

No. 141 Original

**In The
SUPREME COURT OF THE UNITED STATES**

STATE OF TEXAS

v.

**STATE OF NEW MEXICO and
STATE OF COLORADO**

TRANSCRIPT OF JUNE 30, 2016
STATUS CONFERENCE CALL BEFORE
A. GREGORY GRIMSAL, ESQ.
SPECIAL MASTER

Appearances:

For the State of Texas:

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ROBERT B. HOFFMAN, ESQ.
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Appearances:

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& Freeman, PC
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No. 1:

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Appearances:

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No. 1:

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& Sisk, P.A.
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Irrigation District:

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Also Participating:

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Alvin Jones
Jesus Reyes
Johnny Stubbs

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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

PROCEEDINGS

(June 30, 2016)

1
2
3 **THE SPECIAL MASTER:** Good afternoon, Counsel. This
4 is Greg Grimsal in New Orleans. Let's begin by taking roll,
5 please, to see that everybody is with us today.

6 Is counsel for Texas on the line, please?

7 **MR. SOMACH:** Yes, Your Honor. This is Stuart Somach.
8 I'm away from my office. With me here is Robert Hoffman. I
9 believe Mac Goldsberry and Andrew Hitchings are also on the
10 line.

11 **THE SPECIAL MASTER:** Mr. Somach, how do you spell
12 Mr. Goldsberry's name, please?

13 **MR. SOMACH:** Mac, do you want to make sure we get it
14 right?

15 **THE SPECIAL MASTER:** Yes, please.

16 **MR. GOLDSBERRY:** It's G-O-L-D-S-B-E-R-R-Y.

17 **THE SPECIAL MASTER:** Thank you.

18 Is counsel for New Mexico on the line, please?

19 **MS. THOMPSON:** Yes, Your Honor. This is Lisa
20 Thompson for the State of New Mexico. We are just waiting for
21 Mr. Steve Farris to also call in. He should be here any
22 moment.

23 **THE SPECIAL MASTER:** Was that Mr. Farris who just
24 joined us? Let's come back, then.

25 Is counsel for Colorado on the line, please?

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1 **MR. WALLACE:** Yes, Your Honor. Chad Wallace.

2 **THE SPECIAL MASTER:** Thank you, Mr. Wallace.

3 Counsel for the United States, please.

4 **MR. DUBOIS:** Good afternoon, Your Honor. This is
5 Jim Dubois. I believe Stephen Macfarlane is on the line and
6 also Judith Coleman.

7 **MR. MACFARLANE:** Yes, that's correct, Your Honor. I
8 have also with me on the line from the Interior Solicitor's
9 Office Bella Wolitz, W-O-L-I-T-Z.

10 **THE SPECIAL MASTER:** Thank you, Mr. Macfarlane.

11 El Paso County Water Improvement District No. 1
12 counsel on the line, please.

13 **MS. O'BRIEN:** Yes. Good afternoon, Special Master.
14 This is Maria O'Brien for El Paso County Water Improvement
15 District No. 1. With me is Sarah Stevenson. I believe
16 Mr. Speer should also be on the line calling in from El Paso.

17 Special Master, we also have some party
18 representatives for the district, noncounsel, who are also on
19 the line. If you would like us to announce those names as
20 well, we can do that.

21 **THE SPECIAL MASTER:** Yes, please.

22 **MS. O'BRIEN:** On the line are: the president of the
23 board, Johnny Stubbs; the district manager, Jesus Reyes; and
24 the district engineer, Al Blair.

25 **THE SPECIAL MASTER:** Thanks, Ms. O'Brien.

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1 Has Mr. Speer joined the call yet? We will come
2 back to him.

3 Elephant Butte Irrigation District.

4 **MR. HERNANDEZ:** Steven L. Hernandez in Las Cruces.
5 On the line from our Santa Fe office should be Dr. Lisa Henne.

6 **THE SPECIAL MASTER:** Anyone else for your client?

7 **MR. HERNANDEZ:** No, Special Master.

8 **THE SPECIAL MASTER:** Has Mr. Speer joined the line
9 yet?

10 How about Mr. Farris for New Mexico?
11 Mr. Farris, are you on the line?

12 Is there anyone else on the line besides counsel
13 for the parties I have identified?

14 Well, let me ask Ms. Thompson: Is it okay for
15 us to proceed without Mr. Farris on the line?

16 **MS. THOMPSON:** Your Honor, if you would indulge me to
17 wait just one more minute, I know that he was going to call in
18 from a conference room with some other representatives from the
19 State of New Mexico. I can attempt to contact him separately.

20 **THE SPECIAL MASTER:** We will give you a couple
21 minutes.

22 In the meantime, has Mr. Speer joined us?

23 **MR. SPEER:** Yes.

24 **THE SPECIAL MASTER:** Mr. Speer, you're on the line
25 now?

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1 **MR. SPEER:** Yes, finally. I've been calling for
2 several minutes --

3 **THE SPECIAL MASTER:** Thank you.

4 **MR. SPEER:** -- but I couldn't get through for some
5 reason.

6 **THE SPECIAL MASTER:** Thank you. Glad you are with
7 us.

8 **MR. SPEER:** My pleasure. Thank you, sir.

9 **THE SPECIAL MASTER:** Ms. Thompson, let us know when
10 you are able to hook up with Mr. Farris there, please.

11 **MS. THOMPSON:** I will, Your Honor. Thank you.

12 **MR. JONES:** My name is Alvin Jones. I am monitoring
13 on behalf of the Southern Rio Grande Diversified Crop Farmers
14 Association.

15 **THE SPECIAL MASTER:** Thank you, Mr. Jones.

16 Anybody else on the line besides counsel for the
17 parties I have identified?

18 **MS. THOMPSON:** Your Honor, I just spoke with
19 Mr. Farris. They have been attempting to call in and have
20 contacted your office. Apparently the PIN code is not working
21 for them. I confirmed that he had the same one I did from your
22 order, and I'm wondering if we had maybe reached the maximum
23 number of participants or something. I'm not sure.

24 **THE SPECIAL MASTER:** I don't believe there is a
25 maximum number of participants. I believe we can accommodate

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1 as many people as we need. Can you patch him in? Can you do a
2 conference call with him on your line?

3 **MS. THOMPSON:** Let me try that. Hang on one second,
4 please.

