

RAS 4401

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Private Fuel Storage, LLC

Docket Number: 72-22-ISFSI; ASLBP No. 97-732-02-ISFSI

Location: Salt Lake City, Utah

Date: Wednesday, April 24, 2002

DOCKETED  
USNRC  
2002 MAY -7 AM 11: 08  
OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Work Order No.: NRC-281

Pages 4801-5205

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SECY-02

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

In the Matter of: )  
 PRIVATE FUEL STORAGE, LLC, ) Docket No. 72-22  
 (Independent Spent Fuel ) ASLBP No.  
 Storage Installation) 97-732-02-ISFSI  
 )

U. S. Nuclear Regulatory Commission  
 Sheraton Hotel, Wasatch Room  
 Salt Lake City, Utah 84114

On April 24, 2002 the above-entitled matter came  
 on for hearing, pursuant to notice, before:

MICHAEL C. FARRAR, CHAIRMAN  
 Administrative Judge  
 U. S. Nuclear Regulatory Commission

DR. JERRY R. KLINE  
 Administrative Judge  
 Atomic Safety & Licensing Board Panel

DR. PETER S. LAM  
 Administrative Judge  
 Atomic Safety & Licensing Board Panel

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## I N D E X

## E X A M I N A T I O N

	Page
James Catlin	
Cross Examination by Mr. Silberg	4805
Cross Examiantion by Mr. Weisman	4888
Redirect Examiantion by Ms. Walker	4933
Recross Examination by Mr. Silberg	4954
Recross Examination by Mr. Weiss	4968
Redirect Examination by Ms. Walker	4969
Further Redirect by Ms. Walker	4980
Susan Davis and Dennis Hayes	
Rebuttal Examination by Mr. Silberg	4973
Surrebutal Examination by Ms. Walker	4979
Chester Poslusny	
Direct Examination by Ms. Marco	4984
Dr. George H. C. Liang and Donald Wayne Lewis	
Prefiled Testimony admitted	4995
Cross Examination by Ms. Marco	4997
Cross Examination by Mr. Nelson	5002

## E X H I B I T S

No.		MRKD/ADMTD
State's Exhibits		
158	NUREG, 156	5000
159	Deposition of Dr. Liang	5000
160	Deposition of Dr. Lewis	5000
161	Excerpts from FEIS	5000
162	Utah Drinking Water Standards	5000
163	Uniform Plumbing Code Illustrated Training Manual, 1997 edition	5000
164	Excerpt from Safety Analysis Report Two logs from Appendix 2A	5000
165	Safety Analysis Report - excerpt from Attachment 2	5000
166	Two pages from Safety Analysis Report, Volume 1,	5000
167	Percolation Table	5000
Applicant's Exhibits		
AA	Site and Access Road Location Plan	4996/4996
NRC Staff Exhibits		
Y	U. S. Department of the Interior BLM Manual Transmittal Sheet	4893/4896
Z	Application for Construction and Operation Authority	4903/4906
AA	Application for Transportation on Federal Lands	4906/4911
BB	Professional Qualifications of Chster Poslusny	4985/4985

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1 Wednesday, April 24, 2002; 9:04 a.m.

2  
3 P R O C E E D I N G S

4  
5 JUDGE FARRAR: Good morning, everyone.  
6 We're a moment or two late getting started. We  
7 were working out some details for the change in  
8 schedule for tomorrow, which we'll put on the  
9 record later when the State's people are here.

10 Last evening we'd just sworn Dr. Catlin.  
11 Sir, you're still under oath.

12 And it's Applicant's turn -- time to  
13 cross-examine now, unless there are any preliminary  
14 matters from the parties.

15 MR. SILBERG: We have none.

16 MR. WEISMAN: We have none.

17  
18 CROSS-EXAMINATION

19 BY MR. SILBERG:

20 Q. Good morning, Dr. Catlin.

21 A. Good morning.

22 Q. I think yesterday off the record we  
23 learned that you and Judge Lam share the  
24 distinction of having graduated from an institution  
25 of higher learning in Oregon, Oregon State

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1 University; is that correct?

2 A. Yes. And one of the controversies is  
3 over the pronunciation of the word Oregon or  
4 Oregon.

5 Q. And I understand your degree was in  
6 electrical engineering and computers?

7 A. Yes, and simulation, simulation of  
8 systems.

9 Q. And after you -- you worked in the  
10 Peace -- you were in the Peace Corps after that; is  
11 that correct?

12 A. That's correct.

13 Q. And then after that you worked with a  
14 British computer company for two years, in 1974  
15 through '76, as a field service engineer?

16 A. That's correct.

17 Q. What were your duties as a field service  
18 engineer? What does a field service engineer do?

19 A. The duties, we oversaw the maintenance  
20 of a large computer system at an airport --

21 Q. Okay.

22 A. -- Heathrow Airport. At the same time I  
23 also took classes at Imperial College in land use  
24 planning.

25 Q. Yes. And how many courses did you take?

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1 A. I audited two courses.

2 Q. What were those courses?

3 A. One -- and my memory's a little vague  
4 here, but one of them was on rural -- rural land  
5 use management, and the other was on traffic and  
6 transit.

7 Q. And as I understand it, from 1977  
8 through 1990 you worked for a computer company or a  
9 company here in Salt Lake City who's involved with  
10 flight simulators?

11 A. That's correct.

12 Q. By any chance did those involve F-16s?

13 A. It did, and I have the distinction of  
14 crashing almost every major plane in the world in  
15 the simulator.

16 Q. We'll put you on the stand for that.

17 And your involvement there was with the  
18 computer image part of the simulation?

19 A. That's correct.

20 Q. Okay. Your resume says something about  
21 taking an urban land use practicum. What is a  
22 practicum?

23 A. This is with the department of geography  
24 in a combined course with -- with the civil  
25 engineering department at the University of Utah.

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1 It's a way of organizing a training for students in  
2 a one-year process that has a real environment to  
3 it. So the -- the faculty at the university have  
4 an agreement with a rural community or a local  
5 community to produce a land use plan that they  
6 need, and they make that part of this training  
7 class.

8 Q. And what was that community?

9 A. Clearfield, Utah.

10 Q. And what kind of community is that?

11 A. It's near Hill Air Force Base, and it's  
12 probably 20, 30,000 people.

13 Q. Did that practicum involve issues of  
14 critical habitat?

15 A. It involved issues relating to wetlands.  
16 You know, this community is on the edge of the  
17 Great Salt Lake, which is some of the most  
18 productive wetlands in North America.

19 Q. What about railroad routing?

20 A. There actually -- the -- there was a  
21 large -- what used to be a military depot, now  
22 called Freeport in the area. And there were a  
23 number of transcontinental railroads and sidings  
24 and all kinds of railroad activity relating to  
25 military and depot activity.

1 Q. And did you, in the context of that,  
2 study the routing of new railroad lines through  
3 that community?

4 A. No, and I did not gain expertise in  
5 railroads or their function in that -- in that  
6 practicum.

7 Q. Have you gained expertise in railroads  
8 or their function since then?

9 A. I'd have to say that my experience has  
10 come through practical knowledge in reviewing one  
11 project or another relating to transportation  
12 issues.

13 Q. Okay. But you wouldn't say that you're  
14 intimately familiar with how railroads are  
15 constructed, would you?

16 A. No, I'm not.

17 Q. And you wouldn't say that you're  
18 knowledgeable on the cost of building railroads,  
19 would you?

20 A. No.

21 Q. Or factors that affect the cost of  
22 building railroads?

23 A. I'm probably knowledgeable with some of  
24 the factors because they relate also to my  
25 experience on roads and highways.

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1 Q. Didn't you say at your deposition last  
2 April that you were not knowledgeable about factors  
3 affecting the costs of building a railroad?

4 A. I don't recall saying that, but I -- I  
5 would agree that neither -- that that statement I  
6 made is probably -- is probably similar to what I  
7 just said. If there are factors in common to areas  
8 that I have expertise in, probably I might have  
9 that.

10 Q. Do you have a copy of your deposition  
11 with you?.

12 A. Well, I have this. Is this the  
13 deposition?

14 Q. No.

15 A. I don't have a copy of that.

16 Q. Let me give you a copy --

17 MS. WALKER: I have --

18 Q. (By Mr. Silberg) -- because we may  
19 refer to it during the course of the discussion.

20 If you have a copy, you're welcome to  
21 use it?

22 MS. WALKER: Well, I don't care if you  
23 want to use -- do you have extras?

24 MR. SILBERG: I do.

25 MS. WALKER: Do you want to use your

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1 little one that you've been looking at?

2 THE WITNESS: It's fine, either one.

3 MR. SILBERG: Counsel can read that one  
4 too, while we're at it.

5 THE WITNESS: Okay.

6 Q. (By Mr. Silberg) And if you'll look at  
7 page 95, line 13, going back to the question on  
8 line 10, you (sic) said, Are you knowledgeable of  
9 the costs of building a railroad and the factors  
10 that affect the cost of building a railroad?

11 And your answer on line 13 was, I'm not.

12 Is that correct?

13 A. Well, on line 13 -- yes, but I also --  
14 that is correct, but I also see that I answered  
15 that question earlier in a different way, saying,  
16 Some of the rudimentary civil engineering aspects  
17 of it, as with highways.

18 So I mentioned earlier in the -- I made  
19 a similar thing to what I said to say --

20 Q. Well, that the previous answer had to do  
21 with the process of rail lines being constructed,  
22 not with their costs; isn't that correct?

23 A. I assumed that costs were one of the  
24 processes. I'm sorry. Maybe I misinterpreted the  
25 question.

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1 Q. Well, your answer there was you're  
2 familiar with some of the rudimentary civil  
3 engineering aspects of it, as with highways.

4 A. Yes.

5 Q. Okay. Thank you.

6 And back to your qualifications,  
7 after -- or while you were working at the company  
8 on flight simulators, I take it you also got a  
9 master's in civil engineering?

10 A. Yes.

11 Q. Okay. What courses did you take during  
12 that master's with regard to botany or biology?

13 A. Most of the courses I took that related  
14 to that related to the management laws and  
15 environmental laws relating to protection of those.  
16 So I took additional courses relating to that in  
17 the practicum, relating to how wildlife are  
18 administered and managed, so the law relates to  
19 that.

20 Q. But you didn't take any courses on the  
21 biology or the botany of --

22 A. No, I did not.

23 Q. Okay. Thanks.

24 Your thesis had to do with air quality  
25 modeling and carbon monoxide forecasting; is that

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1 correct?

2 A. That's correct.

3 Q. And that was largely computer-related  
4 work, modeling?

5 A. No. It -- it was an evaluation of a  
6 large number of different aspects of -- of how  
7 modeling was used, how sensors were operated, how  
8 they were actually -- the analytic process that  
9 went on within an urban environment, the  
10 assumptions that were made in the -- in both  
11 implementing the model and in the model itself and  
12 how other areas in this country had used similar  
13 modeling practices.

14 Q. Okay. Thanks.

15 From 1995 to '96 you worked again as a  
16 computer -- in the computer area as a computer  
17 consultant?

18 A. I'm sorry. Could you please repeat that  
19 question?

20 Q. Yeah. From 1994 to 1996 you worked as a  
21 computer consultant, as I understand your resume?

22 A. Yes, that's correct.

23 Q. Okay. By the way, I didn't see anything  
24 on your resume as to what you were doing from 1991  
25 to 1994. Can you tell us?

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1           A.       Yes. I was at the University of  
2 California Berkeley getting a Ph.D.

3           Q.       Okay. I'll come back to that in a  
4 minute.

5                    Your work as a computer consultant  
6 involved procurement, installation, training and  
7 technical support with respect to computers?

8           A.       That's correct.

9           Q.       With respect to your Ph.D., I notice  
10 that you didn't mention in your resume what your  
11 dissertation was about. Could you tell us?

12          A.       Yes. The dissertation concerned the use  
13 of GIS and how it influenced land use planning for  
14 the Bureau of Land Management.

15          Q.       Okay. Could you tell us what GIS is?

16          A.       GIS is geographic information systems,  
17 and it's a way of using computers to make maps.

18          Q.       I guess you -- you wouldn't characterize  
19 yourself as biologist, though, would you?

20          A.       No, I'm not.

21          Q.       Okay. Your resume indicates that --  
22 among your other published works, you list a book  
23 called "Wilderness on the Edge"?

24          A.       I think it's called "Wilderness at the  
25 Edge."

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1 Q. I'm sorry. You are correct, "Wilderness  
2 at the Edge." And you're listed there as the  
3 co-publisher, editor, cartography and contributing  
4 photography?

5 A. I believe there's credits in the back,  
6 and whatever it says there is true. I don't --

7 Q. Okay. I think that's how you listed it  
8 in your resume.

9 A. Oh, okay. Well, then that -- that is  
10 true.

11 Q. And I've had the pleasure of looking  
12 through the book, and it has some strikingly  
13 beautiful pictures. Are there any pictures in this  
14 book of the North Cedar Mountains?

15 A. I -- I have not looked at it in a long  
16 time. I'd have to review it to see that.

17 Q. I don't know if there's a quick way to  
18 do that.

19 A. Well, unfortunately, there probably  
20 isn't because in the front there are color  
21 photographs that are statewide --

22 Q. Um-hum. (Affirmative.)

23 A. So it may take a few minutes. Do you  
24 want me to still find --

25 Q. Yes, please.

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1           A.       Well, I'm -- it's actually going to take  
2 just a couple more minutes --

3           Q.       Okay.

4           A.       -- because it's really the front matter  
5 in this first section --

6           Q.       Okay.

7           A.       -- and I'm most of the way through it,  
8 so I expect to be done fairly soon.

9                    I believe there are no pictures of  
10 that --

11           Q.       (By Mr. Silberg) Okay. Could you tell  
12 me briefly the purpose that this book served when  
13 it was published?

14           A.       Yes. The book represented the best  
15 knowledge we had at the time of which areas  
16 qualified as wilderness and we believed should be  
17 designated as wilderness, we being the Utah  
18 Wilderness Coalition.

19           Q.       Okay. And isn't it true that there's no  
20 mention in this book of the North Cedar Mountains  
21 area?

22           A.       That's correct.

23           Q.       Your resume also lists a book called  
24 "Utah's Unprotected Wilderness, Places You Can  
25 Save," and you're listed as one of the

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1 photographers; is that correct?

2 A. Yes. I have one or two pictures in  
3 there.

4 Q. Okay. Does this book feature the North  
5 Cedar Mountains?

6 A. I don't know. I'd have to go through  
7 and look at it. Let's see.

8 Q. There is no index, unfortunately, unless  
9 there's one in the back.

10 A. I think we have to look at what's on the  
11 back and the Newfoundlands may actually -- this is  
12 actually a picture of the North Cedar Mountains --

13 THE REPORTER: I'm sorry. I can't hear  
14 you. This is actually a picture of the North Cedar  
15 Mountains?

16 THE WITNESS: Yes, I'm looking at a book  
17 called the "Utah Unprotected Places, Places You Can  
18 Save," and a few pages in -- these are postcards  
19 you actually pull out and then put a stamp on and a  
20 message and send. And there's a postcard by Scott  
21 Smith -- I didn't take this picture -- called the  
22 Newfoundland Mountains, Newfoundland Mountains  
23 Wilderness, and in it you have a picture of the  
24 Newfoundland Mountains. But you also have a  
25 picture of the mountain ranges beyond it taken from

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1 across the Great Salt Lake, most likely taken from  
2 -- from the mountains -- Silver Island Mountains on  
3 the north end. You can see almost a hundred miles  
4 away.

5 And let me look at a few more here.

6 Q. (By Mr. Silberg) Sure.

7 A. Now, this is -- this is my picture. I'm  
8 pointing to one of the Kaiparowits Plateau. So  
9 that's a picture I took, but it's not of this area.

10 Q. Right. The record won't reflect it, but  
11 the pictures are beautiful.

12 A. That's a judgment call.

13 Q. Right, highly subjective.

14 A. That's the only picture.

15 Q. Okay. So the only picture you might be  
16 able to see the Cedars is one that's entitled  
17 "Newfoundland Mountains, Newfoundland Mountain  
18 Wilderness" that shows both the Stansfields and the  
19 Cedars a hundred miles away?

20 A. Nearly a hundred miles away.

21 MR. WEISMAN: Do you mean the Stansbury?

22 THE WITNESS: Well, it does --

23 MR. SILBERG: I'm sorry.

24 THE WITNESS: -- it does -- it shows the  
25 Newfoundland Mountains and the Cedar Mountains. I

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1 don't know if you can actually see the Stansbury  
2 Mountains.

3 Q. (By Mr. Silberg) Well, doesn't the  
4 caption say, The Cedar and Stansbury Mountains can  
5 be seen in the distance here?

6 A. Oh, all right. Then maybe you can,  
7 because they are higher and beyond it, so maybe you  
8 can see yet even more, 40 miles beyond that.

9 Q. Okay. Thank you.

10 I think you said -- just said a few  
11 minutes ago that you're not a biologist. If that's  
12 true, how can you provide conservation biology  
13 services as you state on your Answer 3 in your  
14 testimony?

15 A. There's a couple of -- of reasons for  
16 that. One is that I work with biologists of one  
17 kind or another. I think -- if you're -- if it's  
18 okay with you, I can give you an example of how I  
19 do that.

20 Q. Sure.

21 A. Right now we're about to publish a  
22 paper -- by we, I mean I'm one of the principal  
23 authors -- a paper on properly functioning  
24 condition, which is a way of assessing the  
25 biological health of riparian areas. This paper is

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1 being co-authored by a world class ornithologist,  
2 riparian biologist, riparian restoration expert, a  
3 wildlife biologist and an ecologist who teaches  
4 at -- at Northern Arizona University. So I rely on  
5 their knowledge and skills for -- for interpreting  
6 the policies that I'm evaluating and -- and the  
7 analysis that we're conducting. So we work in a  
8 collegial fashion with biologists.

9 Q. Okay. But you're not a biologist any  
10 more than if I were to work with -- or with this  
11 yesterday, that would make me a biologist. I'd  
12 assume you'd agree with that.

13 A. Yes.

14 Q. In your testimony -- I think this is  
15 also Answer 3 -- you said, I've been practicing in  
16 this field for 20 years. What field were you  
17 referring to there?

18 A. Public land issues.

19 Q. Okay. So while you were working full  
20 time at --

21 A. Evans & Sutherland?

22 Q. -- Evans & Sutherland and Techtell  
23 Corporation and Pinpoint Research, you were  
24 simultaneously practicing on a volunteer basis? Is  
25 that what you're telling us?

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1           A.       No on the latter two and yes on the  
2 first company.

