

Britta N. Laub
Statement of Professional Qualifications

EDUCATION

B.S. Parks and Recreation Management, University of Utah, 1993
USDI, Bureau of Land Management Training Courses

PROFESSIONAL EXPERIENCE

Outdoor Recreation Planner 1992 - present
Salt Lake Field Office
Bureau of Land Management
Division of Non-Renewable Resources
U.S. Department of the Interior
2370 South 2300 West, Salt Lake City, UT 84119

Duties and Responsibilities:

Serve as the recreation team lead. Includes directing workload of two outdoor recreation planners, recreation technician, and maintaining current workload assignments. Communicate with State Office recreation and wilderness specialists, provide input into SLFO budget proposals, responsible for reporting workload accomplishments and programming workload requirements. Serve as the team lead for two special recreation management areas. Facilitate projects at these areas, communicate status of projects with interested parties/partners, maintain current and pursue new partnerships specific to these areas, and oversee budget (contributed funds and BLM funding) for both projects.

Process applications for special recreation permits. Includes public contact, review, completion of National Environmental Policy Act (NEPA) requirements, decision record, issuance, monitoring, bonding and post use report. Provide recreation, off-highway vehicle, visual resource management and wilderness information, requirements, and mitigation measures into field office NEPA documents. Prepare categorical exclusions, environmental assessments, and determination of NEPA adequacy's as needed in support of recreation and wilderness program projects.

Wilderness Coordinator 05/1999-09/1999
Utah State Office
Bureau of Land Management
Division of Natural Resources, Environmental and Planning Group
U.S. Department of the Interior
324 S. State, Salt Lake City, UT 84145

Temporary assignment, lasting about one year, to the Utah Statewide Wilderness Study Area (WSA) Planning Team. The planning project was statewide effort to prepare a statewide environmental impact statement (EIS) and multiple plan amendments to consider the establishment of new wilderness study areas. Compiled field data for assigned locations and the application of that information in the NEPA/planning process.

Kenneth E. McFarland, P.E.
Statement of Professional Qualifications

Principal Engineer, Washington Infrastructure Services, Inc., San Ramon, California.

Education:

M.S., Civil Engineering, San Jose State University, 1974
B.S., Civil Engineering, University of Washington, 1964

Registrations:

Professional Engineer (Civil), California, #18111 (1968)
Professional Engineer (Civil), Arkansas, #9189 (1997)
Professional Engineer (Civil), District of Columbia, #6969 (1975)
Professional Engineer (Civil), Louisiana, #27036 (1996)
Professional Engineer (Civil), Maryland, #9621 (1975)
Professional Engineer (Civil), Massachusetts, #38608 (1995)
Professional Engineer (Civil), Oregon, #10121 (1979)
Professional Engineer (Civil), Pennsylvania, #PE-042879-R (1992)
Professional Engineer (Civil), Utah, #93-263322-2202 (1994)
Professional Engineer (Civil), Virginia, #7909 (1975)
Professional Engineer (Civil), Washington, #17995 (1979)
Professional Engineer (Civil), Nevada, #13911 (1999)

Qualifications:

Mr. McFarland has 36 years of civil engineering experience 32 years of which have been spent on rail, transit, and water resources projects. His experience includes trackwork and alignment design, civil engineering design, cost estimating, engineering supervision, survey control, contract administration and construction management activities.

Experience:

Rail Projects

Terminal 18 Redevelopment Project
Seattle, Washington

1999 to present

As part of the design/build team, was the project engineer responsible for all track-related design for new intermodal container transfer facility and associated trackwork. Included was final design and construction support for completion of drawings and specifications for over 90,000 feet of track, 86 turnouts and 4600 feet of at-grade crossings. Responsible for preparation of as-built drawings and coordination with mainline railroads

Tasman Drive and North First Street Girder Rail Replacement Project
Santa Clara County, California

1998

Project manager responsible for design of the removal and replacement of 1,000 feet of embedded girder rail including six turnouts and three diamond crossings in a street intersection for the new light rail system.

Double Track Support Services.
Union Pacific Railroad, California

1997 - 1998

Project manager for the design of five grade crossings in the cities of Fremont and Newark, California. This project included street crossing plans and profiles, drainage plans and details and utilities coordination. Mr. McFarland was also responsible for traffic detour plans, pavement striping and obtaining permits.

Red Hill Fuel Tunnel Rail System Study.
United States Navy, Hawaii

1997

Project manager responsible for inspecting, repairing and recommending alternatives, as well as preparing the report for this underground 3.5-mile-long, narrow gauge rail system. This project included inspecting the track, switches, equipment, drainage system and tunnel lining. Mr. McFarland prepared repair and replacement methods along with a capital cost estimate.

Santa Fe Railway Southern California Commuter Project
Burlington Northern Santa Fe (BNSF) (formerly the Atchison Topeka & Santa Fe Railway Company), California.

1991-1997

Project engineer responsible for preparing preliminary and final design of track capacity expansion projects on 37 miles of the BNSF mainline between San Bernardino and Los Angeles via Riverside and Fullerton, to introduce commuter rail service on the existing freight line. There were 16 individual projects involved in the expansion. Projects include double-tracking and triple-tracking of sections on the existing line with the addition of track crossovers at strategic locations. The scope of work included design of alignment, earthwork, grading, bridges, retaining structures, and drainage for the track modifications.

Union Pacific Railroad Mainline Relocation
Kennecott Utah Copper Co., Utah.

1992-1996

Project manager responsible for preliminary and final engineering design for the realignment and abandonment of ten miles of double track Union Pacific main line. The relocation enabled Kennecott to modify one of its tailings dams at the Bingham Canyon Mine. The project consisted of track design involving 10 miles of double mainline track, sidings, storage and rail car transfer yard, embankments, bridges, culverts, utilities, and the abandonment and salvage of the existing rail and ties.

Kenneth E. McFarland, P.E.

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Tasman and Vasona Corridor Light Rail Transit Projects
Santa Clara County Transportation Agency, California.

1991-present

Civil engineer responsible for all trackwork design for these light rail extensions. The projects included trackwork plan and profile drawings, detail drawings including rubberized and concrete grade crossings, special trackwork drawings, and development of all procurement and installation drawings for 14 miles of extensions, including the maintenance and storage yard expansions.

Colton Grade Separation
Burlington Northern Sante Fe (BNSF), California.

1996

Project manager responsible for preliminary design of the grade separation of the BNSF and Union Pacific (formerly Southern Pacific) double track mainlines at Colton, California. The project included design and cost estimates for two miles of relocated double track, crossovers, three bridges, retained earth walls, drainage and utility relocations.

Pacific Northwest Rail Corridor Study
Washington State Department of Transportation (WSDOT)
Washington, Oregon and British Columbia.

1995-present

Project engineer responsible for conceptual layouts for track improvements along the corridor to allow for the addition of 120 mph passenger trains on the existing freight tracks. The project involved field reconnaissance, track layouts and estimates.

Yucca Mountain Project Rail System; Nevada.

1996

Principal engineer for this study to determine the feasibility of transporting 3,000 MTU's of Spent Nuclear Fuel to the proposed Yucca Mountain High Level Radioactive Waste Repository site from an existing rail mainline. The study included development and analysis of four potential rail corridors and alternatives within each corridor. The four routes ranged in distance from 100 to 338 miles.

ESSA Railroad Technical Feasibility Study
Exportadora de Sal, S.A. de C.V., Mexico.

1996

Project engineer for the rail operations and engineering components of a feasibility study assessing the requirements to design and construct a 160 kilometer long purpose-built rail line to transport harvested salt from the reclaiming site to a proposed new ocean transfer terminal. Included were capital cost estimates for track and structures.

Railway Operating Plan and Operating Contract
Minera Alumbrera, Limited, Buenos Aires, Argentina.

1997-1998

Project engineer for the railway operations, engineering, and rolling stock planning connected with development of a major copper mine in northwestern Argentina. Responsibilities included design of two rail yards, development of resource requirements, schedules, costs, and contract terms using dedicated equipment on existing trackage to haul 600,000 - 700,000 net metric tons

of copper concentrate annually over an 860 km rail route from a slurry dewatering plant to a marine export transfer terminal.

Robe River Railroad Project; Australia.

1971

Civil engineer responsible for the design of 100 miles of new railroad from an ore handling facility on the coast to an iron mine located inland. The project involved horizontal and vertical alignment including locating bridges and culverts, earthwork, turnarounds, sidings, all subgrade and track details, aerial topography, cross-sections, and layouts of drawings.

Riverton-Shobon Rail Study

1988

Fremont County Association of Governments, Wyoming.

Civil engineer responsible for field review and inventory of 26 miles of the single track Riverton-Shobon Rail Line for determination of abandonment. An examination of the extent and condition of trackway including rail, ties, ballast, turnouts, bridges, and crossings was included in the project.

Riverside-Orange County Commuter Rail Study

1989-1990

Riverside County Transportation Commission/Atchison Topeka & Santa Fe Railway Company, California.

Project engineer responsible for conceptual layout, design, and cost estimating for progressive track and signal expansions and upgrading. The project was designed to accommodate new commuter rail services on the existing Santa Fe freight mainline between San Bernardino and Los Angeles and between Irvine and Fullerton.

San Diego-Oceanside Commuter Rail Study

1988-1989

San Diego Association of Governments, California.

Civil engineer, participated in a study to conduct advance planning for commuter rail service. The project included establishing passenger station locations, operations plans including schedules and rolling stock and maintenance requirements, and determining track and signal improvements.

Los Angeles-Santa Barbara Rail Corridor Study

1988-1989

Southern California Association of Governments, California.

Civil engineer responsible for time savings studies and track improvement design for an intercity rail service planning study on a 103-mile-long system. The project included ten stations to determine the feasibility of introducing commuter rail service on the existing Southern Pacific line between the two cities.

Sacramento Regional Transit Double Track Design

1990

Sacramento Regional Transit, California.

Civil engineer responsible for layout and design of trackwork for a 4.5-mile light rail double track. The project included preparation of estimates, specifications and design drawings.

Texas High Speed Rail Study

1988

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Houston METRO, Texas.

Civil engineer responsible for conceptual alternative alignment studies of existing track infrastructure to the extent of interim improvements required to meet high speed rail design criteria.

Washington Metropolitan Area Rapid Transit Project

1973-1975

Washington Metropolitan Area Rapid Transit, District of Columbia.

Assistant resident engineer, involved in augered tieback-jackpile operations, cut and cover station construction, engineer's estimates for claims and changes, and contractor negotiations.

Water Resources

A. J. Wiley Hydroelectric Project; Idaho.

1987-1990

Project engineer for the design and layout of various alternatives for a feasibility study. The project was an 80 MW hydraulic power plant and dam across the Snake river. The study included review of geologic reports, layouts, capital cost estimates, power, studies and coordination with all ongoing environmental studies.

Allegheny Lock & Dam No. 3
Pennsylvania.

1988-1992

Project manager for the preliminary design of a 10.5 MW low head power plant to be constructed adjacent to an existing lock and dam on the Allegheny River. The design included power studies, model studies of the dam crest gates, power plant and river navigation all in conjunction with the US Army Corps of Engineers, capital cost estimates and coordination with all ongoing environmental studies.

Wise Hydroelectric Project
Pacific Gas & Electric Company, California.

1985-1987

Consultant responsible for all civil design work for the 2.7 MW Wise 2 Hydroelectric Power Plant including a three-mile-long penstock. Included were development of basic design criteria, plant layout, preparation of construction drawings and specifications, and assistance in solving field problems during construction.

Quincy Chute Hydroelectric Project
Grant County Public Utilities District #1, Washington.

1982-1985

Project engineer responsible for all civil design for a 9.4 MW power plant, including intake structure, penstock, semi-underground powerhouse, and tailrace. Mr. McFarland also participated in the conceptual design of the fish diversion facilities for the Priest Rapids Dam and Power Plant in Washington.

Palm Desert Stormwater System

1981-1982

Coachella Valley County Water District, California.

Project engineer responsible for all civil design for a five-mile-long concrete lined flood control channel (25,000 cfs capacity). Also included were two earth debris basin dams, four concrete bridges, local drainage inlets, and utility relocations.

Setif Irrigation Project

1977-1978

Government of Algeria, Algeria.

Engineering group supervisor responsible for design and specifications for a 50,000 hectare irrigation pipeline distribution system in Algeria. Location, layout, sizing, determination of type of pipe, pressure reducing stations, and estimates were involved.

Palm Desert Flood Control Study

1976-1977

Coachella Valley County Water District, California.

Engineering supervisor involved with the preparation of a flood control study in Southern California, including preliminary design, field reconnaissance, estimate review, supervision of drawing preparation, and preparation of report narrative.

San Bernardino Water Transmission Pipeline Project

1972-1974

San Bernardino Valley Municipal Water District, California.

Engineering supervisor responsible for horizontal and vertical layout of a 78-inch diameter, 12-mile-long water transmission line in San Bernardino, California. The project included preparation of design drawings, specifications, right-of-way acquisition, survey control, and location and design of appurtenances.

Tailings Disposal System; Canada.

1971

Engineer responsible for coordination and preparation of contract design drawings and specifications for a 300 million-ton tailings disposal system in Canada.

San Bernardino Water Transmission Pipeline Project

1970

San Bernardino Valley Water District, California.

Engineer responsible for a 250-square-mile groundwater basin recharge network computer analysis including research of historical data.

Irrigation Master Plan Study

1969

Government of Turkey, Turkey.

Engineer responsible for determination of land classifications and irrigation requirements.

Comanche Dam Project

1968

East Bay Municipal Utilities District, California.

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Engineer responsible for design and layout of an 80-foot-deep slurry trench cutoff as part of the Comanche Dam Project in California.

Elevenmile Canyon Pipeline Project
Cities of Aurora and Colorado Springs, Colorado. 1966

Engineer responsible for design and layout of a six-mile-long, 36-inch-diameter water transmission pipeline.

Dam Safety Study Reports
Various Clients, California, Oregon, Washington. 1966

Engineer responsible for preparation of various dam safety study reports as required by the Federal Energy Regulatory Commission.

Fredericksen Engineering, Inc.
Firestone Tire Wastewater Project; California. 1971-1972

Project engineer responsible for design and specifications for an industrial wastewater collection and treatment system for a Firestone Tire manufacturing plant in Salinas, California. The project included collection piping, a pumping station, a clarification facility, sludge drying beds and evaporation ponds.

Miscellaneous

Robert J. Costa & Associates. 1978-1981

Project engineer, with complete responsibility for subdivision development work in Contra Costa County, California, including tentative map preparation, improvement plans, final maps, and cost estimates. Mr. McFarland coordinated soils investigations and surveying, and attended meetings with various governmental agencies.

Affiliations:

American Railway Engineering and Maintenance-of-Way Association
U.S. Committee on Large Dams

Alice B. Stephenson
Statement of Professional Qualifications

EDUCATION

B.S. Economics, Colorado State University, 1971
USDI, Bureau of Land Management Training Courses

PROFESSIONAL EXPERIENCE

ENVIRONMENTAL SPECIALIST

1989 - present

Salt Lake Field Office
Bureau of Land Management
U.S. Department of the Interior
2370 South 2300 West, Salt Lake City, UT 84119

Duties and Responsibilities:

Responsibilities include coordination and implementation of National Environmental Policy Act (NEPA) reviews, involving preparation and/or review of Environmental Assessments (EAs) and Environmental Impact Statements (EISs) and providing policy and program direction for implementation of existing office land use plans.

Duties include providing guidance on the NEPA process, including document preparation, and content requirements. Provide analytical and technical review of all EAs and EISs, both in-house and third-party submissions. Maintain current land use plans and assures that all proposed projects, both BLM and third party, are within the scope of the current plan. Monitor all steps for completing land use plan amendments. Provide guidance and expertise on all planning matters, including relationship between NEPA and the Federal Land Policy Management Act (FLPMA). Keep current on CEQ Regulations, Department and Bureau policies/procedures, and various Acts, such as FLPMA, Endangered Species Act, National Historic Preservation Act, executive orders, and regulations governing BLM activities on public land.

REALTY SPECIALIST

1988-1989
and 1975-1985

Various offices of the Bureau of Land Management, including:

Salt Lake District Office, Salt Lake City, UT
Washington Office, Washington D.C.
Alaska State Office, Anchorage, AK
Rawlins District Office, Rawlins, WY
Craig District Office, Craig, CO
Las Vegas District Office, NV

Duties and Responsibilities:

Responsibilities included processing all types of lands cases, inventory and planning for the Bureau's Land Use Plans, and providing basic lands data to co-workers and public inquiries. Duties included preparing all required reports for lands cases, including EAs, land reports, classification decisions, final action decisions, and issuance of authorizations including right-of-way grants, special land use leases, and land use permits. Conducted field inspections of lands

Alice B. Stephenson

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involved in proposed actions, both internal and external generated. Prepared stipulations for mitigation of impacts. Gathered and presented basic lands data for input into land use plans and made recommendations to other resource specialists about lands issues.

PARALEGAL SPECIALIST/LAND LAW EXAMINER

1985-1988

Eastern States Office
Bureau of Land Management
U.S. Department of the Interior
Arlington, Virginia

Duties and Responsibilities:

Responsibilities included providing basic land ownership data to co-workers and public inquiries. Duties included reviewing and processing applications under the Color-of-Title Act, and reviewing land office records to determine land ownership.

Gregory P. Zimmerman
Statement of Professional Qualifications

Leader of the Environmental Impact Analysis Group, Environmental Sciences Division, Oak Ridge National Laboratory, Oak Ridge, TN.

Education:

M.S. Degree, Mechanical Engineering, University of Tennessee, Knoxville, 1977.
B.S. Degree, Mechanical Engineering, University of Tennessee, Knoxville, 1975.

Qualifications:

Mr. Zimmerman has over 20 years' experience at ORNL in risk and safety analyses, radioactive waste management, and environmental impact assessment. In 1988, he participated in the preparation of a Programmatic Environmental Impact Statement (EIS) for the U.S. Army's proposal to destroy the national stockpile of lethal chemical weapons, and in 1989, he assumed program management responsibility at ORNL for the preparation of eight site-specific EISs related to that U.S. Army program.

Mr. Zimmerman has provided assistance to the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) in the completion of environmental impact assessments. In his involvement with those programs, Mr. Zimmerman has conducted accident analyses, exposure assessments, and dose analyses for facilities handling radioactive materials and wastes under the jurisdiction of both the DOE and the NRC.

In addition to his technical interests in risk assessment and accident analysis, Mr. Zimmerman has also developed a mathematical technique for blending census of population data with information about atmospherically dispersed pollutants in order to quantify the spatial distribution of potential human health impacts. This analytical technique has been successfully applied to the siting of hazardous facilities and has potential application to the investigation of issues related to environmental justice or environmental equity.

Employment History and Selected Projects:

January 1977 to Present — OAK RIDGE NATIONAL LABORATORY, Oak Ridge, TN.

In his program manager duties, Mr. Zimmerman is responsible for coordinating and supervising the technical progress of a multidisciplinary team of individuals who conduct environmental impact analyses and assessments for a variety of federal agencies. The program specializes in the preparation of environmental impact statements and assessments. His managerial responsibilities include the development of schedules, budgets, and work assignments, as well as technical oversight, quality control, preparation, and assembly of final project deliverables and documents.

In 1993, Mr. Zimmerman lead the ORNL effort to assist NRC with its review of the license application of Envirocare of Utah for an 11e.(2) byproduct disposal facility near Clive, Utah. He provided technical assistance to NRC and coordinated the preparation of the NRC's final EIS as part of this effort. In 1995, Mr. Zimmerman conducted a radiological and chemical accident analyses for NRC's relicensing of Nuclear Metals, Inc., in Concord, Mass. In 1994 to 1996, he

served as the ORNL Core Team leader for Performance Evaluations of fifteen potential DOE mixed, low-level (radioactive) waste disposal sites. This project was a coordinated effort between ORNL and Sandia National Laboratories.

Mr. Zimmerman is presently assisting the NRC with its environmental review of a license application for a commercial spent nuclear fuel storage facility proposed for Skull Valley, Utah.

September 1975 to December 1976 — UNIVERSITY OF TENNESSEE, Dept. of Mechanical Engineering, Knoxville, TN.

Under a graduate research assistantship, Mr. Zimmerman participated in nuclear safety studies involving heat and mass transfer in nuclear reactors cooled by liquid metals.

March 1971 to June 1974 — NASA (GEORGE C. MARSHALL SPACE FLIGHT CENTER), Huntsville, AL.

As part of his cooperative education experience, Mr. Zimmerman assisted with mission planning aspects of the U.S. Space Shuttle program, including payload packaging and scheduling, as well as in-flight operations and orbital mechanics & maneuvering.

Technical Specialties:

Project and Program Management	Environmental Impact Analyses
Risk and Accident Analyses	Nuclear Waste Management
Heat Transfer and Thermodynamics	Nuclear Weapons Effects
Scientific Programming (Computers)	

Professional/Academic Awards and Honors:

Member of Tau Beta Pi, the engineering honorary society.

Joel F. Bailey Award for academic achievement among engineering students (University of Tennessee), 1975

Martin Marietta Energy Systems, Inc., *Significant Event Award*, July 1991.

UT-Battelle, *Significant Event Award*, October 2000.

Selected Publications:

(Project leader for) U.S. Nuclear Regulatory Commission, *Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah (Volumes 1 and 2)*, NUREG-1714, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, D.C., December 2001.

K.S. Gant and G.P. Zimmerman, *Tooele Chemical Agent Disposal Facility: Review and Evaluation of Information for Updating the 1989 Final Environmental Impact Statement*, ORNL/TM-13542, Oak Ridge National Laboratory, Oak Ridge, Tenn., July 1999.

- R.M. Reed and G.P. Zimmerman, "Analyses of Environmental Justice Concerns for the U.S. Army's Chemical Stockpile Disposal Program," proceedings of *Environmental Forum VII*, Denver, Colo., April 28 and 29, 1999, sponsored by the Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md.
- (Among preparers for) U.S. Department of the Army, *Final Environmental Impact Statement for Pilot Testing of Neutralization/Supercritical Water Oxidation of VX Agent at Newport Chemical Activity, Indiana*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., December 1998.
- Blasing, T.J., G.F. Cada, C.E. Easterly, L.N. McCold, G.P. Zimmerman, *Environmental Assessment: Renewal of Materials Licenses for ALARON Corp. Northeast Regional Service Facility, Wampum, Pennsylvania*, NUREG/CR-5549, prepared by the Oak Ridge National Laboratory, Oak Ridge, Tenn., for the Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C., December 1998.
- (Project leader for) U.S. Department of the Army, *Final Environmental Impact Statement for Pilot Testing of Neutralization/Biotreatment of Mustard Agent at Aberdeen Proving Ground, Maryland*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., July 1998.
- (Among preparers for) U.S. Department of the Army, *Revised Final Environmental Impact Statement for Disposal of Chemical Agents and Munitions Stored at Pine Bluff Arsenal, Arkansas*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., April 1997.
- G.P. Zimmerman, *Review and Evaluation of Updated Numerical Input Values for Determining Risks to Threatened and Endangered Species near the Umatilla Chemical Depot, Oregon*, prepared for the Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., by the Oak Ridge National Laboratory, Oak Ridge, Tenn., April 1997.
- R.L. Miller, C.E. Easterly, D.A. Lombardi, I.E. Treitter, R.T. Wimbrow, and G.P. Zimmerman, *Environmental Assessment for Proposed License Renewal of Nuclear Materials, Inc., Concord, Massachusetts*, NUREG/CR-6528, prepared by Oak Ridge National Laboratory, Oak Ridge, Tenn., for U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Washington, D.C., February 1997.
- (Project leader for) U.S. Department of the Army, *Revised Final Environmental Impact Statement for Disposal of Chemical Agents and Munitions Stored at Umatilla Depot Activity, Oregon*, Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, Md., November 1996.
- (Technical Core Team Leader for) U.S. Department of Energy, *Performance Evaluation of the Technical Capabilities of DOE Sites for Disposal of Mixed Low-Level Waste*, DOE/ID-10521 (Vols. 1, 2, and 3) and SAND96-0721 (Vols. 1, 2, and 3), prepared by Sandia National Laboratories, Albuquerque, New Mexico, March 1996.
- J.D. Tauxe, D.W. Lee, J.C. Wang, and G.P. Zimmerman, "A Comparative Subsurface Transport Analysis for Radioactive Waste Disposal at Various DOE Sites," P95-79881, *Proceedings of the 1995 Fall Meeting of the American Geophysical Union*, San Francisco, Calif., December 11-15, 1995.
- National Research Council, *Recommendations for the Disposal of Chemical Agents and Munitions*, National Academy Press, Washington, D.C., 1994. [G.P. Zimmerman provided the text and Figure 4-3 on the comparative risk of destroying the U.S. stockpile of chemical weapons versus continuing to store the stockpile.]

