

SOAH DOCKET NO. 582-15-2082
TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION OF) BEFORE THE STATE OFFICE
130 ENVIRONMENTAL PARK,)
LLC, FOR PROPOSED) OF
PERMIT NO. 2383)
ADMINISTRATIVE HEARINGS

HEARING ON THE MERITS

Monday, August 22, 2016

BE IT REMEMBERED THAT at 9:10 a.m., on Monday, the 22nd day of August 2016, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, William P. Clements, Jr., Building, 300 West 15th Street, Room 404, Austin, Texas, before KERRIE JO QUALTROUGH and CASEY BELL, Administrative Law Judges, and the following proceedings were reported by Lorrie A. Schnoor and Steven Stogel, Certified Shorthand Reporters.

Volume 6

Pages 1210 - 1456

P R O C E E D I N G S

MONDAY, AUGUST 22, 2016

(9:10 a.m.)

JUDGE QUALTROUGH: Let's go on the record. It is August 22, 2016. It is 9:10 a.m. This is SOAH Docket No. 582-15-2082, TCEQ Docket No. 2015-0069-MSW. Just -- we talked briefly off the record regarding the time that we have left in this proceeding. We're getting a little concerned that we will have sufficient time to finish up on Friday, allowing sufficient time for the Protestants' direct cases and any rebuttal.

What we have agreed to do at this point is to finish with Mr. Welch and Mr. Halliburton this morning, and then over lunch, we'll try to come up with some way to address the time issue. And we will begin the Protestants' case after lunch.

So with that said, we will resume with TJFA, EPICC's cross-examination of Mr. Welch.

PRESENTATION ON BEHALF OF APPLICANT (CONTINUED)

KENNETH J. WELCH, P.E.,

having been previously duly sworn, testified as follows:

CROSS-EXAMINATION (Continued)

BY MS. PERALES:

Q Good morning, Mr. Welch.

A Good morning.

1 Q So I think we left off on Applicant's Exhibit
2 EP130-5, which is in Volume 4. So if you could get that
3 out.

4 A Okay.

5 Q And turn to Page 129?

6 A Yes.

7 Q Okay. And this is part of the site operating
8 plan. Isn't that right?

9 A Correct.

10 Q Okay. Can you turn to the Subsection 6.2.3
11 addressing the landfill entrance road? Do you see that?

12 A Yes.

13 Q So does this entrance road, does it include the
14 access road that's outside of the permit boundary?

15 A May I refer to another exhibit, please?

16 Q Sure.

17 A Going to refer to 130EP-1, Page 124, which is a
18 drawing, IIA.8, general site plan. And on that general
19 site plan, it does identify the entrance road to the
20 facility as extending from State Highway 183 up through
21 the facility boundary.

22 Q So references in the site operating plan to the
23 entrance road should be understood to also refer to the
24 entrance road beyond the permit boundary as it connects
25 to 183?

1 A That's my understanding, yes.

2 Q And so how will -- how will operational
3 requirements regarding the entrance road outside of the
4 permit boundary be enforced if they're not part of the
5 permit?

6 A Be enforced by whom?

7 Q By TCEQ.

8 A TCEQ? I would say that since that is the
9 entrance road providing access to the facility, TCEQ
10 would also be reviewing that portion of the entrance
11 road for enforcement purposes.

12 Q And what is your understanding based on?

13 A That would be based on my understanding of
14 reading the site operating plan and looking at the -- at
15 the general site plan.

16 Q Would you agree with me that the -- if the
17 access road had been included within the permit boundary
18 all the way up to where it accesses 183, then it would
19 have been clearer for TCEQ to enforce that part of the
20 site operating plan?

21 A Yes.

22 Q Can you tell me under 6.2.3 what the speed
23 limit is intended to be?

24 A No.

25 Q Do you know whether there will be low water

1 crossings at this entrance road?

2 A I would have to review back through the
3 application to know the answer to that. I do know that
4 that answer -- Tyson Traw would be able to provide that
5 answer.

6 Q Okay. Do you know whether there will be any
7 measures to address dangerous conditions during flood
8 events should there be low water crossings on that
9 access road?

10 A I do not know the answer to that.

11 Q Who would know the answer to that?

12 A I would assume that Tyson Traw would, given his
13 role in the drainage design of the facility.

14 Q So he would also know whether -- whether
15 measures will be included or necessary to address
16 dangerous conditions during flood events?

17 A As it relates to the flooding, yes.

18 Q Okay. Can you turn to Page 133, please?

19 A Yes.

20 Q So is it your understanding that the water
21 supply that will be provided under pressure is from a
22 water storage tank that's authorized under the transfer
23 station authorization?

24 A Would you please repeat that question?

25 Q Sure. The water supply that is -- and let me

1 refer you to the third bullet point.

2 A Yes.

3 Q So the water supply that's contemplated here,
4 is that water supply going to be from a storage tank
5 that's authorized under the transfer station
6 registration?

7 A That is my understanding, yes.

8 Q So if the transfer station is never constructed
9 and the authorization is canceled, what does that do to
10 the water supply?

11 A Well, it's my understanding the transfer
12 station will be constructed; therefore, the above-ground
13 storage tank would be constructed.

14 Q So what is your understanding based on?

15 A That's just based on my understanding of the
16 project and discussion with the -- with the client and
17 others.

18 Q When is the transfer station contemplated to
19 begin construction?

20 A I don't know that answer.

21 Q Do you know when it contemplates beginning
22 operations?

23 A No.

24 Q Could it be after the landfill is constructed,
25 if the landfill is permitted?

1 A I guess it could be.

2 Q Do you know where the -- what the source of the
3 water will be?

4 A I don't know the answer to that.

5 Q Do you know what amount is considered an
6 adequate supply?

7 A I would have to go back through the transfer
8 station registration to refresh my memory on what the
9 quantity of water that would be provided in the
10 above-ground storage tank.

11 Q So someone who is relying on the site operating
12 plan for landfill operations would need to turn to the
13 transfer station registration to determine whether an
14 adequate supply of water exists?

15 A That is where the above-ground water storage
16 tank is identified in the transfer station registration.

17 Q Can you turn to Page 139?

18 A Yes.

19 Q And looking at the top of that page, can you --
20 can you tell us what the operating hours are going to
21 be?

22 A Well, in looking at the second full paragraph,
23 the site operation are 24 hours per day, seven days per
24 week.

25 Q Okay. Were these operating hours considered by

1 Mr. Worrall in conducting his land use compatibility
2 analysis?

3 A To my knowledge, Mr. Worrall was aware of the
4 site operating hours. However, that's -- you would need
5 to ask Mr. Worrall that question.

6 Q Is it your understanding that heavy equipment
7 operations could generate a substantial amount of noise?

8 A Could you repeat that, please?

9 Q Do you know whether heavy equipment operation
10 can generate a substantial amount of noise?

11 A I would say that heavy equipment operation
12 would generate noise.

13 Q Could it also generate light during the evening
14 hours?

15 A Yes.

16 Q And could these be considered to be
17 incompatible with residents who live near the property?

18 A Could you repeat that, please?

19 Q Sure. Heavy equipment operation -- the noise
20 generated by heavy equipment operation and the light
21 generated by heavy equipment operation, could those be
22 considered incompatible with residents who live near the
23 landfill?

24 A I guess it could. However, there are a lot of
25 landfills located in the vicinity of -- of homeowners.

1 So measures would be taken to mitigate that.

2 Q What kind of measures?

3 A I don't know.

4 Q Can you turn to Page 139 of the same exhibit?

5 A Yes.

6 Q And I'll direct you to Subsection 8.5. Do you
7 see that?

8 A Yes.

9 Q The second bullet point. The second bullet
10 point --

11 A Yes.

12 Q -- it contemplates alternative daily cover,
13 doesn't it?

14 A It does state that if alternative daily cover
15 is used.

16 Q Can tarps be considered alternative daily
17 color --

18 A Yes.

19 Q -- cover? Sorry.

20 Does a tarp -- would a tarp be adequate
21 for control of windblown solid waste and litter for a
22 landfill that's proposed to be as high as this one is
23 proposed to be?

24 A In order for tarps or any other alternative
25 daily cover to be used at the landfill, an additional

1 request and authorization would need to be submitted to
2 TCEQ, reviewed by TCEQ to determine if tarps or any
3 other alternative daily cover would be allowed.

4 That's also eventually a public notice
5 permit modification. So at that point in time, TCEQ
6 would be reviewing to determine if tarps would be
7 acceptable at any height of the landfill.

8 Q You are the expert who's been designated to
9 address questions regarding the site operating plan.

10 Correct?

11 A Yes.

12 Q So in your opinion, would a tarp be sufficient
13 or adequate to control windblown solid waste for a
14 landfill that's proposed to be as high as this one is
15 proposed to be?

16 A I'm aware of several sites in the state that
17 uses alternative daily cover, tarps, at a height similar
18 to this landfill. So in my opinion, yes, it would
19 provide adequate control to -- I believe you stated
20 control windblown waste and litter. So in my opinion,
21 yes.

22 Q Right. And that's what we're looking at, the
23 section on control of windblown waste and litter.

24 So you mentioned that you've seen the use
25 of tarps on landfills that are as high as this one is

1 proposed to be. Could you give me a couple of examples?

2 A I believe the D/FW landfill and the Skyline
3 landfill -- those are both in the Dallas/Fort Worth
4 area -- I believe that those use alternative daily cover
5 and use tarps. There are a number of other facilities
6 that do not come to mind at this point.

7 Q And it's your opinion that those tarps -- let
8 me back up.

9 Those two landfills are as high as this
10 130 Environmental Park Landfill is proposed to be?

11 A It's my recollection that they are.

12 Q Okay.

13 A I mean, I don't know the exact height, but --

14 Q Sure.

15 A -- it's my understanding that they are -- they
16 are within this height range, if you will.

17 Q Okay. And tarps have been used as alternative
18 daily cover at those landfills?

19 A I believe that they have.

20 Q And you've -- have you personally observed
21 those tarps effectively controlling windblown waste at
22 those landfills?

23 A I've made a number of site visits. Generally,
24 those are at points in time during the operation that
25 the tarp has been removed for the daily operation.

1 Q At the point where the tarp has been removed?

2 A Yes.

3 Q So you haven't observed whether the tarp has
4 been effective in controlling windblown waste?

5 A I personally probably have not observed that.
6 However, you could review the site operating plan record
7 to determine the effectiveness of those tarps.

8 Q A fence will also -- if you look at the last
9 bullet point on that page, a fence is also contemplated
10 to assist in the control of windblown waste. Is that
11 right?

12 A I'm sorry, you're on the same page, last
13 bullet?

14 Q Yes.

15 A Okay. Okay. Would you please ask the question
16 again?

17 Q Sure. I was just asking you to confirm that a
18 fence is also contemplated for control of windblown
19 solid waste. Is that right?

20 A I believe this is discussing the litter control
21 fences.

22 Q Okay. And it's your understanding -- we're
23 still under Subsection 8.5, Control of Windblown Solid
24 Waste and Litter. Right?

25 A Yes.

1 Q How high of a fence, in your opinion, will we
2 need for the fence to effectively control litter and
3 solid waste?

4 A The litter control fences that I'm familiar
5 with and observed at landfills are probably in the 10-
6 to 12-foot-high range that are located in close
7 proximity to the active working face.

8 Q And have you observed those fences to be
9 effective in the control of litter for a landfill as
10 high as this one is proposed to be?

11 A Well, I have, yes.

12 Q Okay. Can you turn to Page 144, please?

13 A Yes.

14 Q And turn to paragraph -- or Subsection 8.12,
15 Site Access Road.

16 A Yes.

17 Q So the first sentence describes the entrance
18 road as providing access from U.S. 183. Is that right?
19 Do you see that?

20 A Yes.

21 Q But if we look at the permit boundary, the site
22 access road -- excuse me -- the permit boundary does not
23 extend all the way to 183. Isn't that right?

24 A Correct.

25 Q So the portion of the site access road that's

1 not within the permit boundary, would it be subject to
2 this SOP?

3 A In my opinion, it would be, again, because it
4 provides access from 183 to the facility boundary.

5 Q And do you know whether the TCEQ has the
6 authority to enforce a landfill facility such as an
7 access road that's not within the permit boundary?

8 A I don't know that answer.

9 Q Can you turn to Page 145?

10 A Yes.

11 Q The first full paragraph discusses periodic
12 spraying from a water truck to control dust on access
13 roads. Do you see that?

14 A Yes.

15 Q Do you know what the source of the water supply
16 for those water trucks will be?

17 A I don't know that answer.

18 Q Do you know if the water will be under
19 pressure?

20 A I don't know. Well, the spraying of the
21 landfill haul road would be a water truck, so the water
22 within the water truck, when it's sprayed on the
23 roadway, would be under pressure.

24 Q Okay. On that same page, 8.13, there's a
25 paragraph discussing salvaging and scavenging. Do you

1 see that?

2 A Yes.

3 Q Do you know whether the area of the proposed
4 landfill has experienced feral hogs?

5 A I made several site visits to the -- to the
6 property, and I did not observe any feral hogs. So I
7 don't know if other people have observed feral hogs.

8 Q So you didn't observe any signs or indications
9 that feral hogs had been on the site?

10 A Well, I didn't.

11 Q Did you talk to anybody else about --

12 A No, I did not.

13 Q Okay. Did that surprise you not to see any
14 indications or observations that feral hogs hadn't been
15 present on the site?

16 A Well, I don't doubt that there's been feral
17 hogs on this site, not based on anything I observed at
18 this site, but -- so the fact that I did not see any
19 feral hogs really didn't surprise me any.

20 Q Okay. And how does the site operating plan
21 propose to prohibit or disallow feral hogs from
22 accessing the site?

23 A Well, I think the overall operational
24 characteristics of the facility through the use of daily
25 cover, well-compacted daily cover, intermediate cover,

1 those items that are involved in covering of the waste,
2 those would be some of the items that would address
3 that.

4 Q And do you believe that a tarp would be
5 sufficient to prohibit a feral hog from accessing the
6 waste?

7 A I would not think so, no.

8 Q Can you turn to Page 147, please?

9 A Yes.

10 Q And at the top of that page, do you see where
11 compaction of waste is contemplated?

12 A Yes.

13 Q So if there had been previous statements made
14 regarding no compaction of waste at this facility, that
15 would just be an error. Is that right?

16 A You would have to point something out to me.
17 I'm not --

18 Q Okay.

19 A -- aware of your question.

20 Q Okay. But clearly compaction of waste is
21 contemplated?

22 A Yes.

23 Q On the same page, 8.18.1 --

24 A Yes.

25 Q -- this discusses soil management. Correct?

1 A Yes.

2 Q Do you know if sufficient soils exist or are
3 available?

4 A You would need to ask Greg Adams that question.

5 Q Okay. So you just don't have that information?

6 A No.

7 Q Do you know what other suitable sources might
8 be for soil if it's not available?

9 A Again, you would need to ask Mr. Adams that
10 question.

11 Q Because Mr. Adams is tasked with finding other
12 suitable sources of soil for site operations?

13 A No, because Mr. Adams is responsible for the
14 geotechnical aspects of the landfill, which includes the
15 excavation design. So he would be the one most familiar
16 with soils.

17 Q So maybe -- maybe my question would be clearer
18 if you took a second to read the third sentence in that
19 first paragraph under 8.18.1.

20 A I'm sorry. First paragraph, third sentence?

21 Q Yes, sir.

22 A Yes.

23 Q So my question was with regard to other
24 suitable sources; that is, soil obtained from sources
25 other than from excavation. Do you have any knowledge

1 about what other suitable sources exist for soils?

2 A I would say that the overall property in which
3 the landfill was located could provide other suitable
4 sources, but I do not have any specific knowledge of
5 that.

6 Q Okay. And is it your understanding that the
7 same soil is what's contemplated for fire control?

8 A I would say the soils available from the --
9 from the excavation is what's contemplated for fire
10 control, yes.

11 Q So can you turn to Page 148, please?

12 A Yes.

13 Q At the bottom, at 8.18.4, alternative daily
14 cover, do you see that?

15 A Yes.

16 Q And this is what you talked about earlier,
17 about how alternative daily cover would first need to be
18 authorized by the Executive Director. Isn't that right?

19 A Yes.

20 Q Is it your understanding that if 130
21 Environmental Park sought the use of alternative daily
22 cover, that that could be accomplished by a modification
23 to the permit?

24 A Well, there's several steps that are required
25 to be taken that are outlined in 331.65 A. The first

1 step would be to request a temporary authorization for
2 the use of alternative daily cover, and the purpose of
3 that would be for the site operator to utilize the
4 alternative daily cover and submit verification reports
5 to the TCEQ for their -- them to review that addresses
6 vector control, windblown waste, odor.

7 At the end of that 180 days, based on
8 those verification reports submitted to TCEQ, the
9 operator at that point in time could submit a public
10 notice permit modification to TCEQ requesting approval
11 to incorporate that alternative daily cover into their
12 site operating plan.

13 Q So the answer to my question is, yes, that
14 would be accomplished by a modification to the permit?

15 A A public notice modification, yes.

16 Q And among the steps that you described, is a
17 contested case hearing included in that list of steps?

18 A No.

19 Q Do you have -- do you have any knowledge or
20 understanding of the months during which clearing of the
21 property can be accomplished?

22 A I do not.

23 Q Okay. So you wouldn't know if clearing of
24 vegetation or clearing of the property is limited to the
25 months of June, July, and August only?

1 A I'm not aware of that, so I don't know that
2 answer.

3 Q Can you turn to Applicant's Exhibit EP-1?

4 A Okay.

5 Q Page 725.

6 A I'm sorry, 725?

7 Q Yes.

8 A Yes.

9 Q So the second -- or the bottom half of the page
10 includes three enumerated paragraphs, and I'll direct
11 your attention to the one that's numbered No. 1. And
12 that paragraph states that, Clearing of the forested
13 areas shown on Figure 3 and the clearing of the
14 perimeter fencing will not occur between September and
15 May.

16 Do you see that?

17 A I do see that.

18 Q So is it your understanding, then, that that
19 means that the clearing of the forested areas and the
20 clearing for the perimeter fencing will need to occur
21 June, July, and August?

22 A Would you re-ask the question, please?

23 Q Sure. The clearing that is contemplated in
24 Figure 3 and clearing for the perimeter fencing will
25 need to occur during the months of June, July, and

1 August. Is that right?

2 A Based on what I'm reading here, that's --
3 that's correct. Mr. Marusak is the one that prepared
4 this portion of the application.

5 Q Okay. So has there been any consideration
6 about how that limitation on the -- on clearing of the
7 property will impact visual screening, if you know?

8 A Well, I believe there's a drawing in the
9 application on 130EP-1, Page 143, titled Facility
10 Screening Plan. It's drawing No. IIA.24. I believe
11 that drawing would address your question.

12 JUDGE QUALTROUGH: I'm sorry. What page
13 was that?

14 THE WITNESS: Page 143.

15 Q (BY MS. PERALES) My question isn't whether
16 there will be screening provided; my question is whether
17 there has been any consideration of how the limits on
18 clearing of the property will impact screening.

19 A I don't know the answer to that.

20 Q Okay. Can you turn to Page 153?

21 A Which --

22 Q 130EP-5, the site operating plan.

23 A And, I'm sorry, the page number, please?

24 Q 153.

25 A Thank you. Yes.

1 Q Contaminated Water Discharge, Subsection 8.24,
2 do you see that?

3 A I do see that.

4 Q Are you -- do you know of any wastewater
5 treatment plant or POTW that is available and has the
6 capacity to take contaminated water?

7 A I do not.

8 Q Can you turn to Page 159?

9 A Yes.

10 Q Subsection 8.29. Do you see that?

11 A Yes.

12 Q Does this site operating plan under this
13 subsection contemplate that the only potable water that
14 will be available will be bottled water?

15 A I believe that is what this section says.

16 Q And in your experience, is that sufficient to
17 comply with the TCEQ rule regarding provisions for
18 potable water?

19 A As it relates to employee sanitation
20 facilities, yes.

21 Q What about as it relates to overall operation?

22 A My opinion, the bottled water will provide
23 sufficient potable water for site operations.

24 Q Okay. I'll ask you now to turn to Volume 1
25 of -- Exhibit 1, Volume 1 of Applicant's exhibits. Is

1 it your understanding that 130 Environmental Park is a
2 subsidiary of Green Group Holdings?

3 A Did you refer to me to a portion of Volume 1?

4 Q No, not yet.

5 A Okay.

6 Q I'm asking whether it's your understanding that
7 130 Environmental Park is a subsidiary of Green Group
8 Holdings.

9 A I don't know what the legal relationship is. I
10 do know that 130 Environmental Park, LLC -- again, I
11 don't know what the legal terminology is, but that Green
12 Group Holdings is the -- again, I don't know what the
13 legal relationship is, but I do know they are related.

14 Q Okay. Who is it that you were preparing the
15 application for when you first started working on this
16 project?

17 A Well, when I first started working on this
18 project, we were -- you know, HHNT was our client.

19 Q Is that who your understanding of the Applicant
20 was?

21 A No. I mean, I understood the Applicant to be
22 130 Environmental Park, LLC.

23 Q Even though it didn't exist yet?

24 A I do not know.

25 MR. RYAN: Objection. That assumes facts

1 that aren't in evidence. Ms. Perales knows that 130
2 Environmental Park was initially registered in Georgia
3 and what happened here --

4 MS. PERALES: I don't know that.

5 MR. RYAN: -- what happened here in --
6 well, she's got the document showing it. What happened
7 here in Texas was a registration of a foreign entity.

8 MS. PERALES: I'm happy to ask Mr. Welch
9 those questions to make sure they're in the record.

10 JUDGE QUALTROUGH: All right. Go ahead.

11 Q (BY MS. PERALES) So, Mr. Welch, when was 130
12 Environmental Park first legally formed in Georgia?

13 A I don't know.

14 Q Okay. Do you know when it was first registered
15 as an entity in Texas?

16 A Based on the -- based on the Secretary of State
17 certificate, which is in 130EP-1, Page 75, the 130
18 Environmental Park, LLC, was filed on August 20, 2013.

19 Q Okay. When did you first become aware that the
20 130 Environmental Park would be the Applicant for this
21 permit application?

22 A Other than early in the project, I -- I don't
23 know any more specifics than that.

24 Q Do you know whether 130 Environmental Park has
25 any assets?

1 A I don't know.

2 Q Do you know whether Green Group Holdings has
3 any other subsidiary companies operating in Texas?

4 A I believe the Pintail Landfill, LLC, is a part
5 of Green Group Holdings.

6 Q Do you know whether 130 Environmental Park has
7 any financial interest outside of Texas?

8 A I don't know the answer to that.

9 Q Do you have the rules there in front of you,
10 the TCEQ rules?

11 A Yes.

12 Q Can you turn to 330.59, Subsection (e)?

13 A Yes.

14 Q And this rule requires that the operator list
15 all persons having over a 20 percent ownership interest
16 in the proposed facility. Isn't that right?

17 A The owner and operator shall provide
18 verification of legal status and shall list all persons
19 having a 20 percent ownership in the proposed facility.

20 Q So would you agree with me that anyone with
21 20 percent or more ownership interest in 130
22 Environmental Park would also have a corresponding
23 ownership interest of over 20 percent in the facility?

24 A No.

25 Q Okay. And why not?

1 A Well, I believe that 130 Environmental Park,
2 LLC, is the proposed owner and operator of this facility
3 and that there is no person owning greater than
4 20 percent of that facility. That's my understanding.

5 MS. PERALES: Can you tell me whether
6 Protestants' Exhibit 21 has been admitted? I've kind of
7 lost track of it.

8 THE REPORTER: I don't show it admitted.
9 I show it as marked but not admitted.

10 MS. PERALES: I may need one second to
11 pull it up. It's marked. I just need to find it among
12 my exhibits.

13 JUDGE QUALTROUGH: Remember, we're
14 starting your case after lunch.

15 MS. PERALES: Okay. I got it.

16 May I approach?

17 Q (BY MS. PERALES) I've handed you a document
18 marked P-21. Can you take a look at that and see if you
19 can identify it?

20 A It is a response to first NOD for land use
21 compatibility determination submitted to Mr. Steve Odil
22 on February 14, 2014.

23 Q Can you turn to Page 2 of this document and
24 look at No. 6?

25 A Yes.

1 Q And according to -- No. 6, this is a deficiency
2 that has been noted to 130 Environmental Park by the
3 Executive Director's permit reviewer. Is that right?

4 A Yes.

5 Q And according to the permit reviewer, if the
6 sole owner and operator of the proposed facility is 130
7 Environmental Park, then 130 Environmental Park must
8 provide a list of all individuals that own more than
9 20 percent of the corporation. Do you see that?

10 A Yes.

11 Q And did 130 Environmental Park do so; that is,
12 did 130 Environmental Park provide a list of all
13 individuals that own more than 20 percent of the
14 corporation?

15 A I believe the response states that no other
16 person or entity has over a 20 percent ownership in the
17 proposed facility.

18 Q So that doesn't really address the deficiency
19 that was noted by the Executive Director, does it?

20 A Well, I believe that it does in stating that no
21 other person or entity has over a 20 percent ownership
22 in the proposed facility.

23 Q But the deficiency asks for a list of
24 individuals that own more than 20 percent of the
25 corporation. Right?

1 A 130 Environmental Park, a limited liability
2 corporation, the LLC, I mean, I think that's what that
3 response provides.

4 Q So you believe that there is no person or
5 entity who has over 20 percent ownership in the
6 corporation?

7 A Well, it's my understanding that no other
8 person or entity has over a 20 percent ownership in the
9 proposed facility which is 130 Environmental Park, LLC.
10 Anything more specific than that, I would suggest you
11 asked David Green with the -- with the facility.

12 Q So do you know whether anyone asked David Green
13 for that information before responding to this NOD?

14 A I don't know that.

15 Q Can you turn to Page 20 of Exhibit 1? Are you
16 there?

17 A Yes.

18 Q At the top of that page, there's a question
19 regarding whether any local government has -- or
20 governing body of a municipal or county has prohibited
21 the disposal of municipal solid waste. Do you see that?

22 A I see that.

23 Q Is it your understanding that that question
24 would also encompass a landfill siting ordinance?

25 A Could you repeat the question, please?

1 Q Sure. Would this question -- does it
2 contemplate counties that have passed landfill siting
3 ordinances?

4 A I believe that's what this is addressing, yes.

5 Q Is it your understanding that Caldwell County
6 has passed a landfill siting ordinance?

7 A I don't know.

8 Q Okay. The person responsible for filling out
9 this form, do they have a responsibility of looking into
10 whether a landfill siting ordinance exists?

11 A Well, I know with the initial submittal of the
12 application, there was no county siting ordinance. That
13 initial submittal was September 4, 2013, I believe.

14 Q And do you know whether a landfill siting
15 ordinance has since been passed?

16 A I don't know.

17 Q Okay. But certainly several portions of this
18 application have been revised since that initial
19 submittal. Isn't that right?

20 A Correct.

21 Q Can you turn to Page 24?

22 A Yes.

23 Q We've gone over the 20 percent ownership, so
24 I'll direct your attention to evidence of competency.
25 Do you see that?

1 A Yes.

2 Q Here it asks for other facilities in which 130
3 Environmental Park has a financial interest. Isn't that
4 right?

5 A You're referring to the second --

6 Q Yes.

7 A -- block of information?

8 Q Right.

9 A Correct.

10 Q And according to this form, it's your or 130
11 Environmental Park's contention that there are no other
12 facilities that this Applicant has a financial interest
13 in. Isn't that right?

14 A 130 Environmental Park, LLC, that's correct.

15 Q Okay. Green Group Holdings, however, has a
16 financial interest in other facilities. Isn't that
17 right?

18 A The other facility within Texas is the Pintail
19 Landfill, LLC.

20 Q Okay. Then if we go down to the third block,
21 the last one, the last little chart or block on that
22 page, it asks for the names of the principals and
23 supervisors of the owners' and operators' organization
24 together with previous affiliations with other
25 organizations engaged in solid waste. Is that right?

1 A I see that, yes.

2 Q And were other organizations mentioned in
3 response to this question?

4 A I would refer you to Page 50, which is Section
5 6, Evidence of Competency. And it appears that other, I
6 guess, previous affiliations with other organizations
7 are identified under 6.1, Management and Personnel.

8 Q Does this -- does this indicate whether 130
9 Environmental Park has any -- I'm sorry. Does this
10 indicate whether Green Group Holdings has any facilities
11 outside of Texas?

12 A No. This section is addressing the evidence of
13 competency of 130 Environmental Park, LLC.

14 Q Okay. So sticking with Page 50, where you've
15 directed us to, the rules that are referenced here
16 330.59, Subsection (f), requires landfill permit
17 applications to include evidence of competency to
18 operate the facility, including landfilling and
19 earth-moving experience and other pertinent experience.
20 Is that right?

21 A Would you please ask the question again?

22 Q Sure. The TCEQ rules require landfill permit
23 applications to include evidence of competency to
24 operate the facility, including landfilling and
25 earth-moving experience and other pertinent experience.

1 Is that right?

2 A Yes.

3 Q And so as evidence of competency you were
4 required to identify principals and supervisors of 130
5 Environmental Park, LLC. Correct?

6 A Yes.

7 Q And you identified Ernest Kaufmann as president
8 and manager of 130 Environmental Park. Right?

9 A Yes.

10 Q And you also identified Oscar Allen. Right?

11 A Yes.

12 Q But unlike Mr. Kaufmann, you didn't identify
13 Mr. Allen's position with 130 Environmental Park. Isn't
14 that right?

15 A No.

16 Q Do you know what his position is with 130
17 Environmental Park?

18 A I do not.

19 Q Also identified is Mr. Thad Owings, as a
20 principal or supervisor of 130 Environmental Park, LLC.
21 Right?

22 A Yes.

23 Q But his title or official position with 130
24 Environmental Park, LLC, is also not identified. Isn't
25 that right?

