>silvery</b> [1] - 354:15</p> <p><b>similar</b> [22] - 18:19, 41:7, 52:8, 62:13,</p>
--	---	---	---	---

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>68:2, 73:23, 81:24, 90:5, 111:1, 112:21, 112:24, 142:21, 149:24, 256:11, 257:20, 257:24, 257:25, 263:18, 304:16, 307:19, 314:19, 321:23</p> <p><b>similarities</b> [2] - 46:9, 74:4</p> <p><b>similarity</b> [1] - 41:19</p> <p><b>similarly</b> [1] - 297:15</p> <p><b>simple</b> [4] - 42:14, 87:8, 122:19, 154:21</p> <p><b>simple-stomached</b> [1] - 42:14</p> <p><b>simply</b> [7] - 21:19, 82:4, 168:21, 232:20, 247:12, 351:14, 353:6</p> <p><b>single</b> [15] - 70:17, 194:13, 215:7, 239:19, 257:21, 257:25, 258:5, 258:21, 258:23, 259:2, 259:12, 260:19, 260:25, 261:24, 317:11</p> <p><b>single-lined</b> [8] - 215:7, 239:19, 257:21, 257:25, 259:2, 259:12, 260:19, 260:25</p> <p><b>sinkholes</b> [3] - 355:19, 356:15, 356:21</p> <p><b>Sinkholes</b> [1] - 355:23</p> <p><b>sit</b> [3] - 172:7, 306:8, 357:21</p> <p><b>site</b> [9] - 30:9, 34:25, 118:6, 132:25, 238:4, 240:7, 289:16, 319:11, 352:8</p> <p><b>sites</b> [2] - 184:15, 320:6</p> <p><b>sits</b> [1] - 76:14</p> <p><b>sitting</b> [2] - 86:5, 158:11</p> <p><b>situation</b> [3] - 47:19, 299:21, 301:11</p> <p><b>situations</b> [1] - 288:15</p> <p><b>Six</b> [1] - 3:2</p> <p><b>six</b> [15] - 11:20, 16:6, 68:3, 76:14, 113:23, 147:6, 148:4, 148:19, 199:13, 211:22, 235:3, 320:22, 357:6, 357:10, 358:17</p> <p><b>six-mile</b> [1] - 357:6</p>	<p><b>six-year-old</b> [1] - 113:23</p> <p><b>size</b> [6] - 41:9, 41:24, 107:2, 283:22, 284:1, 355:2</p> <p><b>skulls</b> [1] - 71:7</p> <p><b>skunk</b> [1] - 353:25</p> <p><b>slap</b> [1] - 194:17</p> <p><b>Slaughter</b> [3] - 7:23, 248:13, 339:12</p> <p><b>slaughter</b> [190] - 36:6, 36:7, 36:23, 37:5, 49:9, 49:11, 49:12, 52:6, 55:22, 58:9, 58:19, 65:12, 65:16, 65:18, 66:3, 66:8, 66:10, 66:21, 73:15, 80:14, 81:1, 81:10, 87:11, 88:3, 88:11, 95:15, 95:20, 96:1, 96:12, 96:25, 97:1, 97:3, 97:15, 97:18, 97:25, 98:6, 99:4, 103:4, 103:21, 104:2, 104:11, 105:18, 105:22, 106:22, 107:4, 112:6, 114:20, 114:24, 116:18, 117:2, 117:5, 118:7, 123:6, 123:10, 123:12, 123:15, 132:14, 132:15, 132:18, 132:19, 134:18, 135:1, 135:10, 136:11, 136:14, 136:20, 137:19, 138:19, 138:23, 139:12, 144:23, 146:9, 153:17, 153:19, 153:22, 154:1, 157:3, 157:7, 158:25, 159:19, 159:25, 161:8, 161:15, 161:19, 161:20, 162:7, 162:8, 162:17, 162:21, 163:6, 163:8, 163:17, 163:25, 164:2, 164:3, 164:9, 164:17, 165:14, 166:13, 180:22, 181:4, 181:12, 182:5, 182:6, 182:9, 182:14, 182:15, 182:21, 183:4, 187:10, 189:19, 192:18, 193:13, 194:8, 196:16, 198:18, 198:22, 199:2, 200:12, 200:25,</p>	<p>203:7, 207:5, 215:3, 215:18, 217:8, 217:11, 217:24, 220:16, 224:17, 225:24, 226:11, 226:15, 226:22, 227:5, 233:10, 233:22, 235:11, 235:13, 235:15, 236:6, 236:24, 237:1, 263:24, 268:25, 269:18, 270:6, 270:13, 270:24, 271:16, 272:6, 272:20, 275:12, 275:22, 280:15, 286:17, 290:10, 290:20, 304:17, 305:13, 333:16, 335:24, 336:4, 336:9, 336:19, 337:5, 338:14, 341:24, 342:25, 343:1, 344:13, 344:16, 346:11, 346:16, 346:17, 346:21, 347:8, 347:18, 347:19, 348:4, 348:10, 348:13, 348:15, 348:17, 348:20, 351:19, 351:24, 353:10</p> <p><b>slaughtered</b> [19] - 98:2, 103:21, 107:1, 107:7, 109:9, 114:22, 115:14, 116:4, 135:11, 149:18, 164:5, 199:13, 203:9, 203:17, 207:7, 226:24, 277:5, 336:17, 338:12</p> <p><b>slaughterhouse</b> [16] - 103:20, 107:9, 107:23, 132:5, 163:21, 166:2, 166:6, 166:10, 210:17, 242:10, 260:24, 332:8, 332:18, 342:3, 342:4, 351:15</p> <p><b>Slaughterhouse</b> [2] - 8:21, 212:22</p> <p><b>slaughterhouses</b> [11] - 123:2, 131:24, 132:2, 132:3, 132:6, 132:11, 133:16, 137:22, 155:23, 166:18, 210:16</p> <p><b>Slaughterhouses</b> [1] - 9:8</p> <p><b>slaughtering</b> [32] -</p>	<p>66:23, 95:12, 96:5, 96:9, 96:17, 97:6, 97:7, 97:16, 98:7, 99:21, 102:21, 102:23, 102:25, 103:11, 108:24, 110:18, 113:19, 115:9, 117:8, 180:18, 217:18, 218:2, 218:3, 233:12, 234:7, 234:8, 237:8, 265:5, 265:7, 272:22, 282:15, 338:11</p> <p><b>slaughters</b> [3] - 117:20, 117:21, 193:4</p> <p><b>sleep</b> [1] - 334:2</p> <p><b>sleeping</b> [1] - 46:23</p> <p><b>slide</b> [24] - 86:14, 187:12, 188:11, 189:22, 189:24, 190:10, 190:24, 191:11, 192:17, 193:15, 193:18, 194:6, 194:15, 194:24, 194:25, 195:3, 196:4, 196:10, 196:14, 197:5, 198:12, 200:3, 200:23, 203:22</p> <p><b>slides</b> [3] - 188:15, 189:1, 202:7</p> <p><b>slight</b> [1] - 237:13</p> <p><b>slightly</b> [1] - 237:7</p> <p><b>slip</b> [1] - 50:5</p> <p><b>slope</b> [2] - 354:25, 358:17</p> <p><b>slow</b> [1] - 208:13</p> <p><b>Sludge</b> [2] - 8:19, 212:20</p> <p><b>sludge</b> [2] - 242:8, 242:11</p> <p><b>small</b> [13] - 42:15, 42:18, 81:10, 126:14, 126:15, 132:6, 132:9, 159:21, 159:24, 160:1, 184:16, 190:1, 345:15</p> <p><b>smaller</b> [1] - 38:4</p> <p><b>smell</b> [1] - 196:17</p> <p><b>smelter</b> [1] - 348:15</p> <p><b>SMILEY</b> [2] - 5:13, 349:8</p> <p><b>Smiley</b> [2] - 330:18, 349:15</p> <p><b>Smith</b> [1] - 211:24</p> <p><b>smooth</b> [1] - 109:22</p> <p><b>snake</b> [3] - 354:20</p> <p><b>snow</b> [1] - 30:22</p> <p><b>snowbird</b> [1] - 346:8</p> <p><b>Society</b> [1] - 335:17</p>	<p><b>softball</b> [1] - 306:4</p> <p><b>Soil</b> [2] - 8:17, 27:17</p> <p><b>soils</b> [1] - 356:5</p> <p><b>sold</b> [1] - 346:16</p> <p><b>solid</b> [1] - 174:23</p> <p><b>solids</b> [10] - 36:9, 67:13, 83:23, 195:10, 263:16, 301:22, 301:24, 311:1, 311:14, 312:23</p> <p><b>solution</b> [1] - 350:10</p> <p><b>solve</b> [1] - 204:7</p> <p><b>someone</b> [5] - 17:25, 96:11, 291:21, 360:18, 370:3</p> <p><b>someplace</b> [1] - 50:21</p> <p><b>sometime</b> [1] - 13:19</p> <p><b>sometimes</b> [19] - 21:16, 33:4, 37:17, 41:25, 42:22, 43:21, 44:4, 45:4, 50:5, 52:22, 54:8, 94:12, 184:4, 204:22, 210:22, 229:16, 302:12, 309:21, 329:22</p> <p><b>somewhat</b> [2] - 37:18, 90:4</p> <p><b>somewhere</b> [2] - 95:4, 302:10</p> <p><b>soon</b> [2] - 338:25, 370:13</p> <p><b>sorry</b> [42] - 37:2, 58:4, 62:5, 85:10, 86:19, 86:23, 97:18, 100:2, 103:6, 104:17, 113:6, 115:23, 118:21, 118:23, 122:5, 146:4, 146:6, 150:3, 151:3, 154:10, 173:19, 178:22, 187:5, 187:20, 209:4, 228:19, 238:5, 242:22, 243:5, 261:15, 299:24, 305:3, 312:2, 319:19, 319:24, 323:4, 330:20, 334:23, 341:13, 358:8, 360:12</p> <p><b>sort</b> [35] - 22:4, 29:6, 33:6, 39:15, 39:21, 44:5, 51:10, 56:25, 57:2, 62:20, 65:1, 65:3, 66:25, 89:5, 98:2, 167:12, 168:25, 171:3, 178:5, 207:16, 208:23, 218:22, 227:16, 261:23, 277:17, 278:19,</p>
