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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 the surface)
mining and reclamation)Case No. PAN 13-04-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 APRIL 2, 2013

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
DODSON COURT REPORTING & LEGAL VIDEO
425 NORTHWEST 7TH STREET
OKLAHOMA CITY, OKLAHOMA 73102
405/235-1828 Office ~ 405/235-1266 Fax
877/681-2119 Toll Free
dcric@coxinet.net ~ www.dodsonreporting.net

1 (Proceedings began at 10:02 a.m.)
 2 * * * * *
 3 MR. COUCH: Ladies and gentlemen, I
 4 believe the appointed hour has come for the beginning
 5 of an informal conference relating to an application
 6 of Arbuckle Aggregates, LLC. The case number for the
 7 record is PAN 13-04-IC and Permit No. L.E. 2361 known
 8 as the Mill Creek Quarry.
 9 I am Dean Couch, fairly recently retired
 10 lawyer for another state agency, not the Oklahoma
 11 Department of Mines, but the Oklahoma Water Resources
 12 Board. And in scheduling this informal conference, I
 13 was asked if there may be an interest for me, knowing
 14 a little bit about the water resources situation in my
 15 30 years at the Oklahoma Water Resources Board, and
 16 particularly the Arbuckle-Simpson, so I agreed to hold
 17 and be the informal conference officer. And I might
 18 note just before we begin more detail about this
 19 informal conference just generally, and all of this is
 20 set out in the rules of the Oklahoma Department of
 21 Mines.
 22 An informal conference is significantly
 23 different than a formal hearing. This is the informal
 24 conference, a -- basically a two-step process that the
 25 Oklahoma Department of Mines in its statutes and rules

1 that have signed up. If you haven't signed up, we
 2 need you to do that to ensure two things, really:
 3 timing-wise, how much time this may take today and --
 4 and how to allocate our timing for each of the
 5 speakers to make sure everybody has a fair opportunity
 6 to make a presentation on the record about the
 7 application, and as well to ensure that we have
 8 identification of everybody that as the notice
 9 indicates to be able to present today for
 10 information -- it's called on the record. And the --
 11 again, being taped.
 12 We have a court reporter actually provided by
 13 the applicant as -- as well too, but these electronic
 14 tape recordings to ensure that we make -- review those
 15 that objected and objectors can make presentations.
 16 If there's anybody here that did not submit
 17 in advance a written objection to the application --
 18 and, of course, lots of folks have requested this
 19 informal conference, but if there was not an
 20 objection, as the notice indicates, at the end of the
 21 conference, we will allow those to -- persons to
 22 speak, even though they didn't object in writing, but
 23 that will be off the record, again, as indicated in
 24 the notice that triggered this particular informal
 25 conference.

1 provide for. If there is objection to an application
 2 made after the notice is published, then objectors can
 3 request to have an informal conference with the
 4 applicant.
 5 I will be simply here to organize that
 6 conference activities, both for speaking and for
 7 presenting information, exhibits, if you will, for
 8 consideration and all that an informal conference
 9 officer -- after this conference is completed today,
 10 all the informal conference officer does is to write a
 11 recommendation to the Department of Mines. I don't
 12 make final findings. No final decision made,
 13 certainly. Again, this is a two-step process. This
 14 is one of the first steps in the process, so more
 15 informal, if you will.
 16 However, to make sure we are organized
 17 properly and the conference is conducted properly and
 18 organized properly, and we can make sure we have a
 19 complete record and make sure that we can determine
 20 who says what and who presents information today, we
 21 are recording this as is required and specified by the
 22 rules electronically, and we will also be scheduling
 23 the speakers.
 24 There are individual speakers and
 25 representative speakers that will be presenting today

1 The notice -- and a little over a page dated
 2 March 14, 2013 -- was mailed to those persons who the
 3 Department of Mines showed as being objectors and
 4 other interested persons involved in this proceeding.
 5 There have been two previous informal conference
 6 proceedings on the Arbuckle Aggregates application.
 7 Those records from those two informal conferences are
 8 being maintained by the Department of Mines as well.
 9 In terms of then presenting, I think it may
 10 be a matter for the applicant to -- at least if they
 11 have some initial remarks to make, but, primarily, of
 12 course, this informal conference is to have folks make
 13 presentations about the application which was on file
 14 at the -- and as stated in the notice -- the
 15 Tishomingo -- is it the courthouse, I believe? So
 16 all -- all persons are able to review that. If there
 17 are questions, if there are presentations about
 18 matters within that, we will be taking those in today.
 19 But to initiate the -- this conference and
 20 making presentations, I'll I think first allow the
 21 applicant to at least make an opening remark if they
 22 choose to do so, or if they want to present further
 23 the exhibits, I do have a copy of the application and
 24 all the attachments that were formally and officially
 25 filed and made available to the public for review.

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1 But if there are other exhibits that will be
 2 presented, this may be an opportunity for the
 3 applicant to do that.
 4 The -- one of the things in looking at the
 5 number of folks who have signed up to speak, I show
 6 just over an hour and a half if, as has been the
 7 previous practice, for representative speakers to have
 8 approximately five minutes and for individual speakers
 9 to have approximately three minutes. It looks like,
 10 though, compared to the previous conferences where
 11 there may have been many more folks than we have here
 12 today, that may be unnecessary to have that much of a
 13 limit, but I still do believe we need some limitation
 14 or we might get into a situation of being here a lot
 15 longer than most people can have patience for. So at
 16 this point perhaps -- yes?
 17 MS. WILLIAMS: I have a procedural
 18 question, Mr. Couch.
 19 MR. COUCH: Miss Williams.
 20 MS. WILLIAMS: Laurie Anne Williams.
 21 And if I may approach the court reporter, I'll give
 22 her my information. Laurie Anne Williams, attorney
 23 and manager of Oklahomaranch.com.
 24 You mentioned in the -- your setting out the
 25 rules that the two previous informal conference

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1 proceedings are maintained by the Department of Mines
 2 as well, and I do not understand what that statement
 3 means in relationship to this case. Are those
 4 proceedings incorporated by reference here or what is
 5 the status of those proceedings?
 6 MR. COUCH: That's my understanding,
 7 that those records are official records of the
 8 Department of Mines and will be available as part of
 9 the record in this proceeding in total.
 10 MS. WILLIAMS: So they are incorporated
 11 by reference and there does not need to be a request
 12 specially for that?
 13 MR. COUCH: As far as today's
 14 proceeding, if there are numbered exhibits, for
 15 instance, and of course the recordings or transcripts
 16 from those, I do not have those here today.
 17 So if there's a presentation about a
 18 particular matter, piece of paper, or a map that I
 19 don't have here today, that would need to be presented
 20 and marked as a separate exhibit for today just to
 21 ensure that we can keep the record straight. And then
 22 the review I'm required to do to make a
 23 recommendation, I can ensure that we have the proper
 24 document that's being discussed or presented. That
 25 would be my recommendation of how to handle that.

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1 MS. WILLIAMS: I must ask, because I
 2 think that's probably not going to be a feasible thing
 3 for any of us here today, not knowing what -- how
 4 that -- that matter would be treated, whether it be
 5 incorporated or not, so I know in my instance, I'll be
 6 referring to proceedings that are already on file in
 7 the case and would ask that you examine those as part
 8 of the entire record.
 9 MR. COUCH: Very good. I will --
 10 MS. PHILLIPS: And, Mr. Couch, Krystina
 11 Phillips for Citizens for the Protection of the
 12 Arbuckle-Simpson Aquifer.
 13 I may be able to clarify some of the
 14 uncertainty regarding whether or not the previous
 15 records that have been established in the -- the two
 16 other informal conferences and the formal hearing will
 17 be considered in this third informal conference. We
 18 actually have a motion that I intended to file today
 19 when we spoke. It's simply a motion to include the
 20 records from the previous two informal conferences and
 21 formal hearing in this record, so we're -- I may be
 22 able to -- to clear up some of that when I file this
 23 with you, Dean, here in a few minutes.
 24 MR. COUCH: Very good. I -- it -- it
 25 does sound like at least that that will be the

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1 approach taken and that will -- as a motion, then the
 2 applicant will have an opportunity to make whatever
 3 observations on that.
 4 For purposes of time, I think perhaps then
 5 the -- with the numbers of folks here and who wish to
 6 make presentations that perhaps at least initially we
 7 can -- instead of a five minute for representative
 8 speakers -- and we have Richard from the Department of
 9 Mines over here to be a timekeeper on this, but
 10 instead of five minutes, perhaps eight minutes and if
 11 there's objection to that and then the individual
 12 speakers have five minutes instead of three.
 13 And then we can determine as the day
 14 progresses and this conference progresses whether we
 15 need to extend that or otherwise make any adjustments
 16 after all of those presentations are made.
 17 Are there any other general questions? I
 18 noticed for housekeeping the rest rooms and a drinking
 19 fountain are out across the hall from us here. But I
 20 --
 21 MS. SHIRLEY: I have a question.
 22 MR. COUCH: Yes, Miss Shirley?
 23 MS. SHIRLEY: I think -- this is Shannon
 24 Shirley representing self.
 25 I think we should have a bigger room next

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1 time. It's easier to find. I don't know why they
 2 switched to this little bitty cramped place where
 3 we're quickly running out of chairs, but I like the
 4 bigger place better. Thank you.
 5 MR. COUCH: So noted.
 6 MR. SEACREST: I'm the chief counsel for
 7 the Department of Mines. I had no idea this was the
 8 room that we had. I knew we didn't have the -- the
 9 big room --
 10 MS. SHIRLEY: Auditorium?
 11 MR. SEACREST: -- over there, the
 12 auditorium, because it's now has been reserved today
 13 and in fact for most of -- most of the week. They
 14 have some other event going on down here at the
 15 college. And I'm -- I -- I've got an individual's
 16 name here. If we do have more people show as this
 17 goes on and it becomes apparent that -- the problem is
 18 that the notice that went out indicated this was the
 19 location.
 20 MS. SHIRLEY: Right.
 21 MR. SEACREST: If we move the location
 22 to another building especially, it would become a
 23 problem for people to find it if they haven't been
 24 notified. So we'll try to get by with this, but if --
 25 you know, we'll have to make other arrangements if