G.P. Zimmerman, *The National Environmental Policy Act (NEPA): A Training Session on Its Requirements and Its Implementation*, presented at the request of the NEPA Office of the U.S. Army Chemical Materiel Destruction Agency, Aberdeen, Maryland, February 15, 1994.

(Project leader for) U.S. Nuclear Regulatory Commission, *Final Environmental Impact Statement to Construct and Operate a Facility to Receive, Store, and Dispose of 11e.(2) Byproduct Material Near Clive, Utah*, NUREG-1476, U.S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Washington, D.C., August 1993.

(Among preparers for) *Chemical Stockpile Disposal Program Final Programmatic Environmental Impact Statement*, Vols. 1, 2, and 3, Program Executive Officer-Program Manager for Chemical Demilitarization, Aberdeen Proving Ground, MD, January 1988.

G.P. Zimmerman, *Better Understanding of Bubble Behavior in Liquid Environments: The Rise and Collapse of Large Vapor Bubbles*, Master's Thesis, University of Tennessee, Department of Mechanical Engineering, 1977.

1 JUDGE FARRAR: Mr. Weisman, go ahead.

2 MR. WEISMAN: Okay. And the Staff now
3 moves that the exhibits that will be attached to
4 the testimony be accepted as evidence in the
5 proceeding.

6 JUDGE FARRAR: And those are I
7 through --

8 MR. SILBERG: G, H, I.

9 MR. WEISMAN: It's Exhibits G, which
10 is -- actually, the way they're stapled here, G is
11 attached to professional qualifications. Sorry
12 about that. They're not stapled. But G is
13 separate. At least my copies aren't stapled. It
14 is a page from the FEIS, Figure 2.16. And Staff
15 Exhibit H --

16 JUDGE FARRAR: H is the BLM letter?

17 MR. WEISMAN: That's the BLM May 8th,
18 2001 letter.

19 JUDGE FARRAR: And the I through --

20 MR. WEISMAN: I is a map showing
21 locations of photographs, and J through O are the
22 photographs.

23 JUDGE FARRAR: The reporter will mark
24 those for identification.

25 (Discussion off the record.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE FARRAR: While the exhibits are
2 being separated from the qualifications, are there
3 any objections to the admission of the exhibits?

4 MR. SILBERG: We have none.

5 MS. WALKER: No objections.

6 JUDGE FARRAR: Then the exhibits, once
7 they're properly marked, will be admitted.

8

9 (EXHIBITS TO PREFILED TESTIMONY OF
10 KENNETH E. McFARLAND, GREGORY P. ZIMMERMAN,
11 ALICE B. STEPHENSON, AND BRITTA N. LAUB
12 WERE ADMITTED.)

13

14 MR. WEISMAN: Thank you.

15 JUDGE FARRAR: Mr. Silberg, you were
16 going to start your examination?

17 MR. SILBERG: Yeah.

18

19 CROSS EXAMINATION

20 BY MR. SILBERG:

21 Q. Let me address the questions to the
22 panel generally, and whoever is the one or more
23 most knowledgeable can address it.

24 First, can you describe the basis for
25 your familiarity with the area characterized by

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WASHINGTON, D.C. 20005-3701

1 SUWA as the North Cedar Mountains area?

2 MS. STEPHENSON: I'm familiar with it in
3 the fact that I've been in the Salt Lake field
4 office for BLM for the past 13 years, and I've
5 spent numerous visits out in the Skull Valley area
6 both in relationship to this project and on other
7 projects as well.

8 Q. Any other members of the panel have
9 experience in the North Cedar Mountains area?

10 MS. LAUB: I do. I have worked with the
11 Salt Lake field office for almost, well, it will be
12 ten years in June. And in the first of my duties I
13 spent a considerable amount of time in Skull Valley
14 and the Cedar area.

15 Q. About how many times would you have been
16 in the North Cedar Mountains area? Are we talking
17 about ones? Tens? Hundreds? Orders of magnitude.

18 MS. STEPHENSON: I've probably been
19 there about maybe ten to fifteen times.

20 MS. LAUB: In the general area I don't
21 think I could count. It's been so many times.
22 With the recreation program there are special
23 events that go through the area, so not for
24 purposes of this project, but in the course of my
25 other duties, maybe multiples of ten times.

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WASHINGTON, D.C. 20005-3701

1 Q. Ms. Laub, you on your resume, and I
2 think, Ms. Stephenson, on yours, indicate that you
3 both took Bureau of Land Management training
4 courses. Could you each summarize what types of
5 courses those were?

6 MS. STEPHENSON: Well, my first one was
7 a five-month training school where I learned the
8 duties and responsibilities of a realty specialist.
9 And after that it was -- there have been other
10 courses both in the realty line environment, such
11 as electronic systems. I've taken NEPA courses,
12 National Environmental Protection courses. I have
13 had courses relating to our bureau planning system,
14 and those have been formal. I've had informal
15 classes on riparian and visual resource management.
16 I've had some range, some small range courses, and
17 probably a lot more over the course of my 28 years
18 that I don't remember.

19 Q. Ms. Laub?

20 MS. LAUB: I have attended a three-week
21 recreation course which outlines BLM manual
22 processes and procedures, recreation opportunities
23 spectrum, planning, National Environmental Policy
24 Act. I've also taken interim management policy for
25 wilderness courses through the BLM. Land status,

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1 legal land status courses. There's been several.
2 I'm -- do you want all, or just what's relevant?

3 Q. Just what's relevant.

4 MS. LAUB: And I've taken a couple
5 correspondence courses through Colorado State
6 University for management of wilderness.

7 Q. Based on your having been in the area
8 where the railroad spur, railroad line will pass
9 through SUWA's designated area, could you
10 characterize the nature of the vegetation there
11 with respect to whether it's natural versus
12 invasive species?

13 MS. STEPHENSON: Most of that route will
14 be -- would be under invasive species. There is
15 some parts of natural vegetation left. The Cedar
16 Mountains are an area that has burned time and time
17 again, and we've done some reseedings in there, so
18 there will be some planted species. We have a lot
19 of cheat grass that has come in. The greasewood,
20 the sagebrush, a lot of that has been burned off
21 over the course of the years.

22 MS. LAUB: There is also quite a bit of
23 Halogeton in the area.

24 Q. I'm sorry. Could you say that again?

25 MS. LAUB: Halogeton is an invasive

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1 species.

2 MR. SILBERG: Does the reporter know how
3 to spell that? I withdraw the question.

4 MS. STEPHENSON: If I could write it, I
5 might.

6 Q. (By Mr. Silberg) Could you briefly
7 describe the process by which you determine that
8 the wilderness attributes of, particularly focusing
9 on the portion of the SUWA designated North Cedar
10 Mountains area with respect to its wilderness
11 characteristics, whether that was done solely by
12 you, whether it was done as a part of an
13 interdisciplinary process? How would you describe
14 how that was carried out?

15 MS. LAUB: The original BLM inventory in
16 Utah inventoried all acreage in the state, and that
17 was done in 1980 and I was not a part of that
18 process.

19 Q. Would you describe the subsequent looks
20 for this area by BLM?

21 MS. LAUB: The BLM has not revisited its
22 1980 determination of the area for wilderness
23 characteristics.

24 Q. Has it considered the information
25 presented by SUWA or other groups that SUWA may be

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1 associated with on the North Cedar Mountains area?

2 MS. LAUB: The Utah Wilderness Coalition
3 and SUWA gave BLM a proposal in April of 2001 under
4 our new wilderness handbook, but the proposal did
5 not -- we reviewed the proposal carefully, but the
6 proposal didn't contain significantly different
7 information from our originally inventory that
8 would compel us to take another look.

9 MR. SILBERG: We have no other
10 questions.

11 JUDGE FARRAR: When we were out on the
12 site yesterday we saw some greasewood. Can you
13 tell us about that and how it got there and what
14 its role is in the ecosystem?

15 MS. STEPHENSON: I'm not real sure about
16 the role. The greasewood is a native vegetation
17 for that valley, the lower elevations of the
18 valley, and generally it will be a fire resistant
19 plant. But based on -- there were some very large
20 intense fires in the years past that did start
21 burning some of the greasewood, and when the
22 greasewood burned we had cheat grass coming in, and
23 each year that cheat grass tends to reburn and we
24 keep losing more and more of the greasewood each
25 year. And the goal for BLM is to retain as much of

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1 the native vegetation as we can. So we're trying
2 to protect it.

3 JUDGE FARRAR: Ms. Walker, your cross,
4 please.

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6

CROSS-EXAMINATION

7

BY MS. WALKER:

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Q. Mr. McFarland, just because no one's asking you questions, I'll start with you. Would please turn to the FEIS at page 2-49. I need a copy. And also your prefiled testimony at page 29.

MR. McFARLAND: Okay, I have them.

Q. At the top of -- at the beginning of answer 54, that first sentence.

Judge Farrar, can I just ask you a question? Do you want me to be faster? Should I not read this stuff?

JUDGE FARRAR: You can just refer him to the page and just ask questions. And then if he needs more explanation, then you can give it to him.

MS. WALKER: Okay. So the first sentence of your answer where you say "The applicant's analysis shows that the amount of material is about 560,000 cubic yards less than the

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1 amount of material that would be needed for
2 embankment," is that the same thing as the FEIS
3 says on 2-49 where it talks about fill and cut?

4 MR. McFARLAND: Basically that's the
5 same thing, yes. The 560,000 yards is in both
6 places.

7 Q. Yeah. But one said it would require --
8 the FEIS says 560,000 cubic yards of fill, of about
9 which 260 cubic yards would have to be imported.
10 Your testimony says 560,000 cubic yards less than
11 the amount of material that would be needed. Is
12 that the same thing?

13 MR. McFARLAND: Basically it's the same
14 thing.

15 Q. But if I understand you correctly, in
16 the FEIS you're saying the total amount of fill is
17 560,000 cubic yards, and in your testimony you're
18 saying it's 560,000 -- 560,000 cubic yards less
19 than the amount of material in the fill.

20 MR. McFARLAND: I didn't write the EIS.
21 But when I looked at their numbers, that's what the
22 result was. The excavation, the fill amount was
23 like eight hundred and some thousand and the
24 excavation was like three hundred and some
25 thousand, and the net effect is 560 thousand. So I

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1 didn't write the FEIS, but I think that's what
2 they're implying there, that the net difference is
3 560,000.

4 Q. So when they say it would require the
5 emplacement of approximately 560,000 cubic yards of
6 fill material of about which 260,000 cubic yards
7 would have to be imported, they're saying the
8 560,000 cubic yards is just a fraction of the
9 amount of material that would be needed in fill?

10 MR. McFARLAND: Yes, because you'd get
11 some of it from the cut on that portion of the
12 alignment.

13 Q. So how much -- does the FEIS say how
14 much fill it requires?

15 MR. McFARLAND: I don't believe it does.
16 I'm not sure. The numbers I was looking at were
17 the actual computer output for the entire -- for
18 that align.

19 Q. So who wrote the FEIS?

20 MR. McFARLAND: I didn't. I wasn't part
21 of that. My part was just to review the design.

22 Q. So you didn't review the FEIS, you
23 reviewed the design?

24 MR. McFARLAND: Basically.

25 Q. Okay.

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1 MR. McFARLAND: And I used the FEIS
2 reference to it.

3 Q. Okay. And then at page 30 of your
4 prefile, on answer 56 you say, "I considered
5 modifying the profile grade line." What does that
6 mean?

7 MR. McFARLAND: Well, I looked at it
8 independently to see if, well, could I improve
9 this. The 560,000 out of line, could I improve it.
10 So I tried to modify the profile and all I could
11 improve was about 50,000 yards, which is a drop in
12 the bucket at this stage of looking at something.

13 Q. But what does modify the profile grade
14 line mean?

15 MR. McFARLAND: Change grades in certain
16 areas, move the vertical curves, trying to make it
17 closer to the existing ground. Because the closer
18 you get to the existing ground, the more a balanced
19 situation you would have.

20 Q. So by profile grade, you mean the same
21 thing as --

22 MR. McFARLAND: Top of --

23 Q. -- grade?

24 MR. McFARLAND: Top of grade, yeah. Top
25 of embankment.

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1 Q. Okay. All right. So which is more
2 expensive, the truck heavy haul alternative or the
3 rail alternative?

4 MR. SILBERG: Objection, outside the
5 scope.

6 MS. WALKER: This is my line of
7 questioning that goes to the criteria for rejecting
8 an alternative.

9 JUDGE FARRAR: We'll let you explore
10 that, bearing Mr. Silberg's objection in mind.

11 MR. WEISMAN: Also my objection.

12 JUDGE FARRAR: Those are overruled for
13 now. We'll give you some leeway to pursue this for
14 that limited purpose.

15 Go ahead, you may answer.

16 MR. McFARLAND: My review did not
17 involve anything due to costs. I only reviewed
18 volumes. That's why I don't even know about the
19 truck route. I wasn't asked to look at that cost
20 wise or any other way.

21 Q. So you don't know the environmental
22 impacts of the truck line, either?

23 MR. McFARLAND: No. I'm not in
24 environmental.

25 Q. Ms. Stephenson, what does Lee's Canyon

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1 look like?

2 MS. STEPHENSON: I have not been there.

3 Q. Have you seen the quarry in Lee's
4 Canyon?

5 MS. STEPHENSON: I have not been to
6 Lee's Canyon.

7 Q. Have you been on the rim of Lee's
8 Canyon?

9 MR. WEISMAN: Objection, asked and
10 answered.

11 MS. WALKER: The rim is different.

12 JUDGE FARRAR: That's I think a
13 different question. Overruled. Go ahead.

14 Q. Have you been on the rim? I should
15 specify, the northern rim of Lee's Canyon?

16 MS. STEPHENSON: No, I have not.

17 Q. Have you been on the top of the highest
18 peak in the North Cedar Mountains area?

19 MS. STEPHENSON: No.

20 Q. Do you know what the view looks like
21 from up there?

22 MS. STEPHENSON: I have not been there.

23 Q. Have you been to the Cedar Mountains
24 WSA?

25 MS. STEPHENSON: I have been along the

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1 bench road.

2 Q. But not in the interior?

3 MS. STEPHENSON: No.

4 Q. Have you been in any of the 202 areas
5 next to the north -- I know, I have to explain what
6 202 is.

7 MR. WEISMAN: If you understand the
8 question.

9 Q. When I say 202 areas, do you know what I
10 mean?

11 MS. STEPHENSON: Yes.

12 MR. WEISMAN: Could you explain that for
13 the rest of us?

14 MS. STEPHENSON: Yeah. The 202 areas
15 were areas that the BLM looked at back in '96 to
16 '99 for wilderness character.

17 JUDGE FARRAR: Why are they called 202?

18 MS. LAUB: It's under section 202 of the
19 Federal Land Policy Management Act.

20 JUDGE FARRAR: Thank you.

21 Q. (By Ms. Walker) So can you explain
22 exactly what that process was?

23 MS. STEPHENSON: I was not directly
24 involved, but Britta probably would have a much
25 better answer than I could.

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1 Q. Okay, I'll ask her later. Thank you.

2 Is livestock grazing allowed in wilderness areas?

3 MS. STEPHENSON: Yes, it is.

4 Q. Do cows make trails?

5 MS. STEPHENSON: Yes.

6 Q. What does cheat grass look like?

7 MS. STEPHENSON: I would not be able to
8 describe it to someone here who is not familiar.
9 I've seen it enough out there that when it's full
10 grown, I can identify it. But at early stages or
11 to try to describe it to someone else, I would not
12 be able to. I'm not a botanist by training.

13 Q. Well, is it green?

14 MS. STEPHENSON: When it first grows,
15 yes.

16 Q. Then it turns brown?

17 MS. STEPHENSON: Yes.

18 Q. And does it turn brown when other
19 vegetation turns brown?

20 MS. STEPHENSON: Generally it will dry
21 out much sooner in the summer.

22 Q. Is there a cheat grass in the Cedar
23 Mountains WSA?

24 MS. STEPHENSON: I believe there
25 probably is.

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1 Q. Are wildfires natural?

2 MS. STEPHENSON: Yes, they are.

3 Q. Do you know what a guzzler is?

4 MS. STEPHENSON: Yes.

5 Q. Can you explain it, please?

6 MS. STEPHENSON: The guzzler is a
7 mechanism to -- well, not mechanism. It's a
8 structure with a catchment pen as well as draining
9 into a tank. The water will hit the catchment pen,
10 run off into a tank. There will be a ramp or
11 something in there for small wildlife, and it
12 provides drinking water for birds and small
13 animals.

14 Q. So are they designed for wildlife?

15 MS. STEPHENSON: Yes.

16 Q. Are guzzlers allowed in WSA's?

17 MS. STEPHENSON: I would have to do some
18 research on that, but Britta probably could answer
19 that.

20 Q. Have you seen any sheep in the North
21 Cedar Mountains?

22 JUDGE FARRAR: Wait, Ms. Walker. The
23 reason we use panels is to make things go more
24 smoothly, and if someone else has an answer, it's
25 usually better to get it, if someone else can

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1 answer the question, to get it on the record then
2 and let you pursue it. If you don't want to, you
3 don't, I suppose you don't have to. But when one
4 witness refers to another, we usually let them
5 answer that question. Unless you have a reason you
6 don't want us to do that.

7 MS. WALKER: I have a reason I don't
8 want to do it.

9 JUDGE FARRAR: Okay, then we'll do it
10 your way.

11 MS. WALKER: Okay, I have an exhibit I'd
12 like to distribute. It's marked SUWA X-4.

13 MR. SILBERG: I'm going to object to the
14 use of this exhibit.

15 JUDGE FARRAR: Let's get it marked
16 first. Does this follow in sequence from your --
17 did you mean Exhibit 4, or -- I don't have right in
18 front of me how many exhibits you had already
19 marked -- or you prefiled with Dr. Catlin's
20 testimony.

21 MS. WALKER: These aren't prefiled.

22 JUDGE FARRAR: No, but the numbers have
23 to follow.

24 MS. WALKER: Oh. You know, I put the
25 X's in front of it thinking cross.

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1 JUDGE FARRAR: Oh, no. Let's just go
2 with the next number.

3 MS. WALKER: Oh, then it's going to --

4 JUDGE FARRAR: She can mark it whatever
5 you want it marked.

6 MS. WALKER: Even though it says
7 something else on it?

8 JUDGE FARRAR: Right.

9 MS. WALKER: I'm pretty sure we had
10 three, so that would make this 4.

11 JUDGE FARRAR: Right, we've got three.
12 No. 3 was the brief, so we'll mark this for
13 identification as SUWA 4 and let the reporter do
14 that.

15 (SUWA EXHIBIT-4 MARKED.)

16 MS. WALKER: Do you want me to respond
17 to the objection or try to set up foundation for
18 it?

19 JUDGE FARRAR: Well, Mr. Silberg, what's
20 your objection?

21 MR. SILBERG: The objection is that this
22 is a document dated on its face July -- January
23 1992, which was never provided to us in the
24 discovery process. I think it's highly improper to
25 bring it up at this late stage of the process where

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1 we've never had an opportunity to look at it, we
2 have no idea what it is or what relevance it is.
3 To have it dropped in the middle of us in the
4 hearing I think is totally inappropriate, and it
5 should not be allowed in or be used for
6 cross-examination.

7 MS. WALKER: It's a BLM document.

8 MR. SILBERG: Doesn't matter. That's
9 why we have discovery.

10 MS. WALKER: So you're telling me I'm
11 supposed to provide your own agency with its own
12 documents?

13 MR. SILBERG: BLM is not my agency,
14 Ms. Walker.

15 MS. WALKER: Well, they're a party to
16 the FEIM.

17 MR. WEISMAN: But the applicant is not
18 part of the Federal Government.

19 JUDGE FARRAR: These are not
20 Mr. Silberg's witnesses, they're Mr. Weisman's,
21 but --

22 MS. WALKER: It's a government --

23 JUDGE FARRAR: The objection is
24 overruled. This is cross-examination. You can use
25 it for that purpose.

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1 MR. SILBERG: Chairman, I think it is
2 highly prejudicial where we've had three years plus
3 on this contention, including full discovery, and a
4 document comes in on the day of hearing that we
5 have never been provided before. It is really
6 highly prejudicial to allow that document to be
7 used at this time.

8 JUDGE FARRAR: So far I haven't heard
9 any motion to admit it into evidence. It's only
10 being used for cross-examination. We'll give some
11 leeway on that and see where it takes us.

12 MR. WEISMAN: Just for the record, your
13 Honor, aside from Mr. Silberg's motion or his
14 objection based on discovery, the Staff would
15 otherwise not have an objection to this document.

16 MS. WALKER: Would you say that again?

17 JUDGE FARRAR: The objection is
18 overruled. You can go ahead.

19 Q. (By Ms. Walker) Ms. Stephenson, do you
20 know what this is?

21 MS. STEPHENSON: Yes, I do.

22 Q. Can you explain it, please?

23 MS. STEPHENSON: It's a portion of the
24 OHV map, off-highway vehicle road map that we have
25 in Tooele County and Utah County.

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1 Q. Is it current?

2 MS. STEPHENSON: Yes. Possibly -- there
3 was I believe an amendment made, and I'm not sure
4 that the amendment is reflected here.

5 Q. Would the amendment be relevant to the
6 North Cedar Mountains area?

7 MS. STEPHENSON: No, it's not.

8 Q. Does this document guide BLM's
9 management of North Cedar Mountains area?

10 MS. STEPHENSON: This is the management
11 that we are -- the guide that we are managing
12 towards, for OHV only.

13 Q. Does part of the map depict the North
14 Cedar Mountains area?

15 MS. STEPHENSON: Yes.

16 Q. Sorry. Does it contain the area covered
17 by the North Cedar Mountains area?

18 MS. STEPHENSON: Yes, it does.

19 Q. And can you from reading this map tell
20 the management descriptions that apply to the North
21 Cedar Mountains?

22 MS. STEPHENSON: As far as it applies
23 towards OHV management, yes.

24 Q. And what -- how is it symbolized on the
25 map?

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1 MS. STEPHENSON: Symbolized with a B-2.

