

In the Matter Of:
CPAI vs SOA, DNR

Oral Argument
November 21, 2024

PACIFIC RIM REPORTING
STENOGRAPHIC COURT REPORTERS
711 M STREET, SUITE 4
ANCHORAGE, ALASKA 99501
907-272-4383
www.courtreportersalaska.com

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA THIRD
2 JUDICIAL DISTRICT AT ANCHORAGE

3
4 CONOCOPHILLIPS ALASKA, INC.,

5 Appellant,
6 v.



7 STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES;
8 AND OIL SEARCH (ALASKA) LLC,
9 Appellee.

Case No. 3AN-22-09828 CI

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

 TRANSCRIPT OF ORAL ARGUMENT
 BEFORE THE HONORABLE ANDREW GUIDI
 Superior Court Judge

 Anchorage, Alaska
 Thursday, November 21, 2024

1 APPEARANCES :

2 FOR THE APPELLANT: Julie A. Hardin, Esq.
3 Thomas J. Galligan, Esq.
4 REEDSMITH, LLP
811 Main Street, Suite 1700
Houston, Texas 77002

5 Brewster H. Jamieson, Esq.
6 LANE POWELL LLC
1600 A Street, Suite 304
Anchorage, Alaska 99501

7 FOR THE APPELLEE, STATE OF ALASKA, DEPARTMENT OF
8 NATURAL RESOURCES:

9 Mary Gramling, Esq.
10 Attorney General's Office
Juneau Civil Office
PO Box 110300
Juneau, Alaska 99811-0300

11 FOR THE APPELLEE, OIL SEARCH (ALASKA) LLC:
12 James N. Leik, Esq.
13 Elena Romerdahl, Esq.
PERKINS COIE
1029 West Third Avenue, Suite 300
14 Anchorage, Alaska 99501

15

16

17

18

19

20

21

22

23

24

25

1 P-R-O-C-E-E-D-I-N-G-S

2 -o0o-

3 THE CLERK: Superior Court for the state of
4 Alaska is now in session with the Honorable Judge
5 Guidi presiding.

6 THE COURT: Please be seated.

7 THE CLERK: We're on record.

8 THE COURT: Thank you, Madam Clerk.

9 Looks like we are going to pick a jury in a
10 moment here. We're on record in Case
11 No. 3AN-22-09828 Civil. ConocoPhillips Alaska, Inc.
12 versus State of Alaska DNR and Oil Search Alaska, and
13 this is the time set for oral argument on a motion
14 that the parties spent much of the year preparing for
15 and briefing. And I think it's finally -- I -- I
16 don't recall for sure that parties asked for oral
17 argument, but there's no debate about it. I think we
18 need it.

19 MR. LEIK: Here we are.

20 THE COURT: And let me just try to set the
21 procedure for today. First, let me identify the
22 parties present. We have -- I know Madam Clerk has
23 them in the record. I see Mr. Jamieson, Conoco -- on
24 the ConocoPhillips' table, along with Thomas Galligan
25 and Julie Hardin.

1 MS. HARDIN: Yes, Your Honor.

2 THE COURT: On your table, who will be
3 arguing today?

4 MS. HARDIN: I will be, Your Honor.

5 THE COURT: Thank you.

6 And over at the Oil Search Alaska, and I
7 think DNR table, I think we've -- you might be a
8 little crowded. Actually, there's just three of you
9 there. Who -- we have Jim Leik.

10 MR. LEIK: Yes.

11 THE COURT: Mr. Leik and Elena Romerdahl,
12 and thank you. Both with Oil Search Alaska
13 representing it, and then Mary Gramling.

14 MS. GRAMLING: Yes, Honor.

15 THE COURT: DNR, right?

16 MS. GRAMLING: Yes, Your Honor.

17 THE COURT: Which parties will be arguing --
18 which attorneys will be arguing on this motion? I
19 assume, Ms. Gramling, you'll be arguing for -- for
20 DNR?

21 MS. GRAMLING: Yes, Your Honor, and the
22 parties actually did submit a proposal for the
23 proposed argument.

24 THE COURT: Sure. Yeah.

25 You have -- you have submitted a proposal?

1 MS. GRAMLING: Yes, we did.

2 THE COURT: All right. Thank you. Sorry I
3 didn't see it.

4 MR. LEIK: It was -- it was --

5 THE COURT: I was focused on the brief, so
6 I'm -- I'm flexible. What do you have in mind?

7 MS. GRAMLING: The parties -- or the state
8 proposed, and the parties didn't object, to 30
9 minutes for ConocoPhillips and then 30 minutes
10 collectively for this side.

11 THE COURT: Well, I have three hours this
12 morning. This is an endurance contest. This -- this
13 is not a short race. This is a marathon today.
14 We'll take a break, so we can have a bathroom break,
15 and we'll just see, whoever is last standing wins.

16 MS. HARDIN: I like it.

17 THE COURT: No. That's fine. Except, I
18 think there's -- you know, there's quite a bit of
19 background, and I don't want the parties or the
20 attorneys -- I'll use them interchangeably -- to rush
21 through background facts that they want to cover. I
22 mean, I read the briefs, and I appreciate the briefs.
23 They're detailed. But I think it's effective to have
24 a little bit of time for workup. So I'm just going
25 to add to it, you know, take -- for -- for your

1 opening time, take 45 minutes each and -- for each
2 side, and then 20 minute for Conoco; does that --
3 that track what you had in mind, except a little bit
4 more time? Yours was 30, 30, and what was the last
5 amount?

6 MS. HARDIN: I think we proposed 30 minutes
7 for our side. 30 minutes for the DNR/OSA side, and
8 obviously we'll answer the Court's questions as well.

9 THE COURT: Yeah. I think we'll -- we'll
10 have that. I'll work my questions in at some point
11 because, I mean, I have a few. So I would say, I'm
12 just going to expand it to -- you know, so that
13 you're not pressured. You don't have to take the
14 time, of course. And you'll be dividing the time
15 between DNR and OSA on that side, okay?

16 MS. GRAMLING: Yes, Your Honor.

17 THE COURT: And I'll let you track that, but
18 45, 45, 15 minutes for a wrap up, and I think that'll
19 be good. And that's about as long as the audience
20 can probably stand today, and, you know, some of you
21 may have to take a break in the middle of it.
22 I'll take a -- I'll take a break at the 45-minute
23 mark, after the first argument. We'll take a
24 five-minute recess, and then we'll come back in, make
25 it ten because we have quite a few people here in

1 the -- in the courtroom. And it will just take that
2 long, logistically, for everybody to file in and out,
3 and that way you can organize your points, and we'll
4 take another ten-minute break after the appellees
5 conclude their argument.

6 Because contrary to what I said, it's not
7 really an endurance contest. I want to give you time
8 to organize your thoughts, and I -- I don't have
9 anything else on the calendar, so we've got plenty of
10 time, at least until 2:30, and we're not going that
11 long, so don't worry about it.

12 Okay. Without further adieu, parties ready
13 to begin? Is there any preliminary matter before we
14 start?

15 MS. GRAMLING: I don't believe so, Your
16 Honor.

17 THE COURT: Okay. I didn't think so. All
18 right. Then, Ms. Hardin, you have the floor. We're
19 starting at a quarter after, so we'll take our first
20 recess at 10 o'clock.

21 MS. HARDIN: Your Honor, may I approach and
22 give the Court a notebook?

23 THE COURT: Sure.

24 MS. HARDIN: I will give one --

25 THE COURT: I do have the excerpt of record

1 here, if that's what you're referring me to, but I
2 don't mind a notebook.

3 MS. HARDIN: Hopefully, this is going to
4 make it a little bit easier. This notebook has the
5 key regulations and stuff.

6 THE COURT: Thank you. All right.
7 Appreciate it. The problem with the court files is
8 they -- two holes at the top with no third -- second
9 person to hold the pages open for you while you're
10 flipping through them, and they're pretty bulky and
11 awkward, but here we go. You have the floor.

12 MS. HARDIN: May it please the Court, Your
13 Honor.

14 THE COURT: Uh-huh.

15 MS. HARDIN: Your Honor, my name is Julie
16 Hardin, and I'm here on behalf of ConocoPhillips
17 Alaska and the other lessees that are part of the
18 Caparic River Unit on the North Slope. Despite over
19 200 pages of briefing before the Court, the question
20 of law we are asking you to consider is actually
21 narrow and straightforward.

22 It's focused on DNR's authority. Does DNR
23 have the power to grant a third party the right to
24 use privately built leasehold improvements here at
25 KRU Road System simply because those improvements are

1 built on state land. For over 50 years, the answer
2 to that question has been unequivocally no. DNR
3 doesn't have power. Even DNR concedes in the 50-plus
4 years the MLUP regulation has been in effect, never
5 before has it been used to grant a third party the
6 right to use private improvements. Instead, DNR has
7 always required parties to enter private agreements,
8 if a party wants the type of access that OSA has
9 demanded here, and there's a reason for that.

10 DNR's authority comes only from the
11 legislature, and the legislature has answered the
12 question before this Court. What the legislature has
13 said is that DNR's ability to manage and control
14 improvements on state land is limited to improvements
15 belonging to the state.

16 To be clear, and I would say this is
17 important, there is no lease provision. There is no
18 enabling statute. There is no regulation. There's
19 no contractual provision that authorizes DNR to
20 exercise the power it did in issuing the permit. OSA
21 and DNR know that to be true. Through their words
22 and conduct, over many years, they have repeatedly
23 affirmed that roads built on state land, I --
24 lessees, during the lease term, are owned by the
25 lessee. To uphold to permit, would be to disregard

1 the legislative's directive, the conduct of the
2 parties over many years and 50 years of precedent.

3 In issuing the permit to OSA, DNR abused its
4 power and violated the constitution. So we
5 respectfully request that the Court revoke the
6 permit.

7 So what does DNR rely on to grant OSA the
8 right to use the KRU Road System without consent or
9 compensation to ConocoPhillips? Well, really three
10 things. In large part, DNR wants to completely
11 ignore and disregard the enabling statutes. Instead
12 DNR relies on the reservation in the KRU leases, its
13 own regulation that it promulgated 96.010, and some
14 constitutional policy statements.

15 All three of those recognize DNR's power
16 over state land, and ConocoPhillips doesn't challenge
17 that power, but none of the three grant DNR authority
18 over private improvements, and that's important. To
19 answer the legal question before this Court with a
20 yes, the Court must be convinced that when the state
21 references state land or said land and the leases and
22 the regulations and the statutes, and even in the
23 constitution, what the state really means and what
24 the parties really mean in the lease is the land and
25 the improvements. We'll look at the lease and the

1 regulations and the enabling statutes because none of
2 them treat state land and improvements as one in the
3 same.

4 And that's not because the state doesn't
5 know the difference between improvements and land.
6 It does. The KRU leases reference improvements in
7 paragraph 36. The Alaska Land Act, which contains
8 the enabling statutes that empower DNR, it contains
9 52 references to improvements. Chapter 96, which DNR
10 promulgated to carry out its duties, it contains nine
11 references to improvements, none of which empower DNR
12 to expropriate the KRU roads for OSA's benefit.

13 If the legislature wanted DNR to have the
14 authority over privately built improvements, it knew
15 how to make that clear. Only by rewriting the lease
16 and rewriting the regulation and rewriting the
17 enabling statutes and rewriting the constitution can
18 DNR justify its exercise of power. And what we all
19 know is that DNR can't do that, can't go back in time
20 and rewrite the enabling statutes to trump the
21 legislature. And, frankly, even the legislature
22 couldn't write a statute that would allow DNR to
23 control private improvements without complying with
24 the constitution.

25 So let's start with the KRU lessees and --

1 leases, excuse me, and then I'll walk through each of
2 the leases, the statutes and the regulations. DNR's
3 primary argument, under the KRU leases, is grounded
4 in the reservation. DNR claims that its reserved
5 right to grant access to the land necessarily extends
6 to any improvements that are placed on the land. In
7 DNR's telling that's because improvements are -- or
8 because the land is necessarily under the
9 improvement.

10 DNR doesn't make any attempt to actually
11 parse the language or interpret the language in the
12 reservation. What it says instead is that its
13 position is the only sensible outcome. What we know
14 about contract construction is that the words matter,
15 the language matters, and what DNR claims is sensible
16 is found nowhere in the reservation.

17 I want to look at that reservation, and I'll
18 tell you in tab one of your binder, Your Honor, what
19 we included is each of the provisions we're going to
20 walk through. And, first, we have the provision as
21 it's actually written, and then the next page is the
22 provision as DNR -- the lease term, as DNR would like
23 it rewritten to support its power. And if the Court
24 doesn't mind, I'd like to put up these
25 demonstratives, if that's okay.

1 THE COURT: Go ahead.

2 MS. HARDIN: So what I'm putting up is the
3 reservation and the grant with the actual language,
4 how it's written, and then in yellow highlight with
5 red how DNR would have to rewrite the lease term to
6 accomplish its desired result.

7 What we know is, DNR relies on 29E for its
8 grant of power to issue the permit, but regardless of
9 which subpart you look at, what the reservation
10 provides is that the right to authorize others to
11 enter upon and use said land, that's what controls
12 all. A through E, the right to enter upon and use
13 the said land. Now, what we know is DNR wants to add
14 to that language and any improvements on said land.
15 Of course, that's not what the reservation says.

16 This begs the question of, okay, well, what
17 did the parties intend by the use of the term said
18 land. Well, we don't have to guess because the
19 parties define said land in the granting clause,
20 paragraph one. What the parties agree to in the
21 granting clause is that subject to the conditions and
22 reservations, the lessor, the state, would grant and
23 lease unto ConocoPhillips and the KRU lessees,
24 exclusively and without warranty the following
25 described tract of land in Alaska containing 2,560

1 acres, more or less, here and after [indiscernible.]

2 So what do we know from this? We know that
3 the parties specifically define said land to be just
4 the land itself. There's no reference in the
5 granting clause and the definition of said land to
6 any improvements, which only makes sense. Because in
7 1967, when the lease was executed, when it was
8 entered, there were no improvements on the land. The
9 roads weren't added for 15 years. There's -- would
10 be nothing on the land in terms of improvements for
11 the state to lease. And, to be fair, the state has
12 never claimed it's leasing the KRU roads to
13 ConocoPhillips.

14 Importantly, in addition to the granting
15 clause, the lease refers to said land in multiple
16 provisions. In paragraph 30, the parties refer to
17 gas being produced from said land. In paragraph 34,
18 there's a reference to wells being on said land.
19 Paragraph 36 refers to structures and equipment as
20 being allowed to remain on said land. And then
21 paragraph 26 references improvements in the vicinity
22 of said land.

23 Why does all of this matter? Well, the
24 interpretation of said land has to be the same
25 throughout the contract. It has to mean the same

1 thing in the granting clause and these other
2 provisions as it does in the reservation. So what
3 does that tell us? Because said land means only the
4 land itself and not any improvements, what the state
5 reserved to itself was only the right to do A, B, C,
6 D and E on the land itself.

7 The reservation does not allow the state to
8 exercise any control over improvements. It's just
9 not in the language, and that only makes sense. If
10 we go back in time and think about the parties'
11 intent at the time they were entering this lease,
12 which we know we are supposed to do in construing a
13 contract, no lessee would enter an agreement with the
14 state agreeing before anything was built the state
15 would forever and ever have the ability to control
16 improvements, allow other people to use improvements.

17 That could never have been the intent. It's
18 not credible to argue otherwise. The result is no
19 different under the KRU agreement which recognizes
20 the same rights and reservations as the KRU leases
21 and reinforces that improvements put on the land
22 during the lease term of the property of the lessee.

23 Bottom line, the reservation does not
24 support DNR's grant of authority. The reservation
25 does not support DNR's ability to grant OSA access to

1 the KRU lessee's improvements. It's not written
2 anywhere in the agreement. Even if somehow this
3 Court thought the reservation might be broader, we
4 have to look at 29E, because that is what DNR relies
5 on to support its authority. And what we know in 29E
6 is that whatever the lessor is going to do has to be
7 authorized by law and not inconsistent with the
8 rights of the lessee.

9 DNR fails under that provision as well when
10 we look at the law. The regulation that DNR relied
11 on is 96.010. As a state agency, DNR's power under
12 96.010 extends only as far as the Alaska legislature
13 has conferred via the enabling statutes. The Alaska
14 Supreme Court said it best in McDaniel versus Cory,
15 61 P.2d 82. This a quote. "Administrative agencies
16 rest their power on affirmative legislative acts.
17 They are creatures of statute and therefore must find
18 within the statute the authority for the exercise of
19 any power they claim."