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1 more people show up.
 2 MR. COUCH: And perhaps a positive note
 3 beside maybe getting a little warm, but, hopefully, we
 4 all can hear. I hope you can hear me and, likewise,
 5 for purposes of the record, again, we want to make
 6 sure we hear clearly what is being presented verbally
 7 and then certainly we'll try to keep up with and
 8 organize exhibits.
 9 If there are no further -- yes?
 10 MR. DONAHO: There is always going to be
 11 further questions.
 12 MR. COUCH: Your name, please.
 13 MR. DONAHO: Bob Donaho representing
 14 myself.
 15 I don't want to copy hardly anything our
 16 Congress does, but may you yield your excess time to -
 17 - on the floor to another party?
 18 MR. COUCH: You know, I think because of
 19 the timing situation was just to make sure the whole
 20 process goes accordingly, if our timekeeper can keep
 21 up with who's yielding to whom and how much time is
 22 being yielded, I think that would be appropriate to do
 23 so.
 24 MR. DONAHO: Thank you.
 25 MR. COUCH: I might note, too, being

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1 involved in some proceedings over the years at that
 2 other agency, in making presentations, if those folks
 3 that present before you have addressed a topic or a
 4 subject, made a comment that you agree with or
 5 disagree with, my suggestion, though, for timing
 6 purposes and to get the most information you want
 7 presented on the record, that those issues and
 8 statements not be repeated. Perhaps if a reference
 9 just to another person, they made a statement, I agree
 10 with that, if that would be helpful to you, that would
 11 certainly be appropriate as well.
 12 But my suggestion is, and for purposes of
 13 trying not to burden the record, to have the same
 14 statement made over and over is not appropriate and it
 15 certainly wouldn't be very helpful to the time that
 16 you will be allocated. Any other questions? Just in
 17 case there may be.
 18 I will then open this conference proceedings
 19 and allow the applicant to make whatever presentation,
 20 opening presentation, if there are some exhibits,
 21 etc., to -- to initiate and, again, each of -- I think
 22 there are three representatives of the applicant and
 23 we have those three noted on our sign-in sheet. So,
 24 timing-wise, how you wish to deal with that, I'll let
 25 you deal with it.

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1 MS. NICHOLS: And, Mr. Couch, where
 2 would you prefer for me to stand so I...
 3 MR. COUCH: I think you can stay there
 4 or here. These -- I understand these recorders are
 5 very sensitive and will pick up statements made and
 6 presentations.
 7 MS. NICHOLS: Okay. I think that I met
 8 most of you before. My name is Elizabeth Nichols and
 9 I'm the attorney for Arbuckle Aggregates. Can
 10 everyone hear me okay? Okay.
 11 Arbuckle Aggregates is here to clarify our
 12 application before the Oklahoma Department of Mines.
 13 Since the initial informal conference on December 2,
 14 2010, several items have changed: the Supreme Court's
 15 finding in Daffin v the Oklahoma Department of Mines,
 16 which prompted a second informal conference, then
 17 there was the passage of Senate Bill 597 in May of
 18 2011 which governs the OWRB, the Oklahoma Water
 19 Resources Board's authority over pit water and places
 20 Arbuckle Aggregates into the category of an existing
 21 mining operation.
 22 The OWRB administrative rules supporting
 23 Senate Bill 597 have been drafted and sent to the
 24 legislature as far as my understanding is and -- and
 25 Arbuckle Aggregates has complied with submitting their

1 plan to the OWRB.
 2 Arbuckle Aggregates has clarified its ODM
 3 application for mining permit. It has withdrawn
 4 the -- and these items were itemized in the notice for
 5 application which prompted this informal conference.
 6 The outline of the proposed monitoring program was
 7 withdrawn. The updated outline and proposed
 8 monitoring plan which was submitted on June 1, 2012
 9 was withdrawn and the site-specific water management
 10 and conservation plan submitted on November 20, 2012
 11 was withdrawn. The bonding area was revised. The
 12 business address of Arbuckle Aggregates was updated
 13 along with the blaster information.
 14 All of Arbuckle Aggregates's clarifications
 15 to its application were prepared in consultation with
 16 the Oklahoma Department of Mines, and all
 17 clarifications were submitted via redline edit so you
 18 could see the difference between what was the
 19 initially or subsequent document and those changes
 20 were a redline edit to the application.
 21 Arbuckle Aggregates is only addressing the
 22 items at issue before the Oklahoma Department of Mines
 23 at this informal conference. However, we would like
 24 to extend to meet with any individual or group outside
 25 of this form to address any concerns that anyone has

1 regarding our proposed operations. You could either
 2 catch me at some point and I can provide you my
 3 business card with my e-mail address, cell phone
 4 number, or we could set up a meeting following the
 5 informal conference.
 6 And, with that being said, I will -- I will
 7 -- that's my statement.
 8 MR. COUCH: Did not take --
 9 MS. NICHOLS: Did I take my three
 10 minutes?
 11 MR. COUCH: -- perhaps the whole time. I
 12 think as a representative speaker we were looking at a
 13 little bit longer than that but kept it under that.
 14 And for purposes -- clarification for record
 15 purposes, I will assume that the applicant -- the
 16 revised application and the redline versions, the
 17 notice itself as published in the newspaper of that
 18 revised application, the notice and order referring
 19 and setting this informal conference today will be
 20 marked as separate exhibits if -- if that's the
 21 approach typically taken in these proceedings as
 22 applicant's exhibits, perhaps. If that would be the
 23 most proper way to keep it clarified, if counsel has
 24 no objections to that, as Exhibits 1 cumulatively for
 25 the application, attachments, and the redline version,

1 the notice as published -- I think there's a proof of
 2 publication submitted with that -- and then the notice
 3 and order referring for today's conference would be
 4 Exhibit 3.
 5 I guess at this point we need to then have
 6 other speakers, representative speakers. If the
 7 applicant has no one at this point in time, then other
 8 representative speakers. I can call the names out as
 9 you signed up unless there is a more appropriate way
 10 to have -- or if you want another method of
 11 presenting, but I have here Mr. Matt Mauck, Department
 12 of Wildlife Conservation. Actually was here pretty
 13 early to sign up. Mr. Mauck, if you have a
 14 presentation to make.
 15 I did note that as the Department of Mines
 16 perhaps being representative -- representative --
 17 represented in writing as an objector through the
 18 attorney general's office, I'm not sure -- I do have
 19 that as the attorney general's office as getting the
 20 notice today. So if you want to make a presentation
 21 about this application.
 22 MR. MAUCK: I'll make a just a very
 23 brief comment here. Again, my name is Matt Mauck.
 24 Last name is spelled M-a-u-c-k and I represent the
 25 Oklahoma Department of Wildlife Conservation. We are

1 the agency responsible for the management and
 2 conservation and protection of fish and wildlife in
 3 Oklahoma.
 4 Surface and ground water are both of chief
 5 importance to the sustainability of these wild
 6 resources that we are charged to protect. And it is
 7 with this in mind that we express our concern about
 8 the request for an additional quarry within the
 9 Arbuckle-Simpson Aquifer. The springs and streams
 10 above this aquifer are sustained by ground water
 11 inputs and the aquatic communities are reliant upon
 12 reliable flows from subsurface origins. And numerous
 13 keystone streams are in the area that functions in
 14 this manner, including Mill Creek, Pennington Creek,
 15 and even Blue River. And the fishes in this systems
 16 [verbatim] could be affected by reductions in ground
 17 water flows.
 18 Our agency manages over six miles of the Blue
 19 River within the Blue River Public Fishing and Hunting
 20 Area, which hosts a popular fishery attracting more
 21 than 90,000 visitors annually. So we urge the
 22 Department of Mines and, indirectly, the Oklahoma
 23 Water Resources Board to view this applicant as a --
 24 as a new permit rather than preexisting -- rather than
 25 one with preexisting exemptions and we further urge

1 the Department of Mines and water board to require
2 sufficient measures to protect the aquifer and spring
3 and stream flow.

4 MR. COUCH: Thank you.

5 Next I have, at least as signed up as a
6 representative speaker, Mr. Donaho.

7 MR. DONAHO: Penalty of getting here
8 early.

9 Well, as a rancher, a lot of this stuff kind
10 of goes over my head, but I'm familiar with the term
11 like piggyback or grandfathering in and it looks to me
12 like this kind of basically that's what's going on
13 here. When you said that the prior two informal
14 hearings are part of this proceeding and there hadn't
15 been any ruling on those other two hearings yet,
16 you're trying to possibly make this a valid hearing,
17 whether or not those are valid.

18 So it seems to me like this motion or
19 whatever you would call it happens to be has to be
20 dismissed until there is a ruling on the prior two
21 applications. Because there has been a lot of changes
22 in the law and if they -- you know, it's, like, a
23 certain time goes by, you can't make amendments to
24 something that's already void and make it valid,
25 really. It's -- it's -- if it's void on that

1 document, then that's the end of it.

2 And I yield the rest of my time to Krystina
3 Phillips.

4 MR. COUCH: Very good. I'll assume our
5 timekeeper will keep up with that.

6 And as -- that would be a little out of
7 order -- at this point in time as signed up in order,
8 Mr. Alan Woodcock.

9 MR. WOODCOCK: I'm -- I'm Alan Woodcock.
10 I'm the field solicitor for the Department of the
11 Interior. We have written comments today. I don't
12 know -- do you want those or do I -- over here?

13 MR. COUCH: I think our timekeeper and
14 organizer of exhibits will appropriately take those
15 into consideration.

16 MR. WOODCOCK: Your Honor, we -- I --
17 I'm the field solicitor with the Department of the
18 Interior. I represent the United States Fish and
19 Wildlife Service today. The park service will be --
20 is also an entity. The Department of the Interior
21 will be speaking separately, but I have comments on
22 behalf of the Fish and Wildlife Service.

23 Fish and Wildlife Service, your Honor,
24 operates two facilities in Oklahoma that I think are
25 directly affected by this -- this application. First

1 is the Tishomingo National Wildlife Refuge. The
2 Tishomingo National Wildlife Refuge is -- sits at the
3 end of Pennington Creek where it empties into the
4 Cumberland Pool. Indeed, the very creation of the
5 refuge was to take advantage of that for purpose of
6 providing habitat and an ecosystem for migratory
7 birds. Those -- those birds include certain
8 endangered species: the whooping crane, the
9 endangered least tern, and the -- the piping plover.
10 Those are -- are ones that -- that at various times
11 will come to the refuge as part of the migratory
12 pattern.

13 So it's critical that there be adequate water
14 in the Cumberland Pool. It's -- you -- it's something
15 that has to be there or otherwise the birds simply
16 will have no -- no place at that -- that to stop.
17 It -- it threatens the very existence of the -- of
18 the -- the refuge and the purpose that the refuge was
19 created for.