2 Q. And could you please read what B-2
3 means?

4 MS. STEPHENSON: "Motor vehicle use is
5 limited to existing roads and trails year round to
6 promote resource values of soils, vegetation,
7 wildlife habitat, cultural, watershed, riparian,
8 wetlands, and visual resource."

9 Q. So what does that mean, existing roads?

10 MS. STEPHENSON: They would be roads
11 established currently. We would not allow the
12 development of new roads out there.

13 Q. So how do you know what an existing road
14 is?

15 MS. STEPHENSON: They would show up on
16 maps and aerial photos that we had at the time.

17 Q. Attached to your prefiled testimony are
18 some pictures.

19 MR. SILBERG: Are these the exhibits in
20 Staff Exhibit I?

21 MS. WALKER: Yeah. I think they all
22 have the same letter.

23 MR. SILBERG: Yeah, J.

24 MS. WALKER: No, each photo has its own.

25 MR. WEISMAN: Each photo has its own

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1 letter. Map is I.

2 Q. (By Ms. Walker) So Staff Exhibit M,
3 please. Does this show up on one of those maps you
4 were talking about?

5 MS. STEPHENSON: No.

6 Q. Does that mean that ORV use of this is
7 illegal?

8 MR. SILBERG: I'm sorry. You said ORV?

9 MS. WALKER: ORV, off road vehicle.
10 Sorry.

11 Q. (By Ms. Walker) Does that mean vehicle
12 use of this is illegal?

13 MS. STEPHENSON: Yes.

14 Q. Staff Exhibit N --

15 MS. STEPHENSON: Just a minute.

16 Q. N as in Nancy, please. Does this trail
17 way show up on one of those maps you were talking
18 about?

19 MS. STEPHENSON: No.

20 Q. Does that mean that vehicle use of this
21 is illegal?

22 MR. SILBERG: Sorry. Which map are you
23 referring to?

24 MS. WALKER: The maps that she referred
25 to that have designated routes on them.

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1 MR. SILBERG: Which maps are those?

2 MS. WALKER: I'm sorry, existing routes
3 on them.

4 MR. SILBERG: Which maps are those? I'm
5 asking you. You're asking her about designated
6 maps.

7 MS. WALKER: Okay. My understanding of
8 her testimony is that those are maps that were
9 in --

10 MR. SILBERG: Which maps?

11 JUDGE FARRAR: All we're looking for is,
12 when you say the maps, we need identification.

13 MR. SILBERG: Which maps?

14 MS. WALKER: Yeah, I'm explaining. Maps
15 that were in existence at the time this policy was
16 set forth that she explained in her testimony
17 exists somewhere, I imagine in the BLM office, that
18 have existing routes on them.

19 JUDGE FARRAR: And maps that are not in
20 front of us at this moment?

21 MS. WALKER: No.

22 MR. WEISMAN: What was the question?
23 I'm sorry.

24 Q. (By Ms. Walker) I think the question
25 was, that you're asking about is, is the thing

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1 that's depicted in this picture an existing route
2 for purposes of existing routes as defined in this
3 policy here.

4 MS. LAUB: I can answer that. Yes.
5 When we did the resource management plan for the
6 off-highway vehicle designations in 1992, there
7 were some areas where baseline data was gathered
8 and other areas where it was not. The designations
9 were made with full public input and were left to
10 manage a very difficult designation which is
11 limited to existing. So the first person who
12 drives on that route is in fact illegal and the
13 second is not. It's very difficult to manage, and
14 that's where we're at today.

15 JUDGE FARRAR: And the maps that reflect
16 this are not maps that we have in front of us
17 anywhere, but you have them back in the office
18 somewhere?

19 MS. LAUB: What we do when we do a
20 planning process is we have mylar overlays that we
21 put various resource values, issues on. And I
22 wasn't around for the OHV designation plan
23 amendment; but based on other plan, mylars I've
24 seen, and those should be in our office somewhere,
25 I am fairly certain that the route-by-route

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1 baseline data was not gathered at that time. It
2 was a more general classification.

3 MR. SILBERG: Can I just ask a question
4 for clarification of that, following up on that?

5 JUDGE FARRAR: Yes, go ahead.

6 MR. SILBERG: The roads, trails, ways
7 that are shown on Exhibits K, L, M, and N and O,
8 are those roads or trails which show up on the maps
9 in your office?

10 MS. LAUB: I would say no. The map, the
11 maps we used in purposes of the plan amendment that
12 we developed in 1992, those are general overviews
13 that cover all of Tooele and Utah County. I doubt
14 that the North Cedar area has specific routes,
15 baseline data from 1992 on them. I don't believe
16 they were that specific.

17 MR. SILBERG: So when it says in B-2
18 "limited to existing roads and trails," even though
19 they're not on those maps, it's your view that
20 these shown on these pictures --

21 MS. LAUB: Those are existing.

22 MR. SILBERG: Existing roads and trails?

23 MS. LAUB: They are.

24 MR. SILBERG: Thank you.

25 MS. STEPHENSON: The road depicted in

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1 Exhibit M is the road that does show up on
2 topographic maps as well as our 1:100,000 scale
3 maps as a Jeep trail.

4 MR. SILBERG: Thank you.

5 Q. (By Ms. Walker) So this policy is dated
6 1992. And Ms. Laub, you're saying that routes
7 could be created, new routes could be created after
8 1992?

9 MS. LAUB: They have been created since
10 1992.

11 Q. Is it legal to create them after 1992?

12 MS. LAUB: The legality of it, in lieu
13 of baseline data we're hard pressed to prove the
14 route is or is not existing at a certain time. We
15 would have to go back and identify what was there,
16 which is something we have done for the Cedar
17 Mountain wilderness study area is identify what was
18 in existence at the time of inventory.

19 Q. Well, practicality aside, is it legal to
20 create new routes?

21 MR. SILBERG: Objection, calls for a
22 legal conclusion.

23 MS. WALKER: Her agency is charged with
24 managing land.

25 JUDGE FARRAR: Objection, overruled.

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1 It's closely enough within the scope of her duties
2 or her agency's duties.

3 MS. LAUB: The State of Utah manages
4 off-highway vehicle use, and we manage the lands on
5 which people choose to ride their vehicles. State
6 law says that it is illegal to travel on a route or
7 a road that is not signed. However, many people do
8 it.

9 Q. So is it legal or illegal to be in a new
10 road after 1992?

11 MS. LAUB: That would depend. If the
12 Bureau conducted an environmental assessment for
13 the establishment of a new road that was in support
14 of a project like a guzzler or a trough or a cattle
15 improvement, then that would be something the
16 Bureau decided to do.

17 Q. Right. But if I were an ORV user, could
18 I create a route just by driving?

19 MS. LAUB: You could, but that
20 situation --

21 Q. Legally? Could I legally?

22 MS. LAUB: No.

23 Q. Can you say that this route pictured
24 here, M, was in existence in 1992 for sure?

25 MS. LAUB: I wasn't on the planning team

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1 for the RMP amendment, Resource Management Plan
2 amendment. I believe Alice said that this on M was
3 the one depicted on the topographical map.

4 MS. STEPHENSON: Based on where we were
5 at in looking at the maps, I would say yes, it was
6 the one that was on the topo maps. And it was
7 there.

8 Q. What topo map would that be?

9 MS. STEPHENSON: I don't have the name
10 of the quad with me.

11 Q. Would it be one of these kind of topo
12 maps?

13 MS. STEPHENSON: Yes.

14 Q. Can you show it to me on here?

15 MS. LAUB: What year is that topographic
16 map?

17 Q. 1973. Are there earlier, are there more
18 recent ones than these?

19 MS. LAUB: Yes, there are.

20 Q. What dates are the ones you have?

21 MS. LAUB: I don't have them with me.
22 We deal with hundreds of topographic maps in the
23 course of our work. I don't know the dates of any
24 one map.

25 Q. But you can say for sure that this map

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1 is out of date?

2 MR. WEISMAN: Can counsel please see the
3 map?

4 MS. WALKER: I said 1973. That's what
5 it says on it.

6 JUDGE FARRAR: Why don't you show the
7 map you're talking about to counsel and to the
8 witness.

9 MR. WEISMAN: We've got two maps here.
10 One is entitled Hastings Pass, NE Utah. And the
11 numbers underneath it, N 4037.5-W11245/745. Date
12 is 1973. It's a Utah Geological Survey map, and if
13 I recall, I believe that the question was -- if I
14 recall, I believe the question was is this map out
15 of date.

16 MS. LAUB: The map is out of date. Not
17 having the benefit of my maps, I don't know if this
18 is the most recent. But the U.S. -- the United
19 States Geological Surveys do periodically update
20 their maps through the use of aerial photography
21 interpretation.

22 Q. (By Ms. Walker) Can you say for sure
23 that on the newer maps that the thing identified in
24 this photo M is an existing route?

25 MR. WEISMAN: If you know.

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1 MS. LAUB: Without the benefit of my
2 maps, no. But I did travel out to take these
3 photographs, and there was one of the routes. And
4 I don't have the key that explains which photo
5 depicts what, so...

6 Q. Oh, you can have it. You mean this
7 yellow thing? The yellow thing.

8 MS. LAUB: The narrative.

9 Q. Oh, the narrative.

10 MS. LAUB: So we took several. We were
11 on a road identified on the topographic map we had
12 with us in the field, and we took several of the
13 pictures. I don't know if it's M or N or O.

14 MR. WEISMAN: Just for clarification,
15 some of that narrative is incorporated in the
16 testimony. I don't -- we didn't provide the entire
17 narrative key, but we put the relevant portions in
18 the testimony.

19 Q. (By Ms. Walker) So Ms. Laub, could you
20 take a closer look at Exhibit M there? Are you
21 sure that's evidence of a vehicle, or could it be a
22 cow, a bunch of cows?

23 MS. LAUB: It appears to be vehicle
24 tracks, either an ATV, all-terrain vehicle, which
25 would be like a four wheeler on which you sit and

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1 drive, or it can be a Jeep. I can't -- the scale
2 is difficult to tell, but they're parallel, the two
3 track routes. I don't see any other evidence left
4 by a cow in the picture.

5 Q. So when you took this picture, though,
6 you didn't have your map with the existing routes
7 on it with you?

8 MS. LAUB: I had a topographical map
9 with me. It does not depict existing routes in the
10 area as of 2002, no.

11 Q. How about as of 1992?

12 MS. LAUB: No.

13 Q. Okay. What about the picture in N, with
14 the N picture? And if you don't mind, since we're
15 done with the map, do you know whether that's an
16 existing route as of 1992?

17 MS. LAUB: I don't know. I would guess
18 no.

19 Q. So in the picture, Ms. Laub, K, this
20 road that's in the very corner of it, is that in
21 what we're calling the North Cedar Mountains area?

22 MS. LAUB: It's located on the North
23 Cedar Mountains.

24 Q. So do you know what road that is a
25 picture of, the one in the corner?

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1 MS. LAUB: The road in the left-hand
2 corner, I don't know if it has a name given by the
3 BLM, but it's definitely a graded, improved road.

4 Q. Do you know if it's in the SUWA's
5 proposed, or UWC's proposed area or not?

6 MS. LAUB: I believe it is the northern
7 boundary of the UWC, Utah Wilderness Coalition
8 proposed wilderness area; but like I said, we did
9 not revisit the SUWA proposal because it didn't
10 contain significantly new information. So I did
11 not.

12 Q. Then how about L, Staff Exhibit L? Is
13 that road in SUWA's -- or the Utah Wilderness
14 Coalition's proposal, what we call the North Cedar
15 Mountains area?

16 MS. LAUB: I don't know if it's within
17 it or if SUWA has cherry-stemmed it out of their
18 proposed unit. So the unit remains roadless. I'm
19 not -- again, I believe this is the northern SUWA
20 boundary unit looking to the west, where the other
21 one was looking to the east.

22 MR. WEISMAN: Just for clarification,
23 you used the term "cherry-stemmed." Could you
24 explain what that means?

25 MS. LAUB: The Wilderness Act criteria

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1 require that an area be roadless to be designated
2 as a wilderness study area. The BLM does not have
3 the power to designate an area as a wilderness.
4 That's reserved to congress. But in assessment of
5 wilderness values, the area does need to be
6 roadless. And to omit man's intrusions, it is a
7 management tool to, and also used by wilderness
8 proponents to draw a boundary around a road that
9 goes into a wilderness, proposed wilderness unit to
10 omit it, and it looks like a cherry stem.

11 Q. Okay, Staff Exhibit O. Do you know if
12 that, the road depicted in that picture is in Utah
13 Wilderness Coalition's proposed area or what we're
14 calling the North Cedar Mountains area?

15 MS. LAUB: The photos are not keyed to
16 the map very well, so it's very difficult for me to
17 tell which ones are within or without. But -- 7W.
18 Oh, that's where it is. It appears to be on the
19 boundary road that SUWA has chosen as their
20 proposed wilderness road. But I believe this road
21 goes to some private land on the North Cedar
22 Mountain area.

23 Q. So when you were taking these pictures,
24 you weren't quite sure where Utah Wilderness
25 Coalition's proposed area was or where its

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1 boundaries were?

2 MS. LAUB: I didn't have the GPS points,
3 the Global Positioning System points from Southern
4 Utah Wilderness Alliance, so I wasn't able to --
5 and that was not the point for us going out. We
6 were getting a representative, some representative
7 photos of the condition of the area, not to
8 determine wilderness values from the SUWA proposal
9 or not.

10 Q. Did the Utah Wilderness Coalition give
11 the BLM the GPS data of the North Cedar Mountains
12 area?

13 MS. LAUB: We have data on large maps.
14 I don't have specific points, no.

15 Q. Did the Utah Wilderness Coalition let
16 you know that the information was available on the
17 Web?

18 MS. LAUB: The Utah Wilderness Coalition
19 I believe provided our mapping sciences group some
20 maps, but it was a statewide coverage.

21 Q. Do you know if the BLM knew that GPS
22 data was available on the Web?

23 MS. LAUB: I don't know. We have had
24 some problems with our computer, our Internet being
25 shut down for several, several months. We took

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1 these pictures in February, I believe. And that
2 was during the time of our shutdown.

3 JUDGE FARRAR: Is that the shutdown
4 relating to the --

5 MS. LAUB: The Indian trust lands
6 information.

7 Q. (By Ms. Walker) So just as a general
8 matter, the pictures that are attached to your
9 prefile, the ones we just talked about, they're
10 just in the rail corridor or the boundary of the
11 area?

12 MR. WEISMAN: I believe that wherever
13 the pictures were taken is all described in the
14 testimony, in the map.

15 MR. SILBERG: Map being Staff Exhibit 1?

16 MR. WEISMAN: Staff Exhibit "I".

17 Q. (By Ms. Walker) So they were taken
18 along the road that forms the boundary?

19 MS. LAUB: The boundary of what?

20 Q. Okay, they were taken along the road.
21 We'll leave it at that.

22 Time for another exhibit, please.

23 MR. WEISMAN: Pardon me, your Honor.

24 Would it be okay if we took a five-minute break?

25 JUDGE FARRAR: Yeah. Let me just ask

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1 one question. The Staff Exhibit I, what is -- this
2 blue line on which the photographer stood taking
3 the pictures, the blue line indicates what?

4 MR. WEISMAN: It is on a key.

5 MS. STEPHENSON: Those would be the
6 roads out there, the ones that we drove on
7 yesterday.

8 JUDGE FARRAR: So that blue line is one
9 of those Jeep trails, or unpaved --

10 MS. STEPHENSON: It's an unpaved but
11 maintained county road.

12 MR. SILBERG: That's the Jeep trail that
13 we drove on yesterday that forms the border between
14 the SUWA area and --

15 MS. STEPHENSON: Yes.

16 MR. SILBERG: Can I just ask one
17 clarifying question? The numbers and letters on
18 this map, 2E, 2W, 1S, those numbers are keyed to
19 the photographs, are they not? For instance, point
20 1S is Staff Exhibit J?

21 MR. WEISMAN: You're referring to the
22 numbers and letters in the upper left-hand corner?

23 MR. SILBERG: Of the exhibits. Correct?

24 MS. LAUB: Yes.

25 MR. SILBERG: And does the letter

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1 indicate the direction in which you were facing
2 when the picture was taken, E being east, W being
3 west, S being south?

4 MS. STEPHENSON: Yes.

5 JUDGE FARRAR: Mr. Weisman, you wanted a
6 five-minute break?

7 MR. WEISMAN: Please.

8 JUDGE FARRAR: We'll be back at 25
9 after.

10 (A recess was taken.)

11 JUDGE FARRAR: We're back after the
12 recess. We've just clarified some things about the
13 map. Ms. Walker, continue your cross, if you
14 would.

15 Q. (By Ms. Walker) I don't quite know what
16 to do, because I have this map of our field trip
17 and I didn't make a bunch of exhibits or anything,
18 but I think I can get around it.

19 Ms. Stephenson, since you were on the
20 field trip, do you remember the route you took?

21 MS. STEPHENSON: Yes.

22 Q. So I don't think I need the map. I just
23 want to ask you a few field trip-oriented
24 questions. If you would turn to your prefile at
25 page 19. You have on the first paragraph

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1 references to a bunch of townships and ranges. And
2 these are the locations of activities in the North
3 Cedar Mountains subsequent to the 1980 wilderness
4 intensive inventory. Now, did we drive through
5 those?

6 MS. STEPHENSON: Without having a
7 detailed map with me, I don't have the township and
8 range sections.

9 Q. So you're not sure where they are on the
10 ground?

11 MS. STEPHENSON: Not without some of the
12 maps.

13 MS. WALKER: Can we give her maps
14 without them being exhibits? Can I get the field
15 trip map, because it does have township and range
16 on it. Is that all right?

17 JUDGE FARRAR: Well, first let's mark it
18 for identification so we know we're --

19 MR. SILBERG: Can I suggest if Ms. Laub
20 knows the answer, Ms. Stephenson may not, just to
21 move this along. Maybe that's a way to get to
22 this.

23 MS. LAUB: Unfortunately, I was not on
24 the field trip yesterday. But the township and
25 range as depicted on Staff Exhibit I, it appears to

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1 be Township 1 South, Range 9 West. And the seeding
2 was in section -- seedings were in sections 3 and
3 4, which are on the map with the route traveling
4 east-west along it.

5 Q. So we went through them?

6 MS. STEPHENSON: Yes, you did.

7 Q. Well, at least the first one?

8 MS. STEPHENSON: That first one.

9 Q. Yeah.

10 MS. LAUB: Perhaps a portion of it. I
11 don't believe that the -- the emergency fire
12 efforts aren't strictly on a section-by-section
13 basis, it's more of a mosaic pattern. So you may
14 have traveled near one or possibly through it.

15 Q. Okay. Ms. Stephenson, did you point
16 them out to us or anything like that?

17 MS. STEPHENSON: No, I didn't. I
18 mentioned, I did in our vehicle mention that there
19 had been some seedings. That could have been in
20 the area, but I wasn't talking those specific ones.

21 Q. Do we know where in those sections those
22 seedings occurred?

23 MS. STEPHENSON: We would have to look
24 at the files that were done back to the seedings.
25 And I'm not sure how well those maps would be --

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1 like I said, the seedings are done in a mosaic and
2 it's hard to identify those on the ground, on a
3 topo map when we -- that is part of the GPS, so it
4 was an eyeball guess as to where the seedings --
5 where the actual action took place, the seedings.

6 MS. LAUB: Those would be on file in our
7 office in the fire files, most likely. And we
8 could have prepared that had we known it was
9 needed.

10 Q. And when you went out and took the
11 pictures that are attached to your prefile, did you
12 look for those or take pictures of the seedings
13 there?

14 MS. STEPHENSON: No. We were -- our
15 goal for the pictures was to get some general
16 overview shots of the area. Not -- we were not
17 aware that the judges might decide to take a tour
18 of the area, so we just wanted to have them have
19 some idea of what the ground area looked like.

20 Q. Okay. Section 33, which is referenced
21 in No. 2 there, is that also shown on the yellow
22 map?

23 MS. STEPHENSON: No.

24 MR. WEISMAN: Just for clarity, I'm not
25 sure what the numbers are, but if you'd look at the

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1 top of the map. I do see a 33.

2 MS. STEPHENSON: But that would be a
3 different township.

4 MR. WEISMAN: All right.

5 JUDGE FARRAR: So the label down in the
6 lower right-hand corner is a general label but
7 doesn't cover those top three partial sections?

8 MS. STEPHENSON: That is correct.

9 MS. WALKER: Oh, okay. Reading maps is
10 not my strong point.

11 Q. (By Ms. Walker) So Ms. Laub, is this
12 the line, the line between 4 and 33, is that the
13 line between 1 North and 1 South?

14 MS. LAUB: Which line?

15 MR. SILBERG: Is your question whether
16 No. 33, 34 and 35 are in Township 1 North?

17 MS. WALKER: Yeah.

18 MS. LAUB: Yes.

19 Q. (By Ms. Walker) Okay. So that 33 is
20 the one you're talking about in 2?

21 MS. STEPHENSON: Yes. I misread the --

22 Q. So did I. But we drove through it is
23 the point, right?

24 MS. STEPHENSON: Again, we may have
25 driven through it. It depends on the exact area

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1 where the seeding took place. Like I said, it
2 could be part of 33, it could have been all of 33.
3 Without detailed fire records, I don't know.

4 Q. Do mining claims exist in the Cedar
5 Mountains wilderness study area?

6 MS. LAUB: I believe there are some
7 mining claims, yes.

8 Q. Do you know the dates of the mining
9 claims in the North Cedar Mountains area?

10 MS. LAUB: No, but I believe they are
11 subsequent to 1980.

12 Q. But you're not sure?

13 MS. LAUB: Well, at the beginning of the
14 paragraph on page 19 it says, "Further, the
15 following activities have occurred in the North
16 Cedar Mountains subsequent to the 1980 wilderness
17 intensive inventory."

18 Q. So when you testified to that, what
19 you're saying is the mining claims occurred after
20 1980?

21 MS. LAUB: Yes.

22 MS. WALKER: Okay. I have an exhibit.
23 So this will be not what exhibit it says, but 5.

24 JUDGE FARRAR: We'll have the reporter
25 mark this for identification as Exhibit SUWA 5.

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1 (SUWA EXHIBITS 5 AND 6 MARKED.)

2 JUDGE FARRAR: All right, the reporter
3 has marked as SUWA 5 a document that has unit
4 number UT-020-087 at the top, and you've now
5 distributed for identification SUWA 6, Wilderness
6 Inventory and Study Procedures. We'll have the
7 reporter mark that. That's been done.

8 Go ahead, Ms. Walker.

9 Q. (By Ms. Walker) Ms. Stephenson, can you
10 identify SUWA 6, please?

11 MS. STEPHENSON: It's the Bureau
12 handbook, Wilderness Inventory and Study
13 Procedures.

14 Q. Are you familiar with it?

15 MS. STEPHENSON: I have looked at it,
16 yes.

17 Q. Would you please turn to your prefiled
18 testimony, page 18. Looking at answer 32. Could
19 you paraphrase what you say there, or read it, if
20 you'd prefer?