20 So let's look at that enabling statutes on
21 which 96.010 relies. DNR generally wants to ignore
22 those enabling statutes. There are six of them.
23 There are two which are particularly relevant here.
24 None of the enabling statutes that support 96.010
25 grant DNR the authority to control leasehold

1 improvements.

2 If you look, Your Honor, at tab three of
3 your binder, just for your benefit, that's where the
4 enabling statutes -- we included all six of them.
5 I'm going to focus on two in particular.

6 Again, Your Honor, it's important that the
7 language in yellow and red is how DNR has to rewrite
8 the enabling statute to have the power to issue
9 permit. Enabling statute 38.05.035, which is on the
10 left, is the only enabling statute that speaks
11 directly to DNR's control over improvements.

12 And critically it speaks to the precise
13 issue before the Court. Section 38.05.035 is called
14 powers and duties of the director. It contains eight
15 pages of powers the legislature has conferred on the
16 director. Eight pages.

17 Nowhere in those eight pages did the
18 legislature grant the director the power to manage or
19 control private leasehold improvements. If the
20 director had such power, it would be in that enabling
21 statute. It would be in one of those eight pages.
22 It's not there. Instead, the legislature has said
23 exactly the opposite. What the legislature says in
24 35 -- excuse me -- 38.05.35 A2 is that DNR's, the
25 director's ability to manage, inspect and control

1 state land is limited to improvements on it belonging
2 to the state. DNR cannot claim power over privately
3 built improvements on leased land without completely
4 rewriting the legislature's grant of authority in
5 35.05.035.

6 In order for DNR to have the power to issue
7 the permit, in order for DNR to prove to you there's
8 an enabling statute that supports using a
9 miscellaneous land use permit to grant OSA the right
10 to use the KRU roads, it's got to be found in the
11 enabling statute. So what DNR would have to do is
12 completely rewrite the legislative's -- legislature's
13 directive. DNR would have to either remove five
14 words or add seven.

15 So what the legislature could have said and
16 didn't is that the director shall manage, inspect and
17 control state land and improvements on it under the
18 jurisdiction of the division. Legislature didn't say
19 that. What the legislature could have said is the
20 director shall manage, inspect and control state land
21 and improvements on it belonging to the state and all
22 roads installed on state land.

23 Legislature didn't say that either. And we
24 know, can't rewrite a statute years later for DNR to
25 have the power it claims in issuing the permit. Even

1 the legislature couldn't rewrite this law to allow
2 DNR ownership rights over private property without
3 running afoul of the constitution. Bottom line, Your
4 Honor, in 38.05.035, the legislature made clear what
5 DNR's power is over leasehold improvements. And what
6 the legislature said is, you only have power over
7 improvements belonging to the state, not private
8 improvements like the KRU roads.

9 Enabling statute 38.05.850 A confirms the
10 legislature's intent. That enabling statute gives
11 the director the power to issue permits. Again, DNR
12 has to rewrite the enabling statute to accomplish its
13 goal. It has to rewrite the enabling statute to give
14 it the power it needs to issue the permit. If the
15 legislature intended for DNR to have the authority
16 over private leasehold improvements to be able to
17 issue a permit to let others use private leasehold
18 improvements, it would be in that statute.

19 That statute is directly on point. It's
20 about DNR's power to issue permits. It's not there.
21 Again, DNR would have to rewrite that statute to have
22 the power it claims here. Now, not surprising, the
23 lease doesn't have the power. The enabling statutes
24 don't have the power. So now we turn to the
25 regulation, is there some way the regulation can be

1 mirrored with the -- or -- or reconciled with the
2 enabling statutes in a way that DNR can prove it has
3 the power to issue the permit? The answer is no.
4 Pull up the regulation.

5 So here is the miscellaneous land use permit
6 regulations, what DNR cites as the basis for issuing
7 the permit. Again, as you see in the red and yellow
8 highlight, DNR has to change the wording to support
9 its authority. So as reflected in the title, 96.010
10 specifies the activities on state land for which a
11 permit is required. Importantly, because it's not an
12 enabling statute, it is not a grant of authority.

13 Like the enabling statutes, however, 96.10's
14 application is expressly limited to state land. We
15 pressed DNR and we asked and said, well, based on
16 your interpretation of 96.10, which treats state land
17 as synonymous with improvements on the land, would
18 there be any limit to your authority under the
19 provision? DNR basically said no. There would be no
20 limit.

21 DNR doubled down and said, if any third
22 party -- parties can agree about the use of private
23 improvements, we can rely on 96.0103 to grant use.
24 Now, they say that even though it's never been used
25 for that purpose in 50 years. In DNR's world, any

1 third party could go to a lessee and say, I want to
2 use your pipeline. I want to use your facility. I
3 want to use some -- some of your infrastructure and
4 offer uneconomic terms. And if the lessors -- or
5 lessee said, I'm not going to do that. That doesn't
6 make sense. I'm not going to allow you to use my
7 pipeline for pennies on the dollar, under DNR's
8 interpretation, that party could just run to DNR and
9 obtain a permit and use that infrastructure for free.

10 If 96.10 actually allowed DNR to grant third
11 parties the right to use improvements, not just
12 activities on state land, it would be invalid as
13 inconsistent with enabling statutes. It doesn't say
14 that. It says nothing of the sort, and it does not
15 apply to the circumstances here. We know that by
16 looking at the guidance document that supports
17 96.010. That's in the record at page 702.

18 What's interesting about the guidance
19 document that supports the permit is that it's all
20 about seismic and geophysical activities on land.
21 That's what 96.10 has been used for for decades. It
22 says nothing about using 96.10 to allow a party to
23 access private improvements, roads or otherwise on a
24 lessee's estate. Nothing.

25 Again, DNR would have to rewrite the

1 regulation as well to justify issuing the permit to
2 OSA. The reservation doesn't support DNR's power.
3 The enabling statutes don't support DNR's power and
4 the regulation doesn't support DNR's power. When DNR
5 and OSA stand up here, they will not be able to point
6 you to a single provision anywhere that says DNR has
7 the right to control private leasehold improvements.
8 It's nowhere to be found.

9 Because of that, DNR pivots to the Alaska
10 constitution as the basis for its exercise of power
11 under the permit. Now, to be clear, DNR doesn't
12 contend, because it can't, that the constitution
13 explicitly authorizes the state to grant third
14 parties the right to use private leasehold
15 improvements either. That's not found anywhere in
16 the constitution either. Instead DNR argues that
17 this never-before-used authority it claims is implied
18 in the constitution.

19 Specifically, DNR wants this Court to
20 believe that, one, the constitutional mandates of
21 reasonable concurrent use and maximum benefit trump
22 any limit on DNR's authority. Two, DNR wants this
23 Court to believe that DNR can act in any way it deems
24 necessary whenever it decides, without any fact
25 finding, that the public interest is supposedly

1 threatened.

2 DNR acts like these policy statements are
3 its ultimate trump card to overcome any limits on its
4 power found anywhere else, whether it be the lease,
5 the regulations, the statute. None of that matters
6 to DNR because under the constitution, it claims all
7 it has to decide is, reasonable concurrent use,
8 public interest threatened, we get to act in any way
9 we want.

10 That's not what the law says, Your Honor.
11 There's at least three fallacies to DNR's thinking.
12 The first, the notion that DNR need only invoke
13 reasonable concurrent use or a threat to the public
14 interest to absolve its obligations to the
15 legislature or all legislative and constitutional
16 restraint is -- is frankly outrageous. If true, no
17 North Slope operator would ever again invest in
18 infrastructure for risk that at any point DNR could
19 decide to grant access to that infrastructure to
20 another party.

21 Second, we know the concept of reasonable
22 concurrent use, like the regulations and statutes, is
23 about use of the land. We know that because when the
24 framers talked about having these constitutional
25 provisions, the focus was the state land being able

1 to be used for multiple reasons. So, for example,
2 mining and timber. There's nothing in the history
3 that suggests reasonable concurrent use is concurrent
4 use of improvements. It's just not there. And DNR
5 has cited no case law that would suggest otherwise.

6 Third, the notion that ConocoPhillips is
7 somehow preventing reasonable concurrent use of the
8 state's resources or the state land or threatening
9 the public interests is demonstratively false. To be
10 clear, and this is important, ConocoPhillips has
11 never said that OSA can't have access to or use of
12 the KRU roads. For --

13 THE COURT: Has there been any
14 administrative finding or fact finding relating to
15 the issue of -- that particular issue of whether
16 ConocoPhillips has either directly or indirectly
17 precluded or ruled out any sharing of the roads?

18 MS. HARDIN: Thank you for asking. No,
19 because DNR didn't conduct any fact finding and
20 readily admits that. DNR just assumed the public
21 interest was threatened. What we know about the
22 facts, and this is all in the record, is that
23 ConocoPhillips allowed OSA to use the KRU roads for
24 free for years, for all of its predevelopment
25 activity for the Pikka Unit. That only changed when

1 OSA wanted to use the roads 24/7 for heavy access,
2 heavy truck access.

3 And then at that point, reasonably,
4 ConocoPhillips said, okay. Let's enter a commercial
5 agreement so that we can have fair and equitable
6 compensation that takes into account the millions and
7 millions of dollars that ConocoPhillips has invested
8 over 40 years at the tune of ten to 20 million a year
9 in constructing, maintaining and upkeeping the roads.

10 THE COURT: Is there any estimate in the
11 record relating to the additional financial cost of
12 added traffic to the road created by OAS's [as
13 spoken] use?

14 MS. HARDIN: I don't believe there's any
15 detail in the record about what the cost with that
16 would be. And I believe what the courts would say is
17 that the economic impact is not significant or not
18 material when it comes to appropriating a party's
19 right to exclude. In other words, whether OSA uses
20 the roads a lot or a little, temporary or a long
21 time, whether there's an economic impact or not, what
22 the U.S. Supreme Court has said is that doesn't
23 matter. That's still a taking if you're taking away
24 a party's right to exclude.

25 THE COURT: But there's no dispute about the

1 amount of money that ConocoPhillips spends per year
2 on maintaining the road generally?

3 MS. HARDIN: Correct. That's not in
4 dispute. That's in an affidavit that is part of the
5 record and has not been disputed by OSA or DNR, and
6 that figure is ten to 20 million per a year.

7 THE COURT: Is there any dispute about
8 whether road traffic contributes to the need for
9 maintenance? Whether the use of the road, just the
10 use of the road triggers the need for additional
11 maintenance? In other words, I mean, is it just
12 sitting there, used or unused it's going to cost you
13 ten or 20 and additional use of the road won't
14 increase or change that in any way?

15 I mean, typically road use, truck use,
16 impacts roadbeds, impacts pavements. I don't think
17 these roads are paved. I assume they're gravel,
18 packed in some form, but snowplowing is required.
19 Are those the kinds of impacts that ConocoPhillips
20 typically experiences?

21 MS. HARDIN: Sure. The 20 to -- the ten to
22 20 million a year is for the ongoing wear and tear on
23 the roads and the upkeep. That's obviously in
24 addition to the original investment of building the
25 roads, but that -- that amount is going to be, if

1 anything, greater when you assume there's going to be
2 much greater use of the roads. Now, there's not data
3 in the record. I think that would come, when the
4 Court, if it does, consider what compensation
5 would -- would be reasonable.

6 THE COURT: One last related question. I
7 mean, I understand the theories of your case, of --
8 of your case. Is -- is there -- this is an
9 administrative finding. Are you alleging that the
10 breach of the lease expects -- sort of a breach of
11 the contract, the lease provision, and that's one of
12 the reasons that it's unauthorized and there should
13 be some damages that we're talking about today or
14 simply that it's unauthorized, the permit should be
15 voided?

16 And I'm thinking that in relation to
17 contract theory simply because you also mention at
18 the close of your -- I think your reply brief, that
19 if there is a taking and if the Court agrees with you
20 and there's a taking, there's at least a temporary
21 taking however many years it's been in effect and
22 there should be some damage for that loss of
23 exclusive use. I don't know how that would be
24 measured, but is that -- are we talking about
25 remanding for findings of that sort? What are we

1 talking about in relation to damage claims or -- or
2 is the main issue here just authorized or
3 unauthorized permit?

4 MS. HARDIN: So I think it's both. So the
5 first question is: Does DNR have the power to issue
6 the permit?

7 THE COURT: Okay.

8 MS. HARDIN: And obviously we've spent a lot
9 of time walking through why it simply doesn't and
10 there's no support for it in the enabling statutes,
11 the regulations, the lease. So on that basis, we
12 submit that the permit has to be revoked. If you
13 disagree with that, we would still argue that there's
14 been a taking and that ConocoPhillips is -- should
15 receive fair, equitable compensation under the
16 takings provision.

17 What would happen, presumably, is we would
18 bring an inverse condemnation claim and go through
19 that process. We would be presumably afforded the
20 protections and due process and the procedure that
21 that entails. Our view is that DNR doesn't have that
22 authority, and certainly hasn't provided
23 ConocoPhillips with the protections that ordinarily
24 would be required if the state wanted to condemn the
25 roads. You asked about a breach of contract theory,

1 so I want to answer that question as well. Under the
2 ad hoc agreement, the parties did agree and OSA
3 agreed, we are going to have free use of the roads,
4 but one of the conditions is, we're never going to
5 try to claim we have a right to the roads. And
6 obviously by bringing -- or by seeking a permit,
7 seeking free use of the roads, they've violated or
8 breached that particular provision.

9 THE COURT: If -- and I know you've got
10 about ten minutes left for this, but if the Court
11 agrees with you on the thrust of your argument thus
12 far, which is that it's -- the permit was
13 unauthorized and basically not -- not appropriate,
14 what issues do not need to be reached? The taking
15 does not need to be reached?

16 MS. HARDIN: I would -- I would say it would
17 still need to be reached for a period of time,
18 because if the permit is revoked because there's no
19 authority, ConocoPhillips has still been under OSA's
20 use of the road for a number of years. So there is a
21 time period in which ConocoPhillips was -- didn't
22 have its right to exclude and hasn't been compensated
23 for that, so there would be that piece of it.

24 But in our mind, you know, as I started
25 with, this is really straightforward. They've got to

1 prove they have the power. Before we get to all
2 these other issues, DNR has got to prove to you that
3 they have the power to issue this permit which has
4 never been used in this way ever. And they simply
5 don't have it. And so that's why, in our view,
6 that's -- that's the easy question. And then you
7 revoke the permit, and then it does become a question
8 of, okay, well, there was a period of time where OSA
9 has -- has used the roads for free and without our
10 consent and hasn't paid for it.

11 THE COURT: Where would that issue be
12 resolved?

13 MS. HARDIN: I think that we would have to
14 bring an inverse condemnation claim and obtain our
15 compensation for that or hopefully the parties would
16 reach some kind of agreement as to what the fair
17 compensation would have been.

18 THE COURT: All right. Thank you.

19 MS. HARDIN: Your Honor, to justify its
20 unauthorized exercise of power, DNR seems to suggest
21 it had no choice. It either had to issue the permit
22 or the Pikka development would be delayed or the
23 environment would be harmed. That's how DNR presents
24 this kind of Hobson's choice that exists, but that's
25 not right. There were other choices and other

1 options.

2 One, DNR could have said to OSA, if you want
3 to use the roads, like we've said for 50 years, go
4 negotiate a commercial agreement with ConocoPhillips.
5 If that didn't work, OSA -- or excuse me, DNR wasn't
6 out of options. Now, DNR doesn't have the power of
7 eminent domain, but if the parties really couldn't
8 come to an agreement, and there was actual fact
9 finding that the state's interests were threatened or
10 that giving the roads to OSA was in the public
11 interest, the state could have initiated a
12 condemnation proceeding. That didn't happen.

13 Instead, DNR issued a miscellaneous land use
14 permit and gave the roads to OSA for free. And that
15 comes to the takings point that we were talking
16 about. While the state could have initiated a
17 condemnation proceeding and didn't, DNR couldn't.
18 What DNR cannot do is expropriate the roads instead,
19 and that's what they've -- they've done either
20 without compensation, without due process, without
21 the proper procedures.