5 **THE SPECIAL MASTER:** We have had more people than
6 this on the line in the past.

7 **MS. THOMPSON:** Your Honor, I just reached Mr. Farris,
8 and I'm going to try to attempt to call the conference room and
9 connect him.

10 **THE SPECIAL MASTER:** Great. Thank you.

11 **MS. THOMPSON:** Sure.

12 This is Lisa. I'm going to connect us to the
13 group.

14 **MR. FARRIS:** Okay. Thank you.

15 **THE SPECIAL MASTER:** Mr. Farris, is that you on the
16 line now?

17 **MR. FARRIS:** Yes, sir. This is Steve Farris.

18 **THE SPECIAL MASTER:** Thank you, Mr. Farris.

19 **MS. THOMPSON:** Your Honor, this is Lisa too. I think
20 I just patched him in.

21 **THE SPECIAL MASTER:** Great. Yes, I did hear him.

22 Can everyone else hear Mr. Farris? Great.
23 Let's proceed, then.

24 Counsel, the reason I called this conference was
25 to inform you that I have completed a report dealing with the

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1 four motions that are pending before me. My intention is to
2 distribute that report and its appendices to you via DVD, which
3 is going out of my office this afternoon, to be delivered by
4 overnight delivery to your offices. Let me not hold you in
5 suspense any longer. Let me go through the recommendations
6 that are set forth in the report.

7 I'm recommending that New Mexico's motion to
8 dismiss Texas' complaint be denied. I'm recommending that
9 New Mexico's motion to dismiss the United States' complaint in
10 intervention should be granted to the extent that the
11 United States cannot state a plausible claim under the 1938
12 compact. To the extent that the United States has stated a
13 plausible claim under federal reclamation law on behalf of the
14 Rio Grande project, I'm recommending that the Court extend its
15 original but not exclusive jurisdiction pursuant to
16 28 U.S.C. § 1251(b)(2) to allow for the resolution by the Court
17 of the U.S. project claims to occur simultaneously with the
18 resolution of Texas' compact claims against New Mexico. I am
19 further recommending that both motions to intervene should be
20 denied.

21 Let me make a brief comment about the text of
22 the report itself, which is going to be on its way to you this
23 afternoon. As a prelude to my analysis of these motions, the
24 report reviews and recounts the context of the compact. I
25 confess that when we started work on this appointment, we were

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1 uneducated as to the 1938 compact's negotiations and how it
2 functions, so we examined the sources cited within your papers
3 and also sources cited within those sources.

4 In this regard we felt it was appropriate to
5 look at that material in view of Supreme Court guidance in
6 *Arizona v. California* stating that the scope of a compact can
7 be better understood when the compact is set against a
8 background. I also relied on the guidance and practice of
9 other special masters in other matters. Having said that, we
10 did not engage in any fact-finding that would be offensive to
11 Rule 12.

12 Now, that said, what I would like to do at this
13 point is give the parties an opportunity to inspect this
14 prefiling draft of the report. What I would like to do is give
15 you 30 days, until August 1, to review the report and then, if
16 you wish, to submit letter briefs to me which would be limited
17 to suggested technical corrections such as misstatements of
18 law, misstatements of fact, and clerical errors. I ask that
19 you not reargue your position in the letter briefs. Just limit
20 yourself to these technical matters.

21 I would request that you observe a 20-page limit
22 in these letter briefs. It's not mandatory or necessary for
23 you to file them. I am going to provide you the opportunity to
24 do it, however.

25 Let me mention that this prefiling inspection

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1 draft is merely a draft and it's not the report of the special
2 master within the meaning of Rule 53(e). The draft report,
3 however, is not confidential, but it is subject to revision on
4 my part. So it's not absolutely set in stone as it is. I'll
5 set forth a case management order setting out these rules
6 pertaining to your response to the draft report.

7 Once I have received your letters, I'll review
8 them and prepare the report for filing with the Supreme Court.
9 My understanding is that after the receipt of that report, the
10 Court will set it for conference and then at the conference
11 will probably set a schedule for filing any exceptions to the
12 report. Then after the filing of any exceptions, the Court
13 will decide whether to set the motions for oral argument or
14 not.

15 In any case, I would like to be ready to proceed
16 as expeditiously as possible when and if the matter comes back.
17 So what I would like to do is, after you have submitted your
18 letter briefs, I would like to have another telephone
19 conference to discuss a deadline for New Mexico to file an
20 answer and a further deadline for the parties to confer and
21 prepare a case management plan for my review and approval.

22 Again, in this regard I'm kind of relying on
23 what I have observed in other special master cases. In
24 *Montana v. Wyoming*, for example, it was a similar posture. The
25 special master had prepared a first interim report on a motion

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1 to dismiss and believed it was inappropriate to move into
2 discovery until the Court decided on whether to hold oral
3 argument and entertain exceptions on the report.

4 All that said, I do want to move forward as
5 quickly as possible when the case comes back, assuming the
6 Court does not dismiss it. So what I would like to do is pick
7 a date for another conference call the first week of August.

8 We are actually calling you from a conference
9 room in the Eastern District of Louisiana, and the Court has
10 suggested that Thursdays are the best days for us to do that.
11 So to start the conversation, is there anyone who would have a
12 problem with another conference call on August 4?

13 **MR. WALLACE:** Your Honor, this is Chad Wallace. I
14 will be out of town and out of phone communication that week.

15 **THE SPECIAL MASTER:** Okay. Well, how about the next
16 week?

17 **MR. WALLACE:** I am available.

18 **THE SPECIAL MASTER:** We are looking at the 11th now,
19 Counsel. Is there anyone who cannot make a phone conference on
20 August 11? Great. Well, we will set it.

21 Is this time agreeable to everyone, 2:00 Central
22 time? That's great.

23 **MR. SPEER:** Special Master, this is James Speer. Let
24 me just mention we are on Mountain time in New Mexico and
25 Texas. I can meet any time of the day you want, but I just

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1 mention that 2:00 Central time is 1:00 in El Paso and in
2 New Mexico, other places in New Mexico.

3 **THE SPECIAL MASTER:** Does that pose a problem for
4 anyone? I'm happy to move the time if anybody needs me to do
5 so on that day. If there are no problems with this time, let's
6 go ahead and keep 2:00 for that conference call.