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KATHY TOWNSEND COURT REPORTERS

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<p>290:1, 299:19, 301:18, 307:20, 310:15, 313:5, 366:20, 369:19, 370:14</p> <p><b>sought</b> [2] - 58:20, 366:22</p> <p><b>soul</b> [1] - 350:17</p> <p><b>sound</b> [3] - 73:7, 322:3, 364:18</p> <p><b>sounds</b> [6] - 119:7, 129:13, 141:21, 188:23, 251:24, 293:4</p> <p><b>source</b> [2] - 272:9, 276:10</p> <p><b>South</b> [2] - 139:9, 347:11</p> <p><b>south</b> [3] - 305:9, 356:23, 357:5</p> <p><b>southeast</b> [3] - 65:10, 356:2, 356:3</p> <p><b>sparrows</b> [2] - 354:6, 354:7</p> <p><b>speaking</b> [3] - 47:12, 222:10, 342:6</p> <p><b>Spear</b> [1] - 3:5</p> <p><b>special</b> [2] - 17:19, 139:10</p> <p><b>specializing</b> [1] - 161:18</p> <p><b>specialty</b> [2] - 189:15, 190:2</p> <p><b>species</b> [19] - 27:4, 47:6, 56:12, 61:14, 95:22, 104:15, 105:1, 105:7, 105:18, 106:9, 132:4, 132:19, 138:23, 161:19, 274:21, 280:20, 280:24, 280:25, 283:16</p> <p><b>specific</b> [20] - 24:22, 40:19, 47:16, 47:24, 54:6, 54:18, 70:19, 132:4, 149:6, 223:6, 224:13, 244:5, 247:1, 260:9, 260:10, 266:15, 266:16, 297:23, 308:3</p> <p><b>specifically</b> [18] - 22:3, 24:13, 46:21, 50:16, 100:13, 169:13, 180:23, 207:13, 235:13, 245:13, 250:16, 251:18, 273:24, 289:1, 319:13, 320:14, 323:25, 344:15</p> <p><b>specifications</b> [3] -</p>	<p>30:15, 33:22, 125:14</p> <p><b>specificity</b> [1] - 99:13</p> <p><b>specifics</b> [1] - 206:25</p> <p><b>specified</b> [1] - 99:20</p> <p><b>speckled</b> [1] - 354:16</p> <p><b>speculating</b> [1] - 282:3</p> <p><b>speculation</b> [2] - 196:3, 281:25</p> <p><b>speculative</b> [2] - 222:22, 223:1</p> <p><b>speed</b> [1] - 142:15</p> <p><b>speeding</b> [1] - 208:12</p> <p><b>spell</b> [2] - 119:3, 119:4</p> <p><b>spelling</b> [1] - 12:7</p> <p><b>spend</b> [1] - 346:8</p> <p><b>spent</b> [4] - 43:22, 52:11, 347:6, 348:9</p> <p><b>split</b> [1] - 196:9</p> <p><b>spoken</b> [1] - 353:20</p> <p><b>sponsored</b> [1] - 313:5</p> <p><b>spot</b> [2] - 53:19, 317:25</p> <p><b>spot-check</b> [1] - 53:19</p> <p><b>spotty</b> [1] - 304:13</p> <p><b>spread</b> [2] - 44:8, 357:6</p> <p><b>spreadsheet</b> [5] - 230:1, 277:17, 277:21, 278:21, 278:22</p> <p><b>Spreadsheets</b> [1] - 9:3</p> <p><b>spring</b> [4] - 181:1, 354:23, 355:10, 355:25</p> <p><b>Spring</b> [2] - 355:23, 355:24</p> <p><b>springs</b> [3] - 354:22, 355:9, 355:19</p> <p><b>Springs</b> [1] - 355:20</p> <p><b>ss</b> [1] - 372:2</p> <p><b>St</b> [2] - 2:4, 2:9</p> <p><b>staff</b> [21] - 63:23, 257:5, 257:10, 257:13, 257:14, 257:18, 257:19, 261:16, 261:18, 288:13, 288:21, 288:22, 293:8, 307:7, 311:21, 315:22, 320:7, 321:15, 326:19, 362:9, 365:21</p>	<p><b>stamped</b> [2] - 278:5, 325:2</p> <p><b>Stan</b> [2] - 30:7, 125:5</p> <p><b>stand</b> [6] - 83:8, 186:11, 331:23, 334:14, 345:19, 357:20</p> <p><b>standard</b> [10] - 63:2, 76:13, 175:12, 297:23, 297:24, 298:4, 298:18, 306:14, 313:1, 315:15</p> <p><b>standards</b> [13] - 31:3, 32:5, 36:13, 63:3, 83:11, 193:20, 266:9, 266:13, 295:23, 296:14, 297:21, 298:15, 302:4</p> <p><b>standing</b> [4] - 151:9, 169:13, 191:12, 330:20</p> <p><b>standpoint</b> [5] - 60:14, 69:11, 74:2, 182:1, 259:11</p> <p><b>stands</b> [1] - 11:8</p> <p><b>start</b> [23] - 15:9, 40:24, 45:9, 64:24, 80:9, 94:18, 96:4, 98:6, 119:24, 120:10, 186:16, 201:16, 268:21, 318:10, 334:19, 345:25, 366:8, 367:14, 367:17, 368:11, 370:8, 370:13, 370:15</p> <p><b>start-up</b> [1] - 80:9</p> <p><b>started</b> [6] - 109:5, 125:20, 161:11, 300:16, 315:24, 346:18</p> <p><b>starting</b> [3] - 23:10, 369:13, 370:10</p> <p><b>starts</b> [1] - 36:1</p> <p><b>starve</b> [1] - 365:17</p> <p><b>starved</b> [1] - 333:25</p> <p><b>starving</b> [1] - 342:20</p> <p><b>state</b> [48] - 18:13, 18:14, 18:17, 18:20, 20:1, 21:9, 21:15, 23:11, 25:15, 27:19, 30:7, 32:5, 33:23, 38:17, 68:4, 69:14, 87:18, 88:8, 88:16, 99:3, 99:7, 138:12, 139:15, 151:18, 173:7, 176:8, 213:17, 213:19, 221:2, 223:22, 224:1, 264:9, 265:17, 296:23, 337:24, 340:14,</p>	<p>344:18, 351:16, 352:14, 353:4, 360:25, 366:1, 367:12, 369:14, 369:20, 370:18, 370:21</p> <p><b>State</b> [21] - 2:16, 18:21, 19:23, 21:14, 22:3, 25:20, 25:22, 36:21, 81:3, 85:16, 121:14, 151:10, 264:20, 290:18, 295:12, 297:15, 339:18, 349:24, 356:22, 357:5</p> <p><b>STATE</b> [3] - 1:1, 367:20, 372:1</p> <p><b>state's</b> [1] - 68:20</p> <p><b>state-by-state</b> [1] - 88:8</p> <p><b>statement</b> [22] - 50:21, 87:10, 88:5, 89:18, 89:22, 107:19, 134:11, 134:12, 148:4, 148:7, 149:25, 155:10, 155:11, 155:15, 159:5, 159:10, 162:19, 289:9, 289:24, 306:24, 329:14, 329:15</p> <p><b>statements</b> [12] - 138:1, 148:18, 148:20, 149:6, 160:20, 177:22, 192:21, 208:8, 232:6, 244:10, 329:10, 329:12</p> <p><b>States</b> [9] - 66:21, 95:24, 106:24, 117:22, 290:12, 294:2, 334:22, 344:8, 348:23</p> <p><b>states</b> [7] - 88:11, 88:12, 134:5, 138:4, 290:15, 322:1, 357:16</p> <p><b>stating</b> [1] - 333:23</p> <p><b>station</b> [1] - 49:13</p> <p><b>statistical</b> [2] - 187:9, 190:3</p> <p><b>status</b> [2] - 17:7, 29:19</p> <p><b>statute</b> [10] - 17:19, 17:24, 38:18, 169:13, 205:22, 264:10, 265:17, 266:2, 308:20, 341:13</p> <p><b>statutes</b> [1] - 205:8</p> <p><b>statutory</b> [3] - 81:15, 205:16, 205:18</p>	<p><b>stay</b> [2] - 329:21, 360:25</p> <p><b>stays</b> [3] - 51:1, 314:4, 349:1</p> <p><b>steaks</b> [1] - 291:6</p> <p><b>stench</b> [1] - 345:6</p> <p><b>step</b> [2] - 365:8, 365:14</p> <p><b>steps</b> [2] - 98:3, 238:17</p> <p><b>steroids</b> [1] - 46:18</p> <p><b>stick</b> [2] - 98:14, 364:12</p> <p><b>stigmatizes</b> [1] - 348:19</p> <p><b>still</b> [29] - 21:7, 21:8, 48:21, 56:7, 59:16, 59:22, 61:6, 61:11, 90:15, 96:24, 114:21, 115:1, 115:18, 116:17, 166:7, 166:12, 209:12, 209:14, 212:14, 228:4, 229:21, 282:8, 282:19, 304:25, 315:9, 321:23, 325:23, 345:9, 366:6</p> <p><b>Stipulated</b> [1] - 6:22</p> <p><b>stomach</b> [3] - 42:4, 42:10, 154:21</p> <p><b>stomached</b> [1] - 42:14</p> <p><b>stools</b> [1] - 44:5</p> <p><b>stop</b> [2] - 93:2, 197:10</p> <p><b>stopped</b> [2] - 102:13, 304:11</p> <p><b>storage</b> [2] - 30:4, 125:3</p> <p><b>stored</b> [1] - 192:3</p> <p><b>story</b> [1] - 202:22</p> <p><b>strange</b> [1] - 187:6</p> <p><b>strategic</b> [5] - 363:17, 365:4, 366:20, 366:21, 367:1</p> <p><b>stray</b> [1] - 142:11</p> <p><b>stream</b> [5] - 67:13, 205:6, 269:3, 270:20, 271:8</p> <p><b>streams</b> [6] - 62:13, 67:25, 69:17, 69:18, 319:4, 359:7</p> <p><b>stretch</b> [1] - 358:18</p> <p><b>stricken</b> [2] - 19:20, 284:21</p> <p><b>strict</b> [4] - 54:14, 76:5, 159:3, 159:14</p> <p><b>strictly</b> [3] - 26:9, 276:22, 280:24</p> <p><b>strike</b> [6] - 17:9,</p>