3           Q.       Now, you've identified a number of  
4 impacts that you say will occur if a road or other  
5 access route accompanies the rail line, and I think  
6 you said that those impacts could include more off  
7 road vehicle access, noise, more trails, more  
8 visitation, more people having access to that area  
9 and changes in grazing patterns. Is that what you  
10 said in your testimony?

11          A.       Those may occur. I -- where is that in  
12 the testimony?

13          Q.       It's paragraph 2 of your Answer 10.

14          A.       Answer 10.

15          Q.       It's the third sentence.

16          A.       In this document there?

17          Q.       In your testimony, correct.

18                    You say, for instance, If a -- if a road  
19 or other access route accompanies the rail line, it  
20 will provide quick, easy access to previously  
21 undisturbed areas. This change is likely to lead  
22 to increased motor vehicle access, et cetera.

23          A.       I agree with that.

24          Q.       Okay. Now, you say -- in your  
25 deposition you said it was your understanding that

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1 there would be a road built to one side of the  
2 railroad. That's on page 32, line 12, of your  
3 deposition, if you want to check. What was the  
4 basis for your understanding at that point that  
5 there would be a road built to one side of the  
6 railroad?

7 A. Well, I don't know if there will or will  
8 not be, and because I did not know, I said that  
9 if -- if there is one built, this will be the  
10 potential consequences.

11 Q. But in your deposition last year you  
12 said it was your understanding that one would be  
13 built. What was the basis for that understanding?

14 A. It's likely there will be one beside the  
15 road -- beside the rail line, but I don't know.

16 Q. How do you know that?

17 A. Based on -- based on other examples of  
18 where rail lines have been constructed particularly  
19 recently, you'll notice that there's an emphasis  
20 on -- on maintaining wheeled motor vehicle use  
21 nearby the rail line.

22 Q. But the fact is you have no idea whether  
23 or not our plans include building a road along the  
24 railroad line through Low corridor, do you?

25 A. I was -- I looked at the plans, and I

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1 was surprised that it didn't clearly state one way  
2 or the other whether that was the case.

3 Q. Did it show on any of the maps that  
4 there was a road?

5 A. It did not, but, then, it did not show  
6 where roads would be expected. I know that there  
7 are going to be some, for example, by the siding.  
8 It didn't show additional roads by the siding.

9 Q. We're talking about through your  
10 designated North Cedar Mountains area?

11 A. I understand. But in looking at the  
12 whole document, I wanted to see whether you had  
13 included some additional new roads that you put in,  
14 and I didn't find those in the drawings.

15 Q. Okay. And if you didn't find those, why  
16 did you continue to say that there might be a road?

17 A. Well, I assumed that because you haven't  
18 made a determination whether it would be or  
19 wouldn't be. In the case there was, then -- then  
20 these would be the potential impacts. And if --  
21 if -- I would be happy to change that if you're  
22 telling me now there's not a road and we can be  
23 certain there's not going to be a road and the  
24 planning states so.

25 Q. Have you read our testimony?

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1 A. I have not read all your testimony.

2 Q. Okay. Have you read our environmental  
3 report?

4 A. I have read the environmental impact  
5 statement.

6 Q. But you haven't read our environmental  
7 report?

8 A. No.

9 Q. Okay.

10 A. But if you want, I'd be happy to review  
11 it.

12 Q. Well, you can do that at your leisure.

13 You said that -- that there would be an  
14 associated fire barrier with the Low railroad  
15 corridor that would disrupt the natural fire regime  
16 in the area and help spread exotic invasive plants.  
17 Isn't that what you said in your testimony?

18 Let me call your attention to the third  
19 paragraph in your Answer 10 at the top of page 7.

20 A. Okay. I want to make certain that  
21 that's exactly what -- what -- that is here. The  
22 third paragraph being the application of chemicals?  
23 Is that the one.

24 Q. No. On the top of page 7, it starts,  
25 The Low rail -- Low corridor's rail line, road and

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1 associated fire buffers also have the potential.

2 A. Yes.

3 Q. Okay. There you seem to be saying  
4 fairly assertively that there will be a road, by  
5 the way, not that if there's a road. Did you  
6 become more sure that there is a road in that  
7 paragraph?

8 A. I don't see road mentioned. I see fire  
9 buffers. I'm sorry.

10 Q. Look at the first line.

11 A. Oh, the first line, "The Low corridor's  
12 rail line, road, and associated fire buffers."

13 Q. Also have the potential.

14 A. Um-hum.

15 Q. That's kind of a definitive statement  
16 that there are going to be such things there, isn't  
17 it?

18 A. Well, the rail line is proposed and the  
19 road is proposed, but I don't know whether --

20 Q. No, but I thought we just agreed that  
21 the road wasn't proposed.

22 A. We don't know if it's proposed or not.

23 Q. You don't know.

24 A. I don't know, that's correct.

25 Q. Do you know if the associated fire

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1 buffers are proposed?

2 A. Fire management along the rail line is  
3 mentions in the EIS.

4 Q. No. That wasn't the question I asked.  
5 Are the associated fire buffers proposed as part of  
6 this design?

7 A. Well, I interpreted that to be a fire  
8 buffer. A zone on either side of the rail line  
9 would be a buffer.

10 Q. Isn't it true in your deposition you  
11 talked about a fire buffer where vegetation is  
12 manipulated and periodically burned as what you  
13 were concerned with?

14 A. That's a potential activity that may  
15 occur that would be allowed, yes.

16 Q. Allowed by whom?

17 A. Well, we talked yesterday about fire and  
18 prescribed fire. That's something that may occur.  
19 And we've had fires in this area, I believe none of  
20 them prescribed, but we may have prescribed fires.

21 Q. We may?

22 A. Um-hum.

23 Q. But you don't know that?

24 A. No, I don't.

25 Q. And you don't know if that's part of our

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1 plan, do you?

2 A. It may be an action of the land manager.  
3 It may be an activity of the rail operating line.

4 I have seen fires set by rail operations along  
5 lines in -- in Utah.

6 Q. Okay. Have you seen them on every line  
7 in Utah?

8 A. On some lines.

9 Q. All right. But not on every line?

10 A. No.

11 Q. So you have no way to assume that it  
12 would be on this line, do you?

13 A. I -- I don't know. But since it -- the  
14 EIS in the description of the activity does not  
15 preclude those, I assumed that we should plan for  
16 them, since it does not preclude them.

17 Q. It also doesn't preclude lots of things.  
18 It doesn't preclude our bringing in elephants, or  
19 it doesn't preclude our bringing in, you know,  
20 hazardous waste of types not described. It's just  
21 silent on that because it's not going to happen.  
22 Isn't that the fact?

23 A. No, I'm afraid that's not the fact,  
24 because I looked at what practices may occur and  
25 have occurred in similar situations in the state,

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1 and these are some of those and elephants are not.

2 Q. Okay. You testified in your deposition  
3 that putting in fire barriers and periodically  
4 burning them and grading them is more serious than  
5 putting the rail line in; isn't that true?

6 A. Yes.

7 Q. So if we don't have fire barriers and if  
8 we don't periodically burn them and we don't  
9 periodically grade them, then you're not worried  
10 about the rail line?

11 A. I'll have to answer no to that. I am  
12 worried about the rail line for other reasons.

13 Q. Aren't you worried about the rail line  
14 because you just don't want a rail line of any sort  
15 in Skull Valley?

16 A. No. I actually prefer a rail line to a  
17 road. Transporting these materials would be more  
18 impacting on a road than it would be on a railway.  
19 So there are other alternatives that are even more  
20 impactive.

21 Q. Now, you testified that the rail line  
22 has the potential to impact springs and small  
23 wetland areas that are not shown on most maps.

24 A. Yes.

25 Q. Okay. Are they shown on any maps?

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1           A.       They're shown on hydrologic maps of the  
2 southern part of the route, not near the candidate  
3 wilderness area.

4           Q.       Okay. So that has nothing to do with  
5 this issue, I take it?

6           A.       Well, the railroad would impact --  
7 potentially impact those areas if it went through.

8           Q.       No, but it has nothing to do with the  
9 rail corridor through the SUWA-declared North Cedar  
10 Mountains areas, does it?

11          A.       It would impact potential watercourses,  
12 and that, therefore, could impact the vegetation  
13 communities dependent on those watercourses.

14          Q.       No. My question was small springs --  
15 springs and small wetland areas.

16          A.       Yes, it will -- those are not found in  
17 the candidate wilderness area --

18          Q.       Okay.

19          A.       -- where the rail line would go.

20          Q.       You said it was quite possible that  
21 these springs and small wetland areas have  
22 organisms that may be found nowhere else?

23          A.       Yes. And this comes from applying what  
24 I call a precautionary principle. There's been  
25 surveys of spring areas and wetland areas in the

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1 Great Basin by a number of scientists, and they've  
2 been amazed at the unique life forms they've found  
3 in them. But they haven't --

4 Q. But you -- I'm sorry.

5 A. -- they -- they have not surveyed this  
6 area.

7 Q. And you have not either?

8 A. And I have not either.

9 Q. Okay. So, now, that concern would apply  
10 to any wetlands areas, I take it, not just the ones  
11 that you say may be on some maps that may be  
12 affected by something that's outside the scope of  
13 your area?

14 A. No. It applies only to a specific  
15 family of wetland areas found in the bottoms of  
16 these Great Basin mountain ranges and basins. It  
17 doesn't apply to, for example, a spring or wetland  
18 high in a mountain area. It doesn't apply to  
19 springs and wetland areas around the Great Salt  
20 Lake. That's a different -- different habitat  
21 altogether.

22 Q. Okay. Is it possible that there might  
23 be those organisms not found anywhere else in  
24 wetlands near the north end of Skull Valley?

25 A. I'm sorry. Could you please help me

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1 with that question.

2 Q. Sure. Is it possible that you might  
3 find these organisms that you postulated might not  
4 be found anywhere else in the wetlands that are at  
5 the north end of the Skull Valley?

6 A. It's possible.

7 Q. Okay. But you would prefer that we put  
8 a railroad route through those wetlands. Isn't  
9 that what your testimony says?

10 A. The rail line, wherever it's put, will  
11 have impacts of one kind or another. The wetland  
12 areas I'm talking about are of a different nature  
13 than the mud flats found near the -- the area where  
14 the candidate wilderness area is in the north.

15 Q. Okay. But you haven't studied the  
16 biology in either sets of wetlands, have you?

17 A. No, I have not.

18 Q. So you don't know what's in either one.  
19 But you want to protect the ones down south that  
20 you haven't studied, but you don't seem that  
21 interested in protecting the ones up north which  
22 you also haven't studied.

23 A. I don't believe there are wetland areas  
24 of the same kind in the north.

25 Q. Are there wetland areas in the north?

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1 A. There probably are not, no.

2 Q. Okay. But you don't know that?

3 A. I haven't done a survey.

4 Q. I see. About how many times, excluding  
5 our trip out to the site on Monday, have you been  
6 on the tract of land through which the railroad  
7 corridor will cross the North Cedar Mountains area?

8 A. Well, I first went out to that area in  
9 probably 1979. And I have not kept a running tally  
10 of all the times I've been out there, but it's  
11 probably between 10 and 15 times. And that's --  
12 the primary access route to the Cedar Mountains,  
13 the whole Cedar Mountain area, goes through that  
14 particular area and crosses over that particular  
15 area.

16 Q. So if you want to get to the South Cedar  
17 Mountains, the Cedar Mountains WSA, you have to go  
18 through that part?

19 A. That's the most expeditious route, but  
20 that's not the only route.

21 Q. Okay. You wouldn't drive down --  
22 further down a real road, down Skull Valley Road,  
23 and then cut over on one of the other Jeep trails  
24 that would take you directly into the Cedar  
25 Mountains WSA?

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1           A.       I have done that as well as. I've used  
2 both routes.

3           Q.       Okay. By the way, I think you said at  
4 one point if this railroad were built, your health  
5 would be impaired.

6           A.       Oh, really?

7           Q.       Yeah.

8           A.       Okay. Where did I say that?

9           Q.       I believe you said it in your  
10 deposition, or perhaps it was in your declaration,  
11 I think.

12          A.       Could you help me with where that is?

13          Q.       I will try. I may have to come back to  
14 that.

15                    Yes. In your declaration of December 8,  
16 1998, you stated in paragraph 11 that, My health  
17 will be irreparably harmed by a decision to allow  
18 construction and operation of the Low rail spur.  
19 I'm wondering what health problems you anticipate.

20          A.       Where is this in the documents?

21          Q.       Paragraph 11 in your declaration of  
22 December 8, 1998.

23                    Do we have the contentions notebook?

24                    (A discussion was held off the record.)

25                    THE WITNESS: Oh, thank you.

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1 MR. WEISMAN: I believe this is it.

2 Is it paragraph 11?

3 MR. SILBERG: Yes. Let's see if I can  
4 find it. That's a long paragraph, if I remember.

5 THE WITNESS: So where are we here?

6 Q. (By Mr. Silberg) My health will be  
7 directly affected and irreparably harmed by a  
8 decision to allow construction and operation of the  
9 Low rail spur and by other agency actions that may  
10 impact the North Cedar Mountains, including the  
11 exact tract of land, the bench of the North Cedar  
12 Mountains, over which the proposed rail spur will  
13 traverse.

14 A. And your question is specifically --

15 Q. How will your health be harmed?

16 A. And the list health, recreation,  
17 scientific --

18 Q. No. I'm asking about your health?

19 A. I understand. You're asking about my  
20 health.

21 Well, my health will be affected because  
22 this will lead to increased dust creation. As you  
23 remember, we were driving some of the vehicle  
24 routes out there. And one of the factors that  
25 affects my health is asthma. I -- I have

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1 occasional attacks of asthma. And this is created  
2 by a number of factors, according to my doctor,  
3 including stress and my weight, how much exercise I  
4 get, my diet, a number of factors. But  
5 particularly during air quality episodes, I have to  
6 change my behavior in Salt Lake to compensate for  
7 it to prevent asthma attacks. Increased dust and  
8 particulates from -- caused by roads and vehicles  
9 in the area that may be exacerbated by the railroad  
10 could -- could affect my health because it could  
11 cause an asthma attack.

12 Q. Well, why would you drive on a dirt  
13 road, then, if you were worried about dust? I  
14 think we all experienced some dust driving out on  
15 those roads.

16 A. It wouldn't be me, it would be others.

17 Q. I see.

18 A. On busy weekends in that area, you will  
19 see almost a cloud of dust as all the vehicles and  
20 activities out there are churning up dust.

21 Q. And I take it you don't like that?

22 A. Well, I think it -- because of the  
23 weather patterns it becomes part of the air that we  
24 breathe even here in the city.

25 Q. But you'd prefer that those people not

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1 be out there churning up dust?

2 A. I'd prefer not to have my health  
3 compromised by other people's recreation, yes.

4 Q. I see.

5 Let's talk about the railroad corridor  
6 through the North Cedar Mountains area as  
7 identified. How large an area would be between the  
8 rail corridor and the Jeep road which forms the  
9 eastern boundary of that portion, about how many  
10 acres?

11 A. About how many acres. I would have to  
12 look at a map and I could give you a very rough  
13 estimate, or I could use by GIS system computer  
14 mapping and give you within a tenth of an acre.

15 Q. I'm not interested in tenths, I'm  
16 interested in an answer that you could give me  
17 fairly quickly.

18 A. . . . But one of the problems is I don't have  
19 a map in front of me. Do we have a map that has  
20 township and range on it that I can look at briefly  
21 to answer the question? Even the map that was  
22 handed out on the field trip would be adequate if  
23 it has the rail line marked on it.

24 MS. WALKER: It doesn't.

25 THE WITNESS: It doesn't have the rail

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1 line marked on it.

2 Q. (By Mr. Silberg) While we're looking  
3 for it, is it about two and a half sections in a  
4 north-south direction and about a half a section  
5 wide?

6 A. Oh, thank you. Oh, here's a -- here's  
7 a -- well, this has part of it on it, but it  
8 doesn't have the southern part so -- does this have  
9 the -- here's a quad sheet, okay.

10 (A discussion was held off the record.)

11 THE WITNESS: Here are the two -- I've  
12 been given two maps here, one is a map of an aerial  
13 photograph overlain with township and range lines  
14 and the potential right-of-way for the rail line;  
15 is that correct? That's this brown map that I  
16 have.

17 MS. WALKER: But this doesn't have the  
18 wilderness proposal.

19 Was the question between the rail line  
20 and the --

21 MR. SILBERG: Yes, the amount that you  
22 are concerned might be cut out from your designated  
23 area.

24 MS. WALKER: So what's this? That's the  
25 rail line.

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1 THE WITNESS: Yes, that's --

2 MS. WALKER: Oh, and here's the  
3 boundary.

4 THE WITNESS: Yeah, the boundary's down  
5 here.

6 Q. (By Mr. Silberg) Try this one.

7 A. I can actually interpret both of these.

8 Q. Great. I'm just -- I'm looking for  
9 rough numbers in the hundreds of acres.

10 JUDGE FARRAR: Mr. Silberg, before he  
11 goes further with these, do we need these marked or  
12 identified?

13 MR. SILBERG: No.

14 JUDGE FARRAR: All right.

15 Q. (By Mr. Silberg) Would you agree with  
16 me that it's probably about 800 acres?

17 A. Approximately.

18 Q. Okay.

19 A. And is that close enough --

20 Q. That's close enough.

21 A. I mean it could be a hundred more or  
22 hundred less.

23 Q. That's close enough.

24 And the total size of the North Cedar  
25 Mountains area that you've proposed is how many

1 acres?

2 A. Approximately 14,000.

3 Q. 14,173 to be exact?

4 A. I don't have the exact output here.

5 Q. Okay.

6 A. But I'm assuming that's correct.

7 I'll --

8 Q. Now, if we subtract from the 14,000  
9 acres the 800, approximately, that would be cut  
10 off, in your terminology, how many acres would that  
11 leave for the SUWA-designated area?

12 A. Well, perhaps you can do the math for me  
13 without an electronic calculator.

14 Q. I think I can. Would you agree, 13,200?

15 A. About that.

16 Q. Okay. And what's the minimum acreage  
17 needed to be considered for a wilderness area?

18 A. The minimum, actually, it can even be  
19 less -- it's usually 5,000 --

20 Q. Okay.

21 A. -- but it can be less than 5,000.

22 Q. Okay. And if we were to build the rail  
23 line on the proposed route, you would then still  
24 have enough acreage, even assuming that this cut  
25 off acres from your -- from your designated area,

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1 for this to qualify on the basis of size?

2 A. That's correct. It would still qualify.

3 Q. Okay. But -- well, strike that.

4 If we were to build this, would you stop  
5 urging Congress to include the rest of your  
6 designated area as a wilderness area?