1 A Could -- would you mind asking that again?

2 Q Sure. You didn't identify Mr. Owings' title or
3 his official position with 130 Environmental Park, LLC.
4 Isn't that right?

5 A Yes.

6 Q Do you know what his position is?

7 A I do not.

8 Q In fact, neither Mr. Allen nor Mr. Owings are
9 supervisors of 130 Environmental Park, LLC. Isn't that
10 right?

11 A I think, again, you would need to ask Mr. Green
12 the specifics of that question.

13 Q Are you aware that Mr. Kaufmann testified under
14 oath that there are no other officers of 130
15 Environmental Park, LLC, other than himself?

16 A I do not know that.

17 Q Are you aware that Mr. Kaufmann testified under
18 oath that 130 Environmental Park had no employees?

19 A I'm not aware of that.

20 Q Neither Mr. Allen nor Mr. Owings are owners of
21 130 Environmental Park, are they?

22 A I don't know.

23 Q Are you aware that Mr. Kaufmann testified that
24 the only principal of 130 Environmental Park is Green
25 Group Holdings?

1 A I'm not aware of that.

2 Q If Mr. Kaufmann is the only officer of 130
3 Environmental Park, and 130 Environmental Park has no
4 employees, then evidence of competency is limited to
5 evidence about Mr. Kaufmann and about Green Group
6 Holdings. Isn't that right?

7 A I believe we also identified that a landfill
8 manager will be -- will be hired, and we've identified
9 what his qualifications are and experience in landfill
10 operations and earth-moving operations.

11 Q And who was that landfill manager?

12 A That person, to my knowledge, has not been
13 hired. However, I would suggest again you speak with
14 Mr. Green about the specifics of that.

15 Q Okay. So as of right now, evidence of
16 competency is limited to evidence about Mr. Kaufmann and
17 about Green Group Holdings, based on what we know.
18 Isn't that right?

19 A Yes.

20 Q A significant responsibility Mr. Kaufmann has
21 assumed as the sole officer of 130 Environmental Park is
22 evaluating, hiring, and authorizing technical staff to
23 work on the landfill application that was submitted to
24 TCEQ. Right?

25 A I don't understand the question.

1 Q If he's the sole officer of 130 Environmental
2 Park, wasn't it his responsibility to evaluate, hire,
3 and authorize the technical staff to put together the
4 landfill application to submit to TCEQ?

5 A Well, again, our client was HHNT.

6 Q So Mr. Kaufmann had no role in evaluating,
7 hiring, and authorizing this Biggs & Mathews, for
8 instance, to work on the landfill application?

9 A Well, again, our clients was HHNT, and those
10 conversations -- we were hired by HHNT to prepare the
11 130 Environmental Park, LLC, permit application.

12 Q Do you know what Mr. Kaufmann's relationship
13 with HHNT is?

14 A I do not.

15 Q Do you have any relationship with Mr. Kaufmann?

16 A I don't understand the question.

17 Q Do you -- is he your supervisor?

18 A No.

19 Q Do you answer to him at all?

20 A No.

21 Q And yet he's the sole officer of 130
22 Environmental Park. Is that right?

23 A I don't know that.

24 Q Well, if we look at the evidence of competency,
25 he's the only one listed. Isn't that right?

1 A He's the only one identified Section 6.1, yes.

2 Q In the description of Mr. Kaufmann in this
3 section of the application, he's described as an elected
4 member of the City of Huntsville, Alabama, City Council.
5 Right?

6 A Yes.

7 Q Are you aware that as president of the
8 Huntsville City Council, Mr. Kaufmann voted for and
9 signed a resolution accusing the United States
10 government of committing substantial wrongs against
11 German scientist Arthur Rudolph?

12 MR. RYAN: Objection, relevance.

13 MS. PERALES: This goes to Mr. Kaufmann's
14 competency. This is one of the significant actions he
15 took as president of the Huntsville City Council, which
16 is one of the roles that is included here to show his
17 evidence of competency.

18 MR. RYAN: That rule doesn't ask for
19 anything about what he did when he was on the Huntsville
20 City Council.

21 MS. PERALES: But if the -- if his role on
22 the city council is intended to show some evidence of
23 competency, then we should be allowed to cross-examine
24 on what he did as -- as a member of that city council.

25 JUDGE QUALTROUGH: I'm going to overrule

1 the objection, but I'm going to caution you, you're
2 running out of time.

3 MS. PERALES: Okay.

4 JUDGE QUALTROUGH: All right. Because
5 Caldwell County still has to do cross of this witness.
6 You still got to do cross of Mr. Halliburton, and we're
7 starting -- we're breaking at lunch at noon, and we're
8 starting with your case at 1:00.

9 MS. PERALES: Understood.

10 JUDGE QUALTROUGH: So let's focus.

11 All right. So answer what you know.

12 A You will need to ask the question again.

13 Q (BY MS. PERALES) Are you aware --

14 A I apologize.

15 Q Sure. No problem.

16 Are you aware that as president of the
17 Huntsville City Council, Mr. Kaufmann voted for and
18 signed a resolution accusing the United States
19 government of committing substantial wrongs against
20 German scientist Arthur Rudolph?

21 A I have no knowledge of what Mr. Kaufmann did --

22 Q Okay.

23 A -- as an elected member of the City of
24 Huntsville City Council.

25 Q Okay. Do you know who Mr. Arthur Rudolph is?

1 A I have no idea.

2 Q Would it surprise you to learn that Mr. Rudolph
3 was considered a Nazi war criminal?

4 A I have no opinion.

5 Q What kind of inquiries did you make in order to
6 determine what type of competency Mr. Kaufmann had to
7 satisfy Rule 330.59, Subsection (f)?

8 A I asked Mr. Kaufmann to provide the information
9 that would address that rule.

10 Q Okay. So the information -- the description of
11 Mr. Kaufmann that's included in this application, that's
12 something that he provided himself?

13 A Yes.

14 Q And did you make any further inquiries about
15 his competency?

16 A No.

17 Q And you're the person who initially put
18 together this portion of the application. Right?

19 A I did.

20 MS. PERALES: I can take just one second.
21 I think I'm almost done.

22 Q (BY MS. PERALES) Just to clear up the record,
23 can you tell us who Mr. Green is? You referred earlier
24 in some of your responses that we -- that some of my
25 questions were better asked of Mr. Green.

1 A That's David Green with 130 Environmental Park,
2 LLC.

3 Q Okay. What is his role with 130 Environmental
4 Park, LLC?

5 A I'm not sure what his exact title is. We have
6 been coordinating with him for quite some time.

7 Q Okay. Does he have any role with HHNT?

8 A Not that I'm aware of.

9 Q What about with Green Group Holdings?

10 A I don't know.

11 Q Did he have any involvement with the Pintail
12 application?

13 A I don't recall.

14 Q Okay. So as far as you can tell us today, you
15 only know that he's involved with 130 Environmental Park
16 in some capacity?

17 A You know, he may have been involved in the
18 Pintail Landfill, LLC, project. I don't really -- I
19 don't remember that specifically.

20 Q Okay.

21 A But I do know he's involved in the 130
22 Environmental Park, LLC, project.

23 Q And you don't know any specifics about what his
24 title is with 130 Environmental Park?

25 A I do not.

1 Q Okay.

2 MS. PERALES: Okay, thank you. I'll pass
3 the witness.

4 JUDGE QUALTROUGH: All right. Mr. Magee,
5 how much do you have?

6 MR. MAGEE: Not very much.

7 JUDGE QUALTROUGH: Okay.

8 MR. MAGEE: Less than ten minutes, I hope.

9 JUDGE QUALTROUGH: All right. Let's go
10 forward.

11 CROSS-EXAMINATION

12 BY MR. MAGEE:

13 Q I think the bulk of my questions all got asked,
14 but I just wanted to move quickly. If you can just kind
15 of follow along with me, I'm going to stick pretty
16 closely with some of the areas that Ms. Perales talked
17 about.

18 130EP-5, Page 99 through Page 159, this is
19 the site operating plan -- correct -- that she's been
20 asking you about?

21 A Could you -- could you re --

22 Q Exhibit 5, Page 99 through Page 159.

23 A 130EP-5, Page 99 through 159, is the site
24 operating plan with the appendices that follow behind
25 Page -- or behind Page 159.

1 Q And this is a document sealed by Mr. Maroney.
2 Correct?

3 A That is correct.

4 Q Ms. Perales asked you a question about feral
5 hogs -- or several questions about feral hogs. Do you
6 know if Caldwell County has a program, a feral hog
7 program, I guess, to try to combat what the county has
8 determined is a huge problem within the county?

9 A I'm not aware of any --

10 Q Okay.

11 A -- program.

12 Q On Friday, I believe Ms. Perales asked you a
13 couple of questions about commercial construction site
14 permits. Do you remember those?

15 A Probably not.

16 Q Okay. Well, just to clarify for the record,
17 I'm going to ask you a couple of brief questions about
18 that.

19 Have you spoken with anyone with Caldwell
20 County concerning permits necessary for the construction
21 of 130 Environmental Park?

22 A I personally have not. It's my understanding
23 that Mr. Tyson Traw has.

24 Q Have you reviewed the site development permits
25 that are required for Caldwell County?

1 A I have not.

2 Q And same thing with any access road or
3 floodplain permits that may be required for that access
4 road?

5 A I have not.

6 Q Okay. And you directed our attention to EP-1,
7 Page 124, which was a map that showed the access road on
8 it earlier today.

9 A Yes.

10 Q And can you explain for us why the entire
11 access road was not included in the permit boundary?

12 A Well, it's been my experience on other permit
13 applications that TCEQ has not required the entire
14 length of the entrance road to be within the permit
15 boundary, provided that the facility operations and
16 structures are within the permit boundary.

17 Q And I think Ms. Perales asked you what
18 authority would give the TCEQ oversight in the site
19 operating plan for the access road that would be outside
20 the permit boundary. And I believe your answer was you
21 didn't know of any authority. Is that correct?

22 A That's correct.

23 Q Okay. Same thing with the -- it's related to
24 the line of questioning that Ms. Perales asked you about
25 the sources of water for dust control and for fire

1 fighting. And I think she asked you a question about
2 what measures you were aware of that had been put in
3 place if there were flooding or a dangerous situation
4 due to flooding for the access road. Do you recall
5 those lines of questioning?

6 A You could try asking me again --

7 Q Okay.

8 A -- because I don't recall the specifics.

9 Q What measures have been put in place if a
10 dangerous situation occurs, as far as the site access
11 road that's outside the permit boundary, to get access
12 to the proposed landfill site?

13 A I don't know the answer to that.

14 Q Okay. Same thing, if you'll look at Page EP-5,
15 Page 134. I believe you and Ms. Perales talked about
16 Pages 133 and 134?

17 A Okay.

18 Q Page 14 deals with the general rules for fires?

19 A Yes.

20 Q And looking down several bullet points, it
21 talks about the notification of the fire department and
22 calling 911?

23 A Yes.

24 Q And then the fire department arriving out
25 there. Is your answer the same in that type of

1 situation, if there's been some type of emergency, for
2 the portion of the access road outside the permit
3 boundary, what measures have been put in place to ensure
4 that the fire department has access to the proposed
5 landfill site to ensure the safety of the citizens of
6 the county and help fire -- fighting this fire?

7 A I don't know the answer to that.

8 Q Okay. And then along that same line of
9 questioning, if just some type of accident occurs out at
10 the proposed landfill site and EMS is needed to be
11 called to respond -- to care for someone at the
12 facility, what measures have been put in place to
13 guarantee that that access road outside the permit
14 boundary are being met?

15 A I don't know the answer to that.

16 Q Okay. So other landfill projects that you've
17 worked on, you say that you believe the access road is
18 not included in the permit boundary?

19 A I have worked on other permit applications with
20 TCEQ where the entrance road was not within the facility
21 boundary or permit boundary.

22 Q Can you give me the names of those?

23 A One of them was the New Boston Landfill that
24 comes to mind. The permit was issued in 2002 or so.

25 Q Did that access road cross floodplains?

1 A I don't recall that it did.

2 Q And New Boston is in Bowie County. Correct?

3 A It's in Bowie County, yes, sir.

4 Q Did Bowie County have any site development
5 ordinances or permits?

6 A I do not recall any site development ordinances
7 or permits required.

8 Q Any others?

9 A That's the only one that comes to mind at this
10 time.

11 Q What's the most recent landfill, besides this
12 one, that you worked on for an application with TCEQ?

13 A Well, the Atascocita Landfill in Houston was
14 issued in maybe 2011. The Skyline landfill permit
15 application was issued, I believe, in 2015. And the New
16 Boston Landfill second permit application that I worked
17 on was also issued in 2015. There are other permit
18 applications that I'm working on at this point in time
19 that --

20 Q Did you say you worked on the Pintail one,
21 also?

22 A Well, I did work on the Pintail, yes.

23 Q Was the entire access road within the permit
24 boundary in the Pintail Landfill?

25 A I don't believe so, no, sir.

1 Q What about the Skyline?

2 A Yes, it is.

3 Q What about the Atascocita?

4 A I believe that it is, yes, sir.

5 MR. MAGEE: I think that's all the
6 questions I have, within nine minutes.

7 JUDGE QUALTROUGH: All right.

8 (Laughter)

9 JUDGE QUALTROUGH: Very good. Is there
10 going to be any redirect?

11 MR. RYAN: I think just a little bit. If
12 we could take a short break?

13 JUDGE QUALTROUGH: Right. All right. So
14 we'll be back here at 10:40.

15 (Recess: 10:30 a.m. to 10:47 a.m.)

16 JUDGE QUALTROUGH: All right. Before we
17 start your direct -- redirect, I think there's a
18 housekeeping matter regarding TJFA.

19 MS. PERALES: Right. I referred to
20 Exhibit P-21, but I failed to offer that into evidence.
21 And so at this time, I'll offer that.

22 JUDGE QUALTROUGH: All right. Is there
23 any objection?

24 MR. RYAN: No.

25 JUDGE QUALTROUGH: That Exhibit 21 is

1 admitted.

2 (Exhibit Protestants No. 21 admitted)

3 JUDGE QUALTROUGH: All right. So now
4 we'll start with the redirect.

5 MR. RYAN: Your Honor, no redirect for
6 Mr. Welch.

7 JUDGE QUALTROUGH: All right. Thank you
8 very much. You may step down.

9 THE WITNESS: Thank you.

10 JUDGE QUALTROUGH: All right. You may
11 call your next witness.

12 MR. RYAN: Okay. We'll call Mr. Johnie
13 Halliburton.

14 JUDGE QUALTROUGH: Is Mr. Halliburton
15 here?

16 MR. WILSON: Yes, he is.

17 JUDGE QUALTROUGH: All right. If I could
18 get you to come up here, and I'll need to swear you in.

19 (Witness sworn)

20 JUDGE QUALTROUGH: All right. If I could
21 get you to take a seat, and you're going to need to pull
22 that microphone. And it's going to be a little
23 annoying, but it's kind of important if you could speak
24 directly into the microphone.

25 Would you please state your name for the

1 record?

2 THE WITNESS: My name is Johnie
3 Halliburton.

4 JUDGE QUALTROUGH: All right. Thank you.
5 You may proceed.

6 MR. RYAN: Thank you.

7 PRESENTATION ON BEHALF OF APPLICANT
8 AND PLUM CREEK CONSERVATION DISTRICT

9 JOHNIE HALLIBURTON,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RYAN:

13 Q Good morning, Mr. Halliburton.

14 A Good morning.

15 Q Do you see in front of you there a white binder
16 that says Volume 6 on it?

17 A Yes. Uh-huh.

18 Q Would you open that up? And fairly near the
19 front, there's a series of tabs that say Halliburton on
20 there. Do you see those?

21 A I do.

22 Q Okay. And if you would look behind the tab for
23 Halliburton 1, do you see there the transcript from your
24 deposition that was taken on December 3rd of 2015?

25 A Yes, sir.

1 Q If you were asked here today, orally, each of
2 the questions that's set out in that transcript, would
3 your answers be the same?

4 A Yes, sir.

5 Q And are the exhibits behind the tabs that say
6 Halliburton 2 through Halliburton 12, are those exhibits
7 that were referenced in your deposition transcript?

8 A I'm sure they are.

9 Q Okay.

10 MR. RYAN: Your Honor, I would offer
11 Exhibits Halliburton 1 through Halliburton 12.

12 JUDGE QUALTROUGH: All right. Any
13 objection?

14 (No response)

15 JUDGE QUALTROUGH: All right. So those
16 are admitted.

17 (Exhibit Applicant Halliburton Nos. 1
18 through 12 admitted)

19 JUDGE QUALTROUGH: And I understand that
20 this is also the witness for the Plum Creek Conservation
21 District, and I'm -- and this is kind of an odd
22 situation, but I think it's best if we get all the
23 exhibits in so that when we go through the cross, people
24 will have both sets of prefiled testimony to cross from.
25 Unless somebody thinks something different, please let

1 me know.

2 MR. WILSON: My plan -- and this is just
3 my concept -- was to let the Applicant call him and do
4 whatever they wanted to do with him, then I would call
5 him separately and introduce his prefiled testimony and
6 the exhibits associated with the prefiled testimony. I
7 don't care about cross-examination. It can all come at
8 once, but I wanted to do it separately, make sure that
9 there's this distinction that we're actually putting him
10 on as our only witness.

11 JUDGE QUALTROUGH: Okay. So if I
12 understand your question, you don't want to offer your
13 exhibits at this time?

14 MR. WILSON: No, not at this time.

15 JUDGE QUALTROUGH: Well, we're in a bit of
16 a time crunch. So what -- I don't want this witness to
17 be crossed twice.

18 MR. WILSON: I understand. And so as soon
19 as the Applicants are through with him, if you would
20 like me to put him on then, I will be glad to do that.

21 JUDGE QUALTROUGH: And what do you mean by
22 "through with him"?

23 MR. WILSON: Once they finish with their
24 direct testimony, I'm willing to let him be
25 cross-examined once.

1 JUDGE QUALTROUGH: Okay.

2 MR. WILSON: But he's not the Applicant's
3 witness when I put him on, and that's what I'm trying to
4 make clear in the record.

5 JUDGE QUALTROUGH: I realize that.

6 MR. WILSON: Okay.

7 MR. RYAN: Maybe it'll work, now that I've
8 introduced my version of direct testimony and exhibits,
9 if Mr. Wilson calls him as a witness and introduces his,
10 and then we can go through one round of
11 cross-examination.

12 MR. WILSON: I'll be willing to do that.

13 JUDGE QUALTROUGH: That's what I was
14 hoping would happen. Okay. So do you pass this
15 witness?

16 MR. RYAN: Subject to my opportunity to
17 cross-examine him, I pass at this point.

18 JUDGE QUALTROUGH: All right.

19 MR. RYAN: I know that's a little odd.

20 JUDGE QUALTROUGH: So -- well, let me --
21 so I --

22 MR. RYAN: Now we have to talk about the
23 order, I guess.

24 JUDGE QUALTROUGH: Well, I think you're
25 probably the most adverse, so you would go -- as far as

1 cross goes, you would go last, but you also have
2 redirect.

3 MR. RYAN: I can do that -- I can do that
4 at the same time.

5 JUDGE QUALTROUGH: That's kind of what I
6 thought. All right. So this witness has been passed by
7 the Applicant. Now we're going to take up Plum Creek's
8 witnesses.

9 MR. WILSON: Thank you, Your Honor. May I
10 approach, because I'm not sure he has the exhibits in
11 front of him?

12 JUDGE QUALTROUGH: Okay. Let's go off the
13 record for half a second.

14 (Discussion off the record)

15 DIRECT EXAMINATION

16 BY MR. WILSON:

17 Q Mr. Halliburton, good morning.

18 A Good morning.

19 Q You know who I am of course, Mr. Halliburton.

20 A Yes.

21 Q Can you just -- you stated your name for the
22 record. What is your position?

23 A I'm the executive manager for Plum Creek
24 Conservation District.

25 Q And you've been handed a copy of your prefilled

1 testimony and attached exhibits. Correct?

2 A That's correct.

3 Q With respect to the -- and the labeling on
4 them -- and I assume that they're labeled -- it has a
5 cover page. Your prefiled testimony is Exhibit 1.0, and
6 then Exhibits 1.1 through 1.6 are the exhibits attached
7 to your prefiled testimony. Is that correct?

8 A That's correct.

9 Q I don't know how they're labeled for the
10 record, so I'm just going to refer to them the way we've
11 submitted them, because that's more convenient for us.

12 Mr. Halliburton, are you the records
13 custodian for Plum Creek Conservation District?

14 A I am.

15 Q Are each of the exhibits, 1.1 through 1.6,
16 copies of records maintained by Plum Creek Conservation
17 District in the course of its business?

18 A Yes.

19 Q And so those are records under your supervision
20 and control. Is that --

21 A Yes.

22 Q All right. With respect to Exhibit 1.0, I'm
23 going to ask you one question about supplemental
24 information to what is there, and I'll ask you to turn
25 to Page 18 of your prefiled testimony. And that's at

1 the very bottom. It's Line 22.

2 And the question that you were asked in
3 prefiled is: Has the board of the District consented to
4 the proposed amendment to the work plan for Site 21?

5 And your answer, on the top of Page 19,
6 was: Not at this time.

7 Is that correct?

8 A I think the -- I think they have presently has
9 agreed to that.

10 Q That's what my question was going to be. Can
11 you -- is it true that the Plum Creek Conservation
12 District board of directors, at its meeting on
13 July 19th, did approve and consent to entry of the work
14 plan, the supplemental work plan, for Site 21?

15 A That's -- that's correct.

16 Q All right. So with that change,
17 Mr. Halliburton, are the rest of the questions and
18 responses in your testimony exactly the same -- would
19 you give the same answers to the same questions had they
20 been asked of you this morning?

21 A Yes. Uh-huh.

22 MR. WILSON: All right, Your Honor. I'll
23 offer Exhibit -- the Exhibit 1, which is the testimony,
24 plus Exhibits 1.1 through 1.6 which are attached.

25 JUDGE QUALTROUGH: All right. Any

1 objection to the admission of Plum Creek Conservation
2 District's Exhibits 1 -- No. 1.0 through 1.6?

3 MR. RYAN: No objection.

4 JUDGE QUALTROUGH: All right. Those
5 exhibits are admitted.

6 (Exhibit Plum Creek Nos. 1.0 through 1.6
7 admitted)

8 MR. WILSON: That's all we have, Your
9 Honor. We'll pass the witness.

10 JUDGE QUALTROUGH: All right. So now the
11 witness, Mr. Halliburton, is now subject to
12 cross-examination based on the exhibits entered into
13 evidence for the Applicant 130EP and for the Plum Creek
14 Conservation District. Have y'all discussed an order
15 of -- of cross?

16 (No response)

17 JUDGE QUALTROUGH: I assume we'll go --
18 well, I don't know. I would think the Protestants would
19 go first, followed by OPIC, the ED, and the Applicant.
20 Is that -- going with the most adverse party last.

21 MR. WILSON: For the record, I have no
22 cross with respect to the Applicant's offer.

23 JUDGE QUALTROUGH: Right. And this -- and
24 you will have an opportunity for redirect as well.

25 MR. WILSON: I totally understand.

1 JUDGE QUALTROUGH: Okay. This gets a
2 little dicey, but --

3 MR. WILSON: It's a hybrid, and I
4 understand it's a hybrid.

5 JUDGE QUALTROUGH: Yes, it is. That's a
6 good way to put that.

7 So who's going first for the Protestants?
8 Caldwell County?

9 MR. MAGEE: We don't have any questions at
10 this time.

11 (Laughter)

12 JUDGE QUALTROUGH: All right.

13 MR. MAGEE: That's why I raised my hand so
14 fast.

15 JUDGE QUALTROUGH: TJFA and EPICC?

16 MS. PERALES: I have just a couple of
17 questions.

18 CROSS-EXAMINATION

19 BY MS. PERALES:

20 Q And these questions will be related to the
21 prefiled testimony offered by PCCD.

22 So PCCD Exhibit No. 10 (sic), do you have
23 that in front of you? It should be your prefiled
24 testimony.

25 JUDGE BELL: 1.0.

1 A 1.0. Oh, I have that one, yes.

2 Q (BY MS. PERALES) Oh, I'm sorry. 1.0. I
3 didn't see the dot.

4 A Yes.

5 Q So -- and so one -- so first of all, can you
6 describe for us briefly and generally what the
7 significance is of the small watershed protection plan?

8 A It's for flood control.

9 Q Okay. So the plan is intended to offer
10 instruction to PCCD regarding flood control. Is that
11 right?

12 A Would you repeat that, please?

13 Q Is the plan intended to serve as a guidance for
14 PCCD regarding flood control?

15 A Yes. Uh-huh.

16 Q And PCCD also has jurisdiction over
17 groundwater. Isn't that right?

18 A That's correct.

19 Q And, in fact, I think it's pretty clear in your
20 prefiled testimony -- correct me if I'm wrong -- that
21 one of the concerns of PCCD are impacts to groundwater.
22 Is that right?

23 A That's correct.

24 Q And you also talk in your prefiled about how
25 the Site 21 dam has been -- has been identified as a

1 high hazard dam. Is that right?

2 A That's correct.

3 Q Can you tell us what the significance of high
4 hazard is?

5 A Well, it's because of -- as they were built for
6 low hazard in the past, and because of downstream
7 development and the population growth, it has caused the
8 hazard rating to go up to high hazard.

9 Q And what is the impact of changing it to high
10 hazard?

11 A Well, we have to do a couple of things. What
12 really needs to be done is, it would need to be -- as
13 all dams that are reclassified as high hazard, it would
14 be best if they were rehabilitated. Of course, the
15 state doesn't have the funds to do all of that. So the
16 next best thing would be an emergency action plan, which
17 we have to write for each one of these high hazard dams.
18 And that is simply a way to, in case of an emergency, to
19 evacuate the people. That's the second best over
20 rehabilitation.

21 Q Okay. When you say that the state doesn't have
22 funding, you're talking about whether the state has
23 funding for the recommended improvements because of the
24 high hazard designation?

25 A I mean by -- for all of the dams that are

1 classified throughout the state.

2 Q Okay.

3 A Or maybe in the whole United States. It's a
4 lot of them. And it's just -- that would be the best
5 way, but there's not enough funds for that. So we just
6 ourselves work as funds become available.

7 Q I see. And have any steps been taken to start
8 the process of making improvements to Site 21's dam?

9 A It's one of four that's in the planning stage.
10 Of course, planning would be first, design comes later,
11 and then construction. But at this point it's just one
12 of the four in the plans.

13 Q Okay. And the planning stage, could you tell
14 us who -- what other agencies are involved in that
15 planning stage?

16 A Right.

17 Q What other agencies?

18 A What agencies? It would be like the NRCS,
19 different engineers, and that -- that sort.

20 Q And in this planning stage, regarding the
21 improvements that are recommended, were any potential
22 impacts from the proposed landfill taken into
23 consideration, if you know?

24 A I don't believe they were.

25 Q Okay.

1 A And in planning, you know, they just -- they
2 look at their options as what would work best for a
3 certain situation.

4 Q When you say they look at the options that work
5 best for certain situations, what kind of situations are
6 they looking at?

7 A They would -- they look at what they can do as
8 far as construction, if they would need maybe an extra
9 spillway, or if they need to raise the dam higher, raise
10 the footprint wider, change the inlet structures and
11 that type of construction.

12 Q And those are the types of options that have
13 been talked about or contemplated in the current
14 planning stage. Is that right?

15 A Yes, I think so.

16 Q Okay. But it's your understanding that in
17 those discussions, any impacts from the proposed
18 landfill have not been contemplated?

19 A Not at this time. Since this is not -- since
20 the proposed landfill is not in operation, I don't think
21 this was taken into account.

22 Q Okay. I believe in the folder that's in front
23 of you, on the corner of that table -- I think it's in
24 the corner -- there's -- there should be some PCCD
25 exhibits, so documents that have an exhibit label with

1 PCCD.

2 A That must be the one right here, I guess.

3 Q Okay. Do you have one that has the number 8 on
4 it?

5 A I do.

6 JUDGE BELL: Where is this found?

7 MS. PERALES: It's not prefiled, but it
8 had been marked previously by PCCD, and I have copies to
9 share with everyone.

10 JUDGE BELL: Okay. All right.

11 MR. WILSON: There are copies.

12 MS. PERALES: I have them.

13 MR. WILSON: Okay. I do, too.

14 JUDGE BELL: Okay.

15 JUDGE QUALTROUGH: I'm sorry, is this a
16 PCCD exhibit, or is this TJFA?

17 MS. PERALES: Well, it's already been
18 marked as PCCD, so that's why I referred to it that way.
19 But I would be the one offering it, so you might put a
20 different...

21 MR. WILSON: Well, Your Honor asked them
22 to be marked even if we didn't plan to introduce the
23 exhibit. I had them marked, but I did not plan to
24 introduce them, so I did not introduce them as part of
25 our case.

1 JUDGE QUALTROUGH: Okay. So we'll mark
2 this as Protestants' exhibit something. Protestant 44.

3 (Exhibit Protestants No. 44 marked)

4 Q (BY MS. PERALES) Do you recognize the document
5 that's in front of you?

6 A Yes.

7 Q Can you describe it for us, please?

8 A Yes. This is an erosion on the outside berm of
9 the auxiliary spillway.

10 Q The auxiliary spillway to the Site 21?

11 A That's correct.

12 Q Okay. Do you know who took these photos?

13 A Yes. It was me.

14 Q Okay. And there's a date up there that says
15 June 30, 2016. Is that the date that you took the
16 photos?

17 A Yes.

18 Q And what was your intention in taking these
19 photos?

20 A It was -- I kind of -- just kind of, I guess,
21 took them for the record. But as well, also, I sent
22 them to our engineer in Temple, for his advice.

23 Q Okay. And you were looking for advice about
24 what? What is it that you wanted --

25 A Well, what would be the best way to repair it.

1 Q To repair the erosion that's depicted here?

2 A That's correct. It was actually spotted by a
3 fertilize truck. I didn't see it and he told me, and
4 that's when I went and found it.