22 We know that because of the Supreme Court's
23 opinion in Cedar Point Nursery, which arguably is --
24 is on all fours. That's 594 U.S. 139. In the Cedar
25 Point case the state of California issued a

1 regulation that required employers to allow access by
2 union organizers to their property to meet with
3 potential folks that might join the union. And the
4 employers were some nurseries, and they brought a
5 lawsuit and they said, you can't tell us, state of
6 California, that we have to allow this -- you know,
7 union organizers to come on our property. It's our
8 property. We have a right to exclude.

9 And the U.S. Supreme Court spent a lot of
10 time walking through this notion of the right to
11 exclude and what a critical fundamental property
12 right it is. And what the court ended up saying is,
13 it doesn't matter that the access was limited. It
14 doesn't matter that it really had no economic harm,
15 when you take away the right to exclude, you have
16 committed a taking. And that's unconstitutional
17 unless you go through the process and have fair
18 compensation.

19 We -- we believe Cedar Point is on all fours
20 here and indicates and proves that the issuance of
21 the permit accomplished a taking of ConocoPhillips'
22 roads. We talked about this a little bit, but
23 although the remedy we've requested here is the
24 revocation of the permit, as we just talked about, we
25 would want compensation and the right to seek damages

1 for the time period that the permit was in effect and
2 shouldn't have been.

3 Two final points, and I'll go fast. First,
4 DNR and OSA can't credibly reconcile their position
5 with their conduct in admissions over the years.
6 DNR, OSA, the legislature, the governor, have
7 repeatedly recognized that roads built on state land
8 are owned by the lessee during the lease term. There
9 are many examples of this.

10 You will remember, we were here a year ago
11 discussing with you House Bill 39, and the
12 legislature's and governor's recognition that AIDEA
13 owned the roads built on its state land. In House
14 Bill 39 the legislature and governor were willing to,
15 in effect, pay AIDEA over \$13 million to transfer the
16 Mustang Road to DNR for OSA's use.

17 We know that for 40 years the state of
18 Alaska has been taxing the KRU infrastructure and
19 facilities, which it's recognized, include the roads.
20 At one point, DNR even attempted to broker the sale
21 of the Mustang Road to DNR. At one point OSA tried
22 to monetize its Pikka roads and sell them to AIDEA.

23 I go through these list of facts, not
24 because the facts in and of themselves are
25 particularly important as much as what they prove.

1 What they prove is that there's no debate about the
2 law. Whether it be the legislature, the governor,
3 OSA, DNR, ConocoPhillips for 40, 50 years it's been
4 the accepted reality that roads built on state land
5 belong to the lessee during the lease term.

6 Last point. Standard of review. I expect
7 most of what you're about to hear from DNR and OSA
8 will be plea for deference. When it comes to DNR's
9 authority, the appellees want you to take their word
10 for it. We know that's not what the law is. What
11 the law says is that this Court should exercise its
12 independent judgment and conduct a de nova review
13 when it comes to interpreting the constitution, which
14 they agree. But also when it comes to statutory
15 construction and contract construction.

16 So when you're considering the enabling
17 statutes and you're considering the lease provisions,
18 your adjudicative power comes to bear and you can
19 exercise and should exercise, we submit, your
20 independent judgment. There is nothing about the
21 term state land or said land that requires agency
22 expertise. There's nothing about those words that
23 would indicate the definition changes over time.

24 There is no basis to apply a lesser
25 standard. This Court is particularly able to

1 interpret contracts and statutes. That's what courts
2 do every day and your independent judgment controls.
3 The same is true about interpreting the regulations,
4 while oftentimes a regulation interpretation might be
5 subject to a reasonable basis review, that's not the
6 case here.

7 That's not the case here because the
8 argument is DNR has inappropriately applied the
9 regulation to issue the permit. What ConocoPhillips
10 is challenging is DNR's authority under a permit, and
11 in those circumstances the case law is clear, that
12 your independent judgment rules the day and
13 reasonable basis standard doesn't apply.

14 Ultimately, DNR's request or demand that
15 this Court cede its adjudicative power to DNR is no
16 different than its demand that the legislature cede
17 its power to DNR. It's one and the same and Alaska
18 law doesn't allow it. But even a generous standard
19 review, even a reasonable basis of review, would
20 still mean the permit must be revoked because there
21 is literally nothing in the provisions that would
22 justify DNR exercising the power in the way that it
23 has.

24 Your Honor, if DNR actually had the power to
25 grant permits for use of third-party improvements, it

1 would not have been a secret for 50 years. There
2 would be expressed terms in enabling statutes. There
3 would be a guidance document. There would be a
4 regulatory and statutory scheme, regime. It wouldn't
5 be authority that DNR has never used before this
6 permit. We know there isn't. There's nothing that
7 supports their power because DNR unequivocally
8 exceeded its power in issuing the permit, it must be
9 revoked.

10 Thank you, Your Honor.

11 THE COURT: All right. Thank you. Amazing
12 how we took exactly 45 minutes.

13 MS. HARDIN: That was planned.

14 THE COURT: Let's take a ten-minute recess.
15 We'll come back for the response.

16 THE CLERK: We're off record. Please rise.
17 Court is in recess.

18 (Off record.)

19 THE CLERK: Superior Court is in session.

20 THE COURT: Please be seated. We do that
21 sometimes just for your exercise and enjoyment.

22 All right. We're pretty much on track. So
23 we'll stick to the original plan. Forty-five minutes
24 divided between the two appellees. I assume you have
25 an internal agreement on that. All right.

1 MR. LEIK: Figured it out.

2 THE COURT: Thank you.

3 Ms. Gramling, you're going to start with the
4 state? It's a little noisy.

5 MS. GRAMLING: May it please the Court, Mary
6 Hunter Gramling representing the state of Alaska,
7 Department of Natural Resources. I'd like to
8 acknowledge the many client representatives from the
9 Department of Natural Resources in the gally behind
10 me as well.

11 So the state will be splitting time with the
12 permit holder and intervener in this case, Oil
13 Search. So I'd like to reiterate for Your Honor that
14 this case is an appeal of a final agency decision.
15 It's on an administrative record. And so, really,
16 the -- the question before the Court today is whether
17 the DNR commissioner's decision is reasonable, and
18 there's facts at issue whether there's sufficient
19 evidence in the record to support the facts in that
20 decision.

21 So that's the -- the context of this case
22 today. This is not a trial. This is not a -- you
23 know, under the civil rules. This is a case that is
24 under the appellate rules and the jurisdiction of the
25 Court is under those rules, as well. So the state's

1 argument focus today will be on the statutory and
2 regulatory authorities for the permit, the broad
3 reservations of rights to the state in the KRU
4 leases, and the limited grants in those KRU leases
5 and then the takings argument and some of the
6 standard of review. And it will also address some of
7 the points that Your Honor asked questions of Conoco
8 and the -- some points that Conoco made as well.

9 So turning to the permit at issue here, this
10 is a permit that grants nonexclusive access and use
11 of corridors within the KRU, and those corridors
12 contain about 75 miles of gravel roads that have been
13 placed decades ago. And so the permit happened after
14 the parties were unable to reach an agreement for
15 reasonable concurrent use of state lands that contain
16 a road.

17 The record before the division and the
18 commissioner reviewing the permit shows that Conoco
19 and Oil Search had been negotiating for over a year
20 on the use of the state land and the road. And in
21 the record, it also shows that Conoco sent Oil Search
22 a notice of breach of the existing agreement that the
23 parties had and indicated that the parties -- that it
24 might terminate that existing agreement. And the
25 agreement was also called an ad hoc agreement

1 implying that it was, you know, a temporary
2 agreement. And so the state's briefing at pages four
3 through six discusses the commissioner's findings on
4 those and the -- the relevant record cites for Your
5 Honor.

6 So, turning to the permit itself. So the
7 permit itself is not without many, many conditions
8 that I think are important to this case because they
9 go to, what does reasonable concurrent use look like
10 and how does the department manage reasonable
11 concurrent uses of state lands when there are
12 multiple uses of those lands.

13 So, first, the permit requires Oil Search to
14 coordinate with Conoco on use of the land containing
15 those roads, and the permit itself recognizes that
16 Conoco, or the KRU lessees, the KRU lessees have
17 primacy of access because the purpose of the roads
18 and Conoco's use of the land is to develop the oil
19 and gas resources underneath those leases.

20 So the -- the purpose -- the only reason
21 that Conoco was able to construct the road and the
22 only purpose of the road is all as part -- the
23 limited surface use that oil and gas lessees have
24 owing to the exclusive subsurface rights to produce
25 the oil and gas. So the only reason that the road

1 exists at all is it's a limited surface use of that
2 land necessary to produce the oil and gas. And so,
3 that was one of the conditions of the permit, was
4 that Oil Search, they would have to coordinate with
5 Conoco. And so it could be that from a timing
6 standpoint, if Conoco is using the road and can't
7 accommodate whatever trucking is going on, then Oil
8 Search, that that would be a cost to them potentially
9 in their operations. But they would have to, you
10 know, coordinate with Conoco to accommodate that use.

11 Secondly, the agreements -- the permit
12 stipulations mirror many of the conditions that were
13 in the ad hoc road use agreement that the parties
14 presumably already thought were reasonable
15 conditions, and the state included those in the
16 permit conditions. And so in addition to
17 coordination, the -- the permit stipulations require
18 that Oil Search take action to avoid unreasonable
19 interference with Conoco's operations in addition to
20 recognizes the priority of use.

21 And then that Oil Search reimburse Conoco
22 for damages that may be caused by their use and the
23 permit. The conditions also included indemnification
24 provisions in favor of the state, because it is a use
25 of state land. The insurance and bonding were also

1 high other than -- or were pretty high, and those
2 were in favor of the state additionally as well. And
3 so those are facts that show how the department
4 manages reasonably concurrent use of state land. And
5 so it recognized that there was an existing oil and
6 gas lease, and that oil and gas lease has limited
7 surface rights and the -- the road is a use of state
8 land that's a limited surface right.

9 THE COURT: I -- I follow your argument.
10 The argument of the other side is, this is not purely
11 state land. It's infrastructure constructed by the
12 lessee, and you're basically controlling or basically
13 giving rights in it to some third party. So how do
14 you address that argument?

15 MS. GRAMLING: Certainly, Your Honor. So,
16 first, the -- the road itself only exists as a
17 limited surface right. So the only expectation that
18 Conoco ever had about this road was that it could
19 build it and use it for the purposes of its oil and
20 gas exploration. The -- the road doesn't exist in a
21 way that -- there's no authority that Conoco can cite
22 of any right to exclude from that.

23 THE COURT: Since you're on that point, I
24 appreciate it, one of the hypotheticals they posit is
25 that if it was a pipeline constructed by Conoco and

1 you said OSA could tap into it or share that
2 pipeline, how would that be any different?

3 MS. GRAMLING: So pipelines have different
4 authorities on them, as well. Sometimes they're
5 common carrier and there's different right of ways
6 and different authorizations for pipelines. And so
7 the main point is, that's not the fact before this --
8 this is a -- not fact pattern before the Court. And
9 so in the state's view, the Court doesn't need to
10 opine on the entire extent of the world of reasonable
11 concurrent use. The case --

12 THE COURT: No, but a precedent would be set
13 by this decision. And if -- according -- at least
14 Conoco is saying, this is setting a precedent that a
15 future party interested in a -- leasing state land
16 may be deterred because whatever they construct at
17 their own expense is going to be given away for free,
18 let's say, to someone who didn't take the risk.
19 That's the argument.

20 MS. GRAMLING: Yeah. So there are -- the
21 framework of oil and gas leasing in Alaska, in the
22 constitution and in the Alaska statutes, and in the
23 leases themselves, is that it is a limited grant
24 solely for the purposes of oil and gas leasing, the
25 subsurface. And then the -- any surface uses are --

1 are limited related to those purposes. So that's
2 their -- the only reason that Conoco is able to build
3 a road is due to state authorizations. And, then, as
4 far as some sort of limiting principle, there's -- I
5 think roads are different. And here you have a
6 gravel road that is routinely used by others, and so
7 roads are one of the most suitable things for
8 reasonable concurrent uses of state lands.

9 And the -- it's within the department's
10 authority to consider the uses and benefits and
11 costs, you know, to the state and anyone that is
12 looking to use state land. And so --

13 THE COURT: Well, I mean --

14 MS. GRAMLING: -- when you're talking about
15 other facilities --

16 THE COURT: Talking about the convenience, I
17 would think that obviously sharing the road -- not --
18 if -- if OSA doesn't have to build its own roads, it
19 can -- it may have an economic benefit, not just to
20 OSA but also to the state through the value of the
21 lease that it's giving OSA. I would think to the
22 extent the lessor doesn't have to -- excuse me -- the
23 lessee doesn't have to build infrastructure, that
24 would be an economic benefit for the parties that are
25 in that lease because it would label it to be more

1 profitable.

2 So maybe the pipeline is not such a bad
3 analogy because if you let the lessee use an existing
4 pipeline and they can pay you more under the lease,
5 because they don't have to build their own pipeline,
6 then the state would benefit from it just as they
7 benefit from the road. That -- you know, that's --
8 that's part of the argument that, you know, you're
9 spreading costs to a party that isn't profiting from
10 the agreement you're making with OSA.

11 MS. GRAMLING: So when Conoco built the
12 roads decades ago, it had no reasonable expectation
13 under its leases that Oil Search would come along or
14 that -- the purpose it built the road for was to
15 develop its own oil and gas leases. It had no
16 reasonable expectation that it would be able to
17 exclude the state from authorizing other uses of that
18 land just because the road is there. So the --

19 THE COURT: What do you make with the
20 language, less -- lessor does hereby grant and lease
21 unto lessee exclusively without warranty, et cetera,
22 et cetera, in the -- in the grant?

23 MS. GRAMLING: Yeah. So that is exclusively
24 as in, they have an exclusive lease for that oil and
25 gas -- for the purposes of that oil and gas, and that

1 the state would not lease it, that same lease, to
2 someone else. But it's well established in mineral
3 leasing, and in the reservations in the leases and
4 the Alaska constitution and Land Act that state
5 leasing is subject to reasonable concurrent use of
6 the land. And so, here the parties have a dispute
7 about reasonable concurrent use of the land. The
8 state's position, big picture, is that the -- the
9 state's authority to manage land exists regardless of
10 what is on the land.

11 And the improvements, or not, the state's
12 authority to manage that land and control and inspect
13 that land exists regardless, but that brings us to
14 other provisions that, if you're asking about
15 limiting principles, those are that it's to allow
16 reasonable concurrent use. So whether or not the use
17 in somewhere else is reasonable might vary by, you
18 know, if it's a road versus if it's a facility versus
19 if it's a pipeline.

20 And then you would also have to take into
21 account, if it's a use of state land and you have
22 competing uses of state land, you know, what are the
23 authorizations in place? And so, an oil and gas
24 lessee has exclusive rights for its oil and gas
25 operations on those leases. So that right is, you

1 know, higher than the limited temporary permit for
2 the use of the road. And so that's how some of the,
3 you know, conditions come into play. So the state's
4 authority to manage that use of the land is not
5 diminished just because there is improvements of any
6 scale. What happens is whether the state's action in
7 that management, if it happens at all, you know, that
8 goes to the reasonableness of whatever the conditions
9 are.

10 So that, I think, gets to some of your
11 questions about, you know, do I have to adopt some
12 sort of limiting principle. And the state's position
13 here is that, no, you don't. It's -- this is a use
14 of state land, and it's a road, a gravel road that's
15 been there for decades. Conoco has the --

16 THE COURT: Well, the road, you agree,
17 was constructed by the lessee, right?

18 MS. GRAMLING: Yes, and it was constructed
19 subject to the limited surface use for the purposes
20 of developing their oil and gas reserves, and that's
21 the only purpose that they can use that land for.
22 They can't do other things on that land, but the
23 purpose of the leases is limited to the development
24 of that oil and gas.

25 THE COURT: Well, I don't -- we're not

1 talking here about a case where Conoco is accused of,
2 you know, doing a gambling casino on the property.
3 They're using everything there for development of oil
4 and gas. So how does the -- how does that language
5 tie in, I guess? As long as they're using the road
6 exclusively for the development of oil and gas,
7 they're within the -- they're performing within the
8 meaning of the lease, right?

