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BEFORE THE OKLAHOMA DEPARTMENT OF MINES  
STATE OF OKLAHOMA

In Re: The Matter of the )  
Application of: )  
ARBUCKLE AGGREGATES, LLC, for a )  
permit to engage in surface )  
mining and reclamation ) Case No. PAN-10-05-IC  
operations in an area of 575 ) Permit #L.E.-2361  
acres, more or less, located in ) (Mill Creek Quarry)  
Sections 23 and 24, Township 1 )  
South, Range 4 East, Johnston )  
County, State of Oklahoma )

PUBLIC INFORMAL CONFERENCE HELD BY  
THE OKLAHOMA DEPARTMENT OF MINES  
IN TISHOMINGO, OKLAHOMA  
ON DECEMBER 2, 2010

APPEARANCES

On behalf of Arbuckle Aggregates, LLC:  
  
Elizabeth Nichols  
Attorney at Law  
1050 East Second Street, No. 251  
Edmond, Oklahoma 73034

REPORTED BY: KATE SCIPIONE, CSR, RPR, CLR  
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1 (Conference began at 9:30 a.m.)

2 \* \* \* \* \*

3 MR. SHOLAR: Open the record.

4 First thing I want to do before I -- is  
5 explain how this is going to work today. If  
6 everybody -- everybody that came in needs to sign that  
7 white sheet. That is a record that you were here and,  
8 plus, if -- what it'll do is you'll get a copy of  
9 the -- of our -- of the departmental notice when --  
10 when that is do -- when that is done, so if you didn't  
11 sign that white sheet back there or you didn't send a  
12 protest letter in, then we won't be able to send you a  
13 copy. So we hope that everybody signs that.

14 If you're going to be speaking today as an  
15 individual or as representing somebody, then -- then  
16 we had you sign either a pink -- the pinks sheets or  
17 the yellow sheets. If you did not sign up one of  
18 those and you want to cite -- you want to speak later,  
19 just go out in the hall and sign up and I'm just going  
20 to work my way -- my way down -- down through the  
21 list.

22 I would -- do want to stress the fact that  
23 this is not a -- a legal proceeding. This is just an  
24 informal conference. The department of mines is here  
25 simply to listen to the concerns of the citizens and

1 to make sure that we make the right decision in -- in  
2 issuing this permit. So it's -- it's not going to  
3 be -- there will be no objections. The attorneys are  
4 going to have same rights as anybody else does here.  
5 This is a simply -- just an informal conference to  
6 listen to -- to every -- to everyone's concerns.

7 The order of the way things are going to work  
8 is -- is like this: I'm going to have the applicant  
9 come up first, I'm going to give them about 30 minutes  
10 to speak, and they'll give some opening statements and  
11 talk about what they're doing, and then we're going to  
12 go to the representative speakers. If you signed a  
13 pink -- a pink form, you're representing somebody else  
14 or a group or somebody, we'll give -- you'll be given  
15 a chance to speak. When you come up to speak, I need  
16 you to give me a -- we need a list of who you're  
17 representing just so we have record of who you're  
18 representing. You will not be able to speak until --  
19 unless I have that list.

20 So when -- if you're -- if you signed the  
21 pink sheet, I need a list of who you're representing  
22 when -- when you come up -- up to -- up to the -- to  
23 the front. Also, if you are representing someone, you  
24 will get -- we're going to -- based on the size of the  
25 crowd, I kind -- I'm having to -- we're setting time

1 limits. If you're representing someone, you'll be  
2 given six minutes to speak and so we -- we have --  
3 Richard here will be keeping the time and so we will  
4 let you know as you get closer to that time that you  
5 will have -- have six minutes to speak.

6 If you have signed a yellow sheet as an  
7 individual speaker, basically you -- you can't -- you  
8 can't speak then unless someone is representing you,  
9 so if -- if you have an attorney or somebody  
10 representing you talking earlier, then you cannot  
11 speak as an individual because you are already --  
12 already being represented. I understand there's going  
13 to be the same concerns over and over again and I'm  
14 not going to stop anyone from talking, but let's -- to  
15 make this run smoother, I want everybody to say what  
16 they have to say, but also let's try not to reiterate  
17 any more than -- than we -- we have to. It will  
18 all -- it will all be on record.

19 If you're an individual speaker you will be  
20 given three minutes to speak. Everyone that speaks,  
21 you need to come up to the microphone and address the  
22 front of the microphone because this is being  
23 recorded, and so we need to make sure that we get  
24 everyone's comments and get them correctly and -- and  
25 appropriately.

1           After everyone has had a chance to speak,  
2 then the applicant will have a chance -- a chance  
3 again to -- to answer any questions that were raised  
4 earlier in -- in the proceeding. They can take as  
5 long as they need to answer those and make sure  
6 that -- that your questions are answered. Again, if  
7 you -- if you're going to address, I need you only to  
8 address the front if you're at the microphone so  
9 when -- when it's your time because we need to hear  
10 what's said and if you say it from the back, it's not  
11 going to be recorded or it's not going to be part --  
12 part -- part of the proceedings.

13           If you have any exhibits that you want to  
14 present today, over here at this table it says  
15 "exhibits." When you come up, just hand -- hand those  
16 to her and we will mark those and make those part --  
17 part of the record. Also, if -- if you have some  
18 exhibits, something that you thought, man, I wish I'd  
19 have brought this, or you think of something you want  
20 to bring, I'm going to -- when this is over, I'm going  
21 to keep the record open for an additional time and  
22 that way you can send anything in to the department.

23           Matter of fact, I'm going to keep the record  
24 open until January 14, 2011, so we have about a  
25 month. So if there's more stuff that you want to

1 submit to us, that would be -- just send it to our  
2 department. Address is 2915 North Classen Boulevard,  
3 Suite 213, Oklahoma City, Oklahoma, 73106. We can  
4 give that to you later again if -- if you think you  
5 have something, or you can call the -- call our  
6 department at 405-427-3859 and we'll give the address  
7 if you want it -- if you want to send it, or you  
8 can -- or you can bring it -- bring it by the office.  
9 That is and -- that is the January 14th close of the  
10 day, which is -- is four or 4:30. Again, the record  
11 will remain open at that time so -- so I can accept  
12 those.

13 Like I said, we just need to make sure you're  
14 up here when you speak and we -- so we can keep the --  
15 keep things running smoothly. I'm going to reiterate  
16 this again: This is an informal conference and it's  
17 just a chance to listen and to hear what everybody has  
18 to say. After I've gathered all this information,  
19 looked at everything, I'll make a recommendation to  
20 our deputy director who will issue a departmental  
21 notice in regards to it and, like I said, if you have  
22 sent a protest letter in or you signed up today, you  
23 will be given a copy of that and you have a right -- a  
24 right to -- to appeal. So that's the only way you're  
25 going to get that is if you've signed up or if you're

1 under -- under protest, or if you call and request  
2 that. But we would like for you -- that way we get  
3 everybody who wants some information the information  
4 they need. All right.

5 I'm going to read a few things into -- into  
6 the record now. I have the notice and then I'll read  
7 some exhibits into the record, and then I can let you  
8 guys do the rest of the talking so you don't have to  
9 listen to me anymore.

10 This is the fourth Oklahoma Department of  
11 Mines, State of Oklahoma, in the matter of the  
12 application of Arbuckle Aggregates, LLC for a permit  
13 to engage in surface mining and reclamation operations  
14 in the area of 575 acres, more or less, located in  
15 Sections 23 and 24, Township 1 South, Range 4 East,  
16 Johnston County, State of Oklahoma, Case No. PAN-10-  
17 05-IC, Permit No. LE-2361, the Mill Creek Quarry.

18 This a notice and order referring and setting  
19 an informal conference, the state of Oklahoma to the  
20 applicant for a permit to engage in surface mining and  
21 reclamation operations, Arbuckle Aggregates, LLC and  
22 to all proper objectors who have filed a proper  
23 request under OSC 46010-17-7, the Oklahoma Department  
24 of Mines Non-coal Rules and Regulations, to wit.

25 Those parties listed on the notice of mailing attached

1 hereto and party hereof. Notice is hereby given that  
2 an informal conference PAN-10-05-IC is scheduled for  
3 the 2nd day of December 2010 before Bret Sholar,  
4 informal conference officer, to be held in the  
5 Fletcher Auditorium, Murray State College, One Murray  
6 Campus, Tishomingo, Oklahoma, to begin at the hour of  
7 9:30.

8 All right. Now I'm going to enter some  
9 exhibits in -- into the record.

10 Exhibit 1 is an affidavit of publication for  
11 legal notice of permit application in the Johnston  
12 County Capital-Democrat on July 29th, August 5th,  
13 August 12th, and August 19, 2010.

14 Exhibit 2, notice of order referring and  
15 setting informal conference dated October 19, 2010.

16 Exhibit 3, notice of mailing dated October  
17 19, 2010.

18 Exhibit 4, non-coal mining application and  
19 reclamation plan, field evaluation for LE-2361, Mill  
20 Creek Quarry by mine inspector Albert Smith, July 20,  
21 2010.

22 Exhibit 5 -- 5 through 16 are objection  
23 letters for the conference. Exhibit 5, Jim Hunter,  
24 president, Hunter Cattle Company, received August 13,  
25 2010.

1 Exhibit 6, Mike -- Mike Oetker, U.S. Fish and  
2 Wildlife Service, August 16, 2010.

3 Exhibit 7, James F. Herndon (sp), received  
4 August 17, 2010.

5 Exhibit 8, Mary M. Macamore (sp), received  
6 August 18, 2010.

7 Exhibit 9, Lewis Parkhill, received August  
8 8 -- pardon me -- August 19, 2010.

9 Exhibit 10, Tommy B. Williams, received  
10 August 23, 2010.

11 Exhibit 11, Sandra Solei (sp), received  
12 August 23, 2010.

13 Exhibit 12, Larry Johnson, received August  
14 24, 2010.

15 Exhibit 13, Bruce Noble, U.S. National Park  
16 Service, received August 25, 2010.

17 Exhibit 14, Matt Mauck from the department of  
18 wildlife, received August 25, 2010.

19 Number 15, the estate of Ida Sutton Williams,  
20 Roy Ann Williams, received August 31, 2010.

21 Exhibit 16, JCB Aamodt, attorney for CPASA,  
22 received September 2, 2010.

23 These letters were individual letters that  
24 have -- people have sent themselves.

25 Exhibit 17 is objection letters requesting

1 informal conference and there were 337 form letters,  
2 so I'm not going to read all of those, but those --  
3 those were all the same, just had signatures on it.

4 Exhibit 18 is a letter from Krystina E.  
5 Hollarn, Aamodt Law Firm, regarding LE-2361  
6 application and ODM permitting process.

7 Exhibit 19, application for permit to engage  
8 in non-coal mining received May 7, 2010.

9 Again, any -- any additional exhibits you can  
10 hand up front when you come up to speak and they will  
11 be made part -- part of the record. At this time I'm  
12 going to give -- have the applicant come up to speak  
13 and that will give a chance to address -- you all have  
14 a chance to address them after they are done speaking,  
15 so I'll open it up to you. You've got the floor.

16 And when you do come up, I ask that everyone  
17 give your name and your address for the -- for the  
18 record.

19 MS. NICHOLS: Good morning. Can you  
20 hear me, everyone? You can't hear me? Can you hear  
21 me now? Can you hear me now? Okay.

22 My name's Elizabeth Nichols and I am the  
23 attorney representing the applicant, Arbuckle  
24 Aggregates.

25 AUDIENCE MEMBER: Can you turn it up a

1 little bit more?

2 AUDIENCE MEMBER: Can you repeat your  
3 name?

4 MS. NICHOLS: Better? Can you hear  
5 better now? Okay.

6 My name is Elizabeth Nichols. I'm the  
7 attorney for Arbuckle Aggregates, the applicant, and  
8 this is why we're all here. Every protest letter  
9 submitted by individuals or groups has been reviewed  
10 by myself, Pete Dawson who is the representative of  
11 the company, and Geoff Canty, seen over there,  
12 environmental consultant for Arbuckle Aggregates.

13 Our purpose today is to hopefully provide you  
14 with some additional information and some answers to  
15 the issues that you raised in your protest letters and  
16 provide you any additional information regarding our  
17 plan for the Mill Creek facility. Arbuckle Aggregates  
18 is -- is committed to working with the community,  
19 working with the state and federal agencies, the  
20 Chickasaw Nation, and becoming part of your  
21 community. As I'm sure that you know --

22 AUDIENCE MEMBER: We can't hear you.

23 MS. NICHOLS: Okay.

24 AUDIENCE MEMBER: Can you turn that  
25 microphone towards -- towards your mouth?

1 MS. NICHOLS: Is this better? Okay.  
2 It's all those technical difficulties that you have to  
3 work out in the beginning.

4 Mining in the state of Oklahoma is a legal  
5 activity. In order for an individual to be able to  
6 become an operator of a mining facility, certain  
7 requirements have to be met pursuant to Title 45, and  
8 I'm not going to go into any lawyer speak, but just as  
9 far as the rules of the state of Oklahoma, there are  
10 certain requirements to be able to operate a mining  
11 quarry. In order for one of those requirements is the  
12 applicant must hold legal title to the property where  
13 they plan to mine, which means they either own the  
14 property or have a valid lease on the property. In  
15 our case, we own the facility, we own the property  
16 where the Mill Creek facility is going to be.

17 The applicant must also be able to obtain a  
18 security bond related to the mining operation and be  
19 able to submit an application fee with their  
20 application.

21 And finally, the applicant must be able to  
22 provide a complete -- all the information, requisite  
23 information, on the department of mines application  
24 form. As we are all sitting here today, the  
25 application by Arbuckle Aggregates for the Mill Creek

1 facility is administratively complete and technically  
2 correct as deemed by the department of mines.  
3 Arbuckle Aggregates has obtained, or is in the process  
4 of obtaining, all necessary required permits to  
5 operate the Mill Creek facility. Arbuckle Aggregates  
6 is committed to continue to follow the regulations and  
7 the statutes associated with the operation of the Mill  
8 Creek facility, including obtaining any and all  
9 additional permits that may be deemed necessary.

10           The -- at the time that the application for  
11 mining was submitted to the Oklahoma Department of  
12 Mines on May 7, 2010, there was certain information  
13 provided to the department of mines which, since as we  
14 sit here today, December 2nd, has progressed and so  
15 there are certain areas of our application which we  
16 are supplementing as we sit here today, and I'm going  
17 to present those to the hearing examiner, not as an  
18 exhibit to this hearing, but as a supplement to our  
19 application. And just so everyone understands those  
20 supplements to our application, I'm just going to go  
21 over those very quickly so there is complete  
22 transparency as far as where we stand on our  
23 application.

24           Section 1, we have amended our phase bonding  
25 area and how we're going to bond the area and conduct

1 reclamation as far as doing it in a piece-by-piece  
2 basis. There's been one change as to the corporate  
3 officers of Arbuckle Aggregates. And we have updated  
4 the status of our permits required by other  
5 governmental agencies such as the OWRB, and we've  
6 updated our detailed incremental bonding map, our --  
7 our detailed map that we provide with our  
8 application.