7 A. I can't speak for the Utah Wilderness  
8 Coalition, but I can speak for myself. Would that  
9 be okay?

10 Q. Absolutely, absolutely.

11 A. I would recommend that it still be  
12 included, of course excluding the now impacted  
13 area.

14 Q. Yes. Also, your concern really is with  
15 roadless areas; isn't that correct?

16 A. Yes.

17 Q. Okay. The definition of roadless in the  
18 document that you introduced as an exhibit  
19 yesterday, your Exhibit 6, the Wilderness Inventory  
20 and Study Procedures --

21 (A discussion was held off the record.)

22 Q. (By Mr. Silberg) -- defines roadless as  
23 the absence of roads which have been improved and  
24 maintained by mechanical means. Is a railroad a  
25 road?

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1           A.       No, but you also exclude from wilderness  
2 areas significant human impacts such as a quarry or  
3 a rail line. You also exclude right-of-ways. So  
4 if there is a -- there are other things you do  
5 exclude other than --

6           Q.       So if you have a -- for instance, a  
7 transmission line right-of-way, that would exclude  
8 the wilderness area?

9           A.       Yes, it would. I can explain more if  
10 you want me to.

11          Q.       I take it having a railroad on the  
12 border of a wilderness area doesn't exclude that  
13 area from being considered as wilderness area, does  
14 it?

15          A.       No, it doesn't, and I can give you  
16 examples of where we've done just that.

17          Q.       And isn't it true that on the northwest  
18 segment of the North Cedar Mountains area that, in  
19 fact, part of the border is the rail line?

20          A.       On a north -- I -- I'm -- you've got a  
21 map here. Is this the map? He handed me a colored  
22 map that has a number of roadless areas on it  
23 and --

24                   JUDGE FARRAR: Mr. Silberg, you said  
25 "the rail line." You mean there the main line?

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1 MR. SILBERG: Yes, the Union Pacific  
2 route.

3 THE WITNESS: It says "Western Pacific,"  
4 but I think it's now Union Pacific.

5 MR. SILBERG: Um-hum. (Affirmative.)

6 THE WITNESS: And to answer your  
7 question, no, it's along a vehicle route and a  
8 power line. It's not next to the railroad.

9 Q. (By Mr. Silberg) Okay. How far is it  
10 from the railroad?

11 A. Oh, approximately 150 feet.

12 Q. Okay. So it's pretty close.

13 And isn't it true that that railroad  
14 line is a lot more frequently used than the Low  
15 rail corridor would be?

16 A. I don't know because I don't know the  
17 frequency of use that is proposed, but -- but I  
18 would probably, most likely, have to agree with  
19 you.

20 Q. Okay. You didn't make any inquiries as  
21 to just how much this rail line would be used?

22 A. No, I did not. No.

23 Q. Isn't the magnitude of an impact of  
24 relevance to whether an area is a wilderness area  
25 or not?

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1           A.       Impacts that are inside the area, yes.  
2           Impacts that are outside, not usually, no.

3           Q.       Okay. So that's how you -- that's why  
4           you use this cherry stem process we were talking  
5           about yesterday, to exclude those kinds of areas  
6           from a wilderness area?

7           A.       Yes, and for another reason too, and  
8           that's to maintain the need for more vehicle access  
9           where it's required for either ongoing legitimate  
10          activities or maintenance of a facility or some  
11          other legitimate use.

12          Q.       Okay. So we could build a rail line up  
13          into your North Cedar Mountain area and we could  
14          draw the boundary around it, we could gerrymander  
15          that, as we talked about yesterday, and that  
16          wouldn't disqualify it as a wilderness area?

17          A.       I believe it's impractical to do that,  
18          looking at your engineer's requirement for slope  
19          and angle --

20          Q.       I'm not talking about with respect to  
21          this project. I'm talking about building a rail  
22          line into the North Cedar Mountains area. You  
23          could do that, it could terminate all the way in  
24          the middle of the area, and then you could draw  
25          your boundary around that. And then that would

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1 leave you quite happy, because it wouldn't affect  
2 the wilderness characteristic?

3 A. I don't believe it's practical to do  
4 that, and I don't know how to consider it.

5 Q. Let me talk about what I think this  
6 contention involves, which is alternate rail  
7 routes. Now, I have trouble finding in your  
8 testimony the alternate rail route that you would  
9 prefer over the Low rail corridor. Could you point  
10 me to your testimony where that is?

11 A. Now, this is -- this is -- what you call  
12 the proceedings, is that what I should look  
13 through?

14 Q. No. That's your deposition. I'm  
15 talking about your testimony, what you're here  
16 today testifying to.

17 A. And that is -- that is this document?

18 Q. The document that says testimony of  
19 James C. Catlin.

20 A. Okay. So please refresh me on your  
21 question.

22 Q. Yeah. What is the alternate rail route  
23 that you are suggesting we consider since this  
24 contention deals with consideration of alternate  
25 rail routes?

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1           A.       Well, I believe my testimony discusses  
2 whether this area is wild in nature and is of  
3 important natural value.

4           Q.       But where is the alternate route?

5           A.       I believe that's in your EIS document.

6           Q.       No, no. Your alternate route.

7           A.       I don't have an alternate rout.

8           Q.       Okay. Thank you.

9                    So you said we didn't consider alternate  
10 routes, but you don't have any to offer us; is that  
11 right?

12           A.       Well, you being -- being, of course, the  
13 people who prepared the EIS.

14           Q.       Well, we being the people who prepared  
15 the environmental report, the NRC staff --

16                    MS. WALKER: I object. We're the  
17 ones -- my clients are the ones who are saying  
18 there aren't alternatives. Jim's our expert  
19 witness -- I mean Dr. Catlin. I don't know that  
20 he's necessarily the client, so he doesn't make  
21 assertions like that.

22                    MR. SILBERG: But he is the -- I'm  
23 sorry. Mr. Chairman, but he is the witness. He's  
24 testifying with respect to a contention that says  
25 we have not given adequate consideration of

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1 alternative routes. I think it's a perfectly fair  
2 question to ask this witness, What's your  
3 alternative? Otherwise, why are we here?

4 MS. WALKER: We argued this in your  
5 motion for summary disposition. And you suggested  
6 that it was our obligation to come up with an  
7 alternative, and we said it's not our obligation.  
8 And the Board agreed with us.

9 MR. SILBERG: No. I think that's an  
10 incorrect characterization of the Board, but we'll  
11 defer to the Board on that.

12 But I think it's a perfectly fair  
13 question, either he has an alternative or he  
14 doesn't. That's a yes or no question, and he can  
15 explain it as much as he'd like.

16 MS. WALKER: Well, he just said he  
17 didn't.

18 THE WITNESS: Can I respond?

19 JUDGE FARRAR: No, wait.

20 THE WITNESS: All right.

21 JUDGE FARRAR: Mr. Weisman, does the  
22 Staff have anything on this?

23 MR. WEISMAN: I think that the Staff  
24 would agree that it's an appropriate question to  
25 ask. If -- if the witness doesn't have any

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1 alternative rail routes, then we need to know that.  
2 We at least need to know whether there's anything  
3 else to analyze or not.

4 MS. WALKER: It's certainly our  
5 position, SUWA's position, that we have no  
6 alternative rail routes. It's also our position we  
7 have no obligation to present one.

8 JUDGE FARRAR: All right. Even if that  
9 point is valid with respect to the client, we think  
10 that Mr. Silberg is entitled to ask the witness  
11 questions about alternatives, even though his  
12 answers are not binding on your client. It's a  
13 fair question, given the witness's testimony, to  
14 ask him what he would have in mind for  
15 alternatives, whether that's binding on you or not.

16 So we overrule the objection.

17 Mr. Silberg, ask the question again, if  
18 you would.

19 MR. SILBERG: Can I ask the reporter to  
20 read it?

21 (The question was read as follows:

22 "Question: Okay. Thank you. So you  
23 said we didn't consider alternate routes, but  
24 you don't have any to offer us; is that  
25 right?")

1 MS. WALKER: I'm sorry. Didn't he --  
2 didn't Dr. Catlin answer that question?

3 THE REPORTER: Let me read the record.

4 MS. WALKER: Okay.

5 (The record was read as follows:

6 "Question: Okay. Thank you.

7 So you said we didn't consider alternate  
8 routes, but you don't have any to offer us; is  
9 that right.

10 "Answer: Well, you being -- being, of  
11 course, the people who prepared the EIS.

12 "Question: Well, we being the people  
13 who prepared the environmental report, the NRC  
14 Staff --")

15 THE WITNESS: That is correct, and  
16 that's what I said on section 7 on the testimony  
17 where I described alternatives that -- I don't know  
18 what they are, but that would be outside the area.  
19 But I don't know what they might be.

20 Q. (By Mr. Silberg) I'm sorry. Where do  
21 you describe that? In --

22 A. In A11, Answer A11. "Rail alternatives  
23 that do not traverse the proposed North Cedar  
24 Mountain wilderness area have a significant  
25 advantage over the Low Corridor alignment."

1 I don't know what those would be, but  
2 they'd be just outside the area.

3 Q. I see. You do suggest there that in the  
4 case where an alternative alignment bypasses the  
5 North Cedar Mountains area and traverses mud flats  
6 that the mud flats may themselves act as a natural  
7 fire barrier and a barrier to the spread of exotic  
8 weeds?

9 A. Yes.

10 Q. So at least to that extent you're  
11 suggesting that maybe we might put a route down  
12 through the mud flats?

13 A. You might possibly. I don't know if you  
14 would or wouldn't.

15 Q. And you have no idea whether that's  
16 feasible, do you?

17 A. I really don't, no.

18 Q. Okay. You did say in your deposition  
19 that we might have a construction problem in that  
20 area, didn't you?

21 A. You might because of soil condition in  
22 the valley bottoms.

23 Q. Okay. And you also said in your  
24 deposition that that area might not have the soil  
25 type for a roadbed, didn't you?

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1 A. Yes.

2 Q. And you also said in your deposition  
3 that that area might be unstable, didn't you?

4 A. Yes.

5 Q. And you also said that a route through  
6 the mud flats wouldn't impact the mud flats a great  
7 deal, that it would only have a small impact. You  
8 said that, didn't you?

9 A. Please -- please help me with that one.  
10 Where would that one be?

11 Q. Sure. Page 112, lines 5 and 6, of your  
12 deposition?

13 A. In this document?

14 Q. Yes.

15 MS. WALKER: I'm sorry, Jay. Could you  
16 say that again, please, where it is?

17 MR. SILBERG: Page 112, lines 5 and 6.

18 THE WITNESS: Line 5, the size of them?  
19 Am I on the wrong page?

20 Q. (By Mr. Silberg) No, that's the right  
21 one. You said, It would be a small imprint, and  
22 you would not see as many exotic species being  
23 introduced because of the mud flats.

24 So it's the small impact -- small  
25 imprint statement that I'm --

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1 A. I'm trying to see the context --

2 Q. Sure.

3 A. -- that was leading into to see what  
4 really -- because it's only a snippet of a sentence  
5 so --

6 Q. Yes. On the prior page you said, It  
7 probably wouldn't impact a large part of it, i.e.,  
8 the mud flats, but these intermittent ponds do have  
9 unusual things that occur in them. I would think  
10 it wouldn't physically impact them a great deal.

11 Question: Is that because of their  
12 size?

13 Answer: It's the size of them. It  
14 would be a small imprint.

15 A. The size of them being the size of the  
16 railroad or the size of the pools?

17 Q. It's your answer. I don't know.

18 A. . . I'm trying to understand what you want  
19 the question to -- to focus on.

20 Q. The question is how do you know that it  
21 would be a small imprint, i.e., a railroad through  
22 the mud flats would have a small imprint? How do  
23 you know that?

24 A. Well, I -- one of the things that was  
25 interesting for me for going out to the -- on the

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1 field trip was to, again, affirm other rail lines  
2 and the size of imprint they had in the areas they  
3 passed. And, as you know, going out there, we go  
4 through some mud flats where rail lines occur. And  
5 so I envisioned potentially, if you did decide in  
6 an alternative to put a rail line out in the mud  
7 flats, it would be similar to ones we now see that  
8 are in mud flats already near the Great Salt Lake.

9 Q. And you think those imprints are small  
10 compared to the imprints of a rail line through the  
11 Low rail corridor?

12 A. They're probably similar in size.

13 Q. How wide's the right-of-way on the mud  
14 flat routes that you're looking at?

15 A. I don't know. I would have to go to the  
16 land use plats and to the railroad to find out the  
17 right-of-way --

18 Q. So the --

19 A. -- but the imprint is usually less than  
20 the right-of-way.

21 Q. Okay. So when you said it's about the  
22 same, the fact is you don't know because you  
23 haven't looked?

24 A. Well, again, I was looking at the kind  
25 of undulating terrain that the Low route would

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1 traverse as it goes through the candidate  
2 wilderness area. I was looking at the rail line  
3 that goes up to the pass that we went up to and  
4 noticing how it behaved and -- in terms of cut and  
5 fill and trying to judge the terrain in that area  
6 and how it might also appear on the proposed line  
7 inside the candidate wilderness area. So I was  
8 doing in my own head a mental comparison of what  
9 that might actually be.

10 Q. But you also said that you don't have  
11 any specific knowledge of the railroad cross  
12 sections for our rail line. Didn't you say that?

13 A. No, I don't, except from what  
14 potentially I heard yesterday in testimony.

15 Q. I see. And you have no idea about the  
16 amounts of dirt that might have to be removed, that  
17 cut and -- the cuts and fills that we would need at  
18 various points, do you, other than what you might  
19 have heard yesterday?

20 A. Other than what I might have heard  
21 yesterday and on the field trip.

22 Q. Okay. With respect to routes that are  
23 east of the Low rail corridor, is it your position  
24 that changes in the elevation as you move east away  
25 from the corridor wouldn't affect the construction

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1 of the layout of the alternate route?

2 A. Please -- please help me here and -- as  
3 you move east from what?

4 Q. From the existing route, when you move  
5 down the bench.

6 A. Are you talking -- the existing route  
7 being the preferred alternative?

8 Q. Yes, the Low rail corridor.

9 A. And as you -- as you then move to the  
10 east --

11 Q. Away from the outside of your designated  
12 North Cedar Mountains area.

13 A. Out of the proposed candidate wilderness  
14 area?

15 Q. Yes.

16 A. You're asking does the elevation  
17 differ --

18 Q. Do the changes in elevation that the  
19 route would occur (sic) as you move to the east  
20 outside of your candidate area affect the  
21 construction or layout of an alternate route?

22 A. It may affect it, it may not. It may be  
23 positive, it may be negative.

24 Q. I see. You did see, however, when we  
25 were out there, that as you move outside of your

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1 area, you're going down the slope; isn't that  
2 right?

3 A. You're at a lower elevation.

4 Q. Right, and it's significantly lower at  
5 some points; isn't that right?

6 A. No, it's not significantly lower.

7 Q. Okay. But it's not quite flat, is it?

8 A. Of course, the bottom of the valley --  
9 this -- this whole area really has very little  
10 topographic change. It's really a fairly flat and  
11 gentle kind of terrain.

12 Q. All the way from where we were on the  
13 bench down to the bottom of the valley you said is  
14 flat?

15 A. It's gentle.

16 Q. Gentle?

17 A. It doesn't have -- it's not full of --

18 Q. Incised canyons or --

19 A. -- deep incised canyons or pinnacles or  
20 steep cliffs or sharp, abrupt changes in  
21 topography, no. It's gentle.

22 Q. But it does go downhill, doesn't it?

23 A. It does go downhill.

24 Q. Okay. If that's so, why did you say in  
25 your deposition that the area where the rail line

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1 is proposed and east of there is quite flat?

2 That's not true, is it?

3 A. Well, maps would say that most of that  
4 valley bottom is very flat.

5 Q. No, no. We're talking about quite flat  
6 as compared to where the rail line is going east of  
7 that, going down the slope.

8 A. The valley floor that is outside the  
9 candidate wilderness area is much flatter than  
10 the -- than the undulating terrain which is  
11 undulating some, not a lot, where the Low -- the  
12 preferred alternative line would be.

13 Q. But as you move eastward, you're moving  
14 downhill, you're not moving across flatland; isn't  
15 that right?

16 A. Yes, you're moving downhill.

17 Q. Okay. Moving on to another issue, you  
18 are currently challenging the bureau's  
19 determination not to include the North Cedar  
20 Mountains area as a study -- candidate wilderness  
21 area for study; is that correct?

22 A. Please rephrase that question.

23 Q. Yeah. You are currently challenging the  
24 Bureau of Land Management's determination not to  
25 put the North Cedar Mountains area into the

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1 wilderness study area program; isn't that correct?

2 A. Myself as an expert witness or as a  
3 person or --

4 Q. Well, I don't know. SUWA -- your  
5 Exhibit 3 is an appeal of that determination by --  
6 I guess it's by SUWA and others.

7 A. Yes. My question is are you asking me  
8 to represent -- to be a representative of SUWA in  
9 that capacity?

10 Q. Well, are you a member of SUWA?

11 A. Yes.

12 Q. Okay. So SUWA is, in fact, challenging  
13 that determination?

14 A. Yes.

15 Q. And did SUWA ask for a stay of -- from  
16 the Bureau of Land Management in connection with  
17 some oil and gas leases that they were -- they  
18 wanted to make?

19 A. I'm -- I'm not involved in that legal  
20 activity. And I'm sorry. I can't -- I can't tell  
21 you.

22 Q. Okay. So you don't know whether that  
23 stay request -- the status of that stay request?

24 A. I don't know the status of that.

25 Q. Okay. You seem to disagree with BLM's

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1 -- some of BLM's recommendations with respect to  
2 how they handle the -- that North Cedar Mountains  
3 area and other parts of the Skull Valley. For  
4 instance, the Bureau of Land Management has  
5 recommended that crested wheat grass be included in  
6 the seed mixes which are used for revegetating  
7 areas in that area; isn't that correct?

8 A. Yes.

9 Q. Okay. And you don't like crested wheat  
10 grass?

11 A. It's an exotic species.

12 Q. Okay. And, therefore, BLM shouldn't  
13 recommend we plant that to reduce fire risk?

14 A. I don't believe that it -- fire risk is  
15 related to crested wheat grass. It's related to  
16 cheatgrass. The fire risk we're talking about is  
17 problems related to cheatgrass.

18 Q. Yes, but doesn't crested wheat grass act  
19 as a fire barrier or --

20 A. No, it doesn't.

21 Q. -- it slows the progress of fire?

22 A. Not with -- not if it's in a field  
23 dominated by cheatgrass, no.

24 Q. Okay. And is the area where the Low  
25 rail corridor going to be fields dominated by

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1 cheatgrass?