9 MS. GRAMLING: Yes. And the state's
10 position is that that exclusivity for oil and gas
11 does not allow them to exclude the road -- the use of
12 state land for other purposes. So here there's
13 another oil company that has significant lease
14 holdings and, you know, significant revenue
15 potentially to the state from development of those
16 neighboring lands. But miscellaneous land use
17 permits are issued for many other things, and so it
18 could have just as easily been, you know, a hiking
19 guide or someone else who wanted to use the road.

20 And the problem with Conoco's position is
21 that because they -- it would limit the state from
22 being able to allow reasonable concurrent uses. And
23 so -- just because there is a road.

24 THE COURT: What would you say is the
25 language that you think most clearly expresses the --

1 the DNR's interpretation, I guess, or position that
2 improvements constructed by the lessee are within the
3 control of the DNR to authorize third parties to use?

4 MS. GRAMLING: So the state's reservation of
5 rights over the land. And so the reasonableness of
6 how it exercises those rights may very well change,
7 depending on the improvement. But here we have a
8 gravel road, and roads are treated differently in the
9 leases and in the unit agreements and in kind of
10 the -- kind of history of Alaska was concerned about
11 access. And so there's provisions on the lease about
12 entry and access to state land.

13 And the only way to use state land that has
14 a road on it, just that -- looking at that land, is
15 to use the road. That's how you use that land. And
16 so the only reasonable concurrent use of state land
17 that has a road is to cross the road.

18 THE COURT: Which part of the reservation
19 would you rely on? Looking at paragraph 29 if that's
20 what you're looking at in the lease.

21 MS. GRAMLING: Yeah. So in paragraph 29,
22 has that the state reserves the right to dispose of
23 the surface of said land to others and to authorize
24 by permit, you know, conditions subject to prevention
25 of unreasonable interference, to enter upon and use

1 said land. And the only way to enter upon and use
2 said land that contains the road is to go on the
3 road, so I think that's squarely within the
4 reservations. And then also the reservation clause
5 had a catchall that for any purpose, now or hereafter
6 authorized by law not inconsistent with the rights of
7 the lessee. And, again, the rights of the lessee
8 here are limited to production of their oil and gas,
9 and that's the purpose that they built the road.

10 And so there's no, you know, exclusionary
11 rights for other purposes in that grant. Also,
12 Conoco -- some of their arguments about the Mustang
13 and HB39, that was a different grant of authority and
14 different situation because that was an easement.

15 THE COURT: We won't go there right now. I
16 have enough cases to worry about besides that one.
17 But -- so on this thing, said land, Conoco argues
18 that that's defined in the lease, contrary to your
19 interpretation. That the lease defines land as a
20 2,560, or however many acres, and the road wasn't in
21 effect so the road is not part of said land.

22 MS. GRAMLING: So the state's position is
23 that the said land argument or Conoco's said land
24 argument doesn't really make sense because the state
25 has the authority to manage state land regardless of

1 what's on the land or any activities that are
2 happening on the land. And then as far as Conoco's
3 argument that said land, if it has improvements, it's
4 somehow not part of the grant, that would imply that
5 because they built a road, or if there was an
6 existing -- you know, some other improvement on state
7 land, that then the state couldn't lease the
8 subsurface. And so that just -- that argument isn't
9 consistent with set -- the use -- the use of said
10 land in that grant and in the reservation is just
11 referring to the -- the area, generally. It's not --

12 THE COURT: So under your --

13 MS. GRAMLING: So it doesn't matter what's
14 there.

15 THE COURT: So really, then, your position
16 is that anything constructed within the raw area of
17 the 2,560 acres, any infrastructure is subject to the
18 control of DNR?

19 MS. GRAMLING: Not the infrastructure, the
20 land. And then the control, if there is
21 infrastructure on there, it is that -- you know, then
22 the state is looking at what the reasonable uses of
23 that land are. And so the reasonable use of land
24 with a road when someone wants to, you know, traverse
25 state land is to use the road. And so the state's

1 authority over state land, because this is all state
2 land, it's really looking at, if there are, you know,
3 other improvements, here it's a gravel road, the
4 reasonableness of the uses and the -- and the
5 preexisting authorizations.

6 So in some cases, there could be easements.
7 There could be right of ways. There could be other
8 miscellaneous land permits. And the state has
9 authority to manage its lands for reasonable
10 concurrent uses and that includes that there might be
11 multiple uses of same land. And so the idea that
12 placing an improvement on the land just nullifies the
13 state's broad authority, the state very much rejects
14 that argument.

15 But the -- Your Honor is asking about, you
16 know, other things. That would go to the
17 reasonableness and whether there's unreasonable
18 interference. And so that is, I think, a fact by
19 fact kind of equation that's really not before the
20 Court. Right now what's before the Court is a gravel
21 road that was built under a limited surface use to
22 facilitate particular oil and gas development. It's
23 not an all-purpose road.

24 And, importantly, Conoco can't sell the
25 road. It would have to sell all of its lease

1 interests in order to sell this road. This road is
2 not built under an easement. It is just a limited
3 surface right that they have by virtue of the oil and
4 gas lease. So Conoco can't sell the road independent
5 of the lease. Conoco can't really change much about
6 the road without various DNR approvals at the end of
7 Conoco's oil and gas leases. Whether or not it can
8 remove the road or the road remains on the land is up
9 to the state.

10 So the road in and of itself doesn't exist
11 in the way that maybe other roads or other easements
12 do exist. It is a creature of the oil and gas lease
13 and the limited surface rights on that lease. And so
14 the state, in granting this permit, looked at the
15 reasonable use of state land that was being requested
16 to go over a road, and then whether or not that use
17 was consistent with the leases that had broad
18 reservations and limited grants.

19 And so that is really kind of the core of
20 the state's argument and Conoco's arguments about
21 said land. The state's position is that there is no
22 need to add any of that language that's on the
23 displays over there because its -- authority over the
24 land regardless of what's on it. So that's how the
25 state addresses that point. Turning to Conoco,

1 the -- the focus of their argument today, and in some
2 extent, the reply brief seems to be about 38.05.035
3 A, specifically A2. And the state's position is that
4 that statute does not deprive DNR of any authority to
5 manage reasonable concurrent uses of land.

6 First, the -- kind of the state's position
7 is that the statutory and historical context of that
8 statute is important, and that it is really just an
9 organizational statute as to the jurisdiction between
10 different state agencies. And so that statute has
11 been in place since 1959, and the prior versions of
12 that statute pre-statehood included different
13 divisions of how land would be managed. I think
14 there would be a commission.

15 And then in 1959, it was that -- there was
16 the -- the division of lands. And so -- and the
17 state's position is that that statute and the
18 reference to improvements, its improvements --

19 THE COURT: Belonging to --

20 MS. GRAMLING: -- belonging to the state and
21 the jurisdiction of the division as opposed to the
22 jurisdiction of the department of transportation or
23 education or something like that. So the state's
24 position is that that is a kind of organizational
25 state statute. It doesn't deprive DNR of its

1 broad -- broad land management expertise and
2 availability to grant reasonable concurrent uses.

3 THE COURT: Where does DNR get the power,
4 then?

5 MS. GRAMLING: So the other sections within
6 that same statute also provide broad authority to
7 DNR, and I would turn your attention to: The
8 director shall, subject to conditions and limitations
9 imposed by law and the commissioner, issue deeds,
10 leases, you know, disposing of land, resources
11 property and any interest in them.

12 So that's in paragraph six of that same
13 statute. Paragraph seven also has broad jurisdiction
14 over state land with an exception for, again, some
15 organizational purposes that were important at the
16 time of statehood, apparently. But then that
17 sentence ends with, you know, that the department
18 shall, you know, perform duties necessary to protect
19 the state's rights and interests in lands including
20 taking all necessary action to protect and enforce
21 the state's contractual and other property rights.

22 So that's in 035. And then the department
23 also has broad authorities that are found in
24 38.05.020, subparagraphs, I think, A1 and A2, that,
25 you know, the department -- sorry. Skipping around

1 with the questions. So, yeah, the department has --
2 sorry, it's Bl -- is that DNR has the ability to
3 carry out procedures for the Alaska Land Act,
4 exercise all powers and duties to carry out the
5 purposes of the chapter. And then as particular for
6 oil and gas leasing, in administration of oil and gas
7 leasing, the department is to maximize economic
8 recovery and physical recovery of resources,
9 encouraged maximal competition and try to minimize
10 adverse impacts for other uses.

11 And then the 38.05.285 specifically says
12 that disposal and use of state land shall conform to
13 the constitution of the state of Alaska and the
14 principles of multiple purpose use consistent with
15 the public interest. So the idea that there will be
16 concurrent uses of state land, and that it's up for
17 the department, you know, to balance that
18 reasonableness of that land's use is well established
19 in the Alaska constitution.

20 THE COURT: But those all presuppose that
21 it's something that you can regulate. So they don't
22 really help me. If mean, if -- if we've gotten to
23 that point, then no one is arguing that the
24 commissioner has the power to coordinate and, you
25 know, deal with it. The question -- the preliminary

1 question is: Is this something -- this improvement
2 that the DNR has the ability, the power to, you know,
3 to, in this case, require the -- the lessee to share
4 or allow a third party to -- to participate in. I
5 think the -- the guidelines you're talking about,
6 I -- they're there. You know, that's not the
7 problem. The initial authorization is the challenge.
8 What's the most explicit and expressed language you
9 would point me to again for the authority of the DNR
10 here?

11 MS. GRAMLING: So I do think that the
12 reservations clause is -- when it talks about enter
13 upon and use said land, that is -- you know, reserves
14 the right to use said land. And that is broad
15 language, and that is actually a requirement for oil
16 and gas leasing in the Alaska constitution, the
17 article eight, you know, requires oil and gas leasing
18 to allow for concurrent uses, and then contemplate so
19 there will be disputes about what those uses look
20 like.

21 And so the -- the -- you know, the
22 department should create conditions for that. And so
23 the permit itself authorizes the use of state land,
24 and then it's up to the department to determine what
25 the reasonable conditions are and whether it's

1 reasonable to allow concurrent uses. And in some
2 cases, the department doesn't allow concurrent uses,
3 but this is a gravel road used by many people.
4 Conoco -- I think Conoco's course of conduct also
5 suggests that it's recognized for decades that it
6 doesn't have a right to exclude or to try to extract
7 rent from, in this case, a potential competitor
8 because it's allowed free use of the road for
9 decades. You know, that from a corporation is, I
10 would say, unusual, if they thought for decades that
11 they had had use of the road.

12 And so I think, also, the argument that Oil
13 Search breached the agreement by applying for the
14 permit, that presupposes that the -- you know, the
15 state has the authority. You wouldn't draft that
16 provision in a contract unless you were concerned
17 about it. And so that, I think, also suggests that
18 the parties were well aware that, if needed, the
19 state could allow for reasonable concurrent uses like
20 it granted in the permit.

21 The existence of the regulation itself
22 contemplates that usually parties can agree on
23 concurrent uses, and it's more efficient, probably,
24 for them to do so. There's, you know, a certainty in
25 that, but if they don't, if -- the state can use its

1 authorities for reasonable use of state land so that
2 the state's broader interests in, you know,
3 maximizing recovery economically and in resources
4 isn't delayed or impaired.

5 You know, so the fact that here, there's
6 another oil company, I think that goes to maybe the
7 conditions of the permit and some of the -- the
8 balancing in the permit. But the state's position is
9 that it has the authority to grant the sort of permit
10 for any purpose that is a reasonable use of state
11 land that it would need to. And then what the
12 conditions are would depend on, you know, who is
13 questioning it.

14 So here it just happened to be an oil
15 company, but the state's position is that it has the
16 authority to grant reasonable concurrent uses of
17 state land like embodied in this permit. And, you
18 know, the reasonableness of it may depend on the
19 conditions which Conoco here did not actually object
20 to any of the conditions, which makes sense because
21 they were very similar to the ones that the parties
22 had agreed on previously.

23 THE COURT: Are we at the time limit?

24 MS. GRAMLING: Yeah. I think -- I think I'm
25 going to let --

1 THE COURT: Thank you, Ms. Gramling.

2 MS. GRAMLING: Well, I'll just close real
3 briefly that the permit effectuates reasonable
4 concurrent use for the maximum utilization of state
5 resources. There's no takings in this permit because
6 Conoco never had the right to exclude. It only had
7 the limited surface right.

8 And then the department's position is that,
9 again, this is an appeal so really the only decisions
10 that are being made are, you either affirm or, you
11 know, vacate and remand for whatever reason. It's
12 not a damages consideration here.

13 THE COURT: All right. Thank you.

14 Mr. Leik?

15 MS. GRAMLING: Oh, thank you.

16 THE COURT: Thank you.

17 MR. LEIK: Give you copies of that.

18 THE COURT: All right. Thank you.

19 Whenever you're ready.

20 MR. LEIK: All right. Thank you.

21 Jim Leik for Oil Search Alaska.

22 This appeal is about the state of Alaska's
23 ability to develop and manage its resources. And, in
24 particular, the vital oil and gas resources on
25 Alaska's North Slope. To underscore a central point,

1 the state owns these resources, and it operates under
2 certain constitutional and statutory mandates, both
3 of which the department is obligated to follow. That
4 includes the obligation to make maximum use of the
5 state's resources to allow reasonable concurrent use
6 of the state's resources, and that's specific to its
7 leasing power.

8 Under section 180, which is in the handout I
9 gave you, AS38 -- I'm sorry -- I'm referring to
10 article eight, section eight of the Alaska
11 constitution. And, also, a third, a mandate to
12 minimize adverse impacts on state land. And so when
13 the commissioner looked at this issue, it enforced
14 and applied each of those mandates. First observing
15 the importance of the resource and the need to get
16 maximize use of the state's resources by allowing
17 access to the Pikka Unit.

18 Second, by stating what is almost the
19 obvious that you couldn't reach the Pikka Unit and
20 develop that resource unless there's access to it.

21 And, third, and applying the mandate to
22 avoid undue -- to avoid adverse impacts to state
23 land, that the -- the solution to obtaining access
24 and following that statutory mandate was to allow use
25 of existing roads and not create some sort of

1 duplicate road system. So all those mandates, which
2 are statutory and constitutional, had bearing on
3 the -- on the director's approach to this. So the
4 outcome was, of course, that they -- the -- to give
5 effect to the mandate of reasonable concurrent
6 access. In this situation, the -- the commissioner
7 turned to the regulation that's in place.

8 Now, in the first instance, that regulation
9 leaves it to the parties to sort out their own
10 arrangements for reasonable concurrent access.
11 That's in the specific language of the -- of the
12 regulation. DNR becomes involved only if they are
13 unable to agree, and that's what happened here. And
14 so that's at the point when the regulation kicks in.
15 And --

16 THE COURT: I guess I want to ask you about
17 that. It wasn't clear to me from the record whether
18 they really were unable to agree or the process got
19 short circuited by a request for a permit from the --
20 to the state.

21 MR. LEIK: Oh, I think it's clear, and I --
22 I can't give you precise cites from the record, but I
23 it's clear that they exchanged offers over a period
24 of time. I think that is in the record. I know it's
25 in the record. And at some point they reached

1 impasse. It wasn't short circuited --

2 THE COURT: Conoco says that they offered
3 the same terms to OAS that -- what were the -- I
4 think that -- anyway, that they were economically
5 competitive terms consistent with what had been
6 offered, I guess, I don't know if it was Mustang Road
7 or some other situation, but they were -- in other
8 words, they weren't onerous terms. Has that been
9 adjudicated?

10 MR. LEIK: I hasn't been adjudicated.
11 It's -- and -- and under -- under the way this works,
12 that isn't part of what the commissioner adjudicates,
13 but it's not correct. I mean, the -- the -- it's in
14 the record, and in detail in our brief of what the
15 back and forth was, and the -- the conditions that
16 were demanded by Conoco were -- were not similar to
17 anything that's ever been applied elsewhere.

18 In fact, the history on the North Slope was
19 that -- was that unit roads of this kind were used by
20 operators without charging each other, and they would
21 have agreements for use of the road, but they would
22 deal with things like indemnity and risk allocation,
23 that kind of thing, but there weren't charges. This
24 was innovative, I guess you could call it that, on
25 the part of Conoco to -- to demand this kind of

1 compensation for use of roads on state land. So
2 that's when, after that exchange, which is fully set
3 out in the briefs, that's when the parties came to
4 impasse and had to go to DNR to -- and -- and say
5 that they couldn't agree.