---	--	--	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>17:16, 109:10, 154:10, 155:6, 265:24 <b>striking</b> [2] - 18:10, 248:3 <b>stringent</b> [4] - 50:3, 139:18, 149:11, 316:14 <b>striped</b> [1] - 353:25 <b>strong</b> [1] - 14:3 <b>strongly</b> [3] - 335:24, 336:4, 350:15 <b>struck</b> [1] - 245:20 <b>structurally</b> [1] - 67:4 <b>structure</b> [1] - 203:17 <b>struggled</b> [1] - 65:24 <b>struggles</b> [1] - 66:16 <b>studied</b> [7] - 132:20, 193:6, 206:23, 239:24, 250:10, 269:22, 271:9 <b>studies</b> [21] - 122:2, 136:22, 137:1, 150:12, 150:22, 151:11, 158:24, 189:20, 190:3, 207:8, 235:9, 267:20, 269:1, 269:6, 269:7, 269:12, 269:15, 269:23, 270:24, 280:14, 320:1 <b>study</b> [17] - 78:4, 78:19, 187:9, 235:12, 235:18, 236:5, 236:15, 236:23, 237:2, 237:4, 237:16, 248:18, 267:22, 281:2, 282:17, 298:17, 329:25 <b>studying</b> [2] - 206:23, 270:19 <b>stuff</b> [7] - 84:7, 198:8, 207:15, 271:20, 271:21, 272:16, 272:21 <b>stun</b> [1] - 98:11 <b>Subexhibits</b> [1] - 6:8 <b>subject</b> [9] - 11:24, 12:20, 117:19, 190:6, 206:24, 213:4, 213:5, 252:24, 348:23 <b>submission</b> [2] - 231:3, 335:6 <b>submissions</b> [1] - 304:10 <b>submit</b> [10] - 14:18, 14:23, 216:5, 216:16, 322:20, 324:13, 335:21, 337:14, 352:19, 359:17</p>	<p><b>submitted</b> [34] - 24:16, 34:22, 35:2, 103:5, 103:8, 103:14, 104:19, 125:12, 127:8, 128:20, 132:22, 133:3, 157:23, 158:9, 158:18, 209:24, 211:25, 212:18, 216:24, 225:11, 225:14, 233:21, 245:9, 245:10, 247:16, 302:11, 302:12, 303:10, 303:13, 303:14, 324:13, 326:16, 326:19, 336:7 <b>submitting</b> [2] - 337:15, 348:2 <b>Subsection</b> [1] - 36:15 <b>subsection</b> [1] - 314:13 <b>subsequent</b> [3] - 135:3, 169:20, 234:22 <b>substance</b> [12] - 28:1, 50:17, 50:22, 51:8, 52:25, 53:1, 54:4, 62:18, 87:15, 162:12, 169:15, 285:14 <b>Substances</b> [2] - 7:22, 248:12 <b>substances</b> [10] - 123:11, 132:14, 149:23, 169:6, 220:12, 224:16, 336:16, 337:16, 338:4, 338:25 <b>substantial</b> [5] - 19:13, 285:20, 289:13, 289:15 <b>substantially</b> [1] - 285:18 <b>sucker</b> [1] - 354:17 <b>sudden</b> [1] - 191:22 <b>suffer</b> [1] - 201:8 <b>sufficiency</b> [2] - 178:7, 257:8 <b>sufficient</b> [18] - 31:2, 34:3, 38:8, 59:22, 61:6, 61:12, 61:17, 61:24, 63:2, 124:10, 178:9, 251:20, 258:16, 259:13, 260:15, 260:21, 261:6, 261:25 <b>sufficiently</b> [3] - 37:21, 255:2, 279:14 <b>sugar</b> [1] - 367:3</p>	<p><b>suggest</b> [1] - 186:2 <b>suggested</b> [2] - 169:23, 170:13 <b>suggesting</b> [4] - 163:16, 175:5, 315:10, 364:17 <b>suggestion</b> [2] - 174:17, 174:21 <b>suggests</b> [1] - 110:19 <b>Suite</b> [1] - 2:14 <b>sulfate</b> [1] - 301:25 <b>sulfates</b> [1] - 263:14 <b>sum</b> [1] - 267:14 <b>summarize</b> [3] - 214:24, 218:3, 237:22 <b>summarized</b> [1] - 244:10 <b>summary</b> [2] - 188:19, 213:10 <b>Summary</b> [6] - 6:3, 6:5, 6:7, 6:9, 7:4, 7:7 <b>summer</b> [2] - 194:5, 346:12 <b>Sunday</b> [1] - 193:19 <b>Superfund</b> [1] - 176:20 <b>supervision</b> [8] - 257:4, 257:9, 257:11, 258:3, 258:6, 258:7, 258:8, 261:11 <b>supplement</b> [1] - 328:25 <b>supplemented</b> [1] - 199:5 <b>supplied</b> [2] - 245:4, 257:2 <b>suppliers</b> [2] - 105:22, 105:24 <b>supply</b> [2] - 188:15, 338:8 <b>support</b> [6] - 150:22, 276:20, 286:14, 349:19, 350:2, 350:3 <b>supporters</b> [3] - 335:20, 338:22, 351:9 <b>Supporting</b> [1] - 6:8 <b>supporting</b> [3] - 227:4, 233:9, 233:20 <b>supposed</b> [9] - 53:1, 54:2, 69:2, 77:4, 147:11, 188:5, 274:6, 334:9, 358:21 <b>supposedly</b> [1] - 355:4 <b>surface</b> [10] - 32:21, 67:25, 68:9, 69:17, 119:21, 124:1, 271:13, 296:20, 297:2, 314:2</p>	<p><b>surgery</b> [1] - 53:3 <b>surprised</b> [1] - 365:19 <b>surrounding</b> [1] - 347:9 <b>survey</b> [4] - 119:16, 119:18, 120:12, 190:16 <b>surveyed</b> [3] - 78:10, 120:3, 121:4 <b>SUSAN</b> [2] - 5:15, 353:17 <b>Susan</b> [3] - 331:16, 331:18, 331:19 <b>suspended</b> [2] - 195:10, 352:22 <b>Suspension</b> [3] - 9:20, 9:21, 9:22 <b>suspensions</b> [1] - 191:21 <b>Swainson's</b> [1] - 354:10 <b>SWB</b> [2] - 6:21, 6:22 <b>swear</b> [1] - 331:20 <b>swearing</b> [1] - 329:17 <b>sweep</b> [1] - 307:5 <b>swine</b> [1] - 39:2 <b>switch</b> [4] - 40:10, 65:20, 66:7, 211:4 <b>switching</b> [1] - 223:4 <b>sworn</b> [19] - 23:7, 173:2, 176:2, 186:19, 186:20, 187:2, 211:11, 331:23, 332:3, 335:12, 339:5, 343:23, 344:3, 345:20, 346:3, 349:9, 351:2, 353:18, 372:7 <b>synopsis</b> [1] - 28:9 <b>synthetic</b> [4] - 215:8, 215:11, 300:14, 315:5 <b>synthetic-lined</b> [1] - 215:11 <b>synthetically</b> [1] - 36:11 <b>system</b> [23] - 34:3, 36:18, 37:24, 38:1, 38:2, 38:7, 39:15, 68:2, 69:12, 79:16, 154:20, 164:20, 168:1, 180:13, 194:4, 195:19, 198:11, 242:11, 276:15, 315:11, 333:19, 356:4 <b>systems</b> [22] - 36:19, 37:3, 37:10, 37:20, 68:3, 190:16, 193:12, 202:8, 202:10, 204:21, 204:25,</p>	<p>242:8, 256:13, 258:4, 259:23, 269:3, 269:9, 270:20, 271:8, 271:14, 354:23, 355:10 <b>Systems</b> [2] - 8:19, 212:21</p> <p style="text-align: center;"><b>T</b></p> <p><b>table</b> [15] - 12:19, 14:14, 33:6, 86:6, 100:24, 101:2, 172:7, 185:14, 201:14, 230:1, 252:9, 278:14, 318:6, 324:2, 366:1 <b>Table</b> [5] - 7:18, 229:2, 229:24, 230:5, 230:6 <b>tables</b> [2] - 235:14, 324:3 <b>Tables</b> [1] - 9:5 <b>tack</b> [1] - 222:23 <b>tag</b> [1] - 36:17 <b>tail</b> [4] - 43:20, 44:8, 45:7 <b>tailed</b> [1] - 354:20 <b>tailing</b> [2] - 263:11, 300:4 <b>tailings</b> [1] - 263:13 <b>tainted</b> [1] - 355:15 <b>tangential</b> [1] - 190:15 <b>tank</b> [24] - 37:2, 48:15, 48:17, 48:20, 48:22, 48:23, 48:25, 67:9, 79:16, 79:24, 80:1, 80:5, 141:16, 141:17, 141:18, 194:20, 194:21, 195:22, 196:1, 196:8, 203:22 <b>tankage</b> [1] - 50:7 <b>tanker</b> [1] - 199:24 <b>tanks</b> [20] - 36:9, 37:25, 67:9, 67:14, 68:19, 70:22, 74:14, 79:22, 174:23, 241:5, 241:15, 241:19, 257:8, 307:9, 307:16, 307:23, 310:18, 311:4, 311:12 <b>Tanya</b> [1] - 211:23 <b>Taos</b> [1] - 346:9 <b>taxes</b> [1] - 349:22 <b>taxpayer</b> [1] - 348:11 <b>taxpayers</b> [2] - 345:3, 348:18 <b>TDS</b> [8] - 32:4, 82:23,</p>
