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SOAH DOCKET NO. 582-05-1552
TCEQ DOCKET NOS. 1997-1063-UIC AND 2004-0746-UIC

APPLICATION OF URI, INC.	*	BEFORE THE STATE OFFICE
TO	*	
THE TEXAS COMMISSION ON	*	
ENVIRONMENTAL QUALITY	*	
FOR	*	
ISSUANCE OF A PRODUCTION	*	
AREA AUTHORIZATION FOR	*	OF
PRODUCTION AREA 3 UNDER	*	
TCEQ PERMIT UR02827	*	
AND	*	
RENEWAL OF TCEQ WASTE	*	
DISPOSAL WELL PERMIT	*	
NOS. WDW-247 AND WDW-248	*	ADMINISTRATIVE HEARINGS

* *

HEARING ON THE MERITS

* *

On the 5th day of August, 2005, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Paul D. Keeper, Judge presiding, held in Kingsville, Kleberg County, Texas.

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1 THE COURT: Good morning, Counsel. This
2 is Friday, August the 5th, perhaps the last day of our
3 proceeding. The time is 9:31 in the morning. And we
4 are ready to begin. Mr. Hill, I see you have a witness
5 in the dock. How do you wish to proceed?
6 MR. HILL: First of all, I wanted to
7 reurge two motions previously urged in this proceeding
8 challenging the standing of STOP, and the second,
9 challenging the standing of all other protestants. The
10 reason for offering them at this time is that STOP and
11 the other protestants have closed their direct cases.
12 They have not changed the underlying facts, but in fact,
13 have augmented the point made in the prior motions,
14 particularly through the testimony of Mr. Cumberland,
15 who identifies his own interest as congruent with the
16 public -- the larger public interest.
17 And as noted in the written motions, the
18 law generally, and the rules of the Commission
19 specifically, provide a limit intervention and limit
20 interested party status, limit standing to those persons
21 who have an interest different from -- or assert, I
22 should say, an interest different from that of the
23 public at large.
24 I specifically note that whatever
25 individual or private interests STOP may have or claim

1 to have and whatever individual and specific interest
2 any of the protestants may have or claim to have, what
3 is relevant here are the interests which they have
4 brought to this proceeding and sought to vindicate or
5 advance in this proceeding. And the interest which they
6 have advanced in this proceeding, to the extent they are
7 admissible and permissible within the scope of this
8 hearing, are only interests which coincide with -- if
9 there are any interests left after that test, are only
10 interests which coincide with and are congruent with the
11 general public interest; generalized concerns about the
12 control of groundwater, generalized concerns about the
13 pace of restoration, etcetera.
14 And as such, each of these has either
15 demonstrated himself or herself or itself or left us
16 with nothing but bear pleadings. To the effect that
17 this party is none other than a surrogate for the
18 public; ergo, has no standing. At this point therefore,
19 I reurge the prior motions on the same law and on those
20 and additional similar facts today.
21 And I have provided the Judge a copy of
22 those motions updated to today, and I have shown it to
23 opposing counsel and represented to them that the
24 written materials I have handed the Judge are indeed the
25 same as the prefiled -- or the earlier materials of

1 March 11 and March 22.
2 I will then, if the Court wants to respond
3 to that, if there's any response to that, I can wait.
4 Otherwise, my next topic is an agreement as to the
5 testimony, the rebuttal testimony, of Ronald E. Grant.
6 THE COURT: Okay. Here's what I would
7 like to do. I'd like to try to conserve our time today.
8 And with respect to opposing counsel, you are certainly
9 free to make a response. I would like to reserve that
10 to the end of the day if there's time for that. And if
11 there's not, then you may submit a written response if
12 you wish.
13 My guess is that your response is going to
14 be that which you had when the motions were originally
15 made. And with respect to the testimony that was given
16 that has been referred to, I am guessing that your
17 assertion is that that has no effect in the manner that
18 Mr. Hill has asserted. I don't wish to put words in
19 your mouth, but my guess is that this matter is not a
20 matter that needs to be dealt with immediately for us to
21 be able to go forward in this hearing. If I'm wrong,
22 then please tell me otherwise. Counsel?
23 MR. VALDIVIA: I'm anxious to wrap up
24 today, as many others are, I'm sure, so I would -- I'm
25 comfortable with what you propose.

1 THE COURT: Ms. Oberlin?
2 MS. OBERLIN: I agree.
3 THE COURT: And Mr. Redmond?
4 MR. REDMOND: I agree. I would prefer to
5 be able to respond to it written rather than live.
6 MS. MANN: I really enjoy writing briefs,
7 so that sounds like a good idea.
8 THE COURT: So we will deal with this at a
9 later time either today or perhaps after the conclusion
10 of the hearing itself. Mr. Hill?
11 MR. HILL: Thank you, Your Honor. I
12 believe Counsel have agreed to -- that the testimony,
13 rebuttal testimony, of Ronald E. Grant is to be admitted
14 as written and prefiled to be what it is. Each has the
15 right to make whatever arguments he or she may wish to
16 make, but that there is no need to call Mr. Grant to
17 present his testimony.
18 THE COURT: Mr. Valdivia?
19 MR. VALDIVIA: I believe that's correct as
20 to -- are we referring to Mr. Grant's --
21 MR. HILL: Prefiled rebuttal testimony.
22 THE COURT: That's Exhibit 47.
23 MR. VALDIVIA: Yes, that's correct.
24 THE COURT: And Mr. Redmond?
25 MR. REDMOND: That is correct.

1 THE COURT: And Ms. Mann?
2 MS. MANN: That's correct.
3 THE COURT: So URI Exhibit 47 is admitted.
4 MR. HILL: We still have pending
5 distribution -- or we have pending arguments with regard
6 to 23-A and the sponsorship, or portions of that, by
7 Mr. Grant and Mr. Demuth and Mr. Pelizza. But as I
8 understand, those are being reserved until some time
9 later today. I'm prepared to take them up whenever may
10 be appropriate. But noting that and noting that there
11 remains some additional exhibits to be distributed upon
12 further copying, which we hope to have done shortly, URI
13 is prepared to call Mike Russell to present his prefiled
14 rebuttal testimony.
15 THE COURT: And what exhibit number will
16 that be? We may have skipped URI 46. And you certainly
17 have the right to do that, if you wish.
18 MR. HILL: No. I have only skipped it
19 because it is marked Pelizza, and I was going to come
20 back and pick him up last. This should be 48, the
21 prefiled rebuttal testimony of Mike Russell.
22 THE COURT: All right. And before we move
23 to Mr. Russell's testimony, Mr. Valdivia, I acknowledge
24 your standing objection to these matters. And my
25 inclination is to allow the testimony to be given and

1 then we'll deal with the objection afterwards, unless
2 that offends your sense of justice.
3 MR. VALDIVIA: No, I don't think it
4 offends my sense of justice. I would like to make one
5 comment about that, the aspect of this that I think may
6 affect your desire to go ahead with the testimony, but I
7 think most likely, you know, we'll proceed as you
8 suggest. The substance of -- part of the substance of
9 our objection is that Mr. Russell and Mr. Pelizza are
10 attempting to correct matters that are in URI's
11 application, and the Rule 281.23 application amendment
12 governs this. It also references 305.62, which governs
13 permit amendments. And 305.62 is more detailed in what
14 constitutes a major versus a minor amendment.
15 And we submit, Your Honor, that the matter
16 of these corrections, whether they're made through minor
17 amendments, has to be vetted through the executive
18 director, and it's not something that can be decided in
19 this proceeding. So with that in mind, it may be
20 appropriate to take this testimony and punch it back to
21 the director for that determination. But I believe the
22 rule does not allow the SOAH judge to make that
23 determination in the manner that it has come up in this
24 proceeding.
25 THE COURT: Okay. Thank you. And I will

1 accept your offer to proceed with the testimony of this
2 witness. And Mr. Redmond, I'll toss one to you to think
3 about, or you may respond if you wish.
4 MR. REDMOND: Okay. I would like to
5 respond. I think there are two different matters that
6 are on the table. One is an evidentiary matter relating
7 to the offering of testimony and exhibits, and the other
8 matter is relating to an application in what can be
9 changed or amended. And I do not agree with
10 Mr. Valdivia's characterization of what can be amended
11 once an application is referred to SOAH.
12 THE COURT: And I'll note your
13 disagreement with his position. And, again, if there is
14 time at the end of the day, we may be able to take this
15 up in greater detail. And if not, then my understanding
16 is that these issues are amenable to further written
17 argument. Is there anything else before Mr. Hill
18 proceeds with the testimony of Mr. Russell? Okay.
19 Mr. Hill?
20 MR. HILL: URI calls Mike Russell.
21 MIKE RUSSELL,
22 having been first duly sworn, testified as follows:
23 DIRECT EXAMINATION
24 BY MR. HILL:
25 Q. Mr. Russell, I'll hand you a document

1 identified as URI Exhibit 48 and ask you if you
2 recognize it.
3 A. Yes, I do.
4 Q. And I will hand you a loosely collection of
5 pages with various colored tabs referred to as
6 attachments A, B, C, D, E, etcetera, and ask you if you
7 recognize these items as a portion of your prefile.
8 A. Yes, I do.
9 Q. All right. Specifically I call your attention
10 to the item identified as Appendix A as opposed to
11 attachment A at the back of the prefiled. It should be
12 there.
13 A. Yeah.
14 Q. Would you look at -- pardon me, at Appendix A
15 and tell me what that is.
16 A. It looks like my statement of qualifications.
17 Q. Now, that's, what, two pages or three pages?
18 A. Yeah, two pages long.
19 Q. Did you prepare or cause to be prepared the
20 information which is included in Appendix A and the
21 attachment that are attached to your prefiled rebuttal
22 testimony identified in URI's Exhibit No. 48?
23 A. Yes.
24 Q. Did you prepare the answers to the questions
25 that are presented in URI Exhibit 48?

1 A. Yes.
2 Q. Do you wish to adopt at this time as a portion
3 of your testimony in this proceeding the item -- first
4 of all, the testimony presented in Exhibit 48 and the
5 Appendix A and the attachments to that exhibit?
6 A. Yes, I do.
7 MR. HILL: We'll tender the witness for
8 cross-examination.
9 THE COURT: Thank you very much.
10 Mr. Valdivia, are you going to be the front person
11 today?
12 MR. VALDIVIA: Yes, Your Honor.
13 THE COURT: Please proceed.
14 CROSS-EXAMINATION
15 BY MR. VALDIVIA:
16 Q. Good morning, Mr. Russell.
17 A. Good morning.
18 Q. I'd like to ask you a few questions about your
19 qualifications.
20 A. Okay.
21 Q. I see here your formal education in is a
22 Bachelor of Science in geology from Texas A&I University
23 here in Kingsville?
24 A. That's right.
25 Q. And you also list as professional licenses,

1 certificates, registrations and IED advanced well
2 logging?
3 A. Right.
4 Q. Could you elaborate on that? What is IED and
5 what's the nature of that license?
6 A. I'm not sure I can remember what it stands for.
7 It was an oil and gas well logging seminar that I went
8 to, and it's due to energy development or something like
9 that.
10 Q. And you do you recall when you went to that
11 seminar?
12 A. No, I really don't. Probably about ten years
13 ago, 12 years ago, something like that.
14 Q. And that -- how long was that seminar? More
15 than a day?
16 A. You know, I don't remember. I think it was
17 probably two days or three days or something like that.
18 Q. And at the end of that seminar, you received
19 some kind of certification?
20 A. Yeah, just a certificate, yeah.
21 Q. That you completed that course?
22 A. Correct.
23 Q. And you haven't been required to maintain that
24 in any way since then?
25 A. No. That was just an optional thing.

1 THE COURT: Mr. Russell, if I may caution
2 you, if you would wait until Mr. Valdivia has finished
3 his question, it will make life easier on our court
4 reporter.
5 THE WITNESS: Okay. Sorry.
6 THE COURT: Thank you.
7 Q. (By Mr. Valdivia) Mr. Russell, I tend to talk
8 slowly, so it's a problem I have with my witnesses.
9 A. So do I. Sorry.
10 Q. So Mr. Russell, you are not a licensed
11 geoscientist?
12 A. No. I was -- I was in Australia for five years
13 during my time when they started the registration, I've
14 only been back a year, so I haven't really quite gotten
15 into it yet.
16 Q. And Mr. Hill referenced some attachment to your
17 prefiled, Attachment A, B, C, D through, I believe, F.
18 I note that on some, if not all, there are -- there is
19 information in green?
20 A. That's right.
21 Q. Is that information, that writing, what does
22 the green color indicate?
23 A. Well, as Mr. Kier pointed out, there was some
24 missing information on some of the completion reports
25 and some of the maps. So the green are any changes that

1 I made or anything that I added, any information that
2 was added.
3 Q. Some of that information that was incomplete
4 were case well completion reports; is that right?
5 A. That's right.
6 Q. Now, and also -- let me ask you this.
7 Attachment B and C, those documents are on blue paper?
8 A. That's right.
9 Q. And I note that there is no green ink used.
10 How are we to know which is the new information?
11 A. Yeah. Really the green is on the maps.
12 Anything that's on the map that was changed is green.
13 These are all the copies of the completion reports that
14 Mr. Kier had pointed out had missing information on it,
15 so all I did then was took those, added the information
16 and we copied in blue to make sure they were in some
17 different color.
18 Q. Okay. But how did you add information to these
19 reports?
20 A. I just added it with a pencil and I initialed
21 it and dated it at the top, where the missing
22 information was that I was aware of.
23 Q. So for each addition, did you initial alongside
24 the new information?
25 A. No. I just initialed it in the upper

1 right-hand corner.
2 THE COURT: Mr. Valdivia, may I interrupt
3 you for just a second. Let's go off the record.
4 (Off the record.)
5 Q. (By Mr. Valdivia) I believe your testimony
6 just now was that you -- the information -- the new
7 information that you placed on the documents in
8 attachments -- behind Attachments B and C were done by
9 hand; is that a fair statement?
10 A. Well, Attachment B are the completion reports
11 that Mr. Kier had pointed out had some missing
12 information, and I found a couple more, and that's
13 what's in Attachment B. Attachment C are the completion
14 reports for the 35 new baseline wells that were added
15 that he mentioned were missing also.
16 Q. Okay. But my question, Mr. Russell -- and let
17 me just preface this with a comment, if I may. There's
18 a lot of handwritten information on the case well
19 completion report, so I'm trying to determine what is
20 new information --
21 A. Okay.
22 Q. -- and what is corrected information?
23 A. Yeah. In Attachment B, again, those are the
24 completion reports that had missing information. And
25 it's all -- it was printed up from a computer, and the

1 only thing that isn't -- that wasn't handwritten were
2 the signatures at the bottom. So the changes that I
3 made in Attachment B are in pencil or handwritten. And
4 then in Attachment C, all I did there is copy the
5 original completion reports as they were, so they're all
6 handwritten. And I didn't make any changes to the
7 Attachment C. Those were -- that's just the way they
8 were. But they're just the completion reports for the
9 35 new baseline wells.
10 Q. So in Attachment B, any numbers or other
11 information that are written in are your --
12 A. Except for the signatures at the bottom, yeah.
13 Q. Except for the date and signature at the
14 bottom?
15 A. Right.
16 Q. And again, in Attachment C, did I understand
17 you correctly, you said these are just copies, there is
18 no new information in Attachment C?
19 A. That's right. These are the original
20 completion reports. I just pulled them out of a file
21 and copied them.
22 Q. Let's go back then to Attachment B. And how --
23 how do you -- what do you call these documents here?
24 What -- do they have a name?
25 A. Completion reports.

1 Q. And how are they -- how does URI maintain these
2 documents?
3 A. Well, whenever the well is drilled and the
4 information begins to come in, we fill out the
5 information. Some of it is a little bit different times
6 during the stage of the completion of the well. And
7 when the well is drilled, then they'll fill in the
8 information for the dates it was drilled and when it was
9 cased. And then when it's developed and pressure
10 tested, I mean, they fill those in as they go along.
11 Q. Is the information that is on a completion
12 report, where do you get that information?
13 A. Well, I mean, it comes from -- I'm not quite
14 sure what you mean by that necessarily. Let me try. As
15 the well is being drilled, you know, we have a casing --
16 we have a drilling depth. When we pick a casing depth,
17 then we've got a casing depth. The geologist looks at
18 the well log that we get after we drilled it. We pick a
19 depth, an interval, to complete the well in, and we just
20 gather all the information from what we're doing and
21 then put it on a completion report. I don't know if
22 that answers your question.
23 Q. But what form is that information in before it
24 gets to the completion report?
25 A. You mean as far as how it's recorded, you mean?

1 Q. Yes.
2 A. Well, in a lot of different ways. I mean,
3 notes and -- I mean, the drilling depths and things like
4 that, you know, we give them to the drillers, they drill
5 the holes. They have daily reports. Those depths are
6 there. We keep our own notes. When we pick the
7 completion intervals, we keep our notes on that. We
8 usually put it on the well logs. We don't always do
9 that. When the guys pressure test the wells, they have
10 forms they fill out that are not part of these forms.
11 The cementers have forms that we give them. The guys
12 that case the wells have forms that we give them that
13 tell them how deep to case the well. And then we take
14 all that information and make up a completion report
15 with it.
16 Q. You mentioned well logs.
17 A. Yes, sir.
18 Q. You went a little fast for me, so do you always
19 write down information in the well logs or is it
20 sometimes?
21 A. Well, you know what the well log is? I'm not
22 sure.
23 Q. Explain it.
24 A. When you drill a hole, drilling a hole is like
25 taking a drill and drilling a hole in wood. You drill

1 it in the surface and you drop -- we have like -- what's
2 it called? Oh, I can't remember the name of the
3 company. But, you know, we log the hole, we run a Sonde
4 the well that's on a wire and measure the
5 characteristics of the formation. And from that
6 information, it prints a graph out that has the depths,
7 it has the tops and the bottoms, the sands, things like
8 that. So it has all of that kind of information on it.
9 Q. I've been meaning to ask Mr. Pelizza this, but
10 perhaps you know. When you drill a hole, is it
11 typically just straight, smooth sides?
12 A. Well, no, because I mean, it's straight as we
13 get it. You know, we have certain parameters that we
14 require the drillers to stay within, and that's a
15 certain deviation. I mean, it has to be fairly
16 straight, within a very small percentage. And I mean,
17 it's a metal bit and you're cutting sand and clay, which
18 is soft, so it's fairly smooth and straight. But it's
19 still going to be -- just like if you're drilling a hole
20 with a drill, it's not always perfectly straight.
21 Q. Would it be fair to say that because the shape
22 of the bit that you're using, the hole would tend to
23 have kind of a spiral or corkscrew --
24 A. Yes, yes.
25 Q. -- configuration?

1 A. Yes. But, you know, we go in and we don't
2 always do it, but at places like Kingsville where it's a
3 little deeper, we run what's called a drift survey,
4 which actually shows the -- you know, the lineage or the
5 drift of the hole or how straight the hole is. And so
6 we can tell if the driller happens to drill a hole and
7 it turns out to be real crooked, then we basically --
8 they have to use more what are called drill collars,
9 which are bigger pieces of pipe to help keep the hole
10 straight.
11 Q. Is the information you get from the drift
12 survey, does that end up in a completion report
13 somewhere?
14 A. No. It's nothing that's required, that I'm
15 aware of. And we have it, but we don't necessarily use
16 it for that, no.
17 Q. Now --
18 A. We use it mostly for our own purposes, though.
19 Q. Well, what purposes might those be?
20 A. Just to make sure that we're getting good
21 straight holes because we don't want holes to be
22 drifting too far apart.
23 Q. And one of the reasons you want to make sure of
24 that is because they're going to be putting a pipe
25 through that hole, and it would be a problem if it were

1 leaning against the side of that hole?
2 A. Yes, that's definitely one of the reasons. But
3 it's not really the -- I know what you're getting at
4 there. You're saying that maybe the casing might not be
5 sitting in the hole correctly. But no, that's not the
6 problem. The problem is just basically when we get down
7 to the bottom of the hole, you don't want the bottom of
8 the hole to be too far in one direction or the other
9 because we want our wells to be fairly evenly spaced;
10 you know, the well pattern to be evenly spaced. So we
11 don't one to be closer than the other. We want them as
12 evenly spaced as possible.
13 Q. The bottom of the hole is not cased; is that
14 correct?
15 A. Well, that depends on what kind of completion
16 technique.
17 Q. For a monitoring well?
18 A. Well, again, it depends on what completion
19 technique we use. If we're -- there's different
20 completion techniques. We case all the way -- sometimes
21 we case all the way through the production zone and then
22 come back and cut away the casing. And so, you know, in
23 that case it's cased at the bottom, but then it's cut
24 away, so there might be a little piece of casing in the
25 bottom. Normally the way we do it is case to the top of

1 the zone that we're monitoring or that we're going to
2 produce from, and then we drop a well screen through it
3 and then gravel pack around it.
4 Q. Can you explain to me the difference between
5 what we have in Attachment B versus Attachment C? They
6 both are completion reports; is that correct?
7 A. That's right. That's right.
8 Q. Well, could you explain to me what the
9 differences are between these two categories of
10 documents?
11 A. I really haven't compared them much. They
12 should have the same standard kind of information on
13 them. One is all the information is handwritten in and
14 the other is typed up in. It's printed off a computer.
15 The completion reports in Attachment B were printed off
16 the computer, and Attachment C were a form that somebody
17 filled in by hand. The information -- I'd have to
18 compare them, but the information should still be the
19 same, you know, the required information; the drilling,
20 dates, the casing dates, the cementing information,
21 pressure test information.
22 Q. Do you -- I mean, are these documents -- are
23 they kind of duplications of each other? I mean, if I
24 looked at a particular well number in Attachment C,
25 might I find a computer-generated version of it --

1 A. No.
2 Q. -- for attachment B?
3 A. For those particular sets of well, that is the
4 completion. We made a copy of it, but the completion
5 report was a form that was handwritten and I just copied
6 them. I'm not sure what you're asking other than that.
7 Q. Well, it looks like you have two different
8 kinds of completion reports.
9 A. Between Attachment B and C?
10 Q. Yes, sir. And I'm just trying to understand
11 why for some wells --
12 A. If you --
13 Q. Wait. We're talking over each other.
14 A. I'm sorry.
15 Q. I'm trying to understand why you have two
16 different kinds of reports. Are they for different
17 kinds of wells?
18 A. No, no, I don't think so. And I was going to
19 say if you want to really get into that, you might want
20 to ask Mr. Grant or Mr. Pelizza, maybe Mr. Grant,
21 because I didn't generate these, the forms themselves.
22 So I'm not sure I could answer that. But all I do know
23 is that the basic information that we always put on
24 completion reports are in both of the completion
25 reports. It's just, you know, there are two different

1 time intervals and somebody else might have been in
2 charge of, you know, the completion reports in
3 Attachment B, and during the drilling of the other well,
4 somebody else might have been in charge of that, and
5 they just chose to present them in two different ways,
6 but the information still is the same.
7 Q. Let's talk about centralizers. What is your
8 understanding of what centralizers are?
9 A. Well, I can answer that briefly. But if you
10 want to get into that too much, you probably ought to
11 ask Mr. Grant. But centralizers, again, like
12 Mr. Pelizza was saying earlier, just devices that help
13 to centralize the casing in the hole. Like he was
14 saying, I think like a leaf spring on a car or something
15 like that that kind of sticks out and sits again the
16 side of the formation and tries to keep the casing in
17 the center of the hole.
18 Q. And I note here in both the computer-generated
19 forms and the handwritten forms there's a space for
20 centralizer information?
21 A. Yes.
22 Q. And let's just take the first form behind
23 Attachment B. It says: Centralizers, 3. Could you
24 explain to me what that means?
25 A. It means there were three centralizers in the

1 hole.
2 Q. Now, going back to Attachment C, the first
3 report, does that have any information about
4 centralizers?
5 A. Yes. I'm looking for it right now. It takes a
6 minute to find it. Yeah, in that second section there,
7 it says centralizers under casing data.
8 Q. Okay. I'm looking at the first completion
9 report, casing data.
10 A. All right.
11 Q. And there's centralizers and then a blank,
12 joints run in hole. Is that what you're referring to?
13 A. That's right, yeah.
14 Q. And what's the information in that form?
15 A. On which hole number? The very first one?
16 Q. The very first one?
17 A. It looks like it's missing.
18 Q. Well No. 9101?
19 A. There isn't any information there.
20 Q. Let's go to the second one, 9103, well No.
21 9103.
22 A. Yeah.
23 Q. What information is there regarding
24 centralizers?
25 A. Let me see if I can read it. It looks like

1 it's the fourth and the 15th and the 22nd joint.
2 Q. Do you know what that means, what that
3 information means?
4 A. Yeah. From the -- I mean, they refer to them
5 in different ways, depths or they just tell you the
6 total number of them. But from the surface down, the
7 fourth joint down, the 15th joint down and the 22nd
8 joint down, joint of pipe, joint of casing. And they're
9 20-foot joints.
10 Q. So the handwritten case well completion report
11 would appear to have a little more information about
12 centralizers than the computer-generated one behind
13 Attachment B; is that fair to say?
14 A. Yeah, I guess it would appear that way, yeah.
15 Q. And in some cases, it appears there is no
16 centralizer information?
17 A. Yeah, I see one that's missing, yeah.
18 Q. Maybe you can help us here. I'm new to some of
19 these terms. But on page 4 at the top of your prefiled
20 rebuttal, and I'm looking at lines 1 through 5 where you
21 state Dr. Kier has pointed out that some correlation
22 picks on electric logs, which appear on intersection
23 cross-section lines do not match. And your response is
24 that you reconciled the formation picks.
25 A. That's right.

1 Q. A little bit of background. What is a
2 formation pick? Explain that to me.
3 A. Sure. All cross-sections are are several logs
4 put together where the geologist tries to put lines
5 above and below the sands and the clays to separate the
6 sands and the clays to depict the strata and to show the
7 correlation or the uniformity of the strata from one
8 well log to another. And the cross-sections that we've
9 done, it's usually just one line that separates the
10 sands and the clays, and it doesn't really, really
11 matter how perfect it is. It's just basically showing
12 the sands, the production zone sands and the clays
13 between them and the overlying sands and the clays
14 between them.
15 And Dr. Kier had pointed out that some of
16 them were a little different from cross-section to
17 cross-section. There's four cross-sections. And in
18 each cross-section, there's a common log that ties in
19 with another cross-section. And he was noting -- David
20 was noting that when we picked the correlation lines,
21 they were just a foot or two or three foot difference on
22 maybe on one cross-section than they were on another.
23 And it makes no difference. It's very little
24 difference. It's just more cosmetic than anything. But
25 I went ahead and because he brought it up, I went ahead,

1 went back to the cross-section and matched the lines a
2 little bit better. Any geologist that was looking at it
3 wouldn't have probably ever noticed it because it makes
4 very little difference to what you're trying to show,
5 which is basically the zones themselves, you know.
6 Q. Now, the reason you tried to line up the picks
7 is to determine where the sands and the shale layers
8 are?
9 A. It's to roughly --
10 Q. Is that yes or no?
11 A. Well, could you rephrase the question?
12 Q. Is one of the -- is one of the reasons you go
13 through this exercise to determine where the sand and
14 shale, the layers in the ground, to determine where they
15 are?
16 A. That's correct.
17 Q. And it would be important, for example, in
18 order to determine where the first overlying sand is in
19 relative to the production zone; is that right?
20 A. Could you -- I don't -- when you said it would
21 be important, I didn't understand what you were getting
22 at.
23 Q. Well, do you understand what I mean by first
24 overlying sand?
25 A. Yes.

1 Q. It's important to know where the first
2 overlying sand is, isn't it?
3 A. That's right.
4 Q. Because there are regulatory requirements
5 associated with the first overlying sand; is that your
6 understanding?
7 A. Yes.
8 Q. So my question was: One of the reasons this
9 business of lining up the picks is to characterize the
10 first overlying sand accurately; isn't that right?
11 A. Well, when you say accurately, the
12 cross-sections themselves --
13 Q. Let me withdraw accurate. Just to characterize
14 the first overlying sands?
15 A. That's correct. And could I also say that with
16 the cross-sections themselves, you know, however they're
17 illustrated on the cross-section, however the picks are
18 illustrated doesn't change what happened with the wells
19 themselves. Somebody putting a cross-section together
20 might be a little sloppy and might put a line down a
21 little bit or up a little bit or like a typo in a test.
22 It doesn't change the fact that the wells themselves
23 were done properly. It's just the way they were
24 illustrated, so...
25 Q. But if you don't characterize the strata, where

1 the sands are, where the shales are, you might -- when
2 you drill your well, you might miss the sand you're
3 aiming for; isn't that right?
4 A. You might want to ask that again. I'm not sure
5 what you mean by that for sure.
6 MR. VALDIVIA: Your Honor, if I may have a
7 moment. I only have a few questions, but it may take me
8 a moment to set this map up.
9 THE COURT: Yes.
10 Q. (By Mr. Valdivia) Okay. I believe this --
11 this is one of the maps that are behind one of your
12 attachment tabs. Could you identify that map for me,
13 please?
14 A. Yes. It's cross-section A-A prime.
15 Q. And you provided this in one of the attachments
16 in your prefiled rebuttal; is that right?
17 A. That's right.
18 Q. Do you recall which attachment that is?
19 A. It's in Attachment D.
20 Q. Okay. And once again, this is -- some of this
21 information is in black ink and some of it is in green
22 ink. And you testified earlier that we can assume that
23 all of the information there in green ink is new
24 information, apparently revisions that you made around
25 on or about July 6, 2005; is that right?

A. That's correct.

Q. Okay. And we were talking about the possibility of drilling a well and missing the target; is that right? Just before I set up this map, is that your recollection of what we were talking?