6 And I don't think there's an agreement
7 that they -- I don't think it's in dispute that they
8 couldn't agree.

9 THE COURT: Well, I mean, what -- I mean,
10 since we're -- you -- I mean, is the choice -- if the
11 negotiation point was, one party is offering zero,
12 and the other is asking for some share of the ten to
13 20 million of the maintenance cost --

14 MR. LEIK: They were somewhere between.

15 THE COURT: All right. Well, is the outcome
16 of zero appropriate?

17 MR. LEIK: The commissioner is in a position
18 where it, I don't think, has -- is -- is in a
19 position to sort of say who's right and who's wrong
20 about that, right. The commissioner --
21 commissioner's objective, from the perspective of the
22 state, is to say, you haven't agreed. It's in the
23 state's interest to move this project forward, so
24 here's what -- what we're going to do. And that's
25 within the discretion of the state and what terms it

1 sets for that.

2 THE COURT: Okay.

3 MR. LEIK: Okay. I think I want to go now
4 to one of the really key points, I think, that --
5 that underlies this argument, and it's kind of at the
6 heart of their claims. I think early -- in earlier
7 versions of the argument it was that the roads are
8 ConocoPhillips' personal property. And as personal
9 property, they have the exclusive use of it, and --
10 and the state doesn't have any business telling them
11 how to use their personal property.

12 They now acknowledge that this -- these are
13 really leasehold improvements, which is important
14 because putting them in the context of the lease is a
15 really crucial point. Reviewing the status of what
16 ConocoPhillips has on this land, number one, it is
17 state land. There's no dispute about that. It's the
18 state's land. The state hasn't conveyed ownership of
19 any of its land to ConocoPhillips, including the road
20 corridors.

21 It hasn't even given ConocoPhillips an
22 easement, which would be a different kind of property
23 right that ConocoPhillips could claim. The only
24 place that ConocoPhillips has any rights is under the
25 lease. So it has the rights of a lessee under the

1 lease. That's all they have. So it's the old, you
2 know, law school teaching of -- of the bundle of
3 sticks. They -- the state has its bundle of sticks
4 which is the land. It's given a limited amount of
5 limited sticks to ConocoPhillips, which are in this
6 situation, precisely just the lease. So
7 ConocoPhillips has rights as a lessee on the state's
8 land.

9 The state has retained everything else,
10 including the things that it specifically reserved to
11 itself under the lease. And, thus, the reservation
12 clause in the lease is -- is important to that.
13 That's -- that's the language that you went over with
14 Ms. Gramling, which includes the state's specific
15 reservation of its ability to grant -- grant use and
16 grant permits to others for use of the -- of the --
17 of the state's land, reasonable concurrent use. So
18 that, in the context of lease, means reasonable
19 concurrent use of what we lease to --

20 THE COURT: Well, I don't -- I don't want to
21 collapse land and improvement, but that's what your
22 argument is essentially doing. You're saying there's
23 no difference between said land and all the
24 improvements on it.

25 MR. LEIK: Yep.

1 THE COURT: So if this had been a building
2 constructed of a ten-acre plot, the building maybe
3 was only 1,000 square feet. Conoco builds the
4 building on the property. That's subject to -- the
5 state could say, you've got to share the office space
6 with OAS for free?

7 MR. LEIK: It's subject to whatever is in
8 the lease. You know, lease terms, of course, govern,
9 and so whatever the lease terms provide.

10 THE COURT: Same lease terms but it's a
11 building on the property.

12 MR. LEIK: Sure. Yeah. I -- in theory, if
13 it's -- if it's on the state land, and -- and the
14 lease terms are the same, then in theory, the state
15 has authority to authorize reasonable concurrent use,
16 but that's subject to limitations. But in practical
17 terms, the -- of course, the case that's before us
18 today is what the state did with roads. And I think
19 that's -- that's an important distinction.

20 I mean, any decision like this, that's made
21 by the state of Alaska, in this context, is being
22 reviewed in an appeal situation for reasonable
23 exercise or discretion. So what we have here is
24 reviewing the commissioner's reasonable exercise of
25 discretion to allow reasonable concurrent use on a

1 road. Are there other situations? Of course, there
2 could be, and we could screen out hypotheticals, but
3 each one of those would have to be evaluated on its
4 own. Here the question is roads. And roads are --
5 since that's what's before us, we look at roads.

6 Why would the commissioner exercise its
7 discretion to allow use of roads? I -- I have four
8 things that are especially applicable to roads. One,
9 roads are uniquely attached to and part of the land.
10 That's just their characteristic. Two, roads are
11 essential to access to the state's land and adjoining
12 land. And they -- that goes to the mandate of
13 reasonable concurrent use, which is set out in the
14 Alaska constitution.

15 Three, roads are uniquely capable of
16 reasonable concurrent use. It's not hard to say how
17 you can share a road. There -- there are agreements
18 that can govern the sharing of a road, and it's not a
19 complicated thing. Now, if you were sharing some
20 kind of production facility or some -- some sort of
21 technology that's on the leasehold, that might be a
22 whole different thing, where it's not very easy to
23 share and maybe it wouldn't be allowed.

24 And the last thing I would say is that roads
25 have historically been used to access other units on

1 the North Slope. As I said, that's been the
2 practice. And so when -- when ConocoPhillips says,
3 well, DNR has never ever done this before in 50
4 years. Well, that's because the practice was that
5 the operators didn't ever come up with -- didn't ever
6 have this situation. They reached an agreement among
7 themselves to allow reasonable concurrent use without
8 charging each other and just had those agreements to
9 allocate risk.

10 An example is the ad hoc agreement between
11 ConocoPhillips and -- and Oil Search that governed
12 until -- until ConocoPhillips insisted that Oil
13 Search pay more. So the circumstance of this case --

14 THE COURT: How are the factors you just
15 listed -- how do they differ if this was a pipeline?

16 MR. LEIK: Well, those could all be
17 different -- any one --

18 THE COURT: And the pipeline would be
19 attached to the land.

20 MR. LEIK: True.

21 THE COURT: It would save the -- you know,
22 that you could have concurrent use of the pipeline,
23 would save development costs, would presumably make
24 it more profitable. And, therefore, the state
25 could possibly recover more. I mean, profit could

1 pass on up to the state. And it seems to me that --
2 you know, that that principle -- I mean, this -- your
3 position -- I'm looking for a limitation that -- and
4 whether it's a pipeline or a building, they're
5 equally attached to the land.

6 MR. LEIK: Sure. Well, like I said, I
7 think -- I don't know exactly how pipelines would
8 function in this situation, but I don't know that
9 it's as easy to say, you know, you can use the road
10 early in the morning and you can use it at night or
11 whatever -- whatever the different rules of the road
12 are.

13 But I don't know that you would have the
14 same ability to do that with a pipeline. I'm not a
15 pipeline expert, but I -- I think that's something
16 that's in the discretion of DNR to figure out is if
17 that has -- that kind of use of another facility has
18 similar characteristics and also warrants reasonable
19 concurrent use.

20 THE COURT: But you think DNR has that
21 authority?

22 MR. LEIK: Pardon me?

23 THE COURT: But you believe DNR does have
24 that authority?

25 MR. LEIK: Yes, and I can come to that. The

1 other thing that's relevant there -- there that I'll
2 brief just -- I'll mention just really briefly is
3 that the -- you know, they have a lease, and there's
4 language in the lease that protects -- can
5 potentially protect against the -- not -- no pun
6 intended, slippery slope argument here, is that -- is
7 that the language of the lease, the exclusion -- the
8 reservation that we're talking about, has language
9 that says, it -- that the use by others has to be
10 under such conditions as will prevent unnecessary or
11 unreasonable interference with the rights of the
12 lessee and the operations under this lease.

13 So if someone felt -- if someone thought
14 that the concurrent use that DNR was contemplating
15 would interfere with its operations, it could make
16 that case to DNR, using that lease -- the language of
17 the lease. As far as the authority goes that you
18 asked me about, I think there are -- they focus --
19 that Conoco's -- focused almost entirely on AS30 --
20 38.05.035 A2, but that's not the only authority.

21 And I've included AS 38.05.035 in the
22 materials that I gave you. But, number one -- well,
23 there are other provisions as well along with A2 that
24 give the -- the commissioner authority. Let me get
25 my copy here. They include most -- they include,

1 excuse me, a specific statute that authorizes the
2 director to issue permits. That's section AS
3 38.05.850. And other provisions in AS 05.035 include
4 section A3, which authorizes the director to execute
5 laws, regulate rules, regulations and orders adopted
6 by the commissioner.

7 And here the -- here the director was -- was
8 executing the regulation that authorizes this -- this
9 permit. And as the state mentioned, A7. But back to
10 A2, since that's what we focused on here. It
11 authorizes the director to manage, inspect and
12 control state land. And as -- as you perceive from
13 my prior argument, state land includes the state's
14 rights, including its rights to control and manage --
15 control and manage the improvements that are placed
16 on the state land.

17 Again, that's -- this is state land. The
18 state is the owner, and it is the lessor. In the
19 grant clauses and reservation clauses of the leases,
20 the state retained its rights and interests as owner
21 and lessor. Those are state land, and the DNR has
22 the right to manage and control its retained and
23 reserved rights as owner and lessor, including the
24 rights that are retained under the reservation clause
25 that's been discussed.

1 THE COURT: Is the language and improvements
2 on it belonging to the state applicable here?

3 MR. LEIK: I think that state's explanation
4 for that makes sense, but I -- I think that's almost
5 surplus as far as the issue we're facing here. The
6 key is, this is state land and it falls in that
7 first -- first clause, the state is --

8 THE COURT: Well, if anything built on state
9 land is state land, what's the purpose of the
10 language and improvements on it belonging to the
11 state?

12 MR. LEIK: I think that simply clarifies an
13 additional aspect of it, but it doesn't exclude
14 improvements that are made by -- by persons other
15 than -- by persons other than the state. And it may,
16 as the state suggested, be to clarify, you know, a
17 unified part of that second part to clarify that
18 they're talking about -- they're differentiating
19 between state facilities that are managed by DNR and
20 ones that are managed by others.

21 I'm, I think, at the end of my time. There
22 are couple other things that --

23 THE COURT: Well, go ahead, Mr. Leik. I
24 interrupted you a few times. Give you a little extra
25 time. Go ahead.

1 MR. LEIK: Okay. I'll try to be brief.

2 There was an argument that if this is the
3 rule, no one would invest in infrastructure. I don't
4 think that's realistic. The -- parties invest in
5 this infrastructure because it's in their economic
6 interest to develop the oil. That's what they're
7 doing out there. And the idea that they're not going
8 to build roads to extract the oil from the KRU Unit
9 because someone else might use those roads, I don't
10 think stands up to much analysis.

11 THE COURT: I guess the argument would be
12 that if -- in the state sells you a cow and you raise
13 the cow and you feed the cow and you take the cow to
14 the vet, why would anybody buy the cow if they have
15 to give the milk away to somebody else for free?

16 MR. LEIK: Well, the milk here is oil, and
17 ConocoPhillips has gotten all the -- all the milk
18 that it expected to get. Now is -- its expectation
19 when it built the roads. It built those roads to
20 serve this -- to serve its operations at the KRU. It
21 didn't build them or permit them in order to make
22 money from other people. And it got what it -- it
23 got what it expected. It's been able to operate, and
24 the -- it's very clear, and ConocoPhillips doesn't
25 argue otherwise, that under either the permit or the

1 prior agreement, both of those fully protect Conoco
2 in -- in its use of the roads. They have priority to
3 the use of the roads. Both -- the permit expressly
4 says that -- that Oil Search cannot interfere and it
5 must cede priority to Conoco. Oil Search has to pay
6 for any damage that occurs to the road.

7 So if ConocoPhillips -- and ConocoPhillips
8 doesn't argue anywhere that its use of those roads
9 has been impeded in any way. And so I think that's
10 important to understand. ConocoPhillips said
11 something about Oil Search wanting to use the roads
12 24/7, and that -- that just isn't borne out by the
13 record.

14 Conoco, they had an existing agreement that
15 had restrictions that are essentially the same as
16 what's in the permit. Again, giving ConocoPhillips
17 complete priority in the use of the road, and that's
18 what -- that's how they would have continued to
19 operate. The -- the sticking point was the -- the
20 amount of fees that ConocoPhillips wanted to charge
21 for use of the road.

22 So I -- I think that's -- let me just --
23 I -- I would just echo what the state said about the
24 nature of this case. This is strictly an appeal from
25 the permitting decision. If -- if ConocoPhillips

1 claims a taking or if it claims damages or any of
2 those other things, those are things that it would do
3 in a different proceeding. The only question before
4 the Court is whether the permit was properly granted
5 by DNR in the context of an appeal.

6 THE COURT: Can I ask -- this is a
7 background question I don't know the answer to.
8 When -- I assume that your client, OAS, did on this
9 lease -- was it a precondition of -- that they were
10 supposed to use the road or were they -- was it --
11 was it basically at their risk as to whether they
12 would have to build a road or have access to a road?

13 MR. LEIK: It -- I know we went through the
14 history in our brief where it was in permitting for
15 the -- for this unit. There was full disclosure, if
16 you will, that Oil Search would use the existing
17 roads. And that's even a kind of -- you know, it's
18 outlined in the brief, but that's the kind of --

19 THE COURT: So it was sort of
20 contemporaneous of obtaining the lease that your
21 client obtained?

22 MR. LEIK: I can't speak specifically to the
23 timing, but it's -- it's back there somewhere. But
24 the -- the -- that's the kind of -- the kind of
25 proceedings that we talk about in the brief are ones

1 where -- where there's an opportunity to notice --
2 to -- there's notice and an opportunity to commit.

3 THE COURT: Uh-huh.

4 MR. LEIK: And, you know, ConocoPhillips
5 didn't come forward and say, what? You plan to use
6 the roads on the KRU Unit? Because that's common
7 practice and it always has been on the North Slope.
8 Companies use those roads to each other units. It's
9 no surprise to anybody. The surprise was attempting
10 to extract money from the use of the roads, and
11 that's what -- that led to this.

12 THE COURT: All right. Thank you.

13 MR. LEIK: Thank you.

14 THE COURT: Thank you, Mr. Leik.

15 All right. Let's take a final ten-minute
16 recess, and we'll come back for 15 minutes.

17 THE CLERK: We're off record. Please rise.
18 Court is in recess.

19 (Off record.)

20 THE CLERK: Please rise. Superior Court is
21 in session.

22 THE COURT: Please be seated.

23 THE CLERK: We're on record.

24 THE COURT: All right. Ms. Hardin?

25 MS. HARDIN: Thank you, Your Honor. I can

1 almost certainly promise I'm going to jump around a
2 little bit, but I'm going to try to respond to some
3 of the points made by OSA and DNR. And I feel
4 obligated to start by giving a little color to those
5 roads. You might have gotten the impression these
6 are, you know, country roads that people drive on
7 that maybe have a little bit of gravel and dirt.
8 That couldn't be further from the truth.

9 They are gravel roads that are eight-feet
10 tall. They are 30- to 40-feet wide. The 75 miles of
11 KRU roads includes 12 bridges. Suffice it to say
12 these are substantial structures that cost over a
13 billion dollars to construct. And over time, as
14 we've already talked about, ten to \$20 million per
15 year just to maintain.

16 You heard a lot of commentary from I believe
17 both DNR and OSA about Conoco hasn't said that its
18 use of the roads is being interfered with or that
19 somehow it's being impeded, and that ConocoPhillips
20 is fully protected here, and that is the ultimate
21 cart before the horse. Whether Conoco can still use
22 the roads or how it uses the roads or whether OSA has
23 had to buy insurance is completely irrelevant to the
24 issue before the Court, which is, does DNR have the
25 authority to grant the permit in the first place. We

1 know the answer to that is no.

2 I'm not going to retread all the ground
3 through the regulations and enabling statutes and
4 leases to say why, but I do want to come back to the
5 question you have asked over and over and to which
6 you've really gotten no clear answer, in our view.
7 And that is: What is the limiting principle here?

8 If DNR interprets the lease, the statutes
9 and the regulations to mean that state land or said
10 land also means improvements, how can they limit the
11 permit to just the roads or their authority to just
12 the roads? And you've asked that a number of times.
13 And the reality is, there is no limiting principle.
14 They haven't been able to identify anything, any
15 constitutional -- I mean, contractual provision or
16 wording in the statutes or regulations that would
17 somehow say, well, you get to do this for roads but
18 nothing else.