--	---	---	--	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>83:22, 83:23, 301:22, 301:24, 318:11, 318:12</p> <p><b>TEAL</b> [5] - 5:11, 344:1, 344:2, 344:5, 344:11</p> <p><b>Teal</b> [6] - 330:18, 331:23, 331:25, 344:5, 345:18, 347:6</p> <p><b>teal</b> [1] - 343:25</p> <p><b>team</b> [2] - 36:17, 257:15</p> <p><b>teat</b> [1] - 48:6</p> <p><b>teats</b> [1] - 48:6</p> <p><b>tech</b> [1] - 193:22</p> <p><b>Tech</b> [1] - 190:12</p> <p><b>Technical</b> [4] - 6:3, 6:5, 6:7, 6:9</p> <p><b>technical</b> [39] - 11:16, 11:18, 12:2, 12:8, 12:11, 12:14, 12:15, 14:25, 16:22, 16:24, 16:25, 18:11, 18:15, 18:16, 24:11, 25:8, 63:11, 182:1, 187:8, 201:23, 211:18, 257:5, 288:22, 327:14, 327:20, 328:7, 329:3, 329:20, 329:24, 339:10, 339:24, 339:25, 340:1, 349:13, 359:13, 359:20, 369:3, 369:9</p> <p><b>technically</b> [1] - 279:16</p> <p><b>techniques</b> [2] - 197:17, 197:18</p> <p><b>Techniques</b> [1] - 9:8</p> <p><b>teleconference</b> [3] - 17:3, 17:8, 21:13</p> <p><b>television</b> [1] - 333:22</p> <p><b>temperature</b> [2] - 154:22, 154:23</p> <p><b>ten</b> [14] - 27:20, 28:10, 28:12, 29:7, 53:13, 76:7, 163:1, 255:9, 284:17, 317:3, 343:5, 352:18, 362:5, 362:12</p> <p><b>ten-year</b> [2] - 317:3, 352:18</p> <p><b>tend</b> [4] - 37:20, 45:20, 242:13, 366:17</p> <p><b>tending</b> [1] - 201:20</p> <p><b>tens</b> [1] - 342:12</p> <p><b>tenure</b> [3] - 299:4, 299:5, 318:24</p> <p><b>term</b> [2] - 191:9,</p>	<p>212:13</p> <p><b>terminating</b> [1] - 364:10</p> <p><b>termination</b> [1] - 308:20</p> <p><b>terms</b> [14] - 69:11, 77:9, 78:7, 82:8, 82:18, 84:5, 167:10, 216:18, 217:2, 263:12, 266:10, 309:15, 337:13, 348:12</p> <p><b>territories</b> [1] - 24:22</p> <p><b>territory</b> [1] - 142:11</p> <p><b>Terry</b> [1] - 8:13</p> <p><b>test</b> [16] - 33:11, 48:11, 48:14, 49:10, 53:21, 53:23, 53:24, 126:9, 141:15, 159:21, 159:23, 160:4, 160:5, 161:7, 174:22, 310:20</p> <p><b>tested</b> [15] - 34:6, 48:10, 48:11, 48:17, 48:21, 48:24, 52:20, 53:15, 76:3, 147:7, 147:19, 157:3, 200:18, 209:15, 320:5</p> <p><b>testified</b> [19] - 23:8, 107:18, 112:4, 122:13, 132:1, 142:18, 165:18, 173:3, 176:3, 187:3, 211:12, 219:6, 232:2, 232:12, 247:7, 267:7, 282:13, 291:20, 315:4</p> <p><b>testify</b> [8] - 24:10, 185:21, 189:12, 232:4, 232:13, 232:18, 335:15</p> <p><b>testifying</b> [3] - 181:3, 239:16, 267:11</p> <p><b>testimonial</b> [1] - 232:6</p> <p><b>Testimony</b> [9] - 4:23, 6:3, 6:5, 6:7, 6:9, 6:19, 6:24, 10:2, 10:4</p> <p><b>TESTIMONY</b> [1] - 187:4</p> <p><b>testimony</b> [155] - 11:24, 12:18, 15:17, 16:25, 17:17, 18:12, 18:15, 19:12, 19:19, 24:1, 24:15, 24:22, 41:3, 56:16, 63:11, 80:23, 84:24, 85:3, 85:5, 92:8, 106:12, 110:7, 130:7, 136:23, 136:24, 148:19, 157:23, 158:9,</p>	<p>158:10, 160:20, 167:2, 172:3, 174:6, 174:9, 174:18, 174:21, 175:16, 177:3, 177:14, 177:22, 177:24, 178:8, 180:6, 181:7, 183:21, 184:23, 186:4, 187:24, 188:7, 188:20, 201:11, 201:19, 201:24, 211:18, 211:20, 212:1, 212:4, 212:7, 213:7, 213:13, 218:5, 218:16, 218:18, 219:3, 219:21, 226:18, 226:24, 226:25, 228:20, 232:22, 235:8, 235:9, 236:18, 237:22, 237:24, 238:15, 238:23, 239:2, 239:16, 240:22, 241:10, 241:12, 242:4, 244:10, 244:23, 245:19, 246:13, 247:15, 250:7, 253:20, 254:2, 254:15, 256:20, 259:1, 262:5, 262:6, 273:7, 273:18, 273:23, 273:25, 275:8, 275:10, 275:20, 275:25, 280:2, 282:10, 285:13, 285:17, 285:19, 285:21, 289:5, 291:9, 293:25, 294:1, 294:7, 298:20, 299:11, 307:12, 311:24, 312:4, 312:10, 314:7, 314:13, 315:3, 315:17, 315:19, 322:1, 329:3, 329:5, 335:21, 336:6, 338:10, 351:25, 352:4, 352:15, 360:1, 361:16, 363:5, 363:19, 363:22, 363:23, 364:2, 364:7, 364:20, 366:23, 366:25, 369:9, 372:6, 372:8, 372:9</p> <p><b>testing</b> [23] - 31:6, 31:18, 31:20, 32:3, 34:5, 34:9, 54:4, 54:14, 54:17, 141:21, 155:8, 155:12, 155:17, 156:8, 159:11, 160:12,</p>	<p>160:15, 160:18, 161:14, 168:6, 195:4, 200:10, 307:8</p> <p><b>tests</b> [5] - 53:22, 139:10, 159:18, 291:12</p> <p><b>Texas</b> [5] - 96:20, 345:11, 348:7, 348:9, 356:13</p> <p><b>THE</b> [6] - 1:2, 1:5, 2:2, 2:6, 167:6</p> <p><b>themselves</b> [6] - 86:6, 140:9, 262:13, 264:5, 321:20, 329:23</p> <p><b>theoretical</b> [1] - 277:2</p> <p><b>theory</b> [2] - 38:5, 68:13</p> <p><b>therapeutic</b> [4] - 138:7, 147:8, 147:20, 162:3</p> <p><b>thereafter</b> [2] - 199:10, 316:4</p> <p><b>therefore</b> [6] - 142:2, 144:17, 144:25, 145:2, 219:10, 336:15</p> <p><b>thereof</b> [1] - 39:1</p> <p><b>they've</b> [17] - 24:15, 152:23, 165:2, 225:15, 226:24, 235:2, 297:9, 298:14, 301:1, 301:4, 302:12, 302:13, 311:13, 311:14, 322:17, 333:25, 334:7</p> <p><b>thinking</b> [7] - 79:23, 149:19, 305:5, 307:23, 322:10, 346:20, 367:13</p> <p><b>third</b> [7] - 195:3, 277:4, 277:6, 277:11, 277:13, 278:25, 337:7</p> <p><b>thoroughbreds</b> [1] - 207:4</p> <p><b>thoroughly</b> [1] - 269:21</p> <p><b>thoughts</b> [2] - 142:21, 328:20</p> <p><b>thousand</b> [7] - 54:10, 236:4, 236:22, 284:5, 284:6, 317:3</p> <p><b>thousand-pound</b> [3] - 284:5, 284:6</p> <p><b>thousand-year</b> [1] - 317:3</p> <p><b>thousands</b> [3] - 204:12, 204:14, 342:12</p> <p><b>thousandth</b> [2] - 54:11, 54:13</p>	<p><b>thrashers</b> [1] - 354:8</p> <p><b>threat</b> [8] - 62:21, 164:22, 184:18, 258:15, 263:24, 272:25, 275:7, 276:2</p> <p><b>threatened</b> [3] - 356:11, 357:2, 357:3</p> <p><b>threats</b> [2] - 224:10, 350:6</p> <p><b>three</b> [43] - 24:2, 31:12, 32:1, 34:7, 36:24, 37:1, 44:24, 48:9, 78:14, 101:12, 106:24, 109:10, 110:18, 111:8, 121:6, 126:4, 126:18, 135:10, 135:16, 135:18, 138:4, 165:13, 165:17, 190:13, 192:14, 194:7, 194:13, 202:20, 202:23, 212:8, 226:11, 231:4, 233:10, 236:12, 294:1, 308:16, 326:6, 330:7, 338:12, 338:14, 352:23</p> <p><b>throated</b> [1] - 354:7</p> <p><b>throughout</b> [4] - 25:15, 27:19, 225:4, 333:21</p> <p><b>throughs</b> [1] - 117:11</p> <p><b>Tibetans</b> [1] - 209:7</p> <p><b>tie</b> [1] - 107:15</p> <p><b>tight</b> [1] - 346:24</p> <p><b>timeliness</b> [1] - 245:8</p> <p><b>timely</b> [2] - 245:4, 312:23</p> <p><b>tin</b> [1] - 203:16</p> <p><b>tissue</b> [1] - 54:2</p> <p><b>tissues</b> [3] - 159:4, 159:8, 159:15</p> <p><b>titles</b> [1] - 173:24</p> <p><b>TKN</b> [4] - 82:22, 83:8, 301:17, 301:21</p> <p><b>today</b> [47] - 11:4, 13:8, 13:15, 14:5, 14:20, 15:7, 19:17, 22:2, 23:13, 65:21, 91:6, 102:16, 122:9, 136:23, 137:4, 137:7, 142:13, 156:15, 170:18, 174:3, 174:25, 188:17, 211:19, 219:7, 226:9, 232:7, 235:9, 240:23, 265:17, 275:9, 291:25, 335:19,</p>