A. When we were talking about the drift of the hole?

Q. We were talking about how important it is to know where, for example, a first overlying sand is?

A. Yeah. I don't see the correlation between drilling a well and missing a target, though, and the correlations on the cross-sections.

Q. Well, let me ask you about this map. Can you explain to me what the vertical columns are that have the black squiggly lines inside of them?

A. Sure. Each one of these inside the rectangles are well logs themselves. They're graphs of the hole. You want an explanation of what each one of the lines are? Is that what you're asking?

Q. We'll get to that. I'm trying to understand -- okay. At the top of each column there's some numbers?

A. Yeah, those are the hole numbers at the very top of every one of these columns, that's right.

Q. So each column corresponds to an individual well; is that right?

A. That's right.

Q. And we know from prior testimony that some of those numbers and information mean different things. They characterize the kind of well it is; is that right?

A. That's correct.

Q. So for example, the column on the far right, MW 115, that would be monitor well 115, am I right?

A. That's right.

Q. And the -- the length of that column, does that correspond to the depth of the well?

A. Yeah, basically. Yes, it does. Yeah, the depths are marked right there.

Q. So MW 115 goes as far down as the underlying zone on this map, is that right, the A-A sand?

A. It looks to me like -- just going by the log, it looks to me like we TD'ed the hole or stopped the hole right in the underlying clay because here's the underlying clay right here, and it looks like the hole TD'ed right there.

Q. So it goes into -- I see what you're referring to. Yeah.

A. There's a clay right there, yeah.

Q. Now, you just pointed to a bar on the far right side of the map that's all in green?

A. Right.

1 Q. Could you explain what that is?
2 A. It's a lithologic column. It just depicts in
3 very general and simple terms the lithology or the type
4 of rock that exists, whether it's -- and it's all sand
5 and clay here. So when it's crosshatched like that,
6 it's in a clay. And when it's in little dots, it's a
7 sand. It's a very, very simple representation of what's
8 happening or what you're seeing.
9 Q. And I note that that entire column is in green
10 ink, so that was not provided --
11 A. That's right.
12 Q. -- prior to your --
13 A. We added that, that's correct. And it doesn't
14 really of itself doesn't have a lot of use. It may for
15 somebody who doesn't really understand it very well
16 because that is -- as long as you know that it's clay or
17 sand, you can see that. But it doesn't really add a lot
18 of value to it. It's so simple, it doesn't add a lot of
19 value to it, so...
20 Q. So you or I and as employees typically just
21 rely on the information in those columns to the left of
22 the lithographic -- what did you call that again?
23 A. The well logs or the lithology logs or
24 lithology column.
25 Q. Lithology column. The columns to the left or

1 the lithology column, that's pretty much all you or I
2 relies on; is that right?
3 A. Well, it depends on what you mean. Relies on
4 for what?
5 Q. To characterize or to understand what's below
6 the surface, whether it's clay or sand?
7 A. Well, I mean, not entirely. We also get drill
8 cuttings that come up. You know, the sand and the clay
9 that you're drilling as you're drilling and it's coming
10 to the surface, you've got that. That provides you with
11 a description lithology, it provides you with the
12 geochemistry of the sands. And then, of course, we have
13 other things like pump test and other things like that
14 that give us information. So I mean, that's not
15 everything that we have.
16 Q. But looking at this cross-section, that's the
17 only information you rely on, is what's in black ink on
18 that map; is that right?
19 A. Well, it gives us -- it tells us where the
20 sands and the clays are, the depths of them, how much
21 uranium is in them or isn't in them.
22 Q. That's what I'm trying to get at. You
23 determine that by those squiggly lines that are in
24 the --
25 A. That's right.

1 Q. -- the columns; is that right?
2 A. That's right. That gives us a record of what's
3 down in the hole.
4 Q. Okay. And I note that in each case there are
5 three lines within each column?
6 A. That's right.
7 Q. And do those lines mean -- explain to me what
8 each line is.
9 A. Okay. Always in every single column here, the
10 far left curve is the gamma curve. It's a gamma tool.
11 It has a sodium iodide crystal in it, and it detects
12 gamma radiation. That's what helps us know where the
13 uranium is. It measures gamma radiation coming from
14 daughter products of uranium. And then the other two
15 curves on the left is the SP curve, the spontaneous
16 potential, which measures -- there's always some kind of
17 ionic transfer between sands and clays when you drill
18 through them and the drilling mud is a little different
19 salinity than the formation water, and there's a little
20 bit of an ionic flow or transfer that happens between
21 the clay and the sand.
22 And so there's a little potential there,
23 and you measure that electrical flow. So it kind of --
24 it's kind of used for a lithology curve to tell you when
25 you're in the sand and clays. And then the curve on the

1 right is a single point resistance curve or resistivity
2 curve, and it measures the resistance to electrical flow
3 because sands and clays have different resistivities,
4 and freshwater and saltier water have different
5 resistivity. So we can tell where the sands and the
6 clays are with those curves.
7 Q. Okay. So the spontaneous potential line
8 measures -- is that another word for conductivity? It
9 measures the degree to which whatever material the
10 electricity is passing through conducts electricity?
11 A. No, that's the -- no. The resistivity is sort
12 of like the reverse of the conductivity.
13 Q. Well, that's what I was talking about, the
14 middle line, the spontaneous potential line?
15 A. This one right there? No. It measures the
16 electrical potential that's created when you -- when you
17 drill a hole with drilling fluids, with drilling mud,
18 and you drill down through two different formations, say
19 between, you know, through a sand and a clay. And the
20 drilling fluid has a little different salinity than --
21 the chloride and the -- I'm trying to remember.
22 I think it's the sodium, sodium ions or
23 anions and the chloride molecules, they have negative
24 charges, the sodium have positive charges, so there's an
25 electrical potential, electrical flow that's conducted

1 between the sands and the clays when the salinities are
2 a little different. That's the best I can explain it.
3 So it's a natural thing that's occurring, it's not
4 something you're inducing with the logging tool, so
5 you're just measuring it. It just helps you to tell
6 when you're in the sand and when you're in the clay. It
7 measures the tops and the bottoms, so...
8 Q. And so at the far right-hand line, that's
9 actually something you're inducing, you're running an
10 electric current and measuring --
11 A. Between the electrode -- I'm sorry.
12 Q. Go ahead.
13 A. Yeah, it's a resistivity curve. There's an
14 electrode down there. There's two different types. I'm
15 not sure if this is the single point or just the
16 resistivity, but the resistivity curves basically
17 measures electrical flow between two electrodes that are
18 in the logging tool itself. You send a little current
19 out there, and the resistance to it is what you're
20 actually measuring. And a clay has more resistivity
21 than a sand does generally, so you can tell basically
22 when the curve is back closer to the left you're in a
23 clay. And when a curve takes off to the right, you're
24 in a sand. And the intensity of that is how good the
25 sand is or how bad the clay -- how impermeable the clay

1 is or something like that.
2 Q. So -- I'm sorry. Were you done?
3 A. I'm done.
4 Q. You basically use this information -- you
5 interpret this information; is that fair to say?
6 A. That's correct.
7 Q. This is -- instead of indirect -- or direct
8 observation, this is sort of an indirect means to figure
9 out where the clay and the sand are, at what depths they
10 are?
11 A. That's right, and how permeable they are. You
12 can generally make that estimation, too.
13 Q. And other characteristics?
14 A. That's right.
15 Q. And the far left line, that tells you where the
16 uranium is; is that right?
17 A. The uranium. It's actually -- truly it's
18 actually a measurement of daughter products because
19 uranium itself is not a gamma matter, it's the daughter
20 products of uranium. But because uranium is -- these
21 are older deposits. There's always a certain amount of
22 uranium there, so it's actually telling you the amount
23 of daughter products. As long as you know the ratio
24 between uranium and its daughter products, you can
25 calculate the amount of uranium.

1 Q. Now, we started this conversation talking about
2 picks and why they were important. And one of the
3 points I was asking you about is you need to know where
4 the layers are in order to be sure that you've drilled a
5 well that reaches that layer; is that a fair statement?
6 A. That's a fair statement.
7 Q. Okay. And you earlier -- well, let's look
8 at -- I guess it's the -- it's 0MW-17-400.
9 A. That one there, right.
10 Q. And I believe that's what, one, two, three --
11 fourth column from the right. Are you with me?
12 A. Right.
13 Q. And from prior testimony of Mr. Pelizza and
14 others, I believe that would be an overlying sand
15 monitor well?
16 A. That's correct.
17 Q. No. 17?
18 A. That's right.
19 Q. And the 400 would be that it was supposed to
20 reach the 400 foot sand; is that right?
21 A. Well, it's supposed to be screened in the 400
22 foot sand.
23 Q. Okay. Now, I see that that column ends just
24 above some writings that says TD 400?
25 A. Right. Yeah.

1 Q. Is that the 400 foot sand?
2 A. Yeah. It doesn't go all the way through. And
3 I'd have to go back and look at it, but probably because
4 we didn't log it all the way through. Again, there's
5 different completion techniques. And sometimes you
6 drill to the top of the sand, you don't log it all the
7 way through, but you drop the screen down through the
8 sand, so...
9 Q. But on this cross-section, it looks like you
10 missed -- you were short of the 400 foot sand; is that
11 right?
12 A. Yeah. It was either done intentionally or --
13 more than likely it was done intentional.
14 Q. Is that right?
15 A. Sometimes, like I said, we --
16 Q. Are you short of the 400 foot sand? Is
17 OMW-17-400 on this cross-section short of the 400 foot
18 sand?
19 A. Well, it goes down into the middle of it.
20 Q. Is that a yes or a no?
21 A. That's a no, it's not short, no. Could I
22 explain that a little?
23 THE COURT: I think you may explain it
24 when your attorney asks you questions on redirect.
25 THE WITNESS: All right.

1 Q. (By Mr. Valdivia) You mentioned in your
2 prefile that cross-section C-C prime required correction
3 of only -- of three hole numbers. And I'm going to ask
4 you a few questions about that.
5 MR. VALDIVIA: And Mr. Hill, do you have a
6 mounted copy that I can refer to?
7 MR. HILL: Which cross-section? Which
8 one?
9 MR. VALDIVIA: The C-C prime.
10 THE COURT: Why don't we go off the record
11 while they're looking.
12 (Off the record.)
13 Q. (By Mr. Valdivia) Okay. I direct your
14 attention to this cross-section for C-C prime. And
15 again, there is some information there that's
16 highlighted in green this time. It appears you went
17 back and highlighted it by hand; is that right?
18 A. That's right.
19 Q. So that information was there already, wasn't
20 it? Why did you highlight that area?
21 A. I highlighted the three hole numbers because
22 they were -- they were wrong. The hole numbers were
23 wrong on the cross-section.
24 Q. And you said cross-section C-C prime required
25 only the correction of three hole numbers?

1 A. That's correct.
2 Q. Out of how many?
3 A. There's 'five there.
4 Q. And your prefiled -- okay. So three out of
5 five wells were --
6 A. On that cross-section, that's right.
7 Q. About 60 percent?
8 A. Well, one of them was -- well, that's right.
9 On that cross-section, yeah.
10 Q. And on this particular map, you didn't provide
11 a lithographic column?
12 A. No, I didn't.
13 MR. VALDIVIA: Your Honor, I'm feeling a
14 need for a short break, and this would be a good point
15 to stop for a few minutes.
16 THE COURT: Certainly. We'll take a short
17 break. And let's try to keep it short.
18 (A recess was taken.)
19 THE COURT: Back on the record.
20 Q. (By Mr. Valdivia) Mr. Russell, I want to ask
21 you a few more questions about cross-section C-C prime.
22 On page 6 of your prefile, starting at line 17, you say
23 MW 121 did not state a casing depth. Are you with me?
24 A. Yes.
25 Q. And then you go on to say the casing was set

1 through the production zone into the A-A zone and
2 underreamed in all available sand in the production
3 zone. Are you with me?
4 A. Yes.
5 Q. So how is that represented in this -- that
6 column for MW, which is the far right column on
7 cross-section C-C prime?
8 A. Well, I'm not sure what you mean.
9 Q. Well, you just testified the casing was set
10 through the production zone into A-A zone and under and
11 so forth. You describe what happened, what was done,
12 and that -- that's a monitoring well that's on the far
13 right. It's represented by the far right column?
14 A. Right.
15 Q. In C-C prime; is that right?
16 A. Right.
17 Q. What I'm trying to understand, is the proof of
18 what you just said there in that cross-section?
19 A. No. What Dr. Kier was questioning --
20 Q. It's not available in that cross-section, the
21 proof of what you just said?
22 A. No, it isn't. It's in the completion report.
23 It's in the completion report. The information about
24 where the well was underreamed and completed is in the
25 completion report.

1 Q. So if I looked at the completion report for
2 monitoring well 121, that would verify what you just
3 said in your prefiled?
4 A. Well, what he was questioning is the --
5 Q. My question is: If I looked at the completion
6 report for monitoring well 121, that would verify your
7 testimony?
8 A. It should, yes.
9 Q. It should?
10 A. Yes, it should. Actually, I'm not absolutely
11 sure I understand what you're asking.
12 Q. I'm trying to understand what your proof is for
13 the statement you just made in your prefile.
14 A. Well, I'd have to explain what I meant then.
15 Q. Well, my question was where is your proof for
16 your statement at lines 18 and 19, page 6 of your
17 prefiled that the casing was set through the production
18 zone into the A-A zone and underreamed in all available
19 sand in the production zone?
20 A. Right. It's in the completion reports. So if
21 you're asking where the proof is, it's in the completion
22 reports.
23 MR. VALDIVIA: May I approach the witness?
24 THE COURT: Yes.
25 Q. (By Mr. Valdivia) Mr. Russell, I direct your

1 attention to what I believe -- I can't read it now.
2 It's the cross-section index, and that was also one of
3 your exhibits in your prefiled?
4 A. That's right.
5 Q. Do you recall which tab that's behind?
6 A. It's Attachment E.
7 Q. Once again, we see some information in green
8 ink. Could you -- it seems like we only have a couple
9 of things on it. Could you, for the record, just state
10 what changes you made on this cross-section -- of this
11 cross-section index?
12 A. Yes. There were two hole numbers that were
13 mislabeled.
14 Q. And which were those?
15 A. OMW 10 and OMW 11.
16 Q. And how were they mislabeled?
17 A. They were labeled on the maps as 250 sands, and
18 they were actually 400 foot sands.
19 Q. So these are monitoring wells in the first
20 overlying sand for PAA3?
21 A. That's correct. But they're just errors,
22 they're typo type things, don't substantially change
23 what actually happened in the wells themselves. And the
24 wells themselves are completed where they should be, in
25 the 400 foot sand.

1 MR. VALDIVIA: I object. There's not
2 question. And it's nonresponsive to the question I did
3 ask.
4 MR. HILL: He's entitled to explain his
5 answer. You were asking him about the confusion, and he
6 gave you the detail as to the confusion.
7 THE COURT: Let me now rule on your
8 objection. I would say that your objection is certainly
9 sustainable. However, my impression is that as we roll
10 along through the witness's testimony, the clarification
11 is going to come out, so --
12 MR. VALDIVIA: I withdraw my objection.
13 THE COURT: That's okay. Here's what I'd
14 like; and that is, this process, although its goal is to
15 extract the truth and to obtain accuracy, is burdened by
16 the fact that it works through question and answer and
17 question and answer. And so if the witness will answer
18 the attorney's questions, then I think that we will get
19 to the goal of accuracy and completeness. It may take a
20 little longer than it would in normal conversation, but
21 there's a process that we have to go through.
22 THE WITNESS: Okay.
23 Q. (By Mr. Valdivia) Mr. Russell, that is a
24 cross-section index, at least it's labeled as such.
25 Could you explain what that index is?

1 A. Yeah. It's just a base map that shows the --
2 where the cross-section, each of the four different
3 cross-section lines are that connects the different well
4 logs that were used in each of the cross-sections.
5 Q. So for example, in the prior cross-section we
6 looked at, C-C prime, is that -- can you locate that on
7 this index?
8 A. Yeah. C to C prime, right there.
9 Q. And for the record, you indicated a line in the
10 lower right-hand corner of that index basically moving
11 from the bottom left to right, kind of a diagonal; is
12 that fair to say?
13 A. That's right.
14 Q. Okay. And similarly, the other cross-section
15 maps that you provided correspond to lines on this
16 index; is that right?
17 A. That's right.
18 Q. So, for example, if I were looking at -- if I
19 wanted to see where cross-section D came from, the line
20 that has D at the bottom and D prime up at the top, that
21 would be where the cross-section data came from?
22 A. That's right.
23 Q. And we've been saying D and D prime. That's --
24 by D prime, we're talking about the letter D with like a
25 little accent next to it; is that right?

1 A. That's right.
2 Q. And similarly, C-C prime is the letter C with a
3 little accent mark next to it?
4 A. That's right.
5 Q. And that designates the two opposite farther
6 most ends of the cross-section; is that right?
7 A. That's correct.
8 MR. VALDIVIA: I pass the witness.
9 MR. REDMOND: I pass the witness. I have
10 no questions.
11 MS. MANN: I have some questions.
12 CROSS-EXAMINATION
13 BY MS. MANN:
14 Q. Hi. I had some questions about the well
15 completion reports. Basically I understand the
16 completion reports to be a report that typically is
17 generated by URI; is that correct?
18 A. Yeah. The completion report is completion
19 information about the wells.
20 Q. Okay. Who actually generates the completion
21 report?
22 A. Well, it varies. Sometimes it's whoever is in
23 charge of the project, in charge of the drilling and the
24 casing and things like that. It might be a mud
25 engineer, it might be a geologist.

1 Q. Okay. How does that person generate the
2 completion reports? Do they have a collection of the --
3 you mentioned some notes and forms, etcetera. Do they
4 have like a pile and then they enter it into the
5 computer? For example, for the computer-generated
6 reports?
7 A. Well, I mean, over time we've done different
8 ways, but yeah, that's generally the way we do it.
9 Q. Does the person who's entering the information
10 into the computer actually perform the activities noted
11 on the reports? For example, the mechanical integrity
12 test, does that person who did that test enter the
13 information in onto the completion report either by hand
14 or on the computer?
15 A. Well, normally there's some field personnel
16 that does the actual integrity test, and he fills out
17 the form. And it might be some other person who fills
18 out another form. And then the guy that's in charge of
19 all that, you know, consolidates all the data and puts
20 it in a completion report.
21 Q. So the guy that consolidates all the
22 information, does he have any actual -- did he witness
23 the test maybe that occurred for the information that's
24 being transmitted?
25 A. I would say not necessarily. But like for an

1 integrity test, normally the guy that does that would
2 witness it and sign it.
3 Q. Okay. Earlier you testified, and I'm going to
4 obviously paraphrase, so correct me if I make a
5 misstatement, let me know, please. Earlier you
6 testified to the effect that there are -- there were --
7 some of these changes we've been talking about on the
8 attachments to your prefile are more or less in the
9 category of what you might consider typographical change
10 or typographical corrections; is that correct?
11 A. That's right.
12 Q. So the typographical corrections don't
13 necessarily -- I'll rephrase.
14 The material that you're making
15 corrections on, the way it was before the corrections,
16 are we -- the information on that material didn't
17 necessarily relate to the actual field conditions; is
18 that correct?
19 A. Yeah. It's like writing a text and you have a
20 typo and it doesn't necessarily change what was being
21 said, it's represented differently. And a well, we
22 might have some information that was mislabeled, but it
23 doesn't change what happened with the well itself. The
24 wells were done correctly, it's just they were
25 represented maybe --

1 Q. Incorrectly?
2 A. -- incorrectly, yeah.
3 Q. So the information is actually being changed to
4 more accurately reflect what the field conditions
5 actually were; is that correct? Should I rephrase?
6 A. Yeah, you should, if you don't mind.
7 Q. So from document A, which is prior to your
8 corrections, to document B, what you're saying is the
9 field conditions did not change, just the information
10 supplied to the agency will change; is that correct?
11 A. Yeah. Just errors, typos, things like that,
12 that's correct.
13 Q. Okay. So what is the purpose of your making
14 these changes or identifying these changes or
15 identifying the errors and then correcting them if --
16 what is the purpose of that?
17 A. Well, Dr. Kier brought up some -- or brought it
18 to our attention that there were certain errors, some of
19 them we weren't aware of, and I guess the state hadn't
20 noticed them either, so we're just correcting those.
21 Q. And are these errors in the materials that were
22 submitted as part of your application?
23 A. I'm not really sure. I would assume so.
24 Q. Okay. I'll rephrase. The material that you've
25 made corrections on, is it true that the state had

1 access or the materials applied to the state previously?
2 A. I would assume so. You'd have to ask
3 Mr. Pelizza.
4 Q. Okay. There were some additions that we -- or
5 that were discussed in Mr. Valdivia's cross-examination,
6 particularly the -- what did you call it, lithographic
7 column?
8 A. Yes, ma'am.
9 Q. That wasn't exactly a correction, that was more
10 of an addition; is that correct?
11 A. That's correct.
12 Q. Why did you add that?
13 A. Dr. Kiers had mentioned that we didn't have
14 lithology columns. And it's my understanding that --
15 well, it was my understanding that it was an option, it
16 wasn't necessarily something you had to do. But either
17 way, we added it onto the cross-sections.
18 Q. Okay. So some of the information that you've
19 added was something that URI didn't feel that they
20 needed to conduct their business appropriately; is that
21 correct?
22 A. Yeah. Well, the lithology column, as I was
23 saying earlier, it's a very simple reference. It didn't
24 have much usefulness in itself because it's just sand
25 and clays. It's a very simple thing.

1 Q. But, say, to someone who's reviewing the
2 material, the lithology column, might have some sort of
3 use?
4 A. It might.
5 Q. Okay. But not necessarily to someone who would
6 be using that material at URI; is that correct?
7 A. That's correct.
8 Q. Would you say that in other aspects of material
9 you submit to TCEQ or other regulatory agencies, that
10 you also submit material that maybe URI doesn't need but
11 the regulations require? Would you say that's correct?
12 Yes or no?
13 A. I think you'd probably have to ask Mr. Pelizza
14 that.
15 Q. So you're not particularly -- would it be a
16 fair statement to say you're not particularly familiar
17 with the application process?
18 A. That's right.
19 Q. So would it also be fair to say that since URI
20 doesn't necessarily need the lithography or lithographic
21 column to do their business, that you added it in hopes
22 of complying with either Dr. Kier's suggestions or
23 regulations?
24 A. Yeah, I would say to Dr. Kier's suggestions.
25 Q. Okay. As chief geologist for URI -- is that

1 the correct title?
2 A. Yes, ma'am.
3 Q. Okay. I just want to make sure I have it
4 right. Do you have a pretty good understanding of the
5 ore locations in a production area?
6 A. Yes.
7 Q. Do you have any participation in determining
8 the well drilling patterns that URI engages in in the
9 correction area?
10 A. Yes, I coordinate with the reservoir engineer.
11 Q. Okay. During that coordination, do you plan
12 ahead as far as where you may or may not be drilling
13 next? And I'm using very broad terms.
14 A. Yes, we do.
15 Q. Okay. Have you made any determinations on PAA3
16 as far as the drilling, the future drilling
17 possibilities, or have there been any -- I'll rephrase.
18 Have there been any discussions about the
19 possible drilling areas for PAA3?
20 A. I think you'd probably have to ask Mr. Pelizza
21 that.
22 Q. Okay. Have you been consulted in any way in
23 your role at URI where URI may or may not be drilling
24 next in PAA3? And I don't mean -- and I mean without
25 regards to a decision, but have you been consulted?

1 A. Well, we've talked about it, you know. That's
2 about all I can say. We've talked about it. We've
3 thought about it. We're always thinking about those
4 kind of things, where we're going to go next.
5 Q. To your knowledge, have there been any
6 activities conducted by URI to determine how quickly or
7 where you might be producing next?
8 A. Other than discussing it, I don't know, no. I
9 can't say.
10 MS. MANN: I pass the witness.
11 THE COURT: I have a question or two.
12 EXAMINATION
13 BY THE COURT:
14 Q. Can you tell me again what were the errors that
15 were corrected with respect to the information on
16 Exhibit E? And without your having to turn to that,
17 that's the one where you have in green ink OMW-10-400
18 and OMW-11-400. You had said that originally it
19 reflected a 250 foot sand as opposed to a 450 foot sand.
20 Might it be -- might it be the case -- I
21 am trying to put words in your mouth at this point --
22 that originally the titles of those wells were
23 OMW-10-250 and OMW-11-250 instead of 400?
24 A. That's correct.
25 Q. Okay. So it's a labelling issue?

1 A. Yes.
2 Q. Okay. With respect to one of the questions
3 that was asked of you about information on Attachment C
4 and centralizers, one of the items that you were shown
5 was left blank. What conclusion can be drawn about
6 that? Are we talking about the failure of the person
7 who filled out the form to enter the information about
8 the centralizers, or does that reflect that there were
9 no centralizers or what?
10 A. No. We always run centralizers, so whoever
11 filled out the form just didn't put it in there.
12 Q. Okay. So the information should have been
13 entered, but wasn't?
14 A. Yes.
15 Q. And if the individual who should have entered
16 the information but didn't, failed to capture that
17 information, is it then lost to everyone else who would
18 be relying on that information?
19 A. Well, we do have some backup information. The
20 drillers themselves fill out daily reports, and they
21 usually put that kind of information on there. And we
22 give the drillers and whatever rigs they're going to
23 case the well a diagram to show how deep to set the
24 casing, where to put the centralizers and screens and
25 things like that. So we do have backup information that

1 we should be able to go back and recover.
2 Q. Okay. And what happens if a well is not
3 sufficiently straight? I hesitate to use that word
4 because a well could be straight, but not perpendicular
5 to the core of the earth. But if it fails to pass that
6 test, what then happens?
7 A. Well, if it was -- you're talking about if a
8 well was crooked or not as straight as we preferred it
9 to be?
10 Q. Correct.
11 A. Well, we just -- we would abandon it, cement it
12 up and drill another well.
13 Q. And has that happened before?
14 A. It doesn't normally happen because the drillers
15 usually run enough heavy-duty drill collars to keep the
16 hole straight, so it's not usually that much of a
17 problem. It's usually a problem in places where you
18 have lots of hard rock drilling, but not in really soft
19 rock country.
20 Q. And I'm assuming that the reason for that is
21 that it's fairly easy to correct a mistake in soft rock
22 as opposed to hard rock?
23 A. No. It's just in soft rock the hole stays
24 straighter when a bit -- when you're drilling. If you
25 hit something hard, it tends to bounce off and make the

1 hole a little crooked. But if it's soft rock like it is
2 here in Kingsville, it's very easy to drill a straight
3 hole.
4 Q. Is there -- I'll withdraw the beginning of that
5 nonquestion. Hold on one second.
6 I'm looking at the information in Exhibits
7 B and Exhibit C. And I note that in Exhibit B, that's
8 the information that is for the most part
9 computer-generated or typed. The well numbers are
10 designated with two letter followed by two numbers. So
11 for example, on the first page we have information about
12 TNRCC well number AA-22. This is behind Attachment B.
13 A. Right.
14 Q. So we have well number AA-22. And then, for
15 example, for the first cased well completion report
16 behind Attachment C, that's the handwritten version, we
17 seem to have a different kind of numbering system. For
18 example, the first one is numbered well No. 9101.
19 A. Right.
20 Q. Can you account for the differences in this
21 naming or numbering system?
22 A. Sure. In Attachment B, AA-22, that's a deep
23 underlying monitor well in the A-A sand, so we call it
24 A-A dash whatever the number is. And OMW, that's an
25 overlying monitor well.

1 Q. Right.
2 A. And the MW's are all in the monitor well ring.
3 And the baseline wells are BL wells. That's in
4 Attachment C. What's in -- or B. What's in Attachment
5 C are the 35 new baseline wells that were providing
6 completion reports for well fields 9 and 10. So if it
7 was a well field 9 well, it had a 9,000 number, like
8 this is 9101.
9 Q. I see.
10 A. It's in well field 9 and it's hole number 9101
11 in well field 9. And if it's in well field 10, then
12 it's a 10,000 number.
13 Q. Okay.
14 A. So it's -- so it's a production well, not a
15 monitor well.
16 Q. Okay. You had characterized, if I understood
17 you correctly, the matters that Dr. Kier pointed out as
18 helpful or possibly useful. And my understanding, for
19 which I'm looking for correction from you, is that they
20 were helpful or useful because the errors that he
21 pointed out were legitimate. That is, he was accurate
22 in pointing out the errors.
23 My understanding also is that the errors
24 were primarily of the type that we've been discussing,
25 which is labelling errors or similar sorts of errors.