7 I'm FedExing out a disc to each of you tonight
8 with the text of the draft prefiling report on it with the
9 appendices attached. Then we will confer again on August 11,
10 and I will issue appropriate case management orders setting all
11 this forth.

12 I have one final thing I need to go through
13 before we conclude today. My law clerk, Meredith Grabill, who
14 many of you met and dealt with, particularly at the time of the
15 hearings here in August of last year -- Ms. Grabill, I regret
16 to report, is leaving my firm to pursue other opportunities.
17 She has very impressive credentials and experience in
18 bankruptcy, and an opportunity came to her to go practice some
19 very high-level bankruptcy law. I would like on the record to
20 record my gratitude for her excellent research and analysis and
21 wish her best wishes in the next phase of her practice.

22 That said, what I would like to do is replace
23 her with another associate at my firm named Alex Rothenberg,
24 who is with us here today. Alex earned his J.D. from Tulane
25 magna cum laude in 2012. He earned the Dean's scholarship at

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1 Tulane and served as senior articles editor of the Tulane Law
2 Review. He also served as a law clerk to the Honorable
3 Nannette Jolivette Brown of the Eastern District of Louisiana.

4 I would propose to bill Alex at \$300 an hour,
5 which is the same rate I charged for Ms. Grabill's services.
6 Because of the timing of this, it seems to me there will be
7 very little duplicated effort occasioned by the handoff from
8 Meredith to Alex. I plan to get Alex up to speed by letting
9 him read the compact and the draft report, and then he can ask
10 me any questions he may have. After that he will help me with
11 the filing process of the final report with the Supreme Court.
12 Let me emphasize that to date he has not spent a quarter of an
13 hour on this matter, at my instruction, because I asked him not
14 to do so until the parties consent to his engagement.

15 Are there any questions or any objections to my
16 engaging Mr. Rothenberg as my law clerk to replace the
17 departing Ms. Grabill? Any objections to that? Any questions?

18 **MR. SOMACH:** This is Stuart Somach, Your Honor.
19 Texas doesn't have any objection to that.

20 **THE SPECIAL MASTER:** Thank you, Mr. Somach.

21 **MR. FARRIS:** I'm sorry, Special Master. This is
22 Steve Farris. I couldn't understand Mr. Somach.

23 **THE SPECIAL MASTER:** If I can repeat it, Mr. Somach
24 said that he had no objection to my engaging Mr. Rothenberg of
25 my firm to replace Meredith Grabill as my law clerk in this

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1 matter.

2 MR. WALLACE: No objection from Colorado.

3 THE SPECIAL MASTER: Thank you, Mr. Wallace.

4 MR. DUBOIS: No objection from the United States.

5 THE SPECIAL MASTER: Thank you, Mr. Dubois.

6 MR. FARRIS: New Mexico does not object either.

7 THE SPECIAL MASTER: Thank you, Mr. Farris.

8 MS. O'BRIEN: Special Master, excuse me. This is
9 Maria O'Brien for El Paso County Water Improvement District
10 No. 1.

11 THE SPECIAL MASTER: Yes, Ms. O'Brien.

12 MS. O'BRIEN: I have a clarifying question in light
13 of the announcement of your ruling today on the motions to
14 intervene. Certainly without waiving any objections and having
15 not seen your report, I nonetheless would ask if the Court had
16 contemplated as part of the case management plan that that
17 would be the context in which we would address either
18 district's potential participation as amicus in the case?

19 THE SPECIAL MASTER: Why don't you go ahead and read
20 the report. I believe I address that in the report. In the
21 report, although I deny the motion to intervene, I encourage
22 both would-be intervenors to participate as amici in the case
23 in the report.

24 MS. O'BRIEN: Thank you very much.

25 THE SPECIAL MASTER: Why don't you have a look at

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1 that, and then at the conference in August we can discuss
2 whether there's any lingering question or issues you have about
3 that. Does that work?

4 **MS. O'BRIEN:** Yes. Thank you very much,
5 Special Master.

6 **THE SPECIAL MASTER:** That's great. Is there anything
7 else for the good of the order?

8 I would like to thank all counsel for calling in
9 today. Again, I would like to thank all of you for the
10 excellent work you did on this extremely interesting and
11 important case. I wish all of you a happy Fourth of July.

12 (Proceedings adjourned.)

13 * * *

14 **CERTIFICATE**

15 I, Toni Doyle Tusa, CCR, FCRR, Official Court
16 Reporter for the United States District Court, Eastern District
17 of Louisiana, certify that the foregoing is a true and correct
18 transcript, to the best of my ability and understanding, from
19 the record of proceedings in the above-entitled matter.

20
21
22 s/ Toni Doyle Tusa
23 Toni Doyle Tusa, CCR, FCRR
24 Official Court Reporter
25