5 Q What's your concern with regard to the erosion
6 that's depicted here?

7 A Well, this is -- was probably more of a, in my
8 opinion, a safety issue as far as me or someone driving
9 around here and not seeing it. Being it was on the
10 outside of the spillway, it wasn't as crucial as it
11 would be as something that would cut back into the dam
12 itself. But it was -- if it was not repaired, it would
13 just continue to get worse.

14 Q Okay.

15 MS. PERALES: Before I forget, I'll offer
16 P-44 into evidence.

17 JUDGE QUALTROUGH: Any objections?

18 MR. RYAN: No objection.

19 JUDGE QUALTROUGH: P-44 is admitted.

20 (Exhibit Protestants No. 44 admitted)

21 Q (BY MS. PERALES) The --

22 MS. PERALES: And I will pass the witness.

23 JUDGE QUALTROUGH: All right. OPIC?

24 MR. TUCKER: OPIC has no questions.

25 JUDGE QUALTROUGH: Executive Director?

1 MR. TATU: No questions.

2 JUDGE QUALTROUGH: Applicant?

3 MR. RYAN: Thank you, Your Honor.

4 REDIRECT-EXAMINATION

5 BY MR. RYAN:

6 Q Let's see, Mr. Halliburton. I'm going to get
7 you to look back in that white binder -- no, the one
8 that's right there on your table.

9 A Oh, yeah.

10 Q And if you would turn to a tab that says
11 Halliburton 11 and look at the second page of that.
12 Yeah, that's it, a map that's got some blue and yellow
13 and brown on it.

14 A Okay.

15 Q I just want to make sure the record is clear
16 here. Is the area that's outlined in yellow there the
17 location of the Plum Creek Conservation District's
18 current easement associated with Site 21?

19 A That's correct.

20 Q Now, if I can get you to look in your prefilled
21 testimony, PCCD Exhibit 1.0, Page 17.

22 A All right.

23 Q And down there near the bottom of the page is
24 where you identify Exhibit 1.6, which is the final
25 supplemental watershed plan, or at least a portion of

1 it. And do I understand correctly that when the
2 District recently signed the agreement with NRCS related
3 to planning for rehabilitation of several sites,
4 including Site 21, that the document that was submitted
5 to the NRCS included that final supplemental watershed
6 plan?

7 A Yes.

8 Q That's a part of what was submitted to them?

9 A Yes, sir.

10 Q Okay. Now, you testified a minute ago about --
11 about four dams that are in the planning stage. Is that
12 four of Plum Creek's dams?

13 A Yes, sir.

14 Q Okay. And do I recall correctly that you have
15 a total of 28?

16 A Yes, sir, 28 structures. And three in this
17 plan would be in our upper watershed, and one, No. 28,
18 would be in our lower.

19 Q Okay. So this one would be in the upper
20 watershed, 21?

21 A Yes, sir. Yes, sir.

22 Q All right. And when we talk about the NRCS,
23 that's the Natural Resource Conservation Service?

24 A Yes, sir.

25 Q And am I right that that is the successor

1 entity to the Soil Conservation Service?

2 A Yes, sir.

3 Q And so sometimes when people refer to these
4 dams and these reservoirs, they may call them SCS
5 reservoirs. Is that correct?

6 A That's correct.

7 Q But now the federal agency that oversees all
8 those programs is the NRCS?

9 A That's right. I think they changed the name
10 somewhere back down the line and call it that now.

11 Q Okay. But sometimes people still refer to them
12 as SCS?

13 A Exactly. It's still listed on your map, I
14 believe, as SCS or whatever.

15 Q Okay. If you would -- back in the notebook --

16 A All right.

17 Q -- if you would turn to -- oh, wait. I'm
18 sorry. Stay -- stay with what you had there, your
19 prefiled testimony and exhibits. Let's look at --

20 A Okay.

21 Q -- Exhibit 1.6, which is the excerpts from the
22 final supplemental watershed plan. And if you would
23 turn to Page 54. I think 1.6 is probably back at the
24 back, and 54 is pretty near the end of that.

25 A Yes, sir.

1 Q Do you see Page No. 54 there?

2 A Yes, sir.

3 Q Okay. And so this page was included as a part
4 of the agreement that was recently signed with NRCS?
5 This entire --

6 A I'm sure it was, yes.

7 Q This entire Exhibit 1.6 was a part of that
8 agreement?

9 A Right. Right.

10 Q Okay. Is it true that the District does not
11 intend to acquire any additional easement area at Site
12 21 even if rehabilitation of the dam is undertaken?

13 A I don't think they have plans at this time. I
14 can't say what will actually need to be done in the
15 future, but at this time I don't think they do, no, sir.

16 Q Okay.

17 A Well, let me take that back. I guess the
18 District may have to take in some extra acreage possibly
19 for the footprint of the structure or whatever. It's
20 possible.

21 Q Okay. And that would be down in the vicinity
22 of the existing dam?

23 A That's right.

24 Q Okay. But in terms of backup in the watershed,
25 the District doesn't have plans to acquire additional

1 easements?

2 A No plans at this time, no, sir.

3 Q Okay. And is that because it's the District's
4 position that the easement it currently has is
5 sufficient to satisfy NRCS requirements?

6 A Well, I guess it is at this point. Of course,
7 some of the -- some of the requests that NRCS is asking
8 as far as maybe being responsible to the top of the dam
9 in this sort of deal, they may need extra. But, you
10 know, in order to obtain extra easements, which would be
11 even better maybe to the top of the dam, but you're
12 talking a lot of extra cost trying to get easements now.

13 Q Okay.

14 A If that answered what you're saying.

15 Q I think it sort of does.

16 If you look there on Page 54 in Exhibit
17 PCCD 1.6, if we go down in that first big paragraph up
18 there, it says, Rationale for land rights below top of
19 dam elevation.

20 A Yes, sir.

21 Q If you look in the -- one, two, three, four,
22 five, six, seven -- in the 8th line of that, do you see
23 the sentence that begins, The sponsors are not securing
24 upstream land rights to the top of the dam elevation?

25 A Yes, sir.

1 Q And is that a reference to potential additional
2 easement area?

3 A Yes, sir.

4 Q Okay. Is it true that Plum Creek Conservation
5 District doesn't supply water to be used for drinking
6 water purposes from Site 21?

7 A That's correct.

8 Q And is it true, in fact, that the District
9 doesn't supply water to be used for any purpose from
10 Site 21?

11 A That's correct.

12 Q And is it also true that the District doesn't
13 supply water from any of its facilities?

14 A That's correct.

15 Q And the structure at Site 21 is solely for
16 flood control purposes?

17 A That's correct.

18 Q And that's true for all of their dams and
19 reservoir sites that the District manages?

20 A Basically, yes.

21 Q The dam at Site 21 is inspected from time to
22 time by TCEQ and NRCS. Is that right?

23 A That's correct.

24 Q And isn't it true that the results of those
25 inspections show that the dam is generally in good

1 condition, and there's no indication of leakage from the
2 dam or reservoir?

3 A That's true.

4 Q And isn't it also true that the classification
5 of the dam at Site 21 as a high hazard dam is based on
6 the level of downstream development, and it's not
7 related to the condition or structural integrity of the
8 dam?

9 A That's correct.

10 Q Would the District prefer the proposed 130
11 Environmental Park Landfill project to other types of
12 development that have been occurring upstream at some of
13 your other reservoir sites?

14 A That, I'm not sure of.

15 Q Okay. Do you have any personal thoughts on
16 that?

17 A I guess -- I guess I don't.

18 Q Okay.

19 MR. RYAN: Thank you, Mr. Halliburton.

20 I'll pass the witness.

21 JUDGE QUALTROUGH: All right. Anything
22 from the District? I guess this is redirect or maybe
23 some recross?

24 MR. WILSON: Well, I haven't crossed yet,
25 but in terms of redirect, the answer is no, I'm going to

1 let the testimony speak for itself and the exhibits
2 speak for themselves.

3 JUDGE QUALTROUGH: All right. Thank you.
4 And I don't know if that was your cross or redirect or
5 both?

6 JUDGE BELL: Both.

7 MR. RYAN: I think that was everything.

8 MR. WILSON: The whole sandwich.

9 JUDGE QUALTROUGH: Okay. So anything from
10 Caldwell County? Any questions from Caldwell County?

11 MR. MAGEE: Just a few.

12 JUDGE QUALTROUGH: Okay.

13 RECROSS-EXAMINATION

14 BY MR. MAGEE:

15 Q The proposed rehabilitation of the dam, does
16 that increase the size of the dam?

17 A I haven't really studied into a lot of detail,
18 to be honest with you, but yes, it would -- the way I
19 understand, it would raise the height of the structure.
20 It would widen the dam itself at the base. So yes, it
21 would -- it would basically build a structure stronger
22 or stouter in order to handle the flood.

23 Q And could that increase the floodplain?

24 A No, it would not.

25 Q Okay.

1 MR. MAGEE: No further questions.

2 JUDGE QUALTROUGH: TJFA?

3 RECROSS-EXAMINATION

4 BY MS. PERALES:

5 Q I have a couple of questions related to Exhibit
6 1.6 on Page 54. Are you there?

7 A I'm on 54. Is it --

8 Q Okay.

9 A Okay.

10 Q So you were asked a question about the
11 paragraph up on top there regarding rationale for land
12 rights below top of dam elevation.

13 Do you see that?

14 A Yes.

15 Q And the last sentence says, The sponsors
16 acknowledge the risk and liability for not securing land
17 rights to the top of the dam elevation.

18 Do you see that?

19 A Yes.

20 Q What are the risks and liabilities for not
21 securing land rights to the top of the dam elevation?

22 A I guess if the water went even higher, I guess
23 the District, I guess, could possibly be sued or
24 whatever in the future, you know, the -- if the
25 District -- it's risk accepting it like it is, and it's

1 risk if they don't. They're kind of caught in the
2 middle.

3 Q Okay. Below that sentence, on the next
4 paragraph, it says, The sponsors do not have the legal
5 authority to restrict upstream development.

6 Do you see that?

7 A Yes, ma'am.

8 Q So was the District -- was there a suggestion
9 made to the District that it restrict upstream
10 development?

11 A Well, what they're suggesting is that the
12 District work with, I guess, the landowners or
13 municipalities or the county and try to make them aware
14 of what could happen if -- up to that height, to that
15 elevation, and try to get them to cooperate with the
16 District to replat or plat in such a way that would work
17 with the District.

18 Q Okay. And when you say "work with the
19 District," you're talking about working with other
20 municipalities or local governments to address upstream
21 development?

22 A That's right, to make them aware of what could
23 happen if they plat maybe too lower.

24 Q Okay.

25 MS. PERALES: Thank you. I'll pass the

1 witness.

2 THE WITNESS: Thank you.

3 JUDGE QUALTROUGH: All right. OPIC?

4 MR. TUCKER: No questions.

5 JUDGE QUALTROUGH: ED?

6 MR. TATU: No questions.

7 JUDGE QUALTROUGH: And I guess you had
8 your last chance of redirect?

9 MR. WILSON: Well, I have a couple
10 questions just for clarification on cross-examination.

11 JUDGE QUALTROUGH: Okay.

12 MR. WILSON: That was asked by the
13 Applicant, because I haven't done that yet.

14 JUDGE QUALTROUGH: No, but you had the
15 opportunity to. Go ahead.

16 THE REPORTER: Can he have the mic,
17 please?

18 MR. WILSON: Thank you.

19 RE-CROSS-EXAMINATION

20 BY MR. WILSON:

21 Q Mr. Halliburton, just to make sure the record
22 is clear, Plum Creek Conservation District has no
23 engineers, does it, under contract with it?

24 A No, sir.

25 Q And the engineers you're talking about are

1 those engineers affiliated with or associated with or
2 hired by the Natural Resources Conservation Service?

3 A That's correct.

4 Q Plum Creek itself does not hire those engineers
5 to look at the hydraulic capacity of the dam nor the
6 impacts of changes at the dam, does it?

7 A No, sir.

8 Q Do you know whether if there are any hydrologic
9 changes to the dam, the change -- let me back up.

10 The change in design of the structure
11 under the agreement that was recently signed has not yet
12 been accomplished, has it?

13 A Say that again, please, sir.

14 Q Yes, sir. There are no design changes as of
15 yet -- there are no fixed design changes in response to
16 the agreement that was signed in July?

17 A No. No, sir.

18 Q And you don't -- so no one knows at this time
19 what the -- those changes might be or entail?

20 A That's -- that's correct.

21 MR. WILSON: I just wanted to make that
22 clear for the record. Thank you.

23 JUDGE QUALTROUGH: All right. Any party
24 have any questions on that limited line of questioning?

25 (No response)

1 JUDGE QUALTROUGH: All right. So you're
2 free to go. Thank you.

3 THE WITNESS: Thank you.

4 All right. So we're still at the
5 Applicant's direct case.

6 MR. RYAN: Your Honor, our only remaining
7 witness that hasn't yet been called is Jeff Hobby. And
8 as I mentioned last week, he was going to be here this
9 week, and I asked to take him out of order at some
10 point. He'll be here on Wednesday. And so at an
11 appropriate point after we finish a witness on
12 Wednesday, I'd like to call Mr. Hobby then.

13 JUDGE QUALTROUGH: All right. So just to
14 make sure that just as a housekeeping matter, not
15 talking about Mr. Hobby's exhibits, but do we have all
16 the exhibits -- I want to make sure I have everything --
17 I guess, really, she needs to know if everything's been
18 offered and admitted.

19 MR. RYAN: Your Honor, I think with the
20 exception of Mr. Hobby's exhibits, I think all of our
21 witness-specific exhibits --

22 JUDGE QUALTROUGH: Okay.

23 MR. RYAN: -- have been offered and
24 admitted, but I guess I would like -- I'd --

25 JUDGE QUALTROUGH: What about Volume 5? I

1 guess they're not witness-specific?

2 MR. RYAN: And I was going to say that we
3 have several exhibits that are not specifically
4 sponsored by witnesses.

5 JUDGE QUALTROUGH: Uh-huh.

6 MR. RYAN: And what I'd like to do is
7 identify those and offer them now, and I'm only going to
8 identify them by number, if that's okay with you, or I
9 can go through and describe what they are. They're on
10 our exhibit list.

11 JUDGE QUALTROUGH: No, it's on your
12 exhibit list.

13 MR. RYAN: Okay. That would be Exhibits
14 130EP-1 through 130EP-19.

15 JUDGE BELL: So 1 through 5 are the permit
16 application. Correct?

17 MR. RYAN: Yes.

18 JUDGE BELL: I think we've already
19 admitted those.

20 MR. RYAN: Okay.

21 JUDGE BELL: So we're talking about --

22 MR. RYAN: 6 through 19.

23 JUDGE BELL: And 7, actually, has already
24 been admitted as well.

25 MR. RYAN: Oh.

1 JUDGE BELL: So 6 and then 8 through 19?

2 MR. RYAN: Yes, sir, that's correct.

3 JUDGE BELL: All right. And you're
4 offering those now?

5 MR. RYAN: Yes.

6 JUDGE BELL: Any objections?

7 MS. PERALES: Well, we already made our
8 objections.

9 MR. MAGEE: Yes, we did, too.

10 JUDGE BELL: New objections? Then 130EP-6
11 and 130EP-8 through 19 are admitted.

12 (Exhibit Applicant Nos. 6 and 8 through 19
13 admitted)

14 JUDGE QUALTROUGH: All right. Anything
15 else from the Applicant other than Mr. Hobby?

16 MR. RYAN: Other than Mr. Hobby and having
17 to deal potentially with Mr. Maroney down the road.

18 JUDGE QUALTROUGH: Okay.

19 MR. RYAN: He's actually -- he has a
20 doctor's visit today. And I'm going to talk to him
21 after that doctor's visit, and I'll be able to provide
22 an update on that tomorrow.

23 JUDGE QUALTROUGH: Okay, great. All
24 right. So other than those two, Applicant rests?

25 MR. RYAN: Yes.

1 JUDGE QUALTROUGH: All right. It's --
2 what is that -- 11:30? All right. So who's going to go
3 first for the Protestants?

4 MS. PERALES: I believe we are.

5 JUDGE QUALTROUGH: Okay.

6 MS. PERALES: Well, PCCD already has
7 presented their witness, so we'll be next.

8 JUDGE QUALTROUGH: All right. And just
9 for the record, Mr. Wilson, PCCD rests its direct case?

10 MR. WILSON: Yes.

11 JUDGE QUALTROUGH: All right. Thank you.
12 All right.

13 MS. PERALES: Could we possibly take an
14 early lunch break so that I can get my fact witnesses
15 together and prepare to go -- would that be okay?

16 JUDGE QUALTROUGH: Do we need all the fact
17 witnesses?

18 MR. RYAN: I've already told Ms. Perales
19 there are two of them that I don't intend to
20 cross-examine, and my cross-examination of the other two
21 will be brief.

22 JUDGE QUALTROUGH: Okay.

23 MR. RYAN: But I'm okay with taking a
24 lunch break now, if that'll help speed things along.

25 JUDGE QUALTROUGH: All right. We're just

1 trying to figure out the length of time. Typical hour?
2 Will that be fine?

3 MS. PERALES: Sure.

4 JUDGE QUALTROUGH: All right. And
5 hopefully we will have someone fix the lights while
6 we're taking a break for lunch. All right. So we are
7 off the record. Come back at 12:30.

8 (Lunch recess: 11:31 a.m. to 12:35 p.m.)

9 (Exhibit Protestants Nos. 1, 1-A through
10 1-J; 2, 2-A through 2-B; 3, 3-A through
11 3-G; 4, 4-A; 5, 5-A through 5-AG; 6, 6-A
12 through 6-G; 7, 7-A through 7-D; 8; 9, 9-A
13 through 9-F; 10 and 11 marked)

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1 AFTERNOON SESSION

2 MONDAY, AUGUST 22, 2016

3 (12:35 p.m.)

4 JUDGE QUALTROUGH: We are back on the
5 record for the afternoon session for -- I guess it's
6 August 22nd, 2016, and we are going to begin with TJFA
7 and EPICC's direct case. You may call your first
8 witness.

9 MS. PERALES: May I make a brief opening
10 statement?

11 JUDGE QUALTROUGH: Oh, yes, you may.

12 MS. PERALES: Okay. And this will in fact
13 be very brief.

14 JUDGE QUALTROUGH: Okay.

15 MS. PERALES: So based on what we've heard
16 so far, what we know about this Applicant and about this
17 application and about the proposed landfill site is that
18 an out-of-state corporation or an out-of-state entity
19 came into Texas, decided they wanted a landfill in
20 Texas, found an available tract of property, went to a
21 consultant and said, "Make this happen."

22 But there's so much that -- well, in
23 addition to that, here is what else we know. We know
24 that near this property there is a high hazard dam and a
25 reservoir. We know that the proposed landfill footprint

1 is surrounded by floodplain. We know that the access
2 road, which is not included in the facility boundary --
3 at least portions of it are not -- must cross the
4 floodplain in a couple of different places. We know
5 that the proposed site is near a dangerous intersection
6 where there have been multiple accidents. We know that
7 the application was thrown -- Parts 1 and 2 of the
8 application were thrown together rather hastily and in a
9 shoddy manner in order to try to get something on file
10 before the County was able to pass a citing ordinance.
11 We know that when Parts 1 and 2 were filed, there was no
12 intention of actually pursuing a land use compatibility
13 determination. And we also know that a lot of the
14 information, very essential pieces of information that
15 were -- that were presumably relied upon to put this
16 application together no longer exist, and we know that
17 that information was destroyed before the Executive
18 Director even finished reviewing the application and
19 declaring it technically complete.

20 But here is what we still don't know. We
21 still don't know exactly who the Applicant is. We don't
22 know the Applicant's entire history of operating
23 landfills in other parts of the United States. We don't
24 know what the -- exactly what the subsurface geology
25 consists of, other than we know that it's not what was

1 represented in the application materials.

2 Until recently, it appeared that the
3 Applicant couldn't even identify where the landfill
4 is -- the landfill footprint is in relation to the
5 floodplain. We don't know what impacts the irregular
6 shape of the proposed landfill is going to have on slope
7 stability or liner stability. We don't know exactly how
8 the access road is going to be enforced. We don't know
9 exactly how the access road is going to be maintained
10 during catastrophic storm events. We don't know what
11 the source of the water supply is. We don't know if we
12 have adequate soils for the liner or the cover. We
13 don't know what the potential impacts of the proposed
14 landfill will be on the dam and reservoir. We don't
15 know whether the Applicant will be able to obtain a
16 claim or a conditional letter of map provision from FEMA
17 or a county floodplain development permit. We don't
18 know that they've even attempted to obtain approval or
19 authorization from the county or from FEMA. We don't
20 even know whether the market exists for this proposed
21 landfill, and we don't know exactly who is behind 130
22 Environmental Park or Green Group Holdings.

23 In some cases we can attribute this lack
24 of information to a failure to sufficiently investigate
25 or obtain the necessary information that's required by

1 the application. In other cases, this lack of
2 information is -- really it's attributable to a willful
3 destruction of information, such as with the subsurface
4 investigation, so that we'll never be able to find out
5 exactly what the subsurface investigation revealed.

6 One other thing that we do know is that
7 based upon what we've heard so far, based upon the
8 direct case that has been presented by 130 Environmental
9 Park, they cannot satisfy their burden of proof, and
10 they cannot say that they've met all of the regulatory
11 requirements necessary to obtain a landfill permit.

12 Thank you.

13 JUDGE QUALTROUGH: All right. You may
14 call your first witness.

15 MR. ALLMON: Your Honor, Protestants would
16 like to call Patton King.

17 JUDGE QUALTROUGH: Good afternoon. If I
18 could get you to sit by the microphone over there. And
19 I need you to raise your right hand.

20 (Witness sworn)

21 JUDGE QUALTROUGH: All right. Please have
22 a seat, and if you could talk into the microphone and
23 state your name for the record.

24 A My name is Patton King.

25 JUDGE QUALTROUGH: Thank you. You may

1 proceed.

2 PRESENTATION ON BEHALF OF PROTESTANTS

3 PATTON KING,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ALLMON:

7 Q Mr. King, do you have this binder in front of
8 you that says "Protestant's Prefiled Testimony"?

9 A I've got three binders here.

10 MS. PERALES: Can I approach and help him?

11 JUDGE QUALTROUGH: Yeah, if you could
12 locate Volume 1, please.

13 A Let me put my glasses on here. I have the
14 testimony record.

15 Q (BY MR. ALLMON) Great. Can you look at
16 exhibit -- Protestants Exhibit 1?

17 A Page 1?

18 Q No. Exhibit 1.

19 A Okay. The picture of our water well that's
20 underwater?

21 Q That would be Exhibit 1-A. I'm asking for
22 Exhibit 1. Do you see Exhibit 1, which is your prefiled
23 testimony? Do you see at the very -- the very first
24 tab, Exhibit 1?

25 JUDGE QUALTROUGH: EX1.

1 Q (BY MR. ALLMON) Not 1-A, but 1. Before you
2 get to 1-A, there's 1.

3 A Okay.

4 Q Do you see that?

5 A 1.

6 Q Okay. The tab and then the exhibit behind it
7 says, "Protestants Exhibit 1, Prefiled Testimony."

8 Do you see that?

9 A Yes, sir.

10 Q Is that your prefiled testimony?

11 A Yes, sir.

12 Q And do you see Exhibits 1-A, 1-B, 1-C, 1-D,
13 1-E, 1-F, 1-G, 1-H, 1-I, 1-J? Do you see those exhibits
14 that are attached?

15 A Yes, I see them.

16 Q Are those the exhibits to your prefiled
17 testimony?

18 A They are.

19 Q If you were to testify here orally today, would
20 your answers be the same as those provided in Exhibit 1?

21 A Absolutely.

22 Q And are those exhibits referenced and referred
23 to in Exhibit 1, the Exhibits A through I --

24 A Right.

25 Q -- 1-A through 1-I --

1 A Those are all exhibits that I put with my
2 testimony.

3 MR. ALLMON: Okay. Your Honor, subject to
4 the limiting instruction that was in Order 26, TJFA and
5 EPICC offer Exhibit 1 and the exhibits attached to it,
6 which would be Exhibit 1-A through 1-I into evidence.

7 JUDGE QUALTROUGH: All right. What about
8 Exhibit 1-J?

9 MR. ALLMON: Oh, I'm sorry. Also 1-J.
10 I'm sorry, Your Honor. That would include 1-J.

11 JUDGE QUALTROUGH: All right. Any
12 objections to those exhibits?

13 MR. RYAN: No, Your Honor, not other than
14 the ones we've previously made.

15 JUDGE QUALTROUGH: All right. Then as
16 stated in the Order No. 26, Exhibit 1 and then 1-A
17 through 1-J, those exhibits are admitted.

18 (Exhibit Protestants' No. 1 and 1-A
19 through 1-J admitted)

20 MR. ALLMON: I pass the witness.

21 JUDGE QUALTROUGH: All right. Plum Creek?

22 MR. WILSON: No questions, Your Honor.

23 JUDGE QUALTROUGH: All right. Caldwell
24 County?

25 MR. MAGEE: Just a few, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. MAGEE:

3 Q Mr. King, my name is Eric Magee. I represent
4 Caldwell County in this matter. Good afternoon.

5 A Good afternoon.

6 Q The white notebooks on the corner, that's the
7 Applicants' exhibits. Is there one called Volume 1 up
8 there?

9 A I've got 2, 6, 3.

10 MR. MAGEE: Okay. May I approach, Your
11 Honor? I can help, maybe.

12 JUDGE QUALTROUGH: Yes, you may. Are you
13 going to need any other exhibits?

14 MR. MAGEE: Just Volume 1.

15 JUDGE QUALTROUGH: Okay.

16 Q (BY MR. MAGEE) When I refer to page numbers,
17 we're going to look in the top right-hand corner.

18 A Okay.

19 Q Would you turn to 130 EP-1, Page 123? Are you
20 with me, Mr. King?

21 A This is 130 Environmental EP-1, Page 123?

22 Q Yes, sir.

23 A I'm there.

24 Q Okay. I just kind of wanted to see if we could
25 get a visual of where your property is in relationship

1 to the proposed landfill. Can you give us a description
2 so maybe we could locate your property on this map?

3 A Sure. Kind of in the upper right, you see the
4 word "one-mile radius." Coming back towards the center
5 of the diagram, you see "500-foot radius." That big
6 light-colored field is -- that's the top edge of ours --
7 of our ranch, and it drops down close to 1185, right at
8 along FM 179, Homannville Trail right there.

9 Q So if I described it as, I guess, the northeast
10 corner of the property line, does it start about where
11 it says "500-foot radius"?

12 A Yes. Yes, sir.

13 Q And then head southeast back towards 1185?

14 A Yes, sir.

15 Q If we look at the legend over on the right-hand
16 side of the page, there's a yellow square, and it says
17 "Structures and inhabitable buildings within 500 feet."

18 Do you see that?

19 A Yes, sir.

20 Q So right -- it looks like just north of
21 Homannville Trail within the 500-foot radius, there's a
22 little yellow square right next to where it says
23 "landfill footprint," and then there's an arrow being
24 drawn to the landfill footprint. Do you see that?

25 A I see it.

1 Q Is that a structure on your ranch?

2 A Yes, sir. We've got a home there.

3 Q Okay. I wanted to ask you a couple of
4 questions about some things we've actually heard
5 testimony on today. One of them was feral hogs. You
6 were here earlier this morning. Correct?

7 A Correct.

8 Q Do you know if Caldwell County has a feral hog
9 program?

10 A Yes, sir. They've had a feral hog program
11 running for a number of years, I think. There's a
12 bounty out on the tails I believe that you can achieve
13 if you bring a tail in.

14 Q So if you bring a tail in for I guess
15 eradication of a feral hog, then you get paid something?

16 A Yeah. A dollar or so.

17 Q Okay.

18 A I'm not sure on the specific amount.

19 Q And then when we look at your exhibit -- I
20 believe it was J, Page 1, 2, and 3 were all photos of
21 someone shooting a feral hog. Right?

22 A That's my eldest son and one of his good
23 friends shooting those feral hogs.

24 Q Okay.

25 A And all those three kills were located right

1 there next to 179.

2 Q 179, what do you mean by that?

3 A Around the home we just talked about.

4 Q Okay. So that square right there within the
5 500-foot radius of the proposed landfill footprint or
6 the perimeter 500 feet within the permit boundary,
7 that's near where those three hogs were killed?

8 A Absolutely.

9 Q And then if we turn to the fourth page, it
10 looks like a field and a lake through a little forest or
11 grove of trees with some -- I call them ruts. I don't
12 know what the best word is for that.

13 A Right. That's a picture of my mother's front
14 yard. That's the home up on 1185 that she lives in, and
15 those hogs came into her front yard and dug those ruts.

16 Q And is that within a one-mile radius of the
17 proposed landfill?

18 A That particular picture might be -- it's right
19 around a mile.

20 Q Okay. And then the last photo in Exhibit J
21 looks like some wild turkeys. Can you tell me about
22 those?

23 A That would be the picture that was taken in my
24 mother's backyard one day when we had two hens, and I
25 think there were like six little ones that were with

1 them, five or six.

2 JUDGE QUALTROUGH: I'm sorry. Where is
3 that? My J does not have --

4 MR. MAGEE: I. I'm sorry. It's I.

5 JUDGE QUALTROUGH: I?

6 MR. MAGEE: Yes, it's I, the last page of
7 I.

8 JUDGE QUALTROUGH: Oh, okay. There we go.

9 A But those were wild turkeys that just wandered
10 up in the yard.

11 MR. MAGEE: And just to be clear for the
12 record, it's Protestants Exhibit King I, Page 2.

13 JUDGE QUALTROUGH: Okay.

14 Q (BY MR. MAGEE) In your prefiled testimony,
15 which is Exhibit 1, on Page 15 --

16 A Page 15?

17 Q Yes. Are you with me?

18 A I'm there.

19 Q I'm looking down at the bottom on Line 20 and
20 21. There's a sentence that says, "Around 15 oil wells
21 have been drilled without success by various companies."