1 And finally, that the conclusions that could be drawn
2 from these errors might have to do with bookkeeping or
3 attention to data entry kinds of issues as opposed to
4 problems that were identified with the manner in which
5 the wells were drilled or located or maintained.
6 That's -- that is -- in law, that's a
7 multifarious question. That is, it has lots of
8 different parts to it, some which of which you may agree
9 with, and some of which you may disagree with, all of
10 which may be objectionable to. But my question is: Do
11 you have any disagreement with what I've said?
12 A. I don't think so. It was mostly clerical
13 errors.
14 THE COURT: Okay. Those are all my
15 questions. Thank you. Mr. Hill? Mr. Hill, before we
16 begin, I'd like to take a short break. So if we could
17 go off the record, I'll be no more than five minutes.
18 (A recess was taken.)
19 THE COURT: Shall we go back on the
20 record.
21 REDIRECT EXAMINATION
22 BY MR. HILL:
23 Q. Mr. Russell, there's been some discussion about
24 the role or significance of the pages, the completion
25 reports in Attachments B and C, I believe, of your

1 prefiled rebuttal testimony. Have I got the right
2 attachment numbers here, B and C?
3 A. That's correct.
4 Q. All right. Would you characterize -- is there,
5 for every well which URI has drilled, a well file at the
6 URI offices?
7 A. Yes.
8 Q. Would you describe what that well file contains
9 for each well?
10 A. The well log, the sample description log that
11 the geologist fills out to describe --
12 Q. Excuse me. Let me stop you right there. When
13 you say the well log, do you mean this little skinny
14 squiggly thing that's shown on the cross-sections that
15 you referred to?
16 A. Yes. It's a geophysical log.
17 Q. You mean it's something no bigger than the
18 little narrow column shown, for example, on the B-B
19 prime cross-section?
20 A. That's correct.
21 Q. Is that as big as it is, 12, 15 inches long?
22 A. No. We have full-size well logs.
23 Q. Please explain what the full-size log refers
24 to. What do you mean by that?
25 A. Well, the full-size logs, I think they're 11

1 inches wide and they're on a scale of one-inch to ten
2 feet. And so for Kingsville, they are several pages
3 long, or six or seven feet long. These are what we
4 consider mini logs.
5 Q. Mini logs, M-I-N-I logs?
6 A. Yes.
7 Q. Excuse me. And go back, if you would, to your
8 description of the items that appear in each well file.
9 A. Like I said, there's a geophysical well log,
10 there's a what we call a sample description log, which
11 is just where the geologist describes the cuttings, the
12 drill cuttings, the sediments as they're laid in the
13 ground. And then there's different pieces of
14 information that we take to put the -- it's to make the
15 completion report, put the completion report together
16 with; integrity test information, casing diagrams,
17 screen diagrams, cement information. Cementers have a
18 form they have to fill out and complete for what they
19 do. And that's probably pretty much it. I might be
20 missing one or two.
21 Q. If the well has a history of being worked on or
22 replaced, do you have any information about that?
23 A. The recompletion information, yes, we do.
24 Q. Is the completion report of the type that you
25 would find in Attachment B or C of your prefiled

1 rebuttal composited from the well log file information?
2 A. Yes.
3 Q. So if one found -- if one wanted information
4 that was not found, for whatever reason, on a well
5 completion report, could one then simply refer to the
6 well log file?
7 A. Yes.
8 Q. All right. Do you know whether those well log
9 files were made available in discovery in this case?
10 A. Yes.
11 Q. Were they?
12 A. Yes.
13 Q. Are those files, the well log files we've
14 discussed, also available to regulatory agency
15 inspectors from TCEQ or the Department of Health or the
16 Department of State Health Service?
17 A. I would think so, yes.
18 Q. You don't know?
19 A. I don't. I wouldn't know as far as regulators
20 go.
21 Q. Do you know that the files are kept in the
22 office?
23 A. Yes.
24 Q. At the site at the Kingsville Dome Plant?
25 A. Yes.

1 Q. Do you have an opinion as to whether the
2 materials provided by URI in its application,
3 specifically for PAA3 or for the waste disposal well
4 renewals, the information presented to the agency before
5 the inclusion of your corrections was in any way
6 misleading to the agency?
7 A. I would not think so.
8 Q. As a professional geologist evaluating the
9 matters that are to be learned from wells at the URI
10 site or even from cross-sectional wells at the URI site,
11 do you find any primary important analytical use for the
12 lithology columns which you referred to, for example, in
13 regard to the cross-section B-B prime?
14 A. Well, I personally don't have much use for
15 them. It's really more for somebody, you know, who's
16 not technical.
17 Q. All right. Do you have an opinion as to
18 whether -- correction. Let me withdraw that.
19 Do you know whether routine procedures
20 adopted by URI covering the drilling and completion of
21 wells requires the use of centralizers?
22 A. Yes.
23 Q. Does it require that use?
24 A. Yes, it does. It's standard practice.
25 Q. Are your drillers knowledgeable of your

1 standard practices when they work for URI?
2 A. Yes.
3 Q. You mentioned something about requiring a
4 certain straightness of holes that are drilled. Does
5 URI know with sufficient accuracy where both the tops
6 and the bottoms of its wells are in the horizontal and
7 vertical plane?
8 A. Yes.
9 MR. HILL: Thank you. Pass the witness.
10 THE COURT: Mr. Valdivia?
11 RECROSS-EXAMINATION
12 BY MR. VALDIVIA:
13 Q. Mr. Russell, Mr. Hill asked you about full-size
14 logs, and I think you made reference to that in your
15 prefiled as well. Do you know, if you know, are those
16 provided to the agency as part of the application?
17 A. Are you -- you're asking me about the full-size
18 logs?
19 Q. Yes, sir.
20 A. You know, I'm not really sure. You would have
21 to ask Mr. Pelizza.
22 Q. The cross-sectional -- the cross-section maps
23 that we were looking at or cross-section graphs, rather,
24 are they a reduction of the entire full-size log?
25 A. That's right.

1 Q. And do you use the cross-section, the reduced
2 log that's on the cross-section, for purposes of
3 interpreting location of sands, for example?
4 A. Could you rephrase that?
5 Q. You testified earlier that the information on
6 the log is interpreted?
7 A. Uh-huh.
8 Q. And the -- in other words, you look at those
9 lines and you analyze them in a way that leads you to
10 make some assumptions about where, for example, a sand
11 layer might be, how thick it is and how deep it is; is
12 that a fair statement?
13 A. Yes.
14 Q. When you do that interpretation, do you
15 typically use the logs as they are represented on the
16 cross-section?
17 A. No. We typically use the full-size logs.
18 Q. About how -- for example, how long would a
19 full-size log be if it were, let's say -- let's try and
20 pick a shorter one here. If you know. Let's say
21 OMW-2-250, which is in B-B prime, which I believe
22 shows -- it goes to the depth of a 400 foot sand. Are
23 you with me?
24 A. Uh-huh.
25 Q. Have I characterized that fairly?

1 A. You want to know how much bigger the full-size
2 log is?
3 Q. How big would the full-size logs be?
4 A. Like I said earlier, they're about 11 inches
5 wide. A hole that was 400 feet is probably three or
6 four feet long, something like that. It's an inch to
7 ten scale, one-inch to ten feet.
8 Q. Is there -- if you know, is there a consistent
9 scale that you use when reducing the full-size log to
10 cross-sections?
11 A. It totally depends on, I guess, what you're
12 trying to do. Different cross-sections have different
13 scales. If you're trying to make them bigger or
14 smaller, it just depends.
15 Q. Do you know what scale is used in producing the
16 cross-sections that you provided with your prefiled? Is
17 that provided on the cross-section?
18 A. Yes. The cross-section says the vertical scale
19 is an inch to 50 feet.
20 Q. So you're referencing this box in the lower
21 right-hand corner? The top of it says Uranium Resources
22 Incorporated, and the next to last line says vertical
23 scale one-inch to 50 feet?
24 A. That's right.
25 Q. Do you know if the full-size logs were provided

1 to Protestants in this case?
2 A. You'd have to ask Mr. Pelizza.
3 Q. And I may have asked you this before. If I
4 did, I apologize. But do you know whether the full-size
5 logs were made available to the agency?
6 A. Yeah, you did ask me that, and you'd have to
7 ask Mr. Pelizza.
8 Q. Now, Mr. Hill referenced -- I believe he called
9 them well files.
10 A. Yeah, I think that's what he said.
11 Q. This would be a file with all the information,
12 or much of the information that URI has on a particular
13 well?
14 A. That's correct.
15 Q. And it's organized by an individual well. For
16 example, there would be one file that I could go to that
17 would have all of URI's information for MW 118?
18 A. That's correct.
19 Q. And is that the file you went to in order to
20 make the corrections that you refer to in your prefiled
21 testimony? Are those the files you use?
22 A. That's correct.
23 Q. And I'm a little confused about -- because I
24 had asked you about attachment -- the differences
25 between Attachment B and Attachment C. They're both

1 well completion logs, but behind Attachment C, it seems
2 like there's a different system of identifying the
3 log -- the well rather?
4 A. Do you want me to explain that again? I will.
5 Well --
6 MR. HILL: Excuse me, there's no question.
7 Q. (By Mr. Valdivia) I just thought I heard you
8 testify, though, that these handwritten completion
9 reports refer to production wells?
10 A. No, that wasn't the correlation. It's just
11 that the completion reports in Attachment C are for the
12 35 new baseline wells, which were wells from well fields
13 9 and 10. The hole designation, the 9,000 number
14 designation or if there's 10,000 or just -- that's the
15 number of the production well. The A-A in Attachment B,
16 those are monitor wells and different hole designations.
17 It has nothing to do with completion reports.
18 Q. Well, I'm trying to understand the differences
19 still. And is it true then that the completion reports
20 behind Attachment C are for production wells in
21 production areas 9 and 10?
22 A. Yes.
23 Q. And that would account -- perhaps account for
24 the difference between the production -- the completion
25 reports behind tab Attachment C? That would account for

1 the difference between those completion reports and the
2 completion reports behind the tab Attachment B?
3 MR. HILL: Objection. No question.
4 THE COURT: Isn't that the case?
5 MR. VALDIVIA: Thank you, Your Honor.
6 Q. (By Mr. Valdivia) Isn't that true?
7 A. Well, no, I wouldn't put it that way.
8 Q. Well, let me put it another way. Are the
9 handwritten reports behind tab Attachment C, is that the
10 kind of format you use for production wells?
11 A. No, not necessarily. It doesn't have anything
12 to do with whether it's a production well or not.
13 Q. But in this case, the difference in well number
14 designation, that does indicate whether -- what kind of
15 well it is; is that right?
16 A. That's correct.
17 MR. VALDIVIA: I pass the witness.
18 MR. REDMOND: I pass the witness.
19 RECROSS-EXAMINATION
20 BY MS. MANN:
21 Q. During Mr. Hill's redirect, there was a -- you
22 testified that you believed the information presented to
23 the agency before these corrections that were more or
24 less the subject of your testimony today, that that
25 information presented to the agency was not misleading;

1 is that a fair statement of your testimony?
2 A. Yes, that's correct.
3 Q. Okay. And earlier during my cross-examination,
4 you stated that you weren't really very familiar with
5 the application process; is that correct?
6 A. That's right.
7 Q. Do you know what materials were submitted to
8 the agency during the application process?
9 A. No, not entirely.
10 Q. Do you know if the well completion reports were
11 part of the application materials submitted to TCEQ?
12 A. I think you should ask Mr. Pelizza that.
13 Q. And similarly -- you may give me a similar
14 answer, and if so, here we go. But are the well log
15 files submitted to the agency as part of the application
16 process?
17 A. Yeah, I think you should ask Mr. Pelizza.
18 Q. So your answer would be you're not sure one way
19 or the other; is that correct?
20 A. That's right.
21 Q. Okay. If there was different information found
22 on a well completion report from what might be found --
23 what I might consider the underlying documents in the
24 well log file, which would be the definitive source of
25 the information?

1 A. Could you rephrase it?
2 Q. Uh-huh. If there were different -- if there
3 was different information available on a well completion
4 report versus what was found -- I'll back up again.
5 If, for example, a value found in the well
6 completion report was different from a value found in a
7 form for the same well for the same value in the well
8 log file, which would be the correct form to go to
9 for -- to find a correct value?
10 A. Well, the well completion reports, as I said
11 earlier, are consolidated from pieces of information in
12 the well file. So if something was put on the
13 completion report that was different than the completion
14 report, the completion report was different than the
15 information was drawn from, and the information that was
16 drawn from is correct, then the completion report would
17 be wrong.
18 Q. So would this be a fair characterization: To
19 check the correctness or the correctness of a well
20 completion report, one might need the entire well log
21 file to find the original source of the information; is
22 that correct?
23 A. Yes, that's right. That's where it's all from.
24 Q. Okay. Does URI currently use different well
25 completion report forms?

1 A. Currently?
2 Q. Currently.
3 A. Well, are you asking at Kingsville Dome or
4 another project?
5 Q. I'll ask for Kingsville Dome.
6 A. Well, I mean, we're not doing any drilling
7 right now, so I'm not quite --
8 Q. Okay. That's a fair response. Obviously what
9 we have before us are two forms for a well completion
10 report; is that correct?
11 A. That's correct.
12 Q. Why was one form used over another or chosen?
13 A. You probably ought to ask Mr. Pelizza that,
14 too. I'm not -- I didn't generate them, so I don't
15 know. I really don't know.
16 Q. Would it be also fair to say you don't know why
17 some are handwritten and some are computer-generated?
18 A. That's right, I don't know.
19 MS. MANN: I pass the witness.
20 THE COURT: Other further redirect
21 questions?
22 MR. HILL: No further questions, Your
23 Honor. We will offer the exhibits.
24 THE COURT: You will offer the exhibits?
25 MR. HILL: Yes, we will offer the

1 exhibit -- didn't we have the prefiled rebuttal of Mike
2 Russell, Exhibit 48, with his attachments?
3 THE COURT: Yes. Are there any objections
4 to the offer of Exhibit 48? I think that we've already
5 gone through this process, but let me ask it again.
6 MR. VALDIVIA: May I have that running
7 objection that I believe these are matters which amount
8 to an amendment of the application -- or contain matters
9 that amount to an amendment of the application.
10 THE COURT: And Mr. Redmond, we've heard
11 the position of the executive director that they do not?
12 MR. REDMOND: I think those are two
13 different matters, whether an item is admitted into the
14 evidentiary record versus commission rules and law on
15 amendments of applications.
16 THE COURT: Okay. I'd like to engage in
17 what might be some form of colloquy with you here. Is
18 it the position of the executive director that this is a
19 matter that can be ruled upon by the SOAH ALJ or not?
20 MR. REDMOND: I guess I'm not sure of what
21 is to be ruled on, whether the objection can be ruled
22 upon?
23 THE COURT: Well, let's leave the
24 objection aside because I think objections are clearly
25 within my purview. But the question of whether or

1 not -- it seems to me that there are two questions. One
2 is: Does this amount to an amendment of the
3 application, whether significant or insignificant? And
4 then the second one is: Does the executive director
5 retain the authority to make that determination?
6 MR. REDMOND: The applications -- my
7 understanding is the applications have been referred to
8 the State Office of Administrative Hearings for a
9 hearing on the applications, and that the State Office
10 of Administrative Hearings has jurisdiction over those
11 applications. There are commission rules on amendment
12 of applications, and they -- my understanding of those
13 rules, whether an amendment can be made of an
14 application at this stage depends on whether that
15 amendment to the application would be a major amendment
16 to the application or a minor amendment to the
17 application. And I do believe that that is -- that
18 determination can be made by you.
19 THE COURT: Okay. Ms. Mann, I don't mean
20 to leave you out of this discussion.
21 MS. MANN: I would disagree. I confess I
22 don't have the rule right in front of me, but the
23 determination of whether an amendment is minor or major,
24 I do not think is in the purview of Your Honor. I
25 believe that's a determination to be made solely by the

1 executive director. Backing up in consideration of
2 whether or not these should be -- these exhibits should
3 be admitted, I think you're right to sort of delineate
4 those into what purpose these are admitted for.
5 I would agree with Mr. Redmond that the
6 application before you is as it stands, and that's what
7 you're -- that's the material you should be able to
8 consider in making your determination of whether the
9 application supports the permit, which etcetera,
10 etcetera. Therefore, I don't -- if the determination is
11 made that these materials are based more or less -- an
12 amendment to the application, the amended application
13 has not been referred to SOAH.
14 The materials which might compromise an
15 amendment might have some other form or function. I'm
16 not sure that we're even engaging in that discussion.
17 However, I don't think that SOAH is able to consider any
18 of the -- any of the information in that material as
19 part of the body of material that you get to -- that you
20 can consider when making a decision on the application
21 of a permit.
22 THE COURT: Okay.
23 MR. REDMOND: Your Honor, I don't think
24 that was an accurate description of the executive
25 director's position on whether there was an application

1 that was referred to SOAH, but there is a whole body of
2 evidence that is also -- that is entered into the
3 record, and I think that that can include changes to the
4 application as admitted into the record. And so I don't
5 think that there's something that freezes or limits any
6 changes, so long as those changes are offered under the
7 Rules of Evidence and the commission's rules on
8 admitting testimony and exhibits into the record.
9 THE COURT: Mr. Hill, I don't mean to
10 prevent you from responding, and I'm concerned about
11 whether you might explode while waiting.
12 MS. MANN: I have a short, short response
13 to that. I don't disagree with his statement that the
14 executive director can consider additional materials,
15 but the executive director, as far as I understand the
16 rule, has to make a determination on whether or not
17 those additional materials are minor or major because --
18 or constitute a minor or major amendment to the
19 application. And it's that calculus that determines on
20 how we can continue.
21 A minor amendment, there's considerable
22 more flexibility. A major amendment, if the executive
23 director determines it to be a major amendment, then
24 there's a whole other process that has to be undertaken.
25 And I think it's that specific calculus of whether or

1 not this is a major or minor -- this material
2 constitutes a minor or major amendment to the
3 application. That decision has to be made by the
4 executive director.
5 THE COURT: Okay. Mr. Hill, before you
6 respond, I'll tell you what my inclination is, both in
7 terms of the substance of my ruling and the procedure
8 for my ruling, and that is as follows. I have not heard
9 or seen anything that would lead me to the conclusion
10 that there is anything substantive about the changes
11 that have been proposed through the witnesses, plural,
12 witnesses' testimony today. What I see are labelling
13 errors and similar kinds of things. My memory is
14 certainly far from perfect, and there may be points that
15 are more substantive than I recall, but I don't think
16 so.
17 My inclination is to proceed with the
18 hearing on the basis of the application as filed and the
19 application as corrected with the minor corrections that
20 we have. I don't believe that that changes the thrust
21 of the arguments of the Protestants or the positions of
22 the executive director or of OPIC. There's a period at
23 the end of that sentence.
24 However, here are some of the problems
25 that I have in making final that that order in the

1 manner in which I've stated. One, I don't have a copy
2 of the rules that we have been discussing. I physically
3 don't have those documents in front of me, and I would
4 like to. Additionally, it may be that the executive
5 director wishes to speak in some fashion other than
6 through Mr. Redmond. And that's without casting any
7 aspersion upon Mr. Redmond or your authority today.
8 But it may be that the executive director
9 wishes to issue a letter that says we have reviewed the
10 documents and we don't contend that there is any change
11 in the application worthy of impeding this process. I'm
12 not suggesting that he should do that, I'm just saying
13 that might be something that he would do. And so in
14 light of all of that, my -- I'll issue a tentative rule,
15 and that is to overrule the objection and to allow us to
16 proceed based on both the application as submitted, the
17 minor changes that we have seen thus far, and the entity
18 that is comprised by all of the evidence that has been
19 submitted thus far. So now, with all of that, Mr. Hill,
20 has that shortened any response that you might have
21 given?
22 MR. HILL: It does indeed. I feel
23 compelled, however, to make a couple of brief points.
24 Number one, I think Mr. Redmond is correct. The issue
25 immediately before the Judge is the admissibility of

1 these items as evidence in a proceeding which was
2 commenced at the instance of the presentation of an
3 application. And I believe they are admissible in that
4 regard.
5 Second, I believe the issue of whether
6 there is an amended application is a red herring and
7 irrelevant because if we recognize, as Texas
8 administrative law does recognize, that an application
9 is in the nature of a pleading, albeit a fulsome
10 pleading. A pleading may be amended or not, but a
11 pleading which has not been amended may be supported by
12 proof of a great many varieties, not all of which may be
13 anticipated before time of trial.
14 The materials that are here called the
15 corrections or additions or whatever they are, have not
16 supplanted a single page of any application sent over
17 for -- to be determined in this proceeding, and may be
18 treated entirely in the nature of proof, albeit key to
19 particular items of proof which were suggested in the
20 application, but proof of the same matters which were
21 promised to be proven by the application.
22 Therefore, we don't have to get lost in
23 whether or not the application has been amended. There
24 has been no amendment filed. And even if we were to be
25 very generous and say, well, let's look at the rules of

1 pleading and say have the parties who came to
2 participate in this proceeding been surprised and
3 injured by their surprise that this case was about X
4 instead of the Y, which was noticed. And the answer is
5 I cannot imagine any case of feeling surprised that the
6 proof that is adduced in this hearing is of this nature.
7 This is entirely consistent with the pleadings that were
8 filed, which were to the effect that all of the -- a
9 mine plan has been proposed, albeit one which time has
10 outraced because of the pace of the decision is so out
11 of key with the pace of events.
12 I suppose if we had this amendment rule to
13 labor with, we would -- one could always find an
14 application denied by virtue of the fact it hadn't been
15 decided timely. So there is -- going back to the rules
16 of pleading as a guide, not as controlling, but as a
17 guide, the rules of pleading are that a pleading puts
18 the parties on notice as to the nature and indeed a very
19 detailed nature of what is proposed and the relief that
20 is asked. That has remained the same. The same PAA3 is
21 still proposed.
22 It is supported by even more refined
23 information. And what it is supported by is information
24 which has always been available for the inspection of
25 anyone who would be a party and has been made available

1 in discovery in this case, regardless of whether the
2 discovery filtered to the hands of any particular STOP
3 witness. So the analysis is of a pleading. There is no
4 application amendment called as such or proposed as such
5 by the applicant.
6 We are here on these items, which by the
7 way also are bottomed as business records in the
8 peculiar case of a PAA3 where the PAA3 data are
9 developed in the ordinary course of business by a party
10 not in anticipation of litigation. Indeed when these
11 records were developed, there was no conception that
12 there was to be litigation on such a point. So these
13 are ordinary business records of the company in every
14 sense of the word and are entirely admissible on that
15 basis; albeit we've corrected some internal
16 inconsistencies because of compilation or whatever.
17 Anyway, I'll leave it there for now, if I may.
18 THE COURT: Mr. Valdivia has raised his
19 hand.
20 MR. VALDIVIA: Your Honor, I just -- first
21 of all, I do have copies of the rules. I have the book.
22 And you're welcome to make copies if you need them. But
23 if I may approach the bench.
24 THE COURT: Certainly.
25 MR. VALDIVIA: I'll show you what I'm

1 talking about. 28 -- 281.23 sub B sub 1, "The executive
2 director shall determine, shall determine, whether the
3 application amendment constitutes a major amendment."
4 And that's mandatory language. We can get into whether
5 or not these changes are indeed an amendment or not, but
6 I submit that they are. They are a change to the
7 application. And the original application is what was
8 referred to so, and not the application as it may have
9 been changed. And Your Honor characterized some of
10 these matters as technical in nature. I would submit
11 that, first of all, we've only heard one witness on
12 rebuttal, and that much of this witness's answers to
13 questions have been you'll have to ask Mr. Pelizza that.
14 THE COURT: Sure.
15 MR. VALDIVIA: I think the ultimate
16 direction this is going is whether or not, you know,
17 this application has adequately characterized things
18 that are required both under its special provisions of
19 the permit and the regulations. So, you know, even
20 though yes, they may seem like we're just changing a
21 number here, a number there, cumulatively these changes
22 have a regulatory and I suspect also technical
23 consequences, which is really the province of the
24 executive director to determine how serious a matter
25 this is.

1 THE COURT: Thank you. Mr. Redmond?
2 MR. REDMOND: Your Honor, Section 281.23
3 Subsection B is for applications under Chapter 336 in
4 the commission's rules which are for radioactive
5 materials licenses, which is a completely different type
6 of application than we are considering in this
7 proceeding. It would be 281.23 Subsection A that I
8 believe is the controlling requirement on amendments of
9 applications if we are discussing amendments of
10 applications. And that it's essentially a requirement
11 that you can't have a major amendment of an application
12 once the notice of that application has been provided
13 because you may have such a change in application that
14 would require new noticing. And I haven't seen
15 something that we're contemplating such a change that
16 would require notice to new people. So I don't think
17 that the subsection that was provided is the controlling
18 law on amendments of application. That's for a
19 different type of application.
20 THE COURT: All right. I understand.
21 Ms. Mann, you're not required to speak. You're going to
22 pass?
23 MS. MANN: I'm going to pass.
24 THE COURT: Okay. I think Mr. Valdivia's
25 point is well taken with respect to the testimony that

1 we've not heard yet. And if we keep at this pace, we
2 may be able to hear all of the testimony by the end of
3 the day and deal with his issue in some fashion again
4 before the day is over. It's a few minutes to 12:00.
5 Why don't we go off the record.
6 (Off the record.)
7 THE COURT: In light of the conclusion of
8 the questions of this witness, you are excused and
9 thanked. You're welcome to remain and watch the balance
10 of the proceedings as you wish.
11 (A recess was taken for lunch.)
12 THE COURT: We're back on the record after
13 the lunch break. The time is approximately 1:15. And
14 Mr. Hill, are you ready to call your next witness?
15 MR. HILL: I am, Your Honor.
16 THE COURT: I see that Mr. Pelizza is back
17 in the witness chair. Mr. Pelizza, do you understand
18 that you're still under oath?
19 MR. PELIZZA: I do.
20 THE COURT: Mr. Hill, if you would like to
21 proceed.
22 MARK PELIZZA,
23 having been previously duly sworn, testified as follows:
24
25

1 DIRECT EXAMINATION
2 BY MR. HILL:
3 Q. Mr. Pelizza, I've handed you exhibit identified
4 as URI 46 and ask you if you can identify it, please.
5 A. Yes. URI 46 is the prefile rebuttal testimony
6 that I prepared for this case.
7 Q. Does it also contain an attachment or an
8 addendum or an Exhibit A?
9 A. Yes, it contains an Attachment A.
10 Q. And what does that attachment comprise?
11 A. It contains on several pages that in my -- I
12 refer to in my testimony as suggested changes to the
13 production authorization document.
14 Q. Did you prepare or cause to be prepared the
15 document identified as URI 46?
16 A. I prepared it.
17 Q. And the attached -- materials attached in
18 Exhibit A?
19 A. Yes, I prepared them.
20 Q. Do you wish to adopt the statements made in URI
21 Exhibit 46 and the materials set out in the Attachment A
22 as a portion of your testimony in this proceeding?
23 A. Yes.
24 MR. HILL: We tender the witness for
25 cross-examination and offer the exhibit.

1 THE COURT: Is there any objection to the
2 exhibit?
3 MR. VALDIVIA: No new one, Your Honor.
4 THE COURT: All right. Subject to your
5 standing objections, I understand. Mr. Redmond?
6 MR. REDMOND: No objection.
7 MS. MANN: No objection.
8 THE COURT: This is Exhibit No. 46?
9 MR. HILL: Yes, Your Honor, I believe so.
10 THE COURT: Exhibit No. 46 is admitted.
11 And Mr. Valdivia, if you would like to begin your
12 cross-examination.
13 MR. VALDIVIA: Thank you, Your Honor.
14 CROSS-EXAMINATION
15 BY MR. VALDIVIA:
16 Q. Good afternoon, Mr. Pelizza.
17 A. Good afternoon.
18 Q. I think I'd like to start with a little bit of
19 housekeeping regarding Protestant's Exhibit 1, which so
20 Mr. Hill can prepare an objection if he choose, I intend
21 to offer into evidence. But there are a couple of
22 things on here which I realize might not be precise or
23 correct, so I want to go over that first. Mr. Pelizza,
24 I put up on the easel what's been marked as Protestant's
25 Exhibit 1. Do you recognize that document?

1 A. Yes, this is the map we worked on, what, three
2 days ago.
3 Q. That was during your first round of
4 testimony --
5 A. Yes.
6 Q. -- in this hearing; is that right?
7 A. Yes.
8 Q. And can we agree, and you may recall last time
9 we had trouble talking over each other. And do you
10 agree to try not to do that, allow me to finish my
11 question before you answer?
12 A. Very good.
13 Q. So this is the exhibit. This is basically the
14 map that has the details on it of production area 3,
15 monitoring well ring; is that correct?
16 A. Yes.
17 Q. And it also shows some of the -- well, the
18 production wells that you have in what I believe has
19 been called well field 9 and 10; is that right?
20 A. Yes.
21 Q. And in addition, you have made some markings to
22 that exhibit. Those were your markings, is that
23 correct, in blue and in pink?
24 A. Yes.
25 Q. And I believe also in yellow. And there's also

1 some black markings in black ink handwritten?
2 A. Yes.
3 Q. All right. Now, my housekeeping matter has to
4 do with the pink line that you show running more or less
5 through the center of the monitoring well ring. And the
6 first segment you wrote the number 400 feet next to it.
7 Do you recall doing that?
8 A. Yes.
9 Q. Now, 400 feet, that's supposed to represent
10 what?
11 A. It was a measurement I took the day that we --
12 it was a measurement I took the day that we went through
13 the questioning.
14 Q. And as I recall, and correct me if I'm wrong,
15 that measurement was an attempt to measure the distance
16 between the production area and the monitoring well
17 ring; is that a fair statement?
18 A. Yes.
19 Q. Okay. And are you comfortable with the
20 designation of 400 feet that you've placed there?
21 A. In round numbers, yes, with the tools I had,
22 yes.
23 Q. Okay. And below that, the number 1,000. The
24 line continues, I believe, it would be to the south,
25 southwest, No. 1,000. What's that to designate?

1 A. That was another measurement that we took the
2 day of my testimony that indicated 1,000 feet with
3 that -- I believe it's probably that wood ruler right
4 there.
5 Q. Well, I'll hand you that ruler right now,
6 Mr. Pelizza. And here's my concern. I'm not sure what
7 that -- where the 1,000 feet was supposed to begin and
8 end. Do you recall? What was your understanding?
9 A. I think I measured from the edge of the -- it
10 looks like it's probably between two wells, but my
11 understanding was it's approximately the edge of the
12 well field to approximately the edge of the monitor well
13 ring.
14 Q. Okay. And could you, for the record, take the
15 ruler and tell us how many inches per the scale there --
16 it's right below the word confidential?
17 A. Yes.
18 Q. Could you tell me what, I don't know, six
19 inches would be on this map exhibit?
20 A. I can tell you what three inches would be.
21 Q. Why don't we start with that then.
22 A. Three inches is approximately 600 feet. The
23 ruler looks like it may be a little short.
24 Q. Approximately 600 feet?
25 A. Uh-huh.