	79901 [1] 2/23	ask [4] 6/14 10/18 14/9 15/15
MR. DUBOIS: [2] 5/3 15/3	8	asked [1] 14/13
MR. FARRIS: [4] 8/13 8/16 14/20 15/5	800 [2] 2/20 2/20	associate [1] 13/23
MR. GOLDSBERRY: [1] 4/15	80202 [1] 2/11	Association [1] 7/14
MR. HERNANDEZ: [2] 6/3 6/6	80203 [2] 2/4 2/7	assuming [1] 12/5
MR. JONES: [1] 7/11	87102 [1] 3/5	at [11] 10/5 10/12 11/10 12/18 13/14
MR. MACFARLANE: [1] 5/6	87501 [1] 1/23	13/23 13/25 14/4 14/13 15/25 16/1
MR. SOMACH: [3] 4/6 4/12 14/17	88013 [1] 3/8	attached [1] 13/9
MR. SPEER: [5] 6/22 6/25 7/3 7/7	9	attempt [2] 6/19 8/8
12/22	9-700 [1] 2/13	attempting [1] 7/19
MR. WALLACE: [4] 4/25 12/12 12/16	95814 [2] 1/20 2/14	Attorney [1] 1/22
15/1	999 [1] 2/10	August [7] 10/15 12/7 12/12 12/20 13/9
MS. O'BRIEN: [6] 5/12 5/21 15/7	A	13/15 16/1
15/11 15/23 16/3	ability [1] 16/18	August 1 [1] 10/15
MS. THOMPSON: [8] 4/18 6/15 7/10	able [1] 7/10	August 11 [2] 12/20 13/9
7/17 8/2 8/6 8/10 8/18	about [4] 6/10 9/21 12/15 16/2	August 4 [1] 12/12
THE SPECIAL MASTER: [35]	above [1] 16/19	available [1] 12/17
\$	above-entitled [1] 16/19	away [1] 4/8
\$300 [1] 14/4	absolutely [1] 11/4	B
1	accommodate [1] 7/25	B-275 [1] 3/13
1000 [1] 1/19	actually [1] 12/8	back [4] 4/24 6/2 11/16 12/5
1032 [1] 2/22	address [2] 15/17 15/20	background [1] 10/8
11 [2] 12/20 13/9	adjourned [1] 16/12	bankruptcy [2] 13/18 13/19
1120 [1] 2/4	after [4] 11/9 11/12 11/17 14/10	be [16] 4/21 5/16 6/5 9/3 9/8 9/10 9/19
11th [1] 12/18	afternoon [5] 4/3 5/4 5/13 9/3 9/23	9/22 10/7 10/10 10/16 11/15 12/14
12 [1] 10/11	again [3] 11/22 13/9 16/9	14/6 15/17 15/22
1251 [1] 9/16	against [2] 9/18 10/7	because [2] 14/6 14/13
1300 [1] 2/7	agreeable [1] 12/21	been [2] 7/1 7/19
13108 [1] 3/8	ahead [2] 13/6 15/19	before [3] 1/12 9/1 13/13
141 [1] 1/1	aided [1] 3/17	begin [1] 4/4
1508 [1] 1/23	AI [2] 3/10 5/24	behalf [2] 7/13 9/13
1600 [1] 2/4	Albuquerque [1] 3/5	believe [6] 4/9 5/5 5/15 7/24 7/25 15/20
18th [1] 2/10	Alex [5] 13/23 13/24 14/4 14/8 14/8	believed [1] 12/1
1938 [2] 9/11 10/1	all [5] 12/4 13/10 16/8 16/9 16/11	BELLA [2] 2/19 5/9
1:00 [1] 13/1	allow [1] 9/16	besides [2] 6/12 7/16
2	also [11] 3/10 4/9 4/21 5/6 5/8 5/16	best [3] 12/10 13/21 16/18
20-page [1] 10/21	5/17 5/18 10/3 10/8 14/2	better [1] 10/7
2012 [1] 13/25	although [1] 15/21	bill [1] 14/4
2016 [2] 1/11 4/2	Alvin [2] 3/10 7/12	Blair [2] 3/10 5/24
20530 [1] 2/17	am [4] 7/12 9/18 10/23 12/17	board [1] 5/23
2168 [1] 3/4	amici [1] 15/22	both [2] 9/19 15/22
275 [1] 3/13	amicus [1] 15/18	Box [2] 3/4 3/8
28 U.S.C [1] 9/16	analysis [2] 9/23 13/20	brief [1] 9/21
2:00 Central [2] 12/21 13/1	ANDREW [2] 1/18 4/9	briefs [4] 10/16 10/19 10/22 11/18
2:00 for [1] 13/6	announce [1] 5/19	Broadway [1] 2/7
3	announcement [1] 15/13	Brown [1] 14/3
30 [2] 1/11 4/2	another [4] 11/18 12/7 12/12 13/23	but [4] 7/4 9/15 11/3 12/25
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5	anybody [2] 7/16 13/4	12/7 12/12 13/6
500 [2] 1/19 3/13	anyone [5] 6/6 6/12 12/11 12/19 13/4	called [1] 8/24
501 [1] 2/13	anything [1] 16/6	calling [4] 5/16 7/1 12/8 16/8
504 [1] 3/14	Apparently [1] 7/20	came [1] 13/18
53 [1] 11/2	Appearances [3] 1/15 2/1 3/1	can [11] 5/20 6/19 7/25 8/1 8/1 8/22
589-7778 [1] 3/14	appendices [2] 9/2 13/9	10/6 12/25 14/9 14/23 16/1
6	appointment [1] 9/25	cannot [2] 9/11 12/19
601 [1] 2/16	appropriate [2] 10/4 13/10	Capitol [1] 1/19
7	approval [1] 11/21	case [9] 11/5 11/15 11/21 12/5 13/10
700 [1] 2/13	are [15] 4/9 4/20 5/18 5/22 6/11 7/6	15/16 15/18 15/22 16/11
70130 [1] 3/14	7/10 9/1 9/6 12/8 12/10 12/18 12/24	cases [1] 11/23
7778 [1] 3/14	13/5 14/15	CCR [3] 3/13 16/15 16/22
	argument [2] 11/13 12/3	Central [2] 12/21 13/1
	Arizona [1] 10/6	Certainly [1] 15/14
	articles [1] 14/1	CERTIFICATE [1] 16/14
	as [18]	certify [1] 16/17
		CHAD [3] 2/6 5/1 12/13

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charged [1] 14/5
cited [2] 10/2 10/3
claim [2] 9/11 9/13
claims [2] 9/17 9/18
clarifying [1] 15/12
clerical [1] 10/18
clerk [4] 13/13 14/2 14/16 14/25
client [1] 6/6
code [1] 7/20
COLEMAN [2] 2/16 5/6
COLORADO [8] 1/9 2/4 2/6 2/6 2/7
2/11 4/25 15/2
come [2] 4/24 6/1
comes [2] 11/16 12/5
comment [1] 9/21
communication [1] 12/14
compact [6] 9/12 9/18 9/24 10/6 10/7
14/9
compact's [1] 10/1
complaint [2] 9/8 9/9
completed [1] 8/25
computer [1] 3/17
computer-aided [1] 3/17
conclude [1] 13/13
confer [2] 11/20 13/9
conference [14] 1/12 6/18 8/2 8/8 8/24
11/10 11/10 11/19 12/7 12/8 12/12
12/19 13/6 16/1
confess [1] 9/25
confidential [1] 11/3
confirmed [1] 7/21
connect [2] 8/9 8/12
consent [1] 14/14
contact [1] 6/19
contacted [1] 7/20
contemplated [1] 15/16
context [2] 9/24 15/17
conversation [1] 12/11
correct [2] 5/7 16/17
corrections [1] 10/17
couldn't [2] 7/4 14/22
counsel [11] 4/3 4/6 4/18 4/25 5/3 5/12
6/12 7/16 8/24 12/19 16/8
County [5] 2/22 3/2 5/11 5/14 15/9
couple [1] 6/20
COURT [16] 1/4 3/13 9/14 9/16 10/5
11/8 11/10 11/12 12/2 12/6 12/9 14/11
15/15 16/15 16/16 16/23
credentials [1] 13/17
Crop [1] 7/13
Cruces [2] 3/8 6/4
cum [1] 13/25