2 A. Yes. In fact, particularly in the part  
3 of the shoulder bench where we were, we were seeing  
4 all the cattle grazing going on. Most of the small  
5 young grass that was growing -- I think at one  
6 point we stopped as we went up there, and either  
7 you or someone else asked me --

8 Q. I did.

9 A. -- to identify -- and I pulled up a  
10 piece of grass that was there, and that was the  
11 dominant growing plant in that particular area.

12 Q. That being cheatgrass?

13 A. Yes.

14 Q. Okay. So we now have an area there that  
15 is already dominated by exotics.

16 By the way, are exotic species only  
17 plants?

18 A. No.

19 Q. Okay. Are horses native to that area or  
20 were they introduced by man?

21 A. Both is correct, but you have to look at  
22 the time scale. Horses were in that area 15,  
23 20,000 years ago and became extinct, and they've  
24 been reintroduced, a different kind of horse.

25 Q. So the ones that are reintroduced are,

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1 quote, exotic species?

2 A. They're called feral horses.

3 Q. Yeah. Are they, quote, exotic species  
4 the same way as we would say cheatgrass is, because  
5 they were introduced?

6 A. I think so, yes.

7 Q. Thank you.

8 Now I have to make sure I get to the  
9 portions which we left in and left out on Answer 9.

10 JUDGE FARRAR: Mr. Silberg, while you're  
11 doing that, let me just ask about the -- how you  
12 use the term "exotic." Does that mean nonnative,  
13 or does it have another meaning?

14 THE WITNESS: It means a species that is  
15 not part of the natural plant community that  
16 occurred there, usually determined by presettlement  
17 times.

18 JUDGE FARRAR: And how is that  
19 distinguished from the word "invasive," which we  
20 also sometimes hear?

21 THE WITNESS: Invasive implies that a  
22 species is gaining dominance or -- and that can be  
23 actually a native species in some cases under  
24 certain circumstances, but it could be either  
25 exotic or native that's invasive.

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1 JUDGE FARRAR: Thank you.

2 Q. (By Mr. Silberg) On Answer 9 where you  
3 talk about Congress has the final authority to  
4 designate wilderness -- and I think we all agree  
5 Congress hasn't done that, at least yet, for the  
6 North Cedar Mountains area. And, obviously, you  
7 can't predict what Congress will or won't do; is  
8 that correct?

9 A. I cannot.

10 Q. Okay.

11 A. I can guess, but I can't predict.

12 Q. And you talk about this America's Red  
13 Rock Wilderness Act. Did you draft that act?

14 A. No.

15 Q. Okay. Do you know what's in it?

16 A. Yes.

17 Q. Is there any mention in that act --  
18 first of all, are there any red rocks in the North  
19 Cedar Mountains area?

20 A. No.

21 Q. Okay. Is there any mention in that bill  
22 of the North Cedar Mountains area?

23 A. It is included in the current bill, yes.

24 Q. That wasn't my question. Is there any  
25 mention of the North Cedar Mountains area in the

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1 bill?

2 A. The Cedar Mountains are in there, and  
3 there are three units, the south, central and  
4 northern. So, yes, they are included.

5 Q. Can you show me where it says North  
6 Cedar Mountains in that bill?

7 A. It says Cedar Mountains I believe, if  
8 you look.

9 Q. Yes, I know it says Cedar Mountains.

10 A. And if you look at the acreage that's  
11 there, it includes all three areas. So it was  
12 intended -- because -- because there are 145  
13 individual units, some of them adjacent to parks  
14 and 30 acres or so, they were lumped together for  
15 clerical reason. But it is intended to be in  
16 there, even though it is not identified separately.

17 Q. Okay. The fact that it isn't identified  
18 separately in your view doesn't say anything about  
19 how important it is?

20 A. I think it speaks even more strongly for  
21 it, because it's part of a group of three areas  
22 that need to be protected together.

23 Q. I see. And in the findings of the bill  
24 where they mention some specific areas like the  
25 Pilot Range the Stansbury Mountains and the Wah

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1 Wah, there's no mention there of the North Cedar  
2 Mountains, is there?

3 A. No. The Pilot Range also is a group of  
4 several areas, too, similarly clustered together.

5 Q. Yeah, but there's no mention -- there's  
6 not even a mention of the Cedar Mountains in the  
7 context of that finding, is there?

8 A. I -- I'd have to review it again, if you  
9 want me to do that.

10 Q. It's short.

11 A. All right. I'm referring to page 4 of  
12 this document, Cedar Mountains, 108,000 acres  
13 included here --

14 Q. How do we know that?

15 A. It's -- well, you would have to look at  
16 the list that we submitted to the committee who  
17 prepared this bill that includes all of these areas  
18 and includes what we call a cluster and includes  
19 which units were in that cluster. So this we call  
20 a cluster.

21 Q. I see. Okay.

22 A. So I apologize if it isn't more direct  
23 and clear but --

24 Q. Well, I think it says something about  
25 the clarity with which the sponsors of this bill

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1 may or may not have known what they were  
2 recommending.

3 JUDGE FARRAR: Mr. Silberg, before you  
4 leave the bill, could you give us its --

5 MR. SILBERG: Yes. It has two  
6 designations. It's 7S68 under -- I'm sorry 786 --  
7 I'm dyslexic -- 107th Congress, First Session, and  
8 HR1613, 107th Congress, First Session.

9 JUDGE FARRAR: And it's entitled?

10 MR. SILBERG: I think that's designated  
11 America's Red Rock Wilderness Act of 2001.

12 JUDGE FARRAR: Thank you.

13 Q. (By Mr. Silberg) This wasn't the first  
14 time that that bill was introduced in Congress, was  
15 it?

16 A. This bill is different than earlier  
17 citizen-directed wilderness bills so -- but it was  
18 introduced earlier, yes.

19 Q. I see. Did the earlier versions have  
20 the Cedar Mountains listed?

21 A. Some of the earlier ones did not.

22 Q. And about how many times has this bill  
23 been introduced to Congress, or bills like this?

24 A. Since I think about 1988. Maybe you can  
25 help me with the iterations of Congress. But while

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1 I was getting my Ph.D., I stopped watching this  
2 issue for a while so --

3 Q. You can do that with legislation, and it  
4 will still be around. We do that with nuclear  
5 waste legislation.

6 Does the legislation require the  
7 secretary of interior, after enactment, to file a  
8 map and a legal description of each of the  
9 designated areas?

10 A. That's correct.

11 Q. So until that map is -- does that map  
12 exist?

13 A. Yes. The map for the legislation,  
14 proposed legislation does exist.

15 Q. Okay. But that's not necessarily the  
16 map that the secretary of interior, whoever he or  
17 she may be, after enactment might choose to  
18 introduce, is it?

19 A. There would be a different map, and I  
20 can explain how it would be different. Would you  
21 like for me to clarify that?

22 Q. Well, I don't know that that's  
23 necessary. The question is that the map that the  
24 secretary would issue does not today exist?

25 A. It never does for legislative wilderness

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1 bills.

2 Q. Okay. So we don't actually know what  
3 the -- what the specific boundaries of any of these  
4 many areas that are listed would be until that map  
5 is issued, do we?

6 A. We actually do.

7 Q. And how is that?

8 A. Because in this legislation it  
9 prescribes the setback boundaries the legislation  
10 would recommend. A setback means that -- for  
11 example, on that vehicle route that we were on,  
12 there would be an area inside the candidate  
13 wilderness area that would not be actually managed  
14 as wilderness, so it's a setback. And that setback  
15 is defined in the language itself, relating to  
16 different kinds of boundaries.

17 Q. Okay. But the map doesn't exist today,  
18 and presumably the secretary of interior, in the  
19 exercise of his or her functions under the bill,  
20 will do whatever he or she determines appropriate  
21 at the time the bill is passed, if it's ever  
22 passed; isn't that correct?

23 A. The bill would guide the secretary on  
24 how to draw this legal map.

25 Q. Okay. Let's talk for a little while

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1 about the survey that was conducted by I guess your  
2 group that you had a major role in and you talk  
3 about in your testimony.

4 First, were you involved in the  
5 preliminary work on the North Cedar Mountains area?

6 A. Please help me with what you mean by  
7 preliminary.

8 Q. Well, I think your testimony talks about  
9 there being preliminary work before the fieldwork  
10 that was carried out.

11 A. This is in our process, the Utah  
12 Wilderness Coalition's process?

13 Q. Yes.

14 A. Yes, I was involved in that.

15 Q. Did you review aerial photographs?

16 A. Yes.

17 Q. Okay. Did those photographs show the  
18 trails that we saw while we were on the site tour?

19 A. They did not show, for example, the --  
20 the lines marked as Jeep tracks that are in the  
21 maps that were taken with us, that we took on the  
22 field trip, so these particular routes did not  
23 show, no.

24 MS. WALKER: There's the field trip map.

25 THE WITNESS: Here's the field trip map

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1 here.

2 Q. (By Mr. Silberg) Let me show you an  
3 aerial photo that has on the top of it the date of  
4 April 17, 1999. From the outlines of the roads, do  
5 you recognize that photograph?

6 A. Yeah. If I'm holding it this way, north  
7 is to my right, and -- and this is west. And we  
8 actually drove down this, drove down this, yes.

9 Q. And doesn't this aerial photograph show  
10 a number of trails crossing the Jeep track into --  
11 I'm sorry, come up and join us -- crossing the Jeep  
12 track into the SUWA-designated area?

13 A. It -- it shows lines on the ground, yes,  
14 um-hum.

15 Q. Okay.

16 A. This -- now, this, by the way, was not  
17 one of the aerial photographs we looked at. We  
18 looked at color photographs that were taken  
19 approximately five, six years earlier than that.

20 Q. I don't think we ever saw those color  
21 photographs.

22 A. They were taken by the department of the  
23 interior.

24 MS. WALKER: Wait. I'm sorry. I lost  
25 track of what Jim was saying because I was looking

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1 at the map. Can I just hear what he said? Can you  
2 read it to me, please? I'm sorry. I was wandering  
3 around.

4 THE REPORTER: You need to give me some  
5 direction.

6 MS. WALKER: Just when Jay -- I mean  
7 Mr. Silberg showed him the map.

8 (A discussion was held off the record.)

9 (The record was read as follows:

10 "Question: (By Mr. Silberg) Let me  
11 show you an aerial photo that has on the top of  
12 it the date of April 17, 1999. From the  
13 outlines of the roads, do you recognize that  
14 photograph.

15 "Answer: Yeah. If I'm holding it this  
16 way, north is to my right, and -- and this is  
17 west. And we actually drove down this, drove  
18 down this, yes.

19 "Question: And doesn't this aerial  
20 photograph show a number of trails crossing the  
21 Jeep track into -- I'm sorry, come up and join  
22 us -- crossing the Jeep track into the  
23 SUWA-designated area.

24 "Answer: It -- it shows lines on the  
25 ground, yes, um-hum.

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1 "Question: Okay.

2 "Answer: This -- now, this, by the way,  
3 was not one of the aerial photographs we looked  
4 at. We looked at color photographs that  
5 were -- )"

6 MS. WALKER: That's fine. Thank you.

7 May I look at that?

8 THE WITNESS: I believe it does not show  
9 Jeep trails. It shows lines on the ground, not  
10 Jeep trails.

11 MS. WALKER: So, I'm sorry, but, Jim,  
12 what were you pointing to here? I don't get this.  
13 I'm not good with maps.

14 MR. SILBERG: I think we were just  
15 pointing to these tracks that were coming into the  
16 area.

17 MS. WALKER: And what did we drive down?

18 MR. SILBERG: This can be off the  
19 record.

20 JUDGE FARRAR: All right. Off the  
21 record.

22 (A discussion was held off the record.)

23 MR. SILBERG: We're ready to go back on  
24 the record.

25 THE WITNESS: Do you want this back or

1 do you want to keep this here?

2 MR. SILBERG: I'm sure my client would  
3 like it back. I don't think I need it.

4 Q. When you were doing the survey --

5 JUDGE FARRAR: Mr. Silberg, before we  
6 leave that matter of the map, again, you don't need  
7 this marked for identification?

8 MR. SILBERG: No. I don't have enough  
9 copies. But it's not significant.

10 JUDGE FARRAR: Okay.

11 MR. SILBERG: The point, I think, was  
12 made.

13 Q. When you did your survey, you indicated  
14 that the fieldwork was done by carefully screened  
15 and trained volunteers and staff; is that correct?

16 A. Yes.

17 Q. Okay. Who were those four -- who were  
18 the carefully trained volunteers and staff who did  
19 the survey in the North Cedar Mountains area?

20 A. Well, I believe it's in the record, but  
21 two of them -- there may be more than two, but it's  
22 Laurel Legate, I believe is one, Michael Scialdone.

23 Q. And what are their qualifications?

24 A. Michael Scialdone worked for me. He was  
25 one of our lead inventory people. He worked full

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1 time doing this work. And his qualifications, he  
2 learned this process of doing this inventory work  
3 by working with me directly for almost a year as he  
4 worked on this. So we -- his professional  
5 qualifications came from his university experience  
6 in Texas and --

7 Q. What was that experience?

8 A. I'm sorry. I don't know what he  
9 graduated in.

10 Q. Okay.

11 A. But it related to environmental policy,  
12 environmental issues.

13 Q. The -- your description says that after  
14 the fieldwork -- after you reviewed the fieldwork,  
15 you gathered additional information?

16 A. Yes.

17 Q. Now, what additional information did you  
18 gather with respect to the North Cedar Mountains  
19 area?

20 A. Well, we would look at a number of  
21 factors in recommending the area to be wilderness.  
22 One would be we checked the land use plats to see  
23 if there were existing right-of-ways --  
24 rights-of-ways in the area. And we would look to  
25 see in land use plans whether there was a proposal

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1 or some activity planned for the area that would be  
2 in conflict with wilderness. We would look at the  
3 off-road vehicle management of the area and find  
4 out if there were designated routes or existing  
5 routes that the agency was -- was recommending be  
6 open to motor vehicles. And in this particular  
7 case, because off-road vehicles are an issue in  
8 this area, I actually called the -- one of the  
9 recreation planners and talked to him. I talked to  
10 Lou Kirkman about this and asked specifically one  
11 route at a time which of these were existing and  
12 which -- and, therefore, were open for vehicle use  
13 and which were not.

14 Q. Okay. I take it he told you that the  
15 Jeep trail that ran up the middle of your  
16 designated area across the rail corridor was open  
17 for Jeep use?

18 A. He said that was not an existing route  
19 open for vehicle use.

20 Q. So you violated the law Monday when we  
21 drove up that?

22 A. Oh, you're talking about the one going  
23 up to the private lands?

24 Q. Yes.

25 A. No, that was one that was open. I'm

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1           sorry. I thought you meant the north-south one we  
2           looked at but didn't drive on.

3           Q.       I see. I take it from your testimony  
4           that you did not revisit the site as part of this  
5           process?

6           A.       I'm sorry.

7           Q.       Your -- your categorization of the North  
8           Cedar Mountains area, that you personally did not  
9           revisit the site before the recommendation was  
10          made?

11          A.       I'm trying to think. Did I say that?

12          Q.       That's what I interpreted your testimony  
13          to mean.

14          A.       Okay. Could you help me? Where is  
15          that?

16          Q.       Yes. The bottom of page 3.

17          A.       The bottom of page 3.

18          Q.       You said, Then inventory staff members,  
19          one of whom was a member of the TRT -- which stands  
20          for technical review team -- revisited the site.  
21          Then the next sentence says, Then I, together with  
22          other TRT members, used this information.

23                   I take it from that that you did not  
24          revisit the site as part of that process?

25          A.       So page 3. Which paragraph are we on?

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1 I'm sorry. I missed -- I missed -- I was listening  
2 to you and trying to look --

3 Q. Yeah. The bottom -- last paragraph --

4 A. Last paragraph.

5 Q. -- the last two sentences on that  
6 paragraph.

7 A. I was trying to see where it says I did  
8 not visit the area.

9 Q. Well, as I said, I inferred that from  
10 the fact that you said one of, you know, inventory  
11 staff members, one of whom was a member of the  
12 technical review team, revisited the site. I  
13 assumed since you were a member of the technical  
14 review team, if you had revisited the site, you  
15 would have said I revisited the site.

16 A. Well, what this meant to say was we  
17 needed additional detailed fieldwork and we needed  
18 to have one of our experts go out and look at this  
19 a second time.

20 Q. But my question is you didn't revisit  
21 the site?

22 A. I didn't take those photographs, no, but  
23 I did visit the site. But I did not do this  
24 technical fieldwork.

25 Q. Okay. Thank you.

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1 I think you said that to protect  
2 biological diversity you want priority given to  
3 areas with large elevation gradients and riparian  
4 areas. Is that what you say in your testimony?

5 A. For some species but not for other  
6 species.

7 Let's go over that, if we can. Where  
8 would that be in the --

9 Q. Paragraph 7 of your Answer 6.

10 A. Paragraph 7?

11 Q. Yes, bottom of page 3, actually just  
12 before the paragraph we were just looking at.

13 A. Okay.

14 Yes, um-hum.

15 Q. I take it that the technical review team  
16 -- it says you did this, the technical review team  
17 did this, in consultation with biologists. So,  
18 again, you're not the biologist --

19 A. No --

20 Q. -- you were consulting with others?

21 A. -- that's correct.

22 Q. What are the riparian areas that are  
23 affected by the railroad spur, if any?

24 A. I believe there are none --

25 Q. Okay.

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1           A.       -- by the -- by the Low rail  
2 alternative, which is the higher one.

3           Q.       And with respect to the large elevation  
4 gradient portion of that statement, what is the  
5 elevation gradient of your North Cedar Mountains  
6 area?

7           A.       I'd have to look at the map and judge  
8 it, but I'm assuming -- is it okay to say it's  
9 maybe 2 or 3,000 feet.

10          Q.       Sure.

11          A.       Is that close enough for you?

12          Q.       Sure.

13                    Okay. And what's the elevation gradient  
14 in the South Cedar Mountain area, the Cedar  
15 Mountain WSA we're calling it?

16          A.       It's a little higher.

17          Q.       So that has a larger elevation gradient  
18 than what the North Cedar Mountains already have?

19          A.       Yes.

20          Q.       And isn't it true that the base  
21 elevation at the North Cedar Mountain area at the  
22 height of the elevation of the proposed railroad  
23 corridor is about the same as the base elevation at  
24 the South Cedar Mountains, the Cedar Mountain WSA?

25          A.       It's -- it's relatively similar.

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1 Q. Okay. You also testified that the  
2 boundaries of the North Cedar Mountains area  
3 designated by SUWA were drawn specifically to  
4 exclude human impacts. That's what you say?