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KATHY TOWNSEND COURT REPORTERS

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<p>336:10, 336:12, 336:23, 337:8, 337:18, 338:5, 338:11, 338:17, 343:13, 347:17, 349:13, 352:1, 364:16, 367:14, 368:12</p> <p><b>today's</b> [3] - 174:15, 336:7, 351:10</p> <p><b>together</b> [7] - 66:12, 125:17, 127:21, 234:10, 320:25, 347:3, 347:4</p> <p><b>tomorrow</b> [13] - 11:4, 14:21, 359:17, 361:11, 362:10, 364:16, 364:19, 366:2, 368:12, 368:16, 368:18, 370:4</p> <p><b>ton</b> [2] - 41:16, 236:2</p> <p><b>tonight</b> [11] - 12:9, 12:17, 14:20, 359:17, 360:2, 361:10, 362:22, 363:7, 363:9, 364:8, 370:9</p> <p><b>tons</b> [2] - 192:14, 235:20</p> <p><b>took</b> [12] - 58:14, 112:12, 116:13, 128:10, 162:9, 163:22, 196:14, 200:15, 208:18, 223:23, 224:1, 279:25</p> <p><b>top</b> [12] - 18:13, 18:14, 119:16, 120:13, 131:10, 273:15, 313:11, 313:20, 331:4, 331:5</p> <p><b>topic</b> [1] - 14:3</p> <p><b>topog</b> [1] - 119:20</p> <p><b>topogging</b> [1] - 119:21</p> <p><b>topography</b> [1] - 78:16</p> <p><b>total</b> [11] - 83:9, 83:23, 129:2, 167:10, 263:16, 279:4, 281:25, 301:17, 301:22, 301:23, 301:24</p> <p><b>totalling</b> [1] - 352:17</p> <p><b>totally</b> [1] - 283:12</p> <p><b>touched</b> [1] - 348:3</p> <p><b>touchstone</b> [1] - 348:4</p> <p><b>tough</b> [1] - 277:11</p> <p><b>tourists</b> [2] - 345:14, 355:11</p> <p><b>toward</b> [1] - 188:6</p>	<p><b>towards</b> [4] - 46:12, 94:2, 212:12, 276:17</p> <p><b>Tower</b> [1] - 3:5</p> <p><b>town</b> [3] - 65:10, 196:25, 345:15</p> <p><b>Townsend</b> [4] - 12:22, 12:24, 372:4</p> <p><b>TOWNSEND</b> [5] - 93:18, 186:18, 204:2, 219:20, 222:15</p> <p><b>toxic</b> [16] - 36:14, 90:6, 90:7, 183:2, 183:5, 183:8, 183:14, 183:16, 224:20, 295:16, 296:2, 296:6, 296:8, 298:7, 338:6, 338:24</p> <p><b>toxicity</b> [1] - 218:24</p> <p><b>toxicologist</b> [2] - 131:19, 291:14</p> <p><b>toxicology</b> [3] - 157:16, 219:5, 294:21</p> <p><b>trace</b> [1] - 55:7</p> <p><b>tracked</b> [1] - 207:4</p> <p><b>tract</b> [1] - 45:6</p> <p><b>traditional</b> [2] - 336:13, 337:1</p> <p><b>traffic</b> [1] - 29:9</p> <p><b>Trahan</b> [1] - 211:24</p> <p><b>trained</b> [2] - 220:21, 249:25</p> <p><b>trainers</b> [1] - 53:20</p> <p><b>training</b> [7] - 53:3, 83:2, 121:22, 122:6, 169:19, 190:11, 268:20</p> <p><b>TRANSCRIPT</b> [1] - 1:12</p> <p><b>transcript</b> [9] - 12:21, 12:24, 13:1, 14:15, 232:21, 329:24, 329:25, 372:7, 372:9</p> <p><b>transmission</b> [1] - 340:19</p> <p><b>transport</b> [2] - 141:18, 272:4</p> <p><b>transportation</b> [2] - 66:13, 139:4</p> <p><b>transported</b> [2] - 315:7, 346:16</p> <p><b>travel</b> [3] - 361:11, 366:2, 370:1</p> <p><b>treat</b> [1] - 193:12</p> <p><b>treated</b> [2] - 294:3, 336:15</p> <p><b>treating</b> [2] - 26:21, 141:14</p> <p><b>treatment</b> [12] - 39:21, 44:15, 47:15,</p>	<p>50:15, 150:23, 193:1, 195:19, 196:20, 269:8, 286:21, 290:17, 319:7</p> <p><b>tremendous</b> [1] - 44:11</p> <p><b>trial</b> [1] - 245:12</p> <p><b>Tribunal</b> [1] - 177:4</p> <p><b>tried</b> [3] - 197:1, 197:16, 207:20</p> <p><b>tries</b> [1] - 308:5</p> <p><b>trim</b> [2] - 116:5, 116:9</p> <p><b>trimming</b> [3] - 116:6, 116:7, 116:8</p> <p><b>trip</b> [1] - 234:16</p> <p><b>TRO</b> [1] - 10:11</p> <p><b>trouble</b> [3] - 33:4, 146:6, 198:25</p> <p><b>truck</b> [8] - 198:6, 198:8, 198:9, 199:6, 199:17, 199:23, 199:24, 200:15</p> <p><b>trucking</b> [1] - 48:23</p> <p><b>true</b> [20] - 21:13, 37:22, 87:20, 87:24, 132:4, 149:21, 151:13, 163:11, 174:10, 175:16, 200:19, 231:6, 244:14, 254:19, 292:5, 297:20, 298:9, 367:17, 369:11, 372:9</p> <p><b>truth</b> [7] - 252:10, 253:6, 281:20, 288:8, 329:17, 329:18</p> <p><b>truthful</b> [1] - 329:12</p> <p><b>try</b> [12] - 94:15, 140:25, 161:5, 192:13, 212:1, 233:15, 292:4, 306:14, 306:17, 308:8, 346:25, 370:15</p> <p><b>Try</b> [1] - 230:12</p> <p><b>trying</b> [22] - 41:2, 60:13, 65:25, 100:12, 107:18, 123:21, 142:25, 143:5, 148:17, 148:20, 160:17, 198:5, 227:24, 232:15, 267:22, 272:2, 292:3, 309:24, 343:11, 347:7, 348:10, 358:13</p> <p><b>turn</b> [6] - 39:24, 41:4, 43:3, 261:21, 346:18, 347:5</p> <p><b>turned</b> [5] - 192:5, 193:7, 197:2, 198:9, 208:22</p>	<p><b>turning</b> [4] - 34:12, 38:12, 46:1, 344:24</p> <p><b>turns</b> [1] - 199:18</p> <p><b>turtle</b> [2] - 354:18, 354:19</p> <p><b>twenty</b> [1] - 163:1</p> <p><b>twice</b> [2] - 44:23, 102:14</p> <p><b>twisting</b> [1] - 342:24</p> <p><b>two</b> [69] - 11:10, 13:13, 13:21, 31:11, 32:15, 34:7, 36:9, 36:10, 36:19, 37:1, 43:7, 43:8, 46:8, 66:17, 66:18, 67:8, 67:9, 67:14, 67:18, 68:19, 68:20, 75:2, 78:12, 78:20, 79:21, 79:22, 101:12, 108:17, 118:10, 126:4, 126:12, 126:13, 142:6, 154:16, 177:1, 181:12, 193:3, 199:6, 209:8, 222:11, 234:10, 241:3, 241:4, 245:5, 245:10, 245:21, 266:15, 292:14, 295:21, 300:18, 312:7, 313:9, 321:8, 323:21, 324:5, 325:11, 325:17, 326:5, 326:7, 330:7, 339:11, 348:12, 355:2, 364:1, 364:15, 365:5, 368:10</p> <p><b>two-day</b> [1] - 365:5</p> <p><b>type</b> [42] - 28:23, 30:21, 37:2, 37:24, 54:16, 67:9, 69:2, 71:21, 72:4, 75:12, 81:2, 115:8, 117:20, 120:22, 180:17, 180:22, 181:23, 222:24, 222:25, 224:7, 235:24, 239:20, 239:21, 241:18, 262:11, 262:17, 262:19, 263:9, 263:14, 271:3, 277:14, 290:3, 295:13, 295:14, 299:6, 305:6, 305:10, 305:15, 307:19, 308:4, 333:10</p> <p><b>types</b> [24] - 37:11, 37:20, 37:21, 46:4, 80:21, 131:10, 168:11, 170:13, 218:9, 219:24,</p>	<p>223:16, 223:17, 239:12, 248:16, 251:9, 251:11, 256:13, 263:13, 263:19, 269:23, 272:12, 288:2, 290:25, 309:6</p> <p><b>typical</b> [6] - 36:18, 37:6, 37:15, 60:21, 195:9, 224:5</p> <p><b>typically</b> [13] - 37:14, 181:25, 184:14, 250:15, 251:3, 257:15, 259:14, 288:17, 301:20, 301:25, 306:16, 310:9, 319:9</p> <p><b>typo</b> [1] - 147:14</p>