D
date [2] 12/7 14/12
day [2] 12/25 13/5
days [2] 10/15 12/10
DC [1] 2/17
deadline [2] 11/19 11/20
dealing [1] 8/25
dealt [1] 13/14
Dean's [1] 13/25
decide [1] 11/13
decided [1] 12/2
delivered [1] 9/3
delivery [1] 9/4
denied [2] 9/8 9/20
Denver [3] 2/4 2/7 2/11

deny [1] 15/21
departing [1] 14/17
Department [5] 2/6 2/9 2/12 2/15 2/18
did [4] 7/21 8/21 10/10 16/10
disc [1] 13/7
discovery [1] 12/2
discuss [2] 11/19 16/1
dismiss [4] 9/8 9/9 12/1 12/6
distribute [1] 9/2
district [14] 2/22 3/3 3/7 5/11 5/15 5/18
5/23 5/24 6/3 12/9 14/3 15/9 16/16
16/16
district's [1] 15/18
Diversified [1] 7/13
do [14] 4/11 4/13 5/20 8/1 10/12 10/14
10/24 11/17 12/4 12/6 12/10 13/4
13/22 14/14
does [4] 12/6 13/3 15/6 16/3
doesn't [1] 14/19
don't [3] 7/24 15/19 15/25
Doyle [4] 3/13 16/15 16/22 16/22
Dr. [1] 6/5
Dr. Lisa [1] 6/5
draft [7] 10/14 11/1 11/1 11/2 11/6 13/8
14/9
Drawer [1] 1/23
DUBOIS [3] 2/9 5/5 15/5
Dunn [1] 1/17
duplicated [1] 14/7
DVD [1] 9/2

E
each [1] 13/7
earned [2] 13/24 13/25
East [1] 2/22
Eastern [3] 12/9 14/3 16/16
editor [1] 14/1
effort [1] 14/7
either [2] 15/6 15/17
EI [8] 2/22 2/23 3/2 5/11 5/14 5/16 13/1
15/9
El Paso [5] 5/11 5/14 5/16 13/1 15/9
Elephant [2] 3/6 6/3
Elephant Butte [1] 6/3
else [5] 6/6 6/12 7/16 8/22 16/7
emphasize [1] 14/12
encourage [1] 15/21
engage [1] 10/10
engagement [1] 14/14
engaging [2] 14/16 14/24
engineer [1] 5/24
entertain [1] 12/3
entitled [1] 16/19
errors [1] 10/18
ESQ [17]

everybody [1] 4/5
everyone [2] 8/22 12/21
examined [1] 10/2
example [1] 11/24
excellent [2] 13/20 16/10
exceptions [3] 11/11 11/12 12/3
exclusive [1] 9/15
excuse [1] 15/8
expeditiously [1] 11/16
experience [1] 13/17
extend [1] 9/14
extent [2] 9/10 9/12
extremely [1] 16/10

F
fact [2] 10/10 10/18
fact-finding [1] 10/10
Farmers [1] 7/13
FARRIS [15] 1/22 4/21 4/23 6/10 6/11
6/15 7/10 7/19 8/7 8/15 8/17 8/18 8/22
14/22 15/7
FCRR [3] 3/13 16/15 16/22
Fe [2] 1/23 6/5
federal [1] 9/13
FedExing [1] 13/7
felt [1] 10/4
file [2] 10/23 11/19
filing [4] 11/8 11/11 11/12 14/11
final [2] 13/12 14/11
finally [1] 7/1
finding [1] 10/10
firm [3] 13/16 13/23 14/25
first [2] 11/25 12/7
foregoing [1] 16/17
forth [3] 9/6 11/5 13/11
forward [1] 12/4
four [1] 9/1
Fourth [1] 16/11
FRANCIS [1] 1/19
Freeman [1] 2/3
functions [1] 10/2
further [2] 9/19 11/20

G
G-O-L-D-S-B-E-R-R-Y [1] 4/16
Gay [1] 2/20
General's [1] 1/22
get [3] 4/13 7/4 14/8
give [3] 6/20 10/13 10/14
Glad [1] 7/6
go [5] 9/5 13/6 13/12 13/18 15/19
going [6] 6/17 8/8 8/12 9/3 9/22 10/23
GOLDSBERRY [2] 1/19 4/9
Goldsberry's [1] 4/12
good [4] 4/3 5/4 5/13 16/7
Grabill [4] 13/13 13/15 14/17 14/25
Grabill's [1] 14/5
Grande [2] 7/13 9/14
granted [1] 9/10
gratitude [1] 13/20
great [6] 8/10 8/21 8/22 12/20 12/22
16/6
Greg [1] 4/4
GREGORY [1] 1/12
GRIMSAL [2] 1/12 4/4
group [1] 8/13
guidance [2] 10/5 10/8

H
had [6] 7/21 7/22 8/5 11/25 14/24
15/15
handoff [1] 14/7
Hang [1] 8/3
happy [2] 13/4 16/11
Harris [1] 3/2
has [7] 6/1 6/8 6/22 9/12 12/9 13/17
14/12
have [19]
having [2] 10/9 15/14
he [10] 4/21 6/17 7/21 13/25 14/2 14/9
14/10 14/10 14/12 14/24
hear [2] 8/21 8/22
hearings [1] 13/15