21 MR. SILBERG: Mr. Chairman, I know we've
22 allowed leeway for cross-examination, but we are
23 trying to finish this, and I think having people
24 read testimony into the record is not conducive to
25 moving along.

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1 MS. WALKER: But if she doesn't read it,
2 we won't know what I'm talking about, I'm afraid.

3 MR. SILBERG: We've all read the
4 testimony.

5 MS. WALKER: Okay, people read it to
6 themselves.

7 JUDGE FARRAR: Give me the page, the
8 reference again.

9 MS. WALKER: Page 18, answer 32.
10 Everyone read it to themselves.

11 JUDGE FARRAR: Yeah, just ask her
12 questions based on it. And we went through this
13 two weeks ago on some other testimony, and we found
14 it better to just, you know, refer to it and ask a
15 question about it.

16 MS. WALKER: I guess then the public
17 doesn't know what we're talking about.

18 Q. (By Ms. Walker) So do you understand,
19 Ms. Stephenson, the definition of "road" used by
20 the Wilderness Inventory and Study Procedures
21 manual?

22 MS. STEPHENSON: Yes.

23 Q. Can you explain what that is?

24 MS. STEPHENSON: A road has to be
25 constructed to --

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1 Q. Maybe I should -- I'll try to be faster.
2 I'm really sorry. I don't quite know how to do
3 this.

4 JUDGE FARRAR: No, she was answering the
5 question. Go ahead, Ms. Stephenson.

6 MS. STEPHENSON: Well, as far as
7 wilderness goes in the book, they don't really --
8 in the glossary do not define roads, they define
9 what a roadless area is. But the absence of roads,
10 and roads have been improved and maintained by
11 mechanical means to ensure relatively regular and
12 continuous use.

13 JUDGE FARRAR: Where were you reading
14 from?

15 MS. STEPHENSON: It's the glossary from
16 the manual, from Exhibit 6. The definition is in a
17 roundabout way coming from the meaning of roadless.

18 MS. LAUB: It's the very last page of
19 the handbook.

20 Q. (By Ms. Walker) Okay. Is it true that
21 the manual says on page 10 where there's a No. 3,
22 "A route which was established or has been
23 maintained solely by the passage of vehicles would
24 not be considered a road, even if it is used on a
25 relatively regular and continuous basis"? Is that

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1 what it says?

2 MS. STEPHENSON: Yes.

3 Q. Does the handbook also say on page 17
4 that the possibility of an area returning to a
5 natural condition, "An inventory area or portion of
6 an inventory area in which human imprints are
7 substantially noticeable, but which otherwise
8 contains wilderness characteristics, may be further
9 considered for designation as a WSA when it is
10 reasonable to expect that human imprints will
11 return or can be returned to a substantially
12 unnoticeable level either by natural processes or
13 by hand labor"?

14 MS. STEPHENSON: That's what the manual
15 reads.

16 Q. When you took pictures of the boundary
17 area that are attached to your prefiled testimony,
18 were you thinking of the possibility of an area of
19 returning to a natural condition?

20 MS. STEPHENSON: I was just taking
21 pictures of the area.

22 Q. When you say in your prefiled testimony
23 on page 18, "Other extensions of routes used
24 primarily by ORV's," did you mean routes that were
25 maintained?

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1 MS. LAUB: This is a direct excerpt from
2 the 1980 wilderness inventory that BLM conducted.

3 Q. Are you saying you don't know the
4 reasoning behind it?

5 MS. LAUB: I was not, and I don't
6 believe Alice was involved in that inventory.

7 Q. So on what basis are you including it in
8 your testimony?

9 MS. STEPHENSON: The 1979/80 inventory
10 was completed, it was done, it was accepted, and
11 that until we have received information to cause us
12 to re-look at the area, the decisions that were
13 made for the 1980 inventory stand.

14 MS. LAUB: That was determined by the
15 Interior Board of Land Appeals as part of the due
16 process, and we are not revisiting the original
17 inventory.

18 Q. So if the question before the Board here
19 today is does the North Cedar Mountains have
20 wilderness character, your answer to them is what?

21 MS. LAUB: No.

22 Q. And the basis is?

23 MS. LAUB: We have decided that through
24 the process, through the handbook, the new
25 handbook, the public has an opportunity to provide

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1 new information. SUWA did that, but it wasn't
2 significantly new that would compel us to re-look
3 at the area. The process has been followed.

4 Q. So you're unwilling, or the agency is
5 unwilling at this point to revisit the question?

6 MR. SILBERG: Asked and answered. Can
7 we move along?

8 JUDGE FARRAR: No, it's
9 cross-examination. Keep going.

10 MS. LAUB: The agency has not received
11 significantly new and/or different information to
12 compel us to re-look. We have no reason to believe
13 our 1980 inventory wouldn't stand as determined
14 through the IBLA process.

15 Q. What exactly does the 1980 determination
16 say in terms of, what's its conclusion?

17 MS. LAUB: It's in SUWA Exhibit 5. We
18 can read it through if you'd like.

19 Q. Well, maybe I didn't ask it very well.
20 What was the purpose of the inventory?

21 MS. LAUB: The inventory was a
22 requirement under the Federal Land Policy
23 Management Act under section 603 to conduct an
24 inventory for -- and I don't have FLPMA in front of
25 me to read verbatim, but it's a requirement under

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1 603, which the BLM did. It's important to know
2 that the handbook pertains to FLPMA section 202.
3 It's a different process, different --

4 JUDGE FARRAR: What were you doing
5 different under -- the manual deals with 201 and
6 202. Just qualitatively, what's different about
7 the 603 process?

8 MS. LAUB: The FLPMA 202 process is
9 under our obligation to conduct ongoing inventories
10 of public lands maintained. And that is for all
11 resources. The section 603 was a requirement to do
12 certain things the Wilderness Act required from a
13 certain amount of time after the enactment of FLPMA
14 in 1976.

15 MR. SILBERG: Can I follow up on that?
16 So that was a one-time requirement under FLPMA?

17 MS. LAUB: Yes, it was.

18 Q. (By Ms. Walker) Don't you have a
19 continuing obligation to inventory lands for
20 wilderness character?

21 MS. LAUB: We have an obligation to
22 maintain an ongoing inventory of public land
23 resources. Wilderness values are included within
24 that. So are riparian, wildlife, recreation,
25 visual, etc.

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1 Q. So do you know the policies and
2 guidelines in effect when the 1980 inventory was
3 conducted?

4 MS. STEPHENSON: Could you be more
5 specific? There was a lot of them.

6 MS. WALKER: Well, with regard to
7 identifying wilderness character in an area.

8 MS. LAUB: I was ten in 1980. I don't
9 have the benefit of actually being involved in that
10 first process, but I do know after FLPMA there were
11 several Organic Act directives. There were also,
12 you know, like we have today, internal directives,
13 procedures, manuals that we followed.

14 MR. WEISMAN: I'm not sure I understand
15 the question. Are you asking for procedures? Are
16 you asking for criteria, wilderness criteria? Are
17 you asking for procedures they followed when they
18 did inventory?

19 MS. WALKER: No, I'm looking for
20 guidance or policies and procedures.

21 MR. WEISMAN: Okay. So you want to know
22 how they stepped through to do the inventory?

23 MS. WALKER: Yeah.

24 MS. STEPHENSON: There were documents
25 out at that time. I was not involved in any of the

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1 wilderness inventories. I was in Wyoming at the
2 time, southern Wyoming. But I was doing realty
3 work and was not involved.

4 MS. WALKER: Are you familiar with the
5 202 process?

6 MS. LAUB: I am.

7 Q. So what did that entail?

8 MS. LAUB: In 1996 a team of BLM
9 specialists re-looked at certain areas that were
10 proposed for wilderness designation through special
11 interest groups, SUWA being one of them, the
12 sponsorship for members of congress; and there
13 was -- there was some political pressure put on the
14 BLM to re-look at those areas that the special
15 interest groups thought had wilderness character,
16 so BLM did that under FLPMA section 202.

17 Q. When is BLM not under political
18 pressure?

19 MR. WEISMAN: Objection.

20 JUDGE FARRAR: Is that rhetorical,
21 Ms. Walker?

22 Q. (By Ms. Walker) Is BLM inherently --
23 never mind. So what was the result of that?

24 MS. LAUB: BLM found that in some
25 instances circumstances had changed since the 1980

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1 inventory and defined wilderness characteristics in
2 some additional areas.

3 Q. Can you quantify the additional areas?

4 MS. LAUB: I cannot. I was involved on
5 a limited basis for a little bit of time in Salt
6 Lake field office, primarily.

7 Q. Do you know what the total inventory,
8 the acreage --

9 MS. LAUB: The total inventory conducted
10 or the total inventory --

11 Q. How many acres of BLM land did they
12 reinventory?

13 MS. LAUB: I don't know. The inventory
14 looked at public lands throughout the state that
15 were a part of HR-1500 and acquired of lands.
16 HR-1500, like I mentioned, was sponsored by the
17 Southern Utah Wilderness Alliance, and it might be
18 important to note at this time the North Cedar
19 Mountains was not at that time proposed for
20 wilderness designation by the special interest
21 groups, so we did not look at the North Cedar
22 Mountains at that time. It was outside of the
23 scope.

24 Q. But you looked at parts of the Cedar
25 Mountains?

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1 MR. SILBERG: Objection. We just heard
2 that North Cedar Mountains was not included in this
3 inventory. We're way afield of anything having to
4 do with the scope of this contention, which is
5 alternate rail routes in the Low Rail Corridor. I
6 really wish we could move this along faster.

7 MS. WALKER: The key issue is whether or
8 not the North Cedar Mountains has wilderness
9 character.

10 MR. SILBERG: And this witness just said
11 that that inventory you talked about did not
12 include the North Cedar Mountains.

13 MS. WALKER: But if you listen to my
14 question, I said did they find additional 202 areas
15 in the Cedar Mountains.

16 MR. SILBERG: And what relevance does
17 that have to this contention?

18 JUDGE FARRAR: Are you both addressing
19 me?

20 MR. SILBERG: Yes, sir.

21 MS. WALKER: We're addressing each
22 other.

23 MR. SILBERG: I'm just trying to move
24 things along, Mr. Chairman.

25 JUDGE FARRAR: Well, and we did have a

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1 bench conference about moving things along. But
2 our impression up here is Ms. Walker is moving
3 things along in the way that should be done. This
4 is cross-examination on a key issue in the case.

5 But Ms. Walker, we'll allow you very
6 little leeway on this. If you're trying to compare
7 what happened with the Cedar Mountains just to
8 compare that to the North Cedar, that's fine. But
9 we don't need a long history of Cedar Mountains,
10 which are not an issue here.

11 MS. WALKER: Okay.

12 Q. (By Ms. Walker) So please answer the
13 question.

14 MS. LAUB: The BLM found, and I don't
15 know exactly how many acres adjacent contiguous to
16 the existing Cedar Mountain wilderness study area
17 to contain wilderness characteristics. We did not
18 look at the North Cedar Mountains. It was outside
19 of the scope of the reinventory. And wilderness
20 characteristic analysis is not a comparative issue.
21 We don't compare one area with another.

22 Q. But in finding additional areas that
23 qualified as wilderness in the Cedar Mountains,
24 were you saying that areas that you didn't consider
25 had wilderness character before have wilderness

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1 character now?

2 MR. WEISMAN: I don't understand the
3 question.

4 JUDGE FARRAR: Does the witness
5 understand?

6 MS. LAUB: No.

7 JUDGE FARRAR: Okay, rephrase it, if you
8 would.

9 Q. (By Ms. Walker) Under the 202 process,
10 did you look for wilderness character in lands that
11 BLM had previously rejected as having wilderness
12 character?

13 MR. SILBERG: Unless this is limited to
14 the North Cedar Mountains area, I would object to
15 the question.

16 MS. WALKER: Oh, I'm sorry. It's
17 definitely limited to -- oh, it's not limited to
18 the North Cedar Mountains. The Cedar Mountains.

19 MR. SILBERG: I object to the question.

20 MS. WALKER: It's the same thing.

21 JUDGE FARRAR: Ms. Walker, I hear you're
22 trying to establish they used some different
23 process for the Cedar Mountains than they used
24 here. Is that where this -- different process for
25 Cedar Mountains than for North Cedar?

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1 MS. WALKER: I mean, I don't know that
2 it matters that it's a different process. The
3 result was different.

4 JUDGE FARRAR: Not just that the result
5 was different, but that they got there through a
6 different thinking -- result was different in
7 similar areas?

8 MS. WALKER: The result was different in
9 an area that they had looked at before.

10 JUDGE FARRAR: All right, then the
11 objection is overruled. But try to phrase the
12 question narrowly so the witness understands
13 exactly what's being asked.

14 Q. (By Ms. Walker) Okay. In an area in
15 the North Cedar Mountains that you've found has
16 wilderness character under the 202 process, in 1980
17 did you find that it didn't have wilderness
18 character?

19 MS. LAUB: Did you say the North Cedar
20 Mountains?

21 Q. Cedar Mountains.

22 MS. LAUB: I thought I heard north.

23 Q. I could have. I'm sorry.

24 MS. LAUB: The Cedar Mountains, and I
25 don't have a copy of the Cedar Mountain original

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1 inventory from 1980. I didn't realize I was going
2 to be questioned about that. I guess we could have
3 put it in as an exhibit today. I don't know.
4 During the 202 process we did find that the
5 condition of the land and certain areas contiguous
6 to the Cedar Mountain wilderness study area had
7 changed, and the wilderness characteristics found
8 in 1996.

9 Q. So the condition of the land had
10 changed?

11 MS. LAUB: That's what we found.

12 Q. So the condition of the North Cedar
13 Mountains could have changed too?

14 MS. LAUB: Potentially.

15 Q. But you won't look?

16 MS. LAUB: Like I said, it was outside
17 of the scope of our 1996 process. That was
18 directly to look at HR-1500 lands, HR-1500 being
19 sponsored by the Utah Wilderness Coalition and SUWA
20 for the past 13 years, I believe, and acquired
21 lands.

22 MR. WEISMAN: Can I ask a question just
23 for clarification, and that is, who directed BLM to
24 do that 1996 re-inventory?

25 MS. LAUB: The Secretary of Interior,

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1 Bruce Babbitt did.

2 MS. WALKER: You look so surprised.

3 MR. WEISMAN: I didn't know where it
4 came from.

5 JUDGE FARRAR: May I ask a question,
6 Ms. Walker? Can I ask a question?

7 MS. WALKER: Please.

8 JUDGE FARRAR: How did the land -- I can
9 grasp how land changes from wilderness to non
10 wilderness. How in that case or typically does
11 land change back to wilderness when it was not a
12 wilderness?

13 MS. LAUB: It could either be through
14 proactive management by us where we go out and
15 maybe reseed an area with native. Or it could be
16 where you cease an activity in an area and the
17 natural processes are allowed to come back.

18 JUDGE FARRAR: When you see some
19 activity, like you might put up a gate so people
20 can't use it?

21 MS. LAUB: You can change the
22 off-highway vehicle designations through a plan
23 amendment process and seriously restrict, severely
24 restrict use in an area, and that could do it.
25 Potentially -- it would depend on the area and it

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1 would depend on the method the managers chose to
2 use.

3 Q. (By Ms. Walker) Please turn to what we
4 marked SUWA 5, and if you could identify it,
5 please.

6 MS. STEPHENSON: SUWA 5 is the write-up
7 from the 1980 inventory for the North Cedar
8 Mountain area.

9 Q. Okay. If you would turn to page 5,
10 please.

11 MR. SILBERG: I'm sorry. Is that the
12 fifth page, or page 5 of 8?

13 MS. WALKER: Yeah, the 5 of 8.

14 Q. (By Ms. Walker) Okay. Does it say
15 there in the first sentence, "The upper elevations
16 and inner portion of the unit provide opportunities
17 for solitude"?

18 MS. LAUB: That's what the intensive
19 inventory says.

20 Q. Does it say, "The area as a whole,
21 excluding external factors, does offer limited
22 opportunities for solitude"?

23 MS. LAUB: That is an excerpt from page
24 5 of 8, yes.

25 Q. And does it say, "Feelings of isolation

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1 are complemented by winding canyons. However,
2 vegetation canopies and screening are lacking, and
3 therefore does not aid in an outstanding feeling of
4 solitude"?

5 MS. LAUB: Yes, it does.

6 Q. Is solitude a wilderness character?

7 MS. LAUB: It is a wilderness
8 characteristics.

9 Q. Characteristic, sorry. So in saying
10 that it provides opportunities for solitude, does
11 it say that the North Cedar Mountains provides a
12 wilderness characteristic?

13 MR. SILBERG: I'm sorry. I think it
14 says "provides limited opportunities for solitude."

15 Q. I'm sorry. I'm back up to the first
16 sentence, "The upper elevations and inner portions
17 of the unit provide opportunities for solitude."

18 MR. SILBERG: For clarification, the
19 rail spur, the railroad route area, is that part of
20 the upper elevations and inner portion, Ms. Walker?

21 MS. WALKER: You're asking me?

22 MS. LAUB: The BLM found the North Cedar
23 Mountains to lack naturalness, outstanding
24 opportunities for solitude, and a primitive and
25 unconfined recreation. Therefore, it was not -- it

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1 was dropped from further analysis.

2 JUDGE FARRAR: But that wasn't the
3 question.

4 MR. WEISMAN: What was the question?

5 MR. SILBERG: Well, I tried to ask a
6 question whether --

7 JUDGE FARRAR: Go ahead, Mr. Silberg.

8 MR. SILBERG: The upper elevations and
9 inner portions of the unit provide opportunities
10 for solitude. Does the term "upper elevations and
11 inner portion" refer to the area through which the
12 railroad corridor will pass?

13 MS. LAUB: No.

14 MR. SILBERG: Thank you.

15 JUDGE FARRAR: Let's read Ms. Walker's
16 question back, and we'll understand it with
17 Mr. Silberg's clarifying question.

18 (The record was read as follows: "So in
19 saying that it provides opportunities for solitude,
20 does it say that the North Cedar Mountains provides
21 a wilderness characteristic?")

22 JUDGE FARRAR: Go ahead.

23 MS. LAUB: No.

24 JUDGE FARRAR: You mean it doesn't it
25 say that or doesn't mean that? I know it doesn't

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1 say it.

2 MS. LAUB: It doesn't mean it. The
3 conclusion is at the bottom of page 5, and it's a
4 narrative. The whole file contains many more field
5 notes. This is a summary of what was found.

6 Q. (By Ms. Walker) Is the conclusion of
7 the document you have that the North Cedar
8 Mountains has no wilderness characteristics or that
9 it has insufficient wilderness characteristics to
10 designate it as a WSA?

11 MR. SILBERG: Sorry. For clarification,
12 you're referring to this entire eight-page document
13 that's part of your Exhibit 5? Or maybe all ten
14 pages on it. Or are you just referring to the page
15 that we've been talking about?

16 MS. WALKER: I'm referring to the entire
17 document.

18 MS. LAUB: Would you restate the
19 question?

20 Q. (By Ms. Walker) What's the conclusion
21 of this document?

22 MS. LAUB: The conclusion of the
23 document is that the area does not contain
24 wilderness characteristics.

25 Q. Is it that it has none at all?

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1 MR. WEISMAN: Do you want to examine the
2 document and see what it says?

3 MS. LAUB: I think it's more of an
4 all-or-nothing thing. The requirements of the
5 Wilderness Act of 1964, which the Federal Land
6 Policy Management Act tells us we need to -- part
7 of our authority, it adopts it. We have -- there's
8 certain criteria for designation of a wilderness
9 study area. There has to be size, there has to be
10 naturalness. I'm paraphrasing. Outstanding
11 opportunities for primitive and unconfined
12 recreation and solitude. And you have to have --

13 (Interruption.)

14 MS. LAUB: And an area may also have
15 supplemental values. For the BLM to designate an
16 area as a wilderness study area, it has to contain
17 size, naturalness, outstanding opportunities, and a
18 primitive and unconfined recreation. Supplemental
19 values is an option. You can't have two of the
20 criteria. You have to have them all.

21 Q. You have to have them all for what?

22 MS. LAUB: To meet the wilderness
23 characteristics definition. The Exhibit SUWA 6,
24 it's pretty clear what is needed.

25 Q. Then is this comment, "The upper

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1 elevations and inner portion of the unit provide
2 opportunities for solitude," is that a comment on
3 the naturalness of the area? And by naturalness I
4 don't mean as defined under the Wilderness Act.

5 MS. LAUB: I can't speak to the intent
6 of the author of this. I didn't author it. And if
7 it's not in relation to the definition of the
8 Wilderness Act, I --

9 Q. Well, even if it is in relationship to
10 the Wilderness Act, does it speak to things outside
11 the Wilderness Act?

12 MS. LAUB: You just said if --

13 MR. WEISMAN: Objection. I don't
14 understand -- what's the relevance of that question
15 if it speaks to things outside the wilderness?

16 JUDGE FARRAR: Did you understand the
17 question?

18 MS. LAUB: No.

19 JUDGE FARRAR: Ms. Walker, can you
20 rephrase that?

21 Q. (By Ms. Walker) Is this statement an
22 assessment of some of the qualities of the North
23 Cedar Mountains?

24 MR. SILBERG: Which statement?

25 Q. "The upper elevations and inner portion

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1 of the unit provide opportunities for solitude."

2 Is it descriptive of the area?

3 MS. LAUB: Of the area to be traversed
4 by the proposed rail line, or is it SUWA area? I
5 don't know where you're -- what question you're
6 asking me.

7 Q. Is it descriptive of the upper
8 elevations and the inner portion of the unit?

9 MR. SILBERG: It says what it says,
10 Mr. Chairman.

11 MR. WEISMAN: Would the unit be the
12 North Cedar Mountains area?

13 JUDGE FARRAR: Wait. This is more
14 complex than it needs to be. You're just asking,
15 forgetting the Wilderness Act, is this a
16 description of --

17 MS. WALKER: Does it describe qualities
18 of the area.

19 JUDGE FARRAR: Of the area.

20 MS. LAUB: I need a definition of
21 solitude. I think with a context of -- I mean, if
22 you're asking me a personal opinion --

23 MS. WALKER: No, I'm not.

24 JUDGE FARRAR: But you're saying the
25 word "solitude" means to you a word with reference

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1 to wilderness designations, not what the word would
2 mean to one of us?

3 MS. LAUB: Correct.

4 Q. (By Ms. Walker) Okay. So if this word,
5 then, they're using as solitude is defined in the
6 Wilderness Act sense, is it still descriptive of
7 the area? It has solitude in the Wilderness Act
8 sense, but not enough, maybe. Does the word
9 actually lack meaning?

10 MR. SILBERG: Mr. Chairman, if we're
11 talking about all these characteristics of an area
12 that is not the area through which this rail spur
13 passes, I really think we're wasting our time on
14 this. It's outside the scope of this issue.

15 MS. WALKER: Do you want a response?
16 Okay, the Board said, "As we have noted,
17 however" -- this is in LP -- LBP 99-3. "As we have
18 noted, however, in the context of NEPA, even absent
19 the FLPMA statutory scheme, there would be a need
20 to consider the natural state of the land and
21 alternatives, if any, that would be available to
22 preserve that status." I take it when the Board
23 said that, they didn't mean naturalness as defined
24 by the Wilderness Act or anything, they just had a
25 notion of naturalness.