1 Q. So six inches would be probably 1,200 feet?
2 A. Approximately.
3 Q. Could you measure then -- is it your testimony
4 that the measurement from the southern part of that pink
5 line is 1,000 feet all the way down to the monitoring
6 well ring?
7 A. Yes.
8 Q. Could you put the ruler up there, please?
9 A. (Witness complies.)
10 Q. Isn't that more than six inches?
11 A. Yes.
12 Q. So it's more than 1,200 feet?
13 A. Yes. In the haste of the hearing, maybe it was
14 misdone.
15 Q. Yes, and I failed to note that. So let's see.
16 What would 1,000 feet correspond to? Would it be more
17 or less from the southern most blue line which you
18 referred to as the south mineral fairway to the edge of
19 the north mineral fairway? How far would that be?
20 A. If I was to take a line right now to be clear
21 from monitor well 98 to well I-9106, that is nine
22 inches. At an inch equals 2,000 feet, that would be
23 18 -- at an inch equals 200 feet, that would be 1,800
24 feet.
25 THE COURT: So Mr. Valdivia, if I may

1 interrupt you for just a second.
2 MR. VALDIVIA: Yes.
3 THE COURT: So Mr. Pelizza, what you've
4 given us is approximately the width from one edge of the
5 monitor well ring to the edge of the other monitor well
6 ring?
7 THE WITNESS: No, Your Honor. I gave the
8 width from the southern edge of the monitor well ring to
9 the southern edge of the amount of well field that's
10 been developed so far.
11 THE COURT: Okay. Thank you for that
12 clarification. Mr. Valdivia, I apologize.
13 MR. VALDIVIA: That was a good
14 clarification.
15 Q. (By Mr. Valdivia) Okay. Can we agree then to
16 change that 1,000 feet to 1,800 feet?
17 A. Yes.
18 Q. So I'll hand you the Sharpie you used the other
19 day, if you'll make that change for me, please.
20 A. (Witness complies.)
21 Q. Thank you.
22 MR. VALDIVIA: And I'd like to offer this
23 exhibit into evidence at this time.
24 MR. HILL: I need to ask some questions.
25 The source of this map was --

1 THE COURT: Before you begin, Mr. Hill, do
2 you have any objection to Mr. Hill asking questions at
3 this point?
4 MR. VALDIVIA: Well, if he can give me --
5 MR. HILL: I was asking Mr. Valdivia.
6 MR. VALDIVIA: Perhaps we can go off the
7 record and work this out.
8 MR. HILL: I just hadn't looked at this in
9 a while, and I don't recall the provenance of the map.
10 THE COURT: Let's go off the record.
11 (Off the record.)
12 THE COURT: Mr. Hill, any objection to the
13 admission of Protestant's Exhibit No. 1?
14 MR. HILL: None.
15 MR. REDMOND: No objection.
16 MS. MANN: No objections.
17 THE COURT: Protestant's Exhibit No. 1 is
18 admitted. Mr. Valdivia, please proceed.
19 Q. (By Mr. Valdivia) Mr. Pelizza, you were
20 present during Mr. Russell's testimony; is that correct?
21 A. Yes.
22 Q. There were several questions asked of
23 Mr. Russell that he referred -- and he referred us to
24 you, that should be asked of you. And one line of
25 questioning had to do with the full-size well logs.

1 A. Yes.
2 Q. Do you recall that line of questioning?
3 A. Yes, I do.
4 Q. I believe my question was: Were these
5 full-size well logs made -- given to the TCEQ?
6 A. Yes.
7 Q. Now, was that three sets of the well logs, one
8 set?
9 A. Our standard application package consists of
10 three copies of the application, and one copy is
11 required to have a full set of the logs that are
12 produced as far as the PAA. So it would be -- your
13 answer is one set.
14 Q. And I believe that corresponds with your
15 prefiled here on page 3, line 16 is that URI did include
16 at least one set of logs with the PAA3 application?
17 A. Yes.
18 Q. Is it your testimony that you're not sure if
19 three sets were provided or you're now saying that only
20 one set was provided?
21 A. My testimony is I'm absolutely sure that one
22 set of logs was provided, not more or not less.
23 Q. On page 5 of your prefiled testimony, in
24 response to a question about hydrologic testing, do you
25 recall your answer?

1 A. There's three statements on 5. If you could
2 refer me to which one.
3 Q. Yes. Excuse me. Starting on line 24,
4 "Dr. Kier observes that in tab six hydrologic testing,
5 the hydraulic properties, including permeability,
6 transmissivity and storage coefficients and are not
7 calculated for each well."
8 A. Yes.
9 Q. Now, as I understand the gist of your response
10 is that you did pump testing?
11 A. That is correct.
12 Q. And that basically you were looking at the
13 water levels during that pump testing; is that a fair
14 statement?
15 A. Yes, it is.
16 Q. And that was done instead of hydrologic
17 testing?
18 A. That is not correct.
19 Q. Hydrologic testing was not done as Dr. Kier
20 described it?
21 A. No. Pump test is hydrologic testing.
22 Q. Yes, I realize that. Okay. The hydrologic
23 testing you did was just a pump test that looked at
24 water level; is that correct?
25 A. The test itself was a hydrologic test which

1 looked at water levels. That's the only thing that's
2 done during the actual hydrologic test.
3 Q. So you did not look at hydraulic properties
4 such as permeability, transmissivity and storage
5 coefficiency; is that correct?
6 A. Those three items that you mentioned are a
7 calculation by a hydrologist or a reservoir engineer as
8 such that would be done from the data that was obtained
9 from the hydrologic test. Those are academic types of
10 exercises that can be done certainly, but they provide
11 no useful information that I'm aware of in our business.
12 So, you know, we have limited resources, so we just
13 don't do a whole -- a whole host of extraneous academic
14 work. We just do the work that is required to
15 demonstrate that our application meets the requirements
16 of the regulations in terms of safety and safeguards.
17 Q. Are those calculations that you just testified
18 to -- and by that, again, I mean the permeability,
19 transmissivity and storage coefficients, are those
20 calculations, in your opinion, more accurate than a
21 hydraulic test that looks only at water levels?
22 A. As I said, the hydraulic test that looks at
23 only water levels is the test. From the water levels,
24 if one was interested in going through the academic
25 exercise of saying, oh, gee, I wonder what the

1 transmissivity of this rock is, he may take and plot
2 that information, that water level information on curves
3 and go to a textbook and run that number.
4 But that number would provide absolutely
5 no use to the TCEQ in determining if PAA3 as it was laid
6 out was safe or not safe or something in between. It's
7 superfluous to the analysis that's done in terms of
8 safety. It would certainly -- we could also go ahead --
9 Q. Please, excuse me. As I recall, now, the pump
10 testing -- one of the reasons for pump testing was to --
11 I believe you called it the definitive test of
12 containment; is that right?
13 A. Correct. Correct.
14 Q. And these other calculations that I've referred
15 to are things that you can do to go beyond merely
16 looking at the -- I understand they may be derived from
17 the water levels and other information you may get. But
18 this is another step one could take to determine how
19 effective your containments efforts are; is that
20 correct?
21 A. No, it's not. They're not related to
22 containment.
23 Q. What are physical flow parameters?
24 A. You just described physical flow parameters;
25 permeability, transmissivity, porosity. Those would be

1 physical parameters that a reservoir engineer would use
2 in his calculation to determine flow.
3 Q. And you're calculating what in simpler terms?
4 The parameters for flow, what is it that these
5 parameters are calculating? Are they calculating how
6 fast water may flow?
7 A. Those parameters may be something that a
8 reservoir engineer would use as a variable in his
9 calculation for flow.
10 Q. Now, I wasn't here yesterday, but I understood
11 that perhaps Mr. Santos testified to some of these
12 matters, but I just want to be sure. I intended to ask
13 you about these. Regarding -- we've had some discussion
14 about different kinds of monitoring wells, and we
15 haven't talked too much about baseline wells. Could you
16 explain briefly what a baseline well is?
17 A. A baseline well is any well -- and we're
18 talking a baseline well, just if we went to a book of
19 these types of terms. A baseline well would be a well
20 that we were able to obtain a baseline sample from,
21 baseline. And so then we'd have to go to the definition
22 of baseline. What does baseline mean? And what that
23 means is the conditions that existed before there was
24 any type of mining activity there or anything else that
25 would change the baseline. So baselines are wells that

1 establish what the natural conditions are prior to any
2 mining activity by URI in the area. So therefore, any
3 well that was able to provide that kind of information
4 would be a baseline well.
5 Q. And this is important in determining baseline.
6 How do you -- how is that information used?
7 A. Baseline is used to establish in the production
8 area through calculations -- well, in a general sense,
9 baseline is used to -- I'm being redundant here, but
10 it's important that we understand what baseline is.
11 Baseline is used what exists in the natural state. It
12 provides our goalpost, if you will, for where we want to
13 go in our reclamation program after restoration is
14 complete.
15 In the PAA, baseline is important for a
16 number of reasons. A, baseline provides the numbers
17 that we plug into the restoration table. And that may
18 be -- in this body, in the citizens, it may be what's
19 most of concern. So that's where it comes from.
20 Baseline is also used to calculate upper control limits
21 in the surrounding monitor well ring because without an
22 accurate baseline, one would not know what to compare a
23 change during mining against what existed in the natural
24 state.
25 Baseline is also very useful in

1 determining -- and we'll talk about it, some of these
2 instances in a little while. What would exist in
3 natural conditions in the mine area compared to, say,
4 conditions that we see in other locations where we can
5 compare similar data and get more of a -- and use that
6 as evidence to determine what is causing conditions
7 elsewhere. But in the context of the PAA in its pure
8 form, baseline is important because it provides the data
9 we need to craft our restoration table through
10 calculation. And it provides the data that we need to
11 provide numbers for our monitor well ring so we can
12 determine if, in fact, there is or isn't an excursion
13 during operations.
14 Q. Let's -- you mentioned upper control limits.
15 And is that the same as control parameters?
16 A. Well --
17 Q. Control parameter upper limits?
18 A. Sort of. A control parameter is the parameter,
19 and the upper control limit would be the upper limit on
20 that parameter.
21 Q. And as part of your discussion of this, you
22 mentioned one of the reasons you make -- you use that
23 number is to determine increases in the presence of
24 uranium from -- or changes in the presence of uranium
25 from baseline; is that correct?

1 A. The reason that the upper control -- the reason
2 that the suite of control parameters and their
3 associated upper control limits were chosen is because
4 they reflect -- in this case, three parameters that are
5 indicative of the presence of leach solution. They are
6 three parameters that some are chosen, for example,
7 uranium, because it's -- uranium is the key element that
8 we elevate as a result of our process; and therefore, it
9 is used. We have other parameters such as conductivity,
10 and I think chloride that are used because uranium is --
11 it's elevated highly in leach solution. And
12 therefore -- and it's of interest to know that it exists
13 in a monitor well.
14 Yet surprisingly so, it's not a very good
15 control parameter as a matter of reference in our New
16 Mexico operations. It's not used as a control parameter
17 because uranium does not travel very far in the
18 groundwater. And it's very difficult for uranium, even
19 as high as the concentrations get in leach solution, to
20 reach monitor wells because once uranium exits the
21 environment of oxidation in the well field, it quickly
22 reverts to its insoluble form and is precipitated back
23 into the formation and it goes away. But we use it
24 because it's there.
25 There are other elements or indicators

1 such as chloride. We use the element chloride as a
2 control parameter. The element chloride or the -- is
3 highly non-reactive with the sand grains of the rock.
4 And because of that, it's allowed to travel freely with
5 the groundwater, and it's not readily absorbed. What
6 that means is that as the chloride travels, it will stay
7 in solution, if it were leach solution, without
8 precipitating and be indicative that leach solution has
9 reached a monitor well.
10 Similar for conductivity, whereas
11 conductivity is sort of a basket of values. It's not an
12 element. It's a measure of cumulative measure of salts.
13 And then therefore, all of the salts that are not highly
14 reactive with the formation that would travel with the
15 groundwater would give an early warning or it would give
16 a warning at the same times that water reaches from the
17 well field. So it's just not uranium, but it's other
18 items as well. That's your long answer.
19 Q. Thank you. I want to direct your attention to
20 page 10 of your prefiled in response to question 28.
21 There's a table there, table 1.
22 A. Yes.
23 Q. Now, that table kind of sets out schematically
24 what you just testified to; isn't that right?
25 A. I believe so, yes.

1 Q. So --
2 A. I think maybe not schematically, I think
3 maybe --
4 Q. Well, in a --
5 A. -- quantitatively.
6 Q. -- quantitative --
7 A. Quantitatively it set it out.
8 THE COURT: If you-all could not speak at
9 the same time, it would make it easier for the court
10 reporter.
11 THE WITNESS: I'm sorry.
12 Q. (By Mr. Valdivia) Anyway, table 1 on page 10,
13 it shows the control parameters of conductivity,
14 chloride and uranium. Am I using the right terminology?
15 A. Yes, sir.
16 Q. And moving to the right, it shows those control
17 parameters in the mine area monitoring wells?
18 A. Yes, sir.
19 Q. And that would be those wells in the -- that
20 north mineral fairway that you've referred to in our
21 Exhibit 1; is that correct?
22 A. No, sir.
23 Q. Which wells do those refer to?
24 A. I believe what this refers to is the values
25 that were taken out of the actual production area

1 authorization, which would be reflective of all of the
2 monitor well ring entire -- the average of all of the
3 monitor well ring are calculated according to the
4 formula that was used according to the rules of the
5 entire monitor well ring that surrounds the production
6 area, not just the northern wells.
7 Q. Okay. So these are values that come from
8 readings you get from the monitor wells and an average
9 of the readings you get from the monitor wells in the
10 monitoring ring?
11 A. Yes. There's a formula in the rules, and
12 that's where these values come from.
13 Q. Okay. And the next column, production area of
14 baseline wells, which wells are we referring to there?
15 A. These, again, would be baseline wells that are
16 in the production area. In other words, they're inside
17 the monitor well ring, and they are wells that are
18 drilled into the production zone.
19 Q. You use the term production zone. That means
20 that those wells go into that -- they go deep enough to
21 go into the area where you will be injecting and
22 extracting solution, am I right?
23 A. Yes.
24 Q. Okay. By production zone you're talking about
25 the area where you're actually mining the uranium?

1 A. Yes.
2 Q. Are these -- and here's where I get confused,
3 and I think others get confused. The term production
4 area, that refers to an area generally around the
5 injection and extraction wells; is that correct?
6 A. I think it goes a little further than that.
7 And I think that's based on my testimony from the last
8 time, too. But generally speaking, the production area
9 is that area that is going to be mined. And logically,
10 that will be the area that will be patterned, if you
11 will, with injection and extraction wells.
12 Q. Okay. Well, I don't know that we're
13 disagreeing, but this is -- I'm getting my definition of
14 production area from the rule. It's the area defined by
15 a line generally through the outer perimeter of an
16 injection and recovery wells used for mining. Is that
17 consistent with what --
18 A. Yes.
19 Q. -- you just said?
20 A. Uh-huh.
21 Q. So we're -- production area baseline wells then
22 are those wells, baseline wells, that are in that area
23 in Protestant's Exhibit 1, we're talking about baseline
24 wells that are within that area, if we were to draw a
25 circle around the area where you have the injection and

1 extraction wells; is that correct?
2 A. Prior to mining, those wells served as baseline
3 wells by definition. They sampled water from the mine
4 zone prior to mining and established baseline quality.
5 There are other -- and this is a unique circumstance.
6 And we're fortunate to have this circumstance.
7 Q. Please, I appreciate some of the commentary.
8 A. I'm trying to be helpful.
9 Q. I understand. But I'm just trying to get an
10 idea where these wells are. My understanding -- I
11 believe my question was: Are we talking about wells
12 that are within a line one would draw in the general
13 area around the injection and extraction well area on
14 Protestant's Exhibit 1? Is that where those baseline
15 wells are?
16 A. I'm sorry. I just -- you'll have to ask it a
17 different way. I don't understand your question.
18 Q. Well, with the monitor wells were pretty -- in
19 the first column were pretty -- it was pretty easy to
20 just say those are referring to the monitor well ring.
21 I'm just trying to get an idea where the baseline wells
22 are. And maybe it would be easier if you could just
23 point to them on that exhibit.
24 A. I'm glad you suggested it. Baseline wells on
25 the PAA map are designated in two different ways. There

1 are wells that are called BL something, baseline
2 something. And those are baseline wells. I think
3 Mr. Russell clarified the designation in his testimony.
4 BL 311, BL 310, BL 32, BL 34, BL 35, BL
5 36. And there may be more that I didn't see the dots,
6 but those are baseline wells. In addition, in this case
7 we have well field 9 and well field 10. These wells on
8 the extraction wells, and only on the extraction
9 wells -- and the reason for that is nothing other than
10 they were equipped with an electrical pump; and being
11 equipped with an electrical pump, one can get a sample.
12 The extraction wells, prior to any
13 injection activity, were sampled. And those samples
14 were analyzed. They are in the production zone. They
15 are in the -- they are representative of water quality
16 in the production zone; the production zone that will be
17 mined, the production zone that will be restored, the
18 production zone that we will have to compare the results
19 of the restoration progress when we're done. So we're
20 fortunate to have it.
21 And those wells we sampled and we provided
22 the information to TCEQ as baseline data. And by
23 definition, that's exactly what it was. TCEQ chose to
24 use the information from well field 9 -- or accepted
25 maybe I should say, the well field information from 9

1 and not from well field 10.
2 Q. Okay. Thank you. And, again, I may not --
3 sometimes I don't hear well. So you said the wells that
4 you used as baseline wells that were in production area
5 9 were extraction wells?
6 A. Yes, sir.
7 Q. And so you -- getting back to the second column
8 here, production area baseline wells. Are the numbers
9 in that column an average of all the baseline wells,
10 including the ones that were extraction wells?
11 A. I believe I took this out of the PAA and I
12 believe that the PAA incorporated those well field 9
13 wells in the average; so therefore, this table would
14 incorporate those wells.
15 Q. And I note that the production of baseline well
16 numbers for conductivity appear to be a little lower,
17 chloride a little higher, and for uranium, quite a bit
18 higher. Is that a fair statement?
19 A. That's a fair statement.
20 Q. So the -- for purposes of the baseline wells,
21 we're starting out with a higher level of uranium in the
22 sample; is that right?
23 A. That's correct.
24 Q. And higher certainly than the level that's in
25 the mine area monitoring wells?

1 A. That is correct.
2 Q. Okay. In column three, it says PAA3 UCL?
3 A. Yes.
4 Q. Can you explain what that value -- what that
5 column is about?
6 A. That is what we referred to a minute ago,
7 control parameters upper control limits. So those are
8 what is to be determined through our base permit,
9 through the formula that are in our base permit as the
10 upper control limits for monitoring excursions based on
11 a statistical analysis of the baseline data that was
12 presented. And that would be attributable, of course,
13 to only monitor wells.
14 Q. So this upper control limit, how does it relate
15 to detection of excursions? I think you explained, but
16 I'm unclear on that.
17 A. Well, first of all, again, to reiterate how
18 it's calculated. It's calculated according to the
19 formulas that are provided in our base permit. If --
20 and I'll leave it at that because it's --
21 Q. I've seen the calculation, yes.
22 A. It's there. It's just pure math. These are
23 established now as our upper control limits. And if you
24 want to know in terms of the practical applications of
25 our firm, what these will be done is these will be

1 entered onto the lab analysis sheet on the top header,
2 if you will, of every sheet for every well, so the
3 analyst can use it as a comparative to compare regular
4 monitor results against the upper control limit that has
5 been established in the production area for the site.
6 In other words, this is our guideline. Once the
7 production area authorization has been approved and
8 operations begin for determining excursions.
9 Q. So I'll use a different word, and you can tell
10 me if it's correct usage or not. These are kind of like
11 a numerical threshold. If you get a result, for
12 example, in conductivity that approaches or exceeds
13 3,525, then what happens?
14 A. That triggers a whole new set of responses
15 because we have exceeded the UCL. And generally what
16 that means is we'll go back immediately and resample the
17 well and make sure it was an analytical error. If the
18 resample indicates that it's not analytical error, we
19 immediately have to notify the state. And the rules
20 have essentially a cookbook set of procedures that we
21 must follow in terms of taking more comprehensive
22 sampling and corrective action and taking measures to
23 reverse that excursion and bring it down below the upper
24 control limits.
25 Q. Now, looking at the parameter for conductivity

1 again, you characterize these as conservative indicators
2 of an excursion. Could you explain what you mean by
3 that?
4 A. I have to look at the -- I explained it as a
5 conservative chemically a minute ago. I think it's
6 conservative in a number of different ways.
7 Q. I'm referring to your prefiled again. It's the
8 sentence right before the table 1.
9 A. Okay. Let's see if I can read it. Yes, in
10 size. What I characterize them as conservative because
11 the combined three are significantly below the typical
12 concentrations we see during mining; and therefore, if
13 leach solution were present, it would -- it would
14 ultimately come out in a level higher than these
15 parameters. And in that respect, they're conservative.
16 Q. But we're talking about levels here that are
17 much higher than natural water quality; isn't that true?
18 A. Well, it's higher than -- it's higher than the
19 average. And recalling back how these were established
20 in our 1989 hearings, what we did is we looked at water
21 quality not only as an average. In other words, it's --
22 obviously the most important function of monitoring is
23 to determine if an excursion is present. But that
24 doesn't mean that it's okay for false excursions to be
25 recorded continuously because false excursions would

1 utilize company resources and then utilize state
2 resources. Therefore, the statistics that were placed
3 in the base -- or the area permit were statistics that
4 would contemplate all of the values that would be
5 encountered under a normal distribution that are found
6 in the area.
7 And while in this case for the mine area
8 wells 2017 is the average, if one were to look at the
9 number of values over the range, you would encounter
10 water quality in the area that would approach three
11 standard deviations from the average that I think that
12 if we went through the math would start to get fairly
13 close to 3520. So what the agency wouldn't want to do
14 is start to getting natural water that may be
15 statistically of lower occurrence, yet having natural
16 water trigger excursions. That's why it's important to
17 have the upper control limit high enough. So it avoids
18 natural variability, but low enough so it's conservative
19 and it would show the presence of leach solution. I
20 think that's the long answer to your question.
21 Q. Okay. So the concern about avoiding cost --
22 false excursions is an economic one. They waste -- if
23 you have a lot of false excursions detected, it wastes
24 resources, both to the company and the state. Is that a
25 fair characterization of your testimony?

1 A. I would say partially economically, but not
2 completely economic. I think it's got a practical
3 significance to it, sort of like the cry wolf syndrome.
4 If we are -- we take excursions very seriously. The
5 state takes excursions very seriously. If there's an
6 excursion, it needs to be dealt with properly.
7 Conversely, if we're getting bunches of false excursions
8 in and out, in and out, when the real excursion comes
9 along, it may not be taken -- and we can confirm them as
10 false excursions.
11 It has the potential of developing an
12 attitude toward the monitoring that may not -- I
13 wouldn't agree with. I think, you know, this is
14 something that was looked at very carefully in the past
15 in our base permit. And I can tell you professionally
16 it's the types of methods of calculations that we use in
17 other projects in Texas and in other states. And in my
18 professional opinion, the way these are calculated are
19 very good, conservative well-founded methods of
20 calculating UCL's.
21 Q. But you used the term conservative to mean
22 conservative to avoid detection of false excursions?
23 A. I think that it would do that. But I think
24 it's also conservative if one just simply looks at those
25 columns in my testimony and looks at the degree of

1 difference between mining solution, all three as a
2 whole, versus the three that are listed in that table.
3 I think that they are sound parameters that are
4 conservative of detection in both directions.
5 Q. But however we characterize this, these upper
6 control limits, it appears to me it's certainly possible
7 by setting it high to eliminate or try to eliminate
8 false excursions even though you set it, you know, at a
9 high number, a false excursion is still possible; isn't
10 that right?
11 A. But less possible.
12 Q. Similarly, it's possible that you may miss a
13 true excursion, isn't that right, because you've set the
14 parameters so high, the limits so high rather?
15 A. Those are your words. I don't think the limits
16 are set so high. I think they're set relative to the
17 quality of water that we would encounter in leach
18 solution versus what those parameters are. I believe it
19 would be very, very responsive to the presence of leach
20 solution.
21 Q. But it's still possible that you would miss an
22 excursion, isn't it?
23 A. I would say that any possibility is very, very,
24 very remote. And if --
25 Q. But it's possible; isn't that right?

A. I can't envision how it could occur.
Q. Are you saying it's impossible?
A. You know, it's possible that mars is going to hit us right now.
Q. That wasn't my question.
A. No. But, you know, for all practical purposes, it's impossible.
Q. For all practical --
A. I know of no instance in the history of the in situ leach business of the projects that I've been associated with where there's been an excursion undetected using these types of calculations and formulas and statistics.
Q. Well, if it was undetected, how would you know it was there?
A. I know of no instance of what I just said and know -- you're asking me for a hypothetical that I can't imagine how it's going to occur.
Q. Well, let's talk about hydrologic testing again, and see how that goes. The physical flow parameters that we were talking about, again, it seemed to me your testimony was this is an academic exercise, it would just be a waste of money. Does the calculation of physical flow parameters have any value in the detection of excursions, in your opinion?

1 A. First, I don't think I said it was just an
2 academic waste exercise, it would be just a waste of
3 money. It would be a waste of resources. And, you
4 know, there are a lot of important things that we do,
5 and we can't --
6 MR. VALDIVIA: I'm going to object and
7 just ask that you answer my question.
8 A. Go ahead.
9 Q. Does the calculation of physical flow
10 parameters have any value in detecting excursions?
11 A. I can't see any, no.
12 Q. So in your opinion, there is no value in either
13 excursion detection or proving up containment; is that
14 correct? Is that your testimony?
15 A. I can see no value in calculating physical flow
16 parameters in the PAA pump test for detecting excursions
17 in PAA3.
18 Q. Might it have some value in a different
19 production?
20 A. No.
21 Q. So it would have no value whatsoever under any
22 condition that you can think of that would involve ISL?
23 A. Are you asking me outside of ISL?
24 Q. No. I said that would involve ISL.
25 A. The types of parameters that you mentioned are

1 used by reservoir engineers in calculations. They are
2 well-known for the Kingsville Dome Project as field
3 numbers. They -- there is no utility in going through a
4 lengthy calculation of the pump test data to recalculate
5 the things that would not matter in any of the -- you
6 know, that are already known and that just would not
7 matter in any of the subsequent calculations that are
8 used in the in situ leach business.
9 MR. VALDIVIA: Your Honor, I'm going to
10 need a moment to get organized. Can I take just a short
11 break, please?
12 THE COURT: Yes. Let's go off the record.
13 (A recess was taken.)
14 THE COURT: Mr. Valdivia, please proceed.
15 Q. (By Mr. Valdivia) Mr. Pelizza, I'm going to
16 hand you what's been marked as Protestant's Exhibit 10
17 and ask you if you've seen that before; and if so, could
18 you identify it for me?
19 A. I saw this yesterday. It is a handwritten
20 analytical sheet.
21 Q. And on the top line, it has some symbols in
22 there, pH, conduct. What's the third one, U3OH?
23 A. That's a measurement of uranium, uranium oxide.
24 Q. And this -- to the left in the upper left-hand
25 corner there is a date. Do you see that?