22 A Yes, sir.

23 Q Are these 15 oil wells on your property or just
24 in this area?

25 A We've had 15, 16 oil wells drilled on our

1 property since we've owned it.

2 Q And I think there's an exhibit in the -- in
3 that notebook, the Applicants' exhibit, Page 121.

4 A I'm on Page 121.

5 Q I think this exhibit we've gone over here shows
6 some locations of some either dry holes, oil wells, or
7 plugged oil wells on this exhibit. I want to go back to
8 the area where it shows your property line within that
9 500-foot radius where we've talked about the residents.
10 Do you see that area?

11 A Yes, sir.

12 Q We're talking just about north of Homannville
13 Trail, and it looks like -- if I look at the legend
14 there, it looks like there are two dry holes on your
15 property just north of Homannville Trail, either right
16 at or right inside the 500-foot radius, kind of where
17 your residence is.

18 Do you see where I'm talking about?

19 A Yes, sir, I see that.

20 Q Is that correct?

21 A No, that's not correct.

22 Q There's not two dry holes right there?

23 A There are two dry holes pictured on the
24 drawing.

25 Q Okay. And on your property, tell me about

1 that.

2 A That one that's kind of -- it has a No. 1 and
3 it's circled there and it's by the lake, further north,
4 I guess, that well is not in the right correct location.
5 It looks to me like --

6 Q Okay. Let me just make sure the record is
7 clear. So there's a number up there where it says
8 "34730," and then directly below that, there is a dry
9 hole with the number one. Is that one in the correct
10 location?

11 A Fairly close.

12 Q Okay. And so the one you're referring to is
13 the one to the left of that well closer to Homannville
14 Trail. Correct?

15 A That's correct.

16 Q Okay. And what were you saying about that one?

17 A That was the Hunter-King well, and that was
18 drilled on the Kathy Hunter property.

19 Q So it shouldn't be on your property north of
20 Homannville Trail. It should be south of your -- south
21 of Homannville Trail?

22 A Right. It's across the road from there and
23 maybe up just a pinch. It's located over there near
24 where she had the oil tanks that were located maybe 160
25 feet inside the road, something like that.

1 Q So within the permit boundary of this landfill?

2 A That's where those tanks were.

3 Q Okay.

4 MR. MAGEE: That's all the questions I
5 have.

6 JUDGE QUALTROUGH: All right. OPIC?

7 MR. TUCKER: No questions.

8 JUDGE QUALTROUGH: Executive Director?

9 MR. TATU: No questions.

10 JUDGE QUALTROUGH: 130 EP?

11 MR. RYAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. RYAN:

14 Q Good afternoon, Mr. King.

15 A Good afternoon.

16 Q Where do you live?

17 A I live at 22834 Mountain Creek Court in Katy,
18 Texas.

19 Q Does anyone currently live in the house you
20 described on the property near the proposed landfill
21 site?

22 A I would say not on a full-time basis, but we
23 have people in there almost every weekend. I have to
24 ask permission to have a chance to stay in there.

25 Q Let me ask you -- I wasn't really sure I

1 understood what you said about this photo in Exhibit I
2 that's attached to your prefiled testimony. Would you
3 open to that?

4 A Which one?

5 Q The picture of the turkeys. Well, let me just
6 ask you: Where was that taken? Is that in your
7 mother's yard?

8 A Yes.

9 Q Okay.

10 A 3925 FM 1185.

11 Q 3925. Okay. And is that -- how would you
12 describe where on 1185 that is?

13 A It's 3.9 miles from 183 to her front gate on
14 the north side of that road. You turn left into her
15 front gate.

16 Q Okay. So if I was at the interconnection of
17 183 and 1185, and if I headed east on 1185, if I go 3.9
18 miles, I get to her driveway?

19 A Right.

20 Q Okay. Let me ask you about the last photo in
21 Exhibit J to your testimony. Do you see that one?
22 Exhibit J to your testimony, the last photo.

23 A The hog ruts?

24 Q Yeah. So that was taken in your mother's yard
25 at her place that's on 1185. Right?

1 A That's correct.

2 Q Is the area shown in this paragraph the only
3 place in the area where hogs have access to food?

4 A Access to food?

5 Q Yes.

6 A Say that one more time.

7 Q Okay. Is the area that's shown in this photo,
8 this part of your mother's yard --

9 A Right.

10 Q -- is that the only place in this general area
11 where hogs have access to food?

12 A No. They have the run of the whole ranch. Is
13 that the question?

14 Q Well, and not just the ranch, but other areas
15 up in this part of Caldwell County. Are there other
16 places that hogs can access food?

17 A They roam free.

18 Q Okay. And are there also places up in that
19 part of Caldwell County where they can access water?

20 A Yes, sir.

21 Q And is one of them the body of water that's
22 shown in this photograph?

23 A Absolutely.

24 Q Okay. Who owns the property that you
25 identified on Homannville Trail?

1 A It's owned by the King family trust?

2 Q Okay. And are you the trustee of that trust?

3 A No.

4 Q Do you know who is?

5 A That would be my sister.

6 Q Okay.

7 A Well, I say that. I'm sorry. My mother is
8 the -- probably designated as the trustee. My sister is
9 just heavily involved with all the legal work.

10 Q Okay. Now, I think you testified -- well, in
11 your prefiled testimony it says that there have been
12 about 15 oil wells drilled on that property without
13 success?

14 A Correct.

15 Q Do you know if all of those wells have been
16 registered with the Railroad Commission?

17 A I'm not sure if they've all been registered.

18 Q Okay.

19 A Now that I've learned a little bit more about
20 this process, I'm back-tracking that.

21 Q You're going to go back and check?

22 A Yeah.

23 Q Okay.

24 A In 2012, my mother called the Railroad
25 Commission up and had a man out to cap a couple of wells

1 that were leaking oil. You know, it's a process.

2 MR. RYAN: I'll pass the witness.

3 JUDGE QUALTROUGH: All right. Redirect?

4 REDIRECT EXAMINATION

5 BY MR. ALLMON:

6 Q Do you have a specific role in the trust with
7 respect to the landfill matters?

8 A Yes. The trust has assigned me the task to
9 fight on their behalf for the Lazy K Ranch.

10 Q You testified that the well that was shown on
11 Exhibit 130EP-1, Page 121, Exhibit 2A.5, that's shown on
12 your property is actually -- did you say it was about
13 160 feet in from the road?

14 A That's correct. That's what I said.

15 Q And the county --

16 A That's where those tanks are.

17 THE REPORTER: I'm sorry. What was the
18 question? You talked over each other. I didn't hear
19 the question.

20 JUDGE QUALTROUGH: Ask the question. He
21 didn't hear the whole question.

22 Q (BY MR. ALLMON) Was it your testimony that the
23 well that was represented to be on your property in
24 Exhibit 2A.5 was actually on Kathy Hunter's property and
25 160 feet in from the road?

1 A Yes, sir, that's what I testified to. That's
2 where those tanks were located.

3 Q Okay. And do you know when either of those
4 tanks or the well equipment was removed?

5 A My mother said that the tanks, I think, were
6 removed within the -- within 12 months, say, prior to
7 the filing of the permit application.

8 Q Do you remember when you saw the well itself,
9 the operating equipment?

10 A Yeah. I think that well was completed in 1995,
11 and I -- going back, I haven't found them yet. I took
12 pictures of that somewhere. But I was there and saw the
13 well go in. They had wanted to put that well on our
14 property, and my mother wouldn't allow it because they
15 wanted to put it there right next to our lake, and it
16 would have polluted the lake.

17 MR. ALLMON: Pass the witness.

18 JUDGE QUALTROUGH: Plum Creek?

19 MR. WILSON: No questions.

20 JUDGE QUALTROUGH: Caldwell County?

21 MR. MAGEE: No further questions.

22 JUDGE QUALTROUGH: All right. Anybody
23 have any questions?

24 MR. TUCKER: No questions.

25 JUDGE QUALTROUGH: All right. Thanks.

1 You're free to step down. I appreciate it.

2 All right. The next witness?

3 MR. ALLMON: Your Honor, Protestants call
4 Byron Friedrich.

5 (Witness sworn)

6 JUDGE QUALTROUGH: All right. Please have
7 a seat and state your name for the record.

8 A My name is Byron Friedrich.

9 JUDGE QUALTROUGH: Thank you. You may
10 proceed.

11 BYRON FRIEDRICH,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ALLMON:

15 Q Good afternoon, Mr. Friedrich.

16 A Good afternoon.

17 Q The previous witness, Mr. King, was looking at
18 a binder that was Protestants' exhibits. Do you have
19 that in front of you?

20 A I do.

21 Q Can you look at Protestants' Exhibit 2 as
22 indicated on the tab as Exhibit 2?

23 A Yes, sir.

24 Q Do you recognize Exhibit 2?

25 A I do.

1 Q What is Exhibit 2?

2 A It was the prefilled testimony that I gave
3 regarding the landfill.

4 Q And do you recognize Exhibits 3-A through 3-G?

5 JUDGE QUALTROUGH: 3 or 2?

6 A 2, I believe.

7 Q (BY MR. ALLMON) I'm sorry. 2-A through 2-B?

8 A Yes, I do. Those are pictures that I took of
9 flooding on our land for Exhibit 2-A, and then traffic
10 on Highway 183 on 2-B.

11 Q And are those referenced specifically in
12 Exhibit 2?

13 A Yes, they are.

14 Q Looking at Exhibit 2, are there any corrections
15 that you need to make, any errors that are in --

16 A Yes, there are. On -- I believe it's Page 3,
17 it says the location of the landfill, and I said, "just
18 east of my property." It's actually just west of my
19 property.

20 Q Is that on Line 6?

21 A Yes, it's on Line 6. I'm sorry.

22 Q Can you make that change on Page 3?

23 A Yes, I will. Okay.

24 Q Are there any other errors?

25 A There was one dealing with the flooding, if I

1 can remember the page.

2 Q Was that on Page 6?

3 A I believe it was Page 6. And I said I took the
4 pictures in October. I actually took the pictures in
5 November of 2013. That's on page -- on Line 10.

6 Q So instead of October on Line 10, it should say
7 "November"?

8 A That's correct.

9 Q Can you make a change in the record there?

10 A I will, yes, sir. Thank you.

11 Q If you were to testify here orally today, would
12 your answers be the same as have been provided in
13 Exhibit 2?

14 A Yes, they would.

15 MR. ALLMON: Your Honor, subject to any
16 limitation contained in your Order No. 26, TJFA and
17 EPICC offer Exhibits 2, 2-A, and 2-B.

18 JUDGE QUALTROUGH: All right. Let me ask
19 a quick question. On Line 15 of Exhibit 2, Page 6, it
20 also mentions October 2013.

21 A That would be the same. Yes, ma'am, it would
22 be in November.

23 THE REPORTER: It should be November?

24 A Yes, ma'am. I'm sorry.

25 MR. ALLMON: What page did you say that

1 was, Your Honor?

2 JUDGE QUALTROUGH: Page 6, just below the
3 first mention of October 2013.

4 A Yeah. It would be November. That's correct.

5 JUDGE QUALTROUGH: All right. Are you
6 making that change?

7 A Yes, ma'am.

8 JUDGE QUALTROUGH: Thank you. All right.
9 Any objections to the admission of Protestants
10 Exhibit 2, 2-A, and 2-B.

11 MR. RYAN: Not other than the ones we
12 already made.

13 JUDGE QUALTROUGH: All right. Thank you.
14 Those were overruled, and those are admitted -- those
15 exhibits are admitted.

16 (Exhibit Protestants No. 2, 2-A, and 2-B
17 admitted)

18 JUDGE QUALTROUGH: Do you pass the
19 witness?

20 MR. ALLMON: I'm sorry. I pass the
21 witness.

22 JUDGE QUALTROUGH: All right. Plum Creek?

23 MR. WILSON: I have a couple of questions.

24 JUDGE QUALTROUGH: All right.

25

1 CROSS-EXAMINATION

2 BY MR. WILSON:

3 Q Mr. Friedrich, good afternoon. My name is Bob
4 Wilson. I represent Plum Creek Conservation District.
5 You probably know that.

6 A Yes, sir.

7 Q In particular, I wanted to ask you some
8 questions that -- you make a reference at Page 12 of
9 your testimony about your service on the Polonia Water
10 Supply Corporation board.

11 A Yes, sir.

12 Q You first went on the board about 18 months
13 ago. Is that correct?

14 A It's been 20 months now. I went on the board
15 in January of 2015.

16 Q All right. To your knowledge, as a board
17 member of Polonia Water Supply Corporation, is there a
18 pending application of EP130 for service from Polonia
19 Water Supply Corporation?

20 A There is not.

21 Q Do you know if there is water supply service by
22 Polonia to the Hunter property?

23 A There is a meter -- it's equivalent of a
24 residential meter provided onto the Hunter property. It
25 comes off Farm to Market 1185 about a mile and a half I

1 guess east of 183. It's about where the Prestige
2 Concrete is trying to go in. It's along in there. It's
3 very close to the gate entrance that Plum Creek
4 Conservation has their easement beginning and goes into
5 that general area east of the landfill.

6 Q Yes, sir. Are you familiar with the tariffs of
7 Polonia Water Supply Corporation?

8 A Yes, I am.

9 Q Is there a difference between the kind of
10 service that currently exists for the property where
11 Ms. Hunter's tract is than other types of service for
12 other kinds of customers?

13 A Now, there is a very definite difference
14 between the two.

15 Q Is it accurate to call the service to the
16 Hunter tract currently what's called a standard service
17 agreement?

18 A That would be a standard service agreement,
19 basically a residential type of agreement.

20 Q Is everything else a non-standard service
21 agreement?

22 A Everything else would be a non-standard service
23 agreement. Any commercial type of operation would have
24 to fall under the category of a non-standard.

25 Q Are the terms of a non-standard service

1 agreement subject to negotiation between the water
2 supply corporation and the customer?

3 A No. The rates and the fees as far as meter
4 installations, size of meter, that type of thing, is set
5 by our tariff, and they would have to conform to those
6 terms.

7 Q What about the ability to supply water?

8 A The ability of Polonia Water at this time to
9 supply water is really going to depend on their water
10 requirements, which since they have not applied for a
11 permit in any form, we have no idea of what their
12 requirements would be. If it was anything other than a
13 residential meter, which they cannot apply for, we would
14 have to go -- we have an engineer on retainer that we
15 would have to take it to him to let him see what their
16 requirements would be and then whether or not we could
17 supply it.

18 Right now, I would say if it was a large
19 use, I would say we would not be able to supply any
20 large amounts of water to SH130 just based on our
21 current demands.

22 Q Where is the closest elevated storage facility
23 that supplies water to the area that would provide
24 service to the landfill tract?

25 A The closest and really only current elevated

1 water storage tank that Polonia owns is just kind of on
2 the southeast side of Lytton Springs. It's about two,
3 two and a half miles, probably, from my property.

4 Q Is that elevated storage tank also the supply
5 that would be available for the new school that's --

6 A That's correct.

7 Q -- going into existence this fall?

8 A That's correct.

9 Q Okay. What is the source of water that fills
10 that tank?

11 A That water comes from a well field that's
12 owned -- well, leased by Palonia Water just to the east
13 of Dale, Texas.

14 Q Is that water supply corporation in Dale
15 recently acquired by Polonia when it merged with the
16 Dale Water Supply Corporation, or do you know?

17 A It was before my time, but I would think that
18 would be correct.

19 Q Do you know whether Plum Creek issues permits
20 for groundwater production for Polonia Water Supply
21 Corporation?

22 A Well, no, they do not for Polonia, because we
23 do not fall within Plum Creek Conservation's
24 conservation area.

25 Q Polonia has at least one permit for Plum Creek,

1 do they not, or do you know?

2 A I really don't know. I thought we did not have
3 any permits with Plum Creek. I may be --

4 Q What about your --

5 A -- wrong.

6 Q -- south system?

7 A Okay.

8 THE REPORTER: One at a time, please. You
9 guys are talking over each other.

10 MR. WILSON: Excuse me.

11 THE WITNESS: Sorry.

12 Q (BY MR. WILSON) What about your south system?

13 A That very well could be. For those that don't
14 understand, the Polonia water supply is divided into
15 what we call plains. You have a north plain, which
16 includes the Lytton Springs area, which is by far the
17 largest -- it's somewhere around -- I want to say around
18 5,000 customers. And then we have a south plain, which
19 is kind of in the southeast part of the county, and it's
20 providing a lot fewer customers, mainly ranch land down
21 in that area, very little residential development, and I
22 think it's a little over 1,000 customers. And that very
23 well could be a well out of Plum Creek Conservation's
24 authority.

25 Q Do you know whether Polonia maintains an

1 agreement with the City of Lockhart for a backup water
2 supply?

3 A We do not have an agreement with the City of
4 Lockhart.

5 Q Did you at one time?

6 A Not to the best of my knowledge, I don't think
7 so.

8 Q All right.

9 A There are no mains connecting Polonia's system
10 with the City of Lockhart.

11 Q Okay.

12 MR. WILSON: Thank you. That's all the
13 questions I have.

14 JUDGE QUALTROUGH: All right. Caldwell
15 County?

16 MR. MAGEE: Yes, Your Honor. Just a few.
17 May I approach?

18 JUDGE QUALTROUGH: Yes, you may.

19 CROSS-EXAMINATION

20 BY MR. MAGEE:

21 Q There should be a notebook just to your left.
22 It's white. It says "Volume 1" on it.

23 A Yes.

24 Q I think earlier with Mr. King we talked about
25 the map which is depicted at 130EP-1, Page 123.

1 A Yes, sir.

2 Q All right. Can you help us understand where
3 your property is on this map in relationship to the
4 proposed landfill?

5 A Yes. If you look at the footprint of the
6 landfill, and I'll say to the north-northeast side of it
7 where Homannville Trail borders the landfill, and then
8 Homannville Trail runs up to the intersection of
9 Homannville Trail and Farm to Market 1185 --

10 Q (BY MR. MAGEE) Okay.

11 A -- that intersection is our property. We have
12 two houses on that property, and if you go back just to
13 the west along Homannville Trail, you'll see a yellow
14 dotted line, and that is actually our western fence
15 line. It probably runs down about, oh, half a mile, and
16 then jogs for a couple hundred yards, goes back to the
17 west, and then turns and goes south again. And then
18 there's a point that it turns and goes back to the east,
19 and that is our southern property boundary. So kind of
20 a rough triangle between 1185 and Homannville Trail.

21 Q So you are just south of Homannville Trail. Is
22 that correct?

23 A That's correct.

24 Q At the corner of 1185?

25 A That's correct.

1 Q And the back fence line of your property is
2 adjacent to the Hunter tract?

3 A That's correct.

4 Q When this proposed landfill first came on your
5 radar, have you been involved and attended Caldwell
6 County Commissioners Court when there's been discussions
7 involving the 130 Environmental Park proposed landfill?

8 A I have. I attend the Commissioners Court
9 regularly.

10 Q Do you recall whether the Commissioners Court,
11 while you've been in attendance, has passed a resolution
12 in opposition to the application of the
13 130 Environmental landfill?

14 A Yes, they have.

15 Q If you'll look at the documents when I came up
16 there, Caldwell 2?

17 A Yes, sir.

18 Q It's a certified copy of the -- what's now D6?

19 A Yes.

20 Q A resolution in opposition to that application?

21 A That's correct.

22 Q And you were present when this was passed --

23 A Yes, I was.

24 Q -- by the Commissioners Court?

25 MR. MAGEE: All right. At this time, we

1 would offer Caldwell 2.

2 JUDGE QUALTROUGH: Any objections?

3 MR. RYAN: No.

4 JUDGE QUALTROUGH: All right. That's
5 admitted.

6 (Exhibit Caldwell No. 2 admitted)

7 Q (BY MR. MAGEE) And then I think we've heard
8 some testimony from some of the Applicants' witnesses
9 about there being an order for an ordinance prohibiting
10 solid waste disposal in Caldwell County?

11 A Yes, called a citing ordinance, which I guess
12 is what you're referring to.

13 Q Yes. Have you also been present at
14 Commissioners Court and spoken publicly about the County
15 passing a citing ordinance, as you've referred to it?

16 A Yes, I was present -- well, several meetings
17 going into that where I did speak, and then I was
18 present the day that the ordinance -- or the citing
19 ordinance was passed, and I did speak that morning.

20 Q If you would, look at Caldwell 3.

21 A Okay.

22 Q And the page -- I guess three pages in, and
23 then it continues on for the next five pages, D1 through
24 D5. Do you see that?

25 A Yes.

1 Q Does this -- is this a copy of the ordinance
2 that was adopted by the Commissioners Court?

3 A It looks like it was, as I remember it, yes,
4 sir.

5 MR. MAGEE: At this time, we would offer
6 Caldwell 3, Your Honor.

7 JUDGE QUALTROUGH: Any objection?

8 MR. RYAN: No.

9 JUDGE QUALTROUGH: Caldwell 3 is admitted.

10 (Exhibit Caldwell No. 3 admitted)

11 Q (BY MR. MAGEE) Finally, Mr. Friedrich, if you
12 would, turn to March of 2015, which is Caldwell 4. It's
13 a notice of the Commissioners Court.

14 A Yes.

15 Q The last three pages are minutes -- four pages
16 are minutes of a March 16th, 2015 Commissioners Court
17 meeting?

18 A Yes, sir.

19 Q And if you'll look under 2015.03.16.04, there
20 was citizens' comments?

21 A Yes, sir.

22 Q And did you provide comments on that day?

23 A Yes, sir, I did.

24 Q And what was the purpose of your comments?

25 A Well, this was basically the Commissioners

1 Court considering whether to take party status in the
2 contested case hearing, and I spoke that the county
3 should actually take status in this. I think my
4 statement at the time was, you know, if you don't take a
5 seat at the table, you really have no option to voice
6 your opinions, so that they should take part in this.

7 Q And that agenda item is found on the last page
8 at 2015.03.16.15?

9 A I'm sorry. Would you are repeat it again? I'm
10 sorry.

11 Q The last page, it's the top agenda item in the
12 minutes.

13 A Oh, okay. Yeah. Where they vote -- the
14 discussion action, yes.

15 Q To take party status in this matter?

16 A That's correct, uh-huh.

17 MR. MAGEE: We would offer Caldwell 4,
18 Your Honor.

19 JUDGE QUALTROUGH: Any objections?

20 MR. RYAN: No.

21 JUDGE QUALTROUGH: Caldwell 4 is admitted.

22 (Exhibit Caldwell No. 4 admitted)

23 Q (BY MR. MAGEE) I wanted to ask you a couple of
24 questions about your prefiled testimony, which is
25 Protestants Exhibit 2.

1 A Uh-huh.

2 Q I think it's in that black notebook.

3 A Yes, sir.

4 Q If you'd turn to Exhibit 2, Page 6, the one
5 where you corrected the October and November dates.

6 A Yes, sir.

7 Q It's referring to these photos that are
8 attached as Exhibit 2-A, and the question was, "Do these
9 photos accurately reflect the condition of the property
10 following the heavy rains you experienced in November
11 2013?"

12 A Yes. Actually, it was October 31st was the
13 date of the heavy rains.

14 Q Okay. But the pictures were taken in November.
15 Correct?

16 A Yeah. They were -- I was actually out of town
17 on business the day that the rains actually occurred, so
18 it was several days later before I actually could get in
19 there and take the pictures.

20 Q And your answer was, "Yes, we've had similar
21 floods such as this annually," and then it goes on to
22 talk about the Memorial Day weekend flood of 2015 and
23 the Memorial Day weekend flood of 2016.

24 What were the weather conditions like
25 prior to November of 2013, let's say in the summer of

1 2013 and during 2012?

2 A What I'd probably best characterize that is the
3 weather conditions in Caldwell County have been a roller
4 coaster really of droughts interspersed with very heavy
5 downpour type of rains, really going back into the 2006,
6 2007, up through 2009. And that seems to be kind of the
7 case of the way we get rains. We'll have a long period
8 of drought, punctuated by very heavy rainfalls, where it
9 can be several inches of rain falling within an hour or
10 two, which causes extreme flooding conditions.

11 And that's exactly what happened. 2011,
12 going back, was one of those years. It probably could
13 be characterized as wet early, and then probably about
14 February the nozzle stopped, and it didn't rain again
15 until probably about October. During 2011, you had
16 extremely high temperatures. I mean, 100 degree plus
17 days for I think over 100 days in a row.

18 2012 was -- started out wet, and it also
19 turned out dry. And then through the majority of 2013,
20 again it was extremely dry conditions. And I'm gauging
21 this by just watching the levels of our stock tanks rise
22 and fall because we use them for our cattle.

23 And then the floods hit October 31st of
24 2013, which we probably had four to five inches of rain,
25 but it fell over a short period of time at night, so it

1 caused the tremendous flooding issues that they had.

2 Then after that it, you know, there again
3 probably went through the winter and then start --
4 basically stopped raining again through 2014, just maybe
5 normal rainfalls.

6 2015 was again extremely dry until you
7 probably got into later in the year, and then you had
8 the Memorial Day floods of 2015 again.

9 Q I wanted to ask you about Page 15 of Exhibit 2
10 in your prefiled, Line 7.

11 A Yes.

12 Q It says that you've been working to restore the
13 land and native grass that originally covered the park
14 as part of a wildlife management program.

15 What does that mean?

16 A For tax exemption purposes, a landowner can
17 basically get two exemptions in the state of Texas, you
18 know, a way to keep your land taxes down. One would be
19 to have an agricultural exemption, run cattle, which we
20 do. And then the other way is to have a wildlife
21 management exemption, where you're providing habitat for
22 wildlife.

23 And that's actually my wife and I's goal,
24 is to be able to restore that land to the way it would
25 have been 100 years ago, which would involve really

1 getting the grass back to the original native grasses,
2 which was a tall blue stem -- what they call a clump
3 type of grass, and then make the land suitable for
4 wildlife habitat.

5 Q And on the previous page, on Page 14, I think
6 we've heard some testimony from Mr. King today about
7 some wild turkeys at his mother's house. And then I
8 noted on your prefiled testimony, starting at Line 17,
9 it says, "The area along Dry Creek between our fence and
10 the land is a natural roost for Rio Grande turkeys."

11 Did I read that correct?

12 A That's correct.

13 Q Then it says your fear is the proximity of
14 landfill to their roost, they will abandon the area. We
15 will lose that roost and nesting area. Can you tell me
16 about that?

17 A Yeah. Probably when we bought the land -- my
18 wife's family bought the land, you know, nearly 50 years
19 ago, you really didn't see Rio Grande turkeys in the
20 area, and over the past few years they've started coming
21 back in. And I see the stuff where they talk about the
22 endangered species, but my concern is what about the
23 endemic species. What about the turkeys? And what I've
24 noticed over the years since we've been living out there
25 is there's a natural roost -- turkeys at night will

1 roost up in trees. And if you go down along Dry Creek,
2 there's almost always turkeys in there roosting at
3 night. You can see them. You can hear them in the
4 morning coming out.

5 And my experience in dealing with Parks
6 and Wildlife, say if you go to South Llano River State
7 Park in Llano, they have an area where the turkeys will
8 roost, but if people go in there during those roosting
9 hours, the turkeys will abandon those roosts and not
10 come back.

11 This area where these turkeys are
12 currently roosting is within a couple hundred yards of
13 this landfill. And certainly if it was a park land,
14 they would not be allowed to do that landfill in there
15 because of the proximity of that roosting area. And I
16 think personally the turkeys have just as much right as
17 anybody else, and that's why I'd like to restore the
18 land to a wildlife management area, the natural wildlife
19 has a place to survive, because of such of the loss of
20 habitat.

21 Q And I guess part of your concerns, we've heard
22 some testimony this morning from Mr. Welch that this
23 landfill operation could be working 24/7?

24 A That's correct. Well, at the very least, they
25 say they'll start working at 3:00 in the morning, and

1 they do have it in their permit, as I've read it, that
2 they can operate heavy equipment seven days a week if
3 they so desire. So, yeah, that would be a tremendous
4 disruption of the turkeys, plus deer and other wildlife.

5 Q What about any other type of birds or anything
6 that you've noticed out in your area?

7 A It's kind of amazing. My wife and I, first of
8 all we are landlords, if you will, for Purple Martins.
9 We provide habitat for the Purple Martins. We also do
10 Eastern Bluebirds. So we have those on our property in
11 addition to the turkeys.

12 I have -- down at our stock tank, of
13 course we get your normal gathering of white egrets, of
14 gray herons, those type of things -- great blue herons.
15 But I think it was in November of 2014, I believe it
16 was, I actually saw a whooping crane come in. I was
17 walking down -- I wish I had had my camera. But a
18 massive bird came flying out. I got a good view of it.
19 It had white tips on its wings. It had red on its head,
20 and it flew up out of our stock tank. So we're right
21 along the migration route for those birds.

22 Q What about any observation that you've had
23 about feral hogs out in this area?

24 A Feral hogs everywhere in the State of Texas are
25 endemic. Yes, we are pretty much covered up with feral

1 hogs. The county program to eradicate them has done
2 quite a bit, but I see their scat on the ground on a
3 regular basis where I know -- mostly feral hogs are
4 primarily nocturnal. You can catch them early in the
5 morning or late in the evening sometimes, but primarily
6 they're nocturnal, so you don't necessarily see them.
7 But I have game cameras up, and I keep a feeder going,
8 and they'll be trying to get in my feeder frequently.
9 But they're in there. A feral hog -- and I think
10 Mr. King's pictures -- I didn't see exactly what his
11 picture is, but I know what they look like. They can go
12 in, and with their snouts they'll root through the
13 ground, and they can destroy a pasture land in a matter
14 of hours, just make it completely unusable for cattle.