9 And so those are the -- the four areas that  
10 we're supplementing our application for permit to  
11 mine.

12 MR. SHOLAR: Those four -- those four  
13 things will need to be submitted as exhibits and  
14 part -- part of the record today, but they'll be  
15 supplement to your application.

16 MS. NICHOLS: Okay.

17 MR. SHOLAR: So I just need to get your  
18 --

19 MS. NICHOLS: Okay, that's fine.

20 Arbuckle Aggregates intends to use all  
21 legally available resources of water, which includes  
22 pit water. I understand that this is legally and in  
23 this community that has been a very charged issue, but  
24 as we stand here today, in the state of Oklahoma,  
25 through a ruling in the City of Tishomingo v. OWRB,

1 water trapped in a producing mining pit is not subject  
2 to OWRB under the Oklahoma ground water law. And  
3 Senate Bill 288 did not change the exemption status of  
4 water trapped in producing mines.

5 Currently, Arbuckle Aggregates has two  
6 surface water permits pending with the OWRB. Myself  
7 and Pete Dawson of -- the representative of Arbuckle  
8 Aggregates met with OWRB yesterday regarding the  
9 status of our -- our permit application. The OWRB has  
10 stated that our application is administratively  
11 complete and technically correct. They have provided  
12 us with a draft notice for hearing regarding our  
13 application which we are reviewing and should have  
14 back to them in the next week or so. And at that --  
15 after that point that will -- that application will go  
16 to publication for hearing.

17 Arbuckle Aggregates is concerned with  
18 conserving the water in this area. They've taken  
19 every single complaint or concern identified in your  
20 protest letter, we've looked at -- as I said before,  
21 myself, Mr. Pete Dawson, and Mr. Geoff Canty have  
22 reviewed every single letter that was provided to us  
23 in detail and, hopefully, we can have some answers or  
24 be able to provide you with some additional  
25 information regarding your concerns.

1           Several of the protest letters have raised  
2 the issue of the application of the Clean Water Act,  
3 which is Title 27A and -- and its application with the  
4 department of mines, and not to -- to be too much of a  
5 lawyer, speak lawyerese on you too much, Oklahoma has  
6 adopted the statutory canons of construction, meaning  
7 when there's two statutes that are within conflict,  
8 conflicting each other -- which happens all the time,  
9 considering how many statutes or rules there are in  
10 the state of Oklahoma -- you ask if there are two  
11 statutes that are in conflict, which one applies.

12           And so the statutory canons of construction  
13 says in instances where there are statutes that  
14 conflict, if there is a specific statute or a special  
15 statute that is more specific and then there is a more  
16 general statute, the special statute or the more  
17 specific statute would apply. And so Title 27A is the  
18 discussion of the Clean Water Act and which  
19 governmental agency is responsible for ensuring that  
20 the waters of Oklahoma remain clean and -- and govern  
21 that.

22           Title 20 -- 82 is the specific statute  
23 regarding the Oklahoma Water Resources Board. Title  
24 27A, the Clean Water Act, is the more general  
25 statute. Title 82 is a more specific statute related

1 to the OWRB. In applying the canons of construction  
2 in Title 82, the OWRB is granted exclusive  
3 jurisdiction over protecting water. That's the role  
4 of the OWRB.

5 One of the issues that was brought up by  
6 several of the protest letters is related to the  
7 drilling and plugging that we had done on the property  
8 and there was a -- a question and a concern related to  
9 that, and as an exhibit to the hearing I would like to  
10 supplement -- I would like to supplement the record to  
11 provide a letter from our McCaleb Company and OWRB  
12 well completion and plugging reports, which basically  
13 identifies and addresses the issue.

14 There was a concern that our drilling and  
15 plugging activity was done incorrectly. And the  
16 letter from our -- our driller basically explains and  
17 expresses the chronological events that occurred  
18 relating to the drilling and plugging operations. And  
19 OWRB -- we were providing the OWRB reports that showed  
20 that we completed and plugged those wells properly in  
21 accordance with their requirements.

22 Also as an exhibit, I'm submitting the  
23 updates to our other permits that we're required to  
24 have in order to conduct our mining operations,  
25 including an update on the -- the OWRB permits and the

1 DEQ permits and subsequent correspondence related with  
2 those governmental agencies.

3 As I said before, Arbuckle Aggregates is  
4 committed to working with the community, addressing  
5 your concerns that you have, providing you information  
6 that you need to -- to -- to feel comfortable with our  
7 operation.

8 As a general housekeeping issue, I would like  
9 to provide two general objections, the first one  
10 related to Title 45 and objecting to all protestants  
11 who live outside the one-mile radius of the proposed  
12 Mill Creek facility pursuant to Title 45H, Subsection  
13 2, and my other blanket objection is all protesters  
14 which did not file an objection letter within the 14  
15 days of the publication, pursuant to Title 45H,  
16 Subsection 4.

17 What I'd like to do at this time is I would  
18 like to introduce Pete Dawson who is a representative  
19 of the company and give him a few minutes to basically  
20 tell you who Arbuckle Aggregates is and basically give  
21 you an idea of the plan of the company and his  
22 experience with mining.

23 MR. SHOLAR: Thank you. In regards to  
24 your objection, they are so noted but, again, this is  
25 an informal conference and objections really have no

1 -- no standing here today, so.

2 But Mr. Dawson, give your name and address,  
3 please, sir.

4 MR. DAWSON: Good morning. My name is  
5 Peter Dawson. I am the president of Arbuckle  
6 Aggregates. My business address is 5020 Tennyson  
7 Parkway, Plano, Texas, 75024.

8 MR. SHOLAR: Thank you, sir.

9 MR. DAWSON: I'd like to just take a few  
10 minutes and provide a company -- little bit of a  
11 company overview and background for you-all.

12 There are some deep Oklahoma roots that exist  
13 in Arbuckle Aggregates. There are three members of  
14 the LLC: myself, and I have two partners. One of my  
15 partners is -- is here today. His name is Barry Rich.  
16 Barry's from Bryan County. His family still lives in  
17 Bryan County. My other partner is Rod Vilhauer. Rod  
18 is from the Loyal area, which is just northwest of  
19 Kingfisher. Between the two families, there's about  
20 10,000 acres of land ownership within the state of  
21 Oklahoma that exists throughout a number of  
22 generations going back to statehood. So there's a  
23 very deep concern and appreciation for protection and  
24 long-term development of management of land from an  
25 agriculture of ranching and a wildlife habitat and --

1 and conservation perspective.

2 In addition, my background is I have an  
3 education as a mining engineer and have over 20 years  
4 of experience in the mining business, principally  
5 aggregates, and have had a variety of different roles  
6 ranging from front-line supervision to executive-level  
7 management over a number of quarries throughout Texas  
8 and Oklahoma. Most recently in my role is here as  
9 president of Arbuckle and I have utilized a number of  
10 resources inclusive of EST, Incorporated in Norman,  
11 Oklahoma, Geoff Canty, which is the representative for  
12 EST, that's assisted us in evaluating the property and  
13 completing the permit applications.

14 What we're -- what we're very interested in  
15 doing is successfully obtaining all the permits that  
16 are required for us to develop an aggregate business  
17 from this quarry located in Mill Creek. Once we have  
18 all the permits, we intend to then invest additional  
19 monies to develop the business and operate it, which  
20 will create employment and tax base in the local  
21 community. We're interested in understanding  
22 everybody's concerns. I've met with a number of folks  
23 that have expressed concerns, including neighbors, and  
24 the -- our door is always open to understand what  
25 people's concerns are so that we can try to work

1 together and -- and address them.

2 From a planning perspective, I know this will  
3 be a little hard for everyone to see, but these are  
4 the maps that are contained within our permit  
5 application. We have purchased about 582 acres. This  
6 line right here is -- is Highway 1 and 7 and the BNSF  
7 rail line. Our property ranges from the east side of  
8 the highway, the west side of the highway, and the --  
9 the west side of Frisco Road. Of the 582 acres that  
10 we own, we're permitting approximately 575 acres. The  
11 difference between the 582 and the 575 is principally  
12 the -- the boundaries in -- we're permitting the  
13 boundaries inside our fence lines, so there's certain  
14 loss of land that are within the county road right of  
15 way and easements. In addition to that, we've also  
16 leased approximately 1950 acres of -- of land --

17 AUDIENCE MEMBER: I'm sorry --

18 MR. DAWSON: -- of water rights --

19 AUDIENCE MEMBER: -- I can't hear a word  
20 you're saying. It's all kind of going together  
21 somewhat. Can we work with the mic or something so we  
22 can hear these?

23 MR. SHOLAR: You might be able to --  
24 this is a projection-type speaker, so you might be  
25 better if you move over here. That might -- that

1 might help you. I can't -- I can't change -- it's not  
2 an overall sound system.

3 MS. WILLIAMS: Can he raise it to meet  
4 his mouth?

5 MR. DAWSON: I tried that.

6 MR. SHOLAR: Just too tall.

7 AUDIENCE MEMBER: Hold it.

8 MR. DAWSON: It's not going to go.

9 MR. SHOLAR: I don't know how long the  
10 cord is, though. I apologize for that --

11 MR. DAWSON: Right. There's not very  
12 much cord. I'll try and do a little better here.

13 In addition to the land that we own, we've  
14 also leased 1950 acres approximately of land in the  
15 immediate vicinity for water rights, surface and  
16 ground water, and so that is the -- the asset base  
17 that we have from which we're -- we're trying to  
18 obtain all the -- or for which we're in the process of  
19 obtaining all the necessary permits to develop our  
20 business.

21 What we anticipate doing is, upon successful  
22 completion of obtaining the permits, we've planned to  
23 install some infrastructure in the quarry -- roads,  
24 buildings, truck scale, install a crushing plant --  
25 and begin quarry business which we anticipate will --

1 will be both a local truck business and we have --  
2 where I just gestured there, we have designed a plan  
3 for a rail loop so that we can take railcars into the  
4 facility and load them and send them to various  
5 destinations.

6 We anticipate, based on the -- the analysis  
7 we've done to determine the quantity and quality of  
8 reserves, that we have a business life that will be in  
9 excess of 50 years based on the property that we're in  
10 the process of now permitting. And with that, I think  
11 that that is the end of my just brief overview and  
12 then we will address any -- any other points or  
13 questions later.

14 MR. SHOLAR: Thank you very much. Does  
15 Arbuckle have anybody else that's going to speak  
16 first? Okay.

17 MS. NICHOLS: No.

18 MR. SHOLAR: All right. Now what we'll  
19 do is we'll move into the phase for the -- for  
20 everybody else gets -- gets a chance to -- to talk.  
21 We'll start with the -- the representative speakers  
22 and, like I said, this is, again, informal conference  
23 and each speaker will have -- in this list will have  
24 six minutes to -- to give -- to give your comments and  
25 Mr. Shore will have a clock here and a card. He'll

1 remind you as you get -- as you get closer to your --  
2 to your time and we're going to hold that to the -- to  
3 the six minutes. So the -- the first speaker is Kevin  
4 Blackwood. You're not a speaker? You just signed --  
5 you just like the pink list, right? Okay.

6 Then our next speaker will be Laurie Anne  
7 Williams.

8 MS. WILLIAMS: Mr. Sholar, before you  
9 proceed, could we know what exhibits have been marked  
10 thus far, the ones that have just been handed in and  
11 what they are?

12 MR. SHOLAR: Do you have a list, Jenna?

13 MS. TACKETT: I marked as No. 20 Exhibit  
14 --

15 MR. SHOLAR: Jenna.

16 MS. TACKETT: -- the supplemental -- I  
17 marked as Exhibit 20 the supplemental application  
18 which included all of those -- the -- the additions to  
19 each of the sections and the incremental maps. Do you  
20 want me to read that?

21 MS. WILLIAMS: What date were those  
22 filed?

23 MS. TACKETT: The date of the letter is  
24 December 2nd and it is Section 1, changes reflecting a  
25 phased bonding approach and associated map. Section

1 2, updated corporate officers. Section 3, updated  
2 list of issued permits, authorizations, and related  
3 information. Section 4, change date of reclamation  
4 plan, coverage beginning two -- 2011 and provided  
5 additional clarification, maps, updated location and  
6 reclamation maps, and checklist, a summary checklist  
7 of changes. This was what Miss Nichols called the  
8 supplement to the application.

9 And then Exhibit No. 21 is the McCaleb and  
10 Company Incorporated letter, drilling and plugging  
11 activity summary, and the OWRB well completion and  
12 plugging reports. It says 12 bore holes.

13 MS. WILLIAMS: And the date on that.

14 MS. TACKETT: It is also December 2nd.

15 MR. SHOLAR: Thank you, Jenna. All  
16 right.

17 Miss Williams.

18 MS. NICHOLS: Excuse me. I think that  
19 there was one more exhibit that was associated with  
20 that. That -- the update on the permits.

21 MR. SHOLAR: Thank you.

22 MS. TACKETT: Okay. Exhibit 22 is DEQ  
23 air quality extension approval of air quality permit,  
24 2009-105-NOI; the DEQ's storm water construction  
25 authorization, OKR-1010501; DEQ OPDES permit

1 authorization OKG 950048; and COE concurrence  
2 correspondence documentation e-mail dated 5/17/10, and  
3 this letter is also dated December 2nd.

4 MR. SHOLAR: Thank you.

5 Ms. Williams.

6 MS. WILLIAMS: It's a lot to ask,  
7 Mr. Hearing Officer, to ask us to review all of this  
8 in six minutes to tell you what our concerns are.

9 I am a neighbor to this facility. My family  
10 has had an 8,000-acre ranch in the same location since  
11 the nineteen -- early 1900s. Mr. Dawson nor Mr. Rich  
12 nor Mr. Vilhauer have ever come to speak with me.  
13 They know I'm there. I've seen Mr. Dawson in hearings  
14 throughout the Martin Marietta mine and the water  
15 issues related to that. I will object immediately to  
16 an indication by Mr. Dawson that this is a good  
17 neighbor. A good neighbor would come to talk with  
18 us.

19 My second opening point is that today's event  
20 is premature. We've just had a whole pile of  
21 documents that have just been delivered to you today.  
22 There are 330 individuals -- and those are all  
23 individuals; I'm sad that you've marked them  
24 collectively because those all represent individuals  
25 and households in this area that are going to be

1 affected by this event.

2 Forty years ago today, the EPA was created in  
3 the Nixon administration. On the anniversary of that  
4 monumental act, we're going to ask you also to do a  
5 monumental act, and that is to say no. To say no to a  
6 facility that has been created from bits and pieces to  
7 make money only from rocks that will be sent to Texas  
8 to be used in Texas roads, delivering to Oklahoma  
9 almost a nil amount of any good.

10 Mr. Dawson and Miss Nichols said that the  
11 applicant owns all of the property. They do not own  
12 the state highway that runs through the property,  
13 which they chose to buy property on two sides of a  
14 major highway which is not only used for trucks, it  
15 has a rail that goes next to it, it is used for  
16 individuals, and it is a very active highway that  
17 actually leads to Texas and to Oklahoma City. This is  
18 their choice.