20 The refuge cannot economically pump ground
21 water to satisfy its needs. It depends on the water
22 from the -- from the Cumberland Pool or from
23 Pennington Creek into the Cumberland Pool. The USGS
24 survey indicates that the amount of water flowing
25 annually on average is around 30,000 acre-feet into

1 the Cumberland Pool and it would be incredibly
2 expensive to try to pump that. The ground water
3 itself would not -- does not appear to be appropriate
4 for the -- for the -- for the refuge. So it needs --
5 it needs the -- the water from the -- from the -- from
6 Pennington Creek.

7 Our -- the refuge itself holds a surface
8 right from Big Sandy Creek. We also have a pending
9 water permit with the Oklahoma Water Resources Board.
10 In addition, it's our position that we've been relying
11 on this water since 1946 to -- to satisfy the needs of
12 the -- the needs of the refuge.

13 We believe that permitting this application
14 would have adverse effects, direct adverse effects, on
15 the amount of water in Pennington Creek which would
16 adversely affect the -- the refuge.

17 We also have the Tishomingo National Fish
18 Hatchery which was established in 1929. The -- the
19 hatchery depends on flows in Pennington Creek. The
20 hatchery is there to raise threatened and other
21 imperiled aquatic species: paddlefish, alligator
22 snapping turtles, river shiners to alligator gar. And
23 it also works to restore other populations in the --
24 in the Arkansas and Red River basins.

25 So the hatchery serves not only a purpose, a

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1 federal purpose, but I think a state purpose as well.
 2 It -- it provides for our ecosystem that we need.
 3 The hatchery has a -- a permit to divert
 4 water from Pennington Creek that dates to 1931. And
 5 so we think that that should be a prior right. The
 6 hatchery is there because of the water in Pennington
 7 Creek and as -- as we mentioned with the refuge, the
 8 approval of this application would have adverse
 9 effects on Pennington Creek which would affect the --
 10 the hatchery, making it impossible to operate the
 11 hatchery.
 12 I think there's been some discussion already,
 13 but one of the positions that we have as mentioned in
 14 the comments is that this seems to us to be a
 15 completely new application. It is not an
 16 application -- it's not the amended application. It
 17 has varied so far from the original application that
 18 it should be treated as a new application. We believe
 19 that in addition to its treatment as a new
 20 application, it should be denied. The applicant
 21 really has identified no source of water. We think
 22 that another -- another mine into this aquifer is
 23 going to lower the water substantially and we believe
 24 that it should be denied for those reasons.
 25 I think -- I think that's all I have. I do

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1 have this -- these comments on a disc, a PDF document,
 2 if you wish the discs.
 3 MR. COUCH: Yes. That would be helpful.
 4 MR. WOODCOCK: Oh, I'm sorry. I -- I do
 5 have one thing. I wanted to join in with CPASA. We
 6 submitted a number of exhibits in the formal
 7 conference and we believe those should be taken into
 8 account as well. We did not try to reproduce those
 9 numerous exhibits for today's hearing, but we believe
 10 those should be taken into account.
 11 MR. COUCH: Very good.
 12 On the sign-up sheet next as a representative
 13 speaker then, Jim Rodriguez.
 14 MR. RODRIGUEZ: I -- I did not know I
 15 was signing up to speak. I apologize. I have no
 16 desire to speak.
 17 MR. COUCH: I won't say that's a first.
 18 So noted.
 19 And now then, Miss Phillips.
 20 MS. PHILLIPS: Good morning. I have a
 21 business card for you. You'll have to excuse -- I got
 22 married and so I haven't gotten new business cards
 23 printed up, so you'll have to excuse my chicken
 24 scratch.
 25 My name is Krystina Phillips. I represent

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1 Citizens for the Protection of the Arbuckle-Simpson
 2 Aquifer. We are a grassroots citizens organization
 3 that's dedicated to preserving and protecting not only
 4 the Arbuckle-Simpson Aquifer itself but also the
 5 springs and the streams that emanate from the
 6 Arbuckle-Simpson aquifer. I promised you, Mr. Couch,
 7 a motion. We have that. I will file the original
 8 copy with you and then, just for purposes of my
 9 recordkeeping, will these exhibits be numbered 1-2
 10 or -- or how will they be identified? Do we know?
 11 MR. SHORE: This will be No. 2.
 12 MS. PHILLIPS: Okay. Perfect. And I
 13 have additional copies as well for some of the
 14 parties. And can also make it available in electronic
 15 form.
 16 The first issue that deals with this motion
 17 is I feel a little bit like Bill Murray in Groundhog
 18 Day. This is the third informal conference. We've
 19 had an additional formal hearing all related to the,
 20 quote, same permit application.
 21 However, the permit application has -- has
 22 changed dramatically. If you look at all of the
 23 substantive revisions that have occurred to this same
 24 permit, we're now working off of the fourth revised
 25 permit application. It's substantially different than

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1 the first. For -- for that simple reason, CPASA joins
 2 in the US Fish and Wildlife Service's request that
 3 this application be treated as a new application
 4 rather than an existing one due to all the substantial
 5 changes that have been made.
 6 The only reason -- the only way that this
 7 application can be considered the same application is
 8 if the Department of Mines includes all of the
 9 previous documents, all of the records, that have been
 10 established in these previous administrative
 11 proceedings in this record. Otherwise, it's being
 12 treated as a new permit and it would have to be
 13 treated accordingly with other respects to the law
 14 such as Senate Bill 597. That is most of the
 15 substance here in this motion.
 16 I do also want to note CPASA again continues
 17 to object to the Department of Mines's administrative
 18 procedures. We feel that the -- the informal
 19 conference and then the formal hearing really places
 20 protestants at an undue disadvantage. In essence,
 21 we're not allowed to conduct any discovery, to present
 22 any evidence, to call any witnesses before the
 23 Department of Mines makes its departmental decision.
 24 It's only after the Department of Mines has actually
 25 made its decision that we can then go and -- and

1 request documents and do discovery. And then we're
 2 having to fight an uphill battle, trying to prove the
 3 Department of Mines wrong.
 4 That's not how the -- the Administrative
 5 Procedures Act sets forth the procedures for
 6 individual proceedings. The burden is not on the
 7 protestants to show that the -- the application should
 8 be denied. The burden is on the applicant to show
 9 that it meets the requirements and -- and CPASA,
 10 again, objects to the unconstitutional administrative
 11 process that's in place today.
 12 Many of CPASA's concerns with Arbuckle
 13 Aggregates's fourth revised permit application and
 14 really to all of Arbuckle Aggregates's previous
 15 iterations of this permit revolve around water. In
 16 2011, CPASA and Arbuckle Aggregates tried to -- to sit
 17 down and reach an agreement and tried to come to some
 18 sort of resolution, mutually agreeable resolution,
 19 such that CPASA wasn't required to protest Arbuckle
 20 Aggregates's different permits.
 21 Again, in January, CPASA reached out to
 22 Arbuckle Aggregates and asked for a sit-down to try to
 23 work out some of the issues revolving around water as
 24 it relates to their proposed mining operation.
 25 Arbuckle Aggregates never responded, at least not to

1 economic considerations. We agree with that.
 2 However, no business simply plans for its first year
 3 of operation and doesn't have any type of goal or
 4 course plotted out for its immediate future. At least
 5 no successful business.
 6 There has to be additional goals and things
 7 and -- and because Arbuckle Aggregates hasn't revealed
 8 all of the facts related to its application, CPASA
 9 strongly urges the Department of Mines to reject this
 10 application and require Arbuckle Aggregates to
 11 participate and -- and give all of the facts so that
 12 interested parties such as CPASA can fully and
 13 meaningfully participate in this type of -- of
 14 administrative proceeding.
 15 How many -- how many more minutes do I have?
 16 MS. SHIRLEY: She can have my five.
 17 That's what we got, five? You've got at least five.
 18 MS. PHILLIPS: I've got Bill's. Or
 19 Bob's, I mean.
 20 MR. SHORE: It's up to -- it's up to the
 21 hearing officer.
 22 MS. SHIRLEY: Say something.
 23 MS. PHILLIPS: Okay.
 24 MR. COUCH: I think our timekeeper took
 25 that into account.

1 me and to my knowledge not to my co-counsel either.
 2 So I -- I appreciate, Miss Nichols, your -- your offer
 3 for other parties to -- to come and meet with you guys
 4 to try to work out your problems, but we've done that
 5 twice and it hasn't been successful either time.
 6 MS. SHIRLEY: You can have my time.
 7 MS. PHILLIPS: Oh, man. Three minutes.
 8 Okay.
 9 CPASA objects to Arbuckle Aggregates's fourth
 10 revised permit application because it's purposely
 11 misleading with regards to the amount of land that's
 12 going to be bonded. In some of the previous
 13 iterations of this permit application, the -- they had
 14 identified 60 acres to be bonded initially in the
 15 first year with an increasing increments up to the 575
 16 acres that it has requested for its permit. Now
 17 Arbuckle Aggregates has identified 15 acres to be
 18 bonded in its first year with the remaining five
 19 phases TBA, which I guess Arbuckle Aggregates created
 20 that option for itself for a to be announced.
 21 CPASA thinks that it's -- it's completely
 22 unacceptable for Arbuckle Aggregates to try to hide
 23 its -- its intent. CPASA understands the need for
 24 operational flexibility, no doubt, and there has to be
 25 some level of flexibility due to market factors, other

1 Now, Miss Shirley, are you adding --
 2 MR. SHORE: Five minutes -- five minutes
 3 excess.
 4 MR. COUCH: Okay. And Miss Shirley's
 5 adding five minutes.
 6 MS. SHIRLEY: You want to add five more
 7 minutes?
 8 MS. PHILLIPS: No. I -- I can get
 9 through this.
 10 MS. SHIRLEY: We can get it up to an
 11 hour if you want.
 12 MS. PHILLIPS: I don't -- I don't need
 13 an hour.
 14 The Department of Mines's rules also require
 15 that a mining permit application be feasible such that
 16 it can be feasibly accomplished. However, Arbuckle
 17 Aggregates's fourth revised permit application cannot
 18 be feasibly accomplished. You know, previously in
 19 the -- the four other iterations of this permit
 20 application, Arbuckle Aggregates relied upon giving us
 21 two surface water use permits from the Water Resources
 22 Board. And, in fact, the -- the site-specific water
 23 management plan that Miss Nichols referenced earlier
 24 that it had submitted to the -- the water board
 25 actually references getting those two permits.