15 MR. MAGEE: I don't have any further
16 questions.

17 JUDGE QUALTROUGH: OPIC?

18 MR. TUCKER: No questions.

19 JUDGE QUALTROUGH: ED?

20 MR. TATU: Just one or two questions.

21 CROSS-EXAMINATION

22 BY MR. TATU:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Could you just refer to your prefiled exhibit

1 on Page 4 when -- approximately on Line 10, you're
2 talking about the goals of EPICC?

3 A Yes, sir.

4 Q And it states that, "Our goal is to be a model
5 for rural communities in the state in achieving zero
6 waste."

7 Is that correct?

8 A That's correct.

9 Q Can you explain what that means, "achieving
10 zero waste"?

11 A Well, if you look at major industrial -- or
12 major cities say within the state or around the country,
13 due to the cost of handling garbage, if you will, their
14 goals are to get to the point where there is no material
15 going into a landfill. Virtually everything that is
16 used is recycled. It actually comes -- zero waste is
17 probably actually about 90 percent. There are some
18 things that probably cannot be recycled, and that's the
19 goal, to get to the point where you virtually have no
20 need for landfills.

21 Zero waste is also an issue of working
22 with manufacturers to try to get them to change their
23 packaging to, say, Rayovac -- and I think the Texas
24 Campaign for the Environment has done a good job of
25 that, of working with Rayovac where they will take

1 standard lead acid batteries back -- flashlight battery
2 type of things. There again, get away from a lot of the
3 plastic bottles that we so much use these days and
4 all -- you know, 99 percent of it probably goes into the
5 landfills which has the potential of carcinogens that
6 would then come out of them. So, I mean, that's part of
7 the goal of zero waste.

8 Q Okay. Great. And on that same page where
9 you're talking about EPICC's focus, you said, "But EPICC
10 also aims to be an organization that county residents
11 can turn to if faced with bad or unhealthy
12 developments."

13 Did I read that correctly?

14 A Yes, sir.

15 Q Can you give me an example of what other type
16 of projects EPICC would have proposed?

17 A Well, what this revolves around is when State
18 Highway 130 came into Caldwell County -- and I'm talking
19 about the highway itself, not the landfill -- there were
20 a number of people that had real serious oppositions to
21 SH130, but there was no group or organization that you
22 could go to that was organized that they had a voice in
23 that. And what we found as we were talking to people
24 about the landfill is that there is no protective
25 organization, if you will. It's kind of like Save Our

1 Springs out of Austin that's organized to protect Barton
2 Springs, basically. And there is no organization like
3 this within the county, so we thought we might be able
4 to provide that assistance to the people.

5 We've also looked at several wastewater
6 treatment plants that are proposed. I mean, if people
7 would like our assistance in fighting those, that we
8 would be available to help them.

9 Q Okay. Are there any other types of projects
10 that EPICC would oppose in Caldwell County?

11 A If it came up, I mean, I -- I would think that
12 high tension power lines that may be proposed through
13 the county if -- you know, they proposed a rail line
14 that would divert freight traffic from the Austin-San
15 Antone corridor through Caldwell County, and that might
16 be something we would really want to take a look at. I
17 think that one is kind of on the back shelf right now,
18 but that type of thing.

19 MR. TATU: Okay. Great. No further
20 questions. Thank you.

21 JUDGE QUALTROUGH: All right. 130?

22 MR. RYAN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. RYAN:

25 Q Good afternoon, Mr. Friedrich.

1 A Good afternoon.

2 Q Let me start off by asking you about some
3 things Mr. Tatu just covered. EPICC didn't exist at the
4 time State Highway 130 was being proposed and
5 constructed, did it?

6 A No, it did not.

7 Q And, in fact, EPICC didn't exist prior to the
8 time 130 Environmental Park proposed this landfill
9 project?

10 A We organized in response to the announcement of
11 SH130 landfill.

12 Q Okay. And you mentioned something about power
13 lines. Isn't it true that there are lots of large power
14 lines in northern Caldwell County?

15 A There are.

16 Q So you've been active in EPICC since it was
17 created. Right?

18 A That's correct. We were the founders of it.

19 Q Okay. And you have worked with and know the
20 other members that have participated significantly in
21 that organization?

22 A Yes.

23 Q And would that include Jessica Neyman?

24 A Yes. Jessica was not one of the founders of
25 it.

1 Q Okay.

2 A She came in later.

3 Q Okay.

4 A But yes.

5 Q And isn't it true that she has now moved out of
6 Lockhart and moved to Austin?

7 A That's correct, about -- I guess the end of
8 July.

9 Q Okay. And she's no longer on the Lockhart
10 Independent School District Board of Trustees?

11 A That's correct.

12 Q Did Ms. Perales or anybody else talk to you
13 about questions that I had raised about your prefiled
14 testimony in relation to the orientation of some of your
15 photographs?

16 A They asked me about the orientation. I don't
17 believe they specifically mentioned any questions that
18 you may have.

19 Q Okay. So if you look on your prefiled
20 testimony on Page 6 -- well, first let's turn back and
21 look at the photos in Exhibit 2-A. If you'll look at
22 the photos on Pages 2 and 3.

23 A Yes, sir.

24 Q And on Page 3, over towards the right-hand side
25 of the photo, I think I can see some fenceposts with

1 some barbed wire fencing?

2 A That's correct.

3 Q And that fence line runs kind of right through
4 that big shrub or whatever it is there?

5 A Yes.

6 Q And then it extends on out on to that little
7 point of land going out into the water, and it looks
8 like maybe the fence line continues on out into the
9 water. Is that right?

10 A It continues out into the water. It's about
11 100 -- a little over a 100 yards, probably, and then
12 turns and goes back to the south.

13 Q Okay. Which would be to the left --

14 A Yeah, back to your left --

15 Q -- in this photograph?

16 A -- in the photo, yes, sir, that's correct.

17 Q Okay. And so isn't it true that the area to
18 the left of that fence in this photo, that's your land?

19 A That's correct.

20 Q Okay. And the area to the right of that fence
21 in this photo, that's part of the Hunter tract?

22 A That's part of the Hunter tract, and then
23 the -- if you look directly to the west, the way the
24 photo is facing on past the water where all the taller
25 trees are, that is also part of the Hunter tract.

1 Q Okay. Because as you said, your property goes
2 out some distance and then --

3 A And then turns south again, yes.

4 Q Turns south. So you've got a little piece that
5 juts out there?

6 A That's correct.

7 Q Okay. But you would agree with me, wouldn't
8 you, that in both of these photos in Exhibit 2-A, Page 2
9 and Page 3, that the land to the left of that fence line
10 is yours and the land to the right of that fence line is
11 the Hunter tract?

12 A That's correct.

13 Q So now if you'd go back and look at your
14 prefiled testimony, Exhibit 2, on Page 6. In your
15 prefiled testimony where you refer -- there's various
16 places where you refer to the proposed landfill site.
17 One of them is on Line 12 of Page 6. When you refer to
18 that, are you actually talking about the Hunter tract?
19 Which includes the proposed landfill site but is larger
20 than that. Right?

21 A It's larger. I guess you could say the whole
22 ranch.

23 Q Okay. So when you're referring to proposed
24 landfill site, you're talking about the entirety of the
25 Hunter tract?

1 A Included in that, yeah.

2 Q Okay. So there in your answer that starts on
3 Line 10 and goes through Line 13, on Lines 12 and 13 you
4 say, "Those showing the fence posts are the property
5 line with the proposed landfill site to the left and my
6 property to the right."

7 Isn't that just the opposite of what you
8 told us when we were looking at those photos?

9 A Actually -- well, if you go back to -- well,
10 yeah, actually that would be, I guess, yeah.

11 Q Okay.

12 A I'm sorry. I was thinking it was another
13 picture, but, no, that's okay.

14 Q Okay. So that should say --

15 A Yeah. The opposite.

16 Q -- "With the proposed landfill site to the
17 right, and my property to the left"?

18 A Yes. I'm sorry.

19 Q Do you still have your pen?

20 A Yeah. I guess I should make those, huh?

21 Q If you would make that change, I think it would
22 be helpful.

23 A Okay.

24 MR. RYAN: Your Honor, with that change, I
25 would offer Protestants' Exhibit 2, Page 6, Lines 9

1 through 13, as corrected by the witness.

2 MS. PERALES: Would it be cleaner if we
3 offered it so that it's not an Applicant's exhibit.

4 JUDGE QUALTROUGH: All right. We're just
5 going to admit that as corrected, but it's going to
6 remain a Protestant exhibit.

7 MR. RYAN: That's fine with me.

8 JUDGE QUALTROUGH: Okay.

9 MR. RYAN: Thank you. I'll pass the
10 witness.

11 JUDGE QUALTROUGH: All right. Redirect?

12 MR. ALLMON: Just quickly.

13 REDIRECT EXAMINATION

14 BY MR. ALLMON:

15 Q You were asked about water service to
16 serve Environmental Park 130, SPP 130.

17 A From Polonia Water Supply?

18 Q Yes.

19 A Yes, sir.

20 Q And then in your answer you referenced SH130.
21 Did you mean EP130?

22 A Yeah. The landfill.

23 Q And then you testified about a whooping crane
24 that you saw.

25 A Uh-huh.

1 Q And can you tell us again what the coloring on
2 the bird that you saw?

3 A It was a large white crane type of bird. It
4 had black tips on its wings and red on its head.

5 Q Okay.

6 A So that would change it certainly from a
7 standard white egret that would be pretty common in the
8 area.

9 Q And I thought I heard you testify earlier that
10 it had white tips on its wings, but --

11 A It was black tips on its wings.

12 Q Okay.

13 MR. ALLMON: Pass the witness.

14 JUDGE QUALTROUGH: All right. Very
15 limited recross. Anything from Plum Creek?

16 MR. WILSON: Nothing from Plum Creek.

17 JUDGE QUALTROUGH: Caldwell?

18 MR. MAGEE: Nothing, Your Honor.

19 JUDGE QUALTROUGH: OPIC?

20 MR. TUCKER: No.

21 JUDGE QUALTROUGH: ED?

22 MR. TATU: No.

23 JUDGE QUALTROUGH: Applicant?

24 MR. RYAN: Very limited.

25 JUDGE QUALTROUGH: Very limited.

1 RE-CROSS-EXAMINATION

2 BY MR. RYAN:

3 Q Mr. Friedrich, isn't it true that the proposed
4 landfill site is within the certificated area of Polonia
5 Water Supply Corporation?

6 A I believe it is, yes.

7 Q And that's the area that's covered by what's
8 referred to as its certificate of convenience and
9 necessity?

10 A That's correct.

11 Q And isn't it also true that Polonia Water
12 Supply Corporation has an eight-inch water line running
13 along the east side of 183 north of FM 1185?14 A It runs down 183 from 1185 down toward where it
15 crosses into Homannville Trail again. It doesn't quite
16 go all that way down. But, yes, it does go down the
17 east side of 183, eight-inch main.18 Q Okay. And so it goes -- it goes along that
19 portion of the Hunter tract that adjoins 183?

20 A Yeah.

21 Q Okay.

22 MR. RYAN: Thank you. Pass the witness.

23 JUDGE QUALTROUGH: All right. Thank you
24 very much. You're free to step down. You may call your
25 next witness.

1 MS. PERALES: Your Honor, my next witness
2 is going to be Dr. Lauren Ross, but before we move on to
3 her, I'd like to offer the prefiled testimony and
4 exhibits for Jessica Neyman, which is Exhibit 3 and
5 Exhibits 3-A through 3-G, subject to any limiting
6 instructions included in your Order No. 26.

7 JUDGE QUALTROUGH: All right. Any
8 objection to Exhibit 3 through 3-G? Any objections to
9 that coming into the record?

10 MR. RYAN: No objections subject to our
11 earlier objections and your rulings.

12 JUDGE QUALTROUGH: All right. Those are
13 admitted.

14 (Exhibit Protestants Nos. 3 and 3-A
15 through 3-G admitted)

16 MS. PERALES: And then we also have the
17 prefiled testimony of Leslie Holder, which is Exhibit 4,
18 and her attached Exhibit 4-A, which we also offer into
19 evidence at this time. And those are also subject to a
20 limiting instruction that is included in Order No. 26.

21 JUDGE QUALTROUGH: All right. Any
22 objections to the testimony of Ms. Holder, Exhibits 4
23 through 4-A.

24 MR. RYAN: No additional objections.

25 JUDGE QUALTROUGH: All right. So then

1 those are admitted.

2 (Exhibit Protestants Nos. 4 through 4-A
3 admitted)

4 MS. PERALES: And now I will call my next
5 witness, which is Dr. Lauren Ross.

6 MR. RYAN: Could we go off the record just
7 a minute?

8 JUDGE QUALTROUGH: Sure. We're off the
9 record.

10 (Discussion off the record)

11 JUDGE QUALTROUGH: All right. We're back
12 on the record. All right. You've called your next
13 witness. Is that correct?

14 MS. PERALES: That's correct, Dr. Lauren
15 Ross.

16 JUDGE QUALTROUGH: All right. I need to
17 swear you in.

18 (Witness sworn)

19 JUDGE QUALTROUGH: State your name for the
20 record.

21 A My name is Debra Lauren Ross.

22 JUDGE QUALTROUGH: All right. Thanks.
23 You may proceed.

24 LAUREN ROSS,
25 having been first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. PERALES:

3 Q Dr. Ross, there should be a notebook that will
4 be labeled Volume 2 of 3, and it will include
5 Protestants' prefiled testimony. I think it's in that
6 box that you're looking in.

7 If you will take that notebook and turn to
8 Exhibit 5, which is labeled "Ross Testimony." Take a
9 look at that.

10 A Yes. Sorry. The table of contents includes
11 the other Applicants exhibits, so let me just --

12 Q Right. So the first couple of pages in the
13 binder should include a table of contents for all of our
14 exhibits, and so if you'd turn to the tab that says
15 "Exhibit 5, Ross testimony."

16 A Yes.

17 Q Okay. That should be your prefiled testimony.
18 Is that right?

19 A Yes.

20 Q Okay. And it's my understanding that there are
21 a few corrections that we need to make to that prefiled
22 testimony. Is that right?

23 A That's correct.

24 Q Okay. So I am going to walk you through those.

25 Okay. Can you turn to Page 15 of your

1 prefiled testimony?

2 A I'm there.

3 Q And look at Line 12?

4 A Yes.

5 Q Is there a correction that needs to be made
6 there?

7 A The word "samples" should end in a D instead of
8 an S. It should read "sampled."

9 Q Okay. Can you make that correction on that
10 document?

11 A Do you care if it's in red or blue?

12 Q No.

13 A Okay.

14 Q Okay. And then can you turn to Page 25,
15 please. Take a look at Line 24 and let me know if there
16 are any corrections you need to make there.

17 A Yes. The term "secondary features" should read
18 "fractures or fissures."

19 Q Can you make that correction on the document in
20 front of you?

21 A Yes.

22 Q Turn to Page 26, please.

23 A Yes.

24 Q And look at Line 16 and let me know if there is
25 a correction that needs to be made there.

1 A The number 22 fractures should read 19
2 fractures.

3 Q Okay. And can you please make that correction
4 on your prefiled?

5 A Yes.

6 Q Staying on the same page, on Line 20, there's
7 another reference to the number 22. Does that need to
8 be changed as well?

9 A That should read "19."

10 Q On Line 23, there is another reference to a
11 number associated with fractures. Does that need to be
12 corrected?

13 A That needs to be corrected. It currently says
14 105 fractures, and the correct number is 91.

15 Q Have you made the change on the document?

16 A I have.

17 Q The same page, Line 25.

18 A Yes. It reads, "is minuscule four times ten to
19 the minus 47," and that should read, "one times ten to
20 the minus 40."

21 Q What about the word "minuscule"? Does that
22 affect the --

23 A No.

24 Q Okay. So we'll leave minuscule there, and
25 you've made the change to the --

1 A Yes.

2 Q Okay. And Page 36, take a look at Line 20.

3 A The last sentence -- the sentence that begins
4 on that line "on inconsistency," there should be an E at
5 the end of that word, and it should say, "one
6 inconsistency is in."

7 Q Okay. So instead of "on inconsistency" it
8 should say "one inconsistency"?

9 A Yes.

10 Q Have you made the change?

11 A I have.

12 Q Okay. Thank you. Attached to your prefiled
13 testimony are a number of exhibits.

14 MS. PERALES: And, Your Honors, I noticed
15 on the record copy that the order of the exhibits was --
16 it was not arranged correctly. It should be 5-A -- it
17 will go 5-A through 5-Z and then 5-AA, 5-AB, 5-AC, AD,
18 AE, AF, and AG. I have corrected the order of the
19 exhibits on the record copy, but your copy might be out
20 of order. I'm not sure.

21 JUDGE BELL: Our copy?

22 MS. PERALES: I'm not sure. I'm not sure
23 if we made the mistake in the electronic file and then
24 maybe it printed out that way or whether --

25 JUDGE BELL: It's supposed to go from 5-Z

1 to 5-AA --

2 MS. PERALES: Right.

3 JUDGE BELL: -- 5-AB, 5-AC --

4 MS. PERALES: Right. Exactly.

5 JUDGE BELL: We've got it right, then.

6 MS. PERALES: Okay. Great.

7 JUDGE QUALTROUGH: So where is the error?

8 MS. PERALES: The record copy went 5-A,
9 5-AA -- and I've already corrected the record copy. I
10 just wanted to make sure that it wasn't filed that way.

11 JUDGE QUALTROUGH: Okay.

12 Q (BY MS. PERALES) So can you turn to
13 Exhibit 5-P, please?

14 A I'm there.

15 Q Have you made corrections to this exhibit?

16 A Yes, I have.

17 Q And when were those corrections made?

18 A I don't remember exactly.

19 Q Okay.

20 A I think I maybe sealed it on August 18th.

21 Q Okay.

22 A Is that what that says on there?

23 MS. PERALES: May I approach the witness,
24 please?

25 JUDGE QUALTROUGH: You may.

1 MS. PERALES: These are going to be
2 offered as replacements.

3 Q (BY MS. PERALES) So I have handed you a
4 document that looks very similar to the document that
5 had been previously labeled 5-P. Can you take a look at
6 this document I've handed you and explain what the
7 differences are?

8 A Yes. And it was sealed on August 17th, so I
9 made those changes somewhere around August 15th to
10 August 17th, I think.

11 And I've indicated the changes at least
12 conceptually in the boxes on the side. I had a
13 conversation with Mr. Michael Rubinov about MP3. He had
14 made some changes to his original boring log, and so the
15 original document identified vertical gypsum and iron
16 fissures abundant in Protestant's boring MP3 at a depth
17 from 45 to 50 feet. And based on the information
18 Mr. Rubinov provided me, that interval should be 40 to
19 45 feet.

20 And then the second is that in the
21 original document, the number of fractures in the
22 Applicant's borings was 22, and that number was wrong,
23 so I changed that -- I corrected that number to be 19.

24 And then that number of fractures changed
25 the frequency, changed the expected number of fractures

1 in the 2013 borings, and changed the probability of
2 observing no fractures in the 2013 boring, and those are
3 reflected in this exhibit and in the changes we just
4 made on that page in my prefiled testimony.

5 Q Okay. And when did you first share this
6 exhibit with me, the revised exhibit?

7 A I think last night.

8 Q Okay.

9 MS. PERALES: So, Your Honors, we would
10 offer this revision to Exhibit 5-P as a replacement of
11 Exhibit 5-P.

12 JUDGE QUALTROUGH: All right. Let me make
13 sure I understand. For the MP3, the depth -- and this
14 is up at the top, one, two, three, four, five, six --
15 seven lines down?

16 A Yes.

17 JUDGE QUALTROUGH: Should that read "40 to
18 45?"

19 A It should read "40 to 45," yes. And I did not
20 change it in the original because I thought somehow that
21 might be clearer.

22 JUDGE QUALTROUGH: Okay.

23 A But where it says "45 to 50," it should read
24 "40 to 45."

25 JUDGE QUALTROUGH: Okay. But for the

1 changes from 19 and then how that changes at the lower
2 end of this chart, you made those changes?

3 A I did make those changes, yes.

4 JUDGE QUALTROUGH: Okay. I just want to
5 make sure. All right.

6 Q I apologize for the confusion.

7 JUDGE QUALTROUGH: I just need to make
8 sure I understand. All right. Any other changes?

9 Q (BY MS. PERALES) So do you have any other
10 changes that you need to make to any of the exhibits
11 that were attached to your prefiled testimony?

12 A I do not.

13 Q Okay. Now, if you were asked the questions
14 that are included in your prefiled testimony -- if you
15 were asked those questions here today, would your
16 answers be the same as those provided in your testimony
17 with the revisions that you just made?

18 A Yes, they would.

19 MS. PERALES: Your Honor, at this time we
20 would offer Exhibit 5 with the corrections that have
21 been made, along with Exhibits 5-A through 5-AG, and the
22 replacement page to 5-P.

23 JUDGE QUALTROUGH: All right. Any
24 objections?

25 MR. RYAN: None other than the ones we

1 already made, Your Honor.

2 JUDGE QUALTROUGH: All right. So we're
3 going to admit Exhibit 5, and then 5-A through 5-AG,
4 with the corrected change to Exhibit 5-P at Page 1. So
5 that's going to substitute in for that original Page 1.

6 MS. PERALES: Right.

7 JUDGE QUALTROUGH: All right. So those
8 are all admitted.

9 (Exhibit Protestants Nos. 5, 5-A through
10 5-AG admitted)

11 MS. PERALES: Thank you. And I will pass
12 the witness.

13 JUDGE QUALTROUGH: All right. Plum Creek?

14 MR. WILSON: No questions.

15 JUDGE QUALTROUGH: Caldwell County?

16 MR. MAGEE: I have a few questions.

17 CROSS-EXAMINATION

18 BY MR. MAGEE:

19 Q Dr. Ross, I'm Eric Magee. I represent Caldwell
20 County. I know you already know that. You've been here
21 throughout this hearing, just about.

22 The first thing I wanted to ask you about
23 is on pages -- well, first it says you're an
24 environmental engineer and an owner-operator of Glenrose
25 Engineering. Correct?

1 A That's correct.

2 Q And then I believe there's a section beginning
3 on Page 9 of your prefiled that goes through Page 18
4 that talks about policies and procedures and engineering
5 standards and that kind of thing. Do you recall that?

6 A I do.

7 Q Does Glenrose have a document retention policy?

8 A Yes, we do.

9 Q And can you describe that for me?

10 A The document retention policy says that all
11 final copies -- all documents that track the quality
12 assurance and quality control procedures and any
13 original documents such as notes, field investigations,
14 equipment calibrations, all those are maintained
15 indefinitely.

16 Q And when you say "quality assurance and quality
17 control," can you describe for me what you mean by
18 "quality assurance"?

19 A Quality assurance is a set of procedures that
20 are designed to produce products that meet professional
21 standards.

22 Q And it looks like going through your prefiled
23 testimony, you're talking about like the TCEQ rules and
24 ASTM standards and other minimum engineering standards.
25 Correct?

1 A That's correct.

2 Q And you express your opinions concerning those
3 standards in this case?

4 A Yes.

5 Q What did you mean by "quality control"?

6 A Quality assurance is a set of procedures to
7 achieve professional -- a professional product. Quality
8 control is the documentation that you followed quality
9 assurance.

10 Q Okay. That makes sense.

11 A Because you can have great standards, but if
12 you don't implement them, then you didn't actually
13 achieve the objective.

14 Q So does Glenrose Engineering, does that company
15 have quality assurance and quality control protocols,
16 like a written version of those?

17 A Yes, we do.

18 Q And can you just give me a brief description of
19 what that entails?

20 A I think there are two things that we routinely
21 require a quality assurance/quality control procedure
22 for. A lot of our design comes from spreadsheets, and
23 so we have a process that verifies every single number
24 on a spreadsheet. It documents what the purpose of the
25 spreadsheet is, it documents the source of any data, and

1 it verifies the calculations.

2 And I guess I have to say it's obvious
3 that even with -- even though I could produce for you
4 the QA/QC document, it's not perfect, because I can't
5 count 19 instead of 22.

6 But if you ask me to document how I got
7 that original spreadsheet, I do have and will maintain
8 indefinitely in my files the quality control document
9 that shows that I exercised a certain process -- or a
10 certain process was exercised under my direction to
11 achieve that outcome. And we have that for all of the
12 spreadsheets or design information. It will reference
13 back to field notes. It will reference back to boring
14 logs. It will reference back to GIS information, so
15 that somebody looking at that document could trace its
16 lineage, if you will.

17 A similar process happens with written
18 documents, so that numbers within a document like 22 or
19 four times ten to the minus 47 are checked and their
20 source is identified.

21 Q And so that's all maintained by various
22 spreadsheets. Is that correct?

23 A We believe in a paper trail, so it will all
24 be -- there will be, actually, a paper file that is
25 generated and preserve the documents, the QA/QC process.

1 Q And then I could ask you to go back and pull
2 originals -- for example, I think you mentioned field
3 notes -- and we could go look at those and trace your
4 trail from, I guess, conception, initial analysis, all
5 the way through a final product?

6 A You could do that.

7 Q I think you made a change on Page 25 at
8 Line 24.

9 A Yes.

10 Q And before you made the change, I had a
11 question. I think I still may have a question. It's
12 called -- it says, "Anyone reviewing the boring logs
13 submitted with the application would be led to conclude
14 that no secondary features exist in the subsurface of
15 the site."

16 That's how it originally read. What is a
17 secondary feature? What does that mean?

18 A That term, as I use it, refers to two different
19 but related things. If you have an original
20 depositional environment that creates the lithology or a
21 rock, a secondary feature is produced by something that
22 happens -- and I'm looking at Feather over there. He
23 teaches this stuff, I think. But a secondary feature
24 occurs in the formation after the original depositional
25 environment. So that's one thing that a secondary

1 feature means in a geologic sense.

2 As a groundwater scientist myself, the
3 term also means to me features that transmit groundwater
4 that are not the primary porosity of the rock. So there
5 are actually -- and they can be related, because often
6 the secondary features that are not primary porosity of
7 the original material, whether it's rock or soil or
8 lithology, whatever word you want to use for that, the
9 secondary features in terms of groundwater migration are
10 often the same features that are secondary in terms of
11 the geology.

12 Q Okay. I think I understood, but I have another
13 question based on that.

14 When you say "depositional," does that
15 mean when it's deposited?

16 A Yes.

17 Q Okay. So when the layers are being formed,
18 being deposited, the secondary feature is something that
19 wouldn't be there initially, but then comes later on?

20 A Yes.

21 Q Did I simplify it too much?

22 A That's perfect.

23 Q Okay. And then you changed it to say --
24 instead of "secondary features," to say "secondary
25 fractures or fissures."

1 What's a fracture?

2 A A fracture would be a joint or a break in the
3 rock.

4 Q And then if you compare that, what do you mean
5 by "fissure"?

6 A A fissure means there's actually a gap.

7 Q Okay. I'm trying to get a visual mental
8 picture here. Can you help give me one of what I would
9 think a fracture would look like and what a fissure
10 would look like?

11 A Well, a fracture would be observed as a crack.

12 Q Okay.

13 A But a crack doesn't necessarily have an
14 opening. A fissure would have an opening, and that
15 opening might be empty or it might be filled, as we saw
16 often in this case, actually filled with some gypsum
17 material.

18 Q And that's what you referred to as like a gap?

19 A A gap.

20 Q Okay. I think I'm onboard. And so then when
21 we're referring to your testimony -- Protestants'
22 Exhibit 5, that change at Lines 20 through 25, you're
23 referring to the Applicant's initial boring logs that
24 were submitted as part of this application, and that's
25 what you're discussing would lead you to conclude that

1 there were none of those things at the site. Right?

2 A Yes.

3 Q And so then if we look at, I think, the
4 document you just replaced, which was 5-P, this is where
5 you've come up with a summary of those fractures and
6 fissures that were observed not only in the Protestants'
7 borings, but also in the Applicant's supplemental
8 borings. Is that right?

9 A That's correct.

10 Q And that's the 19 that you made the changes to
11 on Page 26?

12 A Yes.

13 Q Okay.

14 A Let me just be clear about that. 19 is the
15 number that were counted in the Applicant's boring.

16 Q Okay.

17 A I think that's clear on the exhibit, but I'm
18 not sure that it was clear in your question.

19 Q Okay. I think I understand. So over on the
20 left-hand side of 5-P where it says "drilling program,"
21 the top portion of it refers to Protestants and then the
22 associated boring, and then when we look at kind of the
23 bottom half of it, it says "Applicant's drilling
24 program," then they're boring, and then it associates
25 the depth and then the secondary features listed there,

1 and that's where the number 19 comes from. Correct?

2 A Yes.

3 Q Okay. On Page 43 of your prefiled testimony --
4 Protestants' Exhibit 5, Page 43.

5 A I'm there.

6 Q The question on Line 18 says, "Do you have any
7 concerns regarding potential impacts from erosion and
8 sedimentation?"

9 And then looking at Line 22, a portion of
10 your answer says, "The landfill application is vague and
11 non-committal regarding which specific construction
12 phase, erosion, and sedimentation controls would be
13 implemented."

14 Can you tell me what you mean by that?

15 A Yes. The landfill addresses erosion and
16 sedimentation controls as I recall in three different
17 places. It has contained within it the Corps of
18 Engineers general Permit No. 14 for linear
19 transportation systems. And we talked a lot about that,
20 I think, last week.

21 Q Right.

22 A That general permit lists every erosion and
23 sedimentation control that I know of, but it doesn't
24 commit this landfill and that road operation to any
25 particular set of controls. It just says, "These are

1 some of the ones that may be used."

2 So I think that the application does not
3 say which specific erosion and sedimentation controls
4 would be used for the roadway.