19 I wrote the mining board and I said how many  
20 mines are there in the state of Oklahoma that fit this  
21 situation. I got a letter back and it said there are  
22 two. And it said there are two that where there are  
23 tunnels under the road, because that is the initial  
24 application that we're reviewed where this mine wants  
25 to come under the highways 330 feet and put 30-by-30

1 boxes -- think of that, 30-by-30 boxes -- underneath  
2 our state highways. Well, they don't own those  
3 highways. Then they say, well, maybe we'll just send  
4 the rock over the road, over the highway. This is the  
5 most ill-conceived plan I have ever seen and I've  
6 expressed that in my protest that is marked Exhibit  
7 No. 15.

8           It's okay to say no. People have asked me,  
9 my friends and colleagues, they said, "Why are you  
10 doing this today, Laurie? There's no hope to convince  
11 the mining commission, whose job is to promote mining,  
12 that this is an ill-advised ruse of a plan." I said,  
13 I am doing this because I still believe that Oklahoma  
14 has a future, not as a hole, but as a place where  
15 tourism grows, where people come to smell the air,  
16 they come to eat the good beef, and they come to  
17 Oklahoma for a reason. They don't come to Oklahoma to  
18 see us as a colony of Texas and that is what is  
19 happening in Johnston County, and that is what these  
20 gentlemen will do.

21           Dennis Rodman wrote a book called "Bad As I  
22 Want to Be." Mr. Rich, his family was a wonderful  
23 family to take Dennis Rodman, the basketball player,  
24 into his home -- and he's the greatest rebounder of  
25 all time. But this is how I see this today is that

1 this company thinks they can be bad as they want to  
2 be. They can mess up the road; they can put pits on  
3 either side. There are only two mines that have roads  
4 that go over a mine, and the second one is in Tulsa,  
5 and in September of last year, four people in a car  
6 drove off into that pit and three of them died.  
7 That's the kind of safety and welfare that we're  
8 looking at here.

9 I understand you're a runner, and a marathon  
10 runner. In Crested Butte, Colorado, the citizens of  
11 Crested Butte, Colorado said no to a mine that wanted  
12 to reduce Red Lady Mountain to nothing. They spoke  
13 up, just like recently the people of Gunter, Texas  
14 spoke up to Arbuckle Aggregates and said no when they  
15 came to them -- this is October 20th. I have about  
16 six exhibits that I do wish to have marked and if  
17 you'll let me finish, I will then ask those to be  
18 marked.

19 One misconception I want you to know is that  
20 during a meeting before the Oklahoma state legislature  
21 on November 10th, Mr. Burdick, who is associated with  
22 the mining commission -- I believe he's one of your  
23 commissioners -- said that he did not believe that  
24 anything drilled as a mine into the Arbuckle-Simpson  
25 Aquifer resulted in a wet mine. Well, that is an

1 absolute falsehood and I want you to erase that from  
2 your mind at this time. We abut this mine, we object  
3 to this mine, we do not think it is transparent, we  
4 believe that Texas has said no to Arbuckle Aggregates  
5 for an ill-conceived plan there, and we ask that the  
6 mining commission at this point, before it goes any  
7 further, say no to this ill-conceived plan. And I  
8 will present my exhibits for marking.

9 MR. SHOLAR: Here -- will you say  
10 those -- say those into the record so we can get that  
11 down.

12 MS. WILLIAMS: Yes.

13 MR. SHOLAR: And then give them to  
14 Jenna, please.

15 MS. WILLIAMS: My first exhibit is the  
16 Federal Insurance Company v. Rodman, and Rodman is the  
17 predecessor in interest to Arbuckle Aggregates.  
18 Rodman went bankrupt. 330 employees -- that's noted  
19 in my application -- were let go. This is a brand new  
20 company, but this is a case filed by the Federal  
21 Insurance Company and Pacific Indemnity Company  
22 against Rodman, Mr. Vilhauer, and Barry Rich, October  
23 8, 2010.

24 The paper -- this is a summary of the Senate  
25 Energy and Environment Committee hearing November 10,

1 2009. I would ask that be marked.

2 I have a picture that shows the boundary of  
3 our ranch next to the mine, and you can see that we  
4 are indeed the neighbors, but we've never been spoken  
5 to, and the road that bisects it.

6 I have a little more -- another map that  
7 shows some of the detail of the highway and other  
8 items.

9 I have a picture of the karst formation at  
10 Mill Creek ranch that's just about a quarter mile  
11 away. It's a cave showing all the fractured -- a  
12 fractured cave there.

13 I have also have an article from October 13,  
14 2010 from the North Texas Community News which is,  
15 "Gunter says no to big business. Gunter Council votes  
16 against annexing land to build a concrete plant."

17 I also have the cover -- a picture of the  
18 cover from "Bad As I Want to Be" by Dennis Rodman that  
19 I will also submit.

20 MR. SHOLAR: Okay. Thank you, ma'am.  
21 Those -- those are exhibits -- if my numbering is  
22 correct, I believe those are Exhibits 23 through 29.

23 MS. WILLIAMS: And I'm sorry to bring  
24 all this -- all this in front of you, but these are  
25 DEQ applications and mining permit applications, the

1 first one, the second one, just to show you what --  
2 what difficulties we have in looking through all this  
3 information.

4 MR. SHOLAR: All right.

5 Our next representative speaker is Amy Ford.  
6 Amy Ford?

7 MS. FORD: I signed up to speak both as  
8 an individual and as an entity, and I'm going to  
9 reserve my right to speak as an individual.

10 MR. SHOLAR: Okay. One or the other,  
11 it's your choice. All right. Okay.

12 Our next speaker is Paul Roan. Mr. Roan,  
13 state your name and address for the record, please.

14 MR. ROAN: Yes, sir. I'm state  
15 representative Paul Roan and I live at 3300 Deer Pond  
16 Lane here in Tishomingo, 73460.

17 I represent -- and the reason I'm outside the  
18 one-mile limit, I represent 34,165 constituents in  
19 House District 20, and about 10,500 of those live here  
20 in the Johnston County and another about 2500 in  
21 Pontotoc County that are directly involved with the  
22 Arbuckle-Simpson Aquifer and I rise to speak for  
23 them.

24 I took one little note that the attorney for  
25 Arbuckle Communication -- or, Arbuckle Communications,

1 there is such a name -- Arbuckle LLC made the  
2 statement a while ago about -- about water produced in  
3 a -- in a mine is not under the Oklahoma Water  
4 Resources Board and I agree that there was a lawsuit  
5 over -- I think it was over in Carter County and she  
6 talked about the general versus specific statutes.  
7 However, that specific statute that she refers to is  
8 silent on -- on whether or not water produced in  
9 surface mining over a single-source aquifer is covered  
10 or not. That was one judge's opinion and I think it's  
11 on appeal status at the Supreme Court at this time.

12 I'm going -- I'm going to be real quick  
13 here. One thing that really scares me about this is  
14 I'm afraid where -- where this mine is located it will  
15 deplete and contaminate Pennington Creek, which is the  
16 sole source of water for the city of Tishomingo where  
17 I live, where about 35 other people live. I think it  
18 could possibly deplete and contaminate our water. I  
19 think it could negatively affect the Tishomingo Fish  
20 Hatchery, which water comes -- all the water they use  
21 comes from Pennington Creek. It could destroy aquatic  
22 organisms -- organisms, it deplete -- depreciate the  
23 amount of water that's available for wildlife.

24 I've been told that at one point the depth of  
25 the water in the Arbuckle there is about 12 foot, so

1 you're going to get into water quite quickly when they  
2 start their mining operation and it would directly  
3 affect the flows of the streams and -- and the creeks.  
4 I would -- I would say this, that Senate Bill 288 did  
5 tie stream water and surface water together and -- and  
6 under Senate Bill 288, Oklahoma water resources law,  
7 when you go to get a permit, you've got to be sure  
8 that you don't degrade the quality of the water and  
9 you don't waste it. And with that, I'll close my  
10 comments. Thank you.

11 MR. SHOLAR: Thank you, sir. Appreciate  
12 your comments.

13 Our next speaker is Jason Aamodt. State your  
14 name and address, please, sir.

15 MR. AAMODT: Sure. My name is Jason  
16 Aamodt and I represent CPASA. Can you all hear me  
17 okay? No? I feel like I'm yelling so I'll speak up a  
18 little louder. Is that better? Okay. Someone who  
19 was with me told me I needed to speak up because I  
20 mumble sometimes.

21 I'm an attorney and I represent CPASA in this  
22 matter. Familiar with a number of the folks over  
23 there -- Mr. Dawson, Mr. Canty -- who are here on  
24 behalf of Arbuckle Aggregates. My client, CPASA, has  
25 a number of I think important concerns, Mr. Scholie.

1 We've laid them out in six categories. We think the  
2 administrative process that's being used for this  
3 hearing is inappropriate and denies the individuals as  
4 well as my client an opportunity to meaningfully  
5 participate. I believe we've documented our concerns  
6 on that. Miss Hollarn from my office had written your  
7 office a letter setting forth our concerns and I think  
8 you've marked it as an exhibit --

9 MR. SHOLAR: Yes, sir.

10 MR. AAMODT: -- today.

11 MR. SHOLAR: Yes.

12 MR. AAMODT: In general, though, we  
13 think that the decision making that the board will  
14 engage in in this case, before there can be any formal  
15 evidence presented and the opportunity for discovery  
16 or cross-examination, violates the concepts of the  
17 administrative process and that the agency's decision  
18 could never be based on substantial evidence because  
19 there will be no -- effectively no evidence whatsoever  
20 before the board when a decision is being made as the  
21 process is laid out right now.

22 Notwithstanding the fact that you're marking  
23 documents as exhibits today, as you've pointed out  
24 this is not a formal hearing, there's been no  
25 opportunity for discovery for us to learn all of the

1 facts, and there's no opportunity for cross-  
2 examination of any witness in a formal setting to  
3 really set out what the facts of this case may be.  
4 Therefore any decision that would occur before that  
5 opportunity for formal hearing were to occur we  
6 believe would be violative of the citizens of  
7 Oklahoma's due process rights under the Oklahoma  
8 constitution.

9 I haven't had a chance to -- to review the  
10 revised permit applications that were submitted I  
11 think as exhibits earlier. I understand that I may  
12 get an opportunity to do that. I think their Exhibits  
13 No. 20 and 22 would be effectively revisions to the  
14 permit application. Because of that, we would of  
15 course request the opportunity to supplement our  
16 comments on the application as it may have been  
17 revised. And I'm not certain if any of my comments  
18 may now be outdated as a result of the applicant's  
19 changes to their application. We object, however, to  
20 the applicant making these late changes kind of after  
21 the fact on the day of hearing that effectively are a  
22 surprise to all of us and don't give us an adequate  
23 opportunity to meaningfully participate in the  
24 administrative process.

25 Primarily, however, and I think our most

1 important point with respect to the application, is  
2 that under the -- the way it's been constructed by the  
3 applicant, they don't have nor are they even planning  
4 on seeking all of the necessary permits from the other  
5 agencies that may be required. Notwithstanding  
6 counsel's argument regarding different administrative  
7 bodies primary jurisdiction under the different  
8 statutes, it's clear that the mining board's own rules  
9 require the applicant to get the necessary permits  
10 from those other agencies, and among them are permits  
11 that are required under Section 404 of the Clean Water  
12 Act.

13           Recently, other mining companies over the  
14 Arbuckle Aggregates -- over the Arbuckle-Simpson  
15 Aquifer have sought and obtained coverage for similar  
16 mining operations under Section 404 of the Clean Water  
17 Act. It's important environmentally because it  
18 requires the mining company to mitigate their effects,  
19 to make other wetlands better or establish new  
20 wetlands for the ones that are being destroyed, and  
21 this applicant plans to destroy a significant quantity  
22 of wetlands. They're going to destroy a portion of  
23 the headwaters of both Mill Creek and Pennington Creek  
24 if their mining application is approved. They'll just  
25 be gone, as well as an important spring.

1           In addition to impacts on the environment,  
2 Mr. Scholie, we think that the designation of  
3 Pennington Creek as a high-quality water under the  
4 Oklahoma Water Resources Board's rules, which are  
5 applicable here, prohibits this particular  
6 application, that the actual Pennington Creek itself  
7 and its status as a high-quality water prohibits  
8 the -- this permit from being issued, at least for a  
9 portion of the area that is planned to be mined.

10           In addition, we think that there is  
11 significant human health and welfare concerns. We  
12 can't emphasize strongly enough the -- that the  
13 Arbuckle-Simpson Aquifer is a sole-source aquifer,  
14 designated by the EPA as such because it is  
15 effectively the only source of drinking water for tens  
16 of thousands of people in this area. When -- if this  
17 mine were to be installed, it would cause the  
18 uncontrolled infiltration of this ground water, which  
19 will significantly impair and impede the use of that  
20 aquifer for its purpose as drinking water. That water  
21 will be wasted and the resource and the federal  
22 purpose will be frustrated.

23           May I have a moment to conclude?

24                   MR. SHOLAR: How much do you need?

25                   MR. AADMOT: A minute, maybe.

1 MR. SHOLAR: I'll allow -- I'll allow  
2 about a minute.

3 MR. AAMODT: All right. Thank you,  
4 sir.

5 The final two points that we would make,  
6 Mr. Scholie, are that the board has set out in Section  
7 122 of the board's statutes certain fundamental  
8 purposes. Among those purposes are protection of the  
9 environment, protection of natural resources, but you  
10 also are responsible for protecting property values  
11 and protecting the aesthetics of the area. We believe  
12 that evidence that would be presented that we're not  
13 able to present today because of the process would  
14 establish all of the things that we've laid out in  
15 this argument, but would also establish that the  
16 property values of the communities surrounding this  
17 proposed mine would be substantially reduced as a part  
18 of the mine, and as a result, this mine cannot be  
19 permitted.

20 Finally, this mine we believe would have  
21 significant detrimental effects on the aesthetics of  
22 the area, causing effectively Mill Creek to begin to  
23 become the Bridgeport, Texas of Oklahoma. Now, I  
24 don't know if you've been to Bridgeport, but you  
25 probably have. It's a big mining area. There's not

1 much there but a big hole in the ground and we don't  
2 think that ought to be permitted.

3 MR. SHOLAR: Thank you for your  
4 comments.

5 I will -- I will note for the record that,  
6 like I said, this is an informal conference. No  
7 decision has been made. This is part of the decision-  
8 making process as is the next step, which would be a  
9 formal hearing, so today no decision is being made.  
10 This is just a fact -- fact finding. And in regard to  
11 the submitting the supplements, that is just part of  
12 that decision-making process. Okay.

13 At this time I don't have any more  
14 representative lists in front of me. I'm going --  
15 we're going to start with some of the -- of our  
16 individual speakers. Let's see.

17 Is Mr. Clyde Runyan -- okay. All right.  
18 Could we get your name and address, please, sir.

19 MR. RUNYAN: Clyde Runyan, Post Office  
20 Box 144, Mill Creek, Oklahoma, 74856.

21 I lived in the Mill Creek area there, oh,  
22 around 35 years. I've lived in the present location  
23 right there for seven, eight years. Once these mines  
24 come in, just about every one of them come in there  
25 and I've got a -- my property joins their property.