1 However, since that time, Arbuckle Aggregates
 2 has actually withdrawn its two pending surface water
 3 permit applications such that it has no water source
 4 other than pit water, or ground water, for which to
 5 use in its -- in its operations. Because Arbuckle
 6 Aggregates's site-specific water management plan is
 7 based upon outdated technical recommendations, it's
 8 not based upon the actual rules that are going through
 9 the approval process now, and because it has no way to
 10 obtain surface water, CPASA argues that it has no way
 11 to obtain any sort of water for its operation and thus
 12 is not feasible.

13 I would -- I would end with reminding the
 14 Department of Mines of its statutory responsibilities
 15 and obligations. The Department of Mines is a state
 16 environmental agency and, as such, is fully
 17 responsible for implementing and enforcing the laws
 18 and rules within its jurisdictional areas of
 19 environmental responsibility. One of the Department
 20 of Mines's jurisdictional areas of environmental
 21 responsibility includes mining regulation. It also
 22 includes mining reclamation and it includes ground
 23 water protection for activities related to mining and
 24 to mining reclamation.

25 Here, the Department of Mines is statutorily

1 could have horrendous impacts upon the city of
 2 Tishomingo.

3 I believe, Mr. Couch, that that is all that
 4 we have. We would incorporate and reassert any and
 5 all of the protests and objections, including what
 6 we've submitted in the previous informal conferences,
 7 the formal hearing, and here in this third informal
 8 conference. Thank you.

9 MR. COUCH: Thank you. And, for
 10 clarification, I noted that the -- our timekeeper did
 11 add Miss Shirley's --

12 MS. SHIRLEY: That's fine.

13 MR. COUCH: -- five minutes. So, again,
 14 for clarification.

15 And speaking of the mayor, Mr. Parkhill, you
 16 are on the sign-up sheet next.

17 MR. PARKHILL: Thank you, Mr. Couch, for
 18 the opportunity. Lewis Parkhill, mayor, City of
 19 Tishomingo, actually presenting wearing two hats, one
 20 very briefly as a resident of 409 South Mickle in
 21 Tishomingo adjacent to Pennington Creek Park with the
 22 flows of Pennington Creek directly visible from our
 23 one-acre property there, which we've owned for 30
 24 years. And the direct effect of the quantity and
 25 volume of Pennington Creek stream flows direct -- has

1 obligated to protect Pennington Creek which, pursuant
 2 to the Water Resources Board's water quality
 3 designations, is a high quality water. Pennington
 4 Creek and the headwaters of Pennington Creek are
 5 approximately one-half mile from Arbuckle Aggregates's
 6 proposed site.

7 Now, in previous informal conferences, the
 8 applicant, Arbuckle Aggregates, argued that it would
 9 have no effect on Pennington Creek because it was
 10 within the Mill Creek watershed. However, the
 11 watershed is based upon surface drainage, not ground
 12 water movement, and it's very clear, based upon the
 13 Water Resources Board's multi million dollar, multi
 14 year hydrologic study of the Arbuckle-Simpson Aquifer,
 15 that surface water movement and ground water movement
 16 aren't necessarily identical.

17 It's very probable and highly likely that any
 18 type of mining operation in the proposed area that
 19 Arbuckle Aggregates seeks to mine would have
 20 detrimental effects upon Pennington Creek. As I'm
 21 sure Mayor Parkhill here will -- will share with us
 22 later, Tishomingo, the city of Tishomingo, relies
 23 solely on Pennington Creek for its municipal water
 24 supply. It's already been very, very dangerously low
 25 and any sort of additional negative effects on it

1 a direct relationship on the property value of our
 2 30-year investment. So that's the personal.

3 I would add now to the city of Tishomingo's
 4 interest. I won't repeat the entire content of our
 5 formal protest filed by the city in the -- prior to
 6 the February deadline. I do want to state just a
 7 couple of facts that will place I hope in context the
 8 new exhibits that I will be presenting.

9 One's the fact already mentioned; Tishomingo
 10 is perhaps the poster city of what it means to be
 11 reliant on a sole-source aquifer. We have no
 12 economically viable ways of getting other water
 13 supply. Residential development -- Tishomingo has
 14 been reliant on that water since the middle of the
 15 19th century. Chickasaws formed the constitution
 16 there 1856. Since statehood, the city of Tishomingo's
 17 been totally reliant on -- on that water support --
 18 supply.

19 In addition to the city of Tishomingo, Murray
 20 State College has a diversion point within the city
 21 limits for the water supply for here, and we are
 22 almost equidistant -- we're -- we're downstream from
 23 the federal facility already referenced. Tishomingo
 24 National Wildlife Refuge is now below us and both of
 25 those existences contribute materially and

1 economically and recreationally to the existence of --
2 of us as -- as a city.

3 Additionally, Pennington Creek flow provides
4 recreational opportunities within the city.
5 Pennington Creek Park, also referenced, has 50-amp RV
6 circuits and they stay pretty busy during the peak
7 hours, so it is of economic value to us as well.

8 As the county seat of Johnston County, we've
9 -- we are a -- what's called a -- an economic draw.
10 That is that we have a sales tax base greater than
11 the -- the population of the city. We -- we -- we
12 experience profit from the development along
13 Pennington Creek and outside in the county. So,
14 although Tishomingo's population has been relatively
15 static, the population of Johnston County did increase
16 by 4 percent in the last census and our sales tax
17 revenues reflect that economic development that is
18 directly related, we believe, to the benefits of
19 Pennington Creek's stream flow.

20 The new exhibits that I -- I present are
21 actually in reference to -- to those. I would add one
22 perhaps correcting, with Miss Phillips's permission, a
23 fact on the -- the -- the -- we have basically two
24 arguments here. There's both the -- the history of
25 what happened when mining in the Mill Creek headwaters

1 were not monitored appropriately and the -- the
2 damaging effects on stream flow there.

3 Second would be the proximity of the current
4 application in -- in an area that is not a half mile
5 away but, by Arbuckle Aggregates's own hand-drawn map
6 in their current application, adjoining the western --
7 the eastern boundary of their permit application. As
8 I read the elevation map, well inside that boundary.
9 It is higher there than things marked as headwater
10 areas of Pennington Creek.

11 I have a -- a couple of maps here that
12 illustrate not only this proximity issue, the
13 closeness of the -- especially the eastern boundary of
14 the Arbuckle Aggregate application but also its -- its
15 relationship to the headwater areas of Pennington
16 Creek. And it's a quite complex watershed up there.
17 It's -- it's not only in the area proposed for this
18 mine but surrounding and above it.

19 We fear that the kind of disruption that
20 we've seen of substrata in previous mining operations
21 up there with permits going down 300 feet already past
22 150 cannot help but have damaging effects on potential
23 stream flow.

24 So what follows is a series of exhibits.
25 One, the text of the city council resolution passed in

1 2010 asking that the Department of Mines reject the
2 permit application summarily. The second exhibit is
3 an overview of the proposed mine boundaries showing a
4 long view of development along Pennington Creek down
5 to and including Tishomingo and the Tishomingo
6 National Wildlife Refuge, a close-up view of that
7 mining area.

8 Then more particular views which show the --
9 the green fingers of Pennington Creek watershed up
10 both the -- the western branch of it, which is
11 adjacent to and overlaps Arbuckle Aggregates's permit
12 requested area, but also the -- the eastern areas.
13 It's quite complex watershed. All of it produces
14 stream flow for the city of Tishomingo.

15 And then, finally, as it comes down to within
16 the city limits of Tishomingo, there's Tishomingo Golf
17 Course and the Pennington Creek Lodge, the Pennington
18 Creek Park, and also the water and wastewater
19 infrastructure for the City of Tishomingo. We have
20 recently incurred a 7-million-dollar water/wastewater
21 project that will encumber us \$7 million for 40 years
22 to provide the citizens of Tishomingo adequate
23 quantity and quality of water supply. This is a
24 tremendous investment of the city -- for the city of
25 Tishomingo and our future and it will be totally lost

1 if the Pennington Creek flow is not sustained.

2 So we do ask for not -- not -- not
3 reconsideration. We ask for, in the interest of the
4 future of the city of Tishomingo, denial of this
5 permit application. Thank you.

6 MR. COUCH: Thank you, Mr. Mayor.

7 MR. PARKHILL: By the way, I'll -- I'll
8 provide -- here's a paper copy with signed -- signed
9 parts and here is also a...

10 MR. COUCH: Do you have copies of that
11 for the applicant?

12 MR. PARKHILL: This -- this has -- this
13 has the water transmission and six exhibits that I
14 referenced in the oral presentation.

15 MR. COUCH: Okay.

16 MR. PARKHILL: And they are all included
17 in this, but the signed copies are there.

18 MR. COUCH: Okay. We'll need to arrange
19 for copies of that for the applicant as soon as
20 possible.

21 MR. PARKHILL: I -- I do have one. I
22 can try this with the applicant. It just lacks the
23 signed -- signed copies, but it has all the exhibits.
24 I mean...

25 MR. COUCH: If the applicant wants to

1 review that and determine whether they want a hard
2 copy or the electronic version, that -- I'll let the
3 applicant speak as to that.

4 MR. PARKHILL: Sure. I can also provide
5 paper, if they would like. I could easily e-mail it
6 and mail it.

7 MR. COUCH: Okay.

8 Next to make a presentation is Amy Ford.

9 MS. FORD: Amy Ford with -- I'm
10 president of Citizens for the Protection of the
11 Arbuckle-Simpson Aquifer.

12 Most of my comments have -- this is our
13 fourth opportunity to make what -- the same comments,
14 so I would ask that reference be made to the previous
15 comments, and I would like to note that there are a
16 number of individuals that have participated over
17 the -- the past years in this process that for -- for
18 various reasons were not able to attend, and if -- as
19 soon as I can find out which -- whether you're going
20 to -- are you going take all of those into
21 consideration into the current record so that I can
22 pass that information on to them? That would be
23 lovely.

24 I'm not going to walk back through them, but
25 I, again, would like to reiterate everything that our

1 legal counsel stated, that the preservations of the
2 springs and streams are paramount. We have seen a
3 great deal of struggles in the area since these
4 operations have -- have commenced, have reached a
5 great depth, have spent a great deal of time with
6 Arbuckle Aggregates over the years discussing their --
7 the outline of their site plans. Welcome that
8 opportunity again. It is not our goal nor has it ever
9 been our goal to spend every day of our lives being
10 consumed by the management of this water.