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1 MR. WEISMAN: The Staff would offer that
2 the Board meant, and of course I think the Board
3 can weigh in on this, that the state of the area
4 would be the area around the rail line and not
5 other areas of the North Cedar Mountains.

6 JUDGE FARRAR: Unlike the witness, I was
7 not ten at the time, but I was not on the board at
8 the time, and so I'll hide behind her excuse.

9 MR. SILBERG: I would note,
10 Mr. Chairman, that the next section of this same
11 page, which counsel for SUWA has not read into the
12 record, says, "The lower, outside portions of the
13 unit," which I take it do refer to those through
14 which the rail corridor passes, "lack outstanding
15 opportunities for solitude due to the sparse
16 vegetative cover, relative open terrain and the
17 cumulative effect of many impacts in the unit."
18 We're talking about a different place that is not
19 the subject of this contention. I wish we'd stay
20 within the scope of the contention and move on.

21 MS. WALKER: Our contention is squarely
22 about the North Cedar Mountains area. It's not
23 about only part of it. It's about the whole thing.

24 JUDGE FARRAR: I'll accept that, but I
25 think the problem we're running into now is we've

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1 gone over this ground, seems to me we've exhausted
2 what we can get out of this. The witnesses have --
3 witness has spoken several times about what this
4 means, what the facts were, why the conclusion was
5 reached, and I think we're about at the end of the
6 ability to get anything more out of this. We'll
7 permit a couple more questions on it, but we don't
8 want to go over this same ground.

9 MR. SILBERG: One more comment,
10 Mr. Chairman. I would note that in LBP 99-3 it
11 says that this contention was admitted as it seeks
12 to explore the question of alignment alternatives
13 for the proposed placement of the Low Junction rail
14 spur. Not the entire North Cedar Mountains area,
15 not the upper elevations, not the innermost
16 solitude canyons, but the area where the rail spur
17 is going. Let's keep that focus.

18 MS. WALKER: Okay, I'll address that
19 right now. If you'd turn to page 16 of the
20 Wilderness Inventory and Study Procedures. This is
21 C.2. Ms. Laub, can you explain the zone of
22 influence that that section refers to?

23 MS. LAUB: I can read the paragraph back
24 to you. The zone of influence is not a term that I
25 have used frequently. And so I --

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1 MR. WEISMAN: I would object on grounds
2 of relevance. This is something that -- zone of
3 influence from the document says it's something
4 you're not supposed to use, so how are we going to
5 use it in this proceeding?

6 JUDGE FARRAR: I take it this goes to
7 how you would draw the boundary if the railroad
8 line were built and you still wanted to try to get
9 this to be designated wilderness? Did you
10 understand -- you know, you --

11 MS. LAUB: I understood it. I wasn't
12 sure if that's what was asked or if it was your
13 interpretation of what was asked.

14 JUDGE FARRAR: Why don't you ask it
15 again, Ms. Walker.

16 Q. (By Ms. Walker) I actually just wanted
17 an explanation of the concept behind it.

18 MR. WEISMAN: I would object on, what is
19 the relevance to this proceeding?

20 JUDGE FARRAR: May be shorter just to
21 get the answer. And sometimes -- on
22 cross-examination sometimes you don't know for sure
23 where something is going to lead, and until we see
24 that it's definitely irrelevant, we'll overrule the
25 objection.

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1 MS. LAUB: The term "zone of influence"
2 is not defined in here, and that's not something
3 that I've used in the work I've done. Based on the
4 other paragraph that's saying we should avoid --
5 draw boundaries to avoid impacts. But I don't know
6 if that's what zone of influence is supposed to
7 mean.

8 JUDGE FARRAR: Then that's a fair
9 answer, and we can move on.

10 Q. (By Ms. Walker) You've said already
11 that BLM refused to revisit the wilderness
12 character of the North Cedar Mountains based on
13 SUWA's submittal in April 2001.

14 MS. LAUB: That's not what I said.

15 Q. Would you say it yourself, then, please?

16 MS. LAUB: SUWA provided the BLM
17 information, or actually it was a proposal as
18 outlined in the Wilderness Act inventory handbook
19 that's SUWA Exhibit 6. It is in Staff Exhibit H.
20 Our determination, the field officer manager's
21 determination -- I guess this is part of the
22 record?

23 MR. WEISMAN: Yes.

24 MS. LAUB: As stated on page 2 of this
25 exhibit, three of the requirements of the

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1 submission were met, and that bumped us up to
2 question No. 2 on here, does proponent's submission
3 describe how its information significantly differs
4 from the information and prior inventory conducted
5 by BLM regarding wilderness values of the area, and
6 the answer to that was no. The proposal we
7 received, from the following page, mainly disagreed
8 with our 1980 inventory which was decided through
9 IBLA, the decision that this area did not contain
10 wilderness characteristics. It was one of the
11 areas that was appealed through the --

12 JUDGE FARRAR: IBLA meaning -

13 MS. LAUB: Interior Board of Land
14 Appeals. Had they provided significantly new
15 information about how conditions had changed on the
16 land, we would have taken the next step and gone
17 out to check what they had given us, but they did
18 not provide us that. They just said why we were
19 wrong the first time, or why they think we're wrong
20 in 1980.

21 Q. (By Ms. Walker) So you're saying, then,
22 that the change -- okay. First, was the size of
23 the area that was rejected in the 1980 inventory
24 the same area? Was it the same boundary that SUWA
25 sought your re-evaluation of?

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1 MS. LAUB: The area that BLM found to
2 not contain wilderness characteristics in 1980 had
3 a different lower boundary than the proposed SUWA
4 proposal as of April 2001.

5 Q. Lower boundary?

6 MS. LAUB: It was SS, southern route,
7 Hastings Pass. The field proposal had Lee's Canyon
8 Way, which was -- in 1980 was identified as a way,
9 which is BLM jargon for -- the technical definition
10 is on page -- it's on page 20, the very last
11 paragraph. A way is routes created and maintained
12 solely by the passage of vehicles. The BLM does
13 not use ways as boundaries.

14 MR. SILBERG: Sorry, page 20 of what?

15 MS. LAUB: Our prefiled testimony.

16 MR. SILBERG: Thank you.

17 MR. WEISMAN: It's in answer 37.

18 MS. LAUB: The SUWA proposal as of April
19 2001 used Lee's Canyon Way as their southern
20 boundary, and BLM does not recognize ways as
21 boundaries. It has to be a road or a right-of-way.

22 Q. (By Ms. Walker) Is that what the
23 Wilderness Inventory and Study Procedure says?

24 MS. LAUB: I was paraphrasing.

25 Q. It says you can't use a way as a

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1 boundary?

2 MS. LAUB: I don't see a list saying you
3 can't use a way as a boundary, but that was
4 something I know from an interview I had with some
5 of the original inventory team members, and that
6 was the process in 1980.

7 MS. WALKER: Oh, I'm sorry. I'm talking
8 about process in 2001.

9 MS. LAUB: The process is according to
10 the handbook, and I didn't read anywhere where it
11 said a way could not be a boundary.

12 Q. Too many negatives. Can you try that
13 last statement again?

14 MS. LAUB: I didn't read that statement
15 in here, no.

16 Q. Okay. So in fact, what does the
17 handbook say about boundary adjustments in 2001?

18 MS. LAUB: Would you like me to read it?

19 Q. Sure. That's C there, page 16.

20 MS. LAUB: Okay. It's on page 16 and
21 17. I can --

22 Q. Well, if you just want to read the first
23 sentence, first two.

24 MS. LAUB: "Boundary adjustments. Where
25 substantially noticeable human-caused impacts occur

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1 within an inventory area, reviewers should consider
2 the opportunity to adjust the boundary to exclude
3 the human impacts. Minor human impacts normally
4 will not require a boundary adjustment, but where
5 there are several minor impacts, they should be
6 evaluated so as to their cumulative effect on the
7 apparent naturalness of all or part of the area."

8 Q. So when the BLM says in that same letter
9 that is your Exhibit FF, you say, "In fact, the
10 majority of the intrusions lie north of Lee's
11 Canyon and include quarries, livestock trails,
12 motorcycle paths, heavy sheep grazing and other
13 minor extensions of way issues, primarily by
14 four-by-four wheeled vehicles."

15 MS. LAUB: I don't know what you're
16 reading from.

17 MR. WEISMAN: What exhibit are you
18 reading from?

19 MS. WALKER: It's your exhibit, so it's
20 attached to --

21 MR. BARNETT: I think that was PFS
22 Exhibit FF.

23 MR. WEISMAN: Probably Staff Exhibit H?

24 MS. WALKER: But you have this somewhere
25 in your exhibits, right?

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1 MR. WEISMAN: Are you referring to the
2 letter from BLM to SUWA?

3 MS. WALKER: Yeah.

4 MR. WEISMAN: Dated May 8th? That's
5 Staff Exhibit H, also SUWA Exhibit 2, also PFS
6 Exhibit FF. So we can look at any one of those and
7 we'll be on the right page.

8 MS. WALKER: So which one is yours?

9 MR. WEISMAN: It's Staff Exhibit H.

10 MS. WALKER: Okay, that would probably
11 be the best. So Staff Exhibit H. I'm sorry. So I
12 was on the third page of that. It doesn't look
13 like they're numbered. And you have halfway
14 down -- well, less than halfway down the page the
15 proponent claims four items as new information, and
16 the first one is where I was reading. And I said,
17 in fact, the majority of the intrusions lie North
18 of Lee's Canyon, dah, dah, dah, dah, dah.

19 Q. (By Ms. Walker) So is that a new
20 evaluation of the new information, or an old
21 evaluation of the new information?

22 MS. LAUB: This was not new information
23 provided to the BLM. The proposal submitted by
24 SUWA did not contain significantly new information
25 to compel us to look at the area again.

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1 Q. I understand that that was your
2 conclusion. What I'm asking is, so the information
3 that SUWA gave you the BLM evaluated, correct?

4 MS. LAUB: We evaluated the proposal
5 very carefully.

6 Q. And does this paragraph explain that
7 evaluation?

8 MS. LAUB: This paragraph discusses in a
9 little more depth one of the items SUWA claims is
10 new information.

11 Q. Okay. So then I was reading that, and I
12 was saying, in fact, the majority of the
13 intrusions, that sentence there, okay. So when BLM
14 says that, is that an old evaluation of the
15 information, so are they relying on their 1980
16 inventory or is it some new analysis of the
17 situation?

18 MS. LAUB: We looked at SUWA's
19 information. We did not do a field check of SUWA's
20 information because it didn't contain significantly
21 new information.

22 Q. Okay. So are you saying that you relied
23 on the 1980 inventory to make that --

24 MS. LAUB: In part.

25 Q. Not totally? This statement, just this

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1 statement.

2 MS. LAUB: This statement is from the
3 1980 inventory.

4 Q. Okay. And it says, "In fact, the
5 majority of the intrusions lie north of Lee's
6 Canyon and include quarries, livestock trails."
7 Now, if you'd turn to the 1980 evaluation, which is
8 SUWA 5. I'm trying to find where that comes from.
9 If you find it sooner than I do, please let me
10 know.

11 MS. LAUB: What we did when we received
12 SUWA's proposal was pull out all the information
13 recent and, you know, to include the 1980 intensive
14 inventory. And this information was on our map of
15 the area from 1980.

16 Q. So you're saying it's not based on this
17 document?

18 MS. LAUB: The document is keyed to a
19 map that we have back at the office. And it's also
20 -- I don't know if it was provided as an exhibit or
21 will be, but it was also provided, photocopied and
22 provided as part of SUWA's proposal to us. It's
23 the exact same map.

24 Q. So the document SUWA 5, though, is a
25 summary which includes that map?

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1 MS. LAUB: Correct.

2 Q. And that's the basis for this statement
3 in Staff Exhibit H? Is it H?

4 MR. WEISMAN: That's the correct letter,
5 yes.

6 MS. LAUB: Is what? I didn't follow
7 that question.

8 Q. Okay. SUWA 5 is a summary of, among
9 other things, the map that you're talking about?
10 Okay, how about this. SUWA 5 is a summary of all
11 the stuff that was in the file in 1980?

12 MS. LAUB: No, it's not. It's part of
13 the file.

14 Q. So this document isn't -- SUWA 5 isn't
15 the summary of the --

16 MS. LAUB: It's a summary. You said was
17 it a copy of the whole document. I thought that's
18 what I heard.

19 Q. I'm sorry. So SUWA 5 is a summary of
20 what was in the file --

21 MS. LAUB: Yes.

22 Q. -- in 1980? And then the statement in
23 the letter to SUWA dated April -- I mean, May 2001
24 relies on SUWA 5 for that statement?

25 MR. SILBERG: I'm sorry. Which

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1 statement? Relying on which statement?

2 MS. WALKER: I'm sorry. This would be
3 much better. If you would remind me, the exhibit
4 that we have in all those zillion places is Staff
5 Exhibit which one?

6 MR. WEISMAN: H.

7 MS. WALKER: H, okay. So what I'm
8 saying is, the statement in Staff Exhibit H on page
9 3 that I've been talking about, "In fact, the
10 majority of the intrusions lie north of Lee's
11 Canyon," is based on SUWA 5?

12 MR. WEISMAN: Are you saying it's based
13 solely on SUWA 5?

14 Q. (By Ms. Walker) Well, to the extent
15 that SUWA 5 is a summary of what was in the file,
16 was there new information?

17 MS. LAUB: It says in No. 1 here that
18 this is not new information.

19 Q. No, I'm asking if BLM had new
20 information, not if SUWA had new information. So
21 did BLM have any new information when they said,
22 "In fact, the majority of the intrusions lie
23 north"?

24 MS. LAUB: As stated in No. 1 --

25 Q. Yes.

1 MS. LAUB: -- this is not new
2 information. BLM inventoried both canyons as part
3 of the intensive inventory, SUWA 5 intensive
4 inventory, and found intrusions along both routes.

5 Q. Right. But did -- outside of what SUWA
6 said --

7 MS. LAUB: This is Exhibit SUWA 5. This
8 is a BLM document. It refers, No. 1 refers to
9 Exhibit 5.

10 Q. Okay. I really -- it's just a question
11 of you understanding me, because I don't think I'm
12 making myself clear.

13 JUDGE FARRAR: Can I try, Ms. Walker?

14 MS. WALKER: Sure.

15 JUDGE FARRAR: The next sentence, the --
16 you're writing that paragraph -- what's now Staff
17 Exhibit H, your department, you were writing that
18 paragraph in year 2001?

19 MS. LAUB: Right.

20 JUDGE FARRAR: And you say, they didn't
21 give us new information.

22 MS. LAUB: Right.

23 JUDGE FARRAR: And you say "in fact"
24 something. When you say that in fact something,
25 that's based on what you found in 1980?

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1 MS. LAUB: Yes.

2 JUDGE FARRAR: Not what you went out and
3 said, I want to see it, this is new information,
4 I'll go out in the field and see if this is new
5 information?

6 MS. LAUB: They didn't provide enough
7 information in the proposal to compel us to go out
8 and look.

9 JUDGE FARRAR: So you went back to your
10 old file and said, we're saying now the same thing
11 that we said then?

12 MS. LAUB: Along with the other
13 information in our Exhibit H, yes.

14 MR. SILBERG: I'm sorry. Without
15 information in --

16 MS. LAUB: In Exhibit, Staff Exhibit H.

17 MR. SILBERG: Can I ask one follow-up
18 question?

19 JUDGE FARRAR: Yes.

20 MR. SILBERG: When you did that, and I
21 believe you had a hand in writing these statements,
22 did you include your current knowledge of what was
23 in that area when you put these statements in Staff
24 Exhibit H?

25 MS. LAUB: Yes.

1 MR. SILBERG: Thank you.

2 JUDGE FARRAR: How did you get that
3 concurrent knowledge?

4 MS. LAUB: I quizzed the other resource
5 specialists in my office, I looked at project
6 files, I looked at the master title plats. The
7 handbook says that the proponent has to provide
8 significantly different information to compel us.
9 We have to be compelled to do it, and that didn't
10 happen.

11 Q. (By Ms. Walker) Okay. So you're saying
12 that when you wrote this "in fact" statement that
13 it actually included some of your own up-to-date
14 facts?

15 MS. LAUB: Statement 1?

16 Q. Yeah, the "in fact" part of it.

17 JUDGE FARRAR: The last sentence of
18 statement 1.

19 Q. So I guess, does that reflect up-to-date
20 knowledge of the BLM?

21 MS. LAUB: That is excerpt from the
22 19 -- that's information derived from the 1980
23 inventory.

24 Q. So it doesn't recollect updated
25 information from the BLM?

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1 MS. LAUB: Later in the document we
2 include updated information.

3 Q. Okay. So is the quarry in Lee's Canyon
4 north of the canyon, or is it in the canyon? The
5 quarry you're talking about in that sentence.

6 MS. LAUB: I'm not sure.

7 JUDGE FARRAR: Ms. Walker, we're coming
8 to the point where we think we've gotten as much
9 information on this small point as we can. But you
10 may respond to that, my comment, if you'd like.

11 MS. WALKER: Okay. Well, she's just not
12 sure --

13 Q. (By Ms. Walker) You're not sure where
14 the quarry is?

15 MS. LAUB: No, I'm not sure if it's to
16 the north or south.

17 Q. Or in the canyon?

18 MS. LAUB: I'm much more familiar with
19 Hastings Pass. Quarries can, they can be a little
20 deceiving. They can be hidden if you don't know
21 where they're at.

22 Q. Okay. Does SUWA 5 actually say -- so
23 that's the 1980 inventory -- actually say that the
24 quarry, the livestock trails, the motorcycle paths,
25 the heavy sheep grazing are actually in the canyon?

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1 MS. LAUB: I believe it says it's within
2 the unit.

3 Q. The sentence I was talking about says,
4 "Other activity along this access route," which is
5 the Lee's Canyon way, "includes quarries, livestock
6 trails, motorcycle paths, heavy sheep grazing and
7 other minor extensions." Does it sound like it's
8 saying it's in the route or to the north of it?

9 MS. LAUB: It says along the access
10 route. I can't tell from the statement whether
11 it's in the canyon, next to the canyon.

12 Q. This canyon's pretty steep, right?

13 MS. LAUB: Define steep.

14 Q. Steep-sided.

15 MS. LAUB: It would be difficult to --
16 it would be a nice hike up the side.

17 Q. You mean if you tried to get out of it,
18 it would be difficult? Is that what you're saying?

19 MS. LAUB: Well, it's a deep cut, yeah.

20 Q. So if you were along an access route in
21 a deep canyon, would that mean you'd be in the
22 bottom of it?

23 MR. SILBERG: Mr. Chairman, again, I
24 don't know where we're going. Lee's Canyon is
25 nowhere near the route of the rail line corridor.

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1 We're just way outside the scope of this
2 contention. I really have to object.

3 JUDGE FARRAR: Ms. Walker?

4 MS. WALKER: BLM says in 2001 that SUWA
5 hasn't provided any new information on the
6 wilderness character of the area. As a result,
7 they're not going to reevaluate it. Not going to
8 reevaluate the new information. I'm trying to find
9 out if the basis for that is legitimate. They
10 claim in here suddenly that all the intrusions lie
11 north of the canyon rather than in it, and that's
12 the basis for their refusal to exclude the canyon
13 from the boundary.

14 MR. WEISMAN: Mr. Chairman -- I'm sorry.

15 JUDGE FARRAR: Let her finish.

16 MS. WALKER: Which is -- which could
17 mean the difference between designating the area
18 with a different boundary as, you know, evaluating,
19 whether you want to say evaluating under the 202
20 process or recognizing its wilderness character on
21 the basis of a newly drawn boundary. It's critical
22 to their decision.

23 JUDGE FARRAR: And you're saying it's
24 their decision -- if their decision on any -- on
25 the -- let me start again. You're not trying to

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1 get them to change their decision or show their
2 decision is wrong based on the area near the rail
3 line; you're trying to show that the overall
4 designation was wrong, and if you prevailed on that
5 that would help you on the rail line?

6 MS. WALKER: The unit needs to be
7 treated as a whole. If the entirety of the unit
8 has wilderness character, then the unit is treated
9 as a unit, which would mean that the rail crossings
10 could be. Now, if -- I mean, they could redo the
11 boundary down there, too. But we're not dealing
12 with that now. If their refusal to consider the
13 unit and its wilderness character is based on a
14 boundary on the side and then that disqualifies the
15 entire unit and they refuse to redraw the boundary,
16 and that's a critical issue.

17 MR. SILBERG: Mr. Chairman, this issue
18 is not a challenge to the BLM determination. SUWA
19 has done that. They are pending before BLM as
20 administrative agency. They can have that process,
21 that due process to their heart's content. It is
22 simply not related to this contention. This
23 contention deals with the question of alignment
24 alternatives, the proposed placement of the Low
25 Junction railroad spur. We're not talking about

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1 that. I really would urge the Board --

2 JUDGE FARRAR: We're talking about it to
3 the extent that the Board's prior decision said
4 it's a factual matter here about what the
5 characteristics around that area are. Just trying
6 to establish through these witnesses that these
7 are -- could be deemed wilderness. But Ms. Walker,
8 I thought you were on the right track when you were
9 talking about the different characteristics, the
10 solitude and so forth.

11 MS. LAUB: But you didn't want me to
12 talk about that anymore.

13 JUDGE FARRAR: Well, we got as much as
14 we could out of that. But now we are --
15 Mr. Silberg is correct that we're getting close to
16 the point at which it sounds like you would want us
17 to say BLM was wrong, and I don't think that's
18 something we're empowered to do. Seems to me you
19 can use these witnesses to establish facts about
20 the area, but to continue to try to show their
21 decision was wrong is not something I think we can
22 act on. You do have the appeals process. We've
23 taken notice that that process is going on, and
24 that will be what -- that will be what it will be.
25 But I don't think we can step in and say, you know,

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1 that one of our findings or conclusions at the end
2 of the case is that they made a bad decision. Even
3 if you convince us that's true --

4 MS. WALKER: Right.

5 JUDGE FARRAR: -- I don't think that's
6 something that we can -- that's not a determination
7 we can make.

8 MS. WALKER: Well, I mean, maybe this
9 just shows -- I don't quite get this process. But
10 since we still are at the administrative level,
11 isn't the administrative body empowered to correct
12 mistakes that the agency has made?

13 MR. SILBERG: Yes, for that agency, but
14 you're in the wrong agency.

15 MR. WEISMAN: This is the NRC.

16 MS. WALKER: So the NRC is incapable of
17 correcting any -- so to the extent that the FEIS
18 has statements in it from the BLM with regard to
19 wildlife or something like that, that can't be
20 corrected, either?

21 JUDGE FARRAR: Oh, no, you can then, as
22 I read the prior -- the Board's decision from 1999,
23 you can establish any facts you want to through
24 these witnesses. In other words, if you could get
25 them to admit that this area has the most marvelous

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1 solitude around, that's a fact that we could find
2 in our opinion. What I'm saying we can't do, I
3 don't think, is say we have reviewed their decision
4 about wilderness or their decision not to review
5 the 1980 conclusion, we've reviewed that and we
6 find it to be wrong. That's not something we can
7 say. We can find facts, but we can't say they were
8 wrong. They have a board within their agency that
9 can make that determination. But we're here, as I
10 understand it, to find facts about the area.