<p>H</p> <p>help [1] 14/10 HENNE [2] 3/7 6/5 her [5] 13/18 13/20 13/21 13/21 13/23 here [4] 4/8 4/21 13/15 13/24 Hernandez [3] 3/6 3/7 6/4 high [1] 13/19 high-level [1] 13/19 him [9] 6/2 6/19 8/1 8/2 8/9 8/20 8/21 14/9 14/13 his [2] 13/24 14/14 HITCHINGS [2] 1/18 4/9 HOFFMAN [2] 1/18 4/8 hold [2] 9/4 12/2 Honor [12] 4/7 4/19 5/1 5/4 5/7 6/16 7/11 7/18 8/7 8/19 12/13 14/18 Honorable [1] 14/2 hook [1] 7/10 hour [2] 14/4 14/13 how [4] 4/11 6/10 10/1 12/15 however [2] 10/24 11/3</p>	<p>Jolivet [1] 14/3 Jones [3] 3/10 7/12 7/15 JR [1] 2/22 JUDITH [2] 2/16 5/6 July [1] 16/11 JUNE [2] 1/11 4/2 jurisdiction [1] 9/15 just [9] 4/20 4/23 6/17 7/18 8/7 8/20 10/19 12/24 12/25 Justice [3] 2/9 2/12 2/15</p> <p>K</p> <p>keep [1] 13/6 kind [1] 11/22 know [2] 6/17 7/9 Knoxville [1] 2/20</p>	<p>meaning [1] 11/2 meantime [1] 6/22 mechanical [1] 3/17 meet [1] 12/25 mention [3] 10/25 12/24 13/1 Meredith [3] 13/13 14/8 14/25 merely [1] 11/1 met [1] 13/14 MEXICO [17] Mexico's [2] 9/7 9/9 minute [1] 6/17 minutes [2] 6/21 7/2 misstatements [2] 10/17 10/18 Modrall [1] 3/2 moment [1] 4/22 monitoring [1] 7/12 Montana [1] 11/24 Montana v [1] 11/24 Montano [1] 2/2 more [2] 6/17 8/5 motion [4] 9/7 9/9 11/25 15/21 motions [5] 9/1 9/19 9/23 11/13 15/13 Mountain [1] 12/24 move [3] 12/1 12/4 13/4 Mr. [29] Mr. Dubois [1] 15/5 Mr. Farris [11] 4/23 6/10 6/11 6/15 7/10 7/19 8/7 8/15 8/18 8/22 15/7 Mr. Goldsberry's [1] 4/12 Mr. Jones [1] 7/15 Mr. Macfarlane [1] 5/10 Mr. Rothenberg [2] 14/16 14/24 Mr. Somach [4] 4/11 14/20 14/22 14/23 Mr. Speer [5] 5/16 6/1 6/8 6/22 6/24 Mr. Steve [1] 4/21 Mr. Wallace [2] 5/2 15/3 Ms [1] 15/11 Ms. [6] 5/25 6/14 7/9 13/15 14/5 14/17 Ms. Grabill [2] 13/15 14/17 Ms. Grabill's [1] 14/5 Ms. O'Brien [1] 5/25 Ms. Thompson [2] 6/14 7/9 much [2] 15/24 16/4 my [20]</p>
<p>I</p> <p>I'll [2] 11/4 11/7 I'm [12] 4/8 7/22 7/23 8/8 8/12 9/7 9/8 9/14 11/22 13/4 13/7 14/21 I've [1] 7/1 identified [2] 6/13 7/17 if [9] 5/19 6/16 7/22 10/15 11/16 13/4 13/5 14/23 15/15 II [1] 1/19 important [1] 16/11 impressive [1] 13/17 Improvement [5] 2/22 3/3 5/11 5/14 15/9 in [46] inappropriate [1] 12/1 indulge [1] 6/16 inform [1] 8/25 inspect [1] 10/13 inspection [1] 10/25 instruction [1] 14/13 intention [1] 9/1 interesting [1] 16/10 interim [1] 11/25 Interior [2] 2/18 5/8 intervene [3] 9/19 15/14 15/21 intervenors [1] 15/22 intervention [1] 9/10 into [1] 12/1 Irrigation [2] 3/7 6/3 is [49] issue [1] 13/10 issues [1] 16/2 it [15] 4/13 6/14 10/1 10/4 10/24 11/3 11/4 11/10 11/24 12/1 12/6 12/20 13/8 14/6 14/23 it's [4] 4/16 10/22 11/1 11/4 its [3] 9/2 9/14 9/22 itself [1] 9/22</p>	<p>L</p> <p>Las [2] 3/8 6/4 Las Cruces [1] 6/4 last [1] 13/15 laude [1] 13/25 law [10] 2/6 3/6 9/13 10/18 13/13 13/19 14/1 14/2 14/16 14/25 leaving [1] 13/16 let [9] 6/14 7/9 8/3 9/4 9/5 9/21 10/25 12/23 14/12 let's [4] 4/4 4/24 8/23 13/5 letter [4] 10/16 10/19 10/22 11/18 letters [1] 11/7 letting [1] 14/8 level [1] 13/19 light [1] 15/12 like [11] 5/19 10/12 10/14 11/15 11/17 11/18 12/6 13/19 13/22 16/8 16/9 limit [2] 10/19 10/21 limited [1] 10/16 Lincoln [1] 2/4 line [20] lingering [1] 16/2 LISA [6] 2/3 3/7 4/19 6/5 8/12 8/19 little [1] 14/7 longer [1] 9/5 look [2] 10/5 15/25 looking [1] 12/18 Louisiana [4] 3/14 12/9 14/3 16/17</p>	<p>N</p> <p>name [2] 4/12 7/12 named [1] 13/23 names [1] 5/19 Nannette [1] 14/3 necessary [1] 10/22 need [2] 8/1 13/12 needs [1] 13/4 negotiations [1] 10/1 NEW [21] New Mexico [9] 4/18 4/20 6/10 6/19 9/18 11/19 12/24 13/2 15/6 New Mexico's [2] 9/7 9/9 New Orleans [1] 4/4 next [2] 12/15 13/21 no [9] 1/1 2/23 3/3 5/15 6/7 13/5 14/24 15/2 15/4 No. [2] 5/11 15/10 No. 1 [2] 5/11 15/10 noncounsel [1] 5/18 nonetheless [1] 15/15 not [16] 7/20 7/23 9/4 9/15 10/10 10/19 10/22 11/1 11/3 11/4 11/14 12/6 14/12 14/13 15/6 15/15 now [4] 6/25 8/16 10/12 12/18</p>
<p>J</p> <p>J.D [1] 13/24 JAMES [3] 2/9 2/22 12/23 Jesus [2] 3/11 5/23 Jim [1] 5/5 Jim Dubois [1] 5/5 Johnny [2] 3/11 5/23 joined [4] 4/24 6/1 6/8 6/22</p>	<p>M</p> <p>Mac [2] 4/9 4/13 MACFARLANE [3] 2/13 5/5 5/10 magna [1] 13/25 Main [1] 2/22 make [3] 4/13 9/21 12/19 Mall [1] 1/19 management [4] 11/5 11/21 13/10 15/16 manager [1] 5/23 mandatory [1] 10/22 many [2] 8/1 13/14 MARIA [3] 3/3 5/14 15/9 master [11] 1/13 5/13 5/17 6/7 11/2 11/23 11/25 12/23 14/21 15/8 16/5 masters [1] 10/9 material [1] 10/5 matter [4] 11/16 14/13 15/1 16/19 matters [2] 10/9 10/20 maximum [2] 7/22 7/25 may [1] 14/10 maybe [1] 7/22 me [19]</p>	