<b>U</b>				
<p><b>udder</b> [2] - 41:25, 48:2</p> <p><b>udders</b> [1] - 109:18</p> <p><b>ultimately</b> [3] - 222:2, 257:4, 259:24</p> <p><b>ultraviolet</b> [1] - 263:6</p> <p><b>unanimously</b> [1] - 196:24</p> <p><b>unaware</b> [3] - 90:7, 146:25, 183:3</p> <p><b>uncertain</b> [1] - 368:8</p> <p><b>uncertainty</b> [1] - 238:25</p> <p><b>unchanged</b> [1] - 180:11</p> <p><b>unclear</b> [1] - 140:11</p> <p><b>unconscious</b> [2] - 98:9, 345:8</p> <p><b>under</b> [60] - 19:12, 23:7, 57:17, 60:15, 61:10, 79:15, 81:15, 83:11, 101:15, 102:22, 131:7, 145:5, 159:3, 159:14, 173:2, 176:2, 183:2, 187:2, 191:18, 198:15, 199:2, 205:24, 211:11, 213:23, 216:19, 221:7, 222:18, 225:8, 226:22, 253:17, 253:25, 257:1, 257:9, 257:10, 258:5, 258:7, 258:8, 261:1, 264:14, 267:4, 287:16, 292:14, 294:11, 298:15, 307:6, 319:8, 319:9, 329:5, 329:16, 332:3, 335:12, 339:5,</p>				

KATHY TOWNSEND COURT REPORTERS

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(505) 243-5018 - Fax (505) 243-3606

<p>344:3, 346:3, 349:9, 351:2, 353:18, 357:13, 368:21</p> <p><b>underground</b> [4] - 76:15, 119:20, 352:3, 356:4</p> <p><b>underneath</b> [8] - 55:19, 55:25, 230:3, 256:23, 258:3, 261:10, 264:18, 267:5</p> <p><b>understood</b> [6] - 182:7, 285:16, 330:10, 333:17, 365:18, 368:8</p> <p><b>underway</b> [1] - 361:21</p> <p><b>undetectable</b> [1] - 90:14</p> <p><b>undetermined</b> [1] - 77:17</p> <p><b>undue</b> [4] - 240:8, 240:10, 240:12, 295:17</p> <p><b>unfamiliar</b> [1] - 170:19</p> <p><b>unfit</b> [3] - 164:22, 165:1, 165:4</p> <p><b>unfortunately</b> [1] - 245:12</p> <p><b>unfounded</b> [2] - 245:21, 253:16</p> <p><b>unit</b> [1] - 279:3</p> <p><b>United</b> [9] - 66:21, 95:24, 106:24, 117:22, 290:12, 294:2, 334:21, 344:8, 348:23</p> <p><b>universal</b> [1] - 47:13</p> <p><b>unknown</b> [3] - 351:16, 351:20, 352:8</p> <p><b>unless</b> [11] - 44:7, 53:2, 68:5, 68:6, 69:8, 101:6, 130:2, 282:2, 298:5, 361:19</p> <p><b>unlike</b> [2] - 336:13, 337:1</p> <p><b>unlikely</b> [1] - 157:8</p> <p><b>unorthodox</b> [1] - 197:16</p> <p><b>unquote</b> [6] - 138:8, 139:20, 155:9, 155:13, 159:4, 161:22</p> <p><b>unsupported</b> [1] - 245:22</p> <p><b>unsure</b> [1] - 368:14</p> <p><b>unthinkable</b> [1] - 347:20</p> <p><b>untruths</b> [1] - 342:23</p> <p><b>ununique</b> [1] - 309:4</p> <p><b>unusual</b> [3] - 289:2,</p>	<p>322:4, 322:6</p> <p><b>unwaivable</b> [1] - 18:18</p> <p><b>unwanted</b> [1] - 340:14</p> <p><b>up</b> [103] - 12:16, 14:16, 14:17, 18:23, 32:22, 33:20, 36:5, 37:17, 41:25, 44:5, 48:24, 53:14, 54:24, 55:4, 60:1, 61:10, 66:1, 66:9, 70:4, 72:21, 80:9, 91:1, 92:11, 92:17, 93:2, 95:4, 97:13, 97:17, 98:13, 109:17, 116:17, 118:2, 118:9, 118:12, 142:16, 161:5, 161:14, 163:21, 163:25, 164:5, 165:22, 166:1, 167:3, 177:20, 178:6, 180:3, 182:16, 184:8, 184:17, 184:24, 185:1, 185:10, 185:18, 185:19, 186:13, 186:14, 189:7, 191:2, 191:24, 195:2, 195:15, 198:2, 199:15, 200:10, 203:1, 206:16, 206:19, 206:20, 208:12, 225:25, 226:24, 229:17, 231:22, 236:21, 250:5, 253:14, 270:6, 270:8, 271:15, 271:19, 272:16, 272:19, 274:1, 274:18, 277:13, 277:14, 278:25, 296:12, 296:13, 297:11, 298:6, 311:22, 318:13, 320:16, 322:25, 333:23, 339:19, 341:6, 348:23, 359:23, 359:25, 361:22, 362:25</p> <p><b>Up</b> [1] - 36:1</p> <p><b>upgrade</b> [2] - 59:18, 70:4</p> <p><b>upgradient</b> [4] - 31:8, 32:5, 126:9, 126:12</p> <p><b>ups</b> [1] - 191:5</p> <p><b>upset</b> [1] - 347:15</p> <p><b>upside</b> [1] - 98:13</p> <p><b>Uptown</b> [1] - 2:13</p> <p><b>upwards</b> [1] - 57:15</p>	<p><b>uranium</b> [4] - 191:17, 192:14, 305:8</p> <p><b>urge</b> [3] - 336:10, 338:23, 350:15</p> <p><b>urinalysis</b> [2] - 53:22, 53:24</p> <p><b>urine</b> [1] - 55:11</p> <p><b>US</b> [2] - 198:23, 355:22</p> <p><b>usage</b> [3] - 58:4, 281:10, 281:22</p> <p><b>USDA</b> [44] - 7:20, 66:4, 95:24, 95:25, 96:4, 96:8, 96:12, 98:4, 104:1, 104:7, 104:11, 104:16, 104:20, 105:6, 116:3, 117:12, 138:7, 138:11, 138:15, 138:17, 142:23, 143:1, 151:17, 152:15, 153:9, 153:14, 156:8, 159:3, 159:15, 159:18, 159:20, 160:5, 160:12, 160:15, 160:18, 161:6, 161:13, 166:16, 205:15, 205:17, 332:25, 339:15, 352:22</p> <p><b>USDA's</b> [1] - 49:12</p> <p><b>USDA/FSIS</b> [2] - 6:20, 142:11</p> <p><b>useful</b> [1] - 210:22</p> <p><b>uses</b> [1] - 51:21</p> <p><b>USGS</b> [7] - 8:22, 120:4, 120:14, 121:4, 270:19, 271:9, 272:1</p>	<p>40:9, 43:23, 55:15, 56:19, 60:5, 60:11, 62:4, 62:7, 63:18, 97:6, 104:2, 122:21, 128:2, 129:12, 129:16, 129:19, 133:12, 133:23, 134:17, 135:9, 137:17, 137:19, 167:25, 183:6, 183:12, 183:23, 188:9, 188:10, 189:2, 198:13, 198:17, 199:21, 199:25, 200:5, 201:5, 209:9, 209:23, 215:15, 215:20, 215:23, 216:8, 216:22, 217:4, 217:17, 225:8, 225:22, 226:9, 226:13, 226:18, 226:20, 227:4, 227:15, 233:9, 233:21, 234:6, 237:2, 237:5, 237:24, 243:24, 247:18, 256:12, 260:19, 261:5, 265:1, 272:22, 287:10, 289:1, 289:14, 289:16, 300:12, 314:20, 319:14, 319:19, 319:20, 319:23, 319:25, 322:2, 322:6, 323:19, 324:10, 335:22, 336:10, 336:19, 337:7, 337:11, 337:18, 337:22, 338:2, 338:3, 338:10, 338:13, 338:17, 338:25, 342:2, 345:1, 345:5, 347:16, 347:20, 347:24, 349:20, 352:2, 352:11, 352:16, 352:18, 352:23, 353:1, 353:6, 353:13, 355:1, 356:3, 357:14, 358:21, 359:4</p> <p><b>VALLEY</b> [2] - 1:5, 6:2</p> <p><b>valley</b> [3] - 319:15, 319:17, 320:14</p> <p><b>value</b> [1] - 143:20</p> <p><b>values</b> [1] - 195:6</p> <p><b>vantage</b> [1] - 199:19</p> <p><b>varies</b> [4] - 57:18, 139:22, 184:1, 306:10</p> <p><b>variety</b> [3] - 20:20, 336:15, 336:23</p> <p><b>various</b> [2] - 52:21,</p>	<p>225:4</p> <p><b>varying</b> [2] - 21:4, 283:16</p> <p><b>vast</b> [1] - 353:10</p> <p><b>vein</b> [1] - 98:15</p> <p><b>Velda</b> [1] - 193:16</p> <p><b>ventilation</b> [1] - 194:4</p> <p><b>veracity</b> [1] - 248:17</p> <p><b>verification</b> [1] - 80:9</p> <p><b>verified</b> [1] - 80:8</p> <p><b>verify</b> [6] - 31:16, 125:11, 126:7, 126:9, 126:19, 179:4</p> <p><b>version</b> [2] - 215:13, 246:12</p> <p><b>versus</b> [7] - 43:4, 263:11, 266:24, 284:3, 284:4, 292:1, 323:19</p> <p><b>vet</b> [4] - 169:19, 252:1, 276:3, 339:15</p> <p><b>veterinarian</b> [22] - 23:20, 26:8, 45:13, 45:16, 49:13, 87:22, 110:8, 151:10, 161:18, 164:6, 169:14, 169:18, 170:22, 267:24, 267:25, 275:14, 275:21, 276:11, 284:23, 291:15, 333:2</p> <p><b>veterinarians</b> [6] - 46:10, 53:19, 147:3, 169:12, 276:7, 276:17</p> <p><b>veterinary</b> [19] - 136:9, 218:23, 219:4, 242:9, 267:23, 268:4, 268:8, 268:20, 269:2, 270:12, 270:22, 273:11, 274:13, 275:16, 276:12, 280:10, 284:25, 291:15, 336:15</p> <p><b>Veterinary</b> [4] - 8:16, 8:20, 26:11, 212:21</p> <p><b>vets</b> [2] - 267:19, 275:18</p> <p><b>vicinity</b> [1] - 307:15</p> <p><b>video</b> [2] - 199:20, 199:22</p> <p><b>viewable</b> [2] - 13:2, 14:1</p> <p><b>views</b> [2] - 19:25, 174:14</p> <p><b>villages</b> [1] - 325:18</p> <p><b>violated</b> [1] - 337:12</p> <p><b>violation</b> [1] - 184:12, 195:1, 197:1, 207:17, 216:4, 216:6,</p>