11 Now, you can get them to -- if you can
12 get them to admit that some of the facts I wrote,
13 which I didn't think you were trying to do, some of
14 the facts they wrote are in fact not true, that's
15 fine. We can act on that, find facts of our own.

16 MS. WALKER: Right.

17 JUDGE FARRAR: But we are not on
18 business of saying whether the decision was correct
19 or not.

20 MS. WALKER: But are you in the business
21 of relying on their decision? I mean, you could
22 decide that their decision weren't well made and
23 therefore you shouldn't rely on it. Because that
24 decision is the reason that you find -- that the
25 FEIS says there's no wilderness character. So to

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1 the extent that the NRC is relying on the BLM to
2 find no wilderness character, couldn't I show that
3 the decision was ill made and therefore you
4 shouldn't rely on it and you should rely on us
5 instead?

6 JUDGE FARRAR: I haven't thought this
7 through, but I would think that we can -- the
8 status of the land now is, it's not wilderness.
9 They haven't -- that's a decision they've made, and
10 that's a fact. That's the status. It's not
11 wilderness within the meaning of the rulings they
12 make. You are free to argue that this land has
13 special qualities, some of which may be embodied in
14 wilderness definition, some of which may not. But
15 this land has special qualities that makes the
16 destruction of those qualities, if that would
17 occur, through the construction of the line a less
18 pleasant alternative than some of the others.

19 But we're not here to attack their
20 decision or entertain a challenge to their decision
21 as such. We're here, and I don't have the opinion
22 in front of me, but I think we're here to find the
23 facts about that area and then to use those facts
24 in a NEPA -- in evaluating the NEPA analysis that
25 the Staff has done about whether one of the

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1 alternatives you proposed is a better alternative
2 than the one the company proposes.

3 MR. SILBERG: Chairman, if I might make
4 one other -- and I hate to prolong this. But it
5 seems to me the 1980 decision is a final agency
6 action. Whatever appeals opportunities have long
7 since -- SUWA didn't challenge. They now have
8 another agency action that is being challenged.
9 This is not the right place to do a collateral
10 attack on that process. I think we need to take
11 the 1980 action as a given. It's a final agency
12 action. If they succeed in the future in their
13 2001, whatever the date was, attempt to change
14 that, so be it. But this is not the proper place
15 to litigate the BLM actions.

16 JUDGE FARRAR: But it is the proper
17 place to find facts about that land.

18 MR. SILBERG: To look at the facts. But
19 the facts in Lee's Canyon bear no relationship to
20 the proposed -- alternatives to the proposed
21 placement of the Low Junction rail spur. And
22 that's the scope of this contention.

23 JUDGE FARRAR: Where's Lee's Canyon in
24 relation to where we were yesterday?

25 MR. SILBERG: Way south.

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1 JUDGE FARRAR: Mr. Weisman, you wanted
2 to add something?

3 MR. WEISMAN: The Staff would just
4 submit that to the extent that the Staff has relied
5 on the 1980 determination with respect to the rail
6 line, questions about that area are fair game. But
7 with respect to the entire unit, the Staff didn't
8 rely on that. So none of those facts will help you
9 in your decision. That's what the Staff would
10 submit.

11 MR. SILBERG: Lee's Canyon, by the way,
12 would be the southernmost boundary of the SUWA
13 designated North Cedar Mountains area.

14 JUDGE LAM: How far would that be from
15 the proposed rail line?

16 MR. SILBERG: It would be quite a ways.
17 Looks to be about 14, 15 miles from the area that
18 it crosses the SUWA designated area.

19 MR. WEISMAN: The Staff tells me it's
20 Staff Exhibit G, and the FEIS, Figure 2.16.

21 MR. SILBERG: I'm sorry. I'm reading
22 the map wrong.

23 MR. WEISMAN: We'll give this to
24 Ms. Laub and let her tell us where it begins and
25 ends.

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1 MR. SILBERG: Two miles south and two
2 miles west?

3 MS. LAUB: We have it.

4 JUDGE FARRAR: What is it?

5 MS. LAUB: It is Staff Exhibit G.

6 JUDGE FARRAR: Right, we have that.

7 MS. LAUB: You ready?

8 JUDGE FARRAR: Yeah.

9 MS. LAUB: You see in the lower
10 left-hand corner where it says "Unit 1"?

11 JUDGE FARRAR: Yes.

12 MS. LAUB: There is, just to the north
13 of there there's a line that -- it's wiggly and it
14 goes northeast and then southeast.

15 JUDGE FARRAR: Yes.

16 MS. LAUB: And then over to the hatch
17 marks where the two alternatives --

18 JUDGE FARRAR: Yes.

19 MS. LAUB: That's Lee's Canyon.

20 JUDGE FARRAR: Let me ask you a question
21 that might help clarify this.

22 MS. LAUB: Wait. Sorry. Lee's Canyon
23 does not go all the way over to the rail line. It
24 stops on the lower part where it says "private
25 land," and generally that area.

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1 JUDGE FARRAR: Where the squiggly line
2 comes up above private land?

3 MS. LAUB: Yes.

4 JUDGE FARRAR: That's where it ends?

5 MS. LAUB: Yes.

6 JUDGE FARRAR: All right. And how far
7 is that from the rail line? I can see it's two
8 miles.

9 Let me ask a question that may help
10 clarify this. Suppose the project were licensed
11 and the rail line were built. Somebody came to you
12 three years later with new information about the
13 whole area. Could you then designate as wilderness
14 or recommend for wilderness designation the land
15 beginning a quarter mile west of the rail line up
16 to the -- including the mountains?

17 MS. LAUB: Yes, we could. The boundary
18 of a wilderness study area can be placed on either
19 the edge of a disturbance or a right-of-way. In
20 this case it would be the right-of-way for the rail
21 line. And that could form the eastern boundary of
22 the proposed wilderness study area, should someone
23 come in with new information.

24 JUDGE FARRAR: Why don't we -- this
25 might be a good time for a ten-minute break.

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1 MR. SILBERG: Could we get off the
2 record an estimate of how much more cross we have
3 of the witnesses?

4 JUDGE FARRAR: Let's get it on the
5 record.

6 MS. WALKER: So if I understand your
7 discussion, I just want to know, you're going to
8 treat -- rule out the decision in 1980, the final
9 decision, and you're not interested in whether or
10 not it was a well made decision?

11 JUDGE FARRAR: I think, and without
12 prejudging what we'll do, because you'll all get a
13 chance to file briefs, but I think for purposes of
14 this argument today, what we're indicating is right
15 now this does not have a wilderness designation.
16 Whether that's from 1980 decision or 2001 decision,
17 whether those decisions are good, bad, or
18 indifferent, it does not now have a wilderness
19 designation.

20 That does not preclude you from trying
21 to show us that it has estimable qualities that
22 ought not to be impacted by this proposed rail
23 line. But I don't think we will at the end of this
24 case want to be in the position of deciding whether
25 the 1980 or the 2001 decisions were correct as a

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1 matter of law. There's a process within the
2 Department of Interior for that, but that does not
3 preclude you from showing us any facts you want to
4 about the relevant area.

5 And these witnesses who were involved in
6 one way or another or know about the 1980 and 2001
7 decisions can testify about those facts, and you
8 can get them to admit or offer anything you want
9 about the facts. And I think they've tried to be
10 responsive. But -- I mean, that's how I see the
11 posture of the case. Maybe I'm wrong, but I don't
12 think so, to this limited degree.

13 JUDGE KLINE: I would just chime in as
14 one who happened to be around when the Board wrote
15 its prior decision. The Board did have its eye on
16 the NEPA process. In other words, the only reason
17 we could undertake the inquiry in the first place
18 is under NRC regulations listed in part 51. So
19 that what we would do, even if there was no BLM
20 designation anywhere, is simply weigh in the
21 balance one alternative versus another. And you do
22 this without regard to who else is looking at you,
23 who else has designated anything. If the proposal
24 were someplace remote from BLM lands, we would
25 still weigh in the balance one alternative versus

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1 another simply on the basis of the facts brought
2 forward on each alternative.

3 And that's what the Board thought it was
4 doing when it wrote its decision. It was in effect
5 trying to take the official designations or lack
6 thereof by another agency out of the question as
7 far as NRC is concerned. Because we're just
8 weighing in the balance on the basis of whatever
9 facts people bring forward, which would be the
10 environmentally most desirable alternative.

11 JUDGE LAM: And if I may add, Judge
12 Kline and I and Judge Bollwerk wrote the decision
13 everybody's talking about before Judge Farrar.

14 JUDGE FARRAR: I won't say how old I
15 was. I was ten.

16 JUDGE LAM: If you read the contention
17 as admitted, it's really, it's a contention that
18 the applicant had failed, quote-unquote, to develop
19 and analyze a range of meaningful alternative. So
20 the key here is alternative, regardless of what the
21 land designation is or is not by any other agency.
22 So as Judge Farrar and Judge Kline were saying,
23 sure, you know, you could, could develop the record
24 as to how pristine or how much wilderness
25 characteristic are there for this particular piece

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1 of land. But you still have yet to go down to
2 develop the record about the applicant's failing or
3 considering an alternative, which we haven't seen
4 yet, Ms. Walker.

5 JUDGE FARRAR: Now, I think you were
6 getting at -- most of this afternoon you were using
7 these witnesses to get at the facts, and it's only
8 recently that we've gotten into what sounds like an
9 attack on their decision as opposed to an
10 evaluation of the facts. I think that's what we're
11 talking about now. Keep the questioning focused on
12 what they know about the facts, and later you'll
13 have your own witness talking about the same
14 things.

15 With that understanding, how much longer
16 do you think you need for cross?

17 MS. WALKER: Well, no, that was very
18 helpful. If you give -- let me just check my
19 exhibits.

20 Twenty minutes. That's --

21 JUDGE FARRAR: That's fine. Why don't
22 we take a short break till 4:15. I've noticed, as
23 I've predicted the first day of the case, the
24 breaks would get longer and longer. People are not
25 getting back on time. Let's get back at 4:15.

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1 Thanks.

2 (A recess was taken.)

3 JUDGE FARRAR: Back on the record after
4 a break, in which we had a number of different
5 discussions about scheduling and where that takes
6 us. What we're going to do is push forward for a
7 little while tonight, see how far we get, and then
8 finish up tomorrow morning, pushing the hydrology
9 hearing off to later in the day tomorrow. We'll be
10 contacting the state's people to start to make
11 those arrangements.

12 The last we heard, Ms. Walker, you
13 promised us you'd finish in 20 minutes.

14 MR. SILBERG: We don't consider that a
15 binding promise, your Honor.

16 JUDGE FARRAR: I think that's kind of a
17 standing order here that we try to push things
18 along, that all lawyers have a way of taking longer
19 than they expected.

20 Go ahead, Ms. Walker.

21 MS. WALKER: Okay, I passed out a new
22 exhibit which we'll want to mark as SUWA 7.

23 (SUWA EXHIBIT-7 MARKED.)

24 JUDGE FARRAR: The one that has the X-3
25 on it?

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1 MS. WALKER: Yeah.

2 JUDGE FARRAR: That will now be 7 for
3 identification. That's been marked by the reporter
4 for identification, so go ahead.

5 MS. WALKER: Okay. And then if
6 Ms. Stephenson or Ms. Laub would take a look at it,
7 identify it, see if she recognizes it.

8 JUDGE FARRAR: Have you all seen this
9 before?

10 MR. SILBERG: No.

11 JUDGE FARRAR: The witnesses.

12 MS. LAUB: Yes. This is the intensive
13 inventory wilderness decision about the North Cedar
14 Mountains.

15 JUDGE FARRAR: From 1979?

16 MS. LAUB: Yes.

17 Q. (By Ms. Walker) Can you just tell me
18 who signed it?

19 MS. LAUB: No, I can't. I can't read
20 the signature.

21 Q. Jack Patterson? Do you know who that
22 is?

23 MS. LAUB: I'm looking on page 2 of SUWA
24 X-3.

25 Q. Oh, sorry.

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1 MS. LAUB: It looks like it was the
2 acting state director who signed it.

3 Q. I'm sorry. I was the page, the second
4 from the end.

5 MS. LAUB: There's four signatures here.

6 Q. So does it look to you like two team
7 members and the area manager and a district manager
8 signed it?

9 MS. LAUB: Yes.

10 Q. And this is your field office?

11 MS. LAUB: Yes. This is a copy from the
12 initial -- BLM initial inventory file that
13 recommended North Cedar Mountains go to the next
14 step, which is the intensive wilderness inventory
15 study.

16 Q. So this document is about the North
17 Cedar Mountains area?

18 MS. LAUB: Yes.

19 MR. SILBERG: I'm sorry. Could I just
20 have some clarification? There appears to be some
21 handwriting on the third page. Is that original
22 handwriting? Because it looks much darker than the
23 rest of -- was that written on there by BLM or
24 someone else?

25 MS. LAUB: The map?

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1 MR. SILBERG: Yes.

2 MS. LAUB: That is from the intensive
3 inventory file, and that was written by the field
4 team of BLM, yes.

5 MR. SILBERG: Thank you.

6 JUDGE FARRAR: Ms. Walker, I think you
7 can proceed.

8 Q. (By Ms. Walker) I just want -- so
9 Ms. Laub, when you explained what this was, can you
10 say how this document fit into the process from
11 1980 inventory?

12 MS. LAUB: The BLM wilderness inventory
13 pursuant to Section 603 of FLPMA had a number of
14 steps to it. The first step was to do an initial
15 inventory, and I just know the general picture, not
16 having been involved. If a piece of ground met the
17 criteria within the initial inventory, it was then
18 recommended or not recommended to be carried
19 forward to the intensive inventory stage. And this
20 looks like it's a summary, I don't know if it's the
21 complete document, but it's a portion of the
22 initial inventory determination.

23 Q. So the comments in here about the state
24 of the land are comments about the North Cedar
25 Mountains area?

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1 MR. SILBERG: I'm sorry. Could you
2 define North Cedar Mountains area? Is it the same
3 as SUWA's definition? Seems to me that this has a
4 somewhat larger area shown as 16,089 acres, and
5 yours I believe is 14,173 acres.

6 MS. WALKER: That's correct. It's not
7 exactly, but maybe Ms. Laub could explain the
8 relationship between the two.

9 MS. LAUB: Between the two inventories?

10 MS. WALKER: Between -- all right.
11 Maybe this would be better.

12 Q. (By Ms. Walker) The area of land dealt
13 with in the document SUWA 7 is the same as the area
14 of land in SUWA 5. Is that right?

15 MS. LAUB: Yes, the same acreage.

16 Q. And it's a description of the same chunk
17 of land?

18 MS. LAUB: I believe so, yes.

19 Q. Okay, that's all I have on that
20 document. And I can't remember -- a while back you
21 asked about guzzlers, and I can't remember, was I
22 supposed to ask that question later? Are guzzlers
23 allowed in wilderness study areas?

24 MS. LAUB: That would depend. If it
25 meets the nonimpairment criteria under our

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1 direction for guidance of wilderness study areas,
2 possibly.

3 Q. I'm sorry. Can you repeat that, please?

4 MS. LAUB: If it meets the nonimpairment
5 criteria where we wouldn't impair congress's
6 ability to designate the area as a wilderness area
7 in the future, it may be allowed. It would depend.

8 MS. WALKER: Okay, that's all I have.

9 MR. SILBERG: Mr. Chairman, could I
10 ask --

11 MS. WALKER: You look so happy.

12 JUDGE FARRAR: No, it was less than 20
13 minutes. You're the first lawyer in two weeks to
14 live up to her --

15 MR. SILBERG: Beg your pardon?

16 JUDGE FARRAR: -- representations.

17 Thank you.

18 MR. SILBERG: Mr. Chairman, could I ask
19 whether Ms. Walker intends to offer any of these
20 documents into evidence? I guess they were marked,
21 but I don't know what their status is. At least 5,
22 6, and 7.

23 JUDGE FARRAR: 5, 6, and 7 were marked
24 for identification, and --

25 MS. WALKER: Some of them are already --

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1 I guess I want them all offered as exhibits. But
2 some of them are already -- remember the ones that
3 were so confusing?

4 JUDGE FARRAR: Well, wait. We also had
5 4, which was the off-highway vehicle designations
6 and the map. So we had 4, 5, 6, and 7, some of
7 which you read portions in or discussed them. And
8 now you want all those admitted?

9 MS. WALKER: Uh-huh.

10 JUDGE FARRAR: So Mr. Weisman?

11 MR. WEISMAN: These are all BLM
12 documents, I believe, 4, 5, 6, and 7. And I
13 believe that they all have -- at least some
14 information in them is relevant. I think that the
15 Staff would not object to any of these as evidence.

16 JUDGE FARRAR: Mr. Silberg.

17 MR. SILBERG: We wouldn't object.

18 JUDGE FARRAR: Okay, then they'll be
19 admitted.

20 (SUWA EXHIBITS 4-7 ADMITTED.)

21 Mr. Weisman, any redirect?

22 MR. WEISMAN: I'll have a little bit of
23 redirect. It will be less than two hours.

24

25

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REDIRECT EXAMINATION

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BY MR. WEISMAN:

Q. The first question I'm going to ask has to do with the line of questioning on cut and fill. Ms. Walker compared your testimony, Mr. McFarland, to what is in the FEIS at pages -- I believe that would be page 249 to 251. We were talking about cut and fill.

MR. McFARLAND: Yes.

Q. It's 249 in the second paragraph. And there appeared to be some -- there was an apparent inconsistency that we'll probably identify. Could you or Mr. Zimmerman explain why there might be a -- harmonize those numbers for us?

MR. ZIMMERMAN: Yes. In the preparation of the Environmental Impact Statement, we used information from the latest version of the environmental report submitted by PFS. And I'm looking in the list of references of the FEIS to see the version number of that particular document. It's listed here as revision No. 14 with a date of November the 21st, 2001. Subsequent to that document, additional design information was made available to us, and Mr. McFarland in particular, on the details of the west valley cut and fill, and

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1 I'll refer specifics of your question to
2 Mr. McFarland.

3 Q. So if I understand the answer correctly,
4 Mr. McFarland's analysis is based on some more
5 recent information?

6 MR. ZIMMERMAN: That's correct.

7 Q. And does that explain the discrepancy?

8 MR. McFARLAND: I really don't think
9 there is a discrepancy.

10 Q. All right. If you could please explain
11 why --

12 MR. McFARLAND: I just feel that the use
13 of the words in the EIS are probably incorrect.
14 They say 560,000 yards of fill material where
15 actually they should have referred to the need for
16 fill material, which was the difference between
17 what was excavated and what was actually needed. I
18 think that's more the case.

19 Q. But you've explained that in your
20 testimony.

21 MR. McFARLAND: Yes.

22 Q. All right, thank you.

23 I'm going to direct my next set of
24 questions to Ms. Stephenson and Ms. Laub. I want
25 to refer to Staff Exhibit M. We had some

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1 discussion in response to Ms. Walker's questions
2 about whether or not this was an existing route.
3 I'd just like to clarify, how would you know when
4 something -- when a route is existent?

5 MS. STEPHENSON: Well, in general terms
6 you'd have to either rely on personal knowledge if
7 you were out there when it was done, or possibly if
8 you had aerial photos taken every year, you could
9 pinpoint it down to a year.

10 Q. Ms. Laub, would you like to add from
11 there?

12 MS. LAUB: Or if there was a proponent
13 that came in and applied for a right-of-way and it
14 would be an action you would authorize, then we
15 would have a preferred way.

16 Q. But as to when a route came into
17 existence, that would be a matter of fact, that you
18 would have to determine that on a case-by-case
19 basis?

20 MS. STEPHENSON: Yes.

21 Q. Can you describe how, when you obtain
22 those facts, how are those incorporated into
23 various maps you rely on?

24 MS. LAUB: Well, the new and improved
25 way is to go out and GPS a route with a global

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1 positioning system unit and to create a data
2 dictionary that describes the attributes about that
3 route. And that would be incorporated into a
4 proper management plan, formal data.

5 Q. Okay. I think we'll -- I'm done with
6 photo M. Ms. Walker also questioned you about
7 using a way for a boundary of a unit. What's the
8 reason that BLM doesn't use a way as a boundary of
9 a unit?

10 MS. LAUB: It could be -- well, I've
11 got -- I did find the boundary requirements in the
12 BLM handbook, but a way -- the idea is a way you
13 can potentially rehab either on its own, or we
14 could go in and do some work.

15 Q. So in other words, if the way
16 disappeared, then you might not have any way -- you
17 wouldn't have a method of determining what the
18 boundary is?

19 MS. LAUB: The preferred -- for
20 management ease, the preference is to have an
21 identifiable boundary on the ground and a
22 disturbance is very identifiable. If it's
23 reclaimed you wouldn't, so yes.

24 Q. Thank you. I think when we started your
25 cross-examination I believe that one of the judges

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1 asked a question about greasewood that we saw in
2 the site that was on the 22nd of April, just
3 yesterday. Would you describe for me what the
4 greasewood communities were like out there before
5 there were fires?

6 MS. STEPHENSON: Not from personal
7 knowledge, but from maps that, and folks that have
8 been there in the office a whole lot longer than I
9 have, apparently that did cover a lot more area
10 than it does today.

11 MR. WEISMAN: Okay, I think I'd like
12 to -- if I could go off the record for about five
13 minutes and see if there's anything else we need to
14 cover, I'd appreciate it.

15 (Discussion off the record.)

16 JUDGE FARRAR: Back on the record.

17 MR. WEISMAN: Thank you, your Honor. We
18 don't have any more redirect.

19 JUDGE FARRAR: One question I had,
20 Ms. Laub. You mentioned -- sometime back a
21 question came up, you used the term "cherry stem,"
22 and somebody asked you to define it and I thought
23 you were going to say something that in a political
24 system we would call a gerrymander where people
25 draw the lines to accomplish a purpose. But you

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1 gave a different definition. Then I found in one
2 of these documents that a cherry stem just sounds
3 like a one-way road that we would call a
4 cul-de-sac. If it was in a neighborhood, that
5 you've got the stem of a cherry and then a
6 turnaround at the end. But that's not the sense
7 that you used it that first time.

8 MS. LAUB: It can be applied that way.
9 There are rare instances where cherry stems have
10 cut through -- technically would make two separate
11 wilderness character areas. But if that helps you
12 envision it, that's a good way of doing it. It
13 excludes that cul-de-sac.

14 MR. SILBERG: Mr. Chairman, I think it's
15 like that North Carolina congressional district
16 that follows the interstate about the width of a
17 railroad right-of-way.

18 JUDGE FARRAR: So how do we understand
19 that very first -- you said -- the question had to
20 do something with, you know, drawing a designation,
21 and you said they could cherry stem it, which I
22 took as a term of a program at the time. Is that
23 how you meant it?

24 MS. LAUB: It's jargon that's become
25 part of the wilderness definition glossary,

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1 basically. In the wilderness arena it's pretty
2 familiar, but it's a way to exclude impacts and
3 still have a viable wilderness character area or
4 proposed character wilderness area. And for the
5 record, I would say Utah is not subject to
6 gerrymandering, very opposed.