5 A. They were drawn to exclude significant  
6 or substantially noticeable human impacts.

7 Q. That's not what your testimony says, is  
8 it?

9 A. You might say I'm -- I'm giving you more  
10 insight into how we actually made the decision. So  
11 we didn't exclude all human impacts because one of  
12 them, for example, is the grazing of a cow --

13 Q. But your testimony says -- and this is  
14 the second paragraph of your Answer 7 -- that,  
15 Because the UWC -- that's Utah Wilderness  
16 Coalition's -- boundaries -- which is the group I  
17 guess that proposed the North Cedar Mountains area  
18 -- were drawn specifically to exclude human  
19 impacts.

20 So you're saying it wasn't -- that's not  
21 entirely true, it's only to exclude significant  
22 ones?

23 A. It might have been an abbreviation of  
24 what should have been a more detailed explanation,  
25 but it's substantially noticeable.

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1 Q. I see. Why didn't you exclude the Jeep  
2 trail, the one that goes up into your area to the  
3 private tract of land that crosses our  
4 railcar (sic) --

5 A. We do.

6 Q. You didn't cherry stem that out of your  
7 design, did you?

8 A. Yes, we did.

9 Q. Isn't it true that that private parcel  
10 of land could be developed for mining?

11 A. Yes, and it could also be exchanged and  
12 acquired by the interior department or by BLM.

13 Q. You also say that the North Cedar  
14 Mountains area has incised canyons and ridge tops.  
15 This is, again, in paragraph 2 of your Answer 7.

16 A. Yes.

17 Q. I take it that doesn't apply with  
18 respect to the area that we're talking about?

19 A. The -- where the rail corridor is?

20 Q. That's right.

21 A. That is correct, yes. You're -- I --  
22 yes.

23 Q. In paragraph 4 of your Answer 7 you say  
24 that this North Cedar Mountains area is, quote, one  
25 of the few remaining habitats where native habitat

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1 dominates.

2 A. That's correct, yes.

3 Q. One of the few within what geographic  
4 area, all of Utah?

5 A. No. I would -- not all of Utah, but  
6 certainly if you compare it with the grassy  
7 mountains to the north, just across on the north  
8 side of the freeway, fires and exotic species have  
9 changed the character there making that a less  
10 productive wildlife habitat area than the North  
11 Cedars.

12 Q. Okay. But I think we just agreed a  
13 little while ago that, at least down in the area of  
14 the rail spur, we've already had those changes take  
15 place. We have an invasive, dominate species of  
16 cheatgrass, we have not the nice scenic vistas that  
17 we have further up into the North Cedars or  
18 certainly across the valley in the Stansburys.

19 A. The question is whether the rail line  
20 will help with us to restore the productivity of  
21 the land or make it harder to recover that land.  
22 So the question is not whether it's pristine or  
23 whether it's in its natural fully functional  
24 character today but whether we can get back to what  
25 it should be. The Bureau of Land Management -- and

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1 I agree with this goal -- is required to take  
2 actions to return the functionality of upland  
3 rangelands. It's a part of their standards and  
4 guidelines. So dealing with exotic species and  
5 dealing with all the other impacts in the area is  
6 something that I'm concerned about.

7 Q. Okay. But certainly the 14,173 acres of  
8 the North Cedar Mountains area is only a small  
9 fraction of the 5 million areas (sic) that SUWA is  
10 seeking to protect.

11 A. It's a small fraction, but importantly  
12 it's some of the most endangered habitat types in  
13 the Great Basin area.

14 Q. And that statement would include the  
15 area where the rail spur is going?

16 A. Yes.

17 Q. So cheatgrass, no incised plains and  
18 canyons, grazing, that's a really endangered area,  
19 isn't it?

20 A. It is, and here's why: What we're  
21 seeing in the Great Basin area is we're seeing a  
22 rapid shift in the plant communities, particularly  
23 the shrub communities that form shoulder lands in  
24 the Great Basin and the bottomlands of the Great  
25 Basin. These lands are the habitat for a diversity

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1 of plant species, insects, rodents and birds that  
2 live in the area.

3 And as we drove into the area, we went  
4 by a rock just inside our proposed area, and on  
5 that rock was stained -- decades, perhaps hundreds  
6 of years of scat from a raptor. The raptor wasn't  
7 there. It could have been a Ferruginous hawk. We  
8 don't know. We haven't done the survey work in  
9 this area.

10 But what we're finding is the loss of  
11 these kinds of shrub lands and bench lands is a key  
12 factor in the decline of wildlife in a larger scale  
13 throughout the region.

14 Q. So you really want to recover this area  
15 from its current status to something else?

16 A. I and the department of interior as  
17 well.

18 Q. What about recovering Skull Valley from  
19 what it is now to what it was sometime in the past?

20 A. I think all rangelands are in that  
21 category.

22 Q. What about Manhattan? No. Strike that.

23 A. Well, I can talk on the side about that.

24 Q. I think we all can.

25 You referred to that the North Cedars

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1 provides critical wildlife habitat. I think we  
2 agreed yesterday, at least with the witnesses who  
3 were on the stand, that the critical habitat area  
4 in the North Cedars excludes the area where the  
5 rail corridor is going; is that correct?

6 A. No, that's not correct.

7 Q. Would you like to look at the table in  
8 the -- and the figure in the final environmental  
9 statement and tell me why that's not correct?

10 A. The figure in the final environmental  
11 statement deals with one species. It deals with  
12 deer. And it was prepared by the Division of  
13 Wildlife Resources, and their emphasis is wildlife  
14 game production.

15 What that is missing from the EIS is the  
16 critical habitat for all of the species that are  
17 found in that area, particularly nongame species.  
18 And the way you determine that is through processes  
19 that the Division of Wildlife Resources hasn't  
20 entered. And I can give you some insight into what  
21 those might be. There's been some analysis done by  
22 the department of defense in the -- in the Great  
23 Basin area, doing predictive modeling of species.  
24 They've verified some of these models by GAP  
25 analysis with Utah State University that has looked

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1 at predictive habitat for a number of important and  
2 sensitive species in the state of Utah. These maps  
3 were also not in there.

4 So my answer to your question is, that  
5 map, no, it does not represent critical habitat for  
6 all species in the area.

7 Q. What map does represent critical habitat  
8 for species in the area covered by the Low rail  
9 corridor?

10 A. Well, I have not produced those. I've  
11 done this in other areas as part of my work --

12 Q. No. I'm asking what map represents  
13 critical habitat for the area we're talking about  
14 in this hearing. Do you know of any such map?

15 A. Yes, I do.

16 Q. What is it?

17 A. I would look at the GAP analysis that  
18 was produced by Utah State University. I would  
19 look at --

20 Q. No, not what you would look at. What  
21 map shows this as critical habitat?

22 A. They have produced maps that I'm  
23 surprised is not part of this EIS. I've been to  
24 presentations where they have shown data that  
25 occurs in this area. It, unfortunately, was not

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1 included in your analysis, so I can't -- it's not  
2 here today to talk about, but I have seen these  
3 maps.

4 Q. But why didn't you produce it?

5 A. Well --

6 Q. You're the one who's arguing that our  
7 analysis isn't adequate. Why didn't you produce  
8 it? Why didn't you make it available to us on  
9 discovery? Why didn't you include it in your  
10 testimony?

11 A. Well, because, like you, I'm a very busy  
12 person, and, unfortunately, I was negligent. I  
13 should have produced those things and I didn't. I  
14 apologize.

15 Q. And you're also not an expert in  
16 critical habitat?

17 A. No, but I would have it verified and use  
18 the expertise from the people who are.

19 Q. Okay. And as far as you know, none of  
20 the people who worked on the environmental report  
21 or the FEIS are verified experts, in your term?

22 A. I have no idea. I assume they are, but  
23 I don't know them personally. I haven't looked at  
24 their resumes. I'm sorry. I can't -- I'm not  
25 qualified to answer that question.

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1 Q. Okay. You're also not an archeologist,  
2 are you?

3 A. No, I'm not.

4 Q. Okay. In your testimony, paragraph 5,  
5 Answer 7, you talk about there is no rock art in  
6 the region.

7 A. Yes.

8 Q. What region are you talking about?

9 A. Well, this would be the Cedar Mountain  
10 region.

11 Q. All the Cedar Mountains?

12 A. Yes.

13 Q. Okay. Do you know of any rock art  
14 within the confines of the North Cedar Mountains  
15 area?

16 A. No, I don't, but I have seen reports of  
17 experts who have said that they have found some.

18 Q. Okay. You can't give me the names of  
19 those experts or any citations of their reports,  
20 can you?

21 A. I can't, not right now, but if you give  
22 me time, I could.

23 Q. I'm sure.

24 You haven't done an archeological survey  
25 of the rail spur route, have you?

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1 A. No.

2 Q. So you don't know where this known rock  
3 art is?

4 A. I believe it is not located on the rail  
5 spur.

6 Q. Okay. And you believe it's not located  
7 in the North Cedar Mountains area?

8 A. I believe there is some in the North  
9 Cedar Mountains area, yes.

10 Q. And where might that be?

11 A. The locations that I saw in a report  
12 were on the west side of the unit.

13 Q. Okay. And you're not aware of the  
14 archeological surveys that have been done in  
15 connection with this project, are you?

16 A. No, I'm not.

17 Q. Okay.

18 A. Unless they -- were they included in the  
19 EIS?

20 Q. Well, they're certainly referred to in  
21 the EIS.

22 A. But they're not -- they're not --  
23 they're not -- all of the reports are not cited  
24 there --

25 Q. Well, they're certainly included in the

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1 environmental reports which you didn't review.

2 A. No, I haven't seen that.

3 MR. SILBERG: Just one minute, please.

4 MS. WALKER: Speaking of minutes, may we  
5 take a break?

6 MR. SILBERG: I have no more  
7 cross-examination.

8 JUDGE FARRAR: All right. It's very  
9 timely because we were just going to ask you when  
10 would be a good time for a break without  
11 interrupting you.

12 MR. SILBERG: Now.

13 JUDGE FARRAR: Let's take 15 minutes so  
14 the court reporters can do their exchange, and  
15 we'll be back at five minutes to 11:00.

16 (A break was held.)

17 JUDGE FARRAR: All right, we're back  
18 after our break. Mr. Silberg, you had concluded  
19 your cross-examination?

20 MR. SILBERG: Yes, sir.

21 JUDGE FARRAR: So, Mr. Weisman, you can  
22 proceed.

23 MR. WEISMAN: Thank you, Your Honor.

24

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## CROSS EXAMINATION

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BY MR. WEISMAN:

Q. Good morning, Dr. Catlin.

A. Good morning. Is my microphone on? Is it okay?

JUDGE FARRAR: Pull it a little closer, if you would.

Q. (By Mr. Weisman) In your testimony, in your response to Question 7, you made a statement that BLM uses specific criteria for determining whether or not an area qualifies as wilderness. And BLM decides, as we discussed yesterday, I think, whether or not an area is designated as wilderness study area, isn't that correct?

A. That's correct.

Q. Right. BLM doesn't designate areas as wilderness, it's Congress that does that?

A. That's correct.

Q. Okay. I'm now going to ask you some questions with reference to SUWA Exhibit 6, and I'm going to have a copy for you.

A. This is the Wilderness Inventory and Study Procedures?

Q. Correct. In your testimony in response to Question 7, you address the criteria that BLM

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1 uses in evaluating an area as wilderness  
2 characteristics; is that correct?

3 A. Yes.

4 Q. And those characteristics are size?

5 A. Yes.

6 Q. Naturalness?

7 A. Yes.

8 Q. And also outstanding opportunities for  
9 solitude or a primitive and unconfined type of  
10 recreation?

11 A. Yes.

12 Q. Okay. What I'd like you to do for me is  
13 to read -- if you'll turn to Page 12, item 2(a) of  
14 SUWA Exhibit 6. I'd like you to read the item  
15 2(a), that sentence, and that's under the heading  
16 of naturalness.

17 A. "Affected primarily by the forces of  
18 nature. Determine if the area generally appears to  
19 have been affected primarily by the forces of  
20 nature with the imprint of man's work substantially  
21 unnoticeable."

22 Q. Okay, thank you. And if you'll look  
23 down still under the heading of naturalness, an  
24 item 2(b)(1), and if you could read the last  
25 sentence of that paragraph, I'd appreciate it.

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1 A. Beginning with the presence?

2 Q. Correct.

3 A. "The presence or absence of  
4 naturalness, i.e., do the works of humans appear to  
5 be substantially unnoticeable to the average  
6 visitor is the question the Wilderness Act directs  
7 the review to assess."

8 Q. Okay, thank you. And now if you'll turn  
9 to Page 13, if you could read item three, which is  
10 on solitude or a primitive unconfined type of  
11 recreation. If you'd just read -- if you'll read  
12 that first sentence of that paragraph, please.

13 A. "Determine if the area has outstanding  
14 opportunities for solitude or a primitive and  
15 unconfined type of recreation."

16 Q. Okay, thank you.

17 Now, in your response to Question 7, you  
18 state that the NCM, and I'll quote, "clearly  
19 possesses opportunities for solitude and to  
20 practice primitive recreational activities."

21 A. Yes.

22 Q. Okay. Now, in that sentence, you've  
23 left out the word outstanding?

24 A. Yes. It was perhaps an error.

25 Q. Okay. You've also left out the word

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1 unconfined in describing recreation.

2 A. It's not here, that's correct. And I  
3 was speaking, you might say, in an informal sense  
4 and not in a legal sense. But what I meant was  
5 that this area had the kinds of wilderness  
6 activities that qualify it for a wilderness area.

7 Q. Okay, thank you. If you'll turn to Page  
8 9 of SUWA Exhibit 6. You know, I think that we've  
9 already -- I think we've already read in -- well,  
10 actually, if you'll read the last three lines on  
11 that page, we'll have a clear definition of what's  
12 on the record. So if you could read that.

13 A. "The word roadless refers to the  
14 absence of roads which have been improved and  
15 maintained by mechanical means to insure relatively  
16 regular and continuous use. A way maintained  
17 solely by the passage of vehicle does not  
18 constitute a road."

19 Does it mean of vehicles?

20 Q. Probably, I would expect that the S  
21 should be on vehicle, but...

22 You know, I'm going to -- I'm passing  
23 out copies of Staff Exhibit Y. You can keep that  
24 with you.

25 JUDGE FARRAR: Mr. Weisman, this is a

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1 new exhibit?

2 MR. WEISMAN: A new exhibit.

3 JUDGE FARRAR: Then while you are doing  
4 that, we'll have the reporter mark it.

5 (EXHIBIT-Y MARKED.)

6 JUDGE FARRAR: Go ahead, Mr. Weisman.  
7 It's now been marked for identification.

8 MR. WEISMAN: Thank you.

9 Q. (By Mr. Weisman) I've given you a Staff  
10 Exhibit Y, Dr. Catlin. Do you know what this is?

11 A. I have never seen it before.

12 Q. Okay.

13 A. So I'm unfamiliar with it. You'll have  
14 to help me.

15 Q. All right. If you could just read the  
16 title of it. I'll read it. It's United States  
17 Department of the Interior, Bureau of Land  
18 Management, Manual Transmittal Sheet. The subject  
19 is No. 6840 - Special Status Species Management.

20 We've had a lot of discussion through  
21 the course of the proceedings on what critical  
22 habitat is, and at the bottom of Page 3 of that  
23 manual, if you'll turn to that, there is a BLM  
24 definition of critical habitat. If you could  
25 please read that for us, I'd appreciate it.

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1           A.       My understanding is this applies only to  
2 species listed on the endangered species list.  
3 Correct?

4           Q.       Well, if you'll read the definition, I  
5 think it will tell us.

6           A.       The whole paragraph under critical  
7 habitat?

8           Q.       I'd like you to read the whole thing.

9           A.       "Critical habitat: One, the specific  
10 areas within the geographical area currently  
11 occupied by a species at the time it is listed in  
12 accordance with the ESA, on which are found those  
13 physical or biological features, (i), essential to  
14 the conservation of the species and two, that may  
15 require special management consideration or  
16 protection. And two, specific areas outside of the  
17 geographical area occupied by a species at the time  
18 it is listed upon determination by the Fish and  
19 Wildlife Service and/or NMFS" -- I guess that's  
20 the -- I don't know what that acronym stands for.  
21 "That such areas are essential for the conservation  
22 of the species. Critical habitats are designated  
23 in 50 CFR parts 17 and 226. The constituent  
24 elements of critical habitat are those physical and  
25 biological features of designated or proposed

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1 critical habitat essential to the conservation of  
2 the species, including, but not limited to, space  
3 for individual and population growth and for normal  
4 behavior; food, water, err light, minerals or other  
5 nutritional or physiological requirements." I'm  
6 going to the next page, is that okay?

7 Q. Yes.

8 A. "Cover or shelter, sites for breeding,  
9 reproduction, rearing of offspring, germination or  
10 seed dispersal, and habitats that are protected  
11 from disturbance or are representative of the  
12 historic geographic and ecological distributions of  
13 a species."

14 Q. And as you pointed out in the first  
15 sentence, it says ESA, and that means Endangered  
16 Species Act?

17 A. Right.

18 Q. Okay.

19 JUDGE FARRAR: Mr. Weisman, do you also  
20 want to state what the two other acronyms stand  
21 for.

22 MR. WEISMAN: Okay. The FWS means Fish  
23 and Wildlife Service. I do not know what the other  
24 one stands for.

25 MS. WALKER: Natural Marine Fishery

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1 Service.

2 MR. WEISMAN: Thank you, Joro.

3 I would like to move for the admission  
4 of Staff Exhibit Y. I offer that into evidence.

5 JUDGE FARRAR: Any objection?

6 MR. SILBERG: No objection.

7 MS. WALKER: No objection.

8 JUDGE FARRAR: All right, it will be  
9 admitted.

10 (EXHIBIT-Y ADMITTED.)

11 Q. (By Mr. Weisman) Dr. Catlin, in your  
12 response to Question 8, you stated that in 1980,  
13 the BLM found that the NCMA contains substantially  
14 noticeable impacts and that this was the main  
15 reason that the BLM dropped the FRA from further  
16 wilderness consideration; is that correct?

17 A. Please help me with where this is so I  
18 know the context.

19 Q. If you'll have a look at your testimony.  
20 That's this document.

21 A. It's Question 8, then, on Page 5?

22 Q. Response to Question 8 on Page 5, that's  
23 correct. And it's the second sentence of the first  
24 paragraph that I'm referring to. The first and  
25 second sentences.

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1 A. Yes, that's correct.

2 Q. Okay. But isn't it true that in the  
3 1980 inventory, BLM also found that the NCMA did  
4 not have outstanding opportunities for solitude or  
5 primitive and unconfined type of recreation?

6 A. The intensive inventory in 1980?

7 Q. Yes. I'm sorry, we were speaking at the  
8 same time. I wanted to get your answer on the  
9 record.

10 A. In the intensive inventory, the answer  
11 to your question was yes. In the initial  
12 inventory, which is a year or so earlier, they  
13 found there were outstanding opportunities for  
14 solitude.