<b>V</b>				
		<p><b>vacancy</b> [2] - 184:2, 184:4</p> <p><b>Vacca</b> [1] - 8:8</p> <p><b>vaccinate</b> [1] - 46:25</p> <p><b>vaccinations</b> [1] - 138:16</p> <p><b>vaccine</b> [1] - 46:24</p> <p><b>vaccines</b> [5] - 43:4, 46:3, 46:22, 47:1, 251:14</p> <p><b>valid</b> [2] - 253:19, 269:6</p> <p><b>Valley</b> [128] - 6:12, 7:18, 8:24, 9:11, 9:13, 9:15, 9:17, 9:19, 9:24, 10:10, 11:5, 15:14, 23:16, 36:18, 38:7,</p>		

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>287:15, 326:14, 326:18, 337:24, 370:7 <b>Violation</b> [1] - 9:18 <b>violations</b> [8] - 197:7, 197:11, 338:1, 345:1, 345:4, 347:16, 352:17, 352:24 <b>violet</b> [1] - 251:17 <b>Virginia</b> [3] - 1:16, 3:11, 190:12 <b>virtually</b> [1] - 239:7 <b>visible</b> [1] - 69:2 <b>visit</b> [2] - 34:25, 117:6 <b>visited</b> [2] - 196:15, 319:11 <b>visual</b> [2] - 57:4, 68:24 <b>voice</b> [3] - 86:16, 223:9, 362:6 <b>voir</b> [7] - 23:24, 24:21, 25:2, 252:22, 252:23, 253:1, 255:1 <b>volume</b> [42] - 37:16, 37:18, 42:25, 43:16, 44:2, 70:12, 70:23, 75:14, 76:8, 77:3, 124:2, 128:19, 128:20, 129:2, 180:8, 180:14, 181:11, 181:14, 182:22, 225:2, 225:7, 225:10, 225:16, 225:17, 226:15, 234:2, 234:3, 235:5, 235:10, 279:6, 279:7, 283:14, 292:6, 292:7, 292:11, 292:12, 292:20, 292:21, 292:24, 293:2, 313:4 <b>Volume</b> [1] - 1:19 <b>volumes</b> [6] - 13:21, 70:13, 235:15, 235:23, 293:12, 293:18 <b>volumetric</b> [2] - 74:23, 292:1 <b>voluntary</b> [2] - 104:8, 104:9 <b>volunteer</b> [1] - 189:17 <b>vote</b> [1] - 21:25</p> <p style="text-align: center;"><b>W</b></p> <p><b>Wagman</b> [46] - 4:8, 4:10, 4:12, 4:14, 4:18, 4:21, 16:2, 16:5, 20:9, 22:9, 64:1, 64:7, 86:5,</p>	<p>92:24, 93:14, 93:15, 94:4, 99:22, 107:15, 112:1, 113:15, 114:6, 130:1, 130:18, 142:7, 142:19, 142:21, 149:3, 151:13, 152:12, 160:19, 160:21, 166:25, 167:8, 171:12, 178:22, 179:15, 184:21, 185:14, 210:4, 228:17, 228:25, 361:2, 361:7, 361:17, 367:8 <b>WAGMAN</b> [93] - 3:3, 16:3, 20:11, 22:10, 24:8, 24:17, 63:13, 64:8, 86:7, 92:25, 93:5, 93:16, 93:19, 94:6, 94:10, 94:12, 94:20, 95:8, 95:10, 99:18, 99:19, 100:8, 100:11, 100:25, 101:11, 107:17, 108:3, 108:4, 110:15, 112:2, 112:3, 113:16, 114:9, 114:13, 114:17, 114:20, 119:8, 119:12, 120:9, 121:9, 121:11, 121:12, 129:22, 130:5, 130:14, 130:20, 135:25, 136:2, 142:24, 143:4, 143:10, 143:11, 145:23, 145:24, 149:4, 149:9, 151:14, 151:16, 151:17, 152:14, 160:23, 161:5, 161:6, 161:12, 161:13, 165:24, 166:6, 166:20, 171:13, 171:15, 177:16, 178:18, 179:17, 179:23, 180:2, 183:18, 183:20, 184:19, 185:16, 210:5, 211:1, 211:4, 229:7, 229:9, 230:14, 231:2, 231:14, 294:9, 325:10, 325:13, 361:8, 367:9, 371:2 <b>Wagman's</b> [1] - 142:14 <b>Wait</b> [1] - 186:18 <b>wait</b> [4] - 151:2, 186:18 <b>waited</b> [1] - 326:16 <b>waiver</b> [1] - 104:14</p>	<p><b>wake</b> [1] - 66:9 <b>walk</b> [2] - 117:11, 160:17 <b>walk-throughs</b> [1] - 117:11 <b>walking</b> [1] - 89:5 <b>wall</b> [2] - 67:10, 89:6 <b>wants</b> [4] - 186:6, 242:20, 334:16, 349:21 <b>War</b> [1] - 191:17 <b>warning</b> [2] - 15:1, 194:16 <b>warrant</b> [1] - 238:13 <b>wash</b> [8] - 68:18, 98:23, 114:24, 115:1, 116:12, 116:17, 116:19, 270:8 <b>washdown</b> [4] - 36:8, 58:7, 98:22, 116:20 <b>washing</b> [5] - 115:4, 115:5, 284:3, 284:4 <b>waste</b> [20] - 27:24, 50:7, 62:13, 67:13, 71:21, 175:13, 192:1, 195:9, 196:22, 197:17, 200:25, 209:2, 262:10, 262:11, 262:17, 262:19, 263:13, 296:24, 319:3, 338:6 <b>wastes</b> [4] - 239:19, 271:1, 340:23, 341:6 <b>Wastes</b> [1] - 8:15 <b>Wastewater</b> [3] - 7:7, 8:21, 212:22 <b>wastewater</b> [73] - 36:6, 36:7, 37:8, 39:21, 67:5, 67:6, 67:16, 70:16, 74:3, 74:6, 77:3, 79:5, 79:8, 79:9, 82:1, 95:11, 110:20, 110:25, 112:11, 112:19, 123:15, 132:18, 135:12, 182:15, 182:24, 193:12, 196:18, 203:11, 213:23, 217:23, 220:4, 224:7, 224:18, 225:2, 226:12, 227:7, 233:23, 235:10, 235:15, 235:25, 236:1, 236:4, 236:6, 236:9, 236:13, 236:19, 236:24, 236:25, 237:4, 239:4, 242:9, 242:10, 256:7, 266:23, 269:3, 269:8,</p>	<p>269:20, 270:1, 270:3, 274:1, 274:18, 280:14, 281:4, 283:11, 283:14, 290:17, 297:6, 314:19, 319:7, 337:4, 338:3, 338:15, 353:12 <b>watch</b> [3] - 49:2, 153:18, 199:22 <b>watched</b> [1] - 199:18 <b>water</b> [94] - 30:6, 30:8, 31:14, 31:24, 31:25, 32:7, 32:25, 36:12, 36:20, 44:16, 56:8, 57:20, 59:18, 68:18, 69:7, 69:17, 70:17, 70:19, 70:20, 74:13, 74:23, 75:4, 78:13, 78:14, 91:4, 99:5, 102:8, 106:18, 115:10, 115:19, 119:17, 119:19, 120:17, 120:19, 120:23, 120:24, 121:23, 122:2, 122:4, 122:5, 123:24, 124:7, 126:10, 128:19, 133:15, 136:19, 149:7, 157:18, 165:14, 165:20, 167:22, 167:23, 182:21, 192:10, 192:12, 192:14, 196:6, 203:2, 204:24, 213:13, 224:5, 263:11, 266:12, 270:8, 271:13, 280:11, 283:15, 283:20, 284:7, 293:21, 296:20, 297:2, 308:24, 309:1, 313:11, 314:4, 315:16, 318:6, 334:15, 338:7, 343:18, 344:18, 344:22, 353:8, 354:5, 355:12, 357:18, 358:23, 359:5 <b>Water</b> [21] - 8:17, 25:18, 103:3, 195:16, 213:14, 213:24, 214:9, 214:19, 216:7, 216:13, 259:21, 260:4, 260:5, 266:7, 297:3, 298:16, 308:25, 337:13, 358:2 <b>WATER</b> [1] - 1:6 <b>watering</b> [1] - 55:14 <b>waterline</b> [6] - 69:10, 76:15, 90:20, 90:25,</p>	<p>91:17, 92:10 <b>waters</b> [6] - 67:25, 68:9, 293:14, 354:12, 356:2, 356:8 <b>watershed</b> [1] - 358:22 <b>wave</b> [3] - 13:5, 313:12, 313:21 <b>waves</b> [1] - 314:2 <b>ways</b> [4] - 20:20, 180:15, 193:24, 296:13 <b>web</b> [1] - 14:1 <b>week</b> [6] - 53:13, 195:6, 234:21, 235:3, 237:9, 342:2 <b>weekend</b> [2] - 17:14, 91:20 <b>weekly</b> [4] - 75:5, 288:14, 288:16, 288:21 <b>weeks</b> [1] - 347:6 <b>weigh</b> [8] - 41:10, 41:14, 41:16, 42:1, 42:2, 42:5, 42:23, 109:18 <b>weighs</b> [1] - 109:17 <b>weight</b> [15] - 41:9, 47:22, 50:14, 106:17, 210:19, 235:24, 236:20, 236:22, 254:14, 280:21, 280:25, 282:25, 283:7, 283:9 <b>welcome</b> [4] - 13:24, 188:18, 334:22, 349:20 <b>welfare</b> [4] - 189:19, 190:7, 335:24, 336:3 <b>Welfare</b> [7] - 3:8, 3:10, 16:20, 187:15, 190:2, 190:3, 332:6 <b>well-known</b> [1] - 294:2 <b>well-respected</b> [1] - 151:9 <b>wells</b> [26] - 31:5, 31:7, 31:21, 32:4, 32:11, 59:16, 63:1, 69:15, 70:1, 78:10, 120:3, 120:14, 120:18, 120:20, 125:21, 126:4, 126:7, 126:11, 127:2, 127:5, 192:12, 241:15, 301:6, 305:24, 306:10, 320:5 <b>west</b> [2] - 80:1, 126:13 <b>western</b> [2] - 354:7,</p>