19 It doesn't exist. If state land includes
20 improvements, which is what DNR must say to get to
21 their power, then it includes all improvements and
22 all infrastructure is forever at risk of a party
23 coming in and saying, I'm going to offer you ten
24 bucks to use your building, your facility, your
25 kitchen, whatever it may be. And if the party says,

1 well, that's not fair, you just run to DNR and ask
2 for a permit. Now, that had never happened before in
3 50 years, but we know it's happened now. And we know
4 that that precedent has been set going forward unless
5 the permit is revoked. The fact that DNR can
6 identify no limiting principle in the language proves
7 just how outrageous their exercise of power here is.

8 There was an argument that was made that
9 ConocoPhillips couldn't have had an expectation when
10 it leased the KRU acreage, that it couldn't have had
11 an expectation that its roads wouldn't be subject to
12 use by other parties. I can assure you that the
13 truth is just the opposite. When the Court is
14 interpreting a contract, of course, it has to
15 consider, what were the facts and circumstances at
16 the time and what was the party's intent at the time
17 they entered the lease?

18 And it is not credible to argue that it was
19 ConocoPhillips' intent, the KRU lessee's intent, when
20 they entered that lease, that whatever infrastructure
21 they put on that land, would be up for grabs from any
22 other party that wanted to use it with a magic wand
23 by DNR and a permit. It is simply not credible to
24 argue that was ConocoPhillips' expectation. It most
25 certainly wasn't, and it never has been since. We

1 know that because, again, for 50 years, DNR has never
2 used the permit to do this, and instead what they've
3 said over and over is, if you want to use somebody's
4 infrastructure, you've got to go reach a commercial
5 agreement.

6 You heard some commentary that nobody ever
7 charges for use of roads. That's not in the record
8 because it's simply not true. There is a history of
9 charging for road use. What is true about these
10 roads and OSA's use, which is in the record, is that
11 the use was going to be or is far greater than other
12 use that has been requested by parties whether it be
13 the KRU Unit or other units.

14 At first, ConocoPhillips was willing to
15 allow OSA to use the roads for free, for its
16 predevelopment activity. But to actually operate and
17 construct the Pikka Unit, no. It -- it wouldn't even
18 make sense to suggest that should be free use of
19 billion dollar roads that require millions and
20 millions of upkeep. There was a lot of talk about
21 reasonable concurrent use of the land, and to be
22 clear, ConocoPhillips doesn't contest the state's
23 right or interest and reasonable concurrent use of
24 the land. But what's so critical here is, we're not
25 talking about concurrent use of the land. We're

1 talking about concurrent use of private improvements.

2 The permit isn't for the land, and I know
3 that both parties, DNR and OSA, want to -- I'm trying
4 to think of a good word. They don't really want to
5 engage with the notion of, they're assuming in the
6 lease the regulations and the statutes that land
7 means improvements, but that is what they're
8 assuming. And there is no authority in the
9 constitution or the lease or anywhere else about
10 reasonable concurrent use of improvements.

11 What I find probably the most interesting is
12 the response on the enabling statutes. It goes
13 without saying, and the Court certainly recognizes
14 this, that whether it's the statutes or the lease,
15 there is an assumption by DNR and OSA that state land
16 or said lands includes improvements. And what we
17 know from the enabling statutes 38.05.035 is that the
18 legislature has said just the opposite.

19 What we heard from DNR in response to your
20 question of: How do you square this? What do you
21 say about the statute? Was: Well, this is just an
22 organizational statute. Your Honor, this is the
23 enabling statute for the regulation they relied on to
24 issue the permit. It is nine pages of director's
25 duties, none of which give DNR the authority over

1 private improvements. The very specific language
2 that addresses the state's rights, specifically says,
3 your rights over improvements are limited to those
4 belonging to the state. There could not be a more
5 direct comment on DNR's authority than what is in the
6 precise language in the enabling statute that
7 supports this permit. It clearly says, DNR can't do
8 what it's trying to do here.

9 The other enabling statute that is on point,
10 38.05.035 talks about DNR being able to issue
11 permits. They had no response for the argument
12 that's clear on the face of the plain language. It
13 doesn't say in there that you get to issue a permit
14 for improvements. It says you can issue a permit on
15 state land and then lists all kinds of things that
16 has nothing to do with improvements.

17 Those are the two very specific enabling
18 statutes that tell us what DNR is authorized to do.
19 When you look at cases, when the court's assess is
20 DNR acting outside of its authority, but those --
21 every single one of the cases starts with, okay,
22 let's look at what they did, under what regulation,
23 and then let's go and look at what the enabling
24 statute says, and is DNR acting within or consistent
25 with those statutes. The answer here is so

1 unequivocally no. They still haven't each identified
2 anything that would support this exercise of power.

3 I was somewhat confused. I thought the
4 argument was: Well, said land and the reservation
5 has to include roads because to use the land you have
6 to be able to use the roads. I think that's what I
7 heard. But what we know, and this is in the record,
8 is each time DNR approves some type of permit or some
9 type of use, it's said to the parties, if you want to
10 go use the roads, go enter a commercial agreement.

11 That has been the history and practice on
12 the North Slope. If you want to use someone's roads,
13 you've got to have an agreement, until today, or I
14 guess now, until two years ago.

15 I'm going to summarize what I believe this
16 Court has to conclude in order to affirm the permit.
17 There are five things, and you've got to be convinced
18 of all five of them. First, you must be convinced
19 that the parties jointly intended, not just the
20 state, but ConocoPhillips as well, via the
21 reservation, that the state could enter upon and use
22 not just the land but improvements installed on the
23 land by the KRU lesses, even though the reservation
24 doesn't say that. Second, you've got to be convinced
25 that granting OSA use of the KRU roads is a purpose

1 that is authorized by law and not inconsistent with
2 the KRU's lease rights as required by 29E. That's
3 the subsection that DNR relied on for its power. We
4 know that not to be the case because we've looked at
5 the law.

6 Third, you must be convinced that DNR can
7 use 91.010, the regulation it relied on to grant the
8 permit, even though that regulation applies to land,
9 not improvements, and even though in 50 years no one
10 has ever used a miscellaneous land use permit to
11 grant a third party the right to private
12 improvements.

13 Fourth, you've got to be convinced that the
14 enabling statutes on which 91.010 is based actually
15 authorizes DNR to exercise control over the roads or
16 improvements even though it says the opposite. And,
17 fifth, you have to be convinced that DNR's
18 expropriation of the care, lessee's rights to exclude
19 others isn't a violation of both the U.S. and
20 Alaska's constitutions, which the U.S. Supreme Court
21 has told us it is.

22 During our -- our discussion, my sense is
23 maybe you were -- you were getting at: What happens
24 now? Where does this go? What does ConocoPhillips
25 want? We believe that the only answer here is for

1 the permit to be revoked, and then for the Court to
2 give the parties direction to follow the rules, for
3 DNR to follow the rules. What we expect will happen,
4 and we know this, in part, that OSA agrees, because
5 as we included in our reply brief, I gave some
6 testimony to a Senate hearing committee earlier this
7 year and said, if the permit is revoked, we think,
8 you know, the parties will be able to work something
9 out. That's what we expect as well.

10 While the permit and authorized permit is
11 still in place, there's really no incentive for OSA
12 to negotiate. There's emails and other things in the
13 record I won't -- I won't get into now, where
14 everybody kind of accepts that when the choice is
15 nothing or paying, DNR or OSA is protected at this
16 point. They get to still use the roads for free, but
17 once the permit is revoked, which we respectfully ask
18 the Court to do, we think the parties will be able to
19 negotiate some type of agreement.

20 Your Honor, I don't have anything else
21 unless you have any questions for me.

22 THE COURT: No, no further questions.

23 MS. HARDIN: Thank you so much.

24 THE COURT: All right. Now comes the part
25 where all the gallery gets to vote on the outcome.

1 No. I'm -- that would be the easy way, and nothing
2 about this case is terribly easy except I will say
3 this, in all honesty, I thought the case was a lot
4 more complicated when it first came up. I just don't
5 think it's that complicated now.

6 I do find myself -- and it's rare that
7 I'll -- you know, in a case of administrative
8 appeal -- I'm just going to share my perceptions --
9 that I find myself lopsidedly in agreement with one
10 side versus the other. And in this case, I do find
11 myself lopsidedly in agreement with ConocoPhillips.
12 There isn't any particular argument they've made that
13 I -- I'm not persuaded by, and I'm just not persuaded
14 by the arguments that have been made on behalf of DNR
15 and OAS. It's no fault of counsel.

16 It's just -- I really did expect that it was
17 a stronger case. I just don't see it that way. That
18 is no -- I will say, having been on the job about 14
19 and a half years, you know, with I guess some track
20 record to look back on with the Alaska Supreme Court,
21 that is -- should not inspire great confidence for
22 anyone.

23 In the immortal words of Judge Sanders, I am
24 in the position of being a speed bump on the way to
25 the Alaska Supreme Court. I think it was Judge

1 Sanders. This case could end up there. I would urge
2 that you try at least one more time, hard, to work
3 out a compromise. But I do find myself in pretty
4 much complete agreement with the position by Conoco,
5 and for that reason I don't want to draw out the
6 agony of this case. It's gone on a long time. I
7 think you need a prompt decision.

8 This is my decision. I'll ask -- the formal
9 decision will be when -- since given my limited time
10 left on the bench, and the fact that my calendar is
11 completely packed because everybody needs to get
12 something decided before I'm gone, I will ask Conoco
13 to prepare an order of whatever length they think is
14 necessary to encapsulate their arguments.

15 I'll review it, and I expect that, in large
16 part, if not in whole, that will be the order of the
17 Court. I appreciate the quality of the briefing by
18 both sides, very interesting. All 200-something
19 pages of it. I don't remember who counted all the
20 pages. Not to mention all the -- the record. But
21 you need a decision, I don't want you to wait longer
22 for it. That's my decision.

23 Any clarification, Counsel?

24 MR. LEIK: Yes. For purposes of calculating
25 deadlines that are triggered by your --

1 THE COURT: It will be when the written
2 order is signed, Counsel. Thank you.

3 MR. LEIK: Okay. Thank you.

4 THE COURT: Yeah. I think I'm expressly
5 saying on the record that the written order will be
6 the Court's decision. I think we need to -- I don't
7 want to start deadline for appeals and all that, or
8 whatever may happen in the case. We'll wait for the
9 order. If you can do it while the -- you know, my
10 only advice is, strike while the iron is hot and my
11 attention span hasn't been completely diverted.

12 Counsel?

13 MS. GRAMLING: I would like to object to the
14 idea that Conoco will be drafting your proposed
15 order. This is an appellate case, so how would Your
16 Honor feel if you were in practice and the Alaska
17 Supreme Court was like, oh, Party A, you draft our
18 decision? That's -- I don't think that's an
19 appropriate use of the Court's power.

20 THE COURT: It's appropriate if I fully
21 agree with the decision, and as I just articulated, I
22 don't disagree with any of the arguments that Conoco
23 has -- has laid out. Now, I may take issue with
24 particular language, and I will review it. And
25 I'll -- if so, if I find myself in disagreement with

1 any particular language, I think it's overbroad or
2 goes outside the record, it's not uncommon for me to
3 interlineate, cross out, strike all paragraphs.
4 Ultimately, I'm responsible for that decision.

5 And so the drafting party is just -- it's a
6 proposed order, just as any other case. And, you
7 know, I think it's rule 53, 58. I don't remember,
8 but it permits parties to submit proposed orders. We
9 could have an order that says, for the reasons argued
10 by appellee or appellant in this case, I'm reversing
11 the -- the DNR in this case, a couple of sentences
12 and be done.

13 I'd rather have a more detailed order in the
14 record, just so that the Supreme Court tracks the
15 reasoning and doesn't have to go read through
16 100-plus pages of appellant's brief to figure out
17 what the basis for my decision is.

18 MS. GRAMLING: I would argue that it's not
19 in the appellate rules and then also that does burden
20 shift the attorney's fees in that you're giving work
21 to one party that isn't contemplated under the rules.
22 What's contemplated under the rules is briefing.

23 THE COURT: Well, you can argue that in
24 objecting to any attorney's fees. I appreciate it,
25 but it's -- I can assure that you I think you're

1 better off with a decision sooner than later, and the
2 decision won't get written, if I'm writing it. I'm
3 effectively done on the bench December 20th, and I
4 don't see an opportunity to write the decision from
5 scratch in that time frame, Counsel. So, yes, this
6 is how we're going to do it. Your objection is
7 noted, however.

8 Mr. Leik?

9 MR. LEIK: Excuse me. You referred to one
10 of the civil rules, and I know which one you're
11 talking about, that says if there's a proposed order,
12 you can object to it or -- or, you know, within a
13 short time.

14 THE COURT: You certainly can. If you have
15 specific aspects -- and thank you for bringing that
16 up, Mr. Leik -- of the -- of the proposed order that
17 you take issue with. Now, you know, you can
18 certainly submit -- I'll give you ten days.

19 Actually, I can't make it -- if we're going to get
20 the proposed order in ten days, that would still be
21 fine. We have time, ten calendar -- ten calendar
22 days for any objections.

23 MR. LEIK: Thank you.

24 THE COURT: As long -- or whatever --
25 obviously not on a weekend, but if -- the next -- the

1 next business day --

2 MR. LEIK: Okay.

3 THE COURT: -- after that period.

4 MR. LEIK: Thank you.

5 MS. HARDIN: Your Honor, just to --
6 administrative note, would it be your preference for
7 us to submit a proposed order but also email it to
8 the Court?

9 THE COURT: Yes.

10 MS. HARDIN: Okay.

11 THE COURT: Both. Yeah, submit it to the
12 law clerk, 3amlaw03@akcourts.gov. You can call my
13 law clerk and get the detail --

14 MS. HARDIN: Okay. Thank you, Your Honor.

15 THE COURT: Thank you-all. We'll go off
16 record.

17 THE CLERK: We're off record.

18 (Off record.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIBER'S CERTIFICATE

I, Sandra A. Ventura, hereby certify that the foregoing pages numbered 1 through 91 are a true, accurate, and complete transcript of the above-referenced proceedings, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

I further certify that I am a disinterested party to said action.