1 A. I do.
2 Q. What's the date?
3 A. 5-21-87.
4 Q. Okay. And directly below the date, there are
5 some names and numbers. Do you see that?
6 A. Yes.
7 Q. Below the date 5-22-87 is the name Garcia and
8 No. 69-A. Do you see that?
9 A. I see it.
10 Q. And what's the value for uranium going directly
11 across from that entry?
12 A. I'll read the numeric value. It's .05.
13 Q. Okay. Is there any indication -- do you know
14 what .05, what that is?
15 A. There's not.
16 Q. What does this look like to you? If you had no
17 other information about this document other than what's
18 there on the page, what does this look like to you?
19 A. This looks like a handwritten analytical sheet,
20 and I do not recognize the writing. But based on the
21 names of the people who are there, I suspect it's
22 something that came out of URI's lab notebooks somewhere
23 around this period of time where it was an analysis that
24 was done in-house by our laboratory.
25 Q. And if it was something done in-house by your

1 laboratory, were you familiar with the protocols of the
2 units of measurement at that time in '87?
3 A. Yes.
4 Q. .05, what measurement would that be?
5 A. That would be -- if it was our laboratory, it
6 would have to be milligrams per litre.
7 Q. And similarly, going down that column, .08,
8 that would be --
9 A. Milligrams, yes.
10 Q. Go ahead. You may --
11 A. I fell out. Go ahead.
12 MR. VALDIVIA: All right. Your Honor, I'm
13 not sure. I understand this has been offered and
14 admitted, but for a limited purpose, and I don't really
15 recall what that purpose was. And maybe Mr. Hill can --
16 THE COURT: This is Protestant's Exhibit
17 10?
18 MR. VALDIVIA: Yes, sir.
19 THE COURT: Mr. Hill?
20 MR. HILL: I thought it was admitted to
21 reflect what we were talking about at the time I
22 cross-examined, I believe, Mr. Saenz who identified the
23 column heads and the names on the left side which are
24 partly obliterated. And I had an opinion as to the
25 likely limits -- pardon me, the likely units in which

1 these values were expressed. I think that's all I know
2 unless I review my notes from yesterday.
3 THE COURT: So Mr. --
4 MR. VALDIVIA: Well, I would like to move
5 to offer this into evidence for all purposes, Your
6 Honor, not subject to limitation.
7 THE COURT: And give me the basis upon
8 which you're making that motion or offer.
9 MR. VALDIVIA: Well, I believe this
10 witness is able to identify with -- and perhaps I'll
11 need to ask a few more questions. But to this witness
12 it looks to him like a page out of a URI notebook, and
13 he's testified to that effect. I think it goes -- given
14 his qualifications, it goes well beyond what our witness
15 was able to do with this exhibit.
16 THE COURT: Okay. And Mr. Hill?
17 MR. HILL: It might be. We could
18 authenticate it for them. I don't know. The witness
19 would have to be asked some questions.
20 THE COURT: All right. Mr. Valdivia, it
21 sounds as though the door is open, so let me withhold my
22 ruling until you --
23 MR. HILL: I will tell you specifically
24 what I'm looking for. What I don't know is whether this
25 is indeed something in the format of a laboratory

1 notebook maintained by someone at URI, whether in fact
2 it is the laboratory notebook page or whether it has
3 been -- you know, whether it's authentic or has been
4 changed or has been put into some other context. I
5 mean, I don't know. If I had known this might come up,
6 we could have looked to see whether we could find such a
7 notebook entry, but I don't know what the witness will
8 tell you at all.
9 MR. VALDIVIA: Well, I can ask a few more
10 questions. But Mr. Hill, where do you think the
11 likelihood of you finding this -- I mean, I think this
12 has been batted around for quite some time. This isn't
13 a totally new document.
14 MR. HILL: Well, it was new yesterday or
15 the day before.
16 MR. VALDIVIA: Anyway, I don't want to --
17 MR. HILL: If I had known then that I was
18 to look for it, I could have asked some people who know.
19 I was just going to ask someone right now.
20 THE COURT: Rather than dealing what might
21 have been or what might be, what if we ask the questions
22 of the witness and see what happens.
23 MR. VALDIVIA: Okay. Very good.
24 Q. (By Mr. Valdivia) Mr. Pelizza, you recall you
25 testified earlier that this looked like to you the lab

1 notes or test notes from a URI test; is that a fair
2 characterization?
3 A. It looks like it could be, yes.
4 Q. And is that because of the kind of information
5 on it and the format that that information is rendered?
6 A. Yes.
7 Q. Does this follow -- does this formatted
8 information follow any kind of standard procedure or
9 protocol that you're familiar with at URI?
10 A. I know these are parameters that we have
11 capability of measuring.
12 Q. Okay. And by parameters, you mean those --
13 that information on the very top of each column; is that
14 right?
15 A. Yes.
16 Q. Could we go through them one by one. PH, what
17 is that?
18 A. PH is a measure of acidity in the water.
19 Q. And the next column?
20 A. Is conductivity, that's the measure of
21 electrical conductance of the water.
22 Q. And the next column is uranium oxide?
23 A. Yes.
24 Q. What about the next column, the fourth column?
25 A. The next one is sodium bicarbonate. That's the

1 measure of the bicarbonate in the water. Actually,
2 sodium, that's measured as a compound, not as -- well,
3 it's measured as sodium bicarbonate. The method is a
4 titration.
5 Q. And the fifth column, what is that?
6 A. Sulfate. That's another salt, if you will, and
7 water. It's another compound.
8 Q. And finally, the last column?
9 A. That's the ion chloride.
10 Q. And I see here we have conductivity, chloride
11 and uranium oxide. Are those the same three control
12 parameters that you utilize in your prefiled in that
13 table 1?
14 A. Yes.
15 MR. VALDIVIA: Your Honor, I reurge my
16 offer.
17 THE COURT: Mr. Hill?
18 MR. HILL: We're indeterminate, but may I
19 suggest in the interest of getting at the truth of the
20 matter and to the end of the matter as well, why don't
21 we proceed for now and see where this stands by an hour
22 from now. I'm not quite sure, but I've asked some
23 questions and I expect to have some answers. It may be
24 that we have no problem with this or it may be that
25 something else will happen. I don't know.

1 THE COURT: I don't think I've ever heard
2 a response like that.
3 MR. HILL: It may be that I wish to
4 sponsor it. I don't know exactly what this thing means,
5 but I don't see any numbers on this sheet that seem to
6 hurt my case, but --
7 THE COURT: Mr. Valdivia, with that as the
8 response of Mr. Hill, would you be amenable to
9 postponing a ruling on this matter until Mr. Hill is
10 able to secure whatever it is that he proposes to secure
11 by the end of the hearing today?
12 MR. VALDIVIA: I'm satisfied with that, as
13 long as we don't forget. That's my only concern.
14 THE COURT: Thank you. I will put it in
15 the do not forget pile.
16 MR. VALDIVIA: And just so Counsel know
17 where I'm headed, I'm planning on doing the same thing
18 with the other lab reports that Mr. Saenz testified to,
19 so that would be Protestant's No. 8, No. 12 and, I
20 believe -- I don't know if Mr. Saenz testified about
21 this, but in the same line of questioning, it would be
22 DeLaPaz No. 2 which did get admitted into evidence.
23 None of these have the same problems that Exhibit 10
24 have, that I can tell. But that's where I'm going.
25 MR. HILL: That's fine. I may be amenable

1 to all of it. Or you might get it regardless of what I
2 think.
3 THE COURT: Mr. Valdivia, with respect to
4 DeLaPaz No. 2, I'm not familiar with that designation as
5 an exhibit.
6 MR. VALDIVIA: That is from the
7 preliminary hearing.
8 THE COURT: And I have those documents in
9 front of it. I see now.
10 MR. VALDIVIA: It's behind Exhibit DeLaPaz
11 2.
12 THE COURT: Yes, I have it now and I see
13 it. Okay.
14 Q. (By Mr. Valdivia) Mr. Pelizza, I'm handing you
15 what's been marked as Protestant's Exhibit A. Would you
16 look at that, please, and please tell me if you
17 recognize that document.
18 A. Yes.
19 Q. Could you identify it for me, please?
20 A. This is an analytical report from Jordan Labs
21 dated May 12, 1998, identification YC Garcia.
22 Q. Okay. And it's addressed to URI, Incorporated;
23 is that right?
24 A. That is correct.
25 Q. So did you receive this report? Do you recall

1 receiving it?
2 A. I do not recall receiving it, but I recall
3 retrieving it.
4 Q. Again, this is a report -- the identification
5 YC Garcia, is that -- what's your understanding about
6 that?
7 A. I think there's not a clear understanding of
8 what YC Garcia means. I know this is an analytical
9 report that was obtained in 1988 with several parameters
10 listed.
11 Q. And do you recall if this analysis was done at
12 the behest of URI?
13 A. Well, I would presume it was since it was
14 addressed to us.
15 Q. Looking in the middle of the page that uranium
16 parenthetically (natural)?
17 A. Yes.
18 Q. You see the value -- the number to the right of
19 that in the analysis state?
20 A. Yes.
21 Q. And that value is, once again, milligrams per
22 litre; is that correct?
23 A. Yes, this is reported in milligrams per litre.
24 Q. And below that, the gross alpha activity?
25 A. Yes.

1 Q. PCI-L, could you explain what that means?
2 A. Gross alpha to uranium and uranium related
3 minerals is analogous to conductivity to salts. Whereas
4 conductivity measures -- or total dissolves solids, if
5 you'd like to use that as a measurement. Conductivity
6 and total dissolve solids are different ways of
7 expressing the same thing. It's a bulk measurement of
8 the gross or total alpha activity in the water.
9 There are three different types of
10 radiation. There's alpha radiation, there's gamma
11 radiation and there's beta radiation. And this would be
12 a gross measurement of the total alpha radiation that
13 could result from uranium or other uranium related
14 minerals.
15 Q. And could you tell me what the values are as
16 reported on this sheet for uranium?
17 A. The value for uranium is .032 milligrams per
18 litre or 32 micrograms per litre. It is 22 picocuries
19 per litre plus or minus 13 gross alpha.
20 MR. VALDIVIA: Again, my understanding is
21 it was introduced for certain limitations. I'm now
22 offering it for all purposes. I'll move on.
23 THE COURT: All right.
24 Q. (By Mr. Valdivia) Mr. Pelizza, I'm going to
25 hand you the book of the exhibits that were compiled

1 during a preliminary hearing in this case. In
2 particular, I direct your attention to DeLaPaz Exhibit
3 2. Could you please look that over and see, do you
4 recognize that exhibit?
5 A. Yes.
6 Q. Could you identify it for us, please?
7 A. This is a letter that I have seen in the past
8 from the EPA to Mr. Garcia.
9 Q. And does that -- there is a portion there
10 that's highlighted. Could you read that into the
11 record, please?
12 A. Since 1996 from the storage tanks -- from the
13 storage tank -- why don't I read the whole thing so it's
14 in context. "Water samples taken by URI, Inc. from the
15 1996 from the storage tank have shown uranium five to
16 eight times above EPA's current drinking water standard
17 of 30 micrograms per litre for regulated public drinking
18 water systems. Gross alpha radiation was detected five
19 to eight times above EPA standard 15 picocuries per
20 litre."
21 Q. Could you, for the record, state what the date
22 of that letter is?
23 A. October 18, 2004.
24 Q. Thank you. Finally I have what's been marked
25 as Protestant's Exhibit 12. I hand this to you. Could

1 you please tell us for the record if you recognize that
2 document?
3 A. No, I have never seen this document, but I
4 suspect it was one that was talked about yesterday.
5 Q. Were you present during the testimony
6 discussion of this document yesterday, as best you
7 recall?
8 A. A document like this was discussed yesterday.
9 I suspect it was the same one.
10 Q. It has a seal of the State of Texas, Texas
11 Commission of Environmental Quality; is that right?
12 A. Yes.
13 Q. Okay. And what's the date?
14 A. January 19th, 2005.
15 Q. Okay. And it's addressed to Mr. Fidel Garcia,
16 424 Garcia Hill?
17 A. Yes.
18 Q. And down below on table 1, it says samples
19 collected from kitchen faucet, and there's a value. The
20 constituents identified uranium, total dissolve gross
21 alpha, total dissolve. Can you read to me the
22 concentrations?
23 A. Starting with what, uranium?
24 Q. Yes, sir.
25 A. Uranium total 159.2 micrograms per litre,

1 uranium dissolved 160 micrograms per litre, gross alpha
2 119 picocuries per litre, gross alpha dissolved 130
3 picocuries per litre.
4 MR. VALDIVIA: Once again, Your Honor, I
5 reoffer this exhibit for all purposes. I can continue
6 or I'm moving off of this.
7 THE COURT: If you choose to move off
8 this, we will come back to it before the end of the day
9 and deal with the issue in some fashion. By moving on,
10 you don't waive anything.
11 MR. VALDIVIA: I just thought it might be
12 an opportunity to rule, but I guess we're still waiting
13 for the lab report. Your Honor, I've just been told by
14 Mr. Hill that --
15 MR. HILL: We don't object to the
16 exhibits, admission of the exhibits.
17 THE COURT: And is that with respect to
18 Protestant's Exhibits 12, 8 and 10 as well as what was
19 originally marked as DeLaGarza 2?
20 MR. HILL: DeLaGarza 2 is already in, and
21 we have no quarrel with it. And 8, 10 and 12, we
22 won't -- we don't object to their admission. I will
23 tell you we don't know that 10 is URI's, but we have no
24 objection to its being admitted for the purpose of
25 proving that water wells on these properties had values,

1 had certain water with certain properties.
2 THE COURT: Mr. Redmond?
3 MR. REDMOND: We have no objection.
4 THE COURT: OPIC?
5 MS. MANN: No objection.
6 THE COURT: The exhibits are admitted.
7 Q. (By Mr. Valdivia) Mr. Pelizza, a few days ago
8 on your cross, we discussed the importance or the
9 purpose of a bleed for maintaining containment in a
10 production area. Do you recall that?
11 A. Yes.
12 Q. I'm going to ask a few follow-ups. Now, you
13 testified that the bleed is -- during production it's in
14 more of a nature of a backup assurance -- a backup
15 system to contain uranium solution; is that a fair
16 statement? In other words -- I'll withdraw the
17 question.
18 During production, containment is achieved
19 through a balance, hydrologic balance?
20 A. I think what I said is ideally if a unit was --
21 if a well field was perfectly balanced, that in the
22 ideal world, containment would be assured.
23 Q. And I believe your testimony was -- and correct
24 me if I'm wrong -- was that when you -- you designed the
25 injection and extraction wells and the process to

1 achieve that balance; is that a fair statement?
2 A. That is correct.
3 Q. So that is perhaps the first line of defense,
4 if you will, against excursions?
5 A. Yes.
6 Q. Maintaining that balance?
7 A. A properly engineered and balanced well field
8 is your first line of defense.
9 Q. And the backup, the second line, would be the
10 bleed. That is, maintaining -- extracting a certain
11 amount of fluid to maintain a low pressure area for
12 containment; is that a fair statement?
13 A. Yes.
14 Q. Okay. And when there is no production going
15 on, as there is at this time -- as there is not at this
16 time in production area 3, the bleed becomes the first
17 line of defense; is that a fair statement?
18 A. The impact of bleed would have a similar effect
19 whether you have a well field operating or whether you
20 don't have a well field operating.
21 Q. Well, but that wasn't my question. My question
22 was: Would the bleed under conditions where there is --
23 the well field is not operating, is the bleed the first
24 line of defense?
25 A. It's important to note that if there is no well

1 field operating, then there is no injection extraction
2 regime to go out of balance. So I guess you could say
3 nature is the first line of defense if the well field --
4 a balanced well field is the first line of defense
5 during operations, then nature is the first line of
6 defense without well fields operating. That is the
7 accurate statement to make your analogy proper.
8 Q. If there were no well production at all, nature
9 takes care of the uranium by the fact that it's a fairly
10 stable and non-mobile -- it remains in place, in its
11 natural state; is that a fair statement?
12 A. Yes.
13 Q. And the ISL process is one whereby the uranium
14 becomes displaced; is that correct?
15 A. That is correct.
16 Q. And the situation we have presently in PAA3 is
17 uranium that has been displaced for a time and has been
18 left in place, if that's proper, since production has
19 ceased?
20 A. It's left in place in relatively low
21 concentrations because the uranium has been depleted in
22 the areas that have been mined. But yes, I agree with
23 that, that there are some residual values of uranium
24 that reside in the well field pattern areas.
25 Q. And this situation is not a natural result,

1 it's a result of mining activity that had occurred for a
2 period of time and suddenly ceased; is that correct?
3 A. That is correct.
4 Q. I'm going to hand you a document. I believe
5 it's been introduced in the record, but I may have
6 missed exactly how it came in. But it is behind tab 20
7 in the McFaddin prefiled. Does that have an exhibit
8 number? Protestant's Exhibit 7, tab 20. Mr. Pelizza,
9 could you have a look at that, please. Do you recognize
10 that document?
11 A. I believe I've looked through these exhibits in
12 general.
13 Q. Okay. Could you identify that document for the
14 record, please?
15 A. This appears to be a memorandum with TCEQ to
16 Pat Fontenot from Mohammadali -- I can't pronounce his
17 last name. He's a health physicist with TCEQ.
18 Q. Mr. Pelizza, in the first paragraph about --
19 there's a highlighted area. The sentence says "facility
20 area inspection was performed." Do you see that?
21 A. About four lines from the bottom?
22 Q. Yes, sir. Facility area inspection performed
23 on June 5th, 2005?
24 A. Yes.
25 Q. I believe it's on page 10, the page beginning

1 with the heading groundwater restoration, page 10, July
2 1st, 2003 groundwater restoration.
3 THE COURT: Just for the clarification of
4 the record, I think that the date that you meant to read
5 was 2003 rather than 2005 if we're talking about the
6 document that appears behind Exhibit 20.
7 MR. HILL: I heard 2005. We just want to
8 get the date right, wherever it was on that first page.
9 MS. OBERLIN: It's in the header.
10 MR. VALDIVIA: Did I say 2003?
11 MR. HILL: If you can help me with the
12 sentence, I haven't found it yet.
13 THE COURT: The sentence is on the first
14 page of Exhibit 20.
15 MR. VALDIVIA: June 5th, 2003. If I said
16 2005, I misspoke.
17 THE COURT: Please proceed. I apologize.
18 Q. (By Mr. Valdivia) Now, page 10, groundwater
19 restoration are in the middle of the page. The
20 paragraph beginning well field 1, production area 1, the
21 second page -- the second sentence, could you read that?
22 Are you with me, Mr. Pelizza?
23 A. I don't think I am. If you can come point it
24 to me.
25 Q. Right here.

1 A. Yes.
2 Q. The second sentence of that paragraph, could
3 you read it for the record, please?
4 A. "The processing plant, WDW-248, and other
5 activities such as groundwater bleed has ceased since
6 the afternoon of 5-23-03. A bleed hydrologic sink was
7 maintained in production area 2 and production area 3,
8 one well in each well field prior to 248 being shutdown
9 on May 5th, 2003. At the time of the inspection, there
10 were no restoration activities, bleed, etcetera at any
11 of the mine areas."
12 Q. Thank you. Now, Mr. Pelizza, isn't it true
13 that during production if you do not have balance
14 production and if there's no bleed, that creates
15 conditions which possibly could lead to an excursion?
16 A. If there's no bleed and you're unbalanced on
17 one side of the well field or not, you will in time end
18 with an excursion.
19 Q. And if there's no production, but you've had
20 production for a time and ceased it and you were
21 maintaining a bleed, but for whatever reason ceased
22 maintaining the bleed, would that condition possibly
23 lead to an excursion?
24 A. If there is no production -- say it again,
25 please.

1 Q. If there was no production -- a situation --
2 I'm trying to describe a situation as I understand it
3 now in PAA3. There has been production for a period of
4 time, but it has ceased?
5 A. Uh-huh.
6 Q. A bleed has been maintained, but as is noted in
7 the document you just read into the record, the bleed
8 had ceased. Would those conditions possibly create an
9 excursion?
10 A. No.
11 MR. VALDIVIA: I pass the witness.
12 MR. REDMOND: I pass the witness. I have
13 no further questions.
14 THE COURT: Ms. Mann?
15 MS. MANN: I just have a couple of
16 questions regarding your rebuttal prefiled testimony.
17 You know what, no, I'm going to pass the witness.
18 THE WITNESS: Thanks.
19 THE COURT: I have a couple of questions.
20 EXAMINATION
21 BY THE COURT:
22 Q. Mr. Pelizza, you testified that TCEQ chose to
23 accept the baseline data from well field 9 but not from
24 well field 10. Do you know why from 9 and not 10?
25 A. Yes.

1 Q. Can you tell us?
2 A. And this may be an area where I don't agree
3 with TCEQ, but we agreed to accept their conservative
4 approach. Well field 9 was the first well field put
5 into production in PAA3. And I cannot remember the
6 exact dates, but for presentation, let's just say well
7 field 9 was put into production several months earlier
8 than well field 10. And if I could just show you by
9 ruler -- and if you'd like me to a draw a line, I would.
10 Well field 9/10 break at about right there.
11 Q. And right there is --
12 A. Between the 900 wells and the 1000 wells.
13 Q. Fine.
14 A. So by definition, well field 10, well field 9.
15 At the time we baselined well field 9, there had been
16 zero mining within production area 3. Therefore, it's
17 unquestioned that it was quote "baseline data" that
18 could not be impacted -- do you want me to mark it?
19 That was not impacted by anything, any external forces.
20 We began operations in well field 9. We
21 performed the same type of water quality testing in well
22 field 10 that we did in well field 9. In other words,
23 prior to beginning any mining, we sampled wells from our
24 extraction wells. However, the concern of TCEQ was
25 that, well, because there was mining in the adjacent

1 area, one may be able to think that there could have
2 been some impact in the common production area. So they
3 just wanted to preclude this information from the PAA to
4 be conservative. And that's it.
5 Q. Okay. Thank you. With respect to the question
6 about the bleed during periods of non-operation of the
7 well field, why does the absence of a bleed not tend to
8 create an excursion if there is some function of the
9 bleed in the first place?
10 A. I think this is in regard to this line of
11 questioning. And since you asked me, I'll take it a
12 step further. Mr. Saenz brought the bleed during this
13 period of time to -- to my attention listening to that
14 testimony, and it alarmed me. And I went back and
15 looked at our records and, in fact, we had been
16 maintaining a bleed throughout the duration of this
17 period of time. It was a batch bleed where what that
18 means is we would take -- for a period of time we would
19 take bleed out of the areas in batch rather than as a
20 slow trickle over a continued period of time. This was
21 done for operational purposes because of limited
22 manpower.
23 I noted and I retrieved from the files
24 where we had reported, because of the concern that the
25 inspector noted in this. Mr. VanHorn was asked, and he

1 complied, where we reported our bleed every month in
2 writing to TCEQ over this period of time. So in fact,
3 in the public record, there is the demonstration of that
4 bleed. Given that, on the direct answer to your
5 question is that in the event there is no bleed over a
6 very short period of time -- one other thing: So there
7 was a bleed. And that's why my answer is knowing what I
8 know, it was impossible for an excursion to occur with
9 the level of bleed that we performed.
10 Now, in the event there was no bleed over
11 a four-month period of time, which there was not, water
12 in -- we talked a lot about how fast water moves.
13 Mr. Grant, I think -- I wasn't here this morning and I
14 didn't hear if he said anything else, but I believe his
15 last testimony was somewhere in the low 20's of feet
16 that water moves per year. So over a four-month period
17 of time, water would move on the order of several feet.
18 And since there's some 400 feet from the edge of a well
19 field to a monitor well -- and let's say there's
20 somewhat less than 300 feet because I, in my past
21 testimony, talked about flare. It's -- the water simply
22 couldn't go that far.
23 There's another issue that I may talk a
24 little bit about in this hearing if I'm given an
25 opportunity; and that is, attenuation. And this

1 wouldn't affect all parameters, but it may affect some
2 like uranium that in my view, and from what I've seen
3 over the years, uranium would have a very difficult time
4 in reaching a monitor well because it's just very highly
5 immobile once it leaves the oxidized portion of the well
6 field. But the main reason that it couldn't happen in
7 the time period that we're talking -- and that's
8 important -- is because the water moves exceedingly
9 slow. Now, if it was to remain neglected for years, I
10 think my answer would be different.
11 Q. And how many years would that have to be?
12 A. Well, let's presume that the chloride ion is
13 highly mobile and is not attenuated at all in the
14 formation, and let's assume that it were 300 feet
15 between the well field flare and the edge of the monitor
16 well ring. And let's assume that the maximum reported
17 fluid movement is what we have, 30 feet per year. Well,
18 that's ten years.
19 Q. Okay. So when you talk about a long time, ten
20 years is a long time?
21 A. Yes.
22 Q. Okay. I'm going to ask you a question that I
23 frankly don't remember if it came from your previous
24 testimony or someone else's. And the question either
25 may or may not be within your area of knowledge or

1 expertise. If it falls outside of those, please let me
2 know and I'll move on to another issue.
3 I asked the question of one of the URI
4 witnesses about the adjustment that was made in the
5 baseline values. That adjustment was made following the
6 determination by TCEQ to admit as baseline well
7 information the data that was taken from well field 9.
8 And this information, I think, may have
9 come from Mr. Russell. Here's my question. And that
10 is: Why is it more accurate to take as baseline data
11 information about the water that is being drawn from the
12 production site as opposed to baseline wells that I
13 understand anyway to be somewhat further away? Isn't
14 it -- isn't it the -- isn't it the function of the
15 baseline well to give you an indication of what the
16 background readings are closer to the areas where water
17 might be used for drinking well purposes rather than
18 having information about the background levels
19 immediately over the production zones? Do you
20 understand my question?
21 A. I think I do. And let me try to answer. And
22 if I don't, ask again because I think I am the right
23 person to ask.
24 I think there's about three answers to
25 this question, and they all sort of go to the same

1 place. But the first answer is the baseline information
2 that we are -- we are providing out of -- let me just
3 back off. The very best information that we will have
4 on this site is at the last day that the last well is
5 drilled. And this gets to what you said the other day
6 about a scatter plot diagram. Well, the way I place it
7 is as you add additional data points, every time you
8 increase your population, your statistics get better and
9 better and better.
10 And that's just a matter of the numbers.
11 And so in the beginning -- and if this was a normal
12 production, you know, if this is production area No. 131
13 in the State of Texas, it's the first one where we've
14 ever been able to step back and get this degree of
15 granularity in the data. I have in my testimony sort of
16 a background piece. I think it's in Attachment B which
17 talks about water quality data in more established sites
18 and it shows the nature of uranium in the production
19 areas after it's been developed and what we're able to
20 learn after the fact.
21 In this case, what we have is we have this
22 well field 9 that gave us more information. And it
23 is -- and what it is, it is the water quality that is
24 there. And these are the levels that we would be
25 required -- and at the end of mining, we will be

1 required to restore back to levels that are consistent
2 with baseline according to the commission rules. And so
3 therefore, since these are the levels that are there, it
4 is reasonable that those are the levels that we should
5 be required to restore back to. Now, we sort of cheat
6 ourselves, the company cheats itself by having widely
7 spaced wells in a production area authorization. It
8 provides low values. But it's all we can have early on
9 in the process.
10 Here now we've drilled wells in ore. They
11 are premining wells; and therefore, it provides the
12 reasonable information for what we should restore back
13 to because going below what was there prior to mining,
14 you would have to actually, you know, go against Mother
15 Nature. It would be a difficult thing to do. So that's
16 the first two answers, I think. The first one was, you
17 know, increased in the numbers gives you better
18 statistics no matter what. The second is that baseline
19 wells located in the ore reflect what is in the ore.
20 It's the only place we're going to mine and it's the
21 only place that we're going to restore.
22 I think the third question is, well, wait
23 a minute, how about using it to calculate values out
24 here in the monitor well ring? And there I don't
25 disagree with you and I don't think, you know, if -- the

1 numbers were run according to the rules, and the rules
2 and the permit specify how it's done. But if -- if --
3 we just don't see very high uranium values in monitor
4 wells during operations. And it wouldn't be material or
5 I guess even matter to the company is as a result of
6 this proceeding, if you chose that we used instead of
7 the high of the two, the high only in the monitor well
8 ring for the purposes of monitoring for excursions.
9 But for the purposes of a restoration
10 table in the area that we're going to restore, gosh, if
11 it was a perfect world in the view of the company, the
12 point of view of the company, we would have all of our
13 well field patterns in place and the mine built before
14 we start mining. But, of course, that's just an
15 impossibility. Did that answer your question?
16 Q. Yes, yes. And as answers often do, they prompt
17 other questions, so I have another one. And you're
18 welcome to sit down again.
19 You talked about the rules. Is there a
20 rule that says that prior to conducting mining
21 operations a mining company needs to go around to the
22 wells, the water wells, of the surrounding community and
23 take background information there first?
24 A. I have two -- you're going to get in trouble
25 with me because I always have two answers for every

1 question.
2 Q. That's okay.
3 A. The first answer is I am not sure whether
4 there's a rule. I do not know of a rule.
5 Q. Okay.
6 A. The second question is as a matter of company
7 policy, as a matter of our Texas Department of Health
8 license, as a matter of our agreement with Kleberg
9 County, we will sample all water wells within one
10 quarter mile of any production area before mining starts
11 and routinely. I know as a matter of policy, and my
12 recollection is we probably -- I'd have to go to the
13 Kleberg County agreement in terms of timing. But we
14 would sample each one of those wells quarterly as a
15 matter of course, the source of the Garcia data.
16 Q. Because I notice that in Protestant's Exhibit
17 No. 12, this is a letter from TCEQ to Mr. Garcia who
18 lives at 424 Garcia Hill, it says that "the TCEQ
19 recently collected water samples from the concrete
20 storage tank and the kitchen faucet in your house."
21 It's not my task to grade the
22 reasonableness of rules or activities of TCEQ or anyone
23 else for that matter. But with respect to concerns by
24 the public about the effect of mining on their water
25 supply, it would seem to me that the earliest -- or

1 among the earliest of the places from which baseline
2 data would be taken would be places like this so that if
3 a complaint were raised later on, there would be some
4 baseline data against which the company would be able to
5 respond.
6 A. Your Honor, how far above 100 percent can I
7 agree with you? Yes, it is true. And that's exactly
8 what we do. And in the case of the Garcia well, for
9 example -- and quite frankly, one of the reasons why I'm
10 just very confused over the controversy is that we began
11 water sampling the Garcia well before the monitor well
12 ring was even drilled for PAA3.
13 And those -- the uranium values that have
14 been recorded throughout all of these records right now
15 and by EPA and TCEQ and the warnings and such are
16 identical to the uranium values that we have been
17 monitoring over the past nine years, more or less
18 identical. There's variability, but it's very close.
19 And were there before mining even started.
20 Q. So that type of baseline data was being
21 collected even before the settlement agreement was
22 entered into with Kleberg County?
23 A. Yes, Your Honor. We have been collecting water
24 quality samples from our neighbors essentially since the
25 beginning. Now, PAA3, of course, in the initial

1 production areas in the south, at that point PAA3 didn't
2 exist back in the middle '80s and such. But as time
3 moved on and we expanded our operations, the first step
4 was to obtain water samples from surrounding areas.
5 Q. So when you say since the beginning, did you
6 take water samples from drinking water wells and taps
7 and things before you began any of this mining
8 operation?
9 A. Well, not everywhere, but generally about a
10 quarter mile from our -- generally about a quarter of a
11 mile from the existing permit area boundary at the time.
12 Q. It seems to me that the concerns expressed by
13 members of the community have been about a second issue,
14 and that issue is the effect of the cessation of
15 operations, both monitoring or extraction during periods
16 of economic downturns. And my understanding of their
17 position is that if this were to continue, then it might
18 have some future adverse effect or more current adverse
19 effect on the wells themselves; that is, the drinking
20 water wells themselves. But it's my understanding of
21 your testimony then that that hasn't occurred. That is,
22 the monitoring didn't cease and the bleed didn't cease?
23 A. Monitoring has not ceased. Monitoring
24 according to TCEQ rules has been conducted quarterly
25 during the restoration mode. The bleed during this

1 period of time that was brought to my attention
2 yesterday, I think it was yesterday, was converted from
3 more of a continuous slow bleed to a batch bleed to
4 accommodate the short -- the shortness of personnel.
5 But there has been no -- to my knowledge,
6 and I conferred with Mr. VanHorn who is here today about
7 this matter, within the past 24 hours there has been no
8 cessation of bleed for any prolonged period of time at
9 the Kingsville Dome site.
10 Q. And then finally, my understanding from the
11 argument that I've heard over the last few days, part of
12 the concern of the community has to do with the accuracy
13 of the data that has been obtained from the mines,
14 concerns about whether or not the sampling was done at
15 proper levels or whether or not or not the wells were
16 put in and the proper angles.
17 And for that kind of information, all of
18 that is held by and generated by URI and its vendors, am
19 I correct on that one?
20 A. That was the evidence that was presented by
21 Mr. Santos yesterday and maybe somebody else. But I
22 would add to that a bit; and that is, we have a
23 requirement in our permit, which we comply with, and
24 which the state takes advantage of to allow samples to
25 be split.