5 Q Okay.

6 A It also talks a lot about erosion and
7 sedimentation control within the landfill footprint. It
8 talks about the erosion final cover. It talks about the
9 fact that you're digging these cells that will store and
10 contain erosion as long as the application of waste is
11 below grade, but it does -- it's not clear and
12 definitive in my mind about the erosion and
13 sedimentation controls, for example, for the roadway
14 that goes around the landfill or the berms that have to
15 be constructed to contain the detention ponds, and those
16 will be very vulnerable to erosion and sedimentation.

17 Q So when you say -- like starting, for example,
18 that same question and answer, Line 24, it says,
19 "Furthermore, the application's erosion calculations
20 fail to account for portions of the landfill cover that
21 will be occupied by drainage berms that are steeper than
22 the assumed four horizontal to one vertical slopes in
23 the erosion calculations."

24 That's another area besides the access
25 road, the perimeter road, and then the detention pond.

1 Correct?

2 A Yes.

3 Q And then also these drainage berms that sit on
4 the actual cover of the landfill?

5 A In that case, I was not talking about the
6 drainage swales on the cover, but the berms that are
7 located around -- it's outside the landfill footprint.

8 Q Okay.

9 A And the outside of the stormwater detention
10 ponds -- I think there are six on the site. I'm talking
11 about an erosion and sedimentation control plan that
12 addresses these ancillary facilities that are part of
13 the landfill permit application but not actually the
14 landfill cells.

15 Q Okay. I think that's where I'm trying to go
16 and wanting to make sure I understand your prefiled
17 testimony.

18 So we've heard last week a lot of
19 testimony about the erosion and sedimentation control
20 plan that's in the application. We could go pull it
21 from one of these binders. Right?

22 A Yes.

23 Q Okay. And you're referring to erosion and
24 sedimentation control plans that are not actually
25 talking about that footprint boundary, but I think with

1 Mr. Traw, we went into discussion about the berms and
2 the various drainage control structures that go around
3 the perimeter of the actual footprint. Right?

4 A That's correct.

5 Q Okay. So I guess that's my main question,
6 maybe, that we've come to in a roundabout way is: Do
7 you have an opinion about whether an erosion and
8 sediment control plan is or should be necessary for
9 landfill facilities other than that footprint? And
10 those are the ones you've been describing for us.
11 Right?

12 A Yes.

13 Q And why is that?

14 A Well, because they are construction projects,
15 in and of themselves, for one thing. Secondly, they are
16 on the edge of the project. So if you're talking about
17 the potential for the off-site migration of sediment,
18 those areas are more vulnerable than the interior. They
19 are more vulnerable because, to some extent, digging
20 that landfill cell does give you, at least initially,
21 some protection to off-site erosion.

22 And then these are also the areas that are
23 closest or colinear with or, in some cases, I think
24 within the 100-year floodplain. So in the event of a
25 100-year or larger flood, they're the ones that are most

1 susceptible to being eroded by that water.

2 Q And that's the access road that crosses the
3 floodplain in multiple locations. Correct?

4 A Yes.

5 Q And then the perimeter access road that goes
6 around the footprint of the landfill? That's one I
7 heard you say?

8 A Yes.

9 Q And then the other thing I heard you say is
10 these berms and stormwater drainage around the detention
11 ponds and other drainage control systems. Correct?

12 A Yes.

13 Q Anything else?

14 A No.

15 Q When you reviewed the application, did you see
16 where the applicant accounted for any erosion or
17 sediment control plan for any of these other
18 construction projects on the site?

19 A Other than the -- the national Permit No. 14, I
20 did not.

21 Q Okay.

22 A Mr. Magee, can I go back and -- I also meant to
23 say an answer to a previous question that another reason
24 why they're important is because they are upstream of
25 the reservoir No. 21, and so sediment into that

1 reservoir will decrease its flood capacity.

2 Q So when I asked why was this important to have
3 such plans, you'd like to amend that answer and include
4 that?

5 A Right.

6 Q Okay. So I want to go to one other topic. And
7 I think you start to cover that on Page 32 of your
8 prefiled testimony. Protestants' 5, Page 32.

9 A I'm there.

10 Q Looking at the bottom of the page at Line 27,
11 it says, "Errors in the conceptual groundwater model."

12 Are you with me?

13 A Yes.

14 Q So do you have -- I guess I'm trying to
15 understand through Page 32 and Page 33, do you have an
16 opinion regarding whether the Applicant's groundwater
17 description -- and I think maps we've looked at --
18 whether those are accurate?

19 A I think that there are ways that the
20 groundwater description in the application does not
21 accurately reflect the potential for groundwater
22 migration at this site, yes.

23 Q So I think the Applicant's groundwater contour
24 map -- could you direct me to that? I think it's in --
25 I was trying to find it real quick.

1 A You know, I have a bunch of doc -- I have a
2 bunch of binders up here, and I'd have to figure out
3 which binder first.

4 Q Okay. I'm sorry to catch you offguard there.

5 A That's okay.

6 Q I was trying to correlate it with your prefiled
7 testimony, and I was having a hard time finding it.

8 JUDGE QUALTROUGH: What exactly are we
9 looking for?

10 A We are looking for a -- the map in the
11 application that shows contours on the
12 weathered-unweathered contact in the geology report of
13 the application. So I guess one -- let's see here. So
14 I think it will be in 130EP, Volume 4.

15 Q (BY MR. MAGEE) Okay.

16 A And I'm looking at Page 161.

17 Q Okay.

18 JUDGE QUALTROUGH: Is this Exhibit 4?

19 A I'm looking at Applicant's Exhibit 130EP-4, so
20 it's going to be in Volume 4, and I'm looking at
21 Page 161.

22 Q (BY MR. MAGEE) I think earlier I asked you a
23 question about contours, and if you look under the
24 notes, it says, "Contours and elevation provided by."
25 That's kind of what my question was going to, what --

1 whether you thought the Applicant's groundwater contour
2 map was accurate. Right?

3 A Yes.

4 Q And you were using this as an example.

5 A Yes.

6 Q Okay. Can you describe that for me?

7 A Yes. So I'm going to start by how I think this
8 map was derived.

9 Q Okay.

10 A I think that they took each boring. They
11 measured the elevation of the top of the boring.

12 Q Okay.

13 A And then they identified a depth that they
14 called the weathered-unweathered contact or the
15 Stratum 2-Stratum 3 contact.

16 Q Okay.

17 A If you subtract the boring elevation -- if you
18 subtract the depth from the boring elevation, you'll get
19 an elevation for the contact, and those would be the
20 numbers associated with each boring.

21 So, for example, to just choose one kind
22 of arbitrarily, BME-25 has the number 494.86 underneath
23 the circle that indicates that boring.

24 Q Okay. So just -- I mean, we can pick pretty
25 much any boring, and you'll see a number directly

1 underneath it.

2 A Yeah. The southern one -- the most southern
3 one is BME-32, and its number is 478.12.

4 Q Okay.

5 A So that establishes points across the landfill
6 where these contacts were observed and picked, if you
7 will, by the geologist in logging the boring.

8 So you put those numbers on the map, and
9 then you come through and you contour the surface of
10 that weathered-unweathered contact, because the
11 Applicant's theory is that the groundwater, to the
12 extent that it exists at this landfill, sits on top of
13 this weathered and unweathered contact. And in a
14 certain way that makes sense because generally the
15 weathered zone is going to be less permeable, so the
16 water seeps through, it hits that less permeable zone,
17 and it kind of hangs out, if you will, on the contact.

18 So they're saying that surface is
19 essentially our upper most aquifer at this landfill.

20 Q Okay. So --

21 A Groundwater sits on top of it. It sits -- and
22 then they're saying -- so we're going to -- we're going
23 to contour the shape, and then we're going to say that
24 the groundwater is going to move from the high points to
25 low points.

1 Q Okay.

2 A So I can't find it right here, but there's
3 another map that's very similar to this one that has the
4 actual blue arrows saying what the directions of
5 groundwater flow are.

6 So I guess I have a few criticisms of this
7 concept.

8 Q Let me ask you real quick --

9 A Okay.

10 Q -- if you would turn to EP-4, Page 222.

11 A Oh, yes. Thank you. That would be the other
12 map that I was talking about. And maybe we should
13 just step from --

14 Q And that's the map you were referring to that
15 had the blue arrows that would show where it would go
16 from the high point to the low point. Is that correct?

17 A Exactly. And so those arrows are going to be
18 drawn perpendicular to the contour lines because those
19 are the places where it's steepest. So the idea is that
20 the direction of groundwater flow is going to be steep
21 off of those contour lines.

22 Q And I think you were about to answer for me
23 what the problems were that you had with this analysis?

24 A With this model.

25 Q Right.

1 A Right. Well, I'll just start with kind of
2 what, in my mind, is maybe the least significant
3 problem, is that if you look at BME-1, which is the
4 northwest upper left boring, it says 528.91, and you can
5 see that the 520 contour line skirts right next to that
6 boring. Well, that's not how you draw a contour map.
7 You can't bring the 520 -- the 530 line should be over
8 there near BME-1, because it's not close -- 528.91 is a
9 lot closer to 530 than it is to 520.

10 Q If we look kind of in the middle section where
11 it says, like, BME-3, we see the 530 contour line.
12 Right?

13 A Yes.

14 Q And that's what you're referring to --

15 A Yes.

16 Q -- when you get over to BME-1 where it says
17 528, you would rather have a 530 contour line than a 520
18 line?

19 A Right. So in a way that's kind of the simplest
20 thing to pick apart about this map.

21 Q Okay.

22 A But I think it points to a more fundamental
23 problem, which is -- and I was out in the field not
24 every day for the Applicant's borings and not every day
25 for the Protestants' borings, but I was out there a lot,

1 and what I know is that to some extent the weathered and
2 unweathered zones interfinger, so there's not like a
3 fixed line.

4 I also know from my analysis the
5 Applicants put a map in their supplement -- and I have a
6 copy of that, I think, in my prefiled testimony, where
7 they put close -- they did this -- they added to this
8 map, or they added to the one that we were looking at a
9 few minutes ago -- the supplemental borings. And you
10 can see that really close to each other, the contacts
11 that they pick are different. They range from 4.22
12 feet, I think is what I remember, up to a number around
13 14 feet.

14 And what that means is that you don't --
15 you have this interfingering. You don't have this
16 smooth surface on which groundwater is going to flow
17 evenly off the side of the landfill. You have a more
18 complex groundwater flow system than that.

19 And likely what you have is the majority
20 of groundwater is moving through these secondary
21 features. This is a model that works well if the
22 groundwater flows through primary porosity, everything
23 in -- if you can imagine like water in a sandbox,
24 everything kind of does move evenly through all of the
25 little pores, but if you have a clay-silt system like

1 this depositional environment, most of your groundwater
2 is going to be moving through these fractures and
3 fissures, and the pattern is not going to be regular
4 like is represented here. There will be zones of
5 preferential flow, and this groundwater analysis does
6 not take that into account.

7 Q And when you were referring to -- and were you
8 referring to -- I believe it's EP Exhibit 7, and it's in
9 Volume 5.

10 A What page?

11 Q I think I'm looking at -- well, it's EP 7, and
12 I'm looking at Page 17 and 18.

13 A Yes, that is the figure I -- Page 17 is the
14 figure I was referencing earlier.

15 Q And then you did this little hand demonstration
16 where you said they are -- what word did you use?

17 A Interfingered.

18 Q Interfingered. So that's the weathered and
19 unweathered?

20 A Right.

21 Q And so earlier you were giving a description of
22 weathered of where the weathered layer is at a certain
23 place, and the groundwater is sitting above that. But
24 from your observations of being out at the site with
25 these boring logs, you didn't see just this one solid

1 weathered surface across the entire landfill place. Is
2 that correct?

3 A That's correct.

4 Q Okay. I just want to make sure I'm
5 understanding your description accurately.

6 Instead, you see borings that show this
7 interfingered layers of weathered and unweathered, and
8 that's the description that you were giving of how
9 groundwater moves at that particular area?

10 A I wasn't giving that description in terms of
11 how groundwater moves, but as a way of saying that that
12 contact is not one smooth surface across the site.

13 Q And that --

14 A There isn't a single point -- at least in some
15 of the borings, there's not a single elevation that is
16 the weathered-unweathered contact.

17 Q And that's where I think then it goes back to
18 my ultimate question a little while ago of kind of --
19 the problems you saw in the application and the
20 descriptions given when coming up with this contour map.
21 Correct?

22 A Yes.

23 MR. MAGEE: I don't think I have any
24 further questions.

25 JUDGE QUALTROUGH: All right. How about

1 OPIC and the ED?

2 MR. TUCKER: Yeah, I just have a few
3 questions.

4 JUDGE QUALTROUGH: Okay. After this, it
5 might be a good time to break. So go ahead.

6 MR. TUCKER: Okay.

7 CROSS-EXAMINATION

8 BY MR. TUCKER:

9 Q Good afternoon, Ms. Ross. My name is Aaron
10 Tucker with the Office of Public Interest Counsel.
11 Thank you for being here.

12 I was wondering if you could turn to your
13 Exhibit 5-W. I'm sorry. Protestants' Exhibit 5-W.

14 A Yes.

15 Q And 5-W, it's a combination of the map that we
16 were all just looking at, correct, earlier?

17 A The map in the original application.

18 Q And that's the map with the contour lines?

19 A Yes.

20 Q That shows the top of Stratum 3 with the dark
21 gray clay. And you've added your own numbers here, and
22 they're in orange. Correct?

23 A Yes.

24 Q Can you explain the significance of those
25 numbers?

1 A Yes.

2 Q Okay. Would you mind explaining?

3 A Not at all.

4 Q Okay. Thank you.

5 A On August 27 of 2015, Protestants were allowed
6 access to the site, and I went to the site with an E
7 line to measure water level elevations. All of the
8 piezometers that day were dry, and so what that meant is
9 that instead of tagging a water elevation with an E
10 line, I tagged the bottom of the piezometer. So I had a
11 depth below the top of casing to the bottom of the well
12 or piezometer.

13 I came back and subtracted those depths
14 from the top of casing elevations and calculated, based
15 on my measurements and Applicant's top of casing, the
16 elevation of the bottom of the well. That's what's
17 plotted on this map in orange. Those are elevations of
18 the bottom of the well.

19 Q And in your testimony, you seemed to raise
20 issues with the bottom -- where the bottom of the wells
21 were. Is that correct?

22 A Yes.

23 Q Can you explain what issue you have with the --
24 I guess the depth that those were drilled to?

25 A Completed at.

1 Q Okay. Thank you.

2 A Yeah. If the Applicant's theory is that the
3 groundwater occurs at the site on the weathered and
4 unweathered contact, then the piezometers ought to be
5 completed -- they ought to be screened across that
6 contact so that you can detect water if it's present.

7 If the bottom of the well is higher than
8 the contact -- and if you just -- then you will not be
9 able to detect groundwater at that location.

10 Q And how many of these piezometers did you think
11 were not completed to a sufficient depth?

12 A I'd have to count them. I don't remember.

13 Q If these had been completed deeper, what more
14 information could have been obtained?

15 A Well, if they had been completed --

16 Q To a deeper depth?

17 A -- to the contact --

18 Q Okay.

19 A -- and the Applicant's theory of groundwater
20 occurrence at this landfill was accurate, then you would
21 either know that the well was dry -- the location was
22 dry, and/or if you measured water in it, you would have
23 a measure of the water surface elevation. And that
24 would be helpful in terms of, one, knowing that the --
25 sort of validating the theory of groundwater at the site

1 and also determining possibly elevations to help
2 supplement the potential direction of groundwater flow.

3 MR. TUCKER: I have no further questions.
4 Thank you.

5 JUDGE QUALTROUGH: All right. Does the
6 Executive Director have some cross?

7 MR. TATU: I just have one or two
8 questions.

9 JUDGE QUALTROUGH: All right. Well, let's
10 go ahead and take your questions, and then we'll take a
11 break.

12 CROSS-EXAMINATION

13 BY MR. TATU:

14 Q Good afternoon, Dr. Ross. Anthony Tatu on
15 behalf of the Executive Director.

16 A Good afternoon.

17 Q I just want to summarize, in the interest of
18 time, if I could, your prefiled testimony regarding
19 QA/QC.

20 Would it be accurate if I said that you
21 testified that the application fails to achieve minimum
22 standards for reliability and quality control?

23 A Yes.

24 Q And in support of that testimony, you cite to
25 rules that are in the Texas Administrative Code, as well

1 as rules established by Texas Board of Professional
2 Geoscientists, and then also ASTM. Were there any other
3 rules in your testimony?

4 A No, I don't think so.

5 Q Okay. I just wanted to focus on the TCEQ rules
6 for a moment, if I could, just to make sure I caught all
7 of them in reviewing your testimony.

8 Can you refer to your prefiled testimony
9 on Page 10, please?

10 A I'm there.

11 Q Thank you. I think on approximately Line 16,
12 you identify 30 Texas Administrative Code
13 Section 305.47. Is that correct?

14 A Yes.

15 Q Okay. And a little further down on
16 approximately Line 23, you identify 30 Texas
17 Administrative Code, Section 330.261(b). Is that also
18 correct?

19 A Yes.

20 Q Great. Thank you. I'm just curious. How does
21 it work in terms of the board's that regulate
22 professional engineers and professional geoscientists in
23 Texas? If they fail to achieve the standards, are there
24 any consequences to that? Is there any type of
25 enforcement, anything like that?

1 A I don't know much about that beyond what's
2 written in the rules. I know that they do have a
3 complaint process, so the Texas Board of Professional
4 Engineers would not know how I'm practicing engineering
5 unless somebody brings a complaint.

6 Q Okay. Do you know if any of the engineers or
7 geoscientists who were working on this application have
8 had complaints filed against them?

9 A I don't know that.

10 Q Okay. Great.

11 MR. TATU: I have no further questions.
12 Thank you, Dr. Ross.

13 JUDGE QUALTROUGH: All right. We will
14 take a break and come back about 3:00. All right. So
15 we'll come back with the Applicant's cross at 3:00.

16 (Recess from 2:44 p.m. to 3:05 p.m.)

17 (Exhibit Applicant Nos. 26 through 38
18 marked)

19 JUDGE QUALTROUGH: All right. We are back
20 on the record, and I believe it is 130EP's opportunity
21 to cross-examine.

22 MR. RYAN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. RYAN:

25 Q Good afternoon, Dr. Ross.

1 A Good afternoon.

2 Q Are you a licensed professional geologist in
3 Texas?

4 A No.

5 Q Are you a licensed professional geologist in
6 any state?

7 A I am not.

8 Q Are you any sort of a geologist in any state?

9 A I am not.

10 JUDGE QUALTROUGH: I'm sorry. If I could
11 get you to talk into the microphone.

12 THE WITNESS: You bet.

13 JUDGE QUALTROUGH: Thanks.

14 Q (BY MR. RYAN) Do you consider yourself to be a
15 conscientious professional?

16 A Yes.

17 Q And yet we've seen that even your QA/QC
18 procedures didn't prevent errors and mistakes in your
19 prefiled testimony and exhibits. Right?

20 A That's right.

21 Q Do you think there are other errors and
22 mistakes in your prefiled testimony and exhibits?

23 A Not that I am aware of.

24 Q Do you see in front of you what have been
25 marked as Exhibits 130EP-26 and 27?

1 A I do.

2 Q Okay. I'm going to ask you a few questions
3 about those here in a minute. Let me wait until those
4 get passed out.

5 Dr. Ross, do you recognize
6 Exhibit 130EP-26 as a copy your Exhibit 5-Y?

7 A Yes.

8 Q And do you recognize Exhibit 130EP-27 as a copy
9 of your Exhibit 5-AG?

10 A Yes.

11 Q So if you look first at 26, the blue area there
12 is described in the legend as the FEMA 100-year
13 floodplain. Right?

14 A Yes.

15 Q And then the note over there on the right says
16 that that's based on FEMA's National Flood Hazard Layer
17 incorporating the Flood Insurance Rate Map database and
18 any revisions, and it was published as of January 28th,
19 2016. Right?

20 A Yes.

21 Q Now if you look over at Exhibit 130EP-27, there
22 are two shades of blue on here. First let's talk about
23 the darker shade of blue. That represents the Plum
24 Creek Conservation District easement or inundation area.
25 Right?

1 A I'm sorry. Which Exhibit are you talking about
2 right now?

3 Q 130EP-27?

4 A Yes.

5 Q Do you see there's two different shades of
6 blue?

7 A Yes.

8 Q And the darker one is the Plum Creek
9 Conservation District easement or inundation area.
10 Right?

11 A I think that's right, yes.

12 Q Okay. And then the lighter blue area, which I
13 guess in every instance -- well, I guess in every
14 instance or nearly every instance includes the darker
15 blue area, the lighter blue area is identified as the
16 FEMA mapped 100-year floodplain?

17 A Yes.

18 Q And in the note up in the top right-hand
19 corner, it refers to the same source of the FEMA
20 100-year floodplain information?

21 A Yes, it does.

22 Q But now if you look at -- on these two
23 exhibits, the FEMA 100-year floodplain as mapped on
24 these two exhibits is not the same, is it?

25 A I think it's a little bit difficult to tell.

1 Q Well, let me point out a couple of places, and
2 you can check.

3 A Okay.

4 Q On the very upper left-hand corner of 130EP-27,
5 do you see the little thing that looks like a whale's
6 tail with a little V-notch?

7 A Yes.

8 Q That's not present on 130EP-26, is it?

9 A I think that's right.

10 Q And then as you come down that west
11 tributary --

12 A Sorry. It's not present on 130EP-27?

13 Q Well, I'm talking about the little V-notch here
14 on 27. Right? Do you see that V-notch on 27?

15 A Yes.

16 Q And it's not there on 26. It's not depicted
17 the same way, is it?

18 A I think that's right.

19 Q Okay. And then if you come down that blue
20 stripe on the left-hand side of the exhibit, do you
21 understand that's referred to as the unnamed tributary
22 or the west tributary?

23 A Unnamed tributary.

24 Q Okay. If you look on Exhibit 130EP-27, as the
25 depicted floodplain there comes down and meets that

1 piece of floodplain that extends off to the west, the
2 first one, that makes an acute angle there. Right?

3 A It looks to me, in comparing these two, that I
4 have mislabeled the FEMA flood map on 130EP-27. It
5 looks to me like what I've actually mapped is the CAPCOG
6 100-year floodplain as of March 30th, 2016, and it has
7 the wrong label on it in terms of the identifying
8 source.

9 Q Okay. But it's true that the blue area on
10 130EP-26 -- well, the FEMA 100-year floodplain as shown
11 on 26 is not the same as the floodplain shown on 27?

12 A That's true. I think that's true.

13 Q Okay. And you believe that the FEMA 100-year
14 floodplain as shown on 130EP-26 actually is the FEMA
15 100-year floodplain?

16 A I do.

17 Q Okay. Based on the current Flood Insurance
18 Rate Map?

19 A Based on the information available through
20 TNRES on 1/28/2016.

21 Q Okay. Isn't it true that the current Flood
22 Insurance Flood Map prepared by FEMA for this area was
23 issued in 2012?

24 A I think that there are -- that these
25 floodplains change, and I -- I actually don't know if

1 there was a previous -- I don't know all the dates of
2 the previous revisions.

3 Q Okay.

4 A I know that what I mapped was the map as of
5 January 28th of 2016.

6 Q Okay. Do you know of any letters of map
7 revision that applied within the area mapped here since
8 FEMA last published a Flood Insurance Rate Map for this
9 area?

10 A I don't know of those.

11 Q Okay. So if we look on Exhibit 130EP-27, which
12 is the same as your Exhibit 5-AG, would you agree with
13 me that -- do you see where the leachate storage
14 facility is shown on that exhibit?

15 A Yes.

16 Q And the floodplain as you have it mapped there
17 extends into that rectangle that's identified as the
18 leachate storage area. Right?

19 A It does.

20 Q And what does that area consist of, that
21 leachate storage area? What's the rectangle?

22 A It's the secondary containment system.

23 Q Which is what?

24 A It is a system of dikes designed to capture
25 leachate should there be a failure in the tanks.

1 Q Okay. And the tanks are represented by the
2 round circles?

3 A That's my assumption, yes.

4 Q Okay. And that secondary containment is a
5 structure made of what? Reinforced concrete?

6 A I'd have to look at the application to be sure.

7 Q Okay. And isn't it true that that containment
8 structure around those leachate storage tanks has a
9 total volume that exceeds the total volume of the tanks?

10 A I think I remember that to be true, yes.

11 Q Okay. So if you look on Exhibit 130EP-26,
12 isn't it true that what you're now saying is actually
13 the FEMA 100-year floodplain is narrower in the area of
14 the leachate storage facility than the floodplain shown
15 on 130EP-27?

16 A Yes.

17 Q And in that area, if you're looking on
18 130EP-26, isn't it true that the 100-year floodplain --
19 the FEMA 100-year floodplain is at or below elevation
20 540?

21 A So I'm thinking, Mr. Ryan, that you're saying
22 that right where it crosses that line that says
23 trapezoidal ditch --

24 Q Yes.

25 A -- and then extending --

1 Q. To the north.

2 A. -- north for some ways, that it is below 540,
3 yes.

4 Q And so if you look at 130EP-27, isn't it true
5 that the 540 contour line is outside of the leachate
6 storage area?

7 A That appears to be true.

8 Q So if Exhibit 130EP-26 properly maps the FEMA
9 100-year floodplain, would you agree that the leachate
10 storage area is outside that floodplain?

11 A Yes.

12 Q Now let's talk -- on 130EP-26, let's talk about
13 the area outlined in gray there. You have that
14 identified here as "CAPCOG 100-year floodplain, March
15 30, 2010." Right?

16 A Yes.

17 Q And March 30, 2010, that's not the date of a
18 study or the date of a map. That's just the date you
19 got some information from CAPCOG?

20 A Yes.

21 Q And what is CAPCOG?

22 A The Capital Area Council of Governments.

23 Q CAPCOG doesn't actually do any flood studies,
24 does it?

25 A Not as far as I know. I don't think they do.

1 Q So they get their information from other
2 sources?

3 A. Typically from FEMA.

4 Q Okay. Do you know what the source of the
5 information that was used in whatever it is that CAPCOG
6 provided you in March of 2010 is? Do you know what that
7 source was?

8 A I do not.

9 Q Did you inquire about that?

10 A I don't remember if I did or not.

11 Q Okay. Do you think it matters?

12 A I -- I assumed that it was the FEMA floodplain
13 as of that date, March 30th, 2010.

14 Q. Okay. Do you have what's been marked as
15 130EP-28.

16 A I do.

17 Q What is that?

18 A This appears to be a paper copy of the Flood
19 Insurance Rate Map for Caldwell County, unincorporated
20 areas.

21 Q And what was the date of the map revision?

22 A July 21st of 1999.

23 Q Okay. If you'll open that up and look up near
24 the upper right-hand portion of the area that's shown on
25 this map, do you recognize the area of the proposed

1 landfill site?

2 A I do, generally.

3 Q Okay. Can you look at -- and the shaded area,
4 the Zone A area on Exhibit 130EP-28, is that commonly
5 referred to as the "FEMA 100-year floodplain area"?

6 A Yes.

7 Q Would you compare the Zone A area on 130EP-28
8 with the CAPCOG area that you have on 130EP-26 and let
9 me know if it appears to you that at least in the
10 vicinity of the landfill site those two things are
11 depicted as covering the same area?

12 A Sorry. Are you asking me whether or not the
13 Zone A shape on 130EP-28 is the same as either the blue
14 or gray shape on EP-26?

15 Q The gray. I think it's the same --

16 A The gray.

17 Q -- as the gray.

18 A The same as the gray.

19 Q I'm asking you if that corresponds to what
20 you've identified as the CAPCOG 100-year floodplain on
21 130EP-26.

22 A Well, the scales are somewhat different, but as
23 nearly as I can tell, they appear to be the same shape.

24 Q Okay. Dr. Ross, do you have there 130EP-29?

25 A I do.

1 Q And is that an enlargement of the portion of
2 130EP-28 that you were just looking at?

3 A It looks to me like it is.

4 Q. Okay. Does that make it a little easier to
5 compare Zone A from the '99 FEMA floodplain map with
6 your CAPCOG 100-year floodplain as it's shown on
7 130EP-26.

8 A Do we get to use the light table yet?

9 Q Sure. Feel free.

10 A Are they at the same scale?

11 Q I hope so.

12 A An old-fashioned thing. Right?

13 I so glibly stepped up there thinking this
14 would be easy to do, but it's actually not that easy.
15 So ask me again what the question is.

16 Q My question is: Is the Zone A area shown on
17 130EP-29 the same as what you have shaded in gray and
18 referred to as the "CAPCOG 100-year floodplain" on
19 130EP-26?

20 A I think it is. I'll just say I think it is.

21 Q Okay.

22 A I don't want to be more definitive than that.

23 Q Okay.

24 A I think it is.

25 Q But you don't see any differences, do you?

1 A No, I don't see any differences.

2 Q Okay. We're going to move to 130EP-31. Well,
3 wait just a minute. No, we don't have to do that.

4 I'd like you to take a look in Volume 2 of
5 the Applicant's exhibits at Page 257.

6 A I'm there.

7 Q And do you see down -- Note 2 near the lower
8 right-hand corner of that, it refers to "FEMA Flood
9 Insurance Rate Maps, effective date 6/19/2012"?

10 A Note 1?

11 Q Yes. Do you see that?

12 A Yes.

13 Q Okay. Would you compare Zone A as it's shown
14 on Page 257 with the blue shaded FEMA 100-year
15 floodplain on Exhibit 130EP-26 and tell me if those
16 appear to be the same?

17 A They look the same to me.

18 Q So on Exhibit 130EP-26, would you agree that
19 the area shaded in gray corresponds to the 1999 Flood
20 Insurance Rate Map?

21 A I think we already -- I think I already said
22 that, yes.

23 Q Okay. And the area shaded in blue corresponds
24 to the 2012 Flood Insurance Rate Map. Right?

25 A Yes.

1 Q So if the ALJs and the Commission are
2 interested in knowing what the current mapped FEMA
3 100-year floodplain is, they should look at Page 257 in
4 Exhibit 130EP-2 or at the blue shaded area on your
5 Exhibit 5-Y. Is that right?