7 JUDGE FARRAR: That's another matter
8 about which we don't comment.

9 Mr. Silberg?

10

11

RECROSS EXAMINATION

12 BY MR. SILBERG:

13 Q. I have four brief questions. The first
14 goes back to the sentence in Staff Exhibit H, which
15 is the May 8, 2001 BLM letter to SUWA, and it
16 involves the last sentence in paragraph 1 in the
17 second page of that attachment. It says, "In fact,
18 the majority of intrusions lie north of these
19 canyons." We had discussions off and on about
20 whether that statement was based solely on the
21 material gathered for the 1980 inventory. So let
22 me ask you two related questions. When you wrote
23 that statement, those facts come from the 1980
24 inventory. Is that correct?

25

MS. LAUB: Primarily, yes.

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1 Q. And when you wrote it you also
2 confirmed, did you not, based on your -- on the
3 site expertise and the expertise of those in your
4 office, that that information remained true as of
5 the date you wrote it?

6 MS. LAUB: Yes, I did.

7 Q. Thank you. Second question. I think
8 counsel for SUWA asked Ms. Stephenson some
9 questions about the visual impact looking down from
10 the top of the North Cedars, and I think
11 Ms. Stephenson said she hadn't been up there. Have
12 you been up there, Ms. Laub?

13 MS. LAUB: To the top of the Cedar
14 Mountains or the North Cedars?

15 Q. The North Cedars.

16 MS. LAUB: I don't know what the top
17 peak is. I've been along the east canyon way and
18 Hastings Pass, and I've also been on the north end
19 of the Cedars where there's some communication
20 facilities.

21 Q. So you've been significantly above --

22 MS. LAUB: Yes.

23 Q. -- the level at which the rail corridor,
24 the Low Rail corridor and the west valley
25 alternative would run?

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1 MS. LAUB: Yes.

2 Q. And would you give us your perception as
3 to the visual impact of those two routes looking
4 down from the top? Would one be more noticeable
5 than the other, given what you've heard about the
6 cut and fill, the two alternatives?

7 MS. LAUB: The visuals, you know, from
8 within the North Cedar area are without, from my
9 experience taking visual resource management
10 courses and doing some simulation, it seems to me
11 that the lower in elevation or the west valley
12 alternative would provide more impact visually.

13 Q. Thank you. Have you reviewed aerial
14 photographs of the area that would be intersected
15 by the Low Rail Corridor in SUWA's North Cedar
16 Mountain area?

17 MS. LAUB: Can you say that again?

18 Q. Have you looked at aerial photographs
19 that cover the area through which the Low Rail
20 Corridor would pass in SUWA's North Cedar Mountain
21 area?

22 MS. LAUB: No, I haven't.

23 Q. One last question. There was some
24 discussion about whether it's legal or illegal to
25 drive or take off-road vehicles through here. Once

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1 that way is created, whether legally or illegally,
2 is it legal to continue to drive on it?

3 MS. LAUB: Yes.

4 MR. SILBERG: Thank you. I have no
5 further questions.

6 JUDGE LAM: I have a short question for
7 Mr. Zimmerman.

8 MR. ZIMMERMAN: Yes.

9 JUDGE LAM: In your direct testimony in
10 answer to question 8 you talk about the Staff's
11 obligation and duty under NEPA. Is there anything
12 more you can share with us other than what you have
13 said here? Is the duty just simply to consider
14 alternatives?

15 MR. ZIMMERMAN: I'm not exactly sure I
16 understand the question. In addition to
17 formulating alternatives under NEPA, they are to be
18 subjected to evaluation. In a comparative sense,
19 the heart of NEPA is the comparative process, which
20 includes the no action alternative as well as the
21 proposed action and the alternatives to that
22 action. Is that what you're getting at?

23 JUDGE LAM: Right. That's the area that
24 I'm interested in.

25 MR. ZIMMERMAN: Okay.

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1 JUDGE LAM: You know, I think you
2 answered my question. But basically, the way I
3 read part 51, the Staff's obligations, as you
4 describe in answer A, ends with "development and
5 evaluation alternatives which were not provided
6 previously given serious consideration." The key
7 is consideration. So I guess I take your answer
8 as, after the Staff had given serious consideration
9 to the alternatives, that the Staff's obligations
10 and duties are met?

11 MR. ZIMMERMAN: Yes. And in addition,
12 this sentence is trying to explain how other
13 alternatives that were not part of the draft EIS
14 could be captured in the final version EIS. They
15 were not given serious consideration previously at
16 the time of the draft, but there were -- there are
17 mechanisms to get those into the final EIS.

18 JUDGE LAM: Okay. I'd like to ask
19 Mr. Weisman, do you have any comment to add to that
20 interpretation of what the Staff's duties are?

21 MR. WEISMAN: Well, I guess the only
22 thing to add is that comparison of each alternative
23 doesn't necessarily have to be in equal depth. In
24 other words, you may do a surface comparison and
25 immediately see differences among alternatives. So

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1 as long as we articulate those reasons, that's an
2 adequate evaluation.

3 As some -- as you get further and
4 further down into the details, you'll find more
5 subtle differences between alternatives, and that's
6 the purpose of the alternative comparison is to
7 make sure that you've done a complete, both on the
8 surface level as to large differences and in the
9 detail as to very small or subtle differences
10 between alternatives. So that's -- that's the only
11 thing I would add to what Mr. Zimmerman had to say.

12 JUDGE LAM: So there may be quite a bit
13 of flexibility involved here --

14 MR. WEISMAN: Yes.

15 JUDGE LAM: -- in the judgment amount?

16 MR. SILBERG: I'm sorry, flexibility
17 in --

18 JUDGE LAM: In interpreting what is
19 serious consideration.

20 MR. WEISMAN: Yes, sir.

21 JUDGE LAM: Thank you.

22 JUDGE FARRAR: Mr. Zimmerman, let me
23 follow up Judge Lam's question. You're at Oak
24 Ridge for most of your work done for the NRC?

25 MR. ZIMMERMAN: No, it's split roughly

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1 50-50 between Department of Energy work and work
2 for other federal agencies, of which NRC is one of
3 those.

4 JUDGE FARRAR: Were you -- to what
5 extent were you an author of the FEIS, this FEIS?

6 MR. ZIMMERMAN: I authored certain
7 sections of it. My responsibility at Oak Ridge was
8 to coordinate the interdisciplinary team of experts
9 at Oak Ridge that contributed their individual
10 components as well as coordinate the effort between
11 Oak Ridge, the NRC, and the other cooperative
12 agencies' staff that collectively put this document
13 together.

14 JUDGE FARRAR: And how many of these
15 FEIS's have you worked on, roughly?

16 MR. ZIMMERMAN: This is probably the
17 twelfth, eleventh or twelfth document.

18 JUDGE FARRAR: With apologies to
19 Ms. Laub, in 1971, right after NEPA was passed, I
20 was at the Environmental Protection Agency. She
21 was not ten, she was zero -- one. We viewed the
22 whole NEPA process then as a real aid to decision
23 making, the political context where agencies didn't
24 think about environmental issues. This was to make
25 them think about them and really use them as

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1 decision documents. And that's always been a
2 concern to me that some FEIS's I see don't look
3 like decision documents that the CEO of the
4 organization would use to make a decision, but are
5 sometimes justifications for a decision that's
6 already made. Can you respond to that observation
7 either in general, both in general and in the
8 context of your work on this aspect of this case?

9 MR. ZIMMERMAN: Well, I do have
10 experience along the exact line you're getting at
11 where we have done impact statements or certain
12 agencies that don't look like decision documents,
13 they look like check-the-box justification of, did
14 we do NEPA. I do not feel that that's the case
15 here. I think we've had active participation and
16 involvement by four federal agencies in the
17 preparation of this document. I think to get any
18 kind of a bias up front and preconceived notion of
19 how this is coming out when four agencies are
20 involved is almost impossible. So I think we've
21 done a very good job on trying to portray impacts
22 on balance and the comparative aspect of the
23 alternatives that we did package in and identify.
24 I feel like we've done one of the best jobs that
25 I've had the privilege of being associated with at

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1 Oak Ridge National Laboratory.

2 JUDGE FARRAR: Who is the -- who was the
3 NRC decision maker on this aspect of this issue?
4 In other words, the document went up the line and
5 was approved. Who was the person who said, okay,
6 ladies and gentlemen, tell me about the rail line
7 alternatives, I need to decide if we're doing the
8 right thing here? Who's that person?

9 MR. WEISMAN: I'm not sure Mr. Zimmerman
10 was involved in it, but I can tell you. It was the
11 director of the Office of Nuclear Material Safety
12 and Safeguards.

13 JUDGE FARRAR: And who is that?

14 MR. WEISMAN: It was Martin Virgilio.

15 JUDGE FARRAR: And Mr. Zimmerman, you
16 didn't make any presentations to him on this; in
17 other words, a document was --

18 MR. ZIMMERMAN: I've never met him, no.

19 JUDGE FARRAR: That's all the questions
20 I had. Ms. Walker? You can recross if anything
21 that Mr. Silberg or the board or Mr. Weisman asked
22 triggers any questions in your mind.

23 ///

24 ///

25 ///

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REXCROSS-EXAMINATION

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BY MS. WALKER:

Q. I was a little confused by Mr. McFarland's answer to Mr. Weisman's question about the apparent discrepancies between your testimony and the FEIS. Did I understand you correctly saying that the FEIS was based on less recent data?

MR. McFARLAND: I don't know. I don't know about that.

Q. Okay. So is there a discrepancy?

MR. McFARLAND: I don't think so.

Q. Your prefiled testimony is based on the most recent version of the ER?

MR. McFARLAND: Yes.

Q. Is the FEIS based on the most recent version of the ER?

MR. ZIMMERMAN: I can answer that question. That's true.

Q. Did you save your evaluation until -- the west valley alternative until the latest version of the ER was out?

MR. McFARLAND: I was just asked to do this within the last three months, so I assume that's the latest one.

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1 Q. Do you know the date of the latest
2 version of the ER?

3 MR. ZIMMERMAN: The latest version of
4 the environmental report is version 14, and it's
5 dated November -- I don't remember the exact day or
6 the month, but it's November 2001.

7 Q. Ms. Laub or Ms. Stephenson, back to the
8 issue of ORV's and roads. Do I understand the SUWA
9 4 correctly in saying that the designation B-2
10 says --

11 MR. WEISMAN: I object. I don't believe
12 we asked about this on redirect. Is this outside
13 the scope?

14 MR. SILBERG: I asked a question about
15 off-road use.

16 MR. WEISMAN: All right.

17 MS. WALKER: Sorry. Did I say it wrong?

18 JUDGE FARRAR: No, the objection is
19 withdrawn. You can go ahead.

20 MS. WALKER:

21 Q. So the designation B-2 that we read that
22 talks about the designated roads, that's designated
23 as of 1992?

24 MS. LAUB: Yeah. That's a planning
25 decision from 1992, and it was limited to existing

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1 routes.

2 Q. So can you close, quote-unquote, close
3 nonexisting routes by putting signs up saying, this
4 is not an existing route?

5 MS. LAUB: If a route has been
6 established, we can do that, yes. We could close a
7 route that is causing damage to the environment.
8 There's provisions in the Code of Federal
9 Regulations for that.

10 Q. Have you done that elsewhere?

11 MS. LAUB: Have we used the emergency
12 closure authority?

13 Q. Is that the only authority you can use
14 to close a --

15 MS. LAUB: It's the authority I'm most
16 familiar with. There may be others that I'm not
17 familiar with.

18 Q. Have you closed any -- yeah, have you
19 used that authority to close routes that were not
20 designated, became sort of visible?

21 MS. LAUB: Yes, we have.

22 MS. WALKER: Okay, that's it for me.

23 JUDGE FARRAR: Can you do that just in
24 areas that have been designated wilderness, or can
25 you do that on any of your lands?

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1 MS. LAUB: On any public lands. But we
2 have to have a documentation and good record, and
3 it has to go through the NEPA process.

4 JUDGE LAM: Let me ask a hypothetical
5 question to Mr. Weisman. The Staff is responsible
6 for the FEIS?

7 MR. WEISMAN: Yes, your Honor.

8 JUDGE LAM: And the applicant is
9 responsible for the environmental report?

10 MR. WEISMAN: Yes, that's correct.

11 JUDGE LAM: Could it happen this way?
12 The contention of the state alleges that the
13 applicant had not adequately done something here.
14 Could it happen this way, then? The Staff is very
15 successful in defending its position in the FEIS,
16 but assuming the applicant has not, do we have a
17 problem?

18 MR. WEISMAN: No, sir, you don't.
19 What's at issue is whether the FEIS is adequate.
20 When a contention is stated in terms of a challenge
21 to the environmental report, once the FEIS is out,
22 that challenge is then applied as if it were a
23 challenge to the FEIS. So if the FEIS is adequate,
24 that's all that you need to know.

25 JUDGE LAM: So the challenge to the

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1 license application amendment now is transferred to
2 the FEIS?

3 MR. WEISMAN: Correct.

4 JUDGE LAM: Thank you.

5 JUDGE FARRAR: Mr. Weisman, any
6 questions furthered by the re-cross?

7 MR. WEISMAN: No, your Honor.

8 JUDGE FARRAR: Mr. Silberg?

9 MR. SILBERG: No, sir.

10 JUDGE FARRAR: Then these -- Ms. Walker?

11

12 FURTHER RECROSS-EXAMINATION

13 BY MS. WALKER:

14 Q. Ms. Laub, you said you have to do NEPA
15 to close a road that's not a designated road?

16 MS. LAUB: Let me clarify that. If we
17 go in and we do disturbing activities where we
18 harrow it, seed it, then we do need to NEPA. We
19 had -- we can close areas through a federal
20 register notice as well, and to do a federal
21 register notice you don't have to do NEPA.

22 Q. So if a road is not a designated road or
23 trail under your travel plan -- I'm sorry. If a
24 road or a trail is not an existing trail under your
25 management plan, to close it you would have to do a

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1 federal register notice?

2 MS. LAUB: No. To -- it depends on
3 the -- okay, let me make sure I have your question.
4 Can you repeat that, please?

5 Q. Could we have a road that's not
6 designated -- let me start over again. You have a
7 road that's not existing, that's not an existing
8 road or trail and you want to close it because it's
9 in the B-2 area, can you close that without a
10 federal register notice? If you don't manipulate
11 it, you just put a sign up and say it's closed?

12 MS. LAUB: I'm not sure. We -- I
13 believe under the new administration we're required
14 to do federal register notices for all closures,
15 but I'm not a hundred percent --

16 Q. Can you just tell me where the answer
17 is? Is it in a policy manual or --

18 MS. LAUB: It would be -- they've
19 recently changed or amended our land use planning
20 procedures. And that talks about travel
21 designations and routes, and I'm not familiar with
22 the new guidance. We also have a new off-highway
23 vehicle strategy or motorized use strategy for
24 public lands, and so trying to adopt the new --
25 we're working towards that. But off the top of my

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1 head, I don't know.

2 Q. But you think the answer lies in one of
3 those documents?

4 MS. LAUB: Yes, I do.

5 MS. WALKER: Okay, that's it.

6 JUDGE FARRAR: Thank you. Then we'll
7 excuse the witnesses. Thank you for testifying
8 here. And why don't we --

9 MR. SILBERG: My suggestion would be, if
10 I might, that we swear Dr. Catlin in, get his
11 testimony introduced, and then adjourn.

12 JUDGE FARRAR: Sounds good. Ms. Walker,
13 is that okay with you? Mr. Weisman?

14 MR. WEISMAN: Yes.

15 JUDGE FARRAR: Fine.

16 MS. WALKER: Did you want to do it just
17 the way you did it as opposed to the way the Staff
18 did it?

19 MR. SILBERG: We can stipulate it in.

20 JUDGE FARRAR: Oh, yeah.

21 MR. SILBERG: Let me just make sure I
22 understand --

23 JUDGE FARRAR: While you all are doing
24 that, I'll swear the witness.

25 //

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DR. CATLIN,

called as a witness, for and on behalf of the Applicant, being first duly sworn, was examined and testified as follows:

MR. SILBERG: I think the only issue we have is the one paragraph that we talked about in the motion to strike, which is on page 6, answer 9. I think under the Board's ruling that would be stricken.

I guess there's also a statement in answer 5 where it says, "I will testify on the potential for congress to designate wilderness." Those two I believe would be stricken under the Board's ruling.

MS. WALKER: Jay, could you say that again, since I was wandering around?

MR. SILBERG: Yes. Answer 9, question and answer 9 on page 6, and also the statement in answer 5 in which Dr. Catlin states that "I will testify regarding the potential for congress to designate wilderness in the North Cedar Mountains area." So that phrase "a potential for congress to designate wilderness in the North Cedar Mountains area" would be deleted as would question and answer

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1 9.

2 The exhibits would come in. Exhibit 1
3 is Dr. Catlin's resume; Exhibit 2 is the May 8,
4 2001 letter, which is also Staff Exhibit H; and
5 Exhibit 3, SUWA 3 is their brief to the Interior
6 Board of Land Appeals, which would come in for the
7 limited purpose as the board rules to show that
8 there is a challenge by SUWA to that determination
9 by BLM.

10 MS. WALKER: May I address that?

11 JUDGE FARRAR: Yes.

12 MS. WALKER: Just with regard to A-9, I
13 don't think the whole paragraph would go out,
14 because he's not trying to guess what congress is
15 going to do when he says that congress has the last
16 word on the issue. That's true regardless of what
17 congress is going to do or not. So my take would
18 be that you don't want to know about how many
19 co-sponsors there are. That would just be taking
20 out, at last check it had 159 co-sponsors. Maybe
21 you'd want to take this -- the sentence that starts
22 with "similarly."

23 MR. WEISMAN: Your Honor.

24 JUDGE FARRAR: Yes, sir.

25 MR. WEISMAN: For the Staff part, the

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1 Staff would not object to the first three sentences
2 of the answer to question 9, but from the words "in
3 fact" until the end of the answer, we believe that
4 the Board's ruling should apply to that text.

5 MS. WALKER: But you said that Jim
6 was -- I mean, Dr. Catlin was free to testify
7 about --

8 MR. SILBERG: His writing of the bill.
9 None of this relates to what he did in writing a
10 draft which may or may not have become a bill.

11 MS. WALKER: Oh, you're saying he can't
12 even say that there is a bill?

13 JUDGE FARRAR: Why don't we do this.
14 Let's strike the portion beginning, "The bill has
15 substantial support in Congress," basically the
16 last half of the statement, which seems to be
17 commentary on the potential for political action,
18 limit his testimony to the first half with the
19 understanding that we're interested in what he
20 knows -- what he did on that rather than anything
21 about what the bill might do, whether the bill
22 might succeed.

23 MR. SILBERG: Well, I will have to then
24 complete the record by indicating how many times
25 this bill has been introduced and failed to get

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1 past its current status, which is it's been
2 introduced and nothing has happened. What it says
3 about Cedar Mountains, what Cedar Mountain area is,
4 there's nothing.

5 JUDGE FARRAR: I think those are -- you
6 could make those points if they're valid.

7 MR. SILBERG: I can, but they have
8 nothing to do with the contention. But if we leave
9 this in, I have to make it, so we're just creating
10 a record of the relevant information, which I
11 thought we had decided this morning.

12 JUDGE FARRAR: We did decide to leave
13 out the political, but there's been a
14 representation that this witness had something to
15 do with writing the bill. And I think -- and we
16 don't have to worry about us being burdened with
17 material that later proves to be irrelevant
18 because, unlike a jury, we can easily disregard it.
19 And so let's for now leave in this first half, and
20 you ask a few questions that make the point you
21 need to make, and then we'll have a complete record
22 and can evaluate if for that purpose.

23 Ms. Walker, do you want to present your
24 witness?

25 MS. WALKER: May I ask a question first?

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1 Am I supposed to then cross that out on the
2 exhibits I just gave the court reporter?

3 MR. SILBERG: Probably would be a good
4 idea.

5 JUDGE FARRAR: Yeah. But you can do
6 that after we finish.

7 MS. WALKER: So you want me to cross out
8 from "at last check" all way down?

9 JUDGE FARRAR: No, from the sentence
10 before that, "The bill has substantial support in
11 Congress."

12 MS. WALKER: All right. From there
13 down --

14 JUDGE FARRAR: Right.

15 MS. WALKER: -- and then the answer 5
16 part?

17 JUDGE FARRAR: Answer 5.

18 MS. WALKER: Potential for Congress to
19 designate, that part, right?

20 MR. SILBERG: I guess that stays in if
21 you leave the first couple sentences in.

22 JUDGE FARRAR: Right.

23 MS. WALKER: Okay, fine with me. And
24 then I don't have to do it on all copies?

25 JUDGE FARRAR: We'll all do ours. You

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1 just do the ones that are filed.

2 MS. WALKER: Okay. So --

3 MR. SILBERG: You'll have to do it after
4 we finish on the reporter's copy.

5 MS. WALKER: So now there's no -- you'll
6 stipulate to --

7 MR. SILBERG: Admission, yes.

8 MR. WEISMAN: Admission, okay.

9 (PREFILED TESTIMONY OF DR. CATLIN
10 FOLLOWS.)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	March 18, 2002

SUWA'S FILINGS IN SUPPORT OF CONTENTION SUWA B

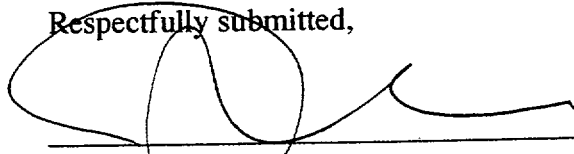
The Southern Utah Wilderness Alliance (SUWA) has one direct case witness for Contention SUWA B: Dr. James C. Catlin. As directed in the Board's Prehearing Memorandum and Order dated December 26, 2001, SUWA has prepared an Outline to preface the pre-filed testimony as well as Key Determinations for Contention SUWA B. Additionally, SUWA submits exhibits in support of Contention SUWA B.

Attached to this filing, please find:

- Pre-filed testimony of Dr. James C. Catlin
- Outline for witness Dr. Catlin
- Key Determinations for Contention SUWA B
- List of exhibits

DATED this 18th day of March, 2002.

Respectfully submitted,



Joro Walker, Esq.
Attorney for the Southern Utah Wilderness Alliance

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March 18, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

TESTIMONY OF JAMES C. CATLIN
ON THE WILDERNESS CHARACTER OF THE
NORTH CEDAR MOUNTAINS
CONTENTION SUWA B

I. BACKGROUND--WITNESS

Q1. Please state your full name.

A1. James C. Catlin

Q2. By whom are you employed and what is your position?

A2. I am the project director of the Wild Utah Project, based in Salt Lake City, Utah.

Q3. Please summarize your educational and professional qualifications.

A3. My professional and educational experience is summarized in the curriculum vitae attached to this testimony. I have a PhD from the University of California, Berkeley in Natural Resource Management and Geographic Information Systems (GIS), and I have been practicing in this field for 20 years. Since 1997, I've provided conservation biology and computer mapping services to the conservation community in Utah through my work for the Wild Utah Project.

Q4. What is the purpose of your testimony?

A4. The purpose of my testimony is to respond to the allegation in Contention SUWA B that:

The License Application Amendment [and/or Final Environmental Impact Statement] fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and associated fire

buffer zone that will preserve the wilderness character and potential wilderness designation of a tract of roadless Bureau of Land Management (BLM) land – the North Cedar Mountains – which it crosses.