1 They're right across the fence from me. What's the  
2 value of my property going to be when they start  
3 mining right across the fence? I've already got  
4 Martin Marietta in my front door and I've got U.S.  
5 Silica in my back door.

6 I watch the water being wasted from the  
7 silica plant -- 4.1 million gallons a day going down  
8 the creek. I really don't know what Martin Marietta  
9 is using. They're using a lot of water out of Mill  
10 Creek. I know Mill Creek is about half of what it was  
11 four or five years ago. I know that the dust up there  
12 -- I'm concerned over dust pollution. I see a lot of  
13 dust. I've called DEQ. That doesn't do any good.  
14 Everybody I've called for help, including you people  
15 right here -- nobody wants to -- nobody wants to  
16 police these people.

17 I don't need another mine in my back door  
18 with nobody telling them how much water they can get  
19 or there's no monitor on anything. Wells have gone  
20 dry, people's called -- we -- we never get any -- any  
21 problems that we have answered by anybody, including  
22 you-all. And even at the Senate hearing, the guy that  
23 was representing you people said that all the mines  
24 were dry mines in -- in Johnston County. We've got --  
25 I don't know -- eight mines down there. No one

1 polices these people. We don't want any more mines in  
2 our area. We don't need any more mines in our area.

3 I've talked to a lot of people -- well, not a  
4 lot of people -- seven, eight people that live north  
5 of the mines there within a mile that their wells have  
6 gone dry. And we call -- we call water resources  
7 board, we call DEQ, and nobody -- nobody will come up  
8 and answer any problems that we've got. And light  
9 pollution -- my boy -- I have Laurie Williams'  
10 property leased -- my boy lives on a hill a mile from  
11 Martin Marietta on a hill. Swear to God, looks like  
12 Las Vegas -- doesn't need a night light anymore, but  
13 it used to be a nice, quiet, peaceful place. You  
14 couldn't hear machines running, you couldn't hear  
15 buzzers beeping when they back up. You could walk out  
16 of your house and you didn't smell diesel smoke. I  
17 smell it now.

18 I don't want any more mines in -- in my  
19 area. I don't want -- I don't want to be around a  
20 mine. Mines are no benefit to anybody in Johnston  
21 County and as far as I'm concerned, they're raping the  
22 land and taking it all to Texas and -- and we're going  
23 to let -- be left with a hole in the ground.  
24 Schools -- they say Mill Creek School is going to go  
25 -- probably go out this year. No mine pays anything

1 to the -- to the -- why aren't they paying something?  
2 You tell me. But they don't pay anything to our -- to  
3 any school -- Tishomingo, Mill Creek. Anyway, that's  
4 it. Thank you.

5 MR. SHOLAR: Thank you for your time,  
6 sir.

7 Mr. CI Maxwell, Sr.

8 MR. MAXWELL: I'm CI Maxwell, Jr. I  
9 live at 4500 Highway 7 West, Tishomingo, Oklahoma,  
10 73460.

11 I have become acquainted with the Arbuckle  
12 Aquifer about 1933. I'm 87 years old now. I lived  
13 with my uncle for three summers while he was doing  
14 his -- his BS and MS and his PhD to get his degrees  
15 and stuff in geology. I am neither a geologist nor an  
16 attorney, but I've (inaudible) with a lot of them and  
17 some of it's come off. I do wish that at times that I  
18 was with my uncle that we did have a GPS, so I would  
19 like to go back to some of the places spot by spot  
20 where the wonderful pleasures that I saw back in 1933,  
21 '34, and '35. It's all changed now. Everybody has  
22 cleared the land, pushed the timbers out, and  
23 everything like that.

24 I will say this: Arbuckle Aggregates has  
25 attempted to preempt anything that would make them

1 liable for anything that they have done. We're here  
2 for one purpose today: to decide on the amount of  
3 water that's going to be had. There's two different  
4 reasons here: Arbuckle Aggregates and money. The  
5 ranchers and -- and people of Johnston County here is  
6 a way of life. I cannot see why the Arbuckle  
7 Aggregates cannot take their pit water that they have,  
8 pump it up into undisturbed overburden, and take the  
9 overburden from the pit that they're going to use and  
10 let the water settle out, because you cannot  
11 contaminate limestone with limestone dust. It's the  
12 same thing.

13 But now, if they do perhaps have a spill of  
14 -- of oil or something like that from their washing of  
15 their machinery and stuff like that, it's very easy  
16 for them to take that sheen and take it off, and as  
17 long as they have water in the settling tank, it will  
18 not go down in the aquifer. The Arbuckle Aquifer  
19 itself is very porous. We do not have -- when we have  
20 our thunderstorms and stuff, which happens three or  
21 four times a year, you do have runoff water, but it  
22 goes down very quickly. Very little of it will soak  
23 in -- soak into the aquifer to recharge it.

24 The recharge of the aquifer comes from  
25 precipitation that usually it starts in and about the

1 middle of September all around through May or  
2 something like that, and that water is -- is duly  
3 general precipitation, either general rain or snow or  
4 sleet or something like that, and it stays on top of  
5 the ground and it will penetrate into the aquifer  
6 through the fines and the things like that. Now, if  
7 they will go ahead --

8 MR. SHOLAR: Thank you for your time.

9 MR. MAXWELL: -- and not pump the  
10 water -- they plan on buying their water from U.S.  
11 Silica. U.S. Silica pumps the water out of the  
12 aquifer for their mining thing up on the north plant,  
13 so there would be no advantage to save the water in  
14 the aquifer by allowing them to take the water from  
15 the U.S. Silica, use it down there for their washing  
16 and -- and scrubbing and things like that and then  
17 pump it out completely out of the aquifer down into  
18 the -- the lower veins because they do not -- the --  
19 the place where they have run the pipeline to down  
20 there is completely out of the aquifer and it's just  
21 like you put a -- a well down in that thing and start  
22 pumping it out. They're going to use many, many, many  
23 million gallons of water.

24 MR. SHOLAR: Okay.

25 MR. MAXWELL: Now, gentlemen, I ask you

1 to stop it. I mean, you've got -- you've got to make  
2 a division somewhere. There is a place --

3 MR. SHOLAR: Sir, we appreciate your  
4 comments. If you have anything --

5 MR. MAXWELL: I'm sorry, I can't hear  
6 you.

7 MR. SHOLAR: Sorry, sir, your time is  
8 up, and if you have any additional comments, we'll be  
9 glad -- we'll be glad to have you -- you can submit  
10 them to us in writing, but we need to -- we need to go  
11 ahead and proceed on so everybody will have a chance  
12 to speak.

13 MR. MAXWELL: Yeah. Okay.

14 MR. SHOLAR: Thank you very much. Okay.  
15 We have a couple of representatives that I'm going to  
16 go ahead and hear.

17 Mr. Bruce Noble of the National Park Service.  
18 State your name and address, please, sir.

19 MR. NOBLE: Good morning. I did sign  
20 the representative list. I'm not quite sure what  
21 happened to it.

22 MR. SHOLAR: That's okay. We got you.

23 MR. NOBLE: My name is Bruce Noble. My  
24 address, business address, is 1008 West Second Street,  
25 Sulphur, Oklahoma, ZIP code 73086. And if the uniform

1 does not give me away, I'm here representing the  
2 National Park Service.

3 AUDIENCE MEMBER: Could you speak into  
4 the microphone, please?

5 MR. NOBLE: I'll try my best.

6 AUDIENCE MEMBER: Can you put it down at  
7 the end of the table and stand at the end of the  
8 table?

9 MR. SHOLAR: No, ma'am. It's only got a  
10 certain length so he'll tell -- he's just going to  
11 have to talk in from the side. I apologize for that.

12 MR. NOBLE: My wife tells me I speak too  
13 loud. Do you hear me okay? Okay. And pardon me, I'm  
14 going to be somewhat boring and read a statement  
15 here. I'm not quite as dynamic as some of the other  
16 speakers.

17 The National Park Service provides the  
18 following comments on the application for an Oklahoma  
19 non-coal mining permit filed by Arbuckle Aggregates,  
20 Inc. More specific written comments and supporting  
21 documents are also submitted today to the Oklahoma  
22 Departments of Mines to provide information to support  
23 our concerns. The National Park Service is concerned  
24 about the development of the Arbuckle-Simpson Aquifer  
25 and the potential impact to springs and streams that

1 rely on this ground water system, including those of  
2 national significance within Chickasaw National  
3 Recreation Area, the national park area in Sulphur  
4 where I serve as superintendent.

5 This park was -- was originally established  
6 as the Sulphur Springs Reservation in 1902 and was  
7 formally designated Platt National Park in 1906.  
8 According to the legislation that established the park  
9 in 1906, I quote, The secretary of the interior may,  
10 under rules prescribed for that purpose, regulate and  
11 control the use of the water of said springs and  
12 creeks, end of quote. Acting on behalf of the  
13 secretary, the park staff has worked hard to carry out  
14 these management responsibilities for over a century.

15 It is important for you to know that the  
16 park's water resources have suffered many serious and  
17 possibly irreversible adverse impacts over the past  
18 century as water development has occurred in and  
19 adjacent to the park. Data indicate that the total  
20 amount of water discharging from flowing wells and  
21 springs in the vicinity of the park are about 10  
22 percent of what they were in the early 1900s. And  
23 that is not a typo, it's 10 percent.

24 We have taken steps within the park, such as  
25 regulating the discharge of the Vendome well, in an

1 attempt to arrest the decline in spring and stream  
2 flows. However, because the primary source areas for  
3 such flows are located outside of the park boundaries,  
4 effective protection of park springs and streams  
5 requires actively managing land use activities in  
6 these source areas outside of the park.

7           Surface mining has the potential to disrupt  
8 and permanently alter the physical and chemical  
9 characteristics of a hydrological system. Even after  
10 mining is complete, in general, permanent changes may  
11 include changes in ground water storage, changes in  
12 the ground water flow direction, reduction in the base  
13 flow of streams, and evaporative losses from post-mine  
14 impoundments.

15           Specific issues that need to be addressed are  
16 as follows: Number one, the -- the excavation and  
17 dewatering of the pit will create a depression in  
18 potentiometric surface that will lower ground water  
19 lever -- levels in the aquifer during mining.

20           Number two, the post-mine impoundments will  
21 result in continued long-term impacts to the aquifer  
22 through evaporative losses. Evaporation from an open  
23 water body in Oklahoma may greatly exceed annual  
24 precipitation.

25           Number three, the amount of water available

1 for appropriation from the Arbuckle-Simpson Aquifer  
2 will be reduced by the project, even after mining is  
3 complete, and must be considered in the overall  
4 management of the aquifer.

5           Number four, if water is diverted from the  
6 proposed surface water locations, less water will be  
7 available to downstream users on Mill Creek. This  
8 will exacerbate the existing conflicts between the  
9 downstream domestic water users on Mill Creek and may  
10 result in increased ground water needs that are  
11 indicated -- or than are indicated in the proposed  
12 mine application.

13           Number five, the current calculations of  
14 available water for surface water at the proposed  
15 point of diversion failed to include the effects of  
16 existing and proposed mining activities relies on a  
17 runoff number that is at the upper range for this  
18 area, assumes existing users will not require the full  
19 amount that they are entitled to at any year, and  
20 fails to address conditions in a below-normal year.

21           These issues suggest that there is inadequate  
22 water available to meet the water supply needs of  
23 Arbuckle Aggregates on a long-term basis. Excuse me.  
24 The combined effect of the two existing mines and the  
25 proposed mine need to be addressed. The close

1 proximity of each of these mines and the potential  
2 impacts to the ground water system, both during mining  
3 and in the post-mining environment, need to be  
4 considered.

5 The National Park Service believes that the  
6 long-term sustainability of springs of Chickasaw  
7 National Recreation Area requires the careful  
8 management of the Arbuckle-Simpson Aquifer, including  
9 the management of land use activities that may impact  
10 the ground water system. Because of the cumulative  
11 hydrological impacts associated with the proposed and  
12 existing mines, we request that the Arbuckles --  
13 Arbuckle Aggregates mine application be denied.

14 MR. SHOLAR: Mr. Noble, are you going to  
15 submit that as -- your letter as an exhibit?

16 MR. NOBLE: I am, yes.

17 MR. SHOLAR: Okay. What number is that,  
18 Jenna?

19 MS. TACKETT: Thirty.

20 MR. SHOLAR: It's Exhibit No. 30,  
21 Mr. Noble, park services letter.

22 MR. NOBLE: And do you want me to read  
23 the title of it?

24 MR. SHOLAR: That's -- that's fine.

25 MR. NOBLE: Okay.

1 MR. SHOLAR: Thank you for your time.

2 MR. NOBLE: Thank you.

3 MR. SHOLAR: All right.

4 Mr. Steve Cullinan, fish and wildlife  
5 service.

6 MR. CULLINAN: Good morning. Hear me  
7 okay?

8 My name is Steve Cullinan. I am representing  
9 the southwest region of the U.S. Fish and Wildlife  
10 Service. Our regional office is located in  
11 Albuquerque, New Mexico, 500 Gold Avenue Southwest,  
12 87102.

13 We have two facilities here in the Tishomingo  
14 area, though.

15 AUDIENCE MEMBER: Speak louder, please.

16 MR. CULLINAN: We have two facilities  
17 here in the Tishomingo area. I'm representing the  
18 fish and wildlife service from our regional office in  
19 Albuquerque. I have some comments here that we'll  
20 submit as an exhibit to let you go through it.

21 We are protesting the Arbuckle Aggregates  
22 mining application. The proposed mine is roughly  
23 within one mile of headwaters of Pennington Creek.  
24 The U.S. Fish and Wildlife Service has two federal  
25 facilities that depend on Pennington Creek for its

1 water supply: Tishomingo National Wildlife Refuge and  
2 Tishomingo -- Tishomingo National Fish Hatchery. The  
3 hatchery is involved with threatened and endangered  
4 fish and the refuge was established to protect  
5 migratory birds.

6 The Oklahoma Water Resources Board within the  
7 last year has completed a multi-year Arbuckle-Simpson  
8 hydrology study. Pennington Creek is totally  
9 dependent on spring flow from the Arbuckle-Simpson  
10 Aquifer. The Arbuckle-Simpson study has six  
11 objectives. With the completion of the -- the recent  
12 completion of the report, they have met five of those  
13 objectives, namely, all the scientific data and  
14 analyses and collection. So the science has been done  
15 on the Arbuckle Aquifer.

16 The sixth objective, and I'm quoting here  
17 from the study, proposed water -- the OWRB will  
18 propose water management options consistent with state  
19 water laws that address water right issues, the  
20 potential impacts of pumping on springs and stream-  
21 based flows, water quality, and water supply  
22 development, end quote.

23 Clearly, Arbuckle Aggregates and their  
24 operation may have impacts on springs and stream-based  
25 flows. We're concerned about Pennington Creek. They

1 are within roughly one mile of Pennington Creek  
2 headwaters. The management options of Objective 6  
3 have not yet been released by OWRB. The U.S. Fish and  
4 Wildlife Service requests that no action be taken on  
5 this application until OWRB aquifer management  
6 guidelines have been proposed and implemented so that  
7 senior water right holders on Pennington Creek are  
8 protected.