<p>N number [2] 7/23 7/25 NW [1] 2/16</p>	<p>position [1] 10/19 possible [2] 11/16 12/5 Post [3] 1/23 3/4 3/8 posture [1] 11/24 potential [1] 15/18 Poydras [1] 3/13 practice [3] 10/8 13/18 13/21 prefiling [3] 10/14 10/25 13/8 prelude [1] 9/23 prepare [2] 11/8 11/21 prepared [1] 11/25 president [1] 5/22 probably [1] 11/11 problem [2] 12/12 13/3 problems [1] 13/5 proceed [3] 6/15 8/23 11/15 proceedings [4] 3/17 4/1 16/12 16/19 process [1] 14/11 project [2] 9/14 9/17 propose [1] 14/4 provide [1] 10/23 pursuant [1] 9/15 pursue [1] 13/16</p>	<p>Rothenberg [3] 13/23 14/16 14/24 Rule [2] 10/11 11/2 Rule 12 [1] 10/11 Rule 53 [1] 11/2 rules [1] 11/5 ruling [1] 15/13</p>
<p>O O'BRIEN [5] 3/3 5/14 5/25 15/9 15/11 object [1] 15/6 objection [4] 14/19 14/24 15/2 15/4 objections [3] 14/15 14/17 15/14 observe [1] 10/21 observed [1] 11/23 occasioned [1] 14/7 occur [1] 9/17 offensive [1] 10/10 office [11] 1/22 1/23 2/19 3/4 3/6 3/8 4/8 5/9 6/5 7/20 9/3 offices [1] 9/4 Official [3] 3/13 16/15 16/23 okay [3] 6/14 8/14 12/15 on [40] Once [1] 11/7 one [4] 6/17 7/21 8/3 13/12 opportunities [1] 13/16 opportunity [3] 10/13 10/23 13/18 or [5] 7/23 10/22 11/13 14/15 16/2 oral [2] 11/13 12/2 order [3] 7/22 11/5 16/7 orders [1] 13/10 original [2] 1/1 9/15 Orleans [2] 3/14 4/4 other [6] 6/18 10/9 10/9 11/23 13/2 13/16 our [1] 6/5 out [5] 9/3 11/5 12/14 12/14 13/7 overnight [1] 9/4</p>	<p>Q quarter [1] 14/12 question [2] 15/12 16/2 questions [3] 14/10 14/15 14/17 quickly [1] 12/5</p>	<p>S Sacramento [2] 1/20 2/14 said [5] 10/9 10/12 12/4 13/22 14/24 same [2] 7/21 14/5 Santa [1] 6/5 Santa Fe [1] 6/5 Sante [1] 1/23 SARAH [2] 3/4 5/15 schedule [1] 11/11 scholarship [1] 13/25 scope [1] 10/6 second [1] 8/3 see [1] 4/5 seems [1] 14/6 seen [1] 15/15 senior [1] 14/1 separately [1] 6/19 served [2] 14/1 14/2 services [1] 14/5 set [8] 9/6 10/7 11/4 11/5 11/10 11/11 11/13 12/20 setting [2] 11/5 13/10 several [1] 7/2 She [1] 13/17 should [5] 4/21 5/16 6/5 9/10 9/19 similar [1] 11/24 Simmons [1] 1/17 simultaneously [1] 9/17 sir [2] 7/8 8/17 Sisk [1] 3/3 so [7] 10/2 11/4 11/17 12/6 12/11 13/5 14/14 software [1] 3/17 Solicitor [1] 2/19 Solicitor's [1] 5/8 Somach [8] 1/17 1/17 4/7 4/11 14/18 14/20 14/22 14/23 some [4] 5/17 6/18 7/4 13/18 something [1] 7/23 sorry [1] 14/21 sources [3] 10/2 10/3 10/3 South [1] 2/10 Southern [1] 7/13 special [12] 1/13 5/13 5/17 6/7 10/9 11/1 11/23 11/25 12/23 14/21 15/8 16/5 Special Master [1] 16/5 speed [1] 14/8 SPEER [7] 2/22 5/16 6/1 6/8 6/22 6/24 12/23 spell [1] 4/11 spent [1] 14/12 Sperling [1] 3/2 spoke [1] 7/18 start [1] 12/11 started [1] 9/25 state [11] 1/6 1/8 1/9 1/17 1/21 1/21 2/2 2/6 4/20 6/19 9/11 stated [1] 9/12 STATES [10] 1/4 2/9 2/12 2/15 2/18 5/3 9/11 9/12 15/4 16/16 States' [1] 9/9 stating [1] 10/6</p>
<p>P P.A [1] 3/3 page [1] 10/21 papers [1] 10/2 part [2] 11/4 15/16 participants [2] 7/23 7/25 participate [1] 15/22 Participating [1] 3/10 participation [1] 15/18 particularly [1] 13/14 parties [5] 6/13 7/17 10/13 11/20 14/14 party [1] 5/17 Paso [8] 2/22 2/23 3/2 5/11 5/14 5/16 13/1 15/9 past [1] 8/6 patch [1] 8/1 patched [1] 8/20 PC [2] 1/17 2/3 pending [1] 9/1 people [2] 8/1 8/5 pertaining [1] 11/6 phase [1] 13/21 phone [2] 12/14 12/19 pick [1] 12/6 PIN [1] 7/20 places [1] 13/2 plan [3] 11/21 14/8 15/16 plausible [2] 9/11 9/13 please [11] 4/5 4/6 4/12 4/15 4/18 4/25 5/3 5/12 5/21 7/10 8/4 pleasure [1] 7/8 point [1] 10/13 pose [1] 13/3</p>	<p>R Raley [1] 2/2 rate [1] 14/5 reached [2] 7/22 8/7 read [2] 14/9 15/19 ready [1] 11/15 reargue [1] 10/19 reason [2] 7/5 8/24 receipt [1] 11/9 received [1] 11/7 reclamation [1] 9/13 recommendations [1] 9/5 recommending [4] 9/7 9/8 9/14 9/19 record [3] 13/19 13/20 16/19 recorded [1] 3/17 recounts [1] 9/24 regard [2] 10/4 11/22 regret [1] 13/15 relied [1] 10/8 relying [1] 11/22 repeat [1] 14/23 replace [3] 13/22 14/16 14/25 report [24] Reporter [3] 3/13 16/16 16/23 representatives [2] 5/18 6/18 request [1] 10/21 research [1] 13/20 resolution [2] 9/16 9/18 response [1] 11/6 review [4] 10/15 11/7 11/21 14/2 reviews [1] 9/24 revision [1] 11/3 Reyes [2] 3/11 5/23 right [1] 4/14 Rio [2] 7/13 9/14 Rio Grande [1] 9/14 ROBERT [2] 1/18 4/8 Roehl [1] 3/2 roll [1] 4/4 room [4] 3/13 6/18 8/8 12/9</p>	