11 And so, with that, I will yield my time to --
12 to the universe.

13 MR. COUCH: Next representative speaker,
14 Miss Laurie Williams.

15 MS. WILLIAMS: I've previously given the
16 court reporter my business information. My name is
17 Laurie Anne Williams. I'm the manager of
18 Oklahomaranch.com, LLC, successor in interest to the
19 estate of Ida Sutton Williams. I also am here today
20 on behalf of myself, Laurie Williams, a consumer of
21 water from the Arbuckle-Simpson Aquifer in Ardmore and
22 in Carter County.

23 Our first request would be to ask that this
24 application be dismissed based on the comments of
25 previous speakers. Oklahomaranch.com owns an

1 8,000-acre ranch across the highway from the existing
2 ranch -- the existing facility of Arbuckle Aggregates
3 and we have previously put in the files pictures of
4 the land that are available here, but if you can
5 Google Mill Creek, Oklahoma, you can see what the
6 situation looks like today.

7 And what I'm pointing out here is Highway 1
8 slash 7 which currently runs by the Martin Marietta
9 facility which you can see, like I said, when you go
10 onto your own Internet and you can see the large ponds
11 of water already existing here and also up at the sand
12 plant.

13 We have a large conservation dam right across
14 the street from Martin Marietta and you can't see it
15 because there's no water in it right now.

16 When you talk about water not being accounted
17 for by this new mining operation, oh, they've got
18 water. They're going to get it from the ground
19 water. Where this mining operation is located is
20 where Mr. Holder used to live, a neighbor of ours.
21 Mr. Holder has a little well and that well flowed one
22 foot down a slope to his house and provided water
23 directly to his home. Unadulterated. That is what he
24 drank. The water table is found at the surface at
25 this location. We have already had the mining

1 operations that exist interfere with every bit of our
2 life.

3 And this about the quality of life. You've
4 heard about -- a lot about there's no basis for this
5 for the economy. It is group of people who come from
6 Texas who are not committing themselves to our economy
7 every day. They're simply taking from this economy.
8 They have -- are affecting our water, our air, trucks,
9 rail sound, night and day lights. So you say, well,
10 what the heck? Just let them have it all. Let them
11 have Johnston County. Because that's where it looks
12 like it's headed.

13 Well, that's not right. Why should our
14 quality of life in a beautiful county like Johnston
15 County, whose life bread was the cattle industry for
16 years and providing beef to the United States, why
17 should it be co-opted by a couple of guys from Texas
18 who, as far as I know, have never been able to show
19 any of this body in any of the pleadings their
20 financial responsibility.

21 And we've asked this all the way along. And,
22 as far as I know, they are still the subject of
23 several federal proceedings in Texas, because I have
24 received no other knowledge except what we have filed
25 previously with this body.

1 There is still quality of life in Johnston
 2 County and the mayor, Mayor Parkhill, just expressed
 3 it. It's about where -- where we're heading for the
 4 future. What will be our future? Will it be
 5 tourism? Will it be water? Or will it be large holes
 6 sitting in mines that you can see -- you can see these
 7 if you fly Southwest Air. Get over on the right side
 8 of the plane -- if you're ever flying from Dallas to
 9 Oklahoma City, look out to the east, and you can see
 10 these holes from the air. You can't see my pond from
 11 the air, but you can see these holes from the air.

12 Not only is this an unfeasible operation, it
 13 is dangerous and -- I'm going to say it --
 14 ridiculous. Where I showed you this land, they
 15 proposed, Arbuckle Aggregates, to not just stay on one
 16 side of the road where Martin Marietta is. They
 17 propose to -- to go across the road to actually take
 18 in the highway. And we've also presented this in our
 19 previous pleadings, that they either wish to go under
 20 or over Highway 1 dash 7, which is the connection to
 21 Sulphur from this entire area. We've shown in our
 22 pleadings so far a situation in Tulsa, Oklahoma, where
 23 a car ran off the road and people died because of a
 24 mine being too close to a road.

25 Now, again, this is people from Oklahoma

1 MR. COUCH: Next on the representative
 2 speaker as signed up, Mr. Bruce Noble.

3 MR. NOBLE: Well, good morning again,
 4 Dean. Good morning, everybody. My name is Bruce
 5 Noble. I'm here representing the National Park
 6 Service. More specifically, I serve as superintendent
 7 of Chickasaw National Recreational Area over in
 8 Sulphur.

9 Given that this is an informal conference, I
 10 had the greatest desire to provide informal comments.
 11 And I think I've failed in my desire to do that, so
 12 I'm going to read a written statement here and I hope
 13 you can all bear with me. The beauty of it is the
 14 timekeeper won't have to work very hard because I'll
 15 come in well under my allotted time.

16 Chickasaw National Recreation Area, on behalf
 17 of the National Park Service of the Department of the
 18 Interior, is concerned by the recent application for a
 19 non-coal mining permit filed by Arbuckle Aggregates in
 20 January 2013 and about the impacts this proposed mine
 21 will have on the springs and streams that rely on the
 22 Arbuckle-Simpson Aquifer, including those of national
 23 significance that are contained within Chickasaw
 24 National Recreation Area.

25 Specific issues that have been raised by this

1 saying Department of Mines, Oklahoma Department of
 2 Mines, we don't want this new wine -- mine. Our
 3 quality of life has been impacted enough. We don't
 4 want it and we want you to deny this application.

5 I do challenge you to find the economic
 6 benefit that any of these mines is providing to this
 7 area more than the tourism that is currently and
 8 prospectively coming to this area. As we know from
 9 the current legislative session, the product is not
 10 taxed that leaves this state. It does not prevent
 11 any -- provide any benefit in that way. The trucks
 12 are coming from Texas -- and this isn't your
 13 grandmother's mine. These are trucks that will take
 14 out a four-story house of rock within -- within
 15 hours. It's not a donkey with a tractor pulling rock
 16 out.

17 As far as the area being close to Pennington
 18 springs, again, all you have to do is go and look at
 19 the map. Look at the Google map. You can see
 20 Pennington springs starts. That's the green -- it
 21 heads right on down to Tishomingo. This is where it
 22 begins. And if we endanger this, if we take it any
 23 further, if we endanger the quality of this water any
 24 further, Johnston County will be nothing.

25 Thank you for your time.

1 application are as follows. First, the proposed
 2 application needs to be considered a new application,
 3 as others have mentioned, since it is substantially
 4 different from previous submittals.

5 Second, the new application should not be
 6 considered complete or accurate for a number of
 7 reasons: one, information has been removed or is
 8 missing; two, information contained within the mine
 9 application is internally inconsistent and doesn't
 10 agree with information contained in applications to
 11 the Oklahoma Department of Environmental Quality for
 12 other required permits; three, information about the
 13 source of water -- sources of water is inconsistent
 14 and contradictory, I believe as others have mentioned
 15 as well; and, four, the application doesn't show how
 16 mining will advance in the future or how reclamation
 17 will progress once mining ceases.

18 Since the application contains so many
 19 inconsistencies and inaccuracies, it does not
 20 affirmatively allow -- or it does not affirmatively
 21 show that mining and reclamation can be feasibly
 22 accomplished as required under state law.

23 Third, the applicant has failed to address a
 24 number of issues that have been raised previously,
 25 including the following: the excavation of the

1 dewatering of the pit will create a depression in the
 2 potentiometric surface that will lower ground water
 3 levels in the aquifer during mining and will affect
 4 springs and ground water flow paths. Also, the
 5 post-mine impoundments will result in continued long-
 6 term impacts to the aquifers through evaporative
 7 losses. And, in addition, the amount of water
 8 available for appropriation from Arbuckle-Simpson
 9 Aquifer will be reduced by the project, even after
 10 mining is complete, and must be considered in the
 11 overall management of the aquifer.

12 Finally, the dewatering of the pit will cause
 13 reductions in water levels in the Arbuckle-Simpson
 14 Aquifer and will reduce discharge from springs that
 15 emanate from the aquifer, including those found in
 16 Chickasaw National Recreation Area. The lowering of
 17 water levels at the mine will change the sub basin
 18 boundary between Chickasaw National Recreation Area
 19 and the mine and cause water that would otherwise flow
 20 towards the park to flow towards the mine pit. The
 21 lowering of water levels in the aquifer and the impact
 22 to the springs cannot be mitigated by current mine
 23 proposals to discharge excess water to streams.

24 And I will just mention as others have -- you
 25 have heard me mention previously, Chickasaw National

1 not bring additional copies. I apologize for that.
 2 If anybody would like copies or electronic copies, let
 3 me know and I will certainly be happy to get them to
 4 you.

5 And I will mention, in closing, as others
 6 have said, we have commented previously at previous
 7 informal hearings on this same proposal, so, Dean, I
 8 would appreciate if you would take those comments into
 9 consideration when you make your recommendation to the
 10 Department of Mines. Thank you.

11 MR. COUCH: Thank you.

12 On the representative speakers sign-up list,
 13 Peter Burck.

14 MR. BURCK: I also didn't know I was
 15 signing up to speak, but is there anyone appropriate
 16 to -- to whom I can appropriately yield my time?

17 MS. SHIRLEY: I'll take it.

18 MR. COUCH: Again, setting limits on the
 19 time not to chill discussion about a very critical and
 20 important topic, we will allow a yielding if Miss
 21 Shannon really has additional information to provide.

22 MS. SHIRLEY: Are we going back to when
 23 I'm going to be called or do I take it now?

24 MR. COUCH: We are now moving to -- that
 25 was the last representative speaker that had signed

1 Recreation Area has been around since 1906 when it was
 2 originally established as Platt National Park. At
 3 that time in 1906, we had 33 springs. We're actually
 4 down to five active springs today. Two of those five
 5 are currently not flowing because of the drought
 6 situation that we're in. We've got a million-plus
 7 visitors annually to the park. We've attracted that
 8 many visitors for several decades now.

9 So our ability to be an attraction to the
 10 public in Oklahoma and to the surrounding region is
 11 directly related to the availability of water. So
 12 anything that impacts the availability of water in the
 13 park is going to impact our visitors, it's going to
 14 impact the resources that we have been -- are charged
 15 by Congress to protect, and it's going to impact the
 16 economy of Murray County and the surrounding region.

17 Therefore, we request that the -- the
 18 Department of Mines deny the application. If the
 19 application is not denied, we request a public hearing
 20 that includes adequate time to hear all interested
 21 parties and to provide substantial information
 22 regarding the impacts of the proposed mine.