1 Q. All right.
2 A. During any type of -- well, any type of routine
3 and nonroutine, but certainly if we are baseline
4 sampling in a new production area, the state will come
5 out, and I think because of budgetary constraints, they
6 won't duplicate our sampling because this sampling
7 effort, as you can imagine, it's a huge effort and cost
8 on tens and thousands of dollars. But they will take a
9 number of samples. In addition, during any restoration
10 activity that is for the purpose of demonstrating final
11 stability, etcetera, they will come and split samples.
12 In addition, during surprise inspections,
13 it's not unusual at all for an inspector to say, I want
14 to sample those four monitor wells and take spot checks.
15 So in that respect, we're tested here and there. Now,
16 the day in, the day out, the bulk of the data that is
17 taken, yes, it is taken by URI and it is subject to
18 inspection. What URI has is we have -- and I have them
19 here. In fact, if anybody is ever curious to leaf
20 through them, we have over 100 procedures on everything
21 that we do, sampling being one of them. And the samples
22 are taken according to procedure.
23 Mr. Garcia mentioned in his testimony,
24 well, the sample was spilled out. Well, if you read
25 through our procedure, that's exactly what the sampler

1 is supposed to do. The sampler is supposed to spill out
2 the sample until he gets continuous conductivity so he
3 can assure that it's formation water and not maybe
4 possibly rainwater or some other contamination that's
5 fallen in the wellbore. He wants to assure that he's
6 getting all of the water out of the wellbore and getting
7 a constant sample that represents the formation. And
8 that's just one piece.
9 And all of this is done as a matter of
10 protocol and it's subject to inspection. And it is.
11 Other than that, you know, I think we're real honest,
12 but it is, it's how it's done. And I can't think of any
13 other way that it could be done with the level of
14 information. Sampling our monitor well ring, especially
15 during the operations, is a full-time job.
16 Q. Okay. I have another question, and that has to
17 do with the attenuation testimony that you gave.
18 There's been a lot of information that I think has been
19 very clear with respect to the chemical properties of
20 uranium and its behavior under oxidized and non-oxidized
21 conditions. However, there are other radioactive
22 elements that are being extracted, radium, and today for
23 the first time I read about extraction of thorium. Can
24 you tell us, one, in what amounts relative to something
25 those are being extracted. And two, what their

1 attenuation factors are?
2 A. Yes. And, again, for background reading -- and
3 I won't recite it today because everyone wants to go
4 home. But for background reading, I would refer you to
5 the piece that was put together in my direct prefiled
6 testimony in the appendix where I presented information
7 on radionuclide concentrations in groundwater. I showed
8 uranium as you just mentioned. I showed radium. I
9 showed radon. And to the extent that we have the
10 information, I showed gross alpha.
11 They all behave slightly differently
12 because of different reasons. Uranium, while it is a
13 radionuclide, it is also -- it's measured chemically in
14 the water and it responds chemically through oxidation.
15 Uranium is highly soluble in the higher valence states.
16 It becomes lower soluble in the lower valence states.
17 And that's how the uranium ore bodies got there.
18 The next daughter of uranium -- and by
19 daughter I mean as a radioactive substance, as a
20 radionuclide, which essentially some people call it an
21 isotope. It's essentially an element that is
22 continuously breaking down spontaneously into different
23 elements. The first daughter or the first product is
24 radium 226. So therefore, wherever there is uranium
25 more or less, unless it's very fresh. Our product that

1 we ship off and sell to the utilities is so fresh that
2 there's very, very little radium in it. The uranium
3 breaks down somewhere between four and a half -- one to
4 four and a half billion years, depending on the isotope
5 that you're measuring. So it's pretty slow.
6 But in the ground, in the geologic
7 formation, there is radium. It's not an equilibrium at
8 Kingsville Dome, but it is there. As Mr. Russell
9 testified, it is radium that we measure to determine if
10 the uranium is present because the radium is truly the
11 more radioactive substance, the uranium is not. The
12 uranium is more of a chemical issue; even toxicity it's
13 more of a chemical issue.
14 Radium in the groundwater is also not
15 mobile at all. It's not so much because of oxidation,
16 it's because radium is highly reactive with calcium in
17 the rock matrix. And if you go and again look at the --
18 and radium is also present in uranium ore naturally. If
19 you look at the types of informations presented in my
20 prefile, one will see -- and at Kingsville at our
21 Vasquez project where I've got the newest data and I'm
22 looking at it very hard because of these issues that
23 we're dealing with, that in the ore you have very high
24 concentrations of radium. And then as you move away
25 from the ore and go to the monitor ring, it all

1 disappears naturally. Why? Because it's not highly
2 mobile.
3 The other reason radium is not that highly
4 mobile is that to some extent, radium has a much faster
5 half-life than uranium. It decays radioactively much,
6 much faster. And because the water is moving so
7 exceedingly slow, by the time the water gets anywhere,
8 it's disintegrated and it's gone. So that's reason
9 number two.
10 Now we get to other radioactive elements
11 that truly are what are reflected in gross alpha and
12 gross beta. These are the decay products of radium 226
13 that start with the gas radon. And we've all read about
14 radon in the newspapers. Radon is essentially a noble
15 gas. It's an element. And it has a half-life of about
16 three and a half days. So again, putting it into
17 perspective of the rate of groundwater management that
18 we talked about here a little bit ago, radon moves --
19 water moves on the rate of 30 feet per year, and radon
20 is half gone in three and a half days, and the next half
21 is gone in another three and a half days. So by the
22 time that water has moved very far, the radon gas is
23 gone.
24 And I'll keep going in this, but I'm going
25 to stop. And that is, now radon goes to stuff and that

1 stuff goes to stuff. And with each progressive
2 iteration of radioactive decay, the half-life is faster
3 and faster and faster, so it doesn't matter. It just
4 can't go anywhere because it essentially is gone before
5 the water even has an opportunity to migrate along its
6 normal flow. That's why gross alpha and gross beta
7 measurements are generally a very good indication that
8 the source term, the source of the contamination; i.e.,
9 the rock with uranium in it, must be very close by. And
10 that's why geologists use them to find uranium.
11 THE COURT: Okay. Those are all my
12 questions. Thank you.
13 MR. HILL: May I take just a five-minute
14 break?
15 THE COURT: Let's go off the record for
16 just a second.
17 (A recess was taken.)
18 REDIRECT EXAMINATION
19 BY MR. HILL:
20 Q. Mr. Pelizza, let me refer you to the record
21 copy of your prefiled direct testimony and ask you --
22 for the benefit of all involved here, is URI 41 -- and
23 ask you to turn to Attachment J, which says -- I believe
24 is headed Mines Agreement. And then two or three pages
25 into that is miscollated the Kleberg County Settlement

1 Agreement. And I'll ask you to indicate briefly -- I
2 don't want you to reproduce what's there or to read it,
3 but indicate the kinds of steps that URI has indicated
4 it has committed itself to take to ensure even better
5 monitoring and restoration than would otherwise be
6 required by TCEQ rules.
7 A. Well, let me start off -- I'll start off with
8 the back and go the other way. There are a number of
9 provisions that are considered other provisions in this
10 agreement.
11 Q. Excuse me. As you say these things, if you can
12 indicate the section --
13 A. Yes, I'm in the Kleberg County agreement under
14 Section 11.
15 Q. Go ahead, please.
16 A. And I'm saying this because it responds to some
17 of the issues that Judge Keeper just mentioned. 11.6
18 requires that URI will sample and test all water wells
19 within a one quarter mile of any EPA monitor or well
20 ring that surround a production well field semiannually
21 and analyze for the parameters listed in the table
22 entitled Water Quality Use Limits in Section 1.7, which
23 is also in this agreement. That's a lengthy list of
24 parameters.
25 There's a requirement that if URI's mining

1 activity impacts water quality in wells within one
2 quarter mile of any production area monitor well ring
3 that's around the production well field, URI will offer
4 at URI's expense a saltwater tap into the South Texas
5 water supply authority pipeline to replace the impacted
6 well. And those are two provisions that I thought were
7 directly in line with what Judge Keeper had asked me.
8 Q. Are there additional obligations in terms of
9 restoration, a more stringent restoration requirements
10 than are imposed by TCEQ rules?
11 A. Yes.
12 Q. Would you state those, please?
13 A. Yes. In Section 11 and also, I believe,
14 Section 1.7, if my memory serves me right, and it does,
15 just paraphrasing, there are limits that require to what
16 extent we will continue to restore the aquifer in terms
17 of core volumes. There are provisions that essentially
18 will make the -- that are more stringent than TCEQ
19 restoration requirements on a well-by-well basis that
20 we've agreed to.
21 Q. Excuse me. I'm going to interrupt you and take
22 this copy and give you a file copy of mine and return
23 this copy to the Judge.
24 A. In both 1.7 and 11.1, the gist of those
25 sections is that rather than -- well, back up a little

1 bit. The TCEQ requirements for groundwater restoration
2 call for averaging of the water in the baseline wells
3 and other selected wells to be applied to the permit and
4 the rules. In addition, in the Kleberg County
5 agreement, what URI has agreed to do on a well-by-well
6 basis that if a well met drinking water standards before
7 mining was to -- mining occurred, that that well would
8 be restored to drinking water standards after mining.
9 And that would be done on a well-by-well analysis rather
10 than a well field average analysis.
11 Other provisions that are in this
12 agreement that I think that are noteworthy is that I've
13 heard in this hearing as issues is the company has
14 agreed to do some additional monitoring in the area of
15 production area 3 by placing continuous water level
16 recorders at select locations. This would go beyond our
17 general practice of taking water levels with hand-held
18 instruments and developing a permanent record at these
19 locations. By doing this, using the theory that I
20 discussed in the past and how water levels are important
21 as an early warning of fluid migration, not only would
22 we have a sample once a week or once a month or once a
23 quarter, but we would have a continual chart from
24 certain wells that showed that information.
25 We agreed, and I think it's a centerpiece

1 for -- that demonstrates URI's strong, strong commitment
2 to compliance, to transparency, and to wanting to work
3 with the community, to fund a community review board.
4 This board is and has been appointed by the Kleberg
5 County Commissioners Court. It's in its -- I'd say it's
6 maybe a little further along than its formulative
7 stages, but it is intended to allow the county to
8 essentially have a direct view into our operations to
9 see what we're doing, see what our compliance looks
10 like.
11 Q. Does it create a reporting channel for URI for
12 any event such as spills, plans to seek new or different
13 permits and the like?
14 A. Yes. I would draw attention to, I believe, the
15 structure of the community review board. I think it's
16 in Attachment 6. It is. And what this has is a
17 four-page document that essentially lists where we agree
18 the community -- what we agree the community review
19 board would do.
20 And just in a nutshell, it is a -- I
21 suppose the way it's evolved is it's a five-person board
22 of individuals who are named by the county with URI as a
23 participant, but a non-voting participant, and also
24 maybe a participant from TCEQ, depending on what they
25 elect to do. URI will essentially pay $10,000 a year

1 for the administrative costs for this. We pay another
2 $10,000 that the county can use as they wish, but
3 generally they will be used -- my understanding is it's
4 going to be used to pay the expert consultant that the
5 board is going to have to provide oversight over our
6 project.
7 There's one other item in the Kleberg
8 County agreement, and this is essentially a little bit
9 redundant, but I think it was -- it's worth mentioning.
10 And that is Section 1.1 calls for full financial
11 security for all new mining. And it's a very short
12 statement. It basically says that URI will have full
13 baunch financial security for all new mining that is
14 including production area 1, 2, 3, and is not subject to
15 force majeure and is not subject to draw on. And I
16 think it probably satisfies some of the financial
17 security concerns that I've heard at this hearing.
18 Q. Does it run beyond the financial security
19 concerns for plugging and abandonment, which are
20 presented by the PAA application and the WDW application
21 in this proceeding?
22 A. Say again. I'm not sure I understood.
23 Q. Does it run -- does it cover restoration
24 bonding as well as plugging and abandonment bonding?
25 A. I don't think -- it's silent to that point, I

1 believe.
2 Q. Okay. Is the requirement applicable to your --
3 in your understanding, are the requirements of the State
4 Department of Health Services and the Texas Commission
5 on Environmental Quality as to cash bonding by hard --
6 with hard bonds applicable to all future mining for URI?
7 A. Well, as a matter of -- and there's another
8 agreement that's in my testimony, which is the mines
9 agreement which specifies the regulatory or the
10 regulation by which we will have to post bonding.
11 But from a practical standpoint to the
12 mining industry -- and I'm saying that broadly
13 intentionally -- there is no bonding in terms of a
14 traveler's insurance available anymore. The only type
15 of bonding that our company has learned is available to
16 us is -- and then this includes what's acceptable to
17 regulatory agencies, what's available, is effectively a
18 letter of credit where the letter of credit is
19 collateralized at about 100 percent, give or take no
20 percent. And essentially, I guess what I'm saying is
21 bonding for anything that we can see in our future is
22 cash bonding, and we treat cash bonding as any other
23 capital investment.
24 Q. There was some discussion of bleed and batch
25 bleed versus continuous bleed. Let me ask for a

1 clarification. Is it bleed which maintains hydraulic or
2 hydrodynamic control or is it bleed -- or is it in fact
3 a result of bleed, which is a sink?
4 A. Yes, it's a result of bleed, which is a sink
5 that causes it. It essentially reverses the gradient,
6 which is a sink.
7 Q. So whether bleed be continuous or batch, if it
8 is sufficient to maintain the sink, which is the lower
9 water pressure to the -- on the inside of the monitor
10 well ring, then whether or not bleed occurs on a given
11 day, so long as the sink remains, control is maintained?
12 A. That is correct.
13 Q. There has been some discussion of natural
14 attenuation. Has URI participated in the preparation of
15 a study by the U.S. Nuclear Regulatory Commission or for
16 them of a study by Battelle Pacific Northwest
17 Laboratories?
18 A. We have.
19 Q. Is it -- let me hand you an item now and ask
20 you to read the title of it.
21 A. Yes. This study is called Act For Restoration
22 At In Situ Leach Uranium Mines, Evidence For Natural
23 Restoration Processes, Battelle. It's by Pacific
24 Northwest Laboratories, Battelle Memorial Institute.
25 Q. And is there a -- on the acknowledgment page,

1 is there a specific reference to URI and its
2 personnel --
3 A. Yes.
4 Q. -- as having contributed to the study by --
5 specifically in relationship to a South Texas facility,
6 the Benavides mine, which is now closed?
7 A. Yes.
8 MR. HILL: Your Honor, I mention this by
9 way of reference. I don't see the need to burden the
10 record with another 300 or 200 pages, but I do believe
11 the company is entitled to recognition of the substance
12 of this study, and this expert has been familiar with it
13 and we have so noted it.
14 Q. (By Mr. Hill) Are you aware, Mr. Pelizza, of
15 some express or implicit community concern that one or
16 more water wells on the Garcia property might have
17 seemed to be -- been uncontaminated and have clean water
18 prior to URI's mining in the area and have demonstrated
19 contaminated water more recently?
20 A. I certainly am.
21 Q. What is your understanding of that matter with
22 respect specifically to the exhibits that have been
23 offered in this case, Protestant's 8, 10, 12, DeLaPaz
24 Exhibit No. 2, the EPA letter?
25 A. Well, my understanding is that uranium -- and

1 I'll say uranium, but also gross alpha radiation, in the
2 Garcia well measures about .2 milligrams per litre.
3 These show slightly less. But as a benchmark, let's
4 just say .2, which would be 200 micrograms per
5 milliliter. The EPA drinking water standard is 30.
6 The EPA drinking water standard for
7 uranium was promulgated about a year and a half ago,
8 maybe two years ago. And it has brought a lot of
9 attention to uranium in groundwater. And I think
10 that -- I think, I don't have direct knowledge, but I
11 think that probably what caused the notification to the
12 Garcia Hill people were the fact that the new standard
13 was in existence. And with the data that was out in the
14 community -- and URI has been sampling these wells for a
15 long, long time known, EPA made a report to the Garcia
16 Hill with their opinion of the water quality based on
17 the new standard that was promulgated.
18 That well -- you know, we sample a
19 combined two wells at the Garcia Hill community. And I
20 think that we have a designation 24/25. We sample wells
21 out of a common tank because my understanding on how
22 that's operated is those wells are pumped individually
23 and the water is commingled into a common tank before it
24 goes to a tap where it can be sampled. And I think
25 that's the understanding that we noted on this map that

1 will go into the record later on.
2 Historically -- and first of all, I might
3 add that I had -- I learned from Mr. Garcia's testimony
4 the other day that there are up to five Garcia wells in
5 the general area historically. So there's some amount
6 of confusion which wells these samples would apply to.
7 Q. Which these are you referring to?
8 A. These are Exhibits 12 and Protestant's Exhibit
9 12, Protestant's Exhibit -- well, no. Protestant's
10 Exhibit 8 and Protestant's Exhibit 10 because the well
11 numbering or identification system does not correspond
12 directly to the 24/25 designation that we use.
13 Nevertheless, I would note that these
14 wells show uranium values that are slightly over
15 drinking water standards, but not tremendously over
16 drinking water, not at 200. And even if we presumed
17 those were the two wells or this was one well and maybe
18 this represents --
19 Q. Excuse me. The "this" you're speaking of will
20 not appear.
21 A. The Exhibit 8 represented one of the wells and
22 Exhibit 10 represented three wells out of five. And
23 they were the same wells. I would note that in 1989 --
24 and this was discussed yesterday and these are the
25 affidavits that exist. URI plugged one of the Garcia

1 wells and replaced it, and that is the well that we
2 sample today.
3 Q. Which well is the one? The one you plugged or
4 the one you replaced?
5 A. Well, no. Obviously we don't replace the well
6 that we plug. We sample the well that we replace. So
7 what we sampled and have sampled since about 1996 is the
8 tank from Garcia Hill, which is fed from two water
9 wells. One is a new water well that we drilled in 1989
10 subsequent to the samples that were taken in
11 Protestant's Exhibit 10 and Protestant's Exhibit 8.
12 Q. And is that subsequent to the plugging of one
13 or more of those --
14 A. I just can't -- there's no way that -- one of
15 these wells may have been plugged, I just don't know.
16 What we do know is that we're sampling water, at least
17 50 percent of the water, from a well that did not exist
18 at the time these samples were taken.
19 Q. The samples referred to in Protestant's --
20 A. 9 and 10 -- 8 and 10. And we have affidavits,
21 which was reviewed by Mr. Garcia in his testimony and
22 are right here, that document when that plugging and
23 when that well replacement occurred in September of
24 1989. Our first sample from the Garcia well was taken
25 in about 1996. And that was in anticipation of the

1 start-up of production area No. 3. And we've sampled it
2 more or less quarterly through that period of time and
3 kept a tabulation of that data, supplied that data to
4 TCEQ. And I suspect that that's what precipitated many
5 of the EPA notifications.
6 And that -- the uranium and gross alpha
7 values in those wells have remained extremely constant
8 from the beginning of time when we started sampling it,
9 right at about .2 PPM uranium or 200 micrograms per
10 liter uranium, whichever units you choose to use. These
11 are very similar to the -- well, in looking at other
12 parameters that exist in this water, we measure
13 conductivity, we measure several other -- we measure
14 chloride. And there you don't see much variance in the
15 concentration. Certainly you don't see anything in the
16 concentrations that would reflect leach solution.
17 Q. Let me ask you: Can leach solution function as
18 a fingerprint to identify or to disqualify your mining
19 activity as a source of uranium that's found in a
20 sample?
21 A. Well, yes. And this is much like my discussion
22 of baseline. Baseline provides a fingerprint. Leach
23 solution provides a fingerprint. In the event the
24 fingerprint was leach solution, we would look at the
25 components of leach solution and we would see uranium,

1 we would see bicarbonate, we would see chloride, we
2 would see elevated conductivity. In the event we were
3 to sample baseline water in and around uranium mines,
4 uranium ore, we would also see a certain degree of
5 uranium, a certain degree of chloride conductivity,
6 etcetera. And that would be what we would use to
7 compare water in another location in terms of its
8 fingerprint and determine where it came from.
9 Q. When you take it to the bottom line, what does
10 the fingerprinting analysis or type of analysis you're
11 talking about tell you about the source of the uranium
12 in the Garcia wells or well?
13 A. Well, as I had shown in the baseline analysis
14 for -- and as you can go to the PAA tables -- if you
15 look at the naturally occurring concentrations of
16 uranium in that water, .34 I think we have in our
17 restoration table, .1 something without the well field 9
18 wells. If you look at the level of chloride baseline,
19 if you look at the level of conductivity, the water
20 quality in the Garcia well just mirrors the water
21 quality that's found naturally in baseline conditions in
22 the ore zone. And I have -- and my conclusion -- and I
23 also know that URI has geologic evidence that shows that
24 the uranium ore skirts essentially directly under the
25 Garcia water well. And I have that plotted on a map for

1 illustrated purposes if one would like to look.
2 But, you know, all of the evidence just
3 stacks up that when one looks at rate of -- no mining in
4 the area during the early samples, rate at which
5 groundwater and -- point fact one. Fact two: But
6 Mr. Pelizza, how about mining that occurred in
7 production area 1 and early mining in production area 2
8 at that period of time? But that was 12,000 feet away.
9 And at the rate that groundwater moves at 20 to 30 feet
10 per year, we're talking 400 years or something like
11 that, if it was even a mere possibility. And that's
12 with no controls. And of course, none of us have been
13 alive that long, so that theory is gone.
14 And you look at this various evidence, and
15 then the fact that the uranium, as this chart shows,
16 meanders right through the area that the Garcia well is.
17 The evidence is essentially conclusive that what we have
18 is we have naturally occurring uranium in water. This
19 is consistent with what EPA in their -- in their tables
20 that show the sources of uranium in drinking water. And
21 under normal circumstances, the source is an erosion
22 product from uranium and rock.
23 Q. Has URI offered to replace one or more of the
24 Garcia wells with wells cited so as to avoid the
25 naturally occurring uranium and other contaminants in

1 the groundwater?
2 A. There are two offers. Or historically there
3 have been two offers on the table. One is to hook the
4 Garcia community to the South Texas Water Supply
5 Pipeline. I understand they've done that themselves,
6 and I think it's a logical move.
7 Two, is water well replacement. We've
8 drilled the Garcias a water well once. I don't remember
9 the circumstances. I just don't remember. I suspect it
10 was a good neighbor sort of thing. We drilled a number
11 of water wells for landowners in and around or mine
12 site. That type of offer is still on the table.
13 If it were me with the geologic knowledge
14 that I have, what I would do is I would look very
15 carefully at my lands that I own, that I have surface
16 rights to -- and I happen to have done that -- and go
17 probably further to the west, get out into the oxidized
18 side. In other words, out away from the ore into the
19 oxidized side where you're a good distance from uranium,
20 and put a well right there or two wells right there.
21 I think that it would be -- there's room
22 to get it far enough away that if the community still
23 wanted to use outside water for peace of mind, there's
24 nothing wrong with that. But, you know, for irrigation
25 and livestock and that sort of thing, it could get

1 pricey to be running a water meter, and if a water meter
2 is used. And it may be that it would be desirable to
3 have a water well in addition to surface water.
4 Q. Did you prepare a short summary exhibit on the
5 subject of the Garcia water well?
6 A. I prepared some notes, but I guess -- I bet
7 after reviewing, I did a pretty good job of remembering
8 them.
9 THE COURT: Is this an exhibit?
10 MR. HILL: I have it marked as one, Your
11 Honor.
12 THE WITNESS: It's what I said.
13 MR. HILL: Your Honor, we anticipated
14 running out of time and thought that it might simplify
15 matters if a few points were summarized on exhibits.
16 And Mr. Pelizza has -- I have marked the Garcia well
17 water quality item as URI Exhibit No. 49.
18 Q. (By Mr. Hill) And Mr. Pelizza, do you wish to
19 adopt it as a portion of your testimony in this
20 proceeding?
21 A. Yes. That's what I just said.
22 THE COURT: Mr. Valdivia, have you had a
23 chance to look at URI No. 49?
24 MR. VALDIVIA: Yes, I have.
25 THE COURT: Have you any objection?

1 MR. VALDIVIA: Well, it does seem
2 cumulative, duplicative of what Mr. Pelizza has just
3 testified about, so I'm not really sure what the purpose
4 would be.
5 MR. HILL: Well, the purpose of the
6 exhibit was twofold. One, was to provide something that
7 could be conferred -- could be reviewed without having
8 to dig it out of the transcript. And second, in an
9 publication that we'd all get out of here more quickly
10 in case there weren't time to summarize it all. That's
11 it. If the exhibit is declined, we'll just take it home
12 with us. But I thought it might, frankly, simplify
13 everyone's work because sooner or later we're going to
14 have to mine this record.
15 MS. MANN: No pun intended.
16 MR. VALDIVIA: Well, just reading it, Your
17 Honor, it just seems to me it's not appropriate. If
18 anything, it would appear to be an indication that
19 Mr. Pelizza was reading from this song sheet, and I
20 think the record will reflect the very same items that
21 we got in writing here.
22 THE COURT: So you object to Exhibit 49?
23 MR. VALDIVIA: Yes.
24 MR. REDMOND: No objection.
25 MS. MANN: I would feel more comfortable

1 if it were -- we've all reviewed it. If it were deemed
2 something along the lines of notes that were reviewed
3 prior to testimony than an actual exhibit. I mean, I
4 know you're supposed to be able to look at such notes,
5 and we've looked at them.
6 MR. HILL: The record would show the
7 witness was not looking at these notes, I believe. I
8 just handed it to --
9 MS. MANN: Prior to --
10 MR. HILL: If you want to ask the
11 witness --
12 MS. MANN: No.
13 MR. HILL: I know how these notes were
14 generated, I know where they came from. And the more
15 you ask, the more he'll tell you.
16 MS. MANN: That's fine.
17 THE COURT: All right. So Mr. Hill?
18 MR. HILL: I've made the offer. If it's
19 deemed useful, the offer is there. There are
20 objections. I don't see what the cumulative problem is,
21 one sheet of paper that saves digging through 50 pages,
22 I think, is a saving.
23 THE COURT: I'll sustain Mr. Valdivia's
24 objection and we can move on.
25 Q. (By Mr. Hill) Mr. Pelizza, let me show you an

1 item marked URI Exhibit 50 and ask you if you'd like to
2 adopt -- if you recognize the document?
3 A. Yes. This is -- like the last document, this
4 is not -- these are actually items that I put down on
5 paper this morning. They are not items I'm reading
6 from, they're items that I read to the paper, if you
7 will.
8 Q. Do you wish to adopt this as a portion of your
9 testimony in this proceeding?
10 A. Yes.
11 Q. In your opinion, does -- are the statements
12 made in this document true?
13 A. They are my opinion, and I tell the truth, yes.
14 Q. Thank you.
15 MR. HILL: We'll offer URI Exhibit 50. If
16 it's declined, we'll elicit it line by line.
17 THE COURT: Mr. Valdivia?
18 MR. VALDIVIA: Well, I have unfortunately
19 an objection based on this really appears to me to be
20 arguments of Counsel, much of it, in a form that is
21 intended, I suppose, that looks something like prefiled
22 testimony. It's late in the day. And I guess my -- I'm
23 not feeling sharp enough to really comb over each and
24 every detail, but it does appear to me that the witness
25 has not testified on much of this. If he's offering it

1 as a written summary of what he would testify to, I
2 guess I would object to some of the material here
3 being -- appearing to be hearsay as well.
4 THE COURT: Mr. Redmond?
5 MR. REDMOND: I have no objection, but I
6 haven't completed reading it, so I would like to do that
7 real quickly.
8 THE COURT: Certainly. Go ahead.
9 MS. MANN: Along those lines, if we could
10 take a short break while we review this.
11 THE COURT: Let's take a short break.
12 (A recess was taken.)
13 MR. REDMOND: If the exhibit is offered to
14 show that this would be the testimony of Mr. Pelizza, I
15 have no objection.
16 THE COURT: Thank you. Ms. Mann?
17 MS. MANN: I don't have -- if this is a
18 summary of what he's about to say through continuation
19 of redirect, I quite frankly don't know how to respond
20 to that because I've never quite seen this before other
21 than actual prefiled testimony. But I suppose I don't
22 have an actual objection to if he will state this is
23 everything he would say and what Mr. Hill is referred to
24 as permissible rebuttal testimony. I'm sorry, that was
25 so long-winded. So no objection so long as it's solely

1 for -- to be included as part of his rebuttal testimony.
2 THE COURT: Mr. Valdivia, do you have
3 anything else that you'd like to add?
4 MR. VALDIVIA: I want to preface this by
5 saying that I feel like we're being held hostage here by
6 Mr. Hill at this late hour that if we don't get this --
7 if we don't get this document in, he's going to keep us
8 here until 8 o'clock or later.
9 THE COURT: And do you understand that's
10 not his purview, but mine?
11 MR. VALDIVIA: Yes, I understand that,
12 Your Honor. I'm just expressing my feelings. I would
13 also point out that much of this, as I said before,
14 appears to be arguments of Counsel. Some of it is
15 irrelevant. For example, for sentence six, "URI's focus
16 is centered on problem solving." You know, that's so
17 general and vague and not very helpful. There are other
18 examples. But again, the concern is if this is intended
19 to move things along and make the record more precise, I
20 don't think it achieves that.
21 THE COURT: You have the right to, I
22 suppose, close on your offer.
23 MR. HILL: Yes. First of all, it's not
24 argument of Counsel. Counsel would have written the
25 argument differently. Second, it's -- it was offered by

1 way of a possibility. I'm prepared to proceed to
2 cross -- to examine the witness to cover these items
3 which I believe are raised on rebuttal, and are entirely
4 permissible for consideration on rebuttal. There have
5 been a number of questions raised about the nature of,
6 for example, compliance, compliance history, how to
7 evaluate it, what it means. And URI is prepared to
8 address that.
9 On the other hand, in the interest of
10 expediting reaching where I intend to go, I offered to
11 put this out as an indication of an additional item, if
12 you will, a supplement to my client's testimony and my
13 witness's testimony. And I'm quite indifferent as
14 between the two. I can go there. I believe it's
15 entirely permissible. It will be -- I may stumble on to
16 some better statement of it when we get it elicited by
17 way of direct examination.
18 THE COURT: Well, I am not entirely
19 dispassionate on the issue. I'd like to ask the witness
20 a question or two, or make an observation or two. As to
21 item No. 1 on what has been marked as URI Exhibit No.
22 50, I believe there has been testimony about the period
23 of time that URI has been in operations in Texas, and I
24 believe there has been testimony about the market
25 conditions that URI has encountered. Do you agree?