November 24, 2024

Sandra Ventura
Sandra A. Ventura, Transcriber

\$	3	7
\$13 33:15	30 5:8,9 6:4,6,7 14:16	702 21:17
\$20 77:14	30- 77:10	75 38:12 77:10
-	34 14:17	8
-o0o- 3:2	35 17:24	82 16:15
0	35.05.035 18:5	9
035 54:22	36 11:7 14:19	91.010 84:7,14
05.035 71:3	38.05.020 54:24	96 11:9
1	38.05.035 17:9,13 19:4 53:2 70:20,21 81:17 82:10	96.010 10:13 16:11,12,21,24 20:9 21:17
1,000 66:3	38.05.285 55:11	96.0103 20:23
10 7:20	38.05.35 17:24	96.10 20:16 21:10,21,22
100-plus 89:16	38.05.850 19:9 71:3	96.10's 20:13
12 77:11	39 33:11,14	A
139 31:24	3amlaw03@akcourts.gov 91:12	A1 54:24
14 86:18	3AN-22-09828 3:11	A2 17:24 53:3 54:24 70:20,23 71:10
15 6:18 14:9 76:16	4	A3 71:4
180 60:8	40 25:8 33:17 34:3	A7 71:9
1959 53:11,15	40-feet 77:10	ability 9:13 15:15,25 17:25 55:2 56:2 59:23 65:15 69:14
1967 14:7	45 6:1,18 36:12	absolve 23:14
2	45-minute 6:22	abused 10:3
2,560 13:25 49:20 50:17	5	accepted 34:4
20 6:2 25:8 26:6,13,21,22 63:13	50 9:1 10:2 20:25 31:3 34:3 36:1 68:3 79:3 80:1 84:9	accepts 85:14
200 8:19	50-plus 9:3	access 9:8 12:5 15:25 21:23 23:19 24:11 25:1,2 32:1,13 38:10 39:17 48:11,12 60:17,20,23 61:6, 10 67:11,25 75:12
200-something 87:18	52 11:9	accommodate 40:7,10
20th 90:3	53 89:7	accomplish 13:6 19:12
24/7 25:1 74:12	58 89:7	accomplished 32:21
26 14:21	594 31:24	account 25:6 45:21
29 48:19,21	6	accused 47:1
29E 13:7 16:4,5 84:2	61 16:15	
2:30 7:10		

acknowledge 37:8 64:12

acreage 79:10

acres 14:1 49:20 50:17

act 11:7 22:23 23:8 45:4 55:3

acting 82:20,24

action 40:18 46:6 54:20

activities 20:10 21:12,20 50:1

activity 24:25 80:16

acts 16:16 23:2

actual 13:3 31:8

ad 29:2 38:25 40:13 68:10

add 5:25 13:13 18:14 52:22

added 14:9 25:12

addition 14:14 26:24 40:16,19

additional 25:11 26:10,13 72:13

additionally 41:2

address 38:6 41:14

addresses 52:25 82:2

adieu 7:12

adjoining 67:11

adjudicated 62:9,10

adjudicates 62:12

adjudicative 34:18 35:15

administration 55:6

administrative 16:15 24:14 27:9
37:15 86:7 91:6

admissions 33:5

admits 24:20

adopt 46:11

adopted 71:5

adverse 55:10 60:12,22

advice 88:10

affidavit 26:4

affirm 59:10 83:16

affirmative 16:16

affirmed 9:23

afforded 28:19

afoul 19:3

agencies 16:15 53:10

agency 16:11 34:21 37:14

agony 87:6

agree 13:20 20:22 29:2 34:14
46:16 57:22 61:13,18 63:5,8
88:21

agreed 29:3 58:22 63:22

agreeing 15:14

agreement 15:13,19 16:2 25:5
29:2 30:16 31:4,8 36:25 38:14,22,
24,25 39:2 40:13 44:10 57:13
63:6 68:6,10 74:1,14 80:5 83:10,
13 85:19 86:9,11 87:4

agreements 9:7 40:11 48:9
62:21 67:17 68:8

agrees 27:19 29:11 85:4

ahead 13:1 72:23,25

AIDEA 33:12,15,22

Alaska 3:4,11,12 4:6,12 8:17
11:7 13:25 16:12,13 22:9 33:18
35:17 37:6 42:21,22 45:4 48:10
55:3,13,19 56:16 59:21 60:10
66:21 67:14 86:20,25 88:16

Alaska's 59:22,25 84:20

all-purpose 51:23

alleging 27:9

allocate 68:9

allocation 62:22

allowed 14:20 21:10 24:23 57:8
67:23

allowing 60:16

Amazing 36:11

amount 6:5 26:1,25 65:4 74:20

analogy 44:3

analysis 73:10

apparently 54:16

appeal 37:14 59:9,22 66:22
74:24 75:5 86:8

appeals 88:7

appellant 89:10

appellant's 89:16

appellate 37:24 88:15 89:19

appellee 89:10

appellees 7:4 34:9 36:24

applicable 67:8 72:2

application 20:14

applied 35:8 60:14 62:17

applies 84:8

apply 21:15 34:24 35:13

applying 57:13 60:21

approach 7:21 61:3

appropriating 25:18

approvals 52:6

approves 83:8

area 50:11,16

arguably 31:23

argue 15:18 28:13 73:25 74:8
79:18,24 89:18,23

argued 89:9

argues 22:16 49:17

arguing 4:3,17,18,19 55:23

argument 3:13,17 4:23 6:23 7:5
12:3 29:11 35:8 38:1,5 41:9,10,14
42:19 44:8 49:23,24 50:3,8 51:14
52:20 53:1 57:12 64:5,7 65:22
70:6 71:13 73:2,11 79:8 82:11
83:4 86:12

arguments 49:12 52:20 86:14
87:14 88:22

arrangements 61:10

article 56:17 60:10

articulated 88:21

AS30 70:19

AS38 60:9

aspect 72:13

aspects 90:15

assess 82:19

assume 4:19 26:17 27:1 36:24
75:8

assumed 24:20	bad 44:2	bringing 29:6 90:15
assuming 81:5,8	balance 55:17	brings 45:13
assumption 81:15	balancing 58:8	broad 38:2 51:13 52:17 54:1,6, 13,23 56:14
assure 79:12 89:25	based 20:15 84:14	broader 16:3 58:2
attached 67:9 68:19 69:5	basically 20:19 29:13 41:12 75:11	broker 33:20
attempt 12:10	basis 20:6 22:10 28:11 34:24 35:5,13,19 89:17	brought 32:4
attempted 33:20	bathroom 5:14	bucks 78:24
attempting 76:9	bear 34:18	build 41:19 43:2,18,23 44:5 73:8, 21 75:12
attention 54:7 88:11	bearing 61:2	building 26:24 66:1,2,4,11 69:4 78:24
attorney's 89:20,24	begin 7:13	builds 66:3
attorneys 4:18 5:20	begs 13:16	built 8:24 9:1,23 11:14 15:14 18:3 33:7,13 34:4 44:11,14 49:9 50:5 51:21 52:2 72:8 73:19
audience 6:19	behalf 8:16 86:14	bulky 8:10
authorities 38:2 42:4 54:23 58:1	belong 34:5	bump 86:24
authority 8:22 9:10 10:17 11:14 15:24 16:5,18,25 18:4 19:15 20:9, 12,18 22:17,22 28:22 29:19 34:9 35:10 36:5 41:21 43:10 45:9,12 46:4 49:13,25 51:1,9,13 52:23 53:4 54:6 56:9 57:15 58:9,16 66:15 69:21,24 70:17,20,24 77:25 78:11 81:8,25 82:5,20	belonging 9:15 18:1,21 19:7 53:19,20 72:2,10 82:4	bundle 65:2,3
authorization 56:7	bench 87:10 90:3	burden 89:19
authorizations 42:6 43:3 45:23 51:5	benefit 11:12 17:3 22:21 43:19, 24 44:6,7	business 64:10 91:1
authorize 13:10 48:3,23 66:15	benefits 43:10	buy 73:14 77:23
authorized 16:7 28:2 49:6 82:18 84:1 85:10	big 45:8	
authorizes 9:19 22:13 56:23 71:1,4,8,11 84:15	Bill 33:11,14	<hr/> C <hr/>
authorizing 44:17	billion 77:13 80:19	calculating 87:24
availability 54:2	binder 12:18 17:3	calendar 7:9 87:10 90:21
avoid 40:18 60:22	bit 5:18,24 6:3 8:4 32:22 77:2,7	California 31:25 32:6
aware 57:18	bonding 40:25	call 62:24 91:12
awkward 8:11	borne 74:12	called 17:13 38:25
	Bottom 15:23 19:3	capable 67:15
<hr/> B <hr/>	breach 27:10 28:25 38:22	Caparic 8:18
B1 55:2	breached 29:8 57:13	card 23:3
back 6:24 11:19 15:10 36:15 62:15 71:9 75:23 76:16 78:4 86:20	break 5:14 6:21,22 7:4	care 84:18
background 5:19,21 75:7	bridges 77:11	carrier 42:5
	briefing 3:15 8:19 39:2 87:17 89:22	carry 11:10 55:3,4
	briefly 59:3 70:2	cart 77:21
	briefs 5:22 63:3	case 3:10 24:5 27:7,8 31:25 35:6, 7,11 37:12,14,21,23 39:8 42:11 47:1 56:3 57:7 66:17 68:13 70:16 74:24 84:4 86:2,3,7,10,17 87:1,6
	bring 28:18 30:14	

88:8,15 89:6,10,11
cases 49:16 51:6 57:2 82:19,21
casino 47:2
catchall 49:5
caused 40:22
Cedar 31:23,24 32:19
cede 35:15,16 74:5
central 59:25
certainty 57:24
cetera 44:21,22
challenge 10:16 56:7
challenging 35:10
change 20:8 26:14 48:6 52:5
changed 24:25
chapter 11:9 55:5
characteristic 67:10
characteristics 69:18
charge 74:20
charges 62:23 80:7
charging 62:20 68:8 80:9
choice 30:21,24 63:10 85:14
choices 30:25
circuited 61:19 62:1
circumstance 68:13
circumstances 21:15 35:11 79:15
cite 41:21
cited 24:5
cites 20:6 39:4 61:22
civil 3:11 37:23 90:10
claim 16:19 18:2 28:18 29:5 30:14 64:23
claimed 14:12
claims 12:4,15 18:25 19:22 22:17 23:6 28:1 64:6 75:1
clarification 87:23
clarifies 72:12
clarify 72:16,17

clause 13:19,21 14:5,15 15:1 49:4 56:12 65:12 71:24 72:7
clauses 71:19
clear 9:16 11:15 19:4 22:11 24:10 35:11 61:17,21,23 73:24 78:6 80:22 82:12
clerk 3:3,7,8,22 36:16,19 76:17, 20,23 91:12,13,17
client 37:8 75:8,21
close 27:18 59:2
collapse 65:21
collectively 5:10
color 77:4
comment 82:5
commentary 77:16 80:6
commercial 25:4 31:4 80:4 83:10
commission 53:14
commissioner 38:18 54:9 55:24 60:13 61:6 62:12 63:17,20 67:6 70:24 71:6
commissioner's 37:17 39:3 63:21 66:24
commit 76:2
committed 32:16
committee 85:6
common 42:5 76:6
Companies 76:8
company 47:13 58:6,15
compensated 29:22
compensation 10:9 25:6 27:4 28:15 30:15,17 31:20 32:18,25 63:1
competing 45:22
competition 55:9
competitive 62:5
competitor 57:7
complete 74:17 87:4
completely 10:10 18:3,12 77:23 87:11 88:11

complicated 67:19 86:4,5
complying 11:23
compromise 87:3
concedes 9:3
concept 23:21
concerned 48:10 57:16
conclude 7:5 83:16
concurrent 22:21 23:7,13,22 24:3,7 38:15 39:9,11 41:4 42:11 43:8 45:5,7,16 47:22 48:16 51:10 53:5 54:2 55:16 56:18 57:1,2,19, 23 58:16 59:4 60:5 61:5,10 65:17, 19 66:15,25 67:13,16 68:7,22 69:19 70:14 80:21,23,25 81:1,10
condemn 28:24
condemnation 28:18 30:14 31:12,17
conditions 13:21 29:4 39:7 40:3, 12,15,16,23 46:3,8 48:24 54:8 56:22,25 58:7,12,19,20 62:15 70:10
conduct 9:22 10:1 24:19 33:5 34:12 57:4
conferred 16:13 17:15
confidence 86:21
confirms 19:9
conform 55:12
confused 83:3
Conoco 3:23 6:2 38:7,8,18,21 39:14,16,21 40:5,6,10,21 41:18, 21,25 42:14 43:2 44:11 46:15 47:1 49:12,17 51:24 52:4,5,25 57:4 58:19 59:6 62:2,16,25 66:3 74:1,5,14 77:17,21 87:4,12 88:14, 22
Conoco's 39:18 40:19 47:20 49:23 50:2 52:7,20 57:4 70:19
Conocophillips 3:11 5:9 8:16 10:9,16 13:23 14:13 24:6,10,16, 23 25:4,7 26:1,19 28:14,23 29:19, 21 31:4 34:3 35:9 64:16,19,21,23, 24 65:5,7 68:2,11,12 73:17,24 74:7,10,16,20,25 76:4 77:19 79:9 80:14,22 83:20 84:24 86:11
Conocophillips' 3:24 32:21 64:8 79:19,24

consent 10:8 30:10
consideration 59:12
consistent 50:9 52:17 55:14
62:5 82:24
constitution 10:4,23 11:17,24
19:3 22:10,12,16,18 23:6 34:13
42:22 45:4 55:13,19 56:16 60:11
67:14 81:9
constitutional 10:14 22:20
23:15,24 60:2 61:2 78:15
constitutions 84:20
construct 39:21 42:16 77:13
80:17
constructed 41:11,25 46:17,18
48:2 50:16 66:2
constructing 25:9
construction 12:14 34:15
construing 15:12
contemplate 56:18
contemplated 89:21,22
contemplates 57:22
contemplating 70:14
contemporaneous 75:20
contend 22:12
contest 5:12 7:7 80:22
context 37:21 53:7 64:14 65:18
66:21 75:5
continued 74:18
contract 12:14 14:25 15:13
27:11,17 28:25 34:15 57:16 79:14
contracts 35:1
contractual 9:19 54:21 78:15
contrary 7:6 49:18
contributes 26:8
control 9:13 11:23 15:8,15 16:25
17:11,19,25 18:17,20 22:7 45:12
48:3 50:18,20 71:12,14,15,22
84:15
controlling 41:12
controls 13:11 35:2
convenience 43:16

conveyed 64:18
convinced 10:20 83:17,18,24
84:6,13,17
coordinate 39:14 40:4,10 55:24
coordination 40:17
copies 59:17
copy 70:25
core 52:19
corporation 57:9
correct 26:3 62:13
corridors 38:11 64:20
Cory 16:14
cost 25:11,15 26:12 40:8 63:13
77:12
costs 43:11 44:9 68:23
counsel 86:15 87:23 88:2,12
90:5
counted 87:19
country 77:6
couple 72:22 89:11
court 3:3,6,8,20 4:2,5,11,15,17,
24 5:2,5,11,17 6:9,17 7:17,22,23,
25 8:6,7,12,14,19 9:12 10:5,19,20
12:23 13:1 16:3,14 17:13 22:19,
23 24:13 25:10,22,25 26:7 27:4,6,
19 28:7 29:9,10 30:11,18 32:9,12
34:11,25 35:15 36:11,14,17,19,20
37:2,5,16,25 41:9,23 42:8,9,12
43:13,16 44:19 46:16,25 47:24
48:18 49:15 50:12,15 51:20 53:19
54:3 55:20 58:23 59:1,13,16,18
61:16 62:2 63:9,15 64:2 65:20
66:1,10 68:14,18,21 69:20,23
72:1,8,23 73:11 75:4,6,19 76:3,
12,14,18,20,22,24 77:24 79:13
81:13 83:16 84:20 85:1,18,22,24
86:20,25 87:17 88:1,4,17,20
89:14,23 90:14,24 91:3,8,9,11,15
court's 6:8 31:22 82:19 88:6,19
courtroom 7:1
courts 25:16 35:1
cover 5:21
cow 73:12,13,14

create 56:22 60:25
created 25:12
creature 52:12
creatures 16:17
credible 15:18 79:18,23
credibly 33:4
critical 32:11 80:24
critically 17:12
cross 48:17 89:3
crowded 4:8
crucial 64:15