9 MR. SHOLAR: Thanks. Is that going to  
10 be your -- part of an exhibit? That will be Exhibit  
11 31. All right.

12 Our next representative speaker will be Lewis  
13 Parkhill.

14 MR. PARKHILL: Thank you for the  
15 opportunity to speak. My name is Lewis Parkhill. I'm  
16 a resident of 409 South Mickle, Tishomingo, Oklahoma.

17 I speak in -- with two hats, as a property  
18 owner along Pennington Creek, a resident of the city  
19 of Tishomingo. For ten years I've been an elected  
20 member of the Tishomingo City Council, currently  
21 serving my third term as mayor. The elected city  
22 position interest is that Pennington Creek is the  
23 high-quality stream which -- and it is a sole source  
24 of our water supply as well as a great part of our  
25 other developments. Let me explain some of these

1 features.

2           The applicant's mining permit application  
3 specifies use of over 500 acres of land over a  
4 sensitive sole-source aquifer and its recharge areas,  
5 and particularly that eastern section comes within one  
6 quarter of the headwater areas of Pennington Creek.  
7 And these streams, these small unnamed streams, are  
8 necessary for the healthy production of water for  
9 Pennington Creek and City of Tishomingo's municipal  
10 use.

11           The application permit describes the intent  
12 to engage in open-pit mining, to use all necessary  
13 soil removal, and uses of both ground and surface  
14 water to attain the mission of the mining enterprise.  
15 It further states the intent to wash the materials  
16 that has mined and states that mine pit dewatering  
17 will occur at some time in the future. These  
18 practices will disrupt drainage and recharge patterns,  
19 which will reduce the flows to Pennington Creek  
20 headwaters and Pennington Creek itself.

21           The application acknowledges that the mining  
22 operation expects to encounter ground water necessity  
23 -- necessitating pit dewatering. Dewatering the pit  
24 will be a wasteful use of water that would otherwise  
25 have contributed to the springs and stream flows

1 necessary for maintaining historical levels of stream  
2 flow in Pennington Creek. The mining application  
3 shows some disregard for basic hydrology and the  
4 downstream effects of mining, stating that no named  
5 rivers or streams are involved. And while this is  
6 technically true in a literal map sense, unnamed  
7 tributary to Mill Creek does appear on the map and  
8 gives us all I think warning that a named stream or  
9 river need not be on the map to be damaged by degraded  
10 flows from unnamed tributaries.

11 And while headwaters and tributaries of  
12 Pennington Creek does not appear on the applicant's  
13 map, these water resources are present in close  
14 proximity to proposed mine as surely as the unnamed  
15 tributary of Mill Creek. When downstream larger named  
16 streams receive less flow from tributary streams,  
17 their flow will be degraded. Mill Creek and  
18 Pennington Creek will be at risk if this permit is  
19 granted.

20 Damage potential is great, and I'll be brief  
21 here. Loss of private property value from degradation  
22 of both quality and quantity of Pennington Creek flow,  
23 reductions in quality or quantity of Pennington Creek,  
24 the sole source of water for the city of Tishomingo,  
25 population 3,200, material damage to the city.

1            Attachment 1 shows the city of Tishomingo,  
2 the county area, and that the federal government have  
3 considerable investment in infrastructure of along  
4 Pennington Creek. Above Tishomingo at raving, the  
5 national wild -- the National Fish Hatchery is  
6 dependent on Pennington Creek for its fishery's  
7 projects. Further down, Slippery Falls Boy Scout  
8 Camp. Further down Pennington Creek the Tishomingo  
9 Golf Course, Pennington Creek Lodge, both dependent on  
10 Pennington Creek. The City of Tishomingo municipal  
11 dam for city water and our water and waste water  
12 treatment plants are also reliant on Pennington Creek.  
13 South of the city, the creek feeds into the Tishomingo  
14 National Wildlife Refuge and is essential to its  
15 mission.

16            The city benefits both socially and  
17 economically from all these developments made possible  
18 by the flows of Pennington Creek. Besides municipal  
19 water, Pennington Creek provides the city with a  
20 beautiful city park setting with developed pavilions,  
21 fishing, picnic, playground and bathroom facilities,  
22 RV sites, and walking trails. Besides providing the  
23 necessity for daily life, the creek is a significant  
24 quality of life value as well as a great recreational,  
25 tourism, and economic value.

1           The Attachment 2 shows the proximity of the  
2 wining -- of the mining application area to the  
3 sensitive sources of stream flow for Pennington Creek,  
4 and Attachment 3 gives a wider area view showing the  
5 proposed Arbuckle Aggregates mining site at the top,  
6 with clear signs of Pennington Creek headwaters in the  
7 mine area as well as prior development along  
8 Pennington Creek, providing beneficial uses of those  
9 waters. As -- because of these reasons, we would  
10 request denial of this permit application. Thank you.

11           MR. SHOLAR: Thank you, sir, for your  
12 comments.

13           Our next individual speaker will be Gloria  
14 Webb. Miss Webb, will you state your name and  
15 address, please.

16           MS. WEBB: My name is Gloria Webb, 1250  
17 Webb, Tishomingo.

18           I speak as a layperson and as a property  
19 owner. My well, my sole water support, is a hand-dug  
20 well over a spring that runs directly into Pennington  
21 Creek. It is obvious to even anybody who has eyesight  
22 that water seeks the lowest level and goes down. If  
23 there is a lower area, it will go down and drain the  
24 higher area. It seems to me that's axiomatic and  
25 self-evident.

1           That principle that I object on is a  
2 principle that might makes right and I object that it  
3 does, and Barry, whose last name I didn't catch, who  
4 was introduced as one of the owners, introduced  
5 himself to me as I think Cherokee and Choctaw, and I  
6 would remind him that might makes right created the  
7 Trail of Tears and brought Indians to Oklahoma over  
8 their objections, and homesteaders were equally  
9 dispossessed on the principal of might makes right.  
10 And for that reason, I object to power or money  
11 depriving people of water, and as a psychiatric nurse  
12 with a master's degree, I hold the belief that they  
13 can do this is psychotic. Thank you.

14           MR. SHOLAR: Thank you, ma'am.

15           Our next -- our next speaker is Phil  
16 Converse.

17           MR. CONVERSE: My name is Phil Converse.  
18 I live at 513 East 23rd, Tishomingo, Oklahoma.

19           I'm a property owner approximately two miles  
20 from the proposed plan. It's -- I have a mile of Mill  
21 Creek that runs through my place. Before the mines,  
22 Mill Creek was a beautiful spring-fed stream. It was  
23 not unusual to catch a big stringer of smallmouth  
24 bass. The smallmouth bass are gone now because of the  
25 reduced water flow on Mill Creek raises the

1 temperature of the water, and because of the reduced  
2 flow we've already lost that species in Mill Creek.  
3 So this mine proposal is also in the Mill Creek  
4 basin.

5 Mill Creek can't take any more or it's going  
6 to be a dry bed stream. This -- also this mine is in  
7 the -- right next to the Pennington springs. We have  
8 already seen what it did to Mill Creek. Now we're  
9 going to see what it does to Pennington if this mine  
10 permit is issued. Thank you.

11 MR. SHOLAR: Thank you, sir.

12 Next speaker is Mr. Matt Mauck. He's with  
13 the department of wildlife.

14 MR. MAUCK: Good morning. I'm Matt  
15 Mauck with the Oklahoma Department of Wildlife  
16 Conservation. Gotcha.

17 I'm Matt Mauck with the Oklahoma Department  
18 of Wildlife Conservation, 2021 Caddo Highway, Caddo,  
19 Oklahoma, 74729.

20 I suspect that our agency will also submit a  
21 formalized letter during this -- during this open  
22 record time, but to issue a few comments today, our  
23 agency is -- has concerns with excessive water use and  
24 the potential negative effects to the underlying  
25 aquifer and subsequent reduced spring and stream

1 flow.

2           Recent modeling work by the Oklahoma Water  
3 Resources Board and through a professor at Oklahoma  
4 State University has showed that -- has demonstrated  
5 that even mild reductions in stream flow can translate  
6 to significant loss of usable habitat for stream  
7 aquatic organisms. In -- in this proposed site,  
8 obviously shallow to -- shallow depth of ground water  
9 exists and it likely for a -- a large, deep quarry to  
10 function as a local ground water sink, pulling in  
11 water from the underlying aquifer. Again, this water  
12 is unique and of high quality.

13           The permit, at least in the form where we  
14 were able to review it, doesn't address the fate of  
15 this pit water. We do not feel that using this high-  
16 quality pit water for washing of aggregates or dust  
17 depression and for spilling of this water to dewater  
18 the pit is a -- is a -- is a viable use for this is --  
19 is not a beneficial use. It's also important that  
20 environmental flows and downstream uses be protected  
21 and given consideration prior to determining the  
22 amount of surface water allowed in a water board  
23 surface water permit, which was included in -- in that  
24 permit.

25           We feel it is premature to permit this or

1 similar mining permits prior to the completion and  
2 policy coming about from the hydrologic -- hydrologic  
3 studies currently underway by the Oklahoma Water  
4 Resources Board. It is unknown if the natural flow  
5 from springs and streams originating in the vicinity  
6 will be diminished by the use of surface water and the  
7 eventual use of pit water, which is acknowledged that  
8 will be used in this permit.

9 We hold the opinion that pit water should be  
10 regulated similar to pending ground water legislation  
11 and not left as an unregulated, nonmetered resource.  
12 It can also be noted that there are numerous streams  
13 that reside over the Arbuckle-Simpson Aquifer. Just  
14 to mention a few, Mill Creek, Pennington Creek, and  
15 Blue River, all which have recreational and economic  
16 draws associated with fish and wildlife values there.  
17 Our agency owns over 3,000 acres of -- of public land  
18 on Blue River where we have tremendous hunting and  
19 fishing opportunities and a lot of this comes from the  
20 lifeblood of the -- the water that flows through that  
21 area.

22 We, you know, came wanting to know some --  
23 some more details regarding the treatment and the  
24 disposition of the generated industrial weight --  
25 waste water and the storm water runoff that's going to

1 be associated with this permit if it goes through.  
2 The fate of the accumulated pit water measures the  
3 mine has demonstrated to conserve and recycle water  
4 that would be available to them as well as alternative  
5 sources of water or off-site material washing  
6 potentials. And like I said, we will likely be adding  
7 a formalized letter as well.

8 MR. SHOLAR: Thank you, sir. All  
9 right.

10 Next speaker is Dick Scalf.

11 MR. SCALF: My name is Dick Scalf. I --  
12 my address is Post Office Box 851, Ada, Oklahoma,  
13 74820.

14 I'm a civil engineer, civil and environmental  
15 engineer, registered in Oklahoma and Texas. For the  
16 last three and a half years, I've served on the Ada  
17 City Council and the City of Ada will have a --  
18 whatever --

19 MR. SHOLAR: Exhibit --

20 MR. SCALF: -- formal protest letter --

21 MR. SHOLAR: -- letter.

22 MR. SCALF: -- later. The Arbuckle-  
23 Simpson Aquifer has been the source of water for Ada  
24 and most of Pontotoc County for over a hundred years,  
25 primarily through the Byrds Mill Spring, the largest

1 spring in Oklahoma. I think currently we serve about  
2 25,000 customers through the city of Ada and the  
3 associated rural water districts that we serve.

4 As far as we know, the ground water basin  
5 that serves Byrds Mill Spring doesn't extend to this  
6 mine area, but it comes close and it's hydrologically  
7 connected. It's impossible to mine below the water  
8 table without lowering the water table. If the water  
9 table in this area is lowered, it affects the water  
10 table in the Byrds Mill Spring recharge basin. And  
11 it -- and that in turn lowers the flow of the Byrds  
12 Mill Spring. There's nothing -- there's not even a  
13 close second -- that is more important to the past,  
14 the present, and the future of the city of Ada and  
15 Pontotoc County than the Arbuckle-Simpson Aquifer. So  
16 we urge you to deny this permit for two simple  
17 reasons: the potential good is almost nil, the  
18 potential bad is enormous.

19 MR. SHOLAR: Thank you, sir.

20 Our next speaker is Shannon Shirley. And  
21 please state your name and address for the record,  
22 please.

23 MS. SHIRLEY: I'm Shannon Shirley. My  
24 address is 2370 North Daube Ranch Road, Mill Creek,  
25 Oklahoma.

1           First off, I'd like to say that I think it's  
2 very telling that you have all these agencies and  
3 these representatives, these municipalities, and --  
4 and people from the tribes that are here that are --  
5 that are all very vested in this area and that care  
6 this much. I think that should tell you that you've  
7 got a problem on your hands. A few years ago I met  
8 Pete Dawson when he was working for Martin Marietta,  
9 and live on Mill Creek a couple of miles down from  
10 Martin Marietta, next door to Phil Converse. And we  
11 bought that area because it was so beautiful. We just  
12 -- I mean, it was just the most drop-dead gorgeous  
13 place you've ever seen in your life.

14           And during these water hearings, Pete Dawson  
15 and his company informed us there would be no effect  
16 on Mill Creek. They had a stream water permit to pump  
17 but, you know, we could control that through the water  
18 board so we wouldn't be affected and, of course, there  
19 was no other reason to worry. Well, then the pit  
20 water started coming. They started sucking all the  
21 water out of the ground. Mill Creek has gone to a  
22 trickle of its former self. We've lost species of  
23 fish through that and other things, and the -- we --  
24 we just don't have any water. We're dependent on Mill  
25 Creek for all our water use. We're on granite, so we

1 use it for domestic, we use for the animals, we use it  
2 for everything but drinking.

3 We have appealed to different agencies for  
4 help, but there is no solution for pit water right  
5 now. We're trying to get some legislation passed that  
6 controls it and monitors it, counts it, makes it not  
7 invisible water that they can just do what they want  
8 with and dry up everybody else. And we expect the  
9 mines to help us with the pit water legislation.  
10 We're getting support from some of them. Some of them  
11 are trying to get in before that happens.

12 We would like very much to see this  
13 application denied. We want to continue to live  
14 there. Mill Creek will be dead. We'll have to move.  
15 I mean, it will just be gone. And it was once big  
16 enough that they were going to put in a public water  
17 supply down at the end of it, and they did 30 years,  
18 the conservation -- the Corps of Engineers did a  
19 30-year plan to build a public water supply down at  
20 the end of it and now there's not even enough water  
21 for Martin Marietta to use it to wash rock with. But  
22 they got plenty of pit water, so it's not a big  
23 problem now.

24 And also, I'd like to thank everybody for  
25 coming. I appreciate it. The creeks appreciate it.

1 That's all I've got to say.

2 MR. SHOLAR: Thank you, ma'am.

3 Reginald Robbins.

4 MR. ROBBINS: I'm Reginald Robbins. I  
5 live at 2370 North Daube Ranch Road, Mill Creek,  
6 Oklahoma. 74586 is the ZIP.