1 THE WITNESS: Yes.
2 THE COURT: All right. And with respect
3 to No. 2, I think that this witness has testified that
4 there's been no abandonment of the Kingsville Dome mine
5 or any other operation. And the rest of the statements
6 that are contained in No. 2 have actually been the
7 subject of testimony. Do you concur?
8 THE WITNESS: Yes.
9 THE COURT: All right. And with respect
10 to No. 3, I believe this witness has talked about URI's
11 history of its environmental protection already and its
12 efforts to protect not only the interests of the
13 environment, but of the community and of the company.
14 THE WITNESS: I'll take your word for it.
15 THE COURT: All right. And with respect
16 to No. 4, as far as I know, that's a new one. I don't
17 remember any testimony with respect to its disciplinary
18 history in Texas or anywhere else. With respect to No.
19 5, I concur with Mr. Valdivia about it being more sort
20 of an argument of Counsel, but I believe I also heard
21 from this witness about URI's strong commitment to
22 compliance. With respect to No. 6, moving to the second
23 statement, "experienced, trained professionals are on
24 site and responsible for administration of URI's
25 environmental protection safety and training programs,"

1 I think we've heard from many of those witnesses over
2 the last couple of days. With respect to No. 7, URI has
3 been subjected to hundreds of inspections by multiple
4 state and federal agencies. I think this witness has
5 testified to that. He may not have used the word
6 hundreds, but perhaps dozens, but it doesn't take many
7 multiples of that to get to hundreds.
8 With respect to No. 8, one of the many
9 ways that URI has addressed community concerns is
10 through the funding of a community review board. I
11 think we've heard about that in detail, as well as
12 having a copy of the settlement agreement. No. 9, URI's
13 preferred response to violations is to take immediate
14 corrective action. This witness testified to that just
15 a few minutes ago. And with respect to No. 10, URI's
16 compliance history do not rise to a level individually
17 or cumulatively which warrant denying future mining, I
18 think is the essence of legal argument.
19 So I think of all of these things, No. 4
20 remains an issue to be the subject of testimony. And I
21 will sustain the objection with respect to everything
22 but No. 4. And if you wish to elicit testimony with
23 respect to item No. 4, I will listen.
24 MR. HILL: Your Honor, I would also
25 propose to elicit testimony as to the fact of

1 non-abandonment, and I'm prepared to proceed.
2 THE COURT: Well, I think that we've
3 heard -- I am -- I'll be happy to be proved wrong, but I
4 think we've heard that URI has not abandoned its mining
5 operations in the past. Now, I'm not sure whether or
6 not there's been any testimony about its intention not
7 to abandon what mining operations in the future, but I
8 think that's there, but you may proceed.
9 Q. (By Mr. Hill) Mr. Pelizza, has URI sought to
10 abandon its operations at Kingsville Dome, whether they
11 be mining or restoration?
12 A. No, we haven't.
13 Q. And when you say that, can you point to some
14 facts which give rise to your opinion on that point in
15 your answer?
16 A. URI has always, and the management of URI, has
17 always been the entity maintaining our presence at the
18 Kingsville Dome site. As the record shows, there's been
19 very difficult economic conditions, but our management
20 through -- and our employees through perseverance have
21 maintained the site and maintained our commitment to
22 all -- maintain -- has maintained all of our commitments
23 to the state agencies and to the local governments in
24 terms of our environmental requirements.
25 Q. Did URI cut personnel and other URI personnel

1 take cuts in pay in order to make continuance on the
2 site possible during difficult times?
3 A. Yes. URI had, especially several years ago at
4 the worst times of the uranium market, without any
5 sources of revenue, URI was forced to cut personnel
6 drastically to the point where only the core individuals
7 remained on site and take other drastic corporate
8 actions. And as a part of that, there are a good number
9 of employees at URI who chose to work without pay.
10 Q. During this time, were you one of them?
11 A. I was.
12 Q. What is URI's history vis-a-vis fines,
13 penalties, orders, judgments or referrals for judicial
14 enforcement, either at a state or federal level in Texas
15 or elsewhere?
16 A. URI has had a number of alleged NOV's over the
17 years. We have a long compliance history. But there
18 has been nothing that has raised to the level of -- and
19 I will just call all of these in general terms --
20 escalation where there has been fines or referrals or
21 suits brought on by the state or federal agencies.
22 Q. Has URI's -- URI -- you have heard in this
23 proceeding a number of references to URI's taking a
24 length of time in restoration or to commence or complete
25 restoration which dissatisfied a number of spokesmen.

1 Has URI's pace in pursuing mining and restoration
2 followed a rational course dictated by the geology of
3 the ore in the ground and the marketplace into which it
4 was to be produced?
5 A. Uranium production, I think I may have
6 testified --
7 MR. VALDIVIA: Your Honor, I'm going to
8 object. I believe this is redirect, and it's pretty far
9 outside the scope of what I remember cross was about.
10 THE COURT: Can you refresh our memory?
11 MR. HILL: Yes, Your Honor. There was
12 provision in the order for this case for URI to provide
13 testimony as to matters which were raised or presented
14 at time of trial which were not necessarily raised in
15 particular portions of prefiled testimony. One of the
16 recurrent themes we have heard here, most recently by
17 Mr. Cumberland, was that URI had taken a long time in
18 restoration.
19 URI's contention in regard to that is --
20 well, we'll let that speak for itself. Mr. Pelizza is
21 prepared to testify, and I have asked him to testify, as
22 to the timeliness of the course of restoration and
23 mining in view of the constraints which a rational user
24 and developer of resources in the State of Texas must
25 face. And this is germane and relevant here because one

1 of the public policies of the Texas -- expressed in the
2 Texas Water Code is rational development of natural
3 resources and the continued existence of existing
4 industries. And URI has mined under the twin
5 constraints of the ores where you find it and the ore is
6 only worth what the market will pay for it. That has
7 dictated much of the pace of mining and has driven the
8 timing of the mine plans which have been at issue. Mine
9 plans have been mentioned a number of times in this
10 session of the hearing. Mine plans are -- the timing of
11 mine plans have been an issue of concern, and URI's
12 contention is that its mine plans have been rational and
13 reasonable; and therefore, it is not to be faulted for
14 the pace of restoration which it has followed.
15 Now, the point of asking this witness is
16 these issues have all boiled up again in the statements
17 of public concern. And we believe URI is entitled to
18 respond to those in this fashion.
19 THE COURT: Mr. Valdivia?
20 MR. VALDIVIA: I would agree. And I
21 submit that URI has had that opportunity. This is
22 redirect. I did not raise this issue of restoration in
23 cross. It's late in the day. And I think it's time --
24 my objection really goes to the point of let's stick to
25 what was raised on cross. To me, that's proper at this

1 point.
2 THE COURT: And with respect to this issue
3 having already been addressed, by whom was it already
4 addressed?
5 MR. VALDIVIA: I believe it's been
6 addressed in Mr. Pelizza's prefiled. We talked about
7 the revised mine plan. Mr. Cumberland testified some
8 time back about his concerns. And there have been
9 opportunities for Mr. Hill to bring that in, bring this
10 matter in since then. And I just think that we're
11 flogging a dead horse at this point.
12 THE COURT: Well --
13 MR. REDMOND: I don't have an objection.
14 MS. MANN: Can I ask a question?
15 THE COURT: Yes.
16 MS. MANN: For a procedural, when is the
17 appropriate -- if rebuttal testimony is appropriate to
18 come in, is it appropriate to come in after adoption of
19 the prefiled rebuttal as part of the -- as part of the
20 case before we began cross and then before we began
21 redirect and the circle goes? And I don't know how to
22 make that into an objection or anything formal.
23 THE COURT: What you're raising is a
24 procedural concern.
25 MS. MANN: Yes.

1 THE COURT: At this point in the day, I'm
2 not sure where it's most appropriate. I'll overrule
3 Mr. Valdivia's objection, but I would ask that you try
4 to shorten things as much as possible.
5 MR. HILL: I will, Your Honor.
6 THE COURT: I would appreciate it.
7 Q. (By Mr. Hill) Mr. Pelizza, let me step to
8 another matter, and that is the issue of spills.
9 A. Yes, sir.
10 Q. Are you aware of expressions of community
11 concerns about spills at the surface of your -- of
12 URI's -- on URI's properties?
13 A. Yes, I am.
14 Q. What is the nature of spills in relationship to
15 violations, if you will, for an ISL miner?
16 A. Spills are not considered a violation for an
17 ISL miner. In fact, if spills are contemplated as -- I
18 won't say a normal, but it's not an unexpected event or
19 an unanticipated event that is part in parcel of the in
20 situ mining process. The Texas Department of Health has
21 in their regulations, their part 40 regulations, a
22 series of criteria for notification, etcetera, for
23 spills. So to the extent the Texas Department of Health
24 is actually codified regulations on dealing with spills
25 is good evidence that it's expected. So having the

1 issue flagged as it has been in this case is a major
2 compliance issue, in my view, is off base.
3 I would also add that the Texas Department
4 of Health in the environmental assessment that was
5 conducted at -- for this site has evaluated the
6 consequence of spills. The result of that evaluation
7 shows that it's a relatively high probability, low risk
8 event. The nature of spills is that water spills on the
9 ground. The significance would be, of course, what
10 level of uranium is in that water. In the event such as
11 the one example that was used in -- on testimony in this
12 case, water was spilled with one part per million
13 uranium. That means that essentially water without
14 uranium was spilled on the ground.
15 The company is required to report all
16 spills, and we do. Therefore, there is a significant
17 paper trail that corresponds to spill history, but
18 this paper -- just because this paper trail doesn't --
19 this paper trail exists shouldn't be construed that it
20 means repeated violation by spills. The company reports
21 every spill, records where the spill happened, and is
22 obliged through financial surety mechanisms to provide
23 surety to clean up any soils that may become
24 contaminated by those spills, and the contamination must
25 be documented as clean before the site is released for

1 unrestricted use.
2 Q. When this -- does URI plan to rely or apply for
3 renewal of its radioactive materials license?
4 A. URI's radioactive materials license is in
5 timely renewal, which means we have applied, and the
6 agency is essentially reviewing the application.
7 Q. In the course of that review, will the agency
8 which issues the radioactive materials license,
9 reconsider yet again the environmental impact of the
10 proposed facility?
11 A. The agency is required to do an environmental
12 assessment of any licensing action. In addition, URI
13 has submitted an environmental assessment in support of
14 that application.
15 Q. Okay. Mr. Pelizza, there was some discussion
16 had about the application of -- or the lack of your
17 professional geoscientist seal on the application for
18 this -- for PAA3 on the application for renewal of
19 WDW-247 and 248. Do you recall that?
20 A. I recall a lot of talk about that subject, yes.
21 Q. All right. Are you prepared to seal the
22 application, those applications?
23 A. Yes. I have reviewed the requirements for
24 geoscientists and the applications and feel comfortable
25 in making that seal.

1 Q. Are those documents qualified to receive your
2 seal as a professional geoscientist?
3 A. Yes, in my opinion they are.
4 Q. Are you willing to seal them at any time the
5 commission may wish to have your seal upon those
6 documents and to be bound fully as though they had been
7 sealed already?
8 A. In the event you would like them sealed, I
9 will.
10 Q. There has been some discussion of a possible --
11 a suggestion that there should be a ring of monitor
12 wells established to surround each of the two ore
13 fairways identified in PAA3. Does URI have any
14 apprehension as to how such a double ring of monitor
15 wells would function?
16 A. A double ring of monitor wells would present
17 risks that should be evaluated. As I had mentioned,
18 there's two mineralized fairways at the Kingsville Dome
19 site. These fairways are in part delineated. I think
20 I've also testified that it's almost 100 percent
21 guaranteed that they will not be straight and that the
22 uranium fronts meander to some extent.
23 I would be concerned that by -- and just
24 in simplest terms looking at this map and looking at the
25 distance between the two fronts, that there would be a

1 strong probability of -- if monitor wells were just
2 drilled with the data that's available now, you would
3 end up drilling monitor wells into a zone that would be
4 subject to mining in the future and just cause more
5 confusion and problems.
6 Q. What would be the value of monitor wells
7 drilled into the ore zone in PAA3?
8 A. Well, if a monitor well were drilled into the
9 ore zone in PAA3, it may be that the company would have
10 to take future licensing and actions to convert a
11 monitor well, for example, to a baseline well.
12 MS. MANN: I'm going to make an objection.
13 We've definitely covered this subject during his initial
14 cross-examination, and I don't understand the point of
15 rebuttal testimony on something that was covered in his
16 original cross and very thoroughly. And I took a while
17 to object because I was making sure to check my notes,
18 so that's my objection.
19 THE COURT: Mr. Hill?
20 MR. HILL: The issue -- a number of these
21 issues have come up after the filing of direct and
22 rebuttal testimony in this case, and they were not
23 anticipated nor anticipatable from direct and rebuttal.
24 And it was contemplated in the scheduling order that the
25 witness -- the company would be able to provide such

1 testimony where it arose in the hearing and was not
2 presented in the prefile. That is the case here. And
3 it's an item which I think can be handled very quickly,
4 three to five minutes. And I think the applicant is
5 entitled to present the problems.
6 THE COURT: But I share OPIC's concern
7 that the matter has been presented already. I believe
8 it is contained in the transcript that will be
9 generated.
10 MR. HILL: I have been here also, and I
11 know of at least two answers that are important that are
12 not in that, and I was offering the witness a chance to
13 note those items. If I -- perhaps I'm mistaken. Also
14 having been here, I'm subject to being worn down by the
15 proceeding.
16 THE COURT: I think we are certainly doing
17 that to each other. But with respect to the two issues
18 that have not yet been the subject of testimony,
19 assuming they are relevant to the proceeding, you are
20 welcome to address those as long as we don't have to go
21 through things we heard before.
22 MR. HILL: No. Specifically I wanted to
23 know whether monitor wells drilled into the ore, if they
24 happen to drill -- to be completed into the ore zone
25 inadvertently, if you will, in an effort to create a

1 monitor well ring around each fairway, whether a monitor
2 well so situated could even function as a monitor well.
3 MS. MANN: Your Honor, I understand that
4 he might not have given the answer that Mr. Hill wanted
5 in the record during cross-examination, but we
6 definitely went over this subject during
7 cross-examination of Mr. Pelizza's direct testimony, and
8 that's my concern.
9 THE COURT: Okay. I'll allow Mr. Pelizza
10 to answer the question and then we can move on.
11 A. My concern is that this is just an estimate.
12 It is likely that we will have meandering of these
13 fronts. That is why we have developed this as one
14 production area. There's a high probability that as
15 well fields are developed, if we had a monitor well ring
16 in the center, we would get interference with normal
17 well field development.
18 Q. Thank you. Would a monitor well ring so
19 establish blankout -- potentially blankout 4- to 800
20 feet of ore zone?
21 A. It would blankout 4- to 800 feet of area that
22 is part of this production area that could potentially
23 have ore zone.
24 Q. Thank you.
25 MR. HILL: Pass the witness.

1 THE COURT: Mr. Valdivia?
2 RECROSS-EXAMINATION
3 BY MR. VALDIVIA:
4 Q. Mr. Pelizza, you just testified that you're
5 willing to seal an application. Can you -- and I'm
6 sorry. I wasn't sure which -- what you were referring
7 to. What documents are you offering to seal?
8 A. I'm offering to seal my name on the application
9 document.
10 Q. Which application?
11 A. The document that has previously been notarized
12 with my signature.
13 Q. But the application for what?
14 A. I believe I signed both the disposal well
15 application and the PAA application. And to the extent
16 that I am qualified to -- that I am -- that the
17 regulations provide for a professional engineer or a
18 professional geoscientist seal on either of those
19 applications as I read in the regulations here last
20 night. I am willing to comply with that regulation.
21 Q. Are you familiar with the rules of the Texas
22 Board of Professional Geoscientists?
23 A. I've read them.
24 Q. And have you read the rule regarding
25 geoscientist seals?

1 A. I have.
2 MR. VALDIVIA: I guess to make this go a
3 little more quickly, Your Honor, I would just like the
4 Court to take judicial notice of 22 TAC 851.156, which
5 is titled Geoscientist Seal.
6 THE COURT: And perhaps you can tell me
7 what that's about and what the relevance of that matter
8 is to the proceeding.
9 MR. VALDIVIA: Sub C, "A geoscientist
10 shall only seal work done by them or performed under
11 their direct supervision." That's just --
12 A. And I have no problems with that.
13 MR. HILL: Excuse me.
14 THE COURT: One second. I'm not certain
15 what the necessity is of my taking judicial knowledge.
16 MR. VALDIVIA: Perhaps I'm overtired.
17 Sorry. I'm making reference to that. I'm going to
18 question the witness on that regulation.
19 THE COURT: All right. You're welcome to
20 question the witness about that regulation.
21 Q. (By Mr. Valdivia) So Mr. Pelizza, is it your
22 testimony that the documents you're going to put your
23 seal on have either been work done by you or performed
24 under your direct supervision?
25 A. That's correct.

1 Q. I'm not sure what term Mr. Hill used, but I
2 believe he said production zone when referring to his
3 line of questioning about making two rings of monitoring
4 wells instead of one. Is that -- is my recollection
5 more or less --
6 A. If you say so, I'll agree with that.
7 Q. Mr. Hill questioned you about how much sense it
8 would make instead of having --
9 A. How much what did you say? I lost a word. I
10 thought you said fence.
11 Q. How much sense.
12 A. That makes sense.
13 Q. What sense it would make instead of having two
14 monitoring well rings, one around each fairway, mineral
15 fairway as we've called it. So you recall that line of
16 questioning? And in Protestant's Exhibit 1, you
17 indicated with a blue hash mark two areas which we later
18 discussed describe two fairways in production area 3.
19 Is that a fair statement?
20 A. Yeah. I think I labeled them mineral zone
21 center.
22 Q. Now, and the purpose of that was to get some
23 idea about URI's compliance with monitoring well
24 placement as it's set out in Rule 331.103. And as I
25 recall, we were trying to figure out whether wells were

1 located not more than 50 feet on either side of a line
2 through the center of the production area?
3 A. Okay.
4 Q. Do you recall that?
5 A. That's the access, okay.
6 Q. So those blue hash marks are an attempt to
7 figure out where that line is; is that a fair statement?
8 Would you agree?
9 A. That is correct. And I think the reason in my
10 testimony that I said I deliberately dashed them is
11 because that they were an estimate of where the access
12 was.
13 Q. Understood. And it's an estimate of where the
14 wells should be 50 feet from; is that a fair statement?
15 A. Yes.
16 Q. And in order to achieve compliance with this
17 rule, it was necessary to draw two lines; is that right?
18 A. Yes.
19 Q. So my confusion is the production zone, my
20 understanding -- is the production zone the entire area
21 within the monitoring well ring?
22 A. The production zone, in my view, would be open
23 to any area within the monitoring well ring
24 approximately, approximately 400 feet from the monitor
25 wells. So the angle from any individual production well

1 and any two monitor wells would not exceed 75 degrees.
2 In other words, it's that -- if you were to draw a
3 buffer area 400 feet within that monitor well ring, this
4 authorization would authorize uranium production within
5 that area. It was also my testimony where I thought the
6 access of the two mineralized fronts were.
7 Q. So it's your testimony that a production area
8 would have one more -- more than one access?
9 A. It's my testimony that a production area can
10 have more than one front, mineralized fronts, yes.
11 Q. But the rules don't speak in terms of
12 mineralized fronts, do they, Mr. Pelizza?
13 A. I don't know of any reference to mineralization
14 in the rules.
15 Q. In fact, with respect to the 50 foot rule,
16 we're talking about a production area; is that right?
17 A. I think we're playing with words here, but the
18 50 foot rule is -- you know, we -- the geologic
19 configuration in nature does not -- you know, it
20 requires interpretation from professionals to layout the
21 monitor wells according to the way we believe the
22 geology will go and according to the rules. It's
23 reasonable to draw the axis the way you had me do it.
24 And in doing that, drawing that axis, things fall into
25 place according to the rules. The problem I've got is

1 you're also recommending something that falls outside
2 the rules. You're recommending some sort of monitor
3 well inside the production area that falls outside the
4 rules. And what my testimony was is that there's the
5 high probability that you could get a migration of the
6 fronts where you would have a problem. And until the
7 delineation, you just won't know that.
8 Q. I'm trying to get a handle on the terms here.
9 I'm not a geoscientist. But the term production area is
10 defined in the rules, and I've read it several times.
11 The area defined by a line generally through the outer
12 perimeter of an injection recovery well used for mining.
13 A. I think it said generally.
14 Q. Which leaves us with a fairly large fudge
15 factor, I recognize. But that's the definition we have
16 to work with.
17 A. And I think that what we did is we laid out a
18 production area that fits well within that definition.
19 Q. Well --
20 THE COURT: If we could proceed to
21 questions and answers, I think we could get along
22 quickly.
23 MR. VALDIVIA: I know. I'm sorry, Your
24 Honor.
25 Q. (By Mr. Valdivia) The production area --

1 perhaps it's more a problem with the rules than it is
2 with URI's mining. But the production -- the rule
3 regarding the 50 foot spacing refers to production area,
4 an axis along the production area. Is it your testimony
5 the production area is the entire area within PAA3?
6 A. Yes. But you asked for an axis, and that's
7 key. And I'm going to exaggerate. But if we had a
8 mineralized front that went like this --
9 THE COURT: And the witness is showing a
10 serpentine movement back and forth across the entire --
11 A. And it went a long way in this direction and a
12 long way in this direction, that would be the axis. And
13 that's an exaggeration, but it is possible that we could
14 have some movement like that.
15 THE COURT: Showing more serpentine
16 movement.
17 A. Within the area that we're authorized to
18 produce. And if we were to drill a monitor well right
19 there that was to serve the same function as that
20 monitor well, we created a problem for ourselves.
21 THE COURT: And the witness has indicated
22 the possibility of drilling a monitor well within the
23 area of the production. Mr. Valdivia?
24 Q. (By Mr. Valdivia) Mr. Pelizza, you spoke at
25 some length -- or testified some at length about a

1 settlement between URI and the county?
2 A. Yes, sir.
3 Q. Would you entertain a settlement provision
4 which would require URI to begin restoration of a well
5 field immediately after production was completed?
6 A. It would require more embellishment than that.
7 THE COURT: I'm sorry. Mr. Valdivia, was
8 your question would you entertain a settlement
9 provision?
10 MR. VALDIVIA: Yes, in which URI agreed to
11 commence restoration immediately or -- immediately after
12 completing production.
13 A. And as I -- and I'm not trying to be cagey. It
14 would require more embellishment than that. You know,
15 there's no doubt that we want to be responsive to the
16 concerns we've heard, but we certainly could not -- and
17 we even count -- and much of the criticism over
18 restoration has -- and Mr. Cumberland was wrong in his
19 date time. And much of the criticisms had been in PAA1
20 and 2 is you have overlap. And if you have overlap, if
21 you're still producing here, but yet you may have
22 restored here, you can't just go ahead and start
23 restoring the whole thing until you're well ahead in
24 your production schedule or you get overlap. So again,
25 it would require some embellishment. It would be

1 something that URI would be willing to engage in
2 conversations about what would work.
3 Q. Well, I think that -- I'm not sure I can
4 embellish more, but I can try to use different words to
5 see if it conveys the concept to you.
6 THE COURT: Mr. Valdivia, before you
7 proceed -- and this may be more appropriate in the realm
8 of objections from other counsel -- but are what we are
9 exploring at this point now settlement possibilities?
10 MR. VALDIVIA: I only have one or two
11 questions about this that I understand it's important to
12 my clients to get it into the record, but I am willing
13 to move off of this if Your Honor feels --
14 THE COURT: As long as there's no
15 objection from the other parties, but I am eager to move
16 on, but go ahead and ask your question.
17 MR. HILL: Your Honor, we are indulging
18 this because we have not heard anything on this subject,
19 and we're interested to hear it. Mr. Pelizza obviously
20 is on the one hand both interested and also concerned
21 that one doesn't walk into a settlement proposal in such
22 broad brush terms.
23 THE COURT: Right. It's just that the
24 function of this proceeding is not settlement, but
25 rather resolution.

1 MR. HILL: We understand this. We're
2 trying to -- I would have objected but for the fact that
3 I'm trying to be flexible with an eye to concluding this
4 matter as soon as possible as well as possible, even if
5 it's a little outside the norm for judicial conduct.
6 THE COURT: And let me also say with
7 respect to the public policy of this. The State Office
8 of Administrative Hearings goes out of its way to
9 encourage settlement discussions, and we have a whole
10 team that's set up for this purpose. There are some
11 rules about settlement discussions in the context of a
12 contested hearing. And so on one hand, you're hearing
13 from the mediator saying yes, please continue, this
14 sounds good, and on the other hand you're hearing from
15 the ALJ saying I'm not sure. So with that, proceed.
16 MR. VALDIVIA: I can move on. I can move
17 on. Thank you. I pass the witness.
18 MR. REDMOND: I just have one question.
19 CROSS-EXAMINATION
20 BY MR. REDMOND:
21 Q. Mr. Pelizza, when you discussed an application
22 for renewal of URI's license was pending at the agency,
23 what agency did you mean?
24 A. It's been pending for a while, and I believe at
25 this point it is pending with the Texas Department of

1 State Health Services.
2 MR. REDMOND: Pass the witness.
3 CROSS-EXAMINATION
4 BY MS. MANN:
5 Q. There was some discussion, some considerable
6 discussion between -- well, questioning regarding the
7 settlement agreement with Kleberg County. Do you recall
8 that?
9 A. I do.
10 Q. What was the purpose of including the
11 settlement agreement in your prefiled testimony?
12 A. The purpose was to provide examples of various
13 ways that we've mitigated concerns in another -- well, I
14 guess a kin type of situation.
15 MR. HILL: Excuse me. The inclusion of
16 the exhibit was Counsel's choice. And at the time it
17 was included, there was a motion -- there was an effort
18 made by one commissioner to enter into this proceeding,
19 and I entered it as a legal matter. So it was -- it was
20 warranted wholly on the basis of a legal matter.
21 Q. (By Ms. Mann) That's fine. Do you believe
22 TCEQ can enforce any of the provisions in the settlement
23 agreement?
24 A. Good question.
25 MR. HILL: Your Honor, I'll object. It

1 asks for a legal conclusion. The witness is not a
2 lawyer. The witness can testify that it will not be
3 necessary, but he can't testify as to a legal opinion as
4 to whether or not it's enforceable or how.
5 MS. MANN: I'll rephrase it. Actually,
6 I'll wait for a ruling.
7 THE COURT: I grant the objection.
8 Q. (By Ms. Mann) To your knowledge -- I'll
9 rephrase. When engaging in discussions of this -- when
10 engaging in settlement discussions and having signed the
11 settlement agreement, is it your understanding without a
12 legal interpretation that TCEQ would adopt any of the
13 settlement agreements?
14 A. I think the TCEQ could probably, while this
15 matter is open, adopt anything they want. But the link
16 between TCE -- and I don't know if it's a direct answer,
17 but I'll give it anyway. The link between this
18 agreement in TCEQ is the community review board where we
19 have agreed in the agreement that we would include
20 recommendations from the CRB in future applications as
21 part of our applications to TCEQ.
22 Q. Okay. If, for example, URI does not comply
23 with one or more of the terms of the settlement
24 agreement, let's use the community review board, is
25 there any manner that you know of that TCEQ can enforce

1 against you?
2 MR. HILL: Same objection, calls for a
3 legal conclusion.
4 Q. (By Ms. Mann) Is it your intention -- I'll
5 withdraw that. Is it your intention to recommend
6 changes to the draft permit to replace any or all of the
7 provisions of the settlement agreement?
8 MR. HILL: Asked and answered. Attempt --
9 the draft permit provisions that are recommended by the
10 client are in his testimony.
11 THE COURT: Would you restate your
12 question?
13 Q. (By Ms. Mann) Is it your intention to
14 recommend any future changes to the draft permit that
15 reflect any or all of the provisions of the settlement
16 agreement?
17 A. I have not recommended that. The only
18 recommendations I have had are essentially mathematical
19 in nature that were in my -- in my direct prefiled
20 testimony.
21 MR. HILL: You mean in your rebuttal.
22 THE WITNESS: Oh, in my rebuttal.
23 MS. MANN: I have no further questions. I
24 pass the witness.
25 MR. HILL: Your Honor, before the witness

1 is dismissed, we have a number of exhibits to be
2 resolved, including the joint map exhibit. And my notes
3 show I have no further questions to ask. On the other
4 hand, if there's any need to lay a foundation for
5 exhibits such as the map, I am willing to dismiss the
6 witness.
7 THE COURT: Okay. Well, let's find that
8 exhibit and deal with it. A document was handed to me
9 on a poster board.
10 MR. HILL: Are we on the record?
11 THE COURT: Yes, we're on the record.
12 MR. HILL: That document was referred to
13 inadvertently by the witness in the course of his
14 testimony and can either be included for the purposes of
15 identification or some other purpose. It was not -- it
16 does not exist in a small form and would have to be
17 reproduced suitable for folding or reduction.
18 THE WITNESS: We could do the same for
19 that.
20 MS. OBERLIN: Your Honor, for
21 clarification, that is not the map that was worked on
22 between the parties.
23 MR. HILL: You are not referring to the
24 joint map that I'm referring to. I'm sorry.
25 THE COURT: Let's deal with the map to

1 which you are referring. And first of all, does it have
2 an exhibit number?
3 MR. HILL: I believe we have suggested --
4 we had proposed URI 36.
5 THE COURT: All right.
6 MR. HILL: On the other hand, that's
7 purely arbitrary.
8 MS. OBERLIN: Sir, did you just suggest an
9 exhibit number?
10 MR. HILL: URI 36 is fine with us.
11 THE COURT: First of all, is there any
12 objection to the exhibit number? Hearing none, it will
13 be Exhibit No. 36. Now, is there any objection to the
14 map? Ms. Oberlin?
15 MS. OBERLIN: Well, let me give it one
16 little glance and make sure it's how we finished it
17 yesterday. Maybe Mr. Saenz can look at it with me.
18 MR. HILL: Everyone concerned should
19 inspect it.
20 THE COURT: Why don't we go off the record
21 while the parties look at Exhibit 36.
22 (Off the record.)
23 THE COURT: Let's go back on the record.
24 It's my understanding that URI 36 has been the subject
25 of review by the parties. Mr. Hill?