23 And I will leave copies of my statement with
 24 this kind gentleman and I will also leave a more
 25 extensive copy of written comments with him. I did

1 up, whether appropriately or not, but individual
 2 speakers then -- and I know he's been -- he greeted me
 3 as I came in. Mr. Maxwell, you were first, of course,
 4 to sign up as an individual speaker for this
 5 application.

6 MR. MAXWELL: I'm C.I. Maxwell, Jr.

7 I live on Pennington Creek. My parents
 8 bought the farm or the ranch on Pennington Creek in
 9 1935. Prior to that time, as I was growing up, I was
 10 with my uncle, Dr. Ross A. Maxwell, PhD, who was a --
 11 he went down to Texas after he got his degree and
 12 served -- finally went down as a junior geologist and
 13 worked his way up to he was manager of the park and
 14 then, when he retired, he started to work for the --
 15 the state of Texas as a consultant.

16 I probably know as much about the Arbuckle
 17 Aquifer as any person in here. Now, I want you to
 18 understand I am not a lettered lawyer, I am not a
 19 lettered hydrologist, and I am not a lettered
 20 geologist, but I've been around some very smart people
 21 and it rubbed off on me, and I learned a lot of things
 22 and probably have forgotten more than you -- some of
 23 you people have ever known.

24 I'm going to -- I have watched Pennington
 25 Creek since 1935. My house right now is about as far

1 from here to that back door from Pennington Creek.
 2 And it is almost dry. I have some -- some printouts
 3 here and charts from the USGS that shows the -- the
 4 mean flow and the maximum flow and the minimum flow of
 5 Pennington Creek since 1924 up until and including
 6 March the 20th of 2013. I want to give you this. I
 7 sent a copy of this to -- oh, you want it? Okay. And
 8 I'll give it to you. I have two more copies. Anybody
 9 want them? Okay. Amy.

10 These are copies of Pennington Creek and the
 11 number of the gauge on Pennington Creek is 07331300.
 12 Pennington Creek near Reagan, Oklahoma. I am
 13 primarily interested, as I'm sure most of you people
 14 that are here are primarily interested, in the minimum
 15 flow of Pennington Creek. Not the flow of the runoff
 16 water at the spring flow of Pennington Creek but the
 17 base flow of the springs.

18 Now, to make it real simple, the aquifer, the
 19 Arbuckle Aquifer, the water that is trapped beneath
 20 the mine -- beneath the springs cannot escape. The
 21 only way it comes out of there is being pumped out.
 22 And when that water is lowered, the upper water, or
 23 the young water as -- as the Water Resources Board
 24 calls it, goes down and you have less pressure forcing
 25 the water out of the springs of Pennington Creek, Blue

1 permit for Arbuckle Aggregates.
 2 Thank you.
 3 MR. COUCH: Thank you for your patience,
 4 Mr. Maxwell.
 5 MR. MAXWELL: Sir?
 6 MR. COUCH: Thank you for your patience,
 7 waiting all this time.
 8 MR. MAXWELL: Thank you for being able
 9 to speak.
 10 MR. COUCH: Next as an individual
 11 speaker, Floy Parkhill.
 12 MS. PARKHILL: Floy Parkhill, 409 South
 13 Mickle, Tishomingo. I'm a resident here for 30 years
 14 or more.
 15 I submitted written comments. I don't have
 16 any -- much to add to those written comments other
 17 than to say one other thing, but I do protest the
 18 approval of this application. The one thing that I
 19 would add is my view of this complicated situation is
 20 this, that for the mines, for this mine, this is about
 21 business. For me and my neighbors here, this is about
 22 our daily glass of water.
 23 MR. COUCH: Next, Reginald Robbins.
 24 MR. ROBBINS: Hello. I'm Reginald
 25 Robbins and I own property on Pennington Creek and

1 River, of Mill Creek, a lot of the mid low branches of
 2 Dry Water Creek, and the water that -- that's on top
 3 of the Pennsylvania limestone which is imperative --
 4 or impenetrable with water and which dries up at
 5 Antelope Springs and Buffalo Springs and which has
 6 affected the park -- national park over at -- over at
 7 Sulphur which is down at the Indian thing.

8 And to give you an idea of like -- I'll just
 9 start here on -- on -- on the water report of -- of
 10 2009. The base flow of Pennington Creek has dropped
 11 66 percent since 2004 up to 2009. And you can look --
 12 you can get all of these charts from the USGS. The
 13 water report is 2011. In the water year of 2013
 14 starting in -- in April the 1st and ending on March
 15 the 20th has dropped down 6.8, 6.4, 6.5, 5.4, 6.1, and
 16 that is not very much water just going down Pennington
 17 Creek. It's going ahead and feeding the town of
 18 Tishomingo, which is entirely dependent on the water.

19 We bought that farm because at the time when
 20 we bought it, Pennington Creek was flowing the minimum
 21 flow, 22, 25 cubic feet per minute. It's not doing it
 22 now. It will never do it now as long as they have the
 23 mines up on -- in the aquifer that's taking the water
 24 out of it because it cannot support it. So I
 25 recommend that the Department of Mines to not issue a

1 Mill Creek. I've seen Mill Creek be potentially
 2 destroyed and I would like for you to deny this permit
 3 that Arbuckle Aggregates is requesting. Thank you.
 4 MR. COUCH: Next, Mr. Joe Duncan.
 5 MR. DUNCAN: My name's Joe Duncan. I
 6 live on the Blue River in the Connerville area.
 7 My cattle depend on the river for water and
 8 also household water comes from a well as we do not
 9 have a rural water system in that area. So I hope we
 10 can not allow this permit. Thank you.
 11 MR. COUCH: And next as an individual
 12 speaker, Miss Shannon Shirley. I will assume the
 13 timekeeper won't have to make special --
 14 MS. SHIRLEY: It will be very short. My
 15 name is Shannon Shirley. I live in Mill Creek.
 16 My family and I depend on Mill Creek for all
 17 our water, domestic water use, except for drinking.
 18 Our livestock depend on it. Our -- we used to fish in
 19 it all the time, canoe on it. One more mine, I don't
 20 think there will be a Mill Creek at all. It will just
 21 be history. Completely.
 22 I don't see anything in the permit that
 23 addresses the obvious elephant in the room that there
 24 is a problem. It's going to take all the water out of
 25 it. And I would like to see some kind of

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1 site-specific plan, some kind of water management
 2 plan. We've all worked very hard to get to this point
 3 and I think it's kind of a snub in our direction. I
 4 also think that after being at the third informal
 5 conference and already being at the formal conference
 6 that it's time to -- to start over on this permit.
 7 Let's get it right. Let's get everything in there
 8 that's supposed to be in there and follow the rules.
 9 And thank you for letting me have the time to
 10 speak.
 11 MR. COUCH: Mr. Kellog. I think I saw
 12 him back there.
 13 MR. KELLOG: I have no further
 14 comments. I'm good.
 15 MR. COUCH: Okay. And it looks like
 16 Phyllis Buckner.
 17 MS. BUCKNER: I too didn't realize I was
 18 signing up. I thought I was signing in, so.
 19 MR. COUCH: I think at this point and
 20 perhaps before getting near the end, that's all we had
 21 as representative and individual speakers, but to
 22 ensure we have a full information that we need, there
 23 were a lot of questions and observations made by many
 24 of the speakers, and so I think it is back to the
 25 applicant to respond to those or point out where in

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1 the application to address some of those, whether
 2 technical or otherwise. This would be an opportunity
 3 I think to provide that for the record to address the
 4 recommendation.
 5 I had a couple of questions that I may just
 6 ask in my review of it and maybe Mr. Canty may be the
 7 appropriate representative to address that. I guess
 8 in a minor thing, the storm water pollution prevention
 9 plan mentioned for employees a portable toilet system,
 10 but elsewhere there was septic and lateral. I don't
 11 know if one was temporary during construction and the
 12 later for a more permanent operations. Is that --
 13 didn't know. Wasn't clear, I didn't think.
 14 MR. CANTY: I'm not exactly sure what
 15 you're referring to, but there is a storm water
 16 construction permit application that we received and
 17 that would be the temporary addressing sanitary
 18 waste. And that would typically be done using
 19 portable toilets. We realize that Pennington Creek
 20 currently is impacted because of fecal material
 21 probably related to agriculture or other
 22 nonfunctioning septic systems. We're -- we're
 23 addressing it for Mill Creek with portable toilets.
 24 That way it wouldn't affect the water quality.
 25 When the mine is in place, we -- I think

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1 you're referring to the application with the -- the
 2 DEQ for the OK-95, the general permit for rock mines,
 3 quarries. Is that what you're referring to?
 4 MR. COUCH: Uh-huh.
 5 MR. CANTY: Yes. Then those would have
 6 a approved sanitary system by a county sanitarian.
 7 MS. WILLIAMS: Mr. Hearing Officer, who
 8 is this man who's speaking?
 9 MR. COUCH: Geoff Canty is the technical
 10 representative for the applicant. And in looking
 11 at -- and this is a -- yeah, the general permit I
 12 guess for DEQ 606 OKG-95. The information as far as
 13 the areas of mining that are -- were presented there
 14 and I note as far as the dimensions and working
 15 volumes for the impoundments -- and this is in the
 16 Section I of -- of that application -- that the depths
 17 appear to be at 25 feet for F01, F02, and F03. Is
 18 that the proposal at this point for those areas for
 19 quarry mining, that'd be the maximum depth that's
 20 being proposed?
 21 MR. CANTY: Oh, I'm not sure what the
 22 question is regarding, but we have those aboveground?
 23 MR. COUCH: No. Those are -- it's
 24 designated for purposes of this application to the DEQ
 25 and the -- for rock, sand, and gravel quarries and

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1 stonecutting activities. I guess the general --
 2 MR. CANTY: Those are -- those are
 3 aboveground impoundments except for one that's
 4 underground. One is subsurface.
 5 MR. COUCH: Okay. Those depths and
 6 dimensions have...
 7 MR. CANTY: Yes. Those are -- those are
 8 proposed since it's been obviously a long application
 9 process. Typically, the Department of Mines will come
 10 out and verify -- excuse me -- the Department of
 11 Environmental Quality will come out and review what
 12 you actually construct and then your permit would be
 13 adjusted accordingly. Those permits are good for five
 14 years. And we're already into that permit cycle. So
 15 as-builts will be provided to the Department of
 16 Environmental Quality.
 17 MR. DONAHO: Mr. Couch?
 18 MR. COUCH: Just a moment.
 19 Again, I wasn't sure by this document in
 20 looking at it, that 25 feet, if that was a depth of --
 21 and dimension for those sites or...
 22 MR. CANTY: Yes, it is.
 23 MR. COUCH: Okay.
 24 MR. CANTY: As proposed.
 25 MR. COUCH: I think that's probably all