7 We've lived there since '98. The spring has  
8 been depleted by mining upstream. We need this -- we  
9 do not need another mine on the creek. We'd like for  
10 you to deny the application of Arbuckle Aggregates.  
11 Thank you.

12 MR. SHOLAR: Thank you, sir.

13 Bill Brunk.

14 MR. BRUNK: My name is Bill Brunk, P.O.  
15 Box 280, Fittstown, Oklahoma, 74842.

16 I also own land on Mill Creek below Martin  
17 Marietta. The stream has been impacted greatly by  
18 Martin Marietta. I fear the same thing would happen  
19 with Pennington Creek through this new mining  
20 application. I also have property on Blue River. I  
21 live on Byrds Mill Spring in Fittstown. In Fittstown  
22 we have mines that's about two and a half miles away,  
23 but they do not mine below the water level and I don't  
24 have anything bad to say about Union Stone.

25 But when you allow the mines to go into the

1 aquifer, they're going to destroy it. And once you  
2 stop that underground stream that's going to that  
3 spring, you'll never put it back together again and  
4 you are responsible somewhat as to whether this  
5 happens or not. Thank you.

6 MR. SHOLAR: Thank you, sir.

7 Don Rhodes.

8 MR. RHODES: Yes. My name is Don  
9 Rhodes. I live at 330 G Street Southwest in Ardmore,  
10 Oklahoma. I represent Rhodes Ranching Company and I'm  
11 a member of CPASA. Rhodes Ranching Company over the  
12 last ten years sits on the western side of the  
13 Arbuckle-Simpson. The natural springs have seen  
14 really a drastic drop in the natural springs of 25 to  
15 30 percent and I -- that's why I object to the --  
16 you-all this application and, anyway, that's about it,  
17 I guess.

18 MR. SHOLAR: Thank you, sir.

19 Steven Jolly.

20 MR. JOLLY: Steven Jolly, P.O. Box 753,  
21 Davis, Oklahoma, 73030.

22 I'm also a manager of the Arbuckle Master  
23 Conservancy District for the Arbuckle Reservoir. My  
24 board has asked me to come here today to be on a fact-  
25 finding mission more than anything to understand your

1 proceedings because I've never been to one of these  
2 before, and I hear you say earlier that there will be  
3 a formal hearing set.

4 MR. SHOLAR: I said after the  
5 departmental notice is given out, anybody who receives  
6 it, anybody who's adversely reflect -- adversely  
7 affected have a right to petition for a -- for a  
8 formal hearing. So this is just one step in --

9 MR. JOLLY: So you didn't say earlier  
10 that there will be a formal hearing.

11 MR. SHOLAR: No. The -- I mean, only if  
12 it's requested, if it's requested.

13 MR. JOLLY: By any individual --

14 MR. SHOLAR: By anybody --

15 MR. JOLLY: -- that's on record today?

16 MR. SHOLAR: By any individual.

17 MR. JOLLY: Okay. Like I said, my board  
18 asked me to come here today. I -- according to our  
19 water reports that we submit to the water resources  
20 board, our district serves a population of excess of  
21 50,000 people in southern Oklahoma through mainly  
22 municipal and industrial water supply.

23 I'd just like to, for sake of time, just echo  
24 comments of Bruce Noble, park superintendent, that the  
25 Arbuckle Lake sits in the boundaries of the Chickasaw

1 National Recreation Area and we are concerned about  
2 anything that affects the natural spring flow of the  
3 Arbuckle-Simpson that usually ends up in the -- our  
4 lake. It's estimated that over 60 percent of our  
5 water in our reservoir is derived from spring, natural  
6 spring flow. So we're very concerned about anything  
7 that affects that and I just appreciate being here  
8 today and that's all I have to say. Thank you.

9 MR. SHOLAR: Thank you, sir.  
10 Carlyle Hill.

11 MR. HILL: My name is Carlyle Hill. My  
12 address is 20295 State Highway 1W, Ada, Oklahoma,  
13 74820.

14 Like some other speakers here -- Clyde  
15 Runyan, Phil Converse -- I have property on Mill  
16 Creek. I am a great-great-grandson of Cyrus Harris,  
17 first governor of the Chickasaw Nation. Part of that  
18 property that's still in our family was the allotment  
19 that he received in the -- in the mid 1800s. We've  
20 been in the ranching business before statehood in this  
21 area and I was raised on Mill Creek.

22 I know what Mill Creek was. It isn't the  
23 creek that it has been all these years since Martin  
24 Marietta opened their operations. That's when I first  
25 met Pete Dawson, which represented Martin Marietta,

1 telling me about this good neighbor policy that they  
2 have. I -- I met you-all many times when we requested  
3 you to come down and look at the flow of Mill Creek  
4 when they were pumping water out of Mill Creek, when  
5 they said they wasn't pumping water out of Mill Creek,  
6 but they was. This was in the summer of 2006.

7 The Chickasaw Nation -- I went to the  
8 Chickasaws. They assisted me in setting up a weir on  
9 a dam that was built my -- by my great-uncles and my  
10 grandfathers in 1938 on the property, the Mill Creek.  
11 We set up a weir and monitored the creek, and you-all  
12 had records of that too that we gave you-all where  
13 there was detrimental, reduced flow of the creek.

14 And as Phil Converse said, we -- we do not  
15 have the fish in Mill Creek anymore. It -- it  
16 actually just quit flowing parts of -- parts of the  
17 summer of '06 and another quarry in this area is --  
18 is -- is just going to be that more detrimental to the  
19 -- to -- to that. It -- we have people here and --  
20 and I have property that's close to Pennington Creek  
21 also. Pennington Creek is a beautiful spring-fed  
22 creek and -- and -- and if you want to see what  
23 happened to Mill Creek, that's going to be what  
24 happened to Pennington Creek if this continues.

25 Also know that the -- the quarries that are

1 presently there, I heard Mr. Dawson say that there  
2 would be a lot of truck sales. That is a -- less than  
3 probably two percent of trucks sales. All the rock  
4 will be going to Texas. All the money will be going  
5 to Texas, not stay here in Oklahoma, as Clyde brought  
6 out, and stay in our school systems, stay in our area,  
7 and that is why I am asking this application be  
8 denied.

9 MR. SHOLAR: Thank you, sir.

10 Johnna Thompson.

11 AUDIENCE MEMBER: I have nothing further  
12 to add.

13 MR. SHOLAR: Tell you what -- at this  
14 time, let's take about -- let's take a five-minute  
15 break. I have 11:22, so in five minutes we will pick  
16 back up again.

17 (Recess taken from 11:22 a.m. to  
18 11:30 a.m.)

19 MR. SHOLAR: All right. We are going to  
20 resume listening to some speakers in PAN 10-05-IC for  
21 Arbuckle Aggregates, LLC, permit LE 2361.

22 Our next speaker will be Miss Linda Hogan.  
23 State your name and address, please, ma'am.

24 MS. HOGAN: Linda Hogan. I live at 903  
25 North Kim.

1 I'm a writer for national publications and my  
2 family has been here since Indian removal. They came  
3 here so my ancestors have been here for many  
4 generations.

5 Water right now is our most important issue.  
6 This is a community that has many health issues as a  
7 result of the mining that's already -- already  
8 underway. But our aquifer is significant to our  
9 lives, our community, and our -- our town. I'd  
10 like -- I would like to see the environmental impact  
11 statement that was done on this because nobody can  
12 really own the flow of water, the movement of it. You  
13 can't own it. If you have acre feet, perhaps you can  
14 box it in, but we don't know how it moves under the  
15 earth always and into the streams and rivers because  
16 that's the water that we have.

17 If -- if somebody hits someone on a bicycle  
18 with their car, they would be investigated. If they  
19 did it premeditatively and ran into a pedestrian, it  
20 would be a crime. This is really a premeditated crime  
21 against a community and they understand what's going  
22 to happen. These are experienced people. We  
23 understand what's going to happen because we live here  
24 but this -- and this is our life and this place is our  
25 livelihood.

1 I do work for the Chickasaw Nation. We're  
2 very active in struggling against this, but I'm here  
3 as a citizen. I think that the dishonesty that has  
4 gone into this is really also a symptom of power over  
5 the powerless, because this is a very underserved  
6 community. They could have gone to a place that  
7 had -- if they went to a place with people who were of  
8 a different economic class and educational group, they  
9 would be -- this would not -- this event would not be  
10 happening now in that area.

11 Anyway, we cannot foresee the kind of  
12 destruction to the environment, the destruction to the  
13 migratory birds that are significant -- this place is  
14 significant not only to here, but to Nebraska and to  
15 the world, because there are certain birds and  
16 certain -- certain birds that migrate here from across  
17 the nation for the water and they are attracted by the  
18 water. So the use of the water, the ground water and  
19 the surface water, and breaking into the aquifer, this  
20 really should be the eleventh commandment that thou  
21 shall not steal water.

22 But I ask you, please, to deny their permit,  
23 and I will write about this so that it's not just  
24 known in this community, but it's not just known in  
25 the state of Oklahoma that has loose environmental

1 laws, but that it's known in larger circles because it  
2 needs to be publicized. Thank you.

3 MR. SHOLAR: Thank you, ma'am.

4 Paul Hall.

5 AUDIENCE MEMBER: He had to leave.

6 MR. SHOLAR: Okay.

7 Amy Ford.

8 MS. FORD: Good morning. Amy Ford, 889  
9 Knight Drive, Durant, Oklahoma. You need my ZIP code?  
10 Okay.

11 I would first like to state that I'm here as  
12 an individual. I'm also president of CPASA and I will  
13 not be speaking on behalf of CPASA members, other than  
14 to express some concerns of several CPASA members who  
15 did want to attend, but Thursday at 9:30 in the  
16 morning a number of them are working and did not have  
17 the opportunity to get away, so when formal hearings  
18 are scheduled, we may want to consider some  
19 alternative time that would allow more participation.

20 I am here today to -- going to speak to the  
21 one-mile geographic limitation imposed by the  
22 department of mines on potential citizen protest.  
23 While this may work in some parts of the state, it  
24 simply does not work in the Arbuckle-Simpson. We have  
25 a unique structure here and there are a couple of

1 issues why it doesn't work. A large number of the  
2 water sources are miles from their ultimate use and  
3 limiting me -- the protestants to one mile limits my  
4 ability to protect my source, which could be  
5 potentially be much further downstream.

6 Byrds Mill strings -- springs is 20 miles  
7 from Ada, yet Ada feels the effects of reduction of  
8 Byrds Mill Springs directly. The Arbuckle-Simpson  
9 study shows that a reduction in any one area of the  
10 aquifer has ramifications in other areas of the  
11 aquifer and thus, the one-mile geographic limit is  
12 completely arbitrary and we're asking that this  
13 restriction be set aside as part of this protest to  
14 continue to allow us our due process in this protest  
15 process.

16 I would also like to note for the record that  
17 when miss -- Miss Nichols spoke earlier in her initial  
18 introduction, Arbuckle Aggregates indicated their --  
19 their -- their want to be a part of this community,  
20 they're Oklahoma citizens, and in the next breath  
21 informed us that the pit water was a legal use of --  
22 that they had legal use of the pit water. We do  
23 recognize that, to date, that you do have legal use of  
24 the pit water. We are working to bring that pit water  
25 under the jurisdiction of the OWRB and at some point

1 we would like you to address if that is brought under  
2 the OWRB's jurisdiction, what are your plans for  
3 modifications of your mining operations to -- to -- to  
4 take that pit water into account as subject to the  
5 permitting process, so. Thank you.

6 MR. SHOLAR: Thank you, ma'am.

7 I will make known and some of you-all  
8 probably already know this that I did set aside the  
9 one-mile limit because I felt this was an important  
10 issue and it couldn't be discussed just within a one  
11 mile, so that's why everybody here who has signed up  
12 to speak is -- is given that opportunity, so.

13 Our next speaker is Floy Parkhill.

14 MS. PARKHILL: My name is Floy  
15 Parkhill. I live 409 South Mickle Street, Tishomingo,  
16 Oklahoma, 73460.

17 I've lived at this address for 33 years. I  
18 own a home there on Pennington Creek near Pennington  
19 Creek Park within the city limits. Mining so close to  
20 the headwaters of Pennington Creek will interfere with  
21 the natural flow of streams and springs that create  
22 that creek, thus my water supply, both the quantity  
23 and the quality, will be put at risk. If the creek is  
24 irreparably damaged, my only alternatives are to haul  
25 in water or move. Either way I lose, and so do the

1 3200 other people in Tishomingo who also depend on the  
2 waters of Pennington Creek as their sole source of  
3 water.

4 My husband and I raised our children in this  
5 community. They live in other states now and  
6 frequently come to visit like they did last week to  
7 share Thanksgiving. When they come we all go walking  
8 on Tishomingo's trails, visit the refuge, and our  
9 grandkids play in the park. I don't know if they will  
10 want to move back here, or my grandkids might want to  
11 move back here at some future date, but I want them to  
12 have the option of doing so. I don't want them to  
13 come back and see a wasteland where there was once  
14 natural beauty, where there was once abundant wildlife  
15 and vegetation, where there was once recreation, where  
16 there was once life.

17 It would be great for all of us if the  
18 department of mines and Arbuckle Aggregates could  
19 guarantee that this will not happen, but we all know  
20 that such a guarantee cannot be given in good faith,  
21 so without it the risk to me, my children, my  
22 grandchildren, and all my neighbors is too great. I  
23 oppose the granting of this permit. Thank you.

24 MR. SHOLAR: Thank you, ma'am.

25 Ray Lokey.

1 MR. LOKEY: I am Ray Lokey and my  
2 address is P.O. Box 520, Tishomingo, Oklahoma.

3 I'm a publisher of Johnston County Capital-  
4 Democrat, the newspaper based here in Tishomingo. I'd  
5 like to just submit for the record an editorial that  
6 was published from today's issue of the newspaper  
7 opposing this permit. I would also like to note that  
8 while the department of mines prepared a notice of  
9 this meeting for publication, that, after visiting  
10 with your office earlier in the week, as far as we  
11 know, we never received a copy of that notice and it  
12 was not published in the newspaper. I believe it was  
13 scheduled for publication on October 21st and October  
14 28th we find no record that we Ever received it.

15 My understanding was it is not a requirement  
16 by law that it be published prior to this informal  
17 conference; however, I do believe that there are some  
18 people who would have been here today that were unable  
19 to make arrangements to attend this meeting because  
20 they did not have proper notification.

21 And finally, the last thing I'd like to say  
22 is the -- as -- as you know, there was a study done by  
23 the Oklahoma Water Resources Board, a five-year study  
24 at a cost of millions of dollars, of the Arbuckle-  
25 Simpson Aquifer in this area, and I believe it is

1 imperative that the results of that study be  
2 considered and viewed at prior to any -- any permit  
3 being granted to this company for mining purposes and  
4 any evidence or information provided by that agency  
5 who -- who has the expertise and the knowledge to  
6 advise the department of mines on the impact that this  
7 mining operation would have on the aquifer. That's  
8 all.

9 MR. SHOLAR: Thank you, sir.  
10 Fred Chapman.

11 MR. CHAPMAN: My name -- my name is Fred  
12 Chapman. My address is Post Office Box 1754, Ardmore,  
13 Oklahoma, 73401.