1 MR. HILL: URI is satisfied and offers and
2 urges URI 36 as the joint map. However, I'm waiting to
3 hear.
4 THE COURT: Ms. Oberlin?
5 MS. OBERLIN: I have no objections and I
6 agree that this map represents the compromises that the
7 parties agreed with regard to the maps that the
8 Protestants had offered and then withdrawn in an effort
9 to put all information on one consolidated exhibit.
10 THE COURT: Thank you. Mr. Redmond?
11 MR. REDMOND: No objection.
12 THE COURT: Ms. Mann?
13 MS. MANN: No objection.
14 THE COURT: So URI 36 is admitted. Is
15 there another exhibit?
16 MR. HILL: Yes, Your Honor.
17 THE COURT: Is this the Google exhibit?
18 MR. HILL: We have a problem. The parties
19 are generally happy with the Google -- the map produced
20 off the Internet by going into Google and filling in the
21 addresses. On the other hand, it is a glossy color item
22 and it doesn't exist in small scale. We do not have
23 copies of it reproduced. And I am reticent to offer
24 something that is going to be awkward and burden the
25 record. I could be persuaded, but I believe it to be an

1 accurate representation, and I believe we can prove it
2 up, but I wonder if it is actually helpful.
3 THE COURT: Ms. Oberlin, do you see a
4 necessity for the introduction of this document as an
5 exhibit?
6 MS. OBERLIN: Your Honor, my clients have
7 an interest in seeing this entered into the record as an
8 exhibit, and my clients' belief is that in conjunction
9 with URI Exhibit 36, the map we prepared, this offers a
10 full and complete picture of the area and that it is
11 helpful to the record.
12 THE COURT: Okay. And I'm assuming that
13 it's full and complete because it represents
14 photographic evidence?
15 MS. OBERLIN: Yes, Your Honor.
16 THE COURT: Fine. Mr. Redmond?
17 MR. REDMOND: I have no objection to its
18 offer or not being offered.
19 THE COURT: Okay. Ms. Mann?
20 MS. MANN: I concur with Mr. Redmond.
21 THE COURT: All right. So Mr. Hill, might
22 it be possible for -- well, let me back up. I'm going
23 to shift my focus from you back to the other parties.
24 Would STOP or Protestants or the ED or OPIC have any
25 objection to Mr. Hill's taking custody of this exhibit

1 for the purpose of making additional copies so that it
2 may more easily come into the record, and copies be
3 distributed to the other parties?
4 MS. OBERLIN: No objection, Your Honor.
5 MR. REDMOND: No objection.
6 MS. MANN: No objection.
7 THE COURT: All right. Mr. Hill, would
8 you like to give us an exhibit number for that document?
9 MR. HILL: URI 51.
10 THE COURT: Mr. Hill, I'm assuming that
11 URI would be willing to do as I have suggested?
12 MR. HILL: We shall. We shall do so, Your
13 Honor.
14 THE COURT: You shall consider or you
15 shall do it? You'll take care of it?
16 MR. HILL: Yes, we'll see to copying it
17 and providing copies to the parties. I was hoping to
18 get an idea of what I was -- okay. Photographic
19 reproduction is what it will be. All right. We've got
20 it. It will be gray.
21 THE COURT: All right. Let's move on to
22 the next issue, and that is what, Mr. Hill?
23 MR. HILL: We have pending Exhibits URI
24 22, the application for PAA3 and URI 23-A and B, the
25 application for renewal of 247 and 248 and the

1 supporting data are offered. And as I understand it,
2 they have not been admitted yet. They were pending, I
3 believe, resolutions of some objections.
4 THE COURT: And again, these are 22, 23?
5 MR. HILL: 23-A is the application
6 materials for 247 and 248. 23-B is a volume of
7 supporting data for 247 and 248.
8 THE COURT: So it's 23-A and 23-B that
9 you're offering at this time or reoffering at this time?
10 MR. HILL: Yes, and 22 as well.
11 THE COURT: And 22. Now then,
12 Protestants?
13 MR. VALDIVIA: I believe I made an
14 objection to 23-B and I wrote a brief brief on it. I
15 found one case that I thought was germane, the O'Malley
16 case. I would also point out that I think some of the
17 testimony Mr. Pelizza gave today is irrelevant here.
18 And I may want to add something to my objection in that
19 for 23-A is the ECO Services' prepared report, and my
20 understanding is that that is a third-party report that
21 has its own engineer prepared and sealed documents.
22 I don't believe to the extent that this is
23 part of the application that Mr. Pelizza proposes to
24 seal, that he can seal it under the regs because it's
25 obviously not done under his direct supervision and

1 obviously not performed by him.
2 THE COURT: Thank you. Mr. Redmond?
3 MR. REDMOND: Again, it seems what we have
4 are two different issues on the table. One is an
5 evidentiary matter and one is rules of the Commission
6 and of the State regarding Texas GSI Practice Act and
7 Texas Engineering Act and whether an application meets
8 the requirements of the Commission's rules. And that
9 seems more like argument that would be made in the
10 closing of this proceeding on whether the applicant
11 meets the burden of proof rather than an offer of
12 evidence, which seems to me that the offering of the
13 application is why we're here at the hearing.
14 THE COURT: All right. OPIC?
15 MS. MANN: I'm not -- I don't really have
16 anything to add except for, I guess except, that I
17 don't -- I don't -- I mean, I don't particularly because
18 there's a written -- a written brief in front of you.
19 I'm not sure if it's something that has to be ruled on
20 by you today. That's just my suggestion. I'm not sure
21 if that's an appropriate comment right now, but...
22 THE COURT: Mr. Hill, you get to close on
23 this point.
24 MR. HILL: Thank you, Your Honor. First
25 of all, Mr. Pelizza has testified and has stood for

1 cross-examination that he, when he retains a consultant
2 and did retain this consultant, he worked closely with
3 the consultant. It was a hands-on exercise. Second --
4 so I think, first of all, we've established the
5 connection necessary. Were that connection not there,
6 Mr. Pelizza could not have submitted this in the first
7 instance. So that's the first point. The Commission's
8 rules require a party responsible to sign and requires
9 that that party have been -- have satisfied himself by
10 checking the work and participating in the work
11 sufficiently, and that recital appears on the signature
12 page.
13 At the time the application was submitted,
14 that was sufficient. And at the time the application
15 was submitted, Mr. Pelizza's participation was also
16 sufficient to qualify him to seal it, had there -- under
17 the present rules had those rules existed at the earlier
18 time. Now, how to analyze this problem legally. First
19 of all, the legal issue, Mr. Redmond is right. There
20 are two issues here. One is the sufficiency of the
21 application as a pleading and as an application. The
22 second one is its evidentiary status.
23 As to the sufficiently of the pleading, it
24 is a pleading. It was filed and it required to be
25 certified in a certain way, the same way a pleading on a

1 sworn account has to be verified and other pleadings
2 would have to be verified in order to be effective as
3 pleadings. It was effective when submitted; it is
4 effective now as a pleading. As proof, it has been
5 adopted and it has been identified as corroborative of
6 expert opinion which has covered every page of it. It
7 doesn't matter. It is rather like a photograph in that
8 if someone took a photograph, another person familiar
9 with the subject of the photograph can identify the
10 photograph as accurately representing the subject.
11 Here also, we've had later experts who
12 have reviewed it, performed the calculations, satisfied
13 themselves that they are substantially correct as
14 presented, and presented the evidence to support the
15 pleading represented by the application. It was a valid
16 pleading. It has been proven up by one or more experts
17 as to every single page. Finally, it is admissible over
18 the hearsay rule as corroborative of the independently
19 established opinion of one or more experts.
20 There is no legitimate legal question as
21 to the admissibility of this document on at least two
22 basis. Finally, the O'Malley case is irrelevant.
23 O'Malley had to do with work that was done by a
24 third-party engineer for a person who was not a party to
25 the proceeding. Quite irrelevant. This work was done

1 expressly for this party to this proceeding for the
2 purpose of the proceeding. This is in the case of 23-A.
3 THE COURT: Let's go off the record for
4 just a second.
5 (Off the record.)
6 THE COURT: I'm going to overrule the
7 objection to Exhibit No. 23. Is it 23-A?
8 MR. HILL: 23-A and B.
9 THE COURT: And B and admit that into the
10 record. All right. Now then, the other issue was as to
11 22?
12 MR. HILL: Yes.
13 THE COURT: And is there a similar
14 objection to 22?
15 MR. VALDIVIA: I hadn't raised it at this
16 point, but yes, I'll go ahead. And I think I know the
17 ruling.
18 THE COURT: Okay. And so Mr. Redmond?
19 MR. REDMOND: I would have a similar
20 response, I guess.
21 MS. MANN: I need a reminder of what 22 is
22 again.
23 THE COURT: It's the application of the
24 PAA.
25 MS. MANN: I guess my response would be

1 the same.
2 MR. VALDIVIA: Your Honor, subject to the
3 additional objection that that I think is running about
4 the amendments, the corrections to that application.
5 THE COURT: Yes, I understand. All right.
6 And so URI 22 is admitted. Okay. Now then, we have --
7 are there any other exhibits, Mr. Hill? Do you need a
8 moment to look?
9 MR. HILL: We had -- let's see -- Exhibit
10 URI 45, which was Chapter 4 of the TWR Publication 291,
11 underground injection operations in Texas, uranium
12 solution mining wells. I show it to have been offered
13 on the 4th, yesterday, and we do not -- we have the
14 Court's -- the Judge's docket sheet here, and we do not
15 show it to have been acted upon. It shows it identified
16 and offered.
17 THE COURT: Okay. And I'm sorry. Did you
18 hand me a copy of that document? This is exhibit number
19 which?
20 MR. HILL: Yes, I did. This is Exhibit
21 URI 45, which is an extract of about 20 pages.
22 THE COURT: I have it.
23 MR. HILL: From TWR Publication 291.
24 THE COURT: Mr. Valdivia, was there an
25 objection?

1 MS. OBERLIN: I think was on my watch.
2 And my recollection is that I objected and it was
3 overruled and it was admitted.
4 THE COURT: All right.
5 MR. REDMOND: My notes show that it was
6 admitted.
7 MS. MANN: I recall it being admitted as
8 well.
9 THE COURT: And it is admitted.
10 MR. HILL: And now we have -- 22 has been
11 admitted, right?
12 THE COURT: Yes. Why don't we go off the
13 record and do this rather than burden the court reporter
14 with all of this information.
15 (Off the record.)
16 THE COURT: Are there any other matters
17 that we need to address through this witness?
18 MR. HILL: I know of none, Your Honor.
19 THE COURT: Mr. Pelizza, you are thanked
20 for your testimony today. You're excused. You may
21 remain for the balance of the proceeding as you please.
22 Now, with respect to rebuttal of URI, are we complete?
23 MR. HILL: We are, Your Honor.
24 THE COURT: All right. Mr. Valdivia?
25 MR. VALDIVIA: Protestants would like

1 to -- an opportunity to present rebuttal, and this is
2 what I propose. At this time, I think the only witness
3 we would call would be Mr. Kier, Dr. Kier. And we
4 propose to actually have his testimony in Austin rather
5 than bring everyone back to Kingsville subject, of
6 course, to his availability and the availability of a
7 hearing space in Austin. I'm not 100 percent certain
8 that Mr. Kier is available next week. I haven't talked
9 to him. If that's a problem, I would imagine we would
10 consider waiving rebuttal and resting.
11 THE COURT: Okay. Let's go off the record
12 for just a second.
13 (Off the record.)
14 THE COURT: Mr. Valdivia has proposed that
15 he have the opportunity to put on rebuttal testimony by
16 Dr. Kier?
17 MR. VALDIVIA: Yes, Your Honor.
18 THE COURT: And that that rebuttal
19 testimony would be given in Austin next week. And
20 Mr. Redmond has given us the citation to a portion of
21 the TCEQ rules that seem to permit rebuttal testimony by
22 a party under specific circumstances, and that citation
23 is 80 point --
24 MR. REDMOND: 117.
25 THE COURT: It's Mr. Valdivia's assertion

1 that 80.117 would encompass the reasons for his calling
2 Dr. Kier as a rebuttal witness for Protestants. We are
3 now about to hear from Mr. Hill who will give a
4 response.
5 MR. HILL: Your Honor, first, the
6 scheduling order in this case was negotiated at some
7 length and under some considerable pressure at the
8 conclusion of our January 19th prehearing conference.
9 And there is a reason why it is -- rebuttal by
10 Protestants is not mentioned; and that is, it was not on
11 the table. It was not part of the agreed order.
12 And I believe it is, A, a breach of that
13 agreement and also of the -- it also upsets the
14 rationals for several other agreements made along the
15 way to, A, return to Austin and, B, take Mr. Kier, and
16 leaves both surprise, prejudice for URI because we have
17 indulged in scheduling this and moving it along in the
18 belief that we were following that other schedule and
19 that we knew what the procedure would be. If you'll
20 notice on the scheduling order, the next thing after the
21 rebuttal of this hearing was scheduling of the Judge's
22 receipt of final argument and so forth.
23 B, it is not convenient -- in addition to
24 that, it's not convenient. And I believe -- I would
25 submit to you there is nothing which Dr. Kier could say

1 that could not have been reasonably anticipated by the
2 course of this hearing. And therefore, that this
3 hearing has been concluded but for the arguments and
4 matters which follow argument in the case.
5 THE COURT: Mr. Valdivia, what might
6 Dr. Kier provide us with?
7 MR. VALDIVIA: Well, Your Honor, I think
8 that there were certainly many things said on rebuttal
9 testimony and cross that he could address. I was
10 thinking in particular about the whole line about
11 hydrologic testing and its importance. I don't
12 anticipate -- first of all, I preface this by saying
13 that I don't know for certain that we will go ahead with
14 rebuttal, but I would like the opportunity to discuss
15 that with Dr. Kier. And I had in mind things that
16 specifically came up today on rebuttal witnesses,
17 specifically hydrological questions. Dr. Kier, you
18 know, is a renowned expert in that.
19 And I would also point out that many of
20 the corrections, if not all of them, were made because
21 of Dr. Kier's work on this. They've been characterized
22 as minor and insignificant and having no technical
23 repercussions. I think that in itself would indicate
24 that Dr. Kier's rebuttal may be useful in determining
25 whether that's true.

1 THE COURT: Okay. Well, the objection is
2 yours, Mr. Hill, so you may close.
3 MR. HILL: Your Honor, I object.
4 Dr. Kier's testimony covered a number of items. He
5 chose to comment on a number of matters which were
6 largely clerical in nature, and those matters were
7 addressed, and we know what the parties' positions are.
8 Whether or not Dr. Kier might find yet another thing to
9 say and then URI might yet find another thing to say.
10 Indulging that process only prolongs what URI has long
11 believed was the injustice of denial of the right to
12 operate pending these proceedings. And I believe it
13 substantially denies URI the schedule which it has
14 negotiated on the 19th of January and has worked very
15 hard to comply with in order to expedite these matters.
16 The actions we have taken in performing in
17 this hearing, that URI has taken, have been taken in
18 express reliance upon the expedition promised by the
19 schedule, including the stipulations and agreements to
20 remove the necessity for calling witnesses. And URI
21 specifically agreed to waive the calling of Dr. Kier and
22 so did the parties who called him. I believe that had
23 they called him and he been here, we might have had a
24 different result, but that is to say they could have
25 then said, well, we want to say something right now.

1 But as it is, they waived his appearance, and URI
2 engaged in that bargain with them in the understanding
3 and reliance on the schedule.
4 And I believe that substantially deprives
5 URI of the benefit of agreements made in this proceeding
6 and deprives URI of the benefit of the very, very time
7 consuming laborious performance which has been
8 necessitated by the schedule we agreed to in this case.
9 THE COURT: Mr. Valdivia, for purposes of
10 completeness, I'll allow you to respond. It seems
11 appropriate.
12 MR. VALDIVIA: My horse is not dead yet,
13 Your Honor, so I thought I would flog it one more time.
14 Mr. Hill has made reference to the scheduling order. I
15 have a copy of it in front of me. Rebuttal, any
16 rebuttal whatsoever, by Protestant or Applicant is not
17 mentioned there. He's already been indulged beyond the
18 parameters of what the scheduling order talked about.
19 We're not talking about adding days to this. We have an
20 extra week already built into the schedule. It is
21 certainly doable.
22 On top of that, you know, the travel time
23 will not be a factor, at least for those of us who are
24 in Austin or close by. I'm not -- believe me, I'm not
25 looking to prolong these proceedings. I simply think

1 that given the rulings from the bench and the
2 presentation today on rebuttal, that we should be
3 allowed at least an opportunity, and that's all I ask,
4 is an opportunity to present rebuttal.
5 THE COURT: Okay.
6 MR. REDMOND: Your Honor, I would just add
7 one more point that was brought to my attention. The
8 interim order for this matter required a hearing in
9 Kingsville, and I don't know how that may weigh into
10 your consideration of this question, but I just wanted
11 to bring that to your attention.
12 THE COURT: Thank you. Actually, I was
13 reviewing the order just a little while ago; that is,
14 the interim order from TCEQ. And although TCEQ stated
15 that the hearing should be here in Kingsville,
16 ultimately it is within SOAH's jurisdiction to make that
17 determination as to where the hearing should be held.
18 And so I agree that hearing -- that the hearing should
19 be here in Kingsville, and that's why we're doing it
20 here today.
21 With respect to Dr. Kier, you know, for
22 the most part, my rulings have been an attempt to be as
23 inclusive as possible with respect to the testimony
24 that's been offered. And I'm concerned about the
25 potential endless nature of point, counter-point. And

1 I, too, don't want to draw this thing out unnecessarily.
2 I'll tell you that my concern is with
3 respect to the substantive weight of Dr. Kier's rebuttal
4 testimony. I'm just not certain what it is that
5 Dr. Kier might have to say that would add anything to
6 this process. If he were to disagree about whether this
7 is a significant or an insignificant series of changes
8 that have been made, I'm not sure what that would add to
9 the evidentiary corpus. You know, one thought that
10 comes to mind is the possibility of Dr. Kier submitting
11 his testimony in writing and giving the opposing parties
12 the opportunity to make their objections. One of those
13 might be to the admissibility of his evidence in
14 general.
15 If I were to allow it in and the parties
16 wanted to cross-examine him, then we could have another
17 brief hearing for that purpose. If the parties didn't
18 want to cross-examine him, then that would be the end of
19 things. And if I were to rule that his testimony were
20 inadmissible, then you could make a bill and have it be
21 there in the record for consideration by other bodies.
22 So that's a thought that I've had in terms of how to
23 deal with this issue. I guess my first question to you,
24 Mr. Valdivia, is how would that proposal suit you?
25 MR. VALDIVIA: That would suit me fine,

1 Your Honor.
2 THE COURT: And Mr. Hill?
3 MR. HILL: That just buys us another
4 round, which requires us to stay on-the-job, on this
5 matter for another two weeks. I have jury trials
6 scheduled that have been advanced, judges who were
7 unwilling to let -- to give an inch on timing, and I've
8 had to squeeze those into this schedule. And that has
9 entered into the bargains that I have made to allow
10 testimony to come in without objection in the case of
11 Dr. Kier and also to allow for his nonappearance.
12 I believe a ruling of that sort is another
13 instance of -- it is a case of splitting the baby in
14 which the baby is the victim. And I think it spoils the
15 object of the compromise and also robs the compromises
16 that have been made to get this procedure expedited of
17 their value.
18 THE COURT: Mr. Redmond, I don't mean to
19 leave you out of the --
20 MR. REDMOND: After bringing those two
21 items to your attention, I don't have a position on the
22 rebuttal testimony of Dr. Kier.
23 MS. MANN: My only, I guess,
24 comment/question is what in the agreement to stipulate
25 to Dr. Kier's testimony without cross-examination on his

1 direct testimony, what happened there that led one party
2 to think that included rebuttal? I mean, is it in
3 written form? Do you understand what I'm --
4 THE COURT: I understand what you're
5 saying. And I can anticipate, I think, what Mr. Hill is
6 going to say. And what I anticipate is that had
7 Dr. Kier been present, then the questions that might
8 have been asked of him on rebuttal might well have been
9 asked of him on direct, and this matter could have been
10 dealt with there. But because there was an agreement
11 not to bring him, not to subject him to
12 cross-examination, then all of that was waived.
13 MS. MANN: Right. But my question is: So
14 the fact witnesses that were here, would they be
15 available for rebuttal? He seems to indicate there's no
16 Protestant rebuttal. I don't know. It seems to be
17 emerging, and I'm trying to get his position clear as
18 far as what is his position on rebuttal at all?
19 THE COURT: And my understanding of
20 Mr. Hill -- and I don't mean to be putting words in your
21 mouth. But my understanding of where we stand is not
22 that there is no possibility for Protestant rebuttal,
23 but only that Dr. Kier being called as a rebuttal
24 witness is a problem because of the agreements that have
25 been made.

1 MR. HILL: Including the agreed scheduling
2 order, which we understood explicit on the point and to
3 only provide -- provided only for rebuttal by the
4 Applicant. And we are aware of the Commission's order
5 providing for rebuttal to a party, and that order was
6 exercised in the scheduling of URI's rebuttal in the
7 scheduling order. And that timing was factored in, and
8 we planned accordingly. That -- the scheduling order
9 and the agreements to waive the necessary -- the
10 necessity of the appearance of Kier and subsequently
11 McFaddin were tied to a desire to expedite this. And
12 had we believed there was the possibility or the
13 necessity of Dr. Kier being called by way of rebuttal,
14 we would have insisted upon his appearance here in the
15 first place and standing for cross-examination at that
16 time.
17 MS. MANN: Well, I have a real problem
18 with that if the scheduling order came out before the
19 stipulation because that doesn't make any -- I don't
20 think anyone from, you know, a broad, like let's get
21 everything in the record perspective, decided there
22 wasn't going to be any rebuttal that early and then
23 later the stipulation cemented that.
24 MR. HILL: No. It was decided on the 19th
25 when the scheduling order was bargained. And it was

1 Richard Egan and Roland and myself and --
2 MS. MANN: But according to the document,
3 because it's not scheduled doesn't mean that you lose
4 the opportunity.
5 MR. HILL: I understand. I'm pointing out
6 that the document reflected the understanding among the
7 parties at that time. And URI relied upon that
8 understanding in scheduling and arranging its case and
9 in making its subsequent decisions, including decisions
10 not to call -- not to require the presence of Dr. Kier.
11 And furthermore, ultimately not to require the presence
12 of Mr. McFaddin in order to expedite this to accommodate
13 the schedule.
14 We bargained for a schedule, which was
15 very difficult, and we complied with it. And I believe
16 this sort of move is both unnecessary. I've been
17 involved in a number of commission proceedings, and much
18 larger than this, and Protestants had no rebuttal. So I
19 was -- I'm quite surprised at the notion that it even
20 belongs in a proceeding of this scale.
21 THE COURT: Okay. I am not persuaded that
22 Dr. Kier's potential testimony would address issues that
23 require addressing. However, if you would like to
24 submit his written testimony in a form, you're welcome
25 to do so. And that -- I'll leave the record open for

1 that purpose and tell you that I don't -- I will
2 grant the -- I'll sustain the objection to the
3 testimony. That will provide you with an automatic bill
4 of exceptions, and you can do with that as you propose.
5 MR. VALDIVIA: Okay. That's fine, Your
6 Honor.
7 THE COURT: Okay. So with that, are
8 there -- there are two more motions that are
9 outstanding, one of which is the motion to strike the
10 intervention of South Texas Opposes Pollution as a
11 party. And the other one is the motion to strike all
12 Intervenor Protestants from party status in the hearing
13 on PAA3. And I overrule those two reasserted motions.
14 I believe those are all the outstanding motions.
15 There are, however, a number of exhibits
16 that have not been copied for a variety of reasons, and
17 that need to be distributed among Counsel. May I rely
18 upon Counsel to confer and identify for those purposes?
19 MS. OBERLIN: Yes.
20 MS. MANN: Yes.
21 THE COURT: Mr. Redmond?
22 MR. REDMOND: Yes.
23 THE COURT: Great. And Mr. Hill? Yes,
24 I'm assuming?
25 MR. HILL: Yes, Your Honor. We understand

1 we have 51, we are waiting, I think Protestant's No. 1
2 copied as well.
3 THE COURT: And I have Protestant's
4 Exhibit No. 1, and I'll be happy to return it to
5 whomever you would like to designate as the official
6 copier person.
7 MS. OBERLIN: I'll take that.
8 THE COURT: Now then --
9 MS. OBERLIN: And, Your Honor, I
10 anticipate not having this copied until I return to
11 Austin and use my copy service, so should I just bring
12 the original back to the SOAH offices?
13 THE COURT: That's fine. Are we going to
14 discuss -- let the record reflect that I've handed
15 Protestant's Exhibit No. 1 to Ms. Oberlin for the
16 purpose we just discussed. Do you want to discuss a
17 briefing schedule at this point?
18 MR. HILL: Yes, Your Honor.
19 THE COURT: Okay. Let's go off the record
20 for just a second.
21 (A recess was taken.)
22 THE COURT: So pursuant to an off the
23 record discussion, the parties have agreed that initial
24 briefs will be filed simultaneously on September 16th,
25 2005, and that response briefs will similarly be filed

1 simultaneously by September the 26th, 2005.
2 In addition, I have a request; and that
3 is, the parties may file their briefs by submitting it
4 on-line or by e-mail in addition to paper, in addition
5 to paper. The e-mail address to which you may submit
6 the document is the following. And I'll put it on the
7 record so you'll have it, but here it goes.
8 Leslie.Gibson@SOAH.State.TX.US. That will go to my ad
9 tech, and she will forward it to me to prevent any ex
10 parte issues.
11 MR. HILL: Electronic format that you
12 require or prefer or tolerate?
13 THE COURT: WordPerfect. If you don't
14 have WordPerfect, if you'll just do it in RTF, that will
15 work.
16 MS. MANN: And is that the controlling
17 date? Do you need both the paper and electronic by 5
18 p.m. at the close of that day or just the electronic and
19 the paper to follow? I'm anticipating -- I hope it
20 doesn't come down to this, but you know...
21 THE COURT: The paper ought to be on the
22 dates that we've stated; the electronic version at your
23 leisure.
24 MS. MANN: Okay.
25 THE COURT: Is there anything else?

1 Hearing nothing, this hearing is adjourned. Let me back
2 up. Let's go back on the record for just a second.
3 I'd like to express my appreciation to
4 Counsel for their professionalism, both with respect to
5 each other and to me. I'd like to thank the County
6 Judge and the County Commissioners of Kleberg County for
7 their consideration and provision of their courtroom.
8 And I'd like to thank the witnesses for their clarity of
9 testimony. And that's it. Thank you.
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1 THE STATE OF TEXAS:
2 COUNTY OF NUECES:
3
4 I, SYLVIA KERR, Certified Shorthand Reporter in and
5 for the State of Texas, do hereby certify that the
6 foregoing transcription was taken down by me in
7 Stenograph, that it is a true and accurate record.
8
9
10 Subscribed and sworn to on this the 12th day of
11 August, 2005.
12
13
14
15 _____
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16 Date of Expiration: 12/31/06
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