1 the questions I have.
 2 Mister -- Mr. Maxwell.
 3 MR. MAXWELL: Do you recall the tale of
 4 the elephant that put his nose in the tent? If I
 5 recall on the thing, the elephant -- I mean, the
 6 camel. I beg your pardon. See, I'm -- I'm getting
 7 old. You'll have to forgive me for my age.
 8 But the camel that put his nose in the tent,
 9 pretty soon, he's all the way in. If I recall in the
 10 May the 15th meeting over at Sulphur, Mr. Dawson
 11 indicated that in the pit, when they got down to where
 12 the water was, they would spread out and not go deeper
 13 down into the aquifer. I could be mistaken, but I
 14 believe those are his very words or his indication
 15 that he had.
 16 Mr. Dawson, do you recall that?
 17 MR. DAWSON: No. We've never had a
 18 meeting in Sulphur for Arbuckle Aggregates.
 19 MR. MAXWELL: I can't hear you.
 20 MR. DAWSON: No, I don't recall that.
 21 We've never had a meeting in Sulphur regarding
 22 Arbuckle Aggregates.
 23 MR. MAXWELL: It's probably in the
 24 record.
 25 MS. SHIRLEY: It was Martin Marietta.

1 impoundments, not the quarry pit itself as part of
 2 this document. And that was just my question that
 3 clarified it.
 4 Does the applicant have any other clarifying
 5 information that they would like to present for the
 6 record at this point?
 7 MS. NICHOLS: No, we do not. Everything
 8 that we've submitted in our permit I think addresses
 9 the -- the concerns that have been raised at the
 10 informal conference and the -- the indication that
 11 we're at the informal conference indicates that our
 12 application was complete and technically correct.
 13 MR. COUCH: I guess I will then note
 14 that the -- the notice indicated that those that
 15 objected in writing and of course got this written
 16 notice of this informal conference could make
 17 presentations and speak today, but the notice likewise
 18 provides if, at the discretion of the informal
 19 conference officer, to take other comments off the
 20 record by those that may be attending here today that
 21 would like to speak to this application in that
 22 fashion and not be on the record.
 23 So I think this would be an appropriate
 24 time. We're heading toward lunch and if there are
 25 those that attended today that were not formal

1 MS. FORD: It was the Martin Marietta
 2 case.
 3 MS. SHIRLEY: He said he -- they
 4 would -- they would look at the --
 5 MR. MAXWELL: I can't hear you.
 6 MS. FORD: It was the Martin Marietta
 7 case, when we did Martin Marietta.
 8 MR. MAXWELL: Yeah.
 9 MS. FORD: It was that case.
 10 MS. SHIRLEY: Same guy, different
 11 company.
 12 MR. COUCH: Does the applicant have --
 13 yes, Mr. Donaho?
 14 MR. DONAHO: In just sort of plain old,
 15 everyday, walking-down-the-street language, what is
 16 this 25 feet we're talking about?
 17 MR. COUCH: This is in a document. I
 18 was just asking a question about a document that's
 19 part of the record --
 20 MR. DONAHO: It's a DEQ document.
 21 MR. COUCH: -- for DEQ indicating in
 22 Section I, impoundment information, and under a column
 23 about depth, and there are five separate impoundments
 24 listed, and it notes a 25-foot depth for three of
 25 those. And the clarification was those are working

1 objectors, if you will, and that did not receive the
 2 separate notice, this would be the opportunity to make
 3 those comments. They will, and for clarification, not
 4 be on the record, but if those comments -- if there's
 5 a desire to make those comments, that could be done
 6 now.
 7 I guess a couple of things then. Is the -- a
 8 request was made a couple of times I think about the
 9 previous exhibits, documents in the record, what have
 10 you. Of course I -- it's not within the informal
 11 conference officer to make such a -- a determination
 12 as to the legal status of those documents. My review
 13 will be on the record presented here today and I
 14 assume, though, that the Department of Mines will
 15 guide that determination.
 16 Again, when there was discussion about the
 17 previous proceedings before today's proceeding that
 18 went on, I think that was a general understanding that
 19 that -- those documents and records still exist. This
 20 is a revision to an existing application at which
 21 those documents were presented. So, again, though, I
 22 don't know that it's within the authority today to
 23 rule on specifically the motion made by Miss
 24 Phillips.
 25 Miss Phillips, yes?

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1 MS. PHILLIPS: I would just like to
 2 additionally point out that the notice that was
 3 published in the newspaper by Arbuckle Aggregates
 4 specifically stated that if any protester had
 5 previously submitted written comments that they need
 6 not submit additional comments, which would lead me to
 7 believe, at least, that their -- their previous
 8 comments would be taken into consideration by the
 9 third informal conference officer.
 10 I think it would be a great and fatal mistake
 11 to not take into account all of the previous comments
 12 and objections and exhibits because this is the same
 13 permit. So if we're going to treat it as the same
 14 permit as it was on May 7, 2010, then you should take
 15 into account all of the comments and documents and
 16 exhibits that were submitted. If not, it's a new
 17 permit and we can start all over again.
 18 MR. COUCH: Very good. And maybe for
 19 purposes of addressing that very issue, I'll allow the
 20 applicant's counsel to address that or make a
 21 presentation about that.
 22 MS. NICHOLS: We don't have any
 23 objection to the -- the prior objections of the
 24 informal conferences being considered cumulatively as
 25 far as -- as this informal conference and, in fact,

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1 that was -- that's more of an administrative
 2 decision.
 3 But when the applica- -- when our notice of
 4 publication was submitted, we had it looked over by
 5 the Department of Mines and -- and that was our
 6 understanding of what was going to occur. So we don't
 7 have any objection to the objections that were
 8 previously submitted.
 9 MS. PHILLIPS: Miss -- Miss Nichols,
 10 does that also include the formal hearing documents?
 11 MS. NICHOLS: I'm sorry. I missed...
 12 MS. PHILLIPS: I'm sorry. Does that
 13 also include you also have no objection to the
 14 inclusion of the formal hearing documents?
 15 MS. NICHOLS: I do have an objection to
 16 that because my understanding is adminis- -- I mean,
 17 that's a -- that's a procedural question for the
 18 Department of Mines, and so my understanding of -- of
 19 the formal proceeding was that those -- those
 20 documents are not included.
 21 MS. PHILLIPS: Well, then CPASA would --
 22 would include specifically, if we haven't done so
 23 already, all of the arguments and pleadings and
 24 filings that we have made in the formal hearing as --
 25 as part of our comments and protest in this third

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1 informal conference.
 2 MS. NICHOLS: And I would object to
 3 that.
 4 MR. WOODCOCK: And, your Honor, while on
 5 that line, we submitted -- the Fish and Wildlife and
 6 Park Service submitted numerous documents in regard to
 7 the formal conference. I think if those are not going
 8 to be included, I think it makes it more clear this is
 9 a completely new application and should be treated as
 10 such.
 11 MS. WILLIAMS: Mr. Couch? Additionally
 12 -- Laurie Anne Williams -- the applicant has attempted
 13 to cherry pick throughout from the beginning in the
 14 filing of this application, and I thought it was quite
 15 a challenge of you to take on this case to be able to
 16 review all of the previous proceedings that they have
 17 requested by starting with the application back to the
 18 beginning that are completely part of this.
 19 And I do not believe that it is the
 20 applicant's choice to say, oh, well, take this, but we
 21 won't take that, and we'll take this, but we won't
 22 take that. I'm afraid we're going to ask that the
 23 hearing officer review the entire record. Unless this
 24 case is dismissed, then the entire record is before
 25 you from the beginning of the filing of the permit

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1 request.
 2 MR. COUCH: I'll take note of that.
 3 And because we are fortunate enough to have
 4 the counsel for the Department of Mines here -- I
 5 don't mean to put him on the spot, but for purposes of
 6 clarification and answering questions, Mark Seacrest
 7 wants to -- he can comment about that or simply await
 8 written documentation later.
 9 MR. SEACREST: Appreciate that, Dean.
 10 Obviously, I don't think people came here to
 11 listen to me talk. A lot of legal issues have been
 12 raised here. This is not a legal proceeding. I think
 13 some of these issues will undoubtedly be raised in the
 14 formal hearing. The original one was dismissed by the
 15 applicant.
 16 It was my understanding that the -- all of
 17 the protests would be considered in this informal
 18 conference review from the first two, but I don't --
 19 it's not my opinion that the pleadings or anything
 20 else from the formal hearing as being withdrawn would
 21 be part of the record here. Those would have to be
 22 part of a new formal hearing after the department
 23 makes a decision, which would not have been made yet
 24 on this permit application.
 25 That's my take on it. Subject to change. I

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1 reserve the right to change my mind on that. That
 2 would be my understanding. But I will be talking to
 3 my client about some of these issues.
 4 MR. WILLIAMS: Mister -- to -- to ask
 5 for clarification, Mr. Couch, when Mr. Seacrest says
 6 the original "one" was dismissed, I don't know what
 7 "one" refers to.
 8 MR. COUCH: Formal hearing.
 9 MS. WILLIAMS: First -- just the formal
 10 hearing.
 11 MR. SEACREST: Yes.
 12 MS. WILLIAMS: And it's all by itself
 13 out there, just -- it was dismissed by itself.
 14 MR. SEACREST: It was dismissed. That's
 15 why we're back here.
 16 MS. SHIRLEY: But the -- the public
 17 comments and the people speaking and all that stuff
 18 from the first one carries on --
 19 MR. SEACREST: Yes.
 20 MS. SHIRLEY: -- even though --
 21 MS. FORD: But not the formal.
 22 MR. SEACREST: Not the formal. That
 23 would be my -- my take on it.
 24 MS. FORD: So those that -- that
 25 participated in the formal -- and, granted, this is