--	---	---	---	--

KATHY TOWNSEND COURT REPORTERS

110 Twelfth Street, Northwest, Albuquerque, New Mexico 87102

(505) 243-5018 - Fax (505) 243-3606

<p>354:8  <b>whatnot</b> [3] - 257:2, 261:14, 334:4  <b>whatsoever</b> [3] - 53:6, 347:18, 350:6  <b>whereby</b> [1] - 42:9  <b>whichever</b> [1] - 123:23  <b>whip</b> [1] - 354:20  <b>whip-tailed</b> [1] - 354:20  <b>whistleblower</b> [1] - 191:19  <b>white</b> [2] - 354:2, 354:6  <b>white-crowned</b> [1] - 354:6  <b>white-footed</b> [1] - 354:2  <b>whole</b> [12] - 48:20, 57:14, 97:12, 101:24, 109:5, 115:8, 116:14, 116:21, 120:10, 199:22, 264:16, 346:11  <b>widely</b> [1] - 190:6  <b>wife</b> [2] - 95:6, 198:1  <b>wild</b> [1] - 346:13  <b>Wild</b> [1] - 339:16  <b>Wildlife</b> [4] - 355:20, 356:17, 356:20, 357:4  <b>wildlife</b> [1] - 353:24  <b>WILLIAM</b> [2] - 5:2, 211:10  <b>William</b> [1] - 7:12  <b>willing</b> [8] - 63:24, 78:6, 82:17, 167:25, 188:23, 255:6, 361:1, 362:10  <b>win</b> [1] - 53:18  <b>wind</b> [2] - 313:20, 314:1  <b>winds</b> [1] - 314:1  <b>winner</b> [1] - 53:16  <b>winning</b> [1] - 54:24  <b>wipes</b> [2] - 251:10, 251:11  <b>wise</b> [3] - 59:11, 310:20  <b>wish</b> [1] - 193:5  <b>wishes</b> [1] - 323:2  <b>withdrawal</b> [54] - 47:10, 47:16, 47:19, 49:1, 49:5, 49:7, 50:11, 51:20, 51:24, 52:6, 52:19, 53:4, 53:11, 53:20, 54:6, 55:3, 87:17, 87:18, 138:8, 139:16, 139:19, 140:4, 140:7,</p>	<p>140:9, 140:14, 141:9, 141:10, 141:25, 142:2, 143:1, 143:12, 143:14, 143:17, 143:20, 144:3, 144:5, 144:7, 144:11, 144:17, 144:20, 155:17, 155:19, 155:24, 156:11, 156:13, 159:6, 159:11, 162:2, 162:25, 163:1, 163:23, 164:14, 169:24, 170:13  <b>Withdrawal</b> [2] - 155:7, 155:12  <b>witness</b> [32] - 12:19, 14:14, 24:5, 25:9, 25:17, 25:21, 25:24, 99:15, 107:17, 111:24, 114:10, 152:8, 171:19, 172:7, 201:14, 208:6, 211:2, 214:3, 246:19, 248:1, 248:15, 252:6, 252:22, 252:23, 262:3, 268:15, 285:3, 295:1, 315:3, 321:5, 325:8, 327:14  <b>witness'</b> [1] - 281:25  <b>witnessed</b> [1] - 43:17  <b>witnesses</b> [27] - 11:16, 11:18, 11:19, 19:9, 19:24, 22:17, 22:24, 23:25, 62:24, 63:7, 83:18, 86:1, 100:24, 172:7, 185:8, 185:9, 226:18, 226:20, 247:18, 336:7, 360:2, 363:5, 366:24, 367:5, 372:6, 372:10  <b>woman</b> [1] - 112:15  <b>wonder</b> [1] - 33:5  <b>wondered</b> [1] - 277:6  <b>wondering</b> [5] - 84:2, 114:7, 255:5, 277:25, 291:11  <b>wood</b> [1] - 208:18  <b>Wood</b> [1] - 7:24  <b>woodrat</b> [1] - 354:3  <b>WOOTEN</b> [4] - 5:13, 349:8, 349:11, 350:21  <b>Wooten</b> [7] - 330:18, 330:22, 345:21, 345:23, 349:7, 349:15, 350:20  <b>word</b> [2] - 52:25, 329:8</p>	<p><b>words</b> [8] - 17:25, 30:5, 119:23, 120:5, 124:17, 126:8, 165:8, 342:9  <b>works</b> [1] - 122:14  <b>Worksheets</b> [1] - 7:8  <b>world</b> [2] - 131:3, 281:9  <b>worries</b> [2] - 204:23, 325:13  <b>worry</b> [1] - 333:20  <b>Worth</b> [1] - 96:19  <b>worth</b> [2] - 66:15, 228:15  <b>Worthington</b> [3] - 13:4, 328:24, 360:14  <b>WORTHINGTON</b> [4] - 331:3, 360:12, 360:17, 367:18  <b>worthington</b> [1] - 360:8  <b>WQCC</b> [4] - 10:3, 10:4, 10:9, 298:2  <b>wrap</b> [1] - 361:22  <b>wrist</b> [1] - 194:17  <b>writing</b> [4] - 14:19, 14:20, 328:24, 329:1  <b>Written</b> [1] - 10:2  <b>written</b> [24] - 23:25, 35:10, 35:11, 41:2, 56:16, 136:23, 174:6, 177:3, 178:8, 181:7, 181:10, 188:20, 211:25, 212:4, 213:7, 219:6, 235:8, 237:22, 237:23, 240:22, 285:21, 335:5, 351:25, 359:17  <b>wrote</b> [1] - 342:7  <b>WW</b> [1] - 36:15  <b>WYANT</b> [67] - 4:2, 4:11, 23:5, 23:17, 25:11, 25:22, 25:25, 34:17, 35:9, 35:17, 35:23, 36:2, 36:4, 36:22, 37:1, 37:12, 37:22, 38:10, 38:21, 38:23, 39:10, 39:23, 60:7, 60:13, 61:2, 61:8, 61:15, 62:1, 62:6, 67:3, 67:5, 67:12, 67:22, 68:1, 68:11, 68:14, 68:23, 72:23, 73:22, 73:25, 74:9, 74:16, 75:14, 75:16, 75:20, 76:9, 79:19, 80:17, 80:25, 81:4, 81:18, 81:22, 82:24, 83:3, 83:9, 83:12, 83:15, 83:19,</p>	<p>83:21, 83:23, 83:25, 85:22, 90:22, 130:19, 168:15, 168:23, 169:3  <b>Wyant</b> [30] - 6:6, 23:2, 23:17, 24:3, 25:6, 34:12, 38:19, 39:13, 59:25, 62:23, 65:4, 66:24, 72:20, 73:17, 74:5, 75:12, 77:15, 79:17, 80:12, 82:20, 85:20, 90:19, 108:23, 130:21, 135:25, 136:6, 168:10, 172:2, 263:5, 301:17  <b>Wyoming</b> [1] - 346:12</p> <p style="text-align: center;"><b>Y</b></p> <p><b>yak</b> [1] - 209:7  <b>yard</b> [1] - 332:11  <b>yards</b> [1] - 37:13  <b>year</b> [21] - 78:20, 102:14, 113:23, 118:20, 118:22, 177:2, 194:18, 194:23, 195:1, 195:3, 195:4, 198:2, 300:21, 300:22, 306:22, 317:3, 334:19, 346:10, 349:2, 352:18  <b>year-and-a-half</b> [2] - 118:20, 118:22  <b>years</b> [58] - 26:9, 26:18, 26:20, 26:23, 27:3, 27:18, 27:20, 28:10, 28:12, 28:15, 28:16, 28:17, 29:7, 52:11, 62:15, 65:13, 65:25, 69:14, 87:23, 90:23, 109:4, 109:6, 113:18, 122:17, 128:10, 169:10, 173:16, 177:1, 187:7, 190:1, 190:12, 191:14, 194:7, 194:14, 197:12, 198:19, 199:6, 203:5, 203:18, 208:18, 213:15, 213:16, 213:20, 214:5, 214:20, 214:22, 220:20, 221:15, 222:11, 286:12, 286:14, 313:17, 337:24, 343:6, 348:10, 350:11, 350:14, 352:24  <b>yellow</b> [3] - 195:4,</p>	<p>195:5, 354:18  <b>younger</b> [1] - 191:12  <b>youngster</b> [1] - 291:2  <b>yourself</b> [5] - 164:7, 170:14, 222:1, 286:9, 291:12  <b>yourselves</b> [1] - 178:16  <b>YouTube</b> [2] - 199:20, 199:22</p> <p style="text-align: center;"><b>Z</b></p> <p><b>zone</b> [1] - 314:3</p>
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