<p>S</p> <p>STATUS [1] 1/12 stenography [1] 3/17 STEPHEN [3] 1/22 2/13 5/5 Steve [3] 4/21 8/17 14/22 Steven [3] 3/6 3/7 6/4 STEVENSON [2] 3/4 5/15 stone [1] 11/4 Street [7] 2/4 2/10 2/13 2/16 2/20 2/22 3/13 STUART [3] 1/17 4/7 14/18 Stubbs [2] 3/11 5/23 subject [1] 11/3 submit [1] 10/16 submitted [1] 11/17 such [1] 10/17 suggested [2] 10/17 12/10 Suite [6] 1/19 2/4 2/10 2/13 2/20 2/22 SUPREME [4] 1/4 10/5 11/8 14/11 Supreme Court [1] 14/11 sure [3] 4/13 7/23 8/11 suspense [1] 9/5</p>	<p>U</p> <p>U.S [5] 2/9 2/12 2/15 2/18 9/17 U.S.C [1] 9/16 under [2] 9/11 9/13 understand [1] 14/22 understanding [2] 11/9 16/18 understood [1] 10/7 uneducated [1] 10/1 UNITED [11] 1/4 2/9 2/12 2/15 2/18 5/3 9/9 9/11 9/12 15/4 16/16 United States [4] 5/3 9/11 9/12 15/4 United States' [1] 9/9 until [3] 10/15 12/2 14/14 up [2] 7/10 14/8 us [10] 4/5 4/24 5/19 6/15 6/22 7/7 7/9 8/12 12/10 13/24 using [1] 3/17</p> <p>V</p> <p>very [5] 13/17 13/19 14/7 15/24 16/4 via [1] 9/2 view [1] 10/5</p>	<p>Your Honor [11] 4/7 4/19 5/1 5/4 6/16 7/11 7/18 8/7 8/19 12/13 14/18 yourself [1] 10/20</p>
<p>T</p> <p>taking [1] 4/4 technical [2] 10/17 10/20 telephone [1] 11/18 Tennessee [1] 2/20 Terrace [1] 2/10 TEXAS [6] 1/6 1/17 2/23 4/6 12/25 14/19 Texas' [2] 9/8 9/18 text [2] 9/21 13/8 than [1] 8/5 thank [19] Thanks [1] 5/25 that [49] that's [3] 5/7 12/22 16/6 them [3] 7/21 10/23 11/8 then [8] 4/24 8/23 10/15 11/10 11/12 13/9 14/9 16/1 there [9] 6/12 7/10 7/24 12/11 12/19 13/5 14/6 14/15 16/6 there's [1] 16/2 these [4] 9/23 10/20 10/22 11/5 They [1] 7/19 thing [1] 13/12 think [1] 8/19 this [30] THOMPSON [4] 2/3 4/20 6/14 7/9 those [2] 5/19 10/3 through [3] 7/4 9/5 13/12 Thursdays [1] 12/10 time [8] 12/21 12/22 12/24 12/25 13/1 13/4 13/5 13/14 timing [1] 14/6 today [5] 4/5 13/13 13/24 15/13 16/9 Toni [4] 3/13 16/15 16/22 16/22 tonight [1] 13/7 too [1] 8/19 town [1] 12/14 transcript [2] 1/11 16/18 transcription [1] 3/17 Trout [1] 2/2 true [1] 16/17 try [2] 8/3 8/8 Tulane [3] 13/24 14/1 14/1 Tusa [4] 3/13 16/15 16/22 16/22</p>	<p>W</p> <p>W-O-L-I-T-Z [1] 5/9 wait [1] 6/17 waiting [1] 4/20 waiving [1] 15/14 WALLACE [5] 2/6 5/1 5/2 12/13 15/3 want [3] 4/13 12/4 12/25 was [6] 4/23 6/17 8/24 10/4 11/24 12/1 Washington [1] 2/17 Water [5] 2/22 3/2 5/11 5/14 15/9 way [1] 9/22 we [23] week [3] 12/7 12/14 12/16 well [4] 5/20 6/14 12/15 12/20 were [1] 9/25 what [6] 10/12 10/14 11/17 11/23 12/6 13/22 when [5] 7/9 9/25 10/7 11/16 12/5 whether [3] 11/13 12/2 16/2 which [5] 9/2 9/22 10/16 14/5 15/17 who [6] 4/23 5/18 12/11 12/19 13/13 13/24 Why [2] 15/19 15/25 will [12] 6/1 6/20 7/11 11/10 11/11 11/13 12/14 12/20 13/9 13/10 14/6 14/10 wish [3] 10/16 13/21 16/11 wishes [1] 13/21 within [3] 10/2 10/3 11/2 without [2] 6/15 15/14 Witwer [1] 2/2 WOLITZ [2] 2/19 5/9 wondering [1] 7/22 work [3] 9/25 16/3 16/10 working [1] 7/20 would [21] would-be [1] 15/22 Wyoming [1] 11/24</p> <p>Y</p> <p>year [1] 13/15 Yes [13] 4/7 4/15 4/19 5/1 5/7 5/13 5/21 6/23 7/1 8/17 8/21 15/11 16/4 yet [2] 6/1 6/9 you [49] you're [1] 6/24 your [24]</p>	