14 My family's been in this area for quite some  
15 time. My grandfather came in 1887 to Indian Territory  
16 and we started buying land and ranches and we have  
17 several. They came because of the springs and the  
18 flowing water, and being from dry Texas, this was a  
19 boon. And we don't have near as much water as we had  
20 back then and we're losing water every day because of  
21 the quarries. My father started irrigating during the  
22 Depression and was flowing water out of the Washita  
23 and that was being fed from the Arbuckle-Simpson  
24 Aquifer. When I got out of the Army in 1953, I filed  
25 for water rights, irrigation rights, and we've kept

1 them up-to-date. We're one of the few ranches in this  
2 area that kept their water rights up-to-date.

3 We the people of this area realize that water  
4 is a crucial part of our existence and we cannot -- I  
5 have two ranches that are on Mill Creek and the Mill  
6 Creek watershed. The one down next to the Washita  
7 west of Ravia, we've had no water for about six years  
8 flowing down that far because of the quarries, and  
9 then we have another ranch that is on Oil Creek and --  
10 and Mill Creek little further up. It's six miles  
11 southwest of Mill Creek. And that ranch is totally  
12 served by springs and -- and creek water and we've had  
13 a lot of trouble with our water on those ranches.

14 And we have another ranch over on I-35 and  
15 it's the headwater for Henry House Creek, Cool Creek,  
16 Honey Creek, and Scout (phonetic) Creek, and all these  
17 were from springs and all of them have slowed down  
18 tremendously. And I don't know if you're familiar  
19 with that area, but you can't build ponds because the  
20 rocks are so close to the surface that you just --  
21 they won't hold water. The water goes into the  
22 rocks. And we have a lot of wells and we're -- we're  
23 using windmills, but now we're using solar pumps  
24 mostly and we're able to get by. But --

25 MR. SHOLAR: Thank you, sir.

1 MR. CHAPMAN: -- the main thing that we  
2 need is to have a law through our legislature that  
3 stops all mining into the aquifer. Thank you.

4 MR. SHOLAR: Thank you, sir, for your  
5 time.

6 Mr. David Curtis.

7 MR. CURTIS: I'm David Curtis. I live  
8 at 903 North Kemp here in Tishomingo.

9 And I think it's already been adequately  
10 documented by many people here the environmental  
11 problems and other problems that will arise from this,  
12 and I think this whole process is these people are  
13 going through is symptomatic of what's destroying life  
14 and the lifestyle in this country, not just here.  
15 They're looking at short-term profit. They're not  
16 thinking about what they're doing to the environment,  
17 what they're doing -- they say they're good neighbors.  
18 They don't think about what they're doing to their  
19 neighbors and this is going to come back and bite them  
20 eventually. This is destroying everything. This  
21 whole attitude is going to affect their children and  
22 their grandchildren too. That's all I have to say.  
23 Thank you.

24 MR. SHOLAR: Thank you, sir.

25 Manta Brown. Manta -- Manta Brown.

1 MS. BROWN: I like to sit in the back,  
2 I'm sorry.

3 MR. SHOLAR: That's okay. That's okay.  
4 We won't miss you. Going to make a grand entrance.

5 MS. BROWN: My name is Manta Brown. I  
6 live at 9379 West Griffin Road, which is six miles  
7 south of Mill Creek.

8 I'm not a rancher, I'm not much of anybody,  
9 but I've noticed we have a well -- it is dry now. My  
10 husband and his family have owned that land for about  
11 80 years and I grew up in Sulphur, and in Johnston  
12 County, the park there, the wells -- or the springs  
13 there were never dry when I was a kid. They have gone  
14 dry since then. And your good neighbor policy, I  
15 don't agree with that, I'm sorry. I live right on the  
16 railroad. Those gravel cars that go down that  
17 railroad throw dust -- if you're sitting outside at my  
18 house, you've got to go in till the train goes by and  
19 the dust settles.

20 I just do not think that Johnston County  
21 needs another mine at all, period, end of sentence.  
22 We need to save our water, and if you live in Texas, I  
23 think you-all are wanting our water anyway, but if you  
24 just keep wasting it, you're not even going to get it  
25 then. Gosh, I lost my train of thought.

1           But -- and I'm not saying this to be mean or  
2 anything, because my whole livelihood comes from a  
3 mine. My husband works for U.S. Silica. He's been  
4 there 31 years and he'll die before he leaves there  
5 with silicosis, I'm sure, so mines have been my whole  
6 livelihood, but Johnston County just doesn't need  
7 another one. Thank you.

8           MR. SHOLAR: Thank you.

9           Randy Fullagar.

10           MS. FULLAGAR: My name -- my name is  
11 Randy Fullagar. I live at 7140 North Bellwood Road,  
12 Mill Creek, Oklahoma. That's about seven miles  
13 northeast of Mill Creek.

14           My husband and I own a little place -- about  
15 150 acres is all we have. I'm trying not to get  
16 emotional but, frankly, it shocks me and angers me and  
17 hurts me that any corporate interest so ignores the  
18 needs of the people who cannot go somewhere else,  
19 cannot afford to dig deeper wells and deeper wells and  
20 deeper wells because water is going away. We can't  
21 move just because it's -- we've lost our water and  
22 you've got your gravel. It's not even moral to  
23 presume that your corporate needs and profits are more  
24 important than the needs of all these people.

25           My heart hurts today because there's not more

1 people here. I know that there are more people that  
2 will be touched. I have neighbors and they have wells  
3 and my -- I -- I'm afraid that I'm going to turn the  
4 water on someday and there's not going to be any  
5 water. And I don't have any spring, I don't have any  
6 creek, it's just one well, and we have animals and we  
7 have to take a bath and we have to drink, and we have  
8 nowhere to go. So what are we supposed to do when the  
9 water's gone? You can't give it back. It's not --  
10 water is not something you can put back. When it's  
11 gone, it's gone. And we, all of us, are going to be  
12 just left holding a dry riverbed.

13 I have some pecan trees on my property that  
14 are well over a hundred years old and they're  
15 beautiful, and I know that they will die when the  
16 water table gets down to a certain point. I know they  
17 will. And then eventually all we're going to have  
18 around here is cedar trees because they can survive in  
19 a desert nearly and nothing else can. And I'm just  
20 asking you to deny this permit because, frankly, they  
21 are not interested in our well being and you're  
22 Oklahoma citizens, elected or appointed, I'm not sure  
23 which, but you have responsibility to us, not to  
24 them. And that's all I have to say.

25 MR. SHOLAR: Thank you, ma'am. I

1 appreciate your comments.

2 Terry Beals.

3 MR. BEALS: My name is Terry Beals. I  
4 live at 4001 Golf Course Road, Tishomingo, Oklahoma.

5 And I speak representing myself as a property  
6 owner on Pennington Creek just north of the golf  
7 course. Moved here ten years ago to retire after  
8 spending ten years as executive director of state  
9 veterinarian in Texas, and having traveled Texas from  
10 El Paso to Texarkana and Beaumont to Dalhart, I -- I  
11 know that they use a lot of gravel and I'm not sure  
12 we've got enough gravel to fix all the roads in  
13 Texas. What I don't understand is why they can't find  
14 their gravel in Texas. Having been all over that  
15 state, it's a question that keeps occurring to me.

16 I also represent TREES, which is the  
17 Tishomingo Refuge Ecology and Education Society -- in  
18 common terms, friends group for the refuge and for the  
19 fish hatchery, both dependent on Pennington Creek as  
20 it has been stated here before today. So as a friends  
21 group speaking for about a hundred members of our  
22 friends group, we -- we just respectfully submit and  
23 request that this permit be denied. We -- we support  
24 the comments that have been made here today and we  
25 appreciate the opportunity to be able to submit our --

1 our comments and thank you very much.

2 MR. SHOLAR: Thank you, sir.

3 Albert, do we have any more sign-in sheets?  
4 No? Nobody else. All right. That's going to  
5 conclude our portion of our speaker comments. The  
6 next phase of this is going to be the company will --  
7 will get a chance to respond to the -- to the  
8 issues -- concerns addressed today and then -- and  
9 present whatever you need to at that -- that point.  
10 Okay. So are you all -- take like a ten-minute break  
11 or you want -- I don't want -- I don't want to break  
12 for lunch. I don't want to have to make everybody  
13 wait. I mean, I don't mind a small break if you want  
14 to kind of gather your thoughts before you get  
15 started.

16 MS. NICHOLS: Can we get about a  
17 20-minute break?

18 MR. SHOLAR: What about 15?

19 MS. NICHOLS: Okay.

20 MR. SHOLAR: All right. Fifteen -- 15  
21 minutes. It's 11:57 now, so at 12:12 we will begin --  
22 we'll begin again. Thank you.

23 (Recess taken from 11:57 a.m. to  
24 12:14 p.m.)

25 MR. SHOLAR: Okay, guys. We're going to

1 start back again, open -- open this up.

2 I did find one more person who had signed up  
3 to speak and I want to give -- I want to give  
4 everybody the opportunity to be heard today and so  
5 Mr. Josh Brecheen, Brecheen, would you come -- come  
6 forward. Josh Brecheen, are you here? State your  
7 name and address, please, sir.

8 MR. BRECHEEN: Josh Brecheen, Route 5,  
9 Box three -- 318, Coalgate, Oklahoma.

10 I'm a newly elected state senator. I'll make  
11 this quick; I've got a county commissioner meeting  
12 I've got to go to and I was on my way out. I would  
13 just ask the mining commission to look at this  
14 delicately. From what I understand, this could be the  
15 first permit that would be able to be held up in -- in  
16 history, so I think instead of giving all the common  
17 concerns, it's just going to be a rubber stamp end  
18 result. I think the mining department's got a chance  
19 here to show that you -- you really do take things  
20 seriously and that plays into whether or not the  
21 Oklahoma Water Resources Board ought to have decision-  
22 making power in situations like this. With that I'm  
23 going to head out.

24 MR. SHOLAR: Thank you, sir, we  
25 appreciate it. All right.

1           Before the -- before the Arbuckle Aggregates  
2 folks come back up, Miss Williams has a couple of  
3 exhibits she wants to present for the record. She's  
4 not going to speak, she just wants to present these.  
5 Miss Williams.

6           MS. WILLIAMS: Thank you, Mr. Sholar.

7           Previously I had omitted two exhibits that I  
8 would like to submit. All the -- most of the  
9 discussion has been about Pennington Springs. On our  
10 property is Pilot Springs. That is where about 40  
11 percent of Pennington Springs -- Pennington Creek  
12 originates. I have a video of Pilot Springs. It's  
13 two minutes and twenty -- two minutes and twenty  
14 seconds done by Kevin Blackwood. This is available on  
15 the Internet on YouTube also for those in the audience  
16 at YouTube and just "Pilot Springs." I'd like that  
17 marked as an exhibit.

18           Then I have another very short video that has  
19 still photos of Pilot Springs on Pennington Creek and  
20 just a couple of clips, and it's entitled "You Can Say  
21 No" and that's dated 11/30 of this year.

22           MR. SHOLAR: All right. Let that be  
23 noted as Exhibit 33 and exhibit -- no? Exhibit 34 and  
24 Exhibit 35. Okay.

25           Miss Nichols.

1 MS. NICHOLS: Again, my name is  
2 Elizabeth Nichols. I'm the attorney for Arbuckle  
3 Aggregates.

4 Our response to -- and we appreciate all your  
5 comments and your time. We hope that -- that we can  
6 answer or address the concerns that you've raised and  
7 I think the best way to -- we've decided that the best  
8 way to handle that is for each individual to deal with  
9 their specialty. Obviously, I'm not a miner and I  
10 don't run a quarry and so all of the operational  
11 issues that were raised as far as how the operation is  
12 going to be ran are going to be addressed by Pete  
13 Dawson. As far as the legal concerns that were  
14 raised, being a lawyer I'll address those, and as far  
15 as the technical issues regarding the watershed and  
16 things of that nature, our environmental consultant,  
17 Geoff Canty, is going to respond to those.

18 As far as the legal issues which are the --  
19 what I am going to address the -- the issue was  
20 brought up -- I brought up -- we were discussing pit  
21 water and what would happen with the pit water. It  
22 was brought up that it was one judge's opinion as to  
23 how the pit water should be handled. In accordance  
24 with the ruling from the Oklahoma Supreme Court in the  
25 City of Tishomingo v. OWRB, the pit water is not under

1 the jurisdiction of the OWRB regarding pit water and  
2 so it's -- it's the law of the state. It's not one  
3 judge's opinion, it is the law of Oklahoma as  
4 determined by the Oklahoma Supreme Court.

5 As far as what will happen if at some point  
6 the pit water does come under the jurisdiction of the  
7 OWRB, Arbuckle Aggregates is committed to abide by the  
8 law and the procedure that is in place by the state of  
9 Oklahoma. At some point, if the pit water is put  
10 under the jurisdiction of the OWRB, Arbuckle  
11 Aggregates will obtain whatever permit is necessary  
12 from the OWRB regarding the use of that pit water.  
13 But as the law stands right now, the pit water is --  
14 is not under the jurisdiction of the OWRB.

15 As I said before, Arbuckle Aggregates is  
16 committed to obtaining every necessary permit to  
17 operate this facility. We have or are in the process  
18 of obtaining that. As far as the exhibits that I  
19 introduced as far as it's -- it's more of a supplement  
20 to our application, and when I say it's a supplement,  
21 it's an update on the process of our permits that we  
22 have obtained. When we initially applied for our  
23 application for permit to mine, we were in process of  
24 obtaining other permits and our supplement just  
25 updates where those permits stands.

1           There is a small correction that I'd like to  
2 make. There was a misunderstanding. Barry Rich, who  
3 is one of the owners of Arbuckle Aggregates, is not a  
4 Native American. He's -- he is from the area and has  
5 property in the area. I'm not from Texas. I'm not  
6 listened to practice in Texas. I have been in  
7 Oklahoma for years and years and plan to stay here and  
8 appreciate every comment that every single one of you  
9 made, and hopefully we can address each and every one  
10 of your concerns.

11           We would request that the Oklahoma Department  
12 of Mines grant our permit because our application is  
13 administratively complete, technically correct.  
14 Mining is a lawful activity in the state of Oklahoma  
15 and we believe that Arbuckle Aggregates meets the  
16 requirements in order to receive their permit. And  
17 with that I would pass the floor to Pete Dawson to  
18 address the operational concerns that -- that were  
19 raised.

20           MR. SHOLAR: Mr. Dawson.

21           MR. DAWSON: There's a handful of  
22 comments I wanted to address specifically, first which  
23 starting is our property does straddle where we own  
24 property on both sides of right of ways of both ODOT,  
25 BNSF railway, and a county road right of way, and our

1 plan as we develop the facility is to cross over or  
2 under as needed those right of ways. We've been in  
3 contact with the respective groups and prior to the  
4 construction of any crossing over or under, we will  
5 seek and obtain the necessary approval.