6 A Yes.

7 Q So would you look at your prefiled testimony,
8 Exhibit Protestants' 5, at Page 10?

9 Now, Mr. Tatu asked you a little bit about
10 this, but I want to ask a little more about it. Down at
11 the bottom of Page 10, starting on Line 21, you refer to
12 30 Texas Administrative Code, Chapter 330, Subchapter F.
13 Right?

14 A Yes.

15 Q And that subchapter is titled "Analytical
16 quality assurance and quality control."

17 Is that right?

18 A Yes.

19 Q And you suggest in your testimony that those
20 are provisions in TCEQ's multiple solid waste rules that
21 should have been followed by the Applicant in this case
22 in connection with its fieldwork. Right?

23 A I do.

24 Q And if we look -- can you open the green book
25 up here, Texas Administrative Code? Would you open to

1 the beginning of Subchapter F in Chapter 330?

2 And I think -- I hope there's a little
3 table of contents for Subchapter F at the beginning of
4 it there.

5 A Subchapter F, analytical quality assurance and
6 quality control?

7 Q Yes. And is there a table of contents for that
8 subchapter?

9 A Not here.

10 Q Okay. Well, let's just go through a few of the
11 sections in here. There aren't that many of them.

12 So Section 263 deals with laboratory
13 analyses. Right?

14 A Yes.

15 Q Section 265 deals with reporting requirements?

16 A Yes.

17 Q 267 deals with records control?

18 A Yes.

19 Q If we go to 277, that deals with data
20 reduction, evaluation, and review?

21 A Yes.

22 Q 281, chain of custody?

23 A Yes.

24 Q 283, sample collection and preparation?

25 A Yes.

1 Q 285, analytical method detection limits and
2 method performance?

3 A Right.

4 Q 287, instrument and equipment calibration and
5 frequency?

6 A Yes.

7 Q And 289, laboratory case narrative?

8 A Yes.

9 Q And those are all regulatory provisions that
10 you believe the Applicant should have complied with in
11 this case because they are actually in TCEQ's MSW rules?

12 A That's not my testimony.

13 Q Okay. Do you believe the Applicant should have
14 complied with those rules?

15 A Only if they are relevant to the work that the
16 Applicant did.

17 Q Okay. But to the extent they're relevant to
18 some portion of the work the Applicant did, you believe
19 they should have been followed in connection with the
20 work done for this permit application?

21 A I do.

22 Q Okay. And that's because they're provisions
23 that are set out in regulations in TCEQ's municipal
24 solid waste rules?

25 A No.

1 Q Would you look at 330.261?

2 A Yes.

3 Q Do you see that?

4 A I do.

5 Q What does the last sentence of that section
6 say?

7 A "This subchapter expires on January 1st, 2009."

8 Q That was seven and a half years ago. Right?

9 A Yes.

10 Q So those rules haven't been in effect for seven
11 and a half years, have they?

12 A I guess that would be right -- or that seems to
13 be right based on what I read here.

14 Q When you included your reference to
15 Subchapter F in your prefiled testimony, were you
16 intending to mislead the Administrative Law Judges or
17 the TCEQ Commissioners about the applicability of those
18 rules?

19 A I was not.

20 Q When you submitted your Exhibits 5-AG and 5-Y,
21 were you intending to mislead the Administrative Law
22 Judges or the TCEQ Commissioners in connection with the
23 extent of the 100-year floodplain?

24 A I was not.

25 Q Were those just examples of errors or mistakes

1 that you made in putting together your prefiled
2 testimony and exhibits?

3 A The labeling on the exhibit is definitely an
4 example of an error. I misidentified the 100-year
5 floodplain -- the source of that 100-year floodplain.

6 Q Is it true that the only evidence of an aquifer
7 of which you are aware within the proposed landfill
8 facility boundary is groundwater that you found in silty
9 material somewhere between 40 and 50 feet below the
10 ground surface in your boring MP-1?

11 A I'm sorry. Would you ask that question again?

12 Q Yes. Is it true that the only evidence of an
13 aquifer within the proposed landfill facility boundary
14 is groundwater that you found in silty material
15 somewhere between 40 and 50 feet below the ground
16 surface in your boring MP-1?

17 A The other evidence of an aquifer is the
18 presence of an aquifer that's mapped by the Texas Water
19 Development Board that extends into the facility
20 boundary.

21 Q Okay. But in terms of physical evidence within
22 the site boundary, isn't it true that the only thing
23 you're aware of there is the groundwater that was found
24 in MP-1?

25 A The only groundwater that we found in our

1 borings was in MP-1, that's correct.

2 Q And other than that groundwater, you're not
3 aware of any other physical evidence of the presence of
4 an aquifer within the proposed permit boundary, are you?

5 A I am not.

6 Q And isn't it true that the silty material in
7 which you found groundwater in your boring MP-1 was
8 above the dark gray clay in that boring?

9 A Yes.

10 Q And isn't it also true that that groundwater
11 that you found in MP-1 corresponds to groundwater that
12 has been persistently present in the Applicant's
13 Piezometer P-32, which is located very near your MP-1?

14 A Could you tell me what you mean by
15 "corresponds"?

16 Q Well, what would you say about the relationship
17 between the water that you found in MP-1 and the water
18 that has been persistently present in P-32?

19 A Other than the fact that they both have
20 groundwater?

21 Q Yeah. I mean, aren't they very near each
22 other?

23 A Yes, they are very near each other.

24 Q Down near the southern end of the permit
25 boundary?

1 A Yes.

2 Q And the groundwater was found at approximately
3 the same depth below ground surface?

4 A I think that's right.

5 Q And in both borings, the groundwater was found
6 above the dark gray clay?

7 A Yes. I know that that's true in our boring,
8 and I presume that it is true in BME-32.

9 Q In P-32, the piezometer?

10 A Well, the -- no lithology was collected -- my
11 understanding is there's no lithology that was collected
12 in the piezometers when they were installed, so the best
13 evidence that we would have is BME-32.

14 Off the top of my head, I don't remember
15 if there's unweathered clay at the bottom of that
16 boring, but I would assume that there is and that it's
17 lower than that level.

18 Q Okay. You mean higher than that level?

19 A At the elevation of the unweathered-weathered
20 contact is lower than the groundwater in -- let me say
21 that again from the start.

22 This is -- because you asked me if I knew
23 it, and I'm just making it clear that I'm presuming what
24 you say is true.

25 Q Okay.

1 A That the weather-unweathered contact in BME-32
2 is lower than the groundwater elevation in P-32.

3 Q Okay. And isn't it true that Piezometer P-32
4 down near the southern boundary of the proposed
5 permitted area is the only location on the site where
6 groundwater has been persistently identified?

7 A There are two other piezometers that had --
8 where groundwater was measured. They have been -- they
9 were dry for the last several measurements, so --

10 Q Okay. And one of those was in the northwest
11 portion of the site and one in the northeast portion?

12 A That's correct.

13 Q Okay. Now I want to ask you about a statement
14 that you made in response to questions from Mr. Magee,
15 and I just want to make sure this is clear, because I
16 think maybe you got it backwards. I'm not going to ask
17 you if you got it backwards. I just want to clarify
18 what you meant.

19 If you testified that the weathered
20 zone is less permeable than the unweathered zone --

21 A That would have been a mistake.

22 Q Okay.

23 A Yeah.

24 Q The unweathered zone is less permeable than the
25 weathered zone?

1 A Yes. I think that's true.

2 Q Okay. And the weathered material sits above
3 the unweathered material?

4 A That's correct.

5 Q. Okay.

6 A. Generally that's correct.

7 Q So the zone of more permeable material would
8 be -- would be higher, closer to the ground surface?

9 A That is generally correct, yes.

10 Q Okay. And that's generally correct at this
11 site?

12 A Yes.

13 Q Okay. Do you know what TPDES stands for?

14 A Texas Pollution Discharge Litigation System.

15 Q System?

16 A. Yeah.

17 Q. Okay. And is that a program for the permitting
18 of stormwater discharges?

19 A Yes.

20 Q And is that a program where permitting can be
21 done either on an individual basis for a project or site
22 or pursuant to the terms of a general statewide permit?

23 A I think that's true.

24 Q And isn't it true that 130 Environmental Park
25 has proposed to obtain coverage under a general NPDES

1 stormwater permit?

2 A TPDES stormwater permit, yes.

3 Q Okay.

4 A I think that's true as well.

5 Q And would you agree that the way a facility
6 obtains coverage under a general permit is to submit
7 what's called an NOI or notice of intent?

8 A Yes.

9 Q And as part of the process of obtaining that
10 coverage, a facility is required to prepare a stormwater
11 pollution prevention plan?

12 A That's correct.

13 Q Which details things like sedimentation erosion
14 control practices and other practices intended to
15 control the release of pollutants in stormwater?

16 A It's supposed to include that, yes.

17 Q Okay. And, in fact, the regulations require
18 that stormwater pollution prevention plans include those
19 things?

20 A Yes.

21 Q And is it your understanding that for this
22 facility, coverage under the general permit and,
23 therefore, the terms of the stormwater pollution
24 prevention plan would cover not just the landfill
25 footprint and areas within the proposed municipal solid

1 waste permit boundary but all areas affected by the
2 project?

3 A That would be the intention of that permit and
4 the SWPPP, yes.

5 Q Including the entrance road from Highway 183?

6 A I think it would have to be covered in the
7 SWPPP, yes.

8 Q And also including the things like the scale
9 house and scale area?

10 A Yes.

11 Q And the citizen's convenience center?

12 A Yes.

13 Q The leachate storage area?

14 A Yes.

15 Q The maintenance building?

16 A Yes.

17 Q The transfer station?

18 A Yes.

19 Q Stream crossings on the site entrance road?

20 A This is the reason why I'm hesitating. Because
21 I know those are covered also -- I believe those are
22 covered by the U.S. Army Corps of Engineers' permit, and
23 I don't know, when those two overlap, what happens.

24 Q Okay.

25 A Just, legally, I don't know the answer to that.

1 Q Okay. But that U.S. Army Corps of Engineers
2 permit that you're referring to, that's that nationwide
3 permit that Mr. Marusak testified about?

4 A Yes.

5 Q And it does have various types of pollution
6 controls specified within it. Right?

7 A My reading of it is that they're not specified.
8 It's just an option -- a menu of options.

9 Q In the documentation that goes along with
10 Nationwide Permit 14?

11 A Yes.

12 Q Okay. But Nationwide Permit 14 does require
13 the implementation of practices intended to protect
14 water quality, does it not?

15 A It does.

16 Q You just don't know if those are the sorts of
17 things that would be -- the details of which would be
18 included in a stormwater pollution prevention plan?

19 A Ask that question again.

20 Q Do I understand correctly that you just don't
21 know if the details of those procedures would be
22 included within a stormwater pollution prevention plan?

23 A So I'm going to ask you the question -- I'm
24 going to tell you the question I think you're asking me.

25 Q Okay.

1 THE WITNESS: Is that okay for me to do?

2 JUDGE QUALTROUGH: Yeah, it is.

3 THE WITNESS: Because I could not.

4 A Okay. So the Judge says it's okay for me to
5 say that this is the question that I think that you're
6 trying to ask me. I don't know whether the requirements
7 of the nationwide Corps of Engineers permit would be
8 encompassed within the TPDES SWPPP. Is that the
9 question that you're asking?

10 Q (BY MR. RYAN) Yeah, I guess so. A little
11 different than that.

12 Do you know whether the manner in which
13 the water quality protection measures that are required
14 under Nationwide Permit 14 would be included in the
15 stormwater pollution prevention plan?

16 A I guess I would say I don't know.

17 Q Okay. Other than this one, what other
18 municipal solid waste landfill permitting matters have
19 you worked on in Texas?

20 A The Jack County landfill. I installed the
21 groundwater monitoring system and helped prepare the
22 Part B permit application for a landfill for the City of
23 Paris. I think somebody from your team was working on
24 that as well, so maybe they were my client.

25 Q Okay.

1 A I've worked on the McCarty Road Landfill. I
2 have worked -- I prepared the closed landfill study for
3 the City of Austin where we went back and did
4 investigations on probably 23 different landfills in and
5 around Austin and Travis County.

6 Q That wasn't municipal solid waste permitting.
7 Right?

8 A Oh, I'm sorry. Your question was limited to
9 permitting?

10 Q Yes.

11 A Okay. No, that was not municipal solid waste
12 permitting.

13 Q Okay. The work you did for the McCarty Road
14 Landfill, was that related to permitting?

15 A It was related to permitting.

16 Q Okay.

17 A The Waste Management landfill in Travis County.
18 I think we called it the Austin Community Landfill. I
19 think there are others, but they're not coming to my
20 mind right now.

21 Q Okay. When you mentioned the Part B associated
22 with the Paris landfill?

23 A That wouldn't be right, would it? That was --
24 no. Yeah. It was a permit application, but it wouldn't
25 have been a Part B, because I think those were RCRA, and

1 that was not a RCRA landfill.

2 Q Okay.

3 A It was a permit application, but it wouldn't
4 have been Part B.

5 Q Okay. What was the work that you did on Waste
6 Management's Travis County landfill?

7 A We were looking at groundwater contamination,
8 potential sources from the landfill or adjacent
9 landfills.

10 Q And that was work that you did for Waste
11 Management?

12 A Yes.

13 Q And the McCarty Road Landfill?

14 A. It was --

15 Q. Oh, excuse me. Let me back up and say: Was
16 that associated with a permitting matter, the Waste
17 Management Travis County work?

18 A They had a permit at the time, so I think it
19 was along the lines of compliance with their permit
20 terms.

21 Q Okay. But it didn't relate to an application
22 for a permit or an amendment to a permit or modification
23 to a permit?

24 A No.

25 Q Okay. Now, how about the McCarty Road

1 Landfill? Did that relate to permitting?

2 A Yes.

3 Q And what was the work that you did there?

4 A I was asked to review the permit application.

5 Q By who?

6 A By Protestants.

7 Q And do I understand correctly that the work you
8 did in connection with the Jack County landfill was for
9 Protestants?

10 A That's correct.

11 Q And who was your client in that case?

12 A I don't know if I know -- if I can actually
13 tell you who my client was without --

14 Q Is that a secret?

15 A No, it's not secret. I just don't remember
16 whether I was contractually working for Marisa Perales
17 and her law firm or whether I was contractually working
18 for the Protestants themselves.

19 Q Okay. And the Applicant in connection with
20 that Jack County landfill was a company called IESI. Is
21 that right?

22 A I think that's right.

23 Q And did Biggs and Matthews prepare the permit
24 application for IESI?

25 A The reason why I'm hesitating is because I have

1 since learned that there's a couple of different shapes
2 and flavors of Biggs and Matthews, and it was one of
3 them. I don't -- you know, whichever one you mean and
4 whichever one I -- I don't know. But --

5 Q. It was some --

6 A. It was some -- some flavor of Biggs and
7 Matthews, yes.

8 Q Okay. And Mike Schneider was the geologist for
9 the Applicant on that project?

10 A I think that's right.

11 Q And you were a witness in the contested case
12 hearing in that matter?

13 A Yes.

14 Q And am I right that you testified that in your
15 opinion, the application should be denied based in part
16 on what you claimed was Mr. Schneider's failure to
17 adequately characterize geology in groundwater?

18 A I don't know whether I would have made an
19 opinion about whether or not the application should be
20 denied. Maybe I did, but I do recall that he had
21 mischaracterized one of the subsurface formations as an
22 aquiclude, yes.

23 Q Okay. Following that contested case hearing,
24 isn't it true that TCEQ approved the application and
25 issued the permit?

1 A That's my understanding.

2 Q And isn't it also true that Protestants in that
3 case, whether you were working for them or you were
4 working through Ms. Perales -- that they appealed the
5 Commission's decision?

6 A You know, if I answer that question yes, I
7 would only be saying it because I think it's true, not
8 because I know it to be true.

9 Q Okay. Do you remember ever having read the
10 Court of Appeals decision?

11 A I did not.

12 Q Okay. So you don't know what happened after
13 TCEQ issued that permit?

14 A I don't think I do.

15 Q Okay.

16 MR. RYAN: Can I have just a minute here?

17 Your Honor, I had asked the other day if
18 you would take judicial notice of the Court of Appeals
19 opinion in that case. I've got a copy of it marked as
20 an exhibit. I think it might be easier if I just make
21 it an exhibit and introduce it into the record. That
22 way it will actually physically be there.

23 JUDGE QUALTROUGH: That's fine.

24 MR. RYAN: Okay.

25 (Exhibit Applicant No. 39 marked)

1 MR. RYAN: Before I get too far passed
2 this, I want to offer Exhibits 130EP-26, 27, 28, and 29.

3 JUDGE QUALTROUGH: All right. Any
4 objections to the admission of those exhibits?

5 MS. PERALES: No objection.

6 JUDGE QUALTROUGH: All right. So 130EP
7 Exhibits 26, 27, 28, and 29 are admitted.

8 (Exhibit Applicant Nos. 26 through 29
9 admitted)

10 MR. RYAN: And I'd also offer 130EP-39,
11 the Court of Appeals opinion.

12 JUDGE QUALTROUGH: Any objections?

13 (No response)

14 JUDGE QUALTROUGH: All right. Exhibit 30
15 is admitted as well. Wait a minute. I'm sorry. That
16 was 39?

17 MR. RYAN: 39, yeah.

18 JUDGE QUALTROUGH: Okay.

19 MR. RYAN: I've got a blank spot in there.

20 JUDGE QUALTROUGH: All right. So let me
21 restate it for the record. 130EP Exhibit 39 is
22 admitted.

23 (Exhibit Applicant No. 39 admitted)

24 MR. RYAN: Thank you.

25 Q (BY MR. RYAN) Dr. Ross, do you have in front

1 of you Exhibits 130EP-37 and 38? It's these two things.

2 Your letter to --

3 A 37 and 38. I do.

4 Q Okay. Good. I'm going to ask you about those
5 in just a minute.

6 MR. MAGEE: This is 37. Right?

7 MR. RYAN: Yeah. 37 is the February 12th,
8 2016 letter.

9 Q (BY MR. RYAN) Dr. Ross, can you identify
10 Exhibit 130EP-37?

11 A This is a letter that I wrote to consultants
12 that were soliciting public comment on proposed
13 improvements to Flood Retarding Structure No. 21.

14 Q And those consultants were working for the
15 NRCS?

16 A Yes.

17 Q And I see that one of the people to whom you
18 addressed your letter was Jeff Irvin. Is that right?

19 A Yes.

20 Q And did you receive a response from Mr. Irvin?

21 A I did.

22 Q And were the comments that you submitted and
23 Mr. Irvin's response -- well, are his responses set out
24 in Exhibit 130EP-38?

25 A Yes.

1 Q And, Dr. Ross, your submission of comments and
2 Mr. Irvin's response to those comments, was that a part
3 of the NRCS process of evaluating options for the
4 Site 21 dam and reservoir?

5 A Yes.

6 Q And isn't it true that among the options that
7 were identified were a no action option where they
8 wouldn't do anything at all?

9 A I think that's right, yeah.

10 Q And another option -- there were either one or
11 two versions of this, as I recall -- would have been
12 control breach and removal of the dam?

13 A That sounds right.

14 Q Okay. And yet another option that was under
15 consideration was rehabilitation work and some level of
16 rebuilding of the dam?

17 A Yes.

18 Q Okay. And in connection with NRCS's process
19 for public comment, you submitted these comments, and
20 Mr. Irvin sent you this response?

21 A That's right.

22 MR. RYAN: I would offer Exhibits 130EP-37
23 and 38.

24 JUDGE QUALTROUGH: Any objections?

25 MS. PERALES: No objection.

1 MR. WILSON: No objection.

2 JUDGE QUALTROUGH: All right. 130EP
3 Exhibits 37 and 38 are admitted.

4 (Exhibit Applicant Nos. 37 and 38
5 admitted)

6 Q (BY MR. RYAN) Dr. Ross, you are aware, aren't
7 you, that your prefiled testimony in this case was
8 submitted, at least in part, on behalf of an entity
9 called TJFA, L.P.?

10 A Yes.

11 Q And you know that the owner of TJFA, L.P., is
12 Bob Gregory?

13 A I have no idea.

14 Q You don't know if Bob Gregory has any
15 affiliation with TJFA?

16 A I have no idea.

17 Q Name somebody for me that you know is
18 affiliated with TJFA.

19 A I think Dennis Hobbs is.

20 Q Okay. And isn't it true that Dennis Hobbs is
21 also an employee of Mr. Gregory's waste company, Texas
22 Disposal Systems?

23 A I think that's true.

24 Q And do I remember correctly from your
25 deposition that you know Mr. Gregory because he asked

1 you to testify in a lawsuit that he had filed against
2 Waste Management some number of years ago?

3 A I actually met Mr. Gregory when I was a member
4 of the League of Women Voters in about 1995, and he was
5 proposing the landfill and gave six or seven of us a
6 tour in his Suburban of the proposed site. That would
7 have been when I met Mr. Gregory for the first time.

8 Q Okay. But then subsequent to that, he asked
9 you to testify in a lawsuit he had filed against Waste
10 Management?

11 A I think originally I was subpoenaed by Waste
12 Management or something, but then I did testify -- then
13 Mr. Gregory did ask me to testify.

14 Q Okay. Mr. Gregory asked you to testify at the
15 trial, and you did so?

16 A Yes.

17 Q Have you ever done any work related to the
18 Texas Disposal Systems landfill?

19 A Yes.

20 Q And what sort of work?

21 A So the Waste Management lawsuit had to do with
22 a fax that I received, along with probably a couple of
23 hundred other -- I'm going to use this pejorative
24 term -- environmentalist, from George Cofer. And he had
25 received that fax text from a lobbyist for Waste

1 Management, and there were some things in the fax that
2 were pejorative about the Texas Disposal Systems liner.
3 There were other things, too. I mean, it was like a
4 page along, but this is what I remember. This was,
5 what, like more than 20 years ago.

6 Mr. Gregory was concerned that people
7 would have a misimpression about the Texas Disposal
8 Systems landfill, and he encouraged George Cofer to hire
9 me through -- Save Barton Creek Association was the
10 organization that George was working for at the time.

11 And so Save Barton Creek Association hired
12 me to go to TCEQ, or whatever it was called then -- I
13 think it was probably TNRCC then in 19 -- this would
14 have been about '94, something like that. Save Barton
15 Creek Association asked me to go and review all of the
16 files at TCEQ about Texas Disposal Systems.

17 Q Okay.

18 A Which I did.

19 Q So you did some work related to the landfill,
20 but you weren't working for Texas Disposal Systems?

21 A I was hired by Save Barton Creek Association to
22 review TCEQ records about the operation and compliance
23 record of the Texas Disposal Systems landfill.

24 Q Have you ever been hired by Texas Disposal
25 Systems to do any engineering work related to its

1 landfill?

2 A No.

3 Q You mentioned that the liner at the -- well,
4 first off, the Texas Disposal Systems landfill is, what,
5 12 or 15 miles north of the proposed 130 Environmental
6 Park site?

7 A That could be true. I don't really know.

8 Q Do you know where the Texas Disposal Systems --

9 A I do know where it is. I just don't know how
10 far that is from this site.

11 Q Several miles. Right?

12 A Yes, several miles.

13 Q Okay. And isn't it true that the Texas
14 Disposal Systems landfill uses an in-situ soil liner?

15 A It's been a long time since I've reviewed their
16 liner specifications, and they may have changed, and I
17 may not remember right, but from what I remember, that's
18 correct.

19 Q Okay. And what does that mean, an in-situ
20 liner?

21 A It means that you are using the native clay
22 material as the liner for the waste disposal cell.

23 Q Without any sort of a synthetic liner component
24 associated with that?

25 MS. PERALES: Your Honor, I'm going to

1 object to this line of questioning. I don't see the
2 relevance of this at all.

3 JUDGE QUALTROUGH: Do you have a response?

4 MR. RYAN: It's my last question. Does
5 that help?

6 MS. PERALES: I still don't see the
7 relevance.

8 JUDGE QUALTROUGH: All right. Overruled.
9 Go ahead and answer the question.

10 Q (BY MR. RYAN) I don't even remember what it
11 was. Do you?

12 A Is it do they have a geomembrane.

13 Q Yeah. The liner system doesn't have a
14 synthetic component to it?

15 A I believe that's right.

16 MR. RYAN: Okay. I'll pass the witness.

17 JUDGE QUALTROUGH: All right. Redirect?

18 REDIRECT EXAMINATION

19 BY MS. PERALES:

20 Q Dr. Ross, you were asked -- can you pull out
21 Exhibits EP-26 and 27, please?

22 A I have them.

23 Q Okay. And I think that through the questions
24 you were asked, we established that 130EP-27, that
25 should have referenced CAPCOG as the source rather than

1 FEMA. Is that right?

2 A Yes.

3 Q Can you remind us what the purpose was in your
4 testimony for including the 130EP -- or the Protestants
5 Exhibits 5-Y and 5-AG?

6 A The purpose was to show that the 100-year
7 floodplains are very close to or possibly overlapping
8 the proposed landfill facilities.

9 Q And, in fact, the CAPCOG floodplain delineation
10 is not -- is a little bit different from the FEMA
11 floodplain delineation. Isn't that right?

12 A I think what we established is that they're
13 both FEMA floodplain delineations.

14 Q Okay.

15 A And the blue -- the CAPCOG is an older version
16 of that floodplain delineation.

17 Q Okay. That's what I wanted to clear up. So
18 what we should gather from this is that the one that is
19 labeled "CAPCOG" is referring to an older --

20 A That's right.

21 Q Okay. And so the delineation of the floodplain
22 has changed between when 5-AG and 5-Y were created?

23 A That's correct.

24 Q Does that surprise you?

25 A No.

1 Q And why is that?

2 A 100-year floodplain maps change all the time.

3 Q Do you know if a letter of map revision was
4 submitted or was the cause of the change to the
5 floodplain?

6 A I don't know.

7 Q You were asked some questions regarding the
8 TPDES permit. Do you recall that?

9 A I do.

10 Q Can you turn to Page -- well, can you take out
11 Applicant's 130EP-2? And that's going to be in
12 Volume 2.

13 A I have Volume 2.

14 Q And turn to Page 34.

15 A I am there.

16 Q The second full paragraph, can you take a look
17 at that last sentence?

18 A Yes.

19 Q And do you see where it says that, "Prior to
20 commencing operations, a notice of intent to enter the
21 stormwater permitting requirements of TCEQ rules will be
22 filed qualifying the facility to operate pursuant to a
23 general stormwater discharge permit"?

24 Do you see that?

25 A I do.

1 Q Do you have an opinion as to what the term "the
2 facility" is intended to reference?

3 A My assumption would be that would be the
4 portion -- improvements within the facility boundary.

5 Q Would "the facility" also include the access
6 road?

7 A Parts of the access road are not within the
8 facility boundary, so --

9 Q Okay.

10 A Within the context of this permit application,
11 I don't think that the term "facility" would include
12 those parts of the access road that are not within the
13 facility boundary.

14 Q Okay. Thank you. You were asked questions
15 regarding whether there was evidence of an aquifer
16 within the site boundary. Do you remember that?

17 A I do.

18 Q Other than the groundwater that was encountered
19 in MP-1, is there other evidence that suggests the
20 presence of an aquifer within the facility boundary?

21 A The Texas Water Development Board prepares maps
22 of major and minor aquifers across the state of Texas.
23 Their map of the outcrop of the Carrizo-Wilcox Aquifer
24 encompasses part of the facility within the facility
25 boundary.

1 Q Okay. Was there anything else -- any other
2 evidence that suggests that an aquifer may be present
3 within the facility boundary?

4 A I think if you look at the lithologic material
5 that we saw in the course of the borings, there were
6 sandstone materials that were encountered, particularly
7 in the vicinity of MP-1. So I think in addition to the
8 water that was present at MP-1, the materials that were
9 present in MP-1 certainly suggest potential for
10 materials similar to that described as the Wilcox to be
11 present at that site.

12 Q Is there any other evidence suggesting that the
13 Wilcox may be present at least near the proposed
14 facility boundary?

15 A In addition to the presence of groundwater and
16 materials similar to what's described as the Wilcox and
17 the map of the Texas Water Development Board that
18 encompasses part of the facility and then extends east
19 from there, there are water wells in the Texas Water
20 Development Board's groundwater database -- groundwater
21 well database, and I observed water in a well on the
22 Lazy King Ranch that appears to be completed in that
23 Wilcox Aquifer.

24 Q Can you turn to Page -- in your prefiled
25 testimony, which is Protestants' Exhibit 5 -- can you

1 grab that, and then turn to Page 10?

2 A I'm there.

3 Q You were asked some questions regarding your
4 QA/QC program, and you were specifically referred to
5 some TCEQ rules.

6 Looking at your testimony on Line 24, is
7 it fair to say that this is still the goal of a
8 professional QA/QC program?

9 A Yes.

10 Q And the regulation is just above that
11 testimony. So the regulation at Line 17, 305.47, to
12 your knowledge, is that regulation still valid?

13 A As far as I know, it is.

14 Q Okay. And that regulation requires that a
15 permittee shall keep records of data used to complete
16 the final application and any supplemental information.
17 Isn't that right?

18 A Yes.

19 MS. PERALES: May I have a minute?

20 Q (BY MS. PERALES) Okay. I have just a couple
21 more questions related to the fractures and fissures
22 description that you provided in response to Mr. Magee's
23 questions.

24 A Okay.

25 Q So the changes that you made to testimony,

1 those were with regard to the 19 fractures. Right?

2 A Yes.

3 Q So that's only fractures, not fissures?

4 A Yes.

5 Q Okay. And those fractures were -- the 19
6 referred to the number of fractures that were identified
7 by the Applicant. Isn't that right?