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1 all legal questions, but I've got to go out there and
 2 explain it. I -- folks that did not participate --
 3 that participated in one or both of the first two but
 4 did not participate or -- and then did -- or just
 5 participated in the formal, they're done. So if -- if
 6 they were -- if they were only a part of the formal
 7 hearing --
 8 MR. SEACREST: For purposes of the
 9 informal conference, the concerns of previous people
 10 in addition to those here today will be considered.
 11 MS. FORD: But -- but not if they
 12 just --
 13 MR. SEACREST: But -- but we haven't
 14 made a decision yet, so, you know, you can't have a
 15 formal hearing until the department makes a decision.
 16 Now, once we make a decision, everybody on
 17 that matrix, the 182 I think that we mailed out, will
 18 be given notice of that decision and then there would
 19 be an ad run in the local newspaper of what that
 20 decision is. Anybody who might be adversely affected
 21 -- and this is a direct quote from the statute -- has
 22 a right to request a formal hearing. Could be the
 23 operator if we deny this thing or if we had conditions
 24 on it. They appealed it the first time.
 25 MS. FORD: Even -- okay. So if somebody

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1 didn't participate today, didn't participate in the
 2 earlier formal hearing --
 3 MR. SEACREST: They can still request a
 4 formal hearing.
 5 MS. FORD: They can --
 6 MR. SEACREST: Anybody who might be
 7 adversely affected --
 8 MS. FORD: Okay. So they're not
 9 precluded --
 10 MR. SEACREST: -- by the decision of the
 11 department --
 12 MS. FORD: -- from that.
 13 MR. SEACREST: You could -- you don't
 14 have to even participate in any of the three informal
 15 conferences to be someone who might be adversely
 16 affected and request that formal hearing.
 17 MR. DONAHO: So let me see if I --
 18 MR. COUCH: Now --
 19 MR. DONAHO: -- understand this correctly
 20 -- I'm sorry. Do you have...
 21 MR. COUCH: Well, mister -- I -- just to
 22 clarify that point, in thinking about this more
 23 legalistic and --
 24 MR. DONAHO: Yeah.
 25 MR. COUCH: -- proceedings, to the extent

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1 there is a new or separate formal hearing requested by
 2 those adversely affected, perhaps at that
 3 proceeding -- won't be before me, but at that
 4 proceeding a separate motion to incorporate the
 5 previous formal hearing documents, testimony, what
 6 have you, could be submitted and the hearing examiner
 7 would be able to address that issue, that separate
 8 issue, at that point in time.
 9 But I think the clarification is now the more
 10 than 200 or so will get notice -- even though they're
 11 not here today, didn't sign in, may not have even
 12 objected for today's proceeding -- will get notice of
 13 the recommendation and decision by the Department of
 14 Mines.
 15 MR. DONAHO: Eloquenty put, Mr. Couch,
 16 but what I'm --
 17 MR. COUCH: It -- it -- there's a --
 18 MR. DONAHO: That's what I'm --
 19 MR. COUCH: -- a little fine line --
 20 MR. DONAHO: -- trying to find out.
 21 MR. COUCH: -- the formal hearing --
 22 MR. DONAHO: Yeah.
 23 MR. COUCH: -- and the previous --
 24 MR. DONAHO: Are these informal --
 25 MR. COUCH: -- informal conferences.

1 MR. DONAHO: -- hearings --
 2 MR. SEACREST: These are conferences.
 3 MR. COUCH: These are conferences.
 4 MR. DONAHO: -- these are just like what
 5 you lawyers call discovery then. Right? We're just
 6 all talking here.
 7 MR. SEACREST: Not here.
 8 MR. DONAHO: No?
 9 MR. SEACREST: This is --
 10 MR. DONAHO: Do they have the impact of
 11 evidence then?
 12 MR. SEACREST: -- the purpose -- the
 13 purpose of -- no. The purpose of an informal
 14 conference is not evidentiary; it is not legal. It is
 15 more the department to hear the concerns of the
 16 citizens, not counsel for the department to be
 17 talking, but it's the only opportunity we have to hear
 18 your concerns before, before, we make a decision on
 19 the permit application that is now pending. We --
 20 MR. DONAHO: Your decision will be based
 21 after a formal hearing then?
 22 MR. SEACREST: No. No. We hear -- we
 23 take this into consideration, we complete the review
 24 of the permit application, and then we will make a
 25 decision. The 182 or however many it was that was on

1 the matrix will receive notice. We will run an ad in
 2 the newspaper of what the decision of the department
 3 is.
 4 Anybody who might be adversely affected,
 5 whether you participated, whether you complained,
 6 whether you whatever, has the right to request a
 7 formal hearing. Has to be in writing, has to be a
 8 request with the department. At that time we will
 9 have a hearing examiner hear the case. He's an
 10 attorney in Oklahoma City.
 11 MS. SHIRLEY: Not Dean.
 12 MR. SEACREST: Not -- not Dean.
 13 MS. FORD: Okay. So -- but let's say,
 14 for argument's sake, that there is going to be a
 15 formal conference. Formal hearing, thank you. Will
 16 it be on this application or will it be on another
 17 changed application and, if so, how do we know that it
 18 has changed?
 19 MR. SEACREST: There is -- I'll let the
 20 counsel for the operator speak to that, but the
 21 current, correct application is at the courthouse.
 22 We'll have the current, correct one at the
 23 department. (Inaudible.)
 24 MS. FORD: Right. But unless we have
 25 the pop-in method, which we are perfectly capable of

1 doing, popping over to the courthouse every day,
 2 saying, oh, has Arbuckle changed their application
 3 again, how do we know that it is in fact changed?
 4 MR. SEACREST: It's -- it's -- I'll let
 5 counsel for --
 6 MR. COUCH: I think, Miss Ford, what
 7 you're referring to, if there is another amendment or
 8 revision, I think the Department of Mines's procedures
 9 then would call for new notice and a new -- to the
 10 extent there is a change that needs more public input
 11 and conferencing.
 12 MS. FORD: You would think. That has
 13 not been -- that's not what's happened. Okay. So we
 14 need to develop a pop-in method.
 15 MS. SHIRLEY: That would be me.
 16 MR. COUCH: Yes, Miss Williams?
 17 MS. WILLIAMS: Mr. Couch, I -- I must
 18 ask this because I -- I'm a little confused at this --
 19 what is your responsibility at this point and what
 20 mission will you carry out at this point for the
 21 Department of Mines, since I've now learned -- I had
 22 assumed that you would then be the next step in this,
 23 but it sounds like this is divided up. What do you --
 24 what comes as a result of this?
 25 MR. COUCH: Prepare a written

1 recommendation for the Department of Mines as to the
 2 application that was specified in the notice, as
 3 revised now, that -- that was at the library, to make
 4 a recommendation on that in writing. That's the sole
 5 authority of this informal conference officer: to
 6 conduct the proceedings today, to make sure we have
 7 all of this on the record, and then to make a written
 8 recommendation to the department.
 9 MS. WILLIAMS: And your recommendation,
 10 does it take in from the beginning of time in this or
 11 does it just pick up when that notice went in the
 12 paper?
 13 MR. COUCH: It does appear that, as the
 14 notice in the paper specified, all those previous
 15 comments would be considered and so I will be
 16 considering those.
 17 MR. MAXWELL: How long is this going to
 18 take?
 19 MR. COUCH: That will be a good
 20 question.
 21 Mr. Phillips, yes, sir.
 22 MR. PHILLIPS: Chris Phillips.
 23 Quick question. In light of the -- the
 24 probable determination that some information that
 25 folks had submitted prior may not be included, would

1 it be possible to leave the record open for a couple
2 of days to allow people to submit new things to the
3 record?

4 MR. COUCH: In view of the complexity,
5 number of people, and opportunity to object or come up
6 here today and the notice is given to so many people,
7 I'm not sure that that is contemplated by the rules or
8 procedures for informal conferences, just to continue
9 to let it go. There may be that any additional
10 information or comments like that may trigger other
11 questions that all of the folks would need to be
12 involved with, including the applicant.

13 That would then lead to the potential that
14 additional informal conferences, proceedings, would
15 continue on and on and that's not my understanding of
16 how these rules are implemented on informal
17 conferences.

18 MR. DONAHO: Mr. Couch, where would we
19 find a copy of the rules for these informal hearings
20 that you've mentioned?

21 MR. COUCH: Well, plenty of places. Of
22 course, on the Web site, both -- and formally at the
23 Department of Mines, hard copies. The secretary of
24 state is the keeper of the formal official rules of
25 all agencies and on their Web site, those can be

1 presented here today. So if you can arrange that
2 after we close down here.

3 Are there any other matters to be addressed
4 in this informal conference on the record?

5 MR. NOBLE: I was the one other and I'll
6 get them the information.

7 MR. COUCH: If there are no other
8 matters to have presented today at this informal
9 conference, I think we need to declare it closed and
10 the record closed at -- it looks like 11:50 on this
11 April 2nd.

12 * * * * *

13 (Proceedings concluded at 11:50 a.m.)
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1 reviewed and downloaded as well.

2 Mr. Maxwell?

3 MR. MAXWELL: Are the Department of
4 Mines or will the Department of Mines send each and
5 every one that's on the list here a copy of the formal
6 recommendations that you give to them?

7 MR. COUCH: That's my understanding of
8 the process, yes. 180 -- there's a number they have,
9 but, yes --

10 MR. MAXWELL: Okay.

11 MR. COUCH: -- that will be provided.

12 MR. MAXWELL: I'll look forward to it.

13 MR. COUCH: Well, I think from what
14 there was the potential anticipation, we are heading
15 toward noon and maybe that appointed hour to wind this
16 down and close the record.

17 We do have all the exhibits and documents
18 that were presented here today. There were I think
19 Mr. Parkhill and perhaps one other document that was
20 presented that there were not extra copies for the
21 applicant, and if -- if you can -- whoever,
22 Mr. Parkhill and there was one other, I think, could
23 come to discuss with Miss Nichols, counsel for the
24 applicant, when those can be provided, we sure want to
25 make sure that they have an exact copy of what was

C E R T I F I C A T E

5 STATE OF OKLAHOMA)
6 COUNTY OF OKLAHOMA)SS:

7 I, Kate Scipione, a certified shorthand
8 reporter within and for the State of Oklahoma, certify
9 that the foregoing proceeding was taken by me in
10 stenotype and thereafter transcribed by computer and
11 is a true and correct transcript of the foregoing
12 proceeding; that the proceeding was taken on April 2,
13 2013, at 10:02 a.m., at Murray State College, Student
14 Services Building, Room 213, Tishomingo, Oklahoma;
15 that I am not an attorney for or a relative of any
16 party, or otherwise interested in this action.

17 Witness my hand and seal of office on
18 April 5, 2013.
19
20
21
22
23
24
25

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

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