15 Q. All right. But the initial inventory  
16 was a first look; isn't that correct?

17 A. It was an earlier look, yes.

18 Q. Right. A first, less in-depth look than  
19 the intensive inventory, isn't that correct?

20 A. I don't know if it was less in-depth or  
21 not.

22 Q. All right. But either reason, whether  
23 there were substantially noticeable impacts or  
24 whether there was a lack of outstanding  
25 opportunities for solitude or the recreation,

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1 either one of those standing alone would be  
2 sufficient for BLM to drop a unit from  
3 consideration as wilderness study area?

4 A. Yes.

5 Q. In response to Question 6, you stated  
6 that you used the wilderness identification  
7 guidelines stricter than BLM's.

8 A. Yes.

9 Q. Does that mean that you used stricter  
10 criteria for judging wilderness characteristics?

11 A. Yes.

12 Q. How were your criteria stricter?

13 A. In areas where an impact was evident but  
14 it was not clear whether it was noticeable or not,  
15 and BLM in some cases on similar impacts had found  
16 them not noticeable, we sometimes -- we would judge  
17 on the error of excluding the impact just to make  
18 certain that it didn't place at risk the  
19 conservancy of the area. So in areas where  
20 evaluation of whether the impact was noticeable or  
21 not, there's often one impact that fall into a gray  
22 area. It's hard to determine where they are.

23 Q. Thank you. Now, in response to the same  
24 question, you also stated that in determining  
25 wilderness characteristics, you used the same

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1 policies as established by Congress and Federal  
2 land management agencies for determining which land  
3 should be designated as wilderness. So now, did  
4 you use the same policies or did you use stricter  
5 ones? Which answer is correct?

6 A. We followed those policies, and in areas  
7 where the policies were gray and it was difficult  
8 to determine how the policies would be determined  
9 by yet another person, we tended to be cautious and  
10 they were the same determinations, but there are  
11 gray areas in those determinations. Now, the  
12 policies that we followed were not the ones you  
13 just listed here, by the way. They were ones that  
14 reflected the Organic Act directives that guided  
15 the inventory in the '80s.

16 Q. But don't those Organic Act directives  
17 include definitions of wilderness characteristics?

18 A. They do, but they include some  
19 additional guidance that's not found in these.

20 Q. All right, thank you.

21 Now, in response to some questions that  
22 Mr. Silberg asked you, you said that the slope from  
23 the rail line -- the proposed site of the rail line  
24 down towards the valley floor was a gentle slope?

25 A. Yes.

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1 Q. And you also said that you are not  
2 qualified as a railroad engineer?

3 A. That's correct.

4 Q. Okay. So you can't really say what is a  
5 gentle slope for a railroad, can you?

6 A. Well, I believe that I can, in terms of  
7 the experience I've had working on roads and grades  
8 for roads and their alignment.

9 Q. Tell me, sir, what is the maximum grade  
10 for a road, for a highway? Let's say an interstate  
11 highway.

12 A. Interstate highway, 10 percent.

13 Q. What's the maximum grade for a railroad?

14 A. As discussed yesterday, it was discussed  
15 at one point, five percent for this particular  
16 application.

17 Q. So a gentle slope for a highway not  
18 necessarily would be a gentle slope for a railroad,  
19 would it?

20 A. But the concept of grade is common. And  
21 applying a different number to the same principles,  
22 you can still evaluate whether it's gentle to that  
23 standard 1.5 or not.

24 Q. But you, yourself, are not a railroad  
25 engineer, are you?

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1           A.       No, but I have experience in civil  
2 engineering, which relates to grade and the  
3 determination of grade.

4           Q.       Have you done any calculations or  
5 analysis of what the grade of a line going down the  
6 slope towards the valley of the -- towards the  
7 floor of the valley would be?

8           A.       I've done some rough analysis, but I  
9 would -- I haven't adequate information based on  
10 the ESI or the documents provided.

11          Q.       And how much cut and fill would be  
12 required under your analysis?

13          A.       I did not analyze those, but I did --

14          Q.       That was the question I asked. I asked  
15 you if you had -- had you analyzed what would be  
16 the requirements to go to a rail line from the  
17 bench down into the floor of the valley, and you  
18 said you had performed analysis.

19          A.       I did a rough estimate. I didn't say an  
20 analysis. It was a rough estimate.

21          Q.       You did no calculations, though?

22          A.       I did calculations.

23          Q.       You calculated cut and fill  
24 requirements?

25          A.       No, I calculated the angle of the slope

1 and the elevation it would be when it arrived at  
2 the valley bottom.

3 Q. And what grade? At what grade?

4 A. 1.5 percent.

5 Q. That's the maximum gradient, I believe  
6 for a railroad, is it not?

7 A. Correct. It was your qualifications --

8 Q. You don't know --

9 JUDGE FARRAR: Mr. Weisman, you can ask  
10 any questions you want, but you have to let him  
11 finish the answer?

12 MR. WEISMAN: Yes, Your Honor, I'm  
13 sorry.

14 DR. CATLIN: I was using the standard  
15 that you apparently required.

16 Q. (By Mr. Weisman) But you don't know  
17 what the standard is, the maximum standard, from  
18 your own knowledge?

19 A. I was using your standard. I was  
20 accepting that as a standard that was needed.

21 Q. But from any other source, you don't  
22 know? You don't have personal knowledge of what is  
23 an acceptable grade for a railroad?

24 A. I don't know.

25 Q. Okay. Mr. Silberg also explored with

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1 you whether or not there would be a road associated  
2 with the proposed Low corridor rail line.

3 MR. WEISMAN: I'm going to pass out  
4 Staff Exhibit Z marked for identification.

5 JUDGE FARRAR: All right, while you're  
6 passing it out, we'll have the reporter mark it as  
7 such.

8 (EXHIBIT-Z MARKED.)

9 Q. (By Mr. Weisman) Dr. Catlin, have you  
10 ever seen this document before?

11 A. I have not, no.

12 Q. You have not. And this is before the  
13 Service Transportation Board. It's an application  
14 for construction and operation authority. It's the  
15 Great Salt Lake and Southern Railroad LLC  
16 construction and operation in Tooele County. This  
17 is the application applicable to the Low corridor  
18 rail spur. Would you please take a couple of  
19 minutes, and I'm going to refer you to page --  
20 pages three and four, and would you look at that,  
21 if you would.

22 A. Could you help me understand -- this is  
23 being applied to which organization or agency?

24 Q. This is the Applicant's application to  
25 the Service Transportation Board, STB.

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1 MR. SILBERG: If I could, this is -- the  
2 application is by a subsidiary of Private Fuel  
3 Storage known as Great Salt Lake and Southern  
4 Railroad LLC. It was applying for authority from  
5 the Service Transportation Board with respect to  
6 the construction and operation of the Low rail  
7 corridor.

8 JUDGE FARRAR: Thank you for that  
9 clarification, Mr. Silberg.

10 Q. (By Mr. Weisman) And this is just an  
11 excerpt out of the application. It has a brief  
12 narrative description of the proposal starting on  
13 Page 2. So why don't you read the whole?

14 A. Read all of Page 2.

15 Q. Read from Page 2 through the rest of the  
16 exhibit.

17 JUDGE FARRAR: You mean read it to  
18 himself?

19 MR. WEISMAN: Just to himself.

20 DR. CATLIN: Oh, to myself. Thank you.  
21 I . . .

22 Q. (By Mr. Weisman) Please let us know  
23 when you familiarize yourself with it.

24 A. Should I read the footnotes, also?

25 Q. Whatever you wish.

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1 MR. SILBERG: While Dr. Catlin is  
2 reading the application, I would note that we have  
3 in the room the chairman of the Great Salt Lake and  
4 Southern Railroad.

5 JUDGE FARRAR: And who is that?

6 MR. SILBERG: Mr. Parkyn. We are not  
7 offering him as a witness, however.

8 JUDGE LAM: However, he was a witness to  
9 our earlier proceedings, right?

10 MR. SILBERG: Yes, sir.

11 DR. CATLIN: I've finished the part. I  
12 didn't read the intermobile transfer option.

13 Q. (By Mr. Weisman) That's fine, because  
14 the question I'm going to ask you doesn't have  
15 anything to do with that.

16 Do you see any mention in this part of  
17 the application of a road next to -- an access road  
18 associated with the railroad?

19 A. It does not describe that a road will be  
20 constructed, nor does it preclude one from being  
21 constructed.

22 Q. Okay, thank you.

23 MR. WEISMAN: I'd like to move that  
24 Staff Exhibit Z be admitted as evidence in the  
25 proceeding.

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1 JUDGE FARRAR: Any objection?

2 MR. SILBERG: No, sir.

3 MS. WALKER: No.

4 JUDGE FARRAR: All right, then it will  
5 be admitted.

6 (EXHIBIT-Z ADMITTED.)

7 MR. WEISMAN: I'm now passing out Staff  
8 Exhibit AA, have it marked for identification.

9 JUDGE FARRAR: While you're doing that,  
10 we'll have it marked by the reporter.

11 (EXHIBIT-AA MARKED.)

12 Q. (By Mr. Weisman) Dr. Catlin, have you  
13 ever seen this document before?

14 A. I have not, no.

15 Q. You have not, all right. If you could  
16 please turn to Page 3. It's the last page.

17 JUDGE FARRAR: Mr. Weisman, would you  
18 describe what it is, please.

19 MR. WEISMAN: I'm sorry. This is an  
20 Application for Transportation on Federal Lands,  
21 Private Fuel Storage Facility, Private Fuel Storage  
22 LLC submitted to the Bureau of Land Management. It  
23 is an excerpt from the application that PFS  
24 submitted to BLM.

25 Q. (By Mr. Weisman) And this has a

1 description of the proposed Low corridor rail line.  
2 If you would please turn to Page 3, Section 2.12,  
3 it's entitled "Access". If you could please read  
4 for the record for us the first sentence of that  
5 section, I'd appreciate it.

6 A. 2.12, Access. "PFS does not propose to  
7 construct an access road along the rail line in  
8 order to avoid impacts to the area that might  
9 otherwise arise in the public's use of such a road  
10 to access the interior of Skull Valley."

11 Q. Thank you.

12 MR. WEISMAN: The Staff would like to  
13 move that Staff Exhibit AA be admitted into  
14 evidence in this proceeding.

15 MR. SILBERG: No objection.

16 MS. WALKER: I'm sorry, Mr. Weisman, I  
17 couldn't find what he was reading.

18 DR. CATLIN: It's the last page.

19 MS. WALKER: The last page of...

20 JUDGE FARRAR: Ms. Walker, while you're  
21 checking that, would the witness be good enough  
22 since that's a short sentence, 2.12, to read the  
23 last sentence.

24 DR. CATLIN: Do you wish me to read it  
25 again?

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1 JUDGE FARRAR: You read the first  
2 sentence.

3 DR. CATLIN: And you would like the last  
4 sentence?

5 JUDGE FARRAR: Right.

6 DR. CATLIN: I was asked to stop before  
7 I read that sentence. Should I read that sentence,  
8 too?

9 JUDGE FARRAR: Yes.

10 DR. CATLIN: "As described below in  
11 Section 6, neither maintenance requirements nor  
12 fire concerns require construction of an access  
13 road."

14 JUDGE FARRAR: Okay, thank you.

15 MS. WALKER: I have no objections, but  
16 I'd like to point out that --

17 MR. WEISMAN: I have no more questions.

18 JUDGE FARRAR: I'm waiting. She's  
19 stating whether she has an objection or not.

20 MS. WALKER: I don't have an objection,  
21 but I'd like to point out that I'm not on the  
22 service list either as representing OGD, which I  
23 was at the time, nor was SUWA.

24 MR. SILBERG: I don't believe SUWA had  
25 been admitted as a party.

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1 MS. WALKER: Right, I agree with that.  
2 But I was representing OGD at the time.

3 JUDGE FARRAR: All right.

4 MS. WALKER: But I don't object.

5 JUDGE FARRAR: So you're saying you have  
6 not previously seen this, but you have no objection  
7 to it?

8 MS. WALKER: I don't. I just think it's  
9 sort of odd that I'm not on the service list.

10 JUDGE FARRAR: You mean the service list  
11 of the cover letter dated August 28th?

12 MS. WALKER: Yes.

13 JUDGE FARRAR: And you were  
14 representing?

15 MS. WALKER: OGD at the time.

16 JUDGE FARRAR: OGD at the time.

17 MR. SILBERG: This was not an issue  
18 which bore at all on OGD, and I suspect Ms. Walker  
19 didn't request to be on the service list, because  
20 as you can see, we were not very restrictive on who  
21 we were serving.

22 MS. WALKER: Well, I have to say that we  
23 were on OGD petitions with regard to the Low rail  
24 corridor.

25 MR. SILBERG: And those contentions were

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1 not accepted.

2 MS. WALKER: Doesn't mean we don't care  
3 about what's going on and it might not be relevant  
4 to our environmental justice action. And I didn't  
5 realize you had to request to be on a service list.  
6 But I don't have any objections. I just think it's  
7 odd.

8 JUDGE FARRAR: Are we talking about an  
9 official NRC service list? This was not a document  
10 filed with the NRC?

11 MR. SILBERG: No, this one was. But  
12 there is an official NRC service list that the  
13 Staff uses, and generally we serve copies of  
14 these -- this correspondence on anybody who asks  
15 for it.

16 JUDGE FARRAR: No, what I mean is, while  
17 you served it on people at the NRC, it does not  
18 appear that you served it, for example, on the  
19 Licensing Board or the NRC --

20 MR. SILBERG: We are not required to  
21 serve on the NRC or on the Licensing Board. And I  
22 suspect the Licensing Board would just be as happy  
23 not to be flooded with licensing correspondence.  
24 I'm sorry, this is also a BLM document. I stand  
25 corrected. This was not a letter to the NRC at

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1 all.

2 JUDGE FARRAR: Right. Ms. Walker, we're  
3 going to admit the document, since you have no  
4 objection, and I don't know that the presence or  
5 absence of service of this document at that time is  
6 anything we can try to remedy now.

7 (EXHIBIT-AA ADMITTED.)

8 JUDGE FARRAR: All right, Mr. Weisman,  
9 you had said with that, you have no further  
10 questions?

11 MR. WEISMAN: Yes, Your Honor.

12 JUDGE FARRAR: All right. Why don't,  
13 Ms. Walker, before you do your redirect, the Board  
14 has a few questions and then you'll be able to do  
15 your redirect all in one piece. Dr. Kline.

16 JUDGE KLINE: Dr. Catlin, when  
17 Mr. Weisman asked you if you were a railroad  
18 engineer, that has two possible answers. I just  
19 want to clarify how you understood it. It could  
20 mean a designer of railroads or it could mean a  
21 driver of locomotives. How did you understand when  
22 you answered it?

23 DR. CATLIN: I believe I have very  
24 little knowledge above the ties, what might be  
25 above the railroads and more below, below the

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1 railroad tracks. Does that help you?

2 JUDGE KLINE: I think that will be  
3 adequate, yes. I have one or two questions  
4 concerning your question and answer 10, and  
5 specifically found on Page 7.

6 DR. CATLIN: I'm on that page.

7 JUDGE KLINE: Yeah, okay. There's four  
8 paragraphs above Question 11 there dealing with  
9 impacts of the Low rail corridor. And as a  
10 preliminary, is my understanding correct that you  
11 are not here advocating any other -- any  
12 alternative rail corridor in this proceeding; is  
13 that correct?

14 DR. CATLIN: I'm here to not advocate  
15 one but to talk about the consequences.

16 JUDGE KLINE: Okay, that's what I'm  
17 trying to get at. So even though you're not  
18 advocating any other alternative, is it fair to  
19 assume that you're familiar with the alternatives  
20 that have been proposed by others in this  
21 proceeding?

22 DR. CATLIN: Generally, yes. By  
23 generally, I mean by what's been published in  
24 the --

25 JUDGE KLINE: Yeah, I understand. Okay,

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1 that's enough. So let's just go down these  
2 paragraphs one-by-one, then. The first paragraph  
3 deals with fire, and I'm trying to understand if  
4 you have an opinion as to how the fire hazard of  
5 the Low rail corridor compares or weighs in the  
6 balance with fire hazard of the other alternatives  
7 that have been proposed. Start with the West  
8 Valley alternative. Have you analyzed that?

9 DR. CATLIN: Being the Low elevation?

10 JUDGE KLINE: Yes.

11 DR. CATLIN: In a very cursory sense,  
12 because there is not exact engineering drawings and  
13 maps showing those. But the habitat type at the  
14 lower elevation, the Low west elevation route which  
15 is the West Valley route, is different than that on  
16 the higher elevation.

17 JUDGE KLINE: Yes, that's what I'm  
18 trying to do, how it weighs in the balance.

19 DR. CATLIN: Yes, there is a difference  
20 in the two. And a fire risk is probably in some  
21 parts of it are the same and other parts might  
22 differ. And the fire risk along the upper route  
23 because of the presence of cheatgrass particularly  
24 at its peak, fire may spread quite quickly, and  
25 fire in the Great Basin, in general, is a serious

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1 ecological risk in the presence of other conditions  
2 that are now there.

3 JUDGE KLINE: I only want to focus on  
4 the alternatives that are part of this case.

5 DR. CATLIN: Oh, I apologize.

6 JUDGE KLINE: And do you have an opinion  
7 as to how fire risk, say, of the route that travels  
8 through the mud flats, how that compares with the  
9 Low rail alternative?

10 DR. CATLIN: The mud flats which is the  
11 West Valley route.

12 JUDGE KLINE: Okay, go ahead.

13 DR. CATLIN: If it goes through the mud  
14 flats, again, it would have a lower risk to spread  
15 fire than it would in a higher -- the Low route.

16 MR. SILBERG: Just to clarify, the West  
17 Valley route does not go through the mud flats.

18 JUDGE KLINE: I had understood there was  
19 even a lower route.

20 MR. SILBERG: That's correct, the  
21 Central Valley route.

22 JUDGE KLINE: What I have in mind is my  
23 understanding is that there is a Low rail  
24 alternative, then there is a West Valley  
25 alternative, and then there is a third alternative

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1 passing through the mud flats area or the very  
2 valley bottom. Is that your understanding?

3 DR. CATLIN: I don't know this third  
4 route, I'm sorry.

5 JUDGE KLINE: Oh, I see. Okay. I'll  
6 only ask you about the routes you know, then.

7 All right, let's go on, then, to the  
8 natural runoff patterns, the second paragraph. Do  
9 you have an opinion as to how runoff patterns or  
10 the disruption of runoff patterns compares between  
11 the two routes that you know about?