Q5. To what will you testify?

A5. I will testify regarding the wilderness character of the North Cedar Mountains Area, the potential for Congress to designate wilderness in the North Cedar Mountains Area, and the potential effects of the Low Corridor Rail Spur and alternative transportation alignments on the naturalness of the North Cedar Mountains Area.

II. NORTH CEDAR MOUNTAINS

A. Wilderness Character of the North Cedar Mountains

Q6. How did you determine that the North Cedar Mountains possess wilderness character?

A6. The North Cedar Mountains Area was included in the Utah Wilderness Coalition's (UWC's) 1998 reinventory of Bureau of Land Management (BLM) wilderness lands, of which I was a part. The goal of this reinventory effort was to: 1) obtain thorough, accurate data to establish which BLM lands qualified for wilderness designation; 2) exclude areas that once, but no longer, qualified as wilderness; and 3) insure that any resulting wilderness proposal fully represented Utah's biological richness and geographic diversity. SUWA spearheaded this reinventory process, is a board member of the UWC, and, with other board members, was in charge of the reinventory process.

In determining wilderness characteristics, we used the same policies as established by Congress and federal land management agencies for determining which lands should be designated as wilderness pursuant to the Wilderness Act of 1964. These statutes and regulations provide definitions of "roadlessness," "substantially unnoticeable" impacts, and other criteria necessary for determining the wilderness character of particular lands pursuant to the Wilderness Act. Essentially, large tracts of roadless public lands, where human impacts are substantially unnoticeable, qualify for wilderness designation and must be determined as such by the BLM.

With these criteria as a basis and with guidance from SUWA and the UWC, we conducted our reinventory fieldwork in several stages. Prior to the actual fieldwork, we gathered as much information as possible about each large potential roadless area. On average, we put in at least ten hours of work per potential roadless area, creating maps for use in the field. We modified United States Geological Survey (USGS) 7.5 minute scale maps with land ownership information, cross-checked with BLM's land status plats. We then consulted recent aerial

photographs of the area to locate impacts not already on the USGS maps. Aerial maps proved to be reliable indicators of impacts, which, in a fragile desert environment, are easily identified from above.

Next, carefully screened and trained volunteers and staff conducted fieldwork to verify map information. These volunteers received approximately 2 hours of training in the classroom, in sessions run by me and other staff members. Then, each volunteer was trained by me or by other staff members in the field for approximately one-half day. Next, the volunteers were assigned a potential roadless area and given a packet containing several maps, film, instructions and forms for field notes.

Field workers then traveled the outer boundary of each potential roadless area, taking frequent photographs of impacts to the land. These workers traveled the length of any intrusions (and any branches of intrusions) entering into a roadless area. Any impacts were photographed and these photographs linked to maps. As a result of this work, each roadless area was further documented as such by field notes and photographs (40,000 to 50,000 photographs in all).

Together with other staff members, I reviewed all volunteer work. If we discovered gaps or inconsistencies in the field work, I or other staff members would revisit the site, several times, if necessary, to complete field checks. We also gathered additional information, including off-road vehicle routes, mineral deposits, and grazing uses. On the basis of maps, fieldwork and any additional information, we made a preliminary boundary recommendation. This recommendation was, in turn, reviewed and fine-tuned by a technical review team (TRT), of which I was a member. The four members of the TRT critiqued all preliminary recommendations for consistency and integrity. The TRT actually adopted stricter wilderness identification guidelines than the BLM so that the resulting boundaries would be above challenge. The boundary specifications that resulted from TRT review were then digitized on GIS along with a written detailed description of the boundary, together with rationales for any tough decisions involved.

Because one of the goals of the 1998 inventory process was to use wilderness designation as a means to protect biological diversity, the TRT, in consultation with biologists, gave priority to areas containing large elevation gradients, large complexes on contiguous roadless areas, and riparian areas.

The inventory of the North Cedar Mountains roadless area was conducted according to this standard procedure. Inventory staff spent approximately 10 hours, including review of aerial photographs, preparing maps for field survey work. A volunteer then surveyed the area and took field notes describing each of 24 pictures that were also linked to USGS maps. Then inventory staff members (one of whom was a member of the TRT) revisited the site and took 38 more photographs, described in field notes and linked to maps. Then I, together with other TRT members, used this information to recommend the boundaries of the pro-

posed wilderness area to SUWA and the UWC. The result of this consultation lead to the UWC's North Cedar Mountains proposed wilderness area.

Q7. Briefly summarize some of the wilderness characteristics possessed by the North Cedar Mountains.

A7. The BLM uses specific criteria for determining whether or not an area qualifies as wilderness. These criteria are described in detail in the BLM's Wilderness Inventory Handbook, but generally speaking, an area must be of sufficient size, it must be largely free of substantial human impacts, it must have opportunities for solitude or primitive recreation, and it might also have additional characteristics of special importance such as a unique geological feature or archaeological site.

Everyone agrees that the North Cedar Mountains meet the size requirement. As I've already discussed, the UWC's North Cedar Mountains proposed wilderness area does not contain substantially noticeable human impacts—on the whole, it remains a natural place where man's impacts are very minor and wouldn't be noticed by the average visitor. As such, it provides important, unfragmented habitat for native flora and fauna. Because the UWC's boundaries were drawn specifically to exclude human impacts, the proposed wilderness meets the conditions described in the BLM's handbook in that regard.

The North Cedar Mountains clearly possesses opportunities for solitude and to practice primitive recreational activities. In fact, in these regards, the North Cedar Mountains area is almost identical to an area just to the south that the BLM has found to possess outstanding opportunities for solitude. In other words, there is very similar terrain and wildlife habitat in the North Cedar Mountains as in the Cedar Mountains Wilderness Study Area to the south, designated by the BLM and found to possess opportunities for solitude and recreation. The two areas share very similar topographic features, vegetation, and incised canyons and ridgetops. If the BLM found outstanding opportunities for solitude and recreation in the Cedar Mountains Wilderness Study Area, it should find those same qualities in the North Cedar Mountains area.

Lastly, the North Cedar Mountains area has supplemental values that contribute to its suitability as a wilderness area. For example, the area is ecologically significant. This is because, as a large, relatively primitive roadless area, the North Cedars provides critical wildlife habitat and is central to maintaining the area's biodiversity. This unfragmented tract of land represent one of the few remaining places where native habitat dominates and where this habitat is likely to stay intact. Places like the North Cedars are cohesive, less vulnerable to invasion by exotic plants and therefore better able to support natural native plant and animal communities that are highly susceptible to weeds, roads and other human intrusions. The unimpeded hydrology of such areas also better suits native plant communities and recharges ground water.

In addition, the North Cedar Mountains lie at the edge of ancient Lake Bonneville, a huge prehistoric freshwater lake. As a result, the area seems to have been utilized by ancient humans. There is known rock art in the region, and certainly there is great potential for archaeological sites to be discovered.

Q8. How do the UWC's findings regarding the wilderness character of the North Cedar Mountains square with findings made by the BLM in their intensive inventory conducted in 1980, and with any subsequent inventories performed by the BLM?

A8. The BLM performed an intensive inventory of the North Cedar Mountains in 1980 and found that the unit contained substantially noticeable impacts. That was the main reason that the BLM dropped the area from further wilderness consideration. However, it is important to note that the BLM's 1980 inventory was problematic. The BLM's inventory unit—in other words the land it studied in 1980—differs substantially from the UWC proposal. Most notably, the boundaries of the UWC's North Cedar Mountains proposed wilderness differ from those of the BLM's unit, and the area proposed for wilderness designation by the UWC is smaller than the BLM's unit. The UWC boundary changes exclude all significant impacts from the proposed wilderness – one of the very reasons that the BLM dropped the unit from further consideration in 1980. The BLM's own policy requires the agency to consider changing the boundaries of a unit to exclude significant impacts, and then reassess the wilderness values of the area. In 1980, the BLM did not do that and thus violated its own policy.

The BLM's error in 1980 was not an isolated occurrence. For example, the BLM reinventoried some citizen-proposed wilderness areas in Utah in the late 1990s and found that mistakes had been made in the first – the 1980 – inventory process. Lands that rightly qualified for wilderness designation had been left out of the BLM's first inventory. Essentially, for almost all areas that the BLM reinventoried in the late 1990s, the agency found that it had made mistakes twenty years earlier and that there was actually more wilderness-quality land than the agency's previous inventories had found. In fact, the BLM's inventories in the late 1990s largely confirmed and validated the work that the UWC had done in creating its wilderness proposal.

Unfortunately, the North Cedar Mountains area was not one of the regions that was reinventoried by the BLM in the late 1990s, so this area has not had the benefit of a second look. The BLM's Wilderness Inventory Handbook provides a mechanism by which citizens or organizations can petition the BLM to reexamine areas for their wilderness characteristics. Using the provisions in the handbook, SUWA petitioned the BLM to examine the North Cedar Mountains for wilderness characteristics in 2001. However, the agency declined to look at the area again. Therefore, as far as I know, the BLM has not specifically looked at this area to determine its suitability for wilderness designation since their initial inventory in 1980.

Q9. The BLM decides whether or not an area is designated a Wilderness Study Area (WSA), and the agency has decided against this area. Does the agency have the final word in the matter?

A9. Actually, the agency does not have the final word in the wilderness debate. Congress has been given the authority to actually designate wilderness, so Congress has the final word. It is true that the BLM gets to decide what is a WSA and what is not, but Congress is by no means bound to restrict itself only to those areas that the BLM has named as WSAs when it designates wilderness. In fact, there is currently a statewide wilderness bill for Utah before Congress called America's Redrock Wilderness Act. It contains lands in Utah that the BLM recognizes as having wilderness character as well as lands—like the North Cedar Mountains—that the BLM has not yet recognized as having wilderness character. ~~The bill has substantial support in Congress. At last check, it had 159 cosponsors in the House and 15 in the Senate. If this bill passes and becomes law, it will designate as wilderness lands that the BLM has chosen to ignore with regard to wilderness. Similarly, there have been bills proposed in Congress in the recent past that would have designated wilderness lands in only specific portions of the state of Utah, such as the west desert region, or, even smaller, the Pilot Range. It is entirely possible that the North Cedar Mountains area could be included in one of these less comprehensive bills before Congress, and that it could gain wilderness designation that way. So, just because the BLM has not yet recognized the wilderness character of lands it manages does not mean that those lands are not being considered by Congress for wilderness designation.~~

B. Impacts of Transportation Alternatives

Q10. What impacts to the wilderness character of the North Cedar Mountains area could the proposed Low Corridor Rail Spur cause?

A10. The impacts would be many. First and most obviously, the Low Corridor Rail Spur would be a significant human impact cutting through a proposed wilderness. It would sever a portion of land that previously qualified as wilderness from the main body of that wilderness, thus decreasing the size of the wilderness area. This results in greater habitat fragmentation and a separation of lowland habitat from higher-elevation terrain, which could lead to a loss of biodiversity. Of course, the rail line and train would affect the scenic values of the area, as well.

The railroad spur would have a number of less obvious impacts. For one, it could lead to increased access to previously pristine areas, which can have major impacts on naturalness. If a road or other access route accompanies the rail line, it will provide quick, easy access to previously undisturbed areas. This change is likely to lead to increased motor vehicle access to these areas, leading to increases in noise, trails, and visitation. Ease of access can also change grazing patterns, which can negatively affect the vegetation in these areas.

The Low Corridor's rail line, road, and associated fire buffers also have the potential to disrupt the natural fire regime of the area. Although low intensity fires are a part of the natural ecosystem, the fire hazard introduced by the rail line will likely lead to the propagation of exotic species. In other words, the rail line and associated fire buffers could lead to increases in the potential for large, destructive fires that can destroy native vegetation and aid in the spread of exotic, invasive plants.

The rail line also has the potential of disrupting natural runoff patterns. Instead of storm water taking many small meanders, the rail line would force the water through a smaller number of culverts, cutting off the natural surface water flow. Water that normally would flow into an area and bring to life the plants would be diverted and withheld. After storms, the vegetation on the upstream side of the railroad bed may look totally different from the vegetation on the downstream side.

The application of chemicals along the rail line also has the potential to disrupt the vegetation of the area. Although the chemicals are often targeted at specific species, they often impact untargeted species such as native plants. When the native plants are killed, exotics can gain a foothold. Similarly, chemical application has the potential to negatively impact pollinators in the region, which also may affect native vegetation.

Lastly, the rail line has the potential to impact springs and small wetland areas that are not shown on most maps. These areas are often home to unique animals such as frogs and amphibians. Because the west desert is itself a unique environment, it is quite possible that some of the organisms that inhabit the rare springs and wetlands in the area may not be found anywhere else.

Q11. What impacts to the wilderness character of the North Cedar Mountains area could a rail spur outside the proposed North Cedar Mountains, such as the proposed West Valley alignment, cause?

A11. Rail alternatives that do not traverse the proposed North Cedar Mountain wilderness area have a significant advantage over the Low Corridor alignment. First and foremost, they would not result in a smaller wilderness area because they would not sever a lowland portion of the wilderness area from the main body of the wilderness. This is important because it would result in the preservation of a large, intact roadless area and would avoid habitat fragmentation. It would also preserve as intact a natural area that encompasses the full range of habitat from lowland valleys to upper-elevation mountainous terrain. In the case where an alternative alignment bypasses the North Cedar Mountain area and traverses mud flats, the mud flats themselves may act as a natural fire barrier and as a barrier to the spread of exotic weeds. Therefore, those impacts may be less, if the rail line is located in mud flat areas.

Although alternative alignments, such as the West Valley alignment, would not directly cut through proposed wilderness areas in the North Cedar Mountains, these alignments would have many of the same impacts, including increases in off-road vehicle use and access, changes to vegetation, wetlands, and water flow, and increased chemical use. Again, even though alternatives to the Low Corridor do not bisect proposed wilderness, they can cause changes in fire patterns that affect vegetation and lead to increases in exotic and invasive plants. Roads associated with these alignments can still lead to an increase in the use of off-road vehicles, which could affect the potential wilderness area. Storm water flow would still be disrupted, leading to changes in the natural vegetation communities that can favor the introduction of exotic species.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of:)	Docket No. 72-22-ISFSI
)	
PRIVATE FUEL STORAGE, LLC)	ASLBP No. 97-732-02-ISFSI
(Independent Spent Fuel)	
Storage Installation))	March 18, 2002

**SUWA'S: 1) OUTLINE FOR WITNESS DR. CATLIN
2) KEY DETERMINATIONS FOR CONTENTION SUWA B
3) LIST OF EXHIBITS**

Outline for Witness Dr. Catlin:

I. Qualifications of James C. Catlin.

- PhD from the University of California, Berkeley in Natural Resource Management and Geographic Information Systems (GIS).
- Director, Wild Utah Project.
- 20 years of experience in GIS and computer mapping.
- Provides conservation biology and computer mapping services to conservation organizations in Utah.

II. Wilderness character of North Cedar Mountains area (NCMA).

- North Cedar Mountains are part of Utah Wilderness Coalition's (UWC's) 1998 reinventory process.
- In determining wilderness character, reinventory process used same criteria as Bureau of Land Management.
- Careful fieldwork by UWC confirms that NCMA possesses wilderness character: it is of a proper size, is primarily affected by the forces of nature, contains outstanding opportunities for solitude, and has supplemental values consistent with wilderness.
- BLM's 1980 wilderness analysis for the NCMA was flawed
- BLM has not re-assessed the wilderness character of the NCMA since their 1980 inventory.
- NCMA is contained in America's Redrock Wilderness Act, currently before Congress and having 159 House cosponsors and 15 Senate cosponsors.

III. Impacts to NCMA from Low Corridor Rail Spur

- Severs the wilderness area, reducing its size and geographic reach.

- Increases habitat fragmentation and decreases biodiversity.
- Increases access and impacts from motor vehicles, including off-road vehicles.
- Increases the spread of exotic and invasive weeds.
- Changes and disrupts storm water flow, leading to adverse vegetation changes.
- Impacts wetland and spring areas, potentially threatening their unique animals.
- Chemical treatments damage native vegetation.

IV. Impacts from alternate transportation routes that do not bisect NCMA

- Leave potential wilderness area intact.
- Leave intact large roadless areas and avoids habitat fragmentation.
- Preserve full range of habitat from lowland valleys to upper-elevation mountainous terrain.
- Where alternative alignments traverse mud flats, the mud flats themselves deter harmful fires and serve as barrier to the spread of exotic weeds.
- Other impacts much the same as routes through NCMA proposed wilderness.

Key Determinations:

- A.** The North Cedar Mountains area possesses wilderness character and/or qualifies for designation as wilderness pursuant to the 1964 Wilderness Act because it is a large roadless area that contains no significant human impacts, has important wildlife habitat, provides opportunities for primitive recreation and solitude, supports biodiversity, and may have cultural resource values.
- B.** A range of alternatives to the Low Rail Spur will have differing impacts on the wilderness character of the North Cedar Mountains area depending on their location and the configuration of the rail line and associated access roads, road crossings, fire buffer zone size, design, and maintenance, and culverts.
- C.** The License Application Amendment [and/or Final Environmental Impact Statement] fails to develop and analyze a meaningful range of alternatives to the Low Corridor Rail Spur and associated fire buffer zone that will preserve the wilderness character and the potential wilderness designation of a tract of roadless Bureau of Land Management land – the North Cedar Mountains – which it crosses.

List of Exhibits:

- SUWA 1:** Resume of Witness Dr. Jim Catlin
- SUWA 2:** BLM Evaluation of [SUWA's] Externally Generated Proposals That Suggest An Area of Public Land Has Wilderness Characteristics
- SUWA 3:** Selected Pages from Notice of Appeal, Statement of Reasons, and Request for Stay Re: Utah State Director Wisely's Decision Partially Denying Southern Utah Wilderness Alliance's Protest of Inclusion of Certain Parcels in the May 22, 2001, Competitive Oil and Gas Lease Sale.

1 JUDGE FARRAR: Okay. And then the
2 testimony of the witness will be bound into the
3 record at this point as though read. And was there
4 also a stipulation as to the exhibits?

5 *Catlin Bound Here*
MR. SILBERG: Yes, sir.

6 MR. WEISMAN: Yes, in accordance with
7 your order earlier today.

8 (EXHIBITS 1-3 TO PREFILED TESTIMONY OF DR.
9 CATLIN WERE ADMITTED.)

10 JUDGE FARRAR: And the exhibits will be
11 admitted. Have you given three copies of those to
12 the reporter?

13 MS. WALKER: Yeah. They're all attached
14 to the file.

15 MR. SILBERG: But you need to give the
16 reporter three copies of the exhibits. She only
17 has one copy.

18 MS. WALKER: She has three copies of the
19 prefile, which means she has three copies of the
20 exhibits. Is that right?

21 JUDGE FARRAR: Right.

22 MS. WALKER: There's no tabs.

23 JUDGE FARRAR: She'll have to
24 disassemble them. Off the record.

25 (Discussion off the record.)

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1 JUDGE FARRAR: Back on the record. Then
2 the witness is ready for cross-examination?

3 MS. WALKER: Yes.

4 JUDGE FARRAR: Okay. It's now almost
5 5:25. Mr. Silberg, if you would go first. And at
6 this point in the day, you and everybody else would
7 prefer to wait until tomorrow morning?

8 MR. SILBERG: Yes, sir.

9 JUDGE FARRAR: And we'll do that. We
10 will be here at nine o'clock. How long will your
11 cross be?

12 MS. WALKER: I'm sorry, your Honor.
13 Tomorrow or Thursday?

14 MR. SILBERG: Tomorrow.

15 MS. WALKER: You asked him if he could
16 be here Thursday. Can you be here Wednesday?

17 THE WITNESS: Yes, I can. What time,
18 again?

19 JUDGE FARRAR: Nine o'clock. The State
20 is supposed to be here for a hydrology issue
21 tomorrow. We've notified them not to come until
22 eleven o'clock. Can we do this --

23 MR. SILBERG: My guess is two to three
24 hours, depends on how long the questions and the
25 answers are and how many additional questions the

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1 answers generate.

2 JUDGE FARRAR: Mr. Weisman, what will
3 you have?

4 MR. WEISMAN: My estimate was about an
5 hour and a half to two hours.

6 MR. SILBERG: But historically, since we
7 go up, we get to preempt a lot of the Staff's cross
8 because a lot of his questions already get asked.
9 I have no idea whether that would be the case here,
10 but historically --

11 MR. WEISMAN: If Mr. Silberg asks the
12 questions that I was planning on asking, I won't
13 ask them again.

14 JUDGE FARRAR: Then we can still have
15 the state come at eleven, and maybe they'll have to
16 wait a little bit, but let's have as a goal
17 finishing this before lunch, even if that's a
18 slightly late lunch.

19 Let's stick with our plan. We'll be
20 here at nine tomorrow and have the state's people
21 come on hydrology at eleven. And Mr. Silberg, you
22 had requested we try to go late tomorrow on
23 hydrology, which we need to do because The state's
24 witness is not available Thursday. If we cancel
25 the oral argument on the Utah SS, you were going to

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1 do that?

2 MR. SILBERG: Yes, sir.

3 JUDGE FARRAR: Who was going to do that
4 for the State?

5 MR. WEISMAN: The State?

6 JUDGE FARRAR: I'm sorry, for the Staff.

7 MR. WEISMAN: For the Staff. I was
8 going to do SS, the oral argument.

9 JUDGE FARRAR: Okay, we will put that
10 off on Friday so -- put that off. We will not do
11 that on Thursday, we probably won't do it this
12 week, because that's not time sensitive. That way
13 you all don't have to be preparing for that. We
14 can go late tomorrow night on hydrology, and the
15 State is trying to get us the state capitol for
16 Friday morning, since we do not have this space
17 Friday, continuing hydrology Friday morning.

18 MR. SILBERG: So we would not do it
19 Thursday but we might come back Friday?

20 JUDGE FARRAR: Right. The State's
21 witness is not available on Thursday. We would do
22 the seismic arguments, seismic in limine motions on
23 Thursday. We have to do those. And we were
24 looking forward, the rest of the board is looking
25 forward to resting up on Friday morning for the

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1 limited appearances in Tooele in the afternoon.

2 MR. SILBERG: We'll try to finish
3 Thursday -- Wednesday with --

4 JUDGE FARRAR: If we can. We'll do
5 Friday morning.

6 JUDGE LAM: If you go late tomorrow
7 night, do we start late Thursday morning? Is that
8 the plan?

9 JUDGE FARRAR: We'll do the seismic in
10 the afternoon.

11 MR. SILBERG: Well, you can set that at
12 pretty much your convenience. Have you set a time
13 for that so we can tell our folks back home?

14 JUDGE FARRAR: For seismic, no. We were
15 waiting to see how all this worked out. We'll talk
16 about that and have something for you.

17 All right. Then it's 5:30, and we'll
18 see you all at nine o'clock tomorrow morning.

19
20 (Proceedings were concluded for the
21 day at 5:30 p.m.)

22

23

24

25

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Private Fuel Storage, LLC

Docket Number: Docket No. 72-22-ISFSI

ASLBP No. 97-732-02-ISFSI

Location: Salt Lake City, Utah

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

15/ Diana Kent
Diana Kent
Official Reporter
Neal R. Gross & Co., Inc.

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