6           There were specific comments made by  
7 different parties about dust and noise. Our  
8 activities on the site as it relates to dust are in  
9 the way dust can be generated and -- and potentially  
10 emitted are regulated by permits that -- and -- and  
11 compliance standards that we have to meet with  
12 Oklahoma Department of Environmental Quality. It's  
13 Arbuckle's plan and -- and we will install necessary  
14 controls and management procedures to operate in full  
15 compliance with those regulations at all times.

16           There was a concern expressed about noise  
17 that's generated at the facility, and there is going  
18 to be some noise that will be -- an increase in  
19 background compared to what is there now. However, my  
20 experience through measuring that with studies state a  
21 weighted decibel sound levels over a period of time,  
22 including in this area, is that any generation of  
23 increased noise is -- is generally not significant and  
24 is very manageable.

25           Next point I'd like to address is there were

1 many comments made about water. During our meeting  
2 with the OWRB yesterday, there was a request made  
3 which we supported and we're going to respond to, to  
4 put in writing what our general plan is for water  
5 management which would include prioritized sourcing of  
6 management, how we plan to use the water, how we plan  
7 to recycle the water, and what our conservation  
8 practices will be, and we're going to put that on  
9 paper and submit it to the OWRB and I believe that it  
10 will wind up becoming part of the permit process as we  
11 move forward on our stream water permits.

12 MR. SHOLAR: And as soon as that becomes  
13 available, we would like to have that or a copy part  
14 of our permitting part of the record.

15 MR. DAWSON: Sure.

16 There was a comment made or a number of  
17 comments made about degrading the land. The first  
18 thing I'd like to say is that going back to my opening  
19 comment, my partners and I have a deep appreciation  
20 for land ranging from conservation to agriculture to  
21 ranching and development of business on -- on land and  
22 it's not our intention to degrade the land or the  
23 surrounding land. We've created a mining plan and a  
24 reclamation plan that's been submitted to the  
25 department of mines and our activities on the site

1 will be fully regulated by the department of mines  
2 should our permit be issued and then subsequent to  
3 that and regular inspections by the department of  
4 mines to ensure that we maintain compliance.

5 As a general practice we -- Arbuckle  
6 Aggregates will obtain all necessary permits prior to  
7 beginning any operating activity that requires a  
8 permit. Amy Ford asked what -- what are our plans if  
9 pit water becomes jurisdictional and Liz spoke to  
10 that, but I just wanted to reiterate from a company  
11 perspective is that we intend to comply with the law  
12 and the law may change, and if the law does change,  
13 then we, as any other operator will be required to,  
14 will comply with that.

15 In my closing statement, what I'd like to say  
16 is that Arbuckle Aggregates is very interested in  
17 working with the regulatory agencies and all concerned  
18 parties in the process of obtaining the necessary  
19 permits that -- that we are still seeking and both  
20 during that -- this process and after this process as  
21 we would develop our business and then operate it in  
22 full compliance with the law and thank you for your  
23 time. I appreciate everybody's comments today so that  
24 we could better understand how people feel and  
25 incorporate those comments into our plan.

1 MR. SHOLAR: Thank you, sir.

2 Since you have not spoken yet, could we get  
3 your name and address for the record, please.

4 MR. CANTY: Sure. My name is Geoff  
5 Canty. I'm with EST, Inc., environmental consultant  
6 for Arbuckle Aggregates.

7 From a technical perspective, they asked me  
8 to talk from a technical perspective. I can  
9 appreciate your concerns and they've been warranted  
10 and where you're coming from. I'd like to point out  
11 that we have evaluated a lot of your issues in detail  
12 and have incorporated them originally into the permit.  
13 There seem to be a couple of repeating themes  
14 throughout and I just pulled three of them because  
15 they seem to coalesce into these: depletion of the  
16 aquifer, polluting of the aquifer and the environment,  
17 and then mining impacts to Pennington Creek.

18 I think I'd like to start with Pennington  
19 Creek. First of all, we are not in the Pennington  
20 Creek watershed. We will not be mining in the  
21 headwaters. We are as close as you can get. The  
22 section line road actually divides us and I've got a  
23 very technical map here highlighted to show you what  
24 I'm talking about, so we'll submit that and you can  
25 take a look at it. We have flown the -- the area and

1 have one-foot topography lines that show that we are  
2 not in Pennington Creek watershed.

3 Depletion of the aquifer, again, I can  
4 appreciate your concern. However, if you attended the  
5 Ada meetings and looked at what the OWRB has produced  
6 in terms of the potentiometric surface maps and you  
7 look at the flow paths, our -- our operation is  
8 down gradient of the park and down gradient of Byrds  
9 Mill Spring, and you -- if you saw any of those, those  
10 are available online at the OWRB web page -- they even  
11 drew lines where the water would flow and show, so  
12 actually the municipalities are having a bitter --  
13 bigger impact on springs and streams than the Arbuckle  
14 Aggregates could possibly have on those springs of  
15 concern.

16 In addition to that, there are four -- four  
17 wells, at least four wells -- there's more than  
18 that -- that are currently being monitored or have  
19 been monitored recently around this general area. You  
20 have to remember that Arbuckle Aggregates is  
21 sandwiched between two other mines and so there is  
22 ongoing well monitoring. The well depths of the water  
23 below the surface has been evaluated, some going back  
24 to 2004, some going back with a couple of data points  
25 into the '70s. This information is on the USGS web

1 page. Feel free to take a look at it. What it  
2 appears to show is that this aquifer is more sensitive  
3 to rainfall, precipitation, than anything. It has a  
4 very seasonal trend; when it rains it goes up, when  
5 it's dry it goes down, and you can look at those  
6 online. And, again, those monitoring around the  
7 facility will go on into the future.

8 In addition to that, I know this concerns, as  
9 Pete mentioned at the beginning of the talk, there is  
10 over a thousand acres that's been leased to help  
11 offset any impacts that we may have from a -- the  
12 depletion. So we're one of the few operations that  
13 are out there that are thinking ahead in this regard.

14 Then with regard to polluting the aquifer, I  
15 think it's important to point out that we are governed  
16 by several agencies and are required to maintain  
17 several permits, plans, and licenses. Those are all  
18 in the permit application. For instance, from an air  
19 pollution perspective, we will have a construction air  
20 permit, we will have an operating air permit which  
21 includes fugitive dust emissions -- that's the ones  
22 that I think people are worried about -- storm  
23 water -- we already have a storm water permit prior to  
24 construction and we'll have to maintain a storm water  
25 permit throughout the life of the mine. So for

1 however long we have the mine in operation, we will  
2 have to monitor our storm water from a quality  
3 perspective, so sediment, erosion -- we have to  
4 maintain BMPs -- best management practices. So this  
5 facility will be regulated by the DEQ and EPA.

6 In addition to that, there was a question  
7 about the process water of being discharged. That  
8 will be quantitatively monitored, meaning it has to go  
9 to an outside, independent, certified laboratory  
10 before we can discharge it and that will be for  
11 sediments, oil and grease, and pH. That process water  
12 will be permitted by the DEQ. We will have to have  
13 permits governing that, that we're maintaining the  
14 quality of it.

15 The mine pit dewatering, I think if you look  
16 at the adjacent facilities that would be sandwiching  
17 our -- our mine, they're completely different  
18 operations and have different impacts or -- or  
19 effects. But you can look at the limestone quarry to  
20 give you a better idea of what we would be  
21 discharging. We are actually right across the  
22 street. So from a dewatering perspective, we're not  
23 anticipating significant amount of water that we  
24 wouldn't already be seeing now.

25 OWRB -- again, from a surface water

1 perspective, we will use the amount of water that the  
2 OWRB will give us. However, the OWRB determines how  
3 much we can have and the water that we have applied  
4 for from -- this is from a depletion perspective -- is  
5 excess water from the U.S. Silica mine primarily and  
6 it's a term permit, so we will not be taking any water  
7 that would naturally be there, so the OWRB does the  
8 calculations on what is available or can be used. So  
9 from a -- again, from that we will be required to  
10 maintain the -- the records that show that.

11 I think with that, that pretty much covers  
12 the three issues -- depletion of the aquifer,  
13 polluting the aquifer and the environment, and the  
14 Pennington Creek -- and we will be more than willing  
15 to look at and evaluate all the additional information  
16 that's coming in from you today and improve our  
17 permit.

18 One thing I think that was left out, some  
19 people made some comments that we at the ninth hour  
20 submitted this revised application and didn't give  
21 anyone any chance to look at it. That's not the  
22 intent. This is still an open process my  
23 understanding until the 14th of January. Is that  
24 correct?

25 MR. SHOLAR: For the -- yeah, the record

1 will remain open to accept exhibits through -- through  
2 then.

3 MR. CANTY: So you'll have plenty of  
4 time to look at it. We took your comments and the  
5 issues that you raised and made our permit application  
6 better, and as Pete said, I think we're open to  
7 discuss any of the issues that you may have from a  
8 technical perspective, from a legal perspective, or  
9 otherwise. So thank you very much for your time.

10 MR. SHOLAR: Mr. Canty, do you have  
11 exhibits?

12 MR. CANTY: I just have this -- this  
13 one.

14 MR. SHOLAR: Okay.

15 MR. CANTY: It shows the -- the relevant  
16 portions of -- the exhibit shows the relevant portions  
17 of the Mill Creek watershed, which incorporates  
18 Threemile Creek, and then the Pennington Creek is  
19 immediately adjacent to it.

20 MR. SHOLAR: Okay. That will be Exhibit  
21 36.

22 MS. WILLIAMS: May I ask who prepared  
23 this exhibit and what it is based on.

24 MR. SHOLAR: I'll -- I'll -- I'll allow  
25 you to answer that, yes.

1 MR. CANTY: I prepared the exhibit and  
2 it was based on our flyover survey, one-foot  
3 contours.

4 MS. WILLIAMS: This is based on  
5 flyover?

6 MR. CANTY: A flyover survey prepared by  
7 professional land surveyors, flyover survey, one-foot  
8 contours accuracy. Actually, it's one- and also  
9 two-foot contours in some other places.

10 MR. SHOLAR: All right. If you-all have  
11 any additional questions, let's -- you can -- when  
12 this is over, if you want to ask them about his  
13 report, that -- that will be fine. All right.

14 This concludes the -- the testimony portion  
15 of today's informal conference. I do want to say  
16 again that this was not a legal proceeding, this was a  
17 listening session and we were here to -- to listen.  
18 You -- at an informal conference no -- no decision has  
19 been made, even after -- even after my -- my  
20 recommendation goes to the deputy director and he  
21 issues a notice, a departmental notice, that the  
22 decision is not made -- the final decision is not made  
23 until the permit is actually issued after we go  
24 through this process, the formal appeal process, and  
25 anything else that -- that is required, so no -- no

1 decision made and that's why we're doing this, to --  
2 to get all the facts and to learn all -- all the  
3 issues involved.

4 In regards to a -- a formal hearing, what's  
5 -- the way this will work is I will submit my  
6 recommendations to the -- the department. They will  
7 issue a notice. Everyone who sent in a protest letter  
8 and everyone -- and anybody else who was here today  
9 and signed up and gave us their address will receive a  
10 copy of that. Once you receive a copy of that, you'll  
11 have a time period to submit your request for a formal  
12 hearing back to the department. So this -- this today  
13 is by no means a final decision, but you do -- you  
14 will have that opportunity if you disagree with the  
15 decision to request that -- to request that -- that  
16 formal processes.

17 In regards to this informal conference, I'm  
18 going to leave the record open until January 14, 2011  
19 at 4:30, which is the close of business, to -- that  
20 way any additional data that we might have I will be  
21 able to look at and to review that -- that -- that as  
22 well. Like I said, a copy will be provided to -- a  
23 transcript will be provided if you contact -- contact  
24 our office once this -- the decision is made and we've  
25 -- and we've gone through all the necessary steps.

1           At this time I would like to just thank  
2 everyone for coming today. I mean, these, you know,  
3 permits aren't just -- just issued. That's why we  
4 have the public notice, public hearing process, so --  
5 so citizens can voice their opinions. We do listen to  
6 what -- what you have to say and it is -- and it is  
7 part of our decision-making process, so we do  
8 appreciate you coming here and taking your -- your  
9 morning to -- to speak with us and let us know to help  
10 us in our -- in our decision. At this time I'm going  
11 to -- I'm going to close.

12           MS. WILLIAMS: You -- I -- I asked  
13 earlier if you might address the availability of  
14 transcripts of this proceeding.

15           MR. SHOLAR: Yeah. Well, the  
16 transcripts -- we are making -- the department is --  
17 I'm making a recording of this today. This is the  
18 official record of -- of these proceedings. There's  
19 an independent court reporter here who also is -- is  
20 making it, but the official one is through the  
21 department. So if you want to -- a copy of the  
22 official transcript, you'll have to contact the  
23 Oklahoma Department of Mines and not just -- not just  
24 her. She is -- that is an unofficial copy of the  
25 transcript that she has.

1 MS. WILLIAMS: Do you have any idea  
2 when --

3 MR. SHOLAR: I do not know. I --  
4 basically I want to give this case all the merit it  
5 deserves and look at everything, so I'm not going to  
6 make a quick decision -- or a quick recommendation.  
7 I'm just going to look at the facts, look -- listen --  
8 go over -- over what I've heard today and look at  
9 things before I pass it on to the department. So, you  
10 know, a reason -- a reasonable time. I'm not going to  
11 give you a date, but it -- but like I said, when that  
12 decision is made and notice is sent out, all those  
13 parties will be sent a copy of what the department's  
14 intent is.

15 MS. WILLIAMS: And I'm -- I'm sorry to  
16 ask you so many questions, but this is new to me.  
17 When you say your record will be open until January  
18 14th, how will we as citizens involved in this know  
19 what's been submitted to you over that period of  
20 time?

21 MR. SHOLAR: Well, when -- when the  
22 notice of decision is received, that will be -- that  
23 will be part of the record, anything that we receive,  
24 and so -- and that's not just from the company. It  
25 can come from the citizens as well, any -- any

1 additional information they might have regarding  
2 this.

3 MS. WILLIAMS: But if you want to  
4 respond to something, how do we know that it's --

5 MR. SHOLAR: Well, the way -- the way  
6 you'd respond is when the -- if you disagreed with  
7 the -- the departmental decision, you would request a  
8 formal hearing.

9 MS. WILLIAMS: Just simply when -- when  
10 it comes out --

11 MR. SHOLAR: Yes, ma'am. All right.

12 At this time I appreciate you-all coming and  
13 that is the conclusion of our day. Thank you very  
14 much.

15 (Conference concluded at 12:41 p.m.)

16 (All exhibits were maintained by the  
17 Oklahoma Department of Mines.)

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STATE OF OKLAHOMA )  
 )SS:  
COUNTY OF OKLAHOMA )

I, Kate Scipione, a certified shorthand reporter within and for the State of Oklahoma, certify that the foregoing proceeding was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the proceeding; that the proceeding was taken on December 2, 2010, at 9:30 a.m., at One Murray Campus, Fletcher Auditorium, Tishomingo, Oklahoma; that I am not an attorney for or a relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on December 6, 2010.

\_\_\_\_\_  
KATE SCIPIONE, CSR  
for the State of Oklahoma  
CSR #1877