12 DR. CATLIN: There might be a similarity  
13 between the two. And I don't know if there would  
14 be a difference in route patterns between the two.

15 JUDGE KLINE: That's what I'm asking.  
16 And if you don't know of any, that's fine.

17 JUDGE FARRAR: Can I?

18 JUDGE KLINE: Yeah, go ahead.

19 JUDGE FARRAR: Let me follow up on that  
20 question. I think we heard testimony yesterday to  
21 the effect that there would be more cut and fill,  
22 or at least more embankments needed in the West  
23 Valley route. Wouldn't that -- and you talk here  
24 about the natural runoff and the line -- the Low  
25 line having culverts that would disrupt the natural

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1 runoff. Wouldn't you have more culverts on the  
2 so-called West Valley line because it would be  
3 constructed with more embankments?

4 DR. CATLIN: I question the assumption  
5 that there's higher and lower embankments. And I  
6 think more analysis would have to be conducted to  
7 validate that.

8 JUDGE FARRAR: Okay.

9 JUDGE KLINE: Let's go onto the  
10 paragraph dealing with chemicals, and again, I'm  
11 asking only a comparative question. Comparatively,  
12 is there more or less or equivalent chemical  
13 impact, in your mind, in your opinion, between the  
14 Low rail alternative and the West Valley  
15 alternative?

16 DR. CATLIN: I believe they are similar.

17 JUDGE KLINE: All right, thank you.

18 Then let's go on to the last paragraph  
19 relating to springs and small wetland areas, and  
20 the home to unique animals such as frogs and  
21 amphibians. Do you have an opinion as to the  
22 comparative impacts of the two rail lines on those  
23 factors?

24 DR. CATLIN: Wetland areas and springs?

25 JUDGE KLINE: Just confine to the two

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1 rail alternatives.

2 DR. CATLIN: I believe that those  
3 impacts are to the south, and neither alternative,  
4 high or Low, would be different in this area.

5 JUDGE KLINE: Whatever they are, is it  
6 your view or are you telling me they're about the  
7 same regardless of the magnitude? Is that correct?

8 DR. CATLIN: Yes, about the same.

9 JUDGE KLINE: Okay, thank you. That's  
10 all I have.

11 JUDGE FARRAR: Dr. Lam.

12 JUDGE LAM: Dr. Catlin, in this  
13 proceeding, both the Applicant and the Staff have  
14 testified that they have examined and analyzed a  
15 range of alternatives to the proposed rail line,  
16 and they have decided that the proposed rail line  
17 is superior to the alternative they have  
18 considered. Do you agree with that determination?  
19 If so, if not, I'd like to hear your basis.

20 DR. CATLIN: I believe that the Low  
21 route is more impacting on the roadless nature and  
22 habitat of the bench areas than the West Valley  
23 route is, because it will be outside roadless area.

24 JUDGE FARRAR: When she asks you that  
25 question, she just means repeat the exact words you

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1 said because she didn't hear it.

2 DR. CATLIN: I'm sorry. I lost track of  
3 what I was saying. Because I believe because you  
4 reduce the size of the roadless areas and keeping  
5 it has ecological importance that can be described.  
6 It's a much fuller discussion, perhaps than you  
7 want to have here, but it relates to the continued  
8 health of the area in many ways.

9 JUDGE LAM: So you believe, Dr. Catlin,  
10 both the Applicant and the Staff can make an error  
11 in their comparative analysis, so one of the  
12 alternatives as you just mentioned is superior?

13 DR. CATLIN: I believe that there would  
14 be fewer -- since I don't really know the details  
15 of the alternative that would be in the West Valley  
16 route -- well, I believe it would be less impacting  
17 than the route going through the roadless area.

18 JUDGE LAM: Do you have any way to  
19 quantify that impact?

20 DR. CATLIN: I don't, no.

21 JUDGE LAM: Would you categorize it as a  
22 lot, a little or somewhat moderate amount, impact?  
23 I mean how would we be able to make a determination  
24 about the degree of superiority here?

25 DR. CATLIN: Well, one of the things

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1 that makes that a difficult question to answer is  
2 that this is one in a number of actions proposed in  
3 this area or maybe happening in this area that  
4 leads to increased fragmentation of habitat. So  
5 while this individual activity may appear to occupy  
6 a small area, taken in conjunction with other  
7 things that happen in the future, some that we can  
8 forecast and some not, this may be one of -- it may  
9 represent a serious part of a larger set of impacts  
10 that this area faces. I'm sorry if I'm not totally  
11 clear on that, on your question, but this  
12 individual area needs to be considered -- this  
13 individual action, the construction of a rail line  
14 through a roadless area needs to be analyzed in  
15 conjunction with all the other future threats that  
16 face this area.

17 JUDGE LAM: So your opinion, Dr. Catlin,  
18 is further analysis perhaps is required?

19 DR. CATLIN: Yes.

20 JUDGE LAM: Thank you.

21 JUDGE FARRAR: Dr. Catlin, I have a few  
22 questions. On the Staff Exhibit Y, which I had you  
23 read the definition of critical habitat, early on  
24 in that, it talks about at the time a species is  
25 listed in accordance with the Endangered Species

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1 Act. Can you clarify the record, if you know, what  
2 the different levels are of the proposed -- of  
3 listings under the Endangered Species Act?

4 DR. CATLIN: I'm not an expert on the  
5 Endangered Species Act, so...

6 JUDGE FARRAR: Okay. In talking about  
7 the alternative routes, one of them, I think that  
8 has been referred to as the Central Valley route,  
9 would go through the mud flats. Are those mud  
10 flats what would -- are they a kind of a wetland?

11 DR. CATLIN: They are a type of wetland,  
12 yes.

13 JUDGE FARRAR: Can you tell me what kind  
14 of wetland they are in comparison to other wetlands  
15 with which we might be familiar?

16 DR. CATLIN: They're a mud alkali  
17 wetland that is fed primarily from surface runoff.  
18 The other wetlands come from springs and have fresh  
19 water and have different bio in them.

20 JUDGE FARRAR: Would these be of a  
21 higher caliber of wetland worth preserving or a  
22 lower caliber on a scale of wetlands?

23 DR. CATLIN: Alkali wetlands are a lower  
24 scale because they are less productive for  
25 biological reasons.

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1 JUDGE FARRAR: Okay. In looking at the  
2 alternatives, you can gather from the record that  
3 the different alternatives either the Applicant or  
4 the Staff looked at were in some part constrained  
5 by the presence of State lands in the vicinity, and  
6 I suppose the notion that the State might not  
7 volunteer those lands for -- to be used for this  
8 purpose. If those State lands were available,  
9 would there be a -- in your experience, within the  
10 limits of your knowledge, would there be a better  
11 route available than any of those that have thus  
12 far been proposed?

13 DR. CATLIN: There might be. And the  
14 reason it might be better is because you might be  
15 able to handle more easily the slope necessary for  
16 the rail line. You must be less confined on where  
17 you choose to put it. It might lead to better  
18 alignment.

19 JUDGE FARRAR: Better alignment in terms  
20 of slope. How about better alignment in terms of  
21 avoiding impacts, deleterious impacts of the kinds  
22 you've talked about today?

23 DR. CATLIN: Yes.

24 JUDGE FARRAR: Do you have any specifics  
25 that come to mind on that, in terms of impacts that

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1 could be avoided?

2 DR. CATLIN: It might avoid some of the  
3 disruption that's going to be caused in the  
4 greasewood community, in that area. It might avoid  
5 some of the potential secondary impacts that will  
6 come as motor vehicles try to use the track side  
7 area for vehicle access. Even though there may not  
8 be a road there, it's unclear whether BLM is going  
9 to manage the area to close that from off-road  
10 vehicles. Right now, it's not, it's open. So that  
11 may lead to additional vehicle use in areas where  
12 now it's not occurring.

13 JUDGE FARRAR: Okay, thank you.

14 JUDGE LAM: I have one follow-up  
15 question to Dr. Catlin.

16 Dr. Catlin, would you share with us in  
17 your opinion, what are some of the most significant  
18 errors both the Applicant and the Staff make in the  
19 analysis? Please restrict your attention to when I  
20 say most significant errors, because in your  
21 testimony, we have heard many errors that you have  
22 come forward.

23 DR. CATLIN: Are you talking about in an  
24 engineering sense or in the sense that -- for  
25 example, in a selected and limited sense, which

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1 alternative we considered?

2 JUDGE LAM: Right. My question is  
3 really, the Staff and the Applicant has an  
4 application to consider alternatives, and in that  
5 comparative analysis, what is wrong with what they  
6 have done, in your opinion?

7 DR. CATLIN: Well, a key turning point,  
8 in my view, appears to be BLM's determination that  
9 this area lacked wilderness quality. I disagree  
10 with that determination. I believe there are --  
11 and we haven't talked about it here. I believe  
12 there's strong arguments to challenge that  
13 particular judgment. Had BLM determined that was a  
14 potential wilderness area, then this alternative  
15 would have received a full consideration and  
16 engineering analysis that other alternatives had,  
17 and we could better understand its limitations and  
18 impacts.

19 MR. SILBERG: I'm sorry, could you for  
20 the record, which alternative would have received a  
21 fuller consideration?

22 DR. CATLIN: An outside the candidate  
23 roadless area would have received full analysis and  
24 engineering.

25 MR. SILBERG: Not in any particular one,

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1 you just mean something outside?

2 DR. CATLIN: Outside, yes.

3 JUDGE LAM: Thank you, Dr. Catlin.

4 JUDGE FARRAR: I have a couple more  
5 questions, Dr. Catlin.

6 On our site visit the other day, we  
7 first went from the service station at the Dell  
8 exit up to a knoll on the north side of the  
9 interstate, and took a general overview of the  
10 entire area. I was left with two impressions that  
11 I want to ask you about. First, is the distinct  
12 line that the greasewood seems to form almost a  
13 startlingly precise lower boundary and upper  
14 boundary. Can you relate that to your two  
15 paragraphs on Page 7 of your testimony talking  
16 about the runoff patterns and the application of  
17 chemicals, how that greasewood would -- seems to  
18 have selected a home that it likes very much  
19 because the demarcation lines at the top and bottom  
20 elevations are so precise? Can you relate those  
21 two paragraphs specifically to what might have  
22 happened to the greasewood?

23 DR. CATLIN: Excuse me, could you help  
24 me on the page number again?

25 JUDGE FARRAR: Page 7, the same four

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1 paragraphs that Dr. Kline asked you about. It's  
2 Answer 10, but it's the part that appears on Page  
3 7, and I'm particularly interested in the two  
4 middle paragraphs on runoff and chemicals.

5 DR. CATLIN: And you're interested in  
6 how that would affect the greasewood community?

7 JUDGE FARRAR: Those two paragraphs are  
8 general, but I'm wondering if you can relate them  
9 to the greasewood specifically.

10 DR. CATLIN: Well, fire particularly  
11 from accelerant or given an additional boost in  
12 intensity because of cheatgrass in a greasewood  
13 community could lead to the death of the greasewood  
14 and lead to that community being even smaller in  
15 size. So that's a potential impact.

16 JUDGE FARRAR: Is that greasewood  
17 natural or native or exotic?

18 DR. CATLIN: It's a native of that area.  
19 And there may have been more of it further up the  
20 hillside. The fires and history of the area have  
21 affected that.

22 JUDGE FARRAR: How about the runoff and  
23 the chemicals that are in the second and third  
24 paragraphs there?

25 DR. CATLIN: I think they would affect

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1 that habitat type to greasewood in a similar way  
2 that it would the uplands areas. However, because  
3 of the cover offered by greasewood, you may find it  
4 offers more cover for more small animals and birds.

5 JUDGE FARRAR: But what I'm asking is,  
6 the greasewood which, as I understand from the site  
7 visit, would be -- is at a lower elevation than the  
8 Applicant's proposed rail line, how -- I want to  
9 know if you can relate your two paragraphs here,  
10 speaking generally about runoff and chemicals,  
11 to --

12 DR. CATLIN: I believe the runoff would  
13 be similar in both alignments.

14 JUDGE FARRAR: Now, I want to know if  
15 what you say is the disruptive runoff caused by the  
16 rail line, whether you would expect that to have a  
17 significant impact on the greasewood community at  
18 the lower elevation from the rail line?

19 DR. CATLIN: No, I wouldn't, because  
20 most of the -- on the upper line in particular,  
21 you'll see that in the stream drainages, in the  
22 runoff drainages, there's actually a change in  
23 character in the plant community. And in the  
24 greasewood area where those runoff patterns occur,  
25 you don't see a difference in change in vegetation.

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1 So --

2 JUDGE FARRAR: What you're saying is the  
3 rail line would disrupt the current runoff  
4 patterns, and my question is simply whether you  
5 would expect that to have a negative impact, that  
6 disruptive runoff pattern to have disruptive  
7 influence on the greasewood?

8 DR. CATLIN: I think it would be less so  
9 than in the higher elevation in this particular  
10 case.

11 JUDGE FARRAR: Higher elevation --

12 DR. CATLIN: The Low line.

13 JUDGE FARRAR: All I'm talking -- maybe  
14 I didn't make myself clear. All I'm talking about  
15 is the Applicant's proposal known as the Capital L  
16 Low line.

17 DR. CATLIN: Would what happen? Would  
18 you please help me with the question.

19 JUDGE FARRAR: Let's go to your  
20 testimony. You say the rail line, meaning the  
21 Applicant's proposal, has the potential of  
22 disrupting natural runoff patterns. All I'm asking  
23 is whether, if you can relate that specifically to  
24 the greasewood plant community that exists below  
25 the Applicant's proposed rail line?

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1 DR. CATLIN: It would cause some  
2 disruption, but less than on the other alternative,  
3 the Low line.

4 JUDGE FARRAR: How about the chemicals  
5 that might be used on the Applicant's rail line?

6 DR. CATLIN: It would cause some  
7 problems that would be similar to both lines.

8 MR. SILBERG: Could I just have a  
9 clarification. I'm not sure I heard correct. Did  
10 you say that the runoff impacts from the Low  
11 corridor would have a greater impact on the  
12 greasewood than the runoff impacts from the West  
13 Valley corridor?

14 DR. CATLIN: Not quite that way. Can I  
15 try and rephrase it?

16 MR. SILBERG: Yeah, because I didn't  
17 understand the answer.

18 DR. CATLIN: The two plant communities  
19 are different. And the Low route has almost no  
20 greasewood.

21 MR. SILBERG: Right.

22 DR. CATLIN: So it may have had at one  
23 time. The fire may have changed that. But what we  
24 see now in the plant community along the Low area,  
25 the Low route, is that the drainages have plants

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1 growing in them that are -- that are different  
2 because of the runoff pattern. They're actually --  
3 they are actually dependent on runoff in those  
4 channels continuing to be there. So if you reduce  
5 the number of drainages that received runoff on the  
6 Low route by diverting water into a few culverts,  
7 below the Low route, you would see over time plant  
8 community change. And so some of the plants that  
9 are now found in these drainages would no longer be  
10 there. In the lower elevation in the greasewood,  
11 you don't see that differentiation in the plant  
12 community between drainage bottoms and the other  
13 areas. It's less -- it's more uniform. Is that  
14 helpful?

15 JUDGE FARRAR: Yes. The other visual  
16 impression I had from the knoll north of interstate  
17 80 was the several, it seemed like three prominent  
18 trails up the mountain. Can you explain why the  
19 presence of those three trails would not disqualify  
20 this as a wilderness area?

21 DR. CATLIN: Yes. We were looking from  
22 that view toward the roadless area, correct?

23 JUDGE FARRAR: Right.

24 DR. CATLIN: And there were -- one of  
25 them was a route on the -- as you're facing it on

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1 the left, that represents the route we drove. The  
2 one in the middle represents the route going up to  
3 the private lands that we also drove up to. And  
4 the route on the south represents the southern  
5 boundary of the unit that we drove along. And the  
6 route -- the first one I talked about, the route on  
7 the left or the north, represents the --

8 JUDGE FARRAR: Wait a minute. The one  
9 on the north is not on the left, it's on the right.

10 DR. CATLIN: On the right, excuse me.  
11 I'm sorry, you're right. On the right. That's  
12 right, on the north. So there were three routes.  
13 Two of them were boundary routes and one of them is  
14 a cherry stem.

15 JUDGE FARRAR: Okay. Help me with the  
16 distinction between wilderness. You're familiar  
17 with the Burr Trail going out of Boulder?

18 DR. CATLIN: I am.

19 JUDGE FARRAR: That's a paved road into  
20 a, what we in the east would think is one of the  
21 more magnificent parts of this country. If the  
22 president had not designated that as a monument,  
23 would that -- would the presence of the paved Burr  
24 Trail disqualify that grand staircase as a  
25 wilderness?

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1 DR. CATLIN: No. And, in fact,  
2 wilderness is yet to be decided there. There's  
3 wilderness on either side of the Burr Trail, north  
4 and south. But the road itself is the boundary  
5 between those areas.

6 JUDGE FARRAR: Okay. So there are  
7 two -- so they're in addition to it being a  
8 monument?

9 DR. CATLIN: There's proposed wilderness  
10 area.

11 JUDGE FARRAR: There's proposed  
12 wilderness north and south?

13 DR. CATLIN: Yes.

14 JUDGE FARRAR: Not disqualified by the  
15 presence of the trail?

16 DR. CATLIN: Correct. It divided them,  
17 but it doesn't disqualify them.

18 MS. WALKER: Dr. Catlin, for the  
19 purposes of clarification, can you distinguish  
20 between proposed wilderness and wilderness with  
21 regard to the Burr Trail?

22 DR. CATLIN: Yes. The Burr Trail is on  
23 each side of them. They are BLM determined  
24 wilderness study areas that are recommended as  
25 suitable for wilderness designation.

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1 JUDGE FARRAR: We have no more  
2 questions. Ms. Walker, do you have any -- I'm not  
3 trying to limit you, but I'm just thinking about  
4 when we want to have lunch, how much -- how long  
5 your redirect will take?

6 MS. WALKER: Would you clarify something  
7 for me first. I don't quite understand what's --  
8 what opportunities I have from now.

9 JUDGE FARRAR: You may now redirect  
10 based on anything Mr. Silberg asked the witness,  
11 anything Mr. Weisman asked the witness, and any  
12 questions of ours. In other words, any topics that  
13 came up then, you're free to redirect the witness  
14 on to get your or his position on the record.  
15 After that, the two -- the two other parties would  
16 get a chance to do additional cross limited to your  
17 direct. If they don't do that, then you would not  
18 have another opportunity.

19 MS. WALKER: Okay.

20 JUDGE FARRAR: So you need to take this  
21 opportunity, it may be your only one. And all I'm  
22 thinking is, if it's less than an hour and your  
23 back is holding up, we may want to continue and  
24 take lunch later and switch reporters and get the  
25 hydrology team in place.