8 A That's right.

9 Q Were there also fractures identified by the
10 Protestants' borings?

11 A Yes. Let me back up and say that I know that
12 there were fissures that were identified in -- by the --
13 in the Protestants' borings. A fissure is a fracture.
14 I don't remember if we -- "we" being the Protestants --
15 specifically used the word "fracture" or not. I just
16 don't remember.

17 Q Okay. And so my question was going to be
18 whether the Applicant distinguished between fractures
19 and fissures.

20 A All of the notes in the Applicant's
21 supplemental borings are fractures.

22 Q Okay. And in the original application, did the
23 Applicant identify -- we know that they didn't identify
24 any fractures. Right?

25 A Yes.

1 Q Did they identify any fissures in the original
2 application?

3 A I don't think so.

4 Q Okay. And the Protestants, I think you just
5 testified that you weren't -- you don't recall whether
6 they distinguished between fractures and fissures. Is
7 that right?

8 A What I said was that what I remember on our --
9 on the Protestants' boring logs are fissures.

10 Q. Okay.

11 A. And I don't remember if the term "fracture"
12 shows up in those boring logs or not.

13 Q Okay. And you were asked a number of questions
14 about whether you are a professional geoscientist or
15 geologist. Do you recall that?

16 A I do.

17 Q What is your background that provides your
18 expertise to offer opinions here?

19 A Sure. I'm a licensed professional engineer in
20 the State of Texas. I have a Bachelor's -- a Master's
21 degree and a Ph.D. in civil engineering with an emphasis
22 in water resources.

23 My Master's research was the movement of
24 water and solutes through the unsaturated zone. I have
25 numerous classes in hydrology. I have numerous classes

1 in groundwater fate and transport. And I've probably
2 prepared, over the course of my career, maybe 40
3 groundwater sampling and analysis plans to detect the
4 presence of contaminants in the groundwater.

5 I cannot do that work of fate and
6 transport, migration in the subsurface, without
7 understanding the aspects of geology that affect
8 groundwater fate and transport. So that is part of my
9 education. That's part of my experience.

10 Q That was my -- my primary question was whether
11 identification of secondary features is an important
12 aspect of your investigation in groundwater movement.

13 A Yes.

14 Q And why is it that fractures and fissures are
15 an important aspect of your investigation into
16 groundwater movement?

17 A Because in this kind of a geologic setting, I
18 would expect them to be a primary mechanism for
19 groundwater movement. I think the -- the Texas
20 Commission on Environmental Quality recognizes that in
21 their rules when they specifically say that the
22 identification of secondary features is an important
23 aspect of a geologic assessment for a landfill site.

24 Q And is it important to identify these fractures
25 and fissures even in an environment such as this one

1 where we've heard that one -- only one piezometer
2 consistently detected groundwater?

3 A Yes. The presence of groundwater doesn't
4 determine whether or not there's a potential for
5 leachate migration. Leachate can migrate through those
6 fractures and fissures even if they are not filled with
7 groundwater.

8 MS. PERALES: All right. I'll pass the
9 witness.

10 JUDGE QUALTROUGH: All right. Plum Creek,
11 any cross?

12 MR. WILSON: No cross.

13 JUDGE QUALTROUGH: Caldwell County?

14 MR. MAGEE: No.

15 JUDGE QUALTROUGH: OPIC?

16 MR. TUCKER: I have in cross for Dr. Ross.

17 JUDGE QUALTROUGH: Executive Director?

18 MR. TATU: No cross.

19 JUDGE QUALTROUGH: 130EP?

20 MR. RYAN: Just a couple.

21 RE-CROSS-EXAMINATION

22 BY MR. RYAN:

23 Q Dr. Ross, you talked about sandstone material
24 that was identified in the vicinity of MP-1. What do
25 you mean by --

1 A In the boring log.

2 Q Okay.

3 A. Yeah.

4 Q. And material described as sandstone wasn't
5 found anywhere else on this site, was it?

6 A I think that's true.

7 Q And when you said that you observed water in a
8 well on the Lazy King Ranch that appeared to be
9 completed in the Wilcox formation, is the reason for
10 your testimony that it appeared to be completed in the
11 Wilcox the water well driller's report?

12 A The water well driller's report combined with
13 the fact that there's a surface outcrop of the Wilcox
14 mapped at that location.

15 Q Okay. So it's what's on the map and what was
16 in the well report, not anything that you saw in the
17 field?

18 A That's true, other than water in the well.

19 Q Okay. Is it possible that the water in that
20 well could be from -- that well is relatively near Dry
21 Creek, isn't it?

22 A Well, relatively near -- I think I can answer
23 that question yes.

24 Q Okay. Isn't it possible that the water in that
25 well could be associated with alluvial material and

1 underflow from the creek?

2 A I don't recall seeing any indication of
3 alluvium at the site. The creek was dry when I was
4 there, which doesn't exactly answer your question,
5 because you did encompass the possibility of underflow.
6 I can't completely and totally rule it out, but I don't
7 think that's the case.

8 MR. RYAN: Okay. Pass the witness.

9 JUDGE QUALTROUGH: All right. Thank you
10 very much. You may step down.

11 All right. It's 4:30. We should start
12 the next witness. Do you have one ready to go?

13 MS. PERALES: I believe I do.

14 JUDGE QUALTROUGH: All right.

15 MS. PERALES: I would call Mr. William
16 Feathergail Wilson as my next witness. May I approach?

17 JUDGE QUALTROUGH: Yes. Let's go off the
18 record for a second.

19 (Discussion off the record)

20 JUDGE QUALTROUGH: All right. We are back
21 on the record, and I believe you have called Mr. Wilson
22 as your next witness. I will need to swear you in.

23 (Witness sworn)

24 JUDGE QUALTROUGH: All right. Could you
25 please state your name for the record?

1 THE WITNESS: William Feathergail Wilson.

2 JUDGE QUALTROUGH: All right. And if I
3 could get you to speak into the microphone. I know it's
4 kind of irritating, but we need to be able to hear you.
5 Thank you. All right. You may proceed.

6 WILLIAM FEATHERGAIL WILSON,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. PERALES:

10 Q Good afternoon, Mr. Wilson. In front of you,
11 you should have a transcript labeled Exhibit 8. Do you
12 see that?

13 A Yes.

14 Q And you and I have met before, haven't we?

15 A Yes.

16 Q And, in fact, the Exhibit 8 is a transcript of
17 my deposition or interview of you back in June of 2016.
18 Isn't that right?

19 A Yes.

20 Q If you were to testify here today under oath
21 and were asked the same questions that I asked you back
22 on June 22nd, 2016, would your answers be the same as
23 you provided back in June?

24 A Yes.

25 Q. And on the very last page of Exhibit 8, if you

1 could turn to that, is this an exhibit that you've
2 prepared?

3 A Yes.

4 Q And this is an exhibit that you and I talked
5 about during your June 2016 deposition. Isn't that
6 right?

7 A Yes.

8 MS. PERALES: Okay. At this time, I will
9 offer Protestants' Exhibit 8.

10 JUDGE QUALTROUGH: Any objections?

11 MR. RYAN: No objection.

12 JUDGE QUALTROUGH: All right. Exhibit 8
13 is admitted.

14 (Exhibit Protestants No. 8 admitted)

15 MS. PERALES: And I'll pass the witness.

16 JUDGE QUALTROUGH: Plum Creek, any cross
17 of this witness?

18 MR. WILSON: No. I will note that
19 Mr. Wilson is a consultant for the Plum Creek
20 Conservation District, but I have no questions of him.

21 JUDGE QUALTROUGH: All right. Thank you.
22 Caldwell County?

23 MR. MAGEE: I don't have any questions of
24 Mr. Wilson.

25 JUDGE QUALTROUGH: OPIC?

1 MR. TUCKER: No questions?

2 JUDGE QUALTROUGH: Executive Director?

3 MR. TATU: No questions.

4 JUDGE QUALTROUGH: Applicant?

5 MR. RYAN: Just a couple.

6 CROSS-EXAMINATION

7 BY MR. RYAN:

8 Q Good afternoon, Mr. Wilson.

9 A Hello.

10 Q Have you ever been to the proposed landfill
11 site?

12 A No.

13 Q Have you ever looked at any soil samples
14 collected there earlier this year?

15 A No.

16 Q Have you ever looked at any soil samples
17 collected there at any time?

18 A No.

19 MR. RYAN: Could I have a minute to grab a
20 couple of exhibits?

21 JUDGE QUALTROUGH: Yes.

22 MR. RYAN: Thanks.

23 (Discussion off the record)

24 JUDGE QUALTROUGH: You may proceed.

25 Q (BY MR. RYAN) Mr. Wilson, do you know what

1 Leona Formation material looks like?

2 A Yes, sir.

3 Q What is it?

4 A It's a gravel. A chert bearing pebble gravel.

5 Q Okay. And we've had a lot of people use the
6 terms "pebble" and "gravel." Let me make sure we
7 understand what you mean --

8 A Pebble-sized gravel. It's a size
9 classification.

10 Q Okay. So what's the differences in pebbles and
11 gravel?

12 A Well, gravel can be -- it's a generalized term.
13 Pebble is more or less a specific term as to size and
14 diameter.

15 Q And what size and diameter?

16 A I don't know. I'd have to look it up in the
17 table.

18 Q So gravel is a generalized term for what?

19 A For pebbles, anything coarser than very
20 coarse-grained sand. It's known as a chert pebble
21 conglomerate.

22 Q Okay. Chert pebble conglomerate. So "chert"
23 describes the type of material?

24 A Yes, sir.

25 Q And is that a rock type, like limestone or

1 granite or something?

2 A Silica.

3 Q Okay. So it's a rock made from silica?

4 A And oxygen.

5 Q Is that different than limestone?

6 A Yes, sir. Limestone is calcium carbonate.

7 Q Okay. And "pebble" refers to the sizes.

8 Right?

9 A Right.

10 Q And "conglomerate," what does that mean?

11 A Anything coarser than very coarse-grained sand.

12 Q Is a conglomerate --

13 A A boulder -- up to about a boulder size, which
14 might be the size of this desk.

15 Q Doesn't conglomerate suggest that you've got
16 multiple pieces of things that are stuck together?

17 A Yes. But in this case, the Leona is derived
18 from the Balcones Fault Zone. The Balcones Fault Zone
19 went up about six and a half million years ago, and the
20 limestone was deposited with the -- with the rest of the
21 rocks. It was dissolved, and the only thing left is a
22 chert.

23 It's the same thing that Indians make
24 arrowheads out of because it's very durable. But it
25 ended up, from really catastrophic flooding, off the

1 Balcones Fault Zone. It extends from this area all the
2 way to Hondo and beyond. It's mostly derived from the
3 Edwards Formation.

4 Q Is your knowledge of the extent of the Leona
5 Formation material based on BEG mapping?

6 A Based upon Bureau of Economic Geology mapping,
7 are you saying?

8 Q Any.

9 A Yes.

10 Q Okay. And the specific geologic mapping that
11 you would rely on for that is the Bureau of Economic
12 Geology mapping?

13 A Correct.

14 Q Okay.

15 MR. RYAN: May I approach the witness,
16 Your Honor?

17 JUDGE QUALTROUGH: Yes, you may.

18 Q (BY MR. RYAN) Mr. Wilson, do you see that
19 drawing pad on the easel behind you there?

20 A Yes.

21 Q And do you see the blue marker that I sat down
22 in front of you?

23 A Yes.

24 Q What I'd like you to do, if you would, is to
25 draw sort of a -- in your prefilled testimony, you talk

1 about the berm associated with the landfill. Right?

2 A Yes.

3 Q Would you draw a cross-section -- as simple or
4 as elaborate as you want to make it, a cross-section
5 through, let's say, a landfill that shows the berm that
6 you're talking about?

7 A Let me describe it first.

8 Q Okay.

9 A My concern was that there is, in some areas --
10 in this area, based upon not only the Bureau of Economic
11 Geology mapping, but based upon, I think, the latest
12 course, described gravel near the surface. So I made
13 what's called an isopach map of that. It's above the
14 Midway. So it's the first unit that you encounter in a
15 core hole.

16 Well, that's -- if you look at the map and
17 you look at the map in the exhibit, you can see that
18 it's relatively widespread based on my -- what my
19 contours show as well as the Bureau of Economic Geology.

20 And if you don't remove that material and
21 you use it in the berm -- particularly at the toe of the
22 berm -- let's assume that it's removed first because
23 it's on top, and you build the berm around the landfill,
24 and you incorporate it into the berm that's supposed to
25 contain the leachate and contain the garbage. Then you

1 create a contaminant pathway -- or a potential pathway.
2 So that's one of my concerns. It's pretty simple. I
3 don't have to draw it.

4 Q Well, I'd like you to draw a cross-section
5 through a landfill that show these berms you're talking
6 about, or just one side of a landfill. Just show us
7 what you're talking about when you refer to a berm.

8 A If you look at -- I have another map where I
9 show that if you want.

10 Q Sure. Where is that?

11 THE WITNESS: Bob, do you have that map?

12 MR. WILSON: May I?

13 JUDGE QUALTROUGH: Yes. Watch out for the
14 wires.

15 A It's not a cross-section. It's a series of
16 maps.

17 Q (BY MR. RYAN) Well, let me just say I, quite
18 frankly, am not interested in a series of maps. What I
19 want to know -- what I want you to do is show me a
20 cross-section of the berm that you've testified about.

21 A Well, as I understand it -- and I'm not an
22 expert bermer. The berm is a containment; a hill, a
23 berm around -- around the garbage.

24 Q Okay. And is it --

25 A Is that not correct?

1 Q Is it your concern that if this landfill is
2 built by pushing the surface soils into a berm around
3 some perimeter and then waste is placed inside that
4 berm, that the gravel material in the shallow surface
5 soils could create a contaminant pathway through the
6 berm?

7 A Yes, sir.

8 Q Okay. And is it your understanding that that's
9 the way this landfill is going to be constructed?

10 A I don't know.

11 Q Okay.

12 A That's just a concern.

13 Q Okay. And is it true that an assumption that
14 is a part of that concern is that the containment system
15 for waste and liquid in the landfill would be this berm
16 potentially constructed out of the near-surface soils?

17 A It's possible.

18 Q Well --

19 A Under, say, an extreme rainfall event where you
20 really have spillage across the berm, and you have very
21 slow spillage through perhaps a toe, but I'm not
22 really -- I don't really know that.

23 Q Okay. Have you looked at any of the logs of
24 borings that have been done at the site?

25 A I've looked at some of the descriptions.

1 Q From borings that were done on behalf of the
2 permit Applicant this year?

3 A The latest borings, whatever they were.

4 Q Okay. And have you also looked at the boring
5 logs prepared for the Protestants by their geologists?

6 A No.

7 Q Do you know where any of the borings that were
8 drilled this year either by the Applicant or the
9 Protestants -- do you know the specific locations of
10 them?

11 A I have them on a map, yes, sir.

12 Q Okay. Can I look at your map real quick?

13 A It may be difficult to see because the scale is
14 so small compared to what the map is -- the map is made
15 for 26 inches. You might have to use a magnifying
16 glass.

17 Q Is that the same thing?

18 A No. This is different.

19 Q Okay.

20 A That's a more formal display.

21 Q Mr. Wilson, you're generally familiar with
22 what's referred to as the landfill footprint area?

23 A Yes, sir. I think on that particular map --

24 Q Yeah. It's actually labeled here.

25 A Okay.

1 Q Are you aware of any borings that have been
2 drilled to the east of the landfill footprint area?

3 A No. But you can see that I've suggested three
4 drill sites.

5 Q Okay. And I see -- I think I see two of them.
6 Are they the large circles?

7 A Yes.

8 Q Large light-colored circles?

9 A Yes. There's two of them. I thought I had a
10 third one on there.

11 Q Okay. Those two?

12 A. (No response).

13 Q. And you don't know how close to either of those
14 locations borings may have been drilled?

15 A They're not drilled. They have never been
16 drilled.

17 Q Okay. But I mean talking about the borings
18 that have been drilled out here, do you know how close
19 to either of those locations any of the existing borings
20 were placed?

21 A No. I would have to scale it off on the map,
22 which I don't -- the scale on this map is one inch
23 equals 404 feet, but the actual original map was 26
24 inches wide.

25 Q Okay. For instance, let me ask you this

1 question: Do you see the red line that goes from
2 northeast to southwest that represents the permit
3 boundary area?

4 A Yes, sir.

5 Q Do you know if any borings have been drilled to
6 the east of that line?

7 A. Not at -- not to my knowledge.

8 MR. RYAN: I'll pass the witness.

9 JUDGE QUALTROUGH: Any redirect?

10 MS. PERALES: I will have redirect. I
11 wonder if I could take the evening to review his
12 documents -- or his maps that he referred to in his
13 testimony.

14 JUDGE QUALTROUGH: If we could finish with
15 this witness today, I would like to.

16 MS. PERALES: Okay. Sure. Then can I
17 have just a few minutes?

18 JUDGE QUALTROUGH: Yes. We'll go off the
19 record.

20 (Recess from 4:50 p.m. to 4:51 p.m.)

21 JUDGE QUALTROUGH: We are back on the
22 record with the redirect of Mr. Wilson. You may
23 proceed?

24

25

1 REDIRECT EXAMINATION

2 BY MS. PERALES:

3 Q So, Mr. Wilson, I believe I heard you testify
4 that you had not reviewed any soil samples that were
5 collected during -- or in preparation for this
6 application. Is that right?

7 A I've seen some field notes.

8 Q Do you recall whose field notes those were?

9 A It was the latest core field notes.

10 Q Okay. So from 2016. Is that right?

11 A Yes.

12 Q Okay. Did you also review some boring logs
13 that were prepared after the 2016 boring program?

14 A No.

15 Q Okay. So have you looked -- so is the extent
16 of your review of the 2016 subsurface investigation, is
17 that limited to the field notes that you've mentioned?

18 A Yes.

19 Q Did you look at the boring logs that were
20 included in the application for the landfill permit?

21 A Barely.

22 Q Okay. Did you at one time prepare an isopach
23 map using the information included in those boring logs?

24 A The latest ones.

25 Q The latest ones. Okay. But you never prepared

1 one using the old boring logs?

2 A I can't recall whether I did or not.

3 Q Okay.

4 A If I did, it's probably outdated.

5 Q And why is it that you barely looked at the
6 boring logs that were included in the application?

7 A Well, I noted that the Leona was actually
8 described as gravel. Gravel can be mixed with the soil
9 itself, like a chernozem soil, which this is, or it can
10 be lying on the surface loose. Often it's integrated
11 with caliche -- mixed with caliche, but it was described
12 in each one of these borings.

13 So I used that material, that description
14 in order to make this isopach map.

15 Q Okay. So, again, you're talking about the
16 descriptions of the -- of what you called the Leona from
17 2016?

18 A Yes.

19 Q Okay. Why is it that you did not rely on or
20 refer to any of the original soil borings that were
21 included in the application materials?

22 A As I recall, they didn't report any gravel.

23 Q Okay. And did you draw any opinions or
24 conclusions from their failure to report gravel?

25 A Well, if you look at the Bureau of Economic

1 Geology map, which is the stippled yellow, obviously the
2 Bureau of Economic Geology thought there was gravel
3 there.

4 Q And in your opinion, is the Bureau of Economic
5 Geology a reliable source?

6 A I think so. I used to work for them as a
7 graduate student.

8 Q Have you looked at any soil samples outside of
9 the landfill footprint but within this general vicinity
10 of the proposed landfill?

11 A No, but I've looked at oil and gas electrical
12 logs.

13 Q Okay.

14 A On the King property in particular.

15 Q If we look at the exhibit that is included
16 with -- at the end of your deposition transcript --

17 A I don't think so. I think I furnished you the
18 logs -- or somebody.

19 Q Right.

20 A The electric logs.

21 Q Right. But do those electric logs correspond
22 to any of the wells that are identified on the isopach
23 map that you created?

24 A No.

25 Q They're not?

1 A No.

2 Q Okay. If we looked at the isopach map, could
3 you describe for us where those electric logs came from?

4 A Where the what?

5 Q Where the logs came from, what part of the --

6 A Well, we -- BCCD purchased 2,500 electric logs
7 from Cambe Log Service.

8 Q Okay.

9 A I'm in the process of going through every one
10 of them and picking the tops right now.

11 Q Okay.

12 A But because of this hearing and because of the
13 issue here, I actually chose logs within the area to
14 look at.

15 Q And that's my question. Where in this area do
16 those logs come from? So what -- the log records a
17 particular well. Is that right?

18 A These are all oil wells, yeah.

19 Q And can you identify where the oil well is on
20 your isopach map that you looked at?

21 A It's shown on the map.

22 Q Okay. And which -- where is it? How is it
23 identified?

24 A It's identified with a well symbol, a red well
25 symbol. You probably have to look real hard to see it.

1 Q Can you describe for us where it is?

2 A. Well, there's an arrow to all of them.

3 Q Okay. And is there -- is there a name
4 associated with the arrow -- with the --

5 A Yes. There's a label. The Gol-King --
6 Gol-King, No. 1 King, 2 and 3 Gol- -- I mean Goliad 2
7 and 3, and the Goliad No. 1 Hunter-King.

8 Q Okay. So if we're looking at the isopach map,
9 the -- the small red circles that are identified as
10 Goliad 3 King, Goliad 2 King, and Goliad 1 Hunter-King,
11 are those the wells for which you looked at the electric
12 logs?

13 A Yes, but not for the purpose of mapping the
14 Leona.

15 Q Okay. For what purpose?

16 A Mapping the edge of the Wilcox exposure within
17 the -- beneath the reservoir.

18 Q Okay. And based on your review of those
19 electric logs, were you able to map the Wilcox?

20 A Well, when you have only three logs and they
21 set pipe throughout almost the entire Wilcox, you just
22 have to go back and rely upon the Bureau of Economic
23 Geology map. Although, there is an indication in 1, 2,
24 and 3 that the resistivity curves are indicative of the
25 fact that the Wilcox is present beneath -- beneath the

1 casing, barely beneath the casing. But you really have
2 to have inferred that.

3 Well, that's one of the reasons that I
4 felt like somebody -- BCCD or -- should really take two
5 additional cores within the lake area.

6 Q Okay. And why is that? Could you explain
7 that?

8 A Well, I wanted to establish the fact that the
9 Wilcox was present beneath the reservoir.

10 Q Okay. And why is the presence of the Wilcox
11 beneath the reservoir -- why is that important to know
12 in your opinion?

13 A Well, it's an aquifer -- the main aquifer in
14 the county.

15 Q And do you have concerns related to the
16 proposed landfill as it relates to the aquifer?

17 A Well, the concern is that if there's any spill
18 or any catastrophic rainfall event or any contamination
19 from the leachate leaking into that area and running
20 down into the reservoir and running down into -- and
21 recharging the Wilcox with contaminated water, that's a
22 concern.

23 Q Do you have an opinion about where the
24 transition between the Wilcox and the Midway is in
25 relation to the proposed landfill?

1 A Yes.

2 Q What's your opinion?

3 A Well, the Midway is -- if you look at the
4 electric logs -- it's hard to describe without looking
5 at them -- the resistivity curves exist on the
6 right-hand side of each log. I'm going to have to just
7 illustrate this by my hand. Okay?

8 If you have -- beneath the casing you
9 have -- the Wilcox extends, and the resistivity sticks
10 out to the right. Okay? Because it's sand -- or it's
11 sand and silt.

12 As you get into the Midway, it does this.
13 It stairsteps down into the Midway, which is indicative
14 of the fact that the Midway is really a forced-slope --
15 or a deltaic slope deposit of the Wilcox that original
16 was up-depth from this area. Midway is not -- there is
17 no disconformity or erosional surface between the two
18 units.

19 When you pick the Midway, you pick it as
20 sort of an arbitrary place where there's no sand. If I
21 started picking the Midway all over the area, which I've
22 done, it's really a different pick each place. So it's
23 transitional with the Wilcox.

24 And if you had the geophysical logs, which
25 you can run now but you couldn't run then, with

1 electrodes that are spaced, like, two inches apart or
2 six inches apart, you might be able to see some of these
3 sands that have been described, as well as the silts.

4 Q. Okay.

5 A. But not with these older logs.

6 Q Okay.

7 A The older logs, the electrodes are spaced --
8 the smallest space is 16 inches. So, you know, unless
9 you run those logs, you're not going to see it.

10 Well, another issue is that I would prefer
11 to see geophysical logs run on each core hole -- modern
12 geophysical logs.

13 Q Okay.

14 A And that, to me, would be prudent. Otherwise,
15 we're just blowing smoke.

16 Q So is it possible that the Wilcox -- could
17 it -- that transition, could it extend all the way to
18 beneath the facility boundary?

19 A Oh, yes. But I can't tell you that that's what
20 it is until you drill some holes and run some
21 geophysical logs.

22 Q Okay.

23 A Fairly sophisticated logs.

24 Q So you can't tell based on the information that
25 you've reviewed thus far?

1 A No.

2 Q So based on what you've described, do you have
3 an opinion as to whether this is an appropriate site for
4 a proposed landfill?

5 A Well, there are better places with better
6 geology in the county that are not adjacent to a
7 reservoir, particularly in the Navarro Formation.
8 Navarro is over 1,000 feet thick, the clay, and it
9 covers a large area of the county. If you want to put a
10 landfill in, that's where you'd put it.

11 Q Okay.

12 A You wouldn't put it adjacent to a potential
13 contaminated Wilcox outcrop or a major stream.

14 Q Or a major what?

15 A A major stream.

16 Q Okay.

17 A So my opinion is it's not the best place to put
18 one.

19 Q Okay. And did you --

20 A At least I wouldn't put it there.

21 Q Okay. And did you have an opinion regarding
22 the reliability of the boring logs that were included in
23 the permit application?

24 A The second set, as I recall, was a lot better
25 description.

1 Q And you're talking about the field notes from
2 the second set?

3 A They were better descriptions, yes.

4 Q Okay. And the boring logs included in the
5 application -- in the landfill permit application, those
6 did not include field notes. Isn't that right?

7 A What?

8 Q The boring logs -- the final boring logs that
9 were included in the permit application -- so from the
10 older borings -- those did not include field notes.
11 Isn't that right?

12 A No, not that I recall.

13 Q Okay.

14 A Or if they did, I didn't see them.

15 MS. PERALES: Okay. I'll pass the
16 witness. Thank you.

17 JUDGE QUALTROUGH: All right. Recross
18 from Plum Creek?

19 MR. WILSON: No, Your Honor.

20 JUDGE QUALTROUGH: All right. Caldwell
21 County?

22 MR. MAGEE: No, Your Honor.

23 JUDGE QUALTROUGH: OPIC?

24 MR. TUCKER: No.

25 JUDGE QUALTROUGH: ED?

1 MR. TATU: No recross.

2 JUDGE QUALTROUGH: Applicant?

3 MR. RYAN: Yes, Your Honor.

4 JUDGE QUALTROUGH: Okay.

5 RECROSS-EXAMINATION

6 BY MR. RYAN:

7 Q Mr. Wilson, I see that you're looking at a
8 color version of your isopach map there. Is that
9 labeled Protestants' Exhibit 8, Page 72? It's down
10 there in the --

11 A Yes. Yes.

12 Q Okay. I just want to make sure we're looking
13 at the same thing.

14 And on that map where it says "Wilcox
15 outcrop" in a little box with an arrow, is that based on
16 the Bureau of Economic Geology mapping of the outcrop?

17 A Correct.

18 Q And then if we go down from that, there are the
19 two lighter color circles that say "drill site," with a
20 question mark, and those are locations where you have
21 suggested doing some drilling to see if Wilcox material
22 is present there?

23 A Yes, sir. Particularly sand.

24 Q Okay. And is it true that the Wilcox overlies
25 the Midway?

1 A Yes, sir.

2 Q So if you were to drill there, as soon as you
3 got through whatever might -- I don't know the right
4 word for it, but --

5 A Alluvium.

6 Q Okay. Whatever alluvium material might be on
7 the surface, you would get into the Wilcox if it were
8 present there?

9 A The alluvium is probably no more than ten or 20
10 feet thick.

11 Q Okay. And if the Wilcox were present, you
12 would get into it at 10, 20 feet, something like that?

13 A That's correct.

14 Q And you would know if you were in Wilcox
15 because you would find sand?

16 A Sand and shale and lignite, yes, sir.

17 MR. RYAN: Okay. I'll pass the witness.

18 JUDGE QUALTROUGH: Thank you. I
19 appreciate your testimony.

20 THE WITNESS: Bye.

21 JUDGE QUALTROUGH: Bye.

22 (Laughter)

23 JUDGE QUALTROUGH: Okay. It is after
24 5:00. I think this is a good place to stop. All right.
25 So we'll go off the record and adjourn for the day.

1 Thank you.

2 MR. RYAN: Thank you.

3 (Discussion off the record)

4 JUDGE QUALTROUGH: Oh, I'm sorry. We have
5 to go back on.

6 Exhibit 44, I don't think it was -- maybe
7 it was -- that's this one.

8 MS. PERALES: Oh, that's right.

9 JUDGE QUALTROUGH: I don't think this was
10 offered.

11 MS. PERALES: Okay. I'll offer that.

12 JUDGE QUALTROUGH: Any objections to
13 Protestants' 44?

14 MR. RYAN: No objection.

15 JUDGE QUALTROUGH: All right. That's
16 admitted.

17 (Exhibit Protestants No. 44 previously
18 admitted on Page 1272)

19 JUDGE QUALTROUGH: Now we can go off the
20 record. Thank you.

21 (Proceedings concluded at 5:08 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

We, Lorrie A. Schnoor and Steven Stogel,
Certified Shorthand Reporters in and for the State of
Texas, do hereby certify that the above-mentioned matter
occurred as hereinbefore set out.

WE FURTHER CERTIFY THAT the proceedings of
such were reported by us or under our supervision, later
reduced to typewritten form under our supervision and
control, and that the foregoing pages are a full, true
and correct transcription of the original notes.

IN WITNESS WHEREOF, we have hereunto set our
hand and seal this 6th day of September, 2016.

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