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1 MS. WALKER: I would say it would be  
2 less than an hour.

3 JUDGE FARRAR: Then unless anyone has an  
4 objection, let's keep going.

5

6 REDIRECT EXAMINATION

7 BY MS. WALKER:

8 Q. Dr. Catlin, Mr. Weisman had you read  
9 some sections out of the Wilderness Inventory and  
10 Study Procedures. Just to give the context of what  
11 you read at that time, I'd like you to read some  
12 more.

13 MR. SILBERG: Ms. Walker, if I might,  
14 the entire document is in evidence. So that  
15 reading it won't put it into evidence again. It's  
16 already there and you can use that information for  
17 whatever you want. If you want comments on that,  
18 fine, but you don't need to put that into the  
19 evidence, put that into evidence by having him read  
20 it.

21 MS. WALKER: Well --

22 JUDGE FARRAR: But if you wish the  
23 document -- portions of it to appear at the same  
24 part of the transcript as your questions, that's  
25 fine. I guess we all would appreciate, though, not

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1 any lengthy readings.

2 DR. CATLIN: I would appreciate it, too.

3 JUDGE FARRAR: I was tempted when  
4 Mr. Weisman asked for the lengthy reading, to say  
5 it will appear in the record, but he must have  
6 wanted that in. And we try to apply the same rules  
7 to everybody, so you have some leeway here.

8 Q. (By Ms. Walker) Well, if you could  
9 explain, then, the notion of naturalness in terms  
10 of disturbed ecosystems.

11 A. Yes.

12 JUDGE FARRAR: In terms -- in which  
13 document are you looking at, just so we can follow?

14 MS. WALKER: The Wilderness Inventory  
15 and Study Procedures.

16 DR. CATLIN: Do we need to wait until  
17 everybody is on a specific page or shall I just go  
18 on?

19 JUDGE FARRAR: No, just go.

20 DR. CATLIN: Protecting or knowing which  
21 habitat now functions is directly linked to knowing  
22 which habitat is natural. There's a correlation.  
23 So if you're looking at maintaining ecosystems or  
24 restoring ecosystems, the first place you go is  
25 determining which lands are in a natural condition.

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1 So while this relates to more of an anthropocentric  
2 process of wilderness, it's also a fundamental tool  
3 in identifying those lands that you're going to  
4 place in a planning process to manage an area for  
5 its ecosystem health. Does that answer your  
6 question?

7 Q. (By Ms. Walker) Yes, thanks.

8 Are there often private lands in  
9 wilderness areas?

10 A. Not often, but there are some.

11 Q. And how does the Utah Wilderness  
12 Coalition proposal deal with them?

13 A. We generally try, and if there is a  
14 well-used vehicle route going to it, exclude the  
15 private lands and the vehicle route. In a case to  
16 the south, there are some private lands that are  
17 deeply inside candidate areas, in fact, in  
18 wilderness study areas where we did not do that.  
19 And we're hoping that -- and this actually  
20 happened. The Bureau of Land Management, bless  
21 their heart, would exchange those lands, and they  
22 could then become part of the wilderness area. And  
23 that actually happened in the Cedar Mountains to  
24 the south. It hasn't happened in the area that  
25 we're in concern over today in North Cedars. It

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1 hasn't happened yet.

2 Q. Can you explain briefly how you draw a  
3 boundary of a unit, or in particular, the North  
4 Cedar Mountains unit?

5 A. The boundary of a unit is drawn along  
6 naturalness, along areas that have -- do not have  
7 substantially noticeable human imprints. So you  
8 would choose the edge of, for example, a road or a  
9 vehicle weight that significantly impacts an area.  
10 So in this case, we chose vehicle routes that have  
11 been talked about, and we visited also vehicle  
12 routes that are significantly used in the southern  
13 part of the unit. Lee's Canyon has been talked  
14 about. We also exclude private lands and patented  
15 lands, and we also draw along rights-of-way where  
16 they occur. And I believe if we look at the corner  
17 of the unit that's up by the rail line on the  
18 Northwestern corner, we'll find out that there's a  
19 right-of-way that may cause the boundary to come in  
20 some. I haven't looked at the detail land plats in  
21 that particular area.

22 So those are the primary things we use  
23 to draw a wilderness boundary, and that was what  
24 was used in this particular area.

25 Q. Do you draw boundaries based on the

1 impacts of outside sources or outside impacts on  
2 the -- oh, that's a bad choice. How does a  
3 boundary relate to -- of a unit relate to what's  
4 outside of the unit?

5 A. Outside sights and sounds and influences  
6 are not used to determine the boundary. The  
7 boundary is determined by the naturalness of the  
8 area itself.

9 Q. And why is that?

10 A. Well, that's consistent with the policy.  
11 And that's consistent with how Congress designates  
12 candidate wilderness areas, as well. That's their  
13 expectation.

14 Q. What's the reasoning?

15 A. Well, the reasoning is that the areas  
16 that qualify for wilderness need to have, in part,  
17 somewhere in the area, opportunities for wilderness  
18 quality recreation and wilderness quality solitude.  
19 I'm again not using the exact language that's in  
20 the act. We could go to that if we want. But it  
21 only has -- but those opportunities, recreational  
22 solitude only have to be in part of the area. The  
23 whole area has to meet the naturalness criteria and  
24 that defines the boundary. And that ensures that  
25 the area represents the natural areas as the

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1 Wilderness Act intended it to do.

2 Q. Would you please turn to your prefile on  
3 page four. It's Answer 7.

4 A. I'm on that page now.

5 Q. There was a discussion about whether --  
6 now I can't find it. But I believe Mr. Weisman was  
7 asking you about somewhere where you use the term  
8 human impacts to exclude human impacts. And I  
9 believe it was somewhere in here. But -- you don't  
10 remember where that was, do you?

11 JUDGE FARRAR: Is that in the second  
12 paragraph?

13 DR. CATLIN: It's in the second  
14 paragraph.

15 Q. (By Ms. Walker) But that says  
16 substantially there -- oh, substantially  
17 noticeable, okay. So would you just, in that  
18 context, read the paragraph above that starts  
19 with -- you could just read it to yourself and see  
20 if you talk about substantial human impacts.  
21 That's a way to do it.

22 A. Yes, that paragraph does have the term  
23 substantial human impacts.

24 Q. Okay. And then the third paragraph  
25 down, does that paragraph talk about outstanding

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1 opportunities for solitude?

2 A. It says possess opportunities for  
3 solitude and primitive practice -- practice  
4 primitive recreational activities.

5 Q. Yeah, but I mean the paragraph as a  
6 whole.

7 A. Yes, it does talk about outstanding  
8 opportunities, yes.

9 Q. In fact, could you read the last  
10 sentence of that paragraph, please. Or we can all  
11 read it. Yeah, so Paragraph 3 of Answer 7.

12 A. Beginning with the two areas share very  
13 similar?

14 Q. No, I'm sorry, one more down. If the  
15 BLM.

16 A. "If the BLM found outstanding  
17 opportunities for solitude and recreation in the  
18 Cedar Mountains Wilderness Study Area, it should  
19 have found those same qualities in the North Cedar  
20 Mountains area."

21 Q. You actually misread that. It should  
22 find, but that's okay.

23 A. I've been doing too much reading.

24 Q. Yeah. So is the North Cedar Mountains  
25 area included in America's Red Rock Wilderness

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1 Bill?

2 A. The North Cedar Mountains is included in  
3 that bill.

4 Q. Do you still have confidence in your  
5 boundary description of the North Cedar Mountains  
6 wilderness area?

7 A. Yes, I do.

8 Q. I mean proposed area.

9 A. Yes, I do.

10 Q. And is that confidence based on recent  
11 reevaluations?

12 A. Yes, it is.

13 Q. Do you have confidence in the quality of  
14 the fieldwork of your team?

15 A. Yes.

16 Q. May I borrow that picture that -- the  
17 aerial photograph that Dr. Catlin was shown.  
18 Thanks.

19 How much of the Utah Wilderness  
20 Coalition's proposed North Cedar Mountains unit is  
21 shown in that picture?

22 A. As a percent of the whole picture?

23 Q. Well, just like -- I know it's tough,  
24 but could you quantify in some way, not as  
25 representative of the whole picture, but in terms

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1 of perhaps even the part that's traversed by the  
2 proposed Low corridor.

3 A. I'm guessing the part of the aerial  
4 photograph that is -- that includes the candidate  
5 wilderness area is approximately 200 acres or so.  
6 Maybe 300 acres at most.

7 Q. And what does it show?

8 A. It shows a sliver of the Northwestern  
9 part of the candidate roadless area.

10 Q. And what does it show in terms of  
11 impasse?

12 A. It shows vehicle routes that we  
13 traversed, which are fairly evident and well  
14 defined. It shows a number of lighter lines that  
15 seem to emanate from a cattle stock point that we  
16 passed when we were going by. And it also seems to  
17 show some of the vegetation community changes  
18 because of repair in area ravines. It also shows  
19 ant hills. You can see individual ant hills on  
20 this map.

21 Q. So would a picture like that, the aerial  
22 view, cause you to change or reevaluate the  
23 proposed unit at all?

24 A. We used these to identify things that we  
25 needed to see on the ground. So on our field maps,

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1 we would mark these lines and check out to see  
2 whether they were cow tracks, animals tracks,  
3 vehicle routes. And as we did in our trip, we  
4 stopped at a number of these and found that even  
5 though these lines which are on this map, show on  
6 an aerial photograph, they end up being either  
7 natural or largely reclaimed or of -- caused by  
8 animals, and therefore, not a factor affecting the  
9 naturalness of the candidate wilderness area.

10 Q. Can you explain why the North Cedar  
11 Mountains unit doesn't appear in wilderness at the  
12 edge?

13 A. We only put in that particular proposal,  
14 the 5.7 million acre proposal done at the time  
15 about 1988. Areas that we could confidently -- I  
16 lost my aerial photo. But areas that we were  
17 confident had wilderness characteristics. So if we  
18 had not been to the area, we had not looked at it  
19 with the adequate inventory and analysis, then we  
20 didn't put it in. As a result, there were many  
21 deserving areas that now are in the proposal that  
22 we have gone and seen that we're comfortable to  
23 add. But we did not want to have something in the  
24 proposal that we did not know fully about, and we  
25 could not defend and were certain that it did

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1 qualify.

2 So for that reason, there were areas  
3 that should have been in the proposal that weren't,  
4 but we just didn't have the staff, time to  
5 volunteer time to, the resources to put all that  
6 together at that time. Since then, we have had a  
7 lot more ability to go out and do this inventory  
8 work. And I don't know if you want me to respond  
9 to that. It's probably outside your question.

10 Q. What's the single greatest impact of  
11 having the Low corridor rail line built across the  
12 North Cedar Mountains unit?

13 A. It would fragment the roadless area,  
14 cutting off parts of it and disqualifying it from  
15 being roadless. And therefore, leading to a  
16 diminishment in the size of that area and leading  
17 to -- potentially leading to a number of impacts  
18 that -- that will affect not only the area that  
19 remains inside the roadless area, but also the  
20 smaller area that's been chopped off.

21 Q. Is there the potential or do you feel  
22 like the area has the potential to recover its  
23 biological and ecosystem values, the unit?

24 A. Yes. I think it's going to be  
25 difficult, but it's going to -- we'll have to deal

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1 with a number of human uses and current management  
2 practices to change that, but it's going to be a  
3 difficult process. I believe it will be made -- be  
4 made more difficult by establishing additional  
5 human impacts in the area that will make recovery  
6 much more difficult.

7 Q. Why is SUWA or the Utah Wilderness  
8 Coalition so dogged about defending their units?

9 MR. WEISMAN: I object, Your Honor.  
10 That's beyond the scope of the cross-examination.

11 JUDGE FARRAR: Overruled. Go ahead, you  
12 may answer.

13 DR. CATLIN: I answered this in part,  
14 that while this particular proposal in itself may  
15 not seem to be enormous, taken in concert with a  
16 number of things going on, the continued growth of  
17 off-road vehicle trails which advocates are trying  
18 to legitimize and propagate through the area, the  
19 proposals for more communication sites, for other  
20 transportation facilities, overseeing interestingly  
21 is a rapid industrialization of this part of the  
22 state. If you look on the far side of the mountain  
23 range, there's an incinerator. If you look to the  
24 north, there's a huge magnesium plant. If you look  
25 on the other side of the range, the Stansburys,

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1 there's nuclear weapons -- excuse me, there's  
2 chemical weapons facilities. If you look on the  
3 west side to the south, there's military proving  
4 grounds that has all kinds of activities in it that  
5 are changing over time. What we're finding is that  
6 while this particular activity taken -- just  
7 looking at it in isolation may not seem to be  
8 large, but when taken in concert with this plus the  
9 population growth, the changing use of public  
10 lands, the intensity of it, we're seeing that there  
11 is a need to protect roadless areas and to try and  
12 divert those activities elsewhere.

13 Q. (By Ms. Walker) Have you gotten any  
14 sort of feedback on the quality of the Utah  
15 Wilderness Coalition's unit designations?

16 A. Yes, we have, actually. There's been  
17 two kinds of feedback. One has been agency's  
18 review of the kind of wilderness inventory process  
19 that we've gone through in the past. This has been  
20 talked about as the 202 process, where a few years  
21 back, the agency reviewed the 5.7 million acre  
22 wilderness proposal, plus additional new lands that  
23 the agency had acquired, and determined, did these  
24 possess wilderness characteristics? And in most of  
25 the cases where they looked at the Utah Wilderness

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1 Coalition's work, they agreed with us. The amount  
2 of disagreement was in the low, one or two or three  
3 percent disagreement.

4 We have done similar inventory work now  
5 on the North Cedar Mountains and believe that if  
6 the BLM went back and used the same process they  
7 used in the earlier 202 process and evaluated this  
8 area, they would come to the same conclusion they  
9 had on other areas that we have done similar  
10 fieldwork on.

11 Q. Did you -- in the course of listening to  
12 testimony yesterday and preparing for your  
13 testimony today, did you look at the exhibits that  
14 had cross-sections and maps of the proposed rail  
15 line and the Low rail line?

16 A. Yes, I did.

17 Q. Did you look at all of the ones that  
18 were provided?

19 A. I don't know.

20 Q. Okay.

21 A. There were a lot of different pieces of  
22 paper floating around the room. I honestly don't  
23 know if I looked at them all or not.

24 Q. But you do remember the pink and green  
25 cross-sections?

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1 A. Yes, I do.

2 Q. And the long charts and the maps with  
3 the topography?

4 A. Yes, I do.

5 Q. Okay. And, you know, did you examine  
6 them pretty closely?

7 A. I had difficulty interpreting them  
8 because there was unequal analysis on the two  
9 routes that were described in the documents. They  
10 had cross-sections and fill drawings for the West  
11 Valley route, but there weren't similar drawings  
12 and similar analysis done for the Low route. So it  
13 was difficult to tell how the two compare.

14 The drawings showing -- the lineage  
15 drawings showing the cross-section of the route and  
16 its location were reduced in such size that they're  
17 almost unintelligible. I mean they were too small  
18 to equally tell what was really going on. So it  
19 was difficult to really analyze fully those, based  
20 on those documents that I saw, that you provided,  
21 because there was unequal presentation and they  
22 were reduced in such a manner that I could not read  
23 all the information on them well.

24 Q. And when Mr. Silberg was talking about  
25 reclaiming Manhattan, I know he was kidding, but he

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1 did talk about Skull Valley versus the shoulders of  
2 the valley. And what I believe he was talking  
3 about was, you know, are you hoping that the  
4 area's -- the area's potential for being reclaimed,  
5 do you think they're equal or are you as concerned  
6 about the valley as you are about the shoulders?

7 A. I think that most of the reclamation in  
8 a biological point of view -- not necessarily in a  
9 naturalness point of view, but a biological point  
10 of view, it would be the areas on the shoulders  
11 where the Low route is going through, are most in  
12 need of restoration.

13 Q. And why is that?

14 A. That's because of cheatgrass, primarily.  
15 The loss of the natural plant community. Probably,  
16 mostly caused by cattle grazing.

17 Q. And there was also a reference to  
18 building a road into the middle -- I mean a  
19 railroad actually into the middle of the unit and  
20 cherry-stemming it out, and you were asked -- I  
21 don't think you really quite answered this because  
22 you couldn't envision a railroad in the middle of a  
23 unit, but given that it were a possibility, would  
24 that be a desirable outcome even if you could  
25 cherry-stem it out of the unit?

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1           A.       It would be undesirable because it would  
2           lead -- be a porthole to allow all kinds of other  
3           activities into the area, and lead to loss of  
4           habitat function.

5           Q.       Okay, I'm finished for now. Thank you.

6           JUDGE FARRAR: Let me just ask a quick  
7           question. Where is the southern boundary of your  
8           proposed Cedar Mountains wilderness area in  
9           relation to the southern end of the rail line at  
10          the proposed facility on the reservation? Does the  
11          southern boundary of the Cedar Mountains proposal  
12          go farther south than the rail line would go?

13          DR. CATLIN: Yes, it does.

14          JUDGE FARRAR: How much further?

15          DR. CATLIN: Further to the west. It  
16          would go approximately two miles. Is that rough  
17          enough for you?

18          JUDGE FARRAR: Yeah.

19          MR. SILBERG: I'm sorry, you're saying  
20          does the rail line go further south than the  
21          southern border of the North Cedar Mountains area?

22          JUDGE FARRAR: No, I'm talking about  
23          the -- in other words, the entire Cedar Mountains  
24          area, not just the northern portion. I want to  
25          know where the southern boundary --

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1 MR. SILBERG: Of the Cedar Mountains WSA  
2 is?

3 JUDGE FARRAR: Yes, right.

4 DR. CATLIN: So, the WSA?

5 JUDGE FARRAR: In relation to the  
6 facility.

7 DR. CATLIN: It might be helpful, do you  
8 have that color map that we showed earlier, that  
9 had -- if we look at that map, I think that might  
10 most easily answer that question.

11 JUDGE FARRAR: But I'm looking for a  
12 very general, is it one mile, five miles, 50 miles?

13 DR. CATLIN: Well, the Cedar Mountains  
14 Wilderness Study Area goes way to the south, 10 or  
15 20 miles.

16 JUDGE FARRAR: Past --

17 DR. CATLIN: I'd have to check their  
18 map, but I think it goes past where the rail line  
19 turns off. But I'm not certain. If it's -- we're  
20 scrambling for a map there.

21 MS. WALKER: You mean turns off to the  
22 proposed facility?

23 DR. CATLIN: Turns off to the proposed  
24 facility.

25 MR. SILBERG: I believe I have a map,