D

damage 27:22 28:1 74:6
damages 27:13 32:25 40:22
59:12 75:1
data 27:2
day 35:2,12 91:1
days 90:18,20,22
de 34:12
deadline 88:7
deadlines 87:25
deal 55:25 62:22
debate 3:17 34:1
decades 21:21 38:13 44:12
46:15 57:5,9,10
December 90:3
decide 23:7,19
decided 87:12
decides 22:24
decision 37:14,17,20 42:13
66:20 74:25 87:7,8,9,21,22 88:6,
18,21 89:4,17 90:1,2,4
decisions 59:9
deeds 54:9
deems 22:23
deference 34:8
define 13:19 14:3

defined 49:18	disagree 28:13 88:22	20:25 21:7 22:2,3,4,22 23:11 34:8
defines 49:19	disagreement 88:25	35:10,14 48:1 82:5 84:17
definition 14:5 34:23	disclosure 75:15	DNR/OSA 6:7
delayed 30:22 58:4	discretion 63:25 66:23,25 67:7	document 21:16,19 36:3
demand 35:14,16 62:25	69:16	dollar 21:7 80:19
demanded 9:9 62:16	discussed 71:25	dollars 25:7 77:13
demonstratively 24:9	discusses 39:3	domain 31:7
demonstratives 12:25	discussing 33:11	doubled 20:21
department 37:7,9 39:10 41:3	discussion 84:22	draft 57:15 88:17
53:22 54:17,22,25 55:1,7,17	displays 52:23	drafting 88:14 89:5
56:22,24 57:2 60:3	disposal 55:12	draw 87:5
department's 43:9 59:8	dispose 48:22	drive 77:6
depend 58:12,18	disposing 54:10	due 28:20 31:20 43:3
depending 48:7	dispute 25:25 26:4,7 45:6 63:7	duplicate 61:1
deprive 53:4,25	64:17	duties 11:10 17:14 54:18 55:4
desired 13:6	disputed 26:5	81:25
detail 25:15 62:14 91:13	disputes 56:19	
detailed 5:23 89:13	disregard 9:25 10:11	<hr/> E <hr/>
determine 56:24	distinction 66:19	earlier 64:6 85:6
deterred 42:16	diverted 88:11	early 64:6 69:10
develop 39:18 44:15 59:23 60:20	divided 36:24	easement 49:14 52:2 64:22
73:6	dividing 6:14	easements 51:6 52:11
developing 46:20	division 18:18 38:17 53:16,21	easier 8:4
development 30:22 46:23 47:3,	divisions 53:13	easily 47:18
6,15 51:22 68:23	DNR 3:12 4:7,15,20 6:15 8:22	easy 30:6 67:22 69:9 86:1,2
differ 68:15	9:2,3,6,19,21 10:3,7,10,12,17	echo 74:23
difference 11:5 65:23	11:8,9,11,13,18,19,22 12:4,10,15,	economic 25:17,21 32:14 43:19,
differentiating 72:18	22 13:5,7,13 16:4,9,10,21,25 17:7	24 55:7 73:5
differently 48:8	18:2,6,7,11,13,24 19:2,11,15,21	economically 58:3 62:4
diminished 46:5	20:2,6,8,15,19,21 21:8,10,25	education 53:23
direct 82:5	22:4,6,9,11,16,19,22,23 23:2,6,	effect 9:4 27:21 33:1,15 49:21
direction 85:2	12,18 24:4,19,20 26:5 28:5,21	61:5
directive 10:1 18:13	30:2,20,23 31:2,5,6,13,17,18	effective 5:23
directly 17:11 19:19 24:16	33:4,6,16,20,21 34:3,7 35:8,15,	effectively 90:3
director 17:14,16,18,20 18:16,20	17,22,24 36:5,7 37:17 48:3 50:18	effectuates 59:3
19:11 54:8 71:2,4,7,11	52:6 53:4,25 54:3,7 55:2 56:2,9	efficient 57:23
director's 17:25 61:3 81:24	61:12 63:4 68:3 69:16,20,23	eight-feet 77:9
dirt 77:7	70:14,16 71:21 72:19 75:5 77:3,	Elena 4:11
	17,24 78:8,20 79:1,5,23 80:1	
	81:3,15,19,25 82:7,10,18,20,24	
	83:8 84:3,6,15 85:3,15 86:14	
	89:11	
	DNR's 8:22 9:10,13 10:15 12:2,7	
	15:24,25 16:11 17:11,24 19:5,20	

email 91:7
emails 85:12
embodied 58:17
eminent 31:7
employers 32:1,4
empower 11:8,11
enabling 9:18 10:11 11:1,8,17,20
16:13,20,22,24 17:4,8,9,10,20
18:8,11 19:9,10,12,13,23 20:2,12,
13 21:13 22:3 28:10 34:16 36:2
78:3 81:12,17,23 82:6,9,17,23
84:14
encapsulate 87:14
encouraged 55:9
end 52:6 72:21 87:1
ended 32:12
ends 54:17
endurance 5:12 7:7
enforce 54:20
enforced 60:13
engage 81:5
enjoyment 36:21
entails 28:21
enter 9:7 13:11,12 15:13 25:4
48:25 49:1 56:12 83:10,21
entered 14:8 79:17,20
entering 15:11
entire 42:10
entry 48:12
environment 30:23
equally 69:5
equation 51:19
equipment 14:19
equitable 25:5 28:15
essential 67:11
essentially 65:22 74:15
established 45:2 55:18
estate 21:24
estimate 25:10

evaluated 67:3
evidence 37:19
examples 33:9
exceeded 36:8
exception 54:14
excerpt 7:25
exchange 63:2
exchanged 61:23
exclude 25:19,24 29:22 32:8,11,
15 41:22 44:17 47:11 57:6 59:6
72:13 84:18
exclusion 70:7
exclusionary 49:10
exclusive 27:23 39:24 44:24
45:24 64:9
exclusively 13:24 44:21,23 47:6
exclusivity 47:10
excuse 12:1 17:24 31:5 43:22
71:1 90:9
execute 71:4
executed 14:7
executing 71:8
exercise 9:20 11:18 15:8 16:18
22:10 30:20 34:11,19 36:21 55:4
66:23,24 67:6 79:7 83:2 84:15
exercises 48:6
exercising 35:22
exist 41:20 52:10,12 78:19
existence 57:21
existing 38:22,24 41:5 44:3 50:6
60:25 74:14 75:16
exists 30:24 40:1 41:16 45:9,13
expand 6:12
expect 34:6 85:3,9 86:16 87:15
expectation 41:17 44:12,16
73:18 79:9,11,24
expected 73:18,23
expects 27:10
expense 42:17

experiences 26:20
expert 69:15
expertise 34:22 54:1
explanation 72:3
explicit 56:8
explicitly 22:13
exploration 41:20
expressed 36:2 56:8
expresses 47:25
expressly 20:14 74:3 88:4
expropriate 11:12 31:18
expropriation 84:18
extends 12:5 16:12
extent 42:10 43:22 53:2
extra 72:24
extract 57:6 73:8 76:10

F

face 82:12
facilitate 51:22
facilities 33:19 43:15 72:19
facility 21:2 45:18 67:20 69:17
78:24
facing 72:5
fact 22:24 24:14,19 31:8 42:7,8
51:18,19 58:5 62:18 79:5 87:10
factors 68:14
facts 5:21 24:22 33:23,24 37:18,
19 41:3 79:15
fails 16:9
fair 14:11 25:5 28:15 30:16 32:17
79:1
fallacies 23:11
falls 72:6
false 24:9
fast 33:3
fault 86:15
favor 40:24 41:2

feed 73:13
feel 77:3 88:16
fees 74:20 89:20,24
feet 66:3
felt 70:13
figure 26:6 69:16 89:16
Figured 37:1
file 7:2
files 8:7
final 33:3 37:14 76:15
finally 3:15
financial 25:11
find 16:17 81:11 86:6,9,10 87:3 88:25
finding 22:25 24:14,19 27:9 31:9
findings 27:25 39:3
fine 5:17 90:21
five-minute 6:24
flexible 5:6
flipping 8:10
floor 7:18 8:11
focus 17:5 23:25 38:1 53:1 70:18
focused 5:5 8:22 70:19 71:10
folks 32:3
follow 41:9 60:3 85:2,3
forever 15:15 78:22
form 26:18
formal 87:8
Forty-five 36:23
forward 63:23 76:5 79:4
found 12:16 18:10 22:8,15 23:4 54:23
fours 31:24 32:19
Fourth 84:13
frame 90:5
framers 23:24
framework 42:21

frankly 11:21 23:16
free 21:9 24:24 29:3,7 30:9 31:14 42:17 57:8 66:6 73:15 80:15,18 85:16
full 75:15
fully 63:2 74:1 77:20 88:20
function 69:8
fundamental 32:11
future 42:15

G

gallery 85:25
Galligan 3:24
gally 37:9
gambling 47:2
gas 14:17 39:19,23,25 40:2 41:6, 20 42:21,24 44:15,25 45:23,24 46:20,24 47:4,6,10 49:8 51:22 52:4,7,12 55:6 56:16,17 59:24
gave 31:14 60:9 70:22 85:5
generally 16:21 26:2 50:11
generous 35:18
geophysical 21:20
give 7:7,22,24 19:13 59:17 61:4, 22 70:24 72:24 73:15 81:25 85:2 90:18
giving 31:10 41:13 43:21 74:16 77:4 89:20
goal 19:13
good 6:19 81:4
govern 66:8 67:18
governed 68:11
governor 33:6,14 34:2
governor's 33:12
grabs 79:21
Gramling 4:13,14,16,19,21 5:1,7 6:16 7:15 37:3,5,6 41:15 42:3,20 43:14 44:11,23 46:18 47:9 48:4, 21 49:22 50:13,19 53:20 54:5 56:11 58:24 59:1,2,15 65:14 88:13 89:18

grant 8:23 9:5 10:7,17 12:5 13:3, 8,22 15:24,25 16:25 17:18 18:4,9 20:12,23 21:10 22:13 23:19 35:25 42:23 44:20,22 49:11,13 50:4,10 54:2 58:9,16 65:15,16 71:19 77:25 84:7,11
granted 57:20 75:4
granting 13:19,21 14:5,14 15:1 52:14 83:25
grants 38:4,10 52:18
gravel 26:17 38:12 43:6 46:14 48:8 51:3,20 57:3 77:7,9

great 86:21
greater 27:1,2 80:11
ground 78:2
grounded 12:3
guess 13:18 47:5 48:1 61:16 62:6,24 73:11 83:14 86:19
guidance 21:16,18 36:3
guide 47:19
guidelines 56:5
Guidi 3:5

H

half 86:19
handout 60:8
happen 28:17 31:12 85:3 88:8
happened 38:13 58:14 61:13 79:2,3
happening 50:2
hard 67:16 87:2
Hardin 3:25 4:1,4 5:16 6:6 7:18, 21,24 8:3,12,15,16 13:2 24:18 25:14 26:3,21 28:4,8 29:16 30:13, 19 36:13 76:24,25 85:23 91:5,10, 14
harm 32:14
harmed 30:23
HB39 49:13
hear 34:7
heard 77:16 80:6 81:19 83:7

hearing 85:6
heart 64:6
heavy 25:1,2
high 41:1
higher 46:1
highlight 13:4 20:8
hiking 47:18
historical 53:7
historically 67:25
history 24:2 48:10 62:18 75:14
80:8 83:11
Hobson's 30:24
hoc 29:2 38:25 40:13 68:10
hold 8:9
holder 37:12
holdings 47:14
holes 8:8
honesty 86:3
Honor 4:1,4,14,16,21 6:16 7:16,
21 8:13,15 12:18 17:2,6 19:4
23:10 30:19 35:24 36:10 37:13
38:7 39:5 41:15 51:15 76:25
81:22 85:20 88:16 91:5,14
Honorable 3:4
horse 77:21
hot 88:10
hours 5:11
House 33:11,13
Hunter 37:6
hypotheticals 41:24 67:2

I

idea 51:11 55:15 73:7 88:14
identified 83:1
identify 3:21 78:14 79:6
ignore 10:11 16:21
immortal 86:23
impact 25:17,21
impacts 26:16,19 55:10 60:12,22
impaired 58:4
impasse 62:1 63:4
impeded 74:9 77:19
implied 22:17
imply 50:4
implying 39:1
importance 60:15
important 9:17 10:18 17:6 24:10
33:25 39:8 53:8 54:15 64:13
65:12 66:19 74:10
importantly 14:14 20:11 51:24
imposed 54:9
impression 77:5
improvement 12:9 48:7 50:6
51:12 56:1 65:21
improvements 8:24,25 9:6,14
10:18,25 11:2,5,6,9,11,14,23
12:6,7 13:14 14:6,8,10,21 15:4,8,
16,21 16:1 17:1,11,19 18:1,3,17,
21 19:5,7,8,16,18 20:17,23 21:11,
23 22:7,15 24:4 35:25 45:11 46:5
48:2 50:3 51:3 53:18 64:13 65:24
71:15 72:1,10,14 78:10,20,21
81:1,7,10,16 82:1,3,14,16 83:22
84:9,12,16
inappropriately 35:8
incentive 85:11
include 33:19 70:25 71:3 83:5
included 12:19 17:4 40:15,23
53:12 70:21 85:5
includes 51:10 60:4 65:14 71:13
77:11 78:19,21 81:16
including 54:19 64:19 65:10
71:14,23
inconsistent 16:7 21:13 49:6
84:1
increase 26:14
indemnification 40:23
indemnity 62:22
independent 34:12,20 35:2,12
52:4
indirectly 24:16
indiscernible 14:1
infrastructure 21:3,9 23:18,19
33:18 41:11 43:23 50:17,19,21
73:3,5 78:22 79:20 80:4
initial 56:7
initiated 31:11,16
innovative 62:24
insisted 68:12
inspect 17:25 18:16,20 45:12
71:11
inspire 86:21
installed 18:22 83:22
instance 61:8
insurance 40:25 77:23
intend 13:17
intended 19:15 70:6 83:19
intent 15:11,17 19:10 79:16,19
interchangeably 5:20
interest 22:25 23:8,14 24:21
31:11 54:11 55:15 63:23 73:6
80:23
interested 42:15
interesting 21:18 81:11 87:18
interests 24:9 31:9 52:1 54:19
58:2 71:20
interfere 70:15 74:4
interfered 77:18
interference 40:19 48:25 51:18
70:11
interlineate 89:3
internal 36:25
interpret 12:11 35:1
interpretation 14:24 20:16 21:8
35:4 48:1 49:19
interpreting 34:13 35:3 79:14
interprets 78:8
interrupted 72:24
intervener 37:12

invalid 21:12
inverse 28:18 30:14
invest 23:17 73:3,4
invested 25:7
investment 26:24
invoke 23:12
involved 61:12
iron 88:10
irrelevant 77:23
issuance 32:20
issue 13:8 17:8,13 18:6 19:11,14,
17,20 20:3 24:15 28:2,5 30:3,11,
21 35:9 37:18 38:9 54:9 60:13
71:2 72:5 77:24 81:24 82:10,13,
14 88:23 90:17
issued 31:13,25 47:17
issues 29:14 30:2
issuing 9:20 10:3 18:25 20:6
22:1 36:8

J

Jamieson 3:23
Jim 4:9 59:21
job 86:18
join 32:3
jointly 83:19
Judge 3:4 86:23,25
judgment 34:12,20 35:2,12
Julie 3:25 8:15
jump 77:1
jurisdiction 18:18 37:24 53:9,
21,22 54:13
jury 3:9
justify 11:18 22:1 30:19 35:22

K

key 8:5 64:4 72:6
kicks 61:14

kind 30:16,24 48:9,10 51:19
52:19 53:6,24 62:19,23,25 64:5,
22 67:20 69:17 75:17,18,24 85:14
kinds 26:19 82:15
kitchen 78:25
knew 11:14
KRU 8:25 10:8,12 11:6,12,25
12:3 13:23 14:12 15:19,20 16:1
18:10 19:8 24:12,23 33:18 38:3,4,
11 39:16 73:8,20 76:6 77:11
79:10,19 80:13 83:23,25

KRU's 84:2

L

label 43:25
laid 88:23
land 9:1,14,23 10:16,21,24 11:2,
5,7 12:5,6,8 13:11,13,14,18,19,25
14:3,4,5,8,10,15,17,18,20,22,24
15:3,4,6,21 18:1,3,9,17,20,22
20:5,10,14,16,17 21:12,20 23:23,
25 24:8 31:13 33:7,13 34:4,21
38:20 39:14,18 40:2,25 41:4,8,11
42:15 43:12 44:18 45:4,6,7,9,10,
12,13,21,22 46:4,14,21,22 47:12,
16 48:5,12,13,14,15,16,23 49:1,2,
17,19,21,23,25 50:1,2,3,7,10,20,
23,25 51:1,2,8,11,12 52:8,15,21,
24 53:5,13 54:1,10,14 55:3,12,16
56:13,14,23 58:1,11,17 60:12,23
63:1 64:16,17,18,19 65:4,8,17,21,
23 66:13 67:9,11,12 68:19 69:5
71:12,13,16,17,21 72:6,9 78:9,10,
19 79:21 80:21,24,25 81:2,6,15
82:15 83:4,5,22,23 84:8,10

land's 55:18
lands 38:15 39:11,12 43:8 47:16
51:9 53:16 54:19 81:16
language 12:11,15 13:3,14 15:9
17:7 44:20 47:4,25 52:22 56:8,15
61:11 65:13 70:4,7,8,16 72:1,10
79:6 82:1,6,12 88:24 89:1

large 10:10 87:15

law 8:20 16:7,10 19:1 23:10 24:5
34:2,10,11 35:11,18 49:6 54:9
65:2 84:1,5 91:12,13

laws 71:5

lawsuit 32:5

lease 9:17,24 10:24,25 11:15
12:22 13:5,23 14:7,11,15 15:11,
22 19:23 23:4 27:10,11 28:11
33:8 34:5,17 41:6 43:21,25 44:4,
20,24 45:1 47:8,13 48:11,20
49:18,19 50:7 51:25 52:4,5,12,13
64:14,25 65:1,6,11,12,18,19 66:8,
9,10,14 70:3,4,7,12,16,17 75:9,20
78:8 79:17,20 81:6,9,14 84:2

leased 18:3 79:10

leasehold 8:24 16:25 17:19 19:5,
16,17 22:7,14 64:13 67:21

leases 10:12,21 11:6 12:1,2,3
15:20 38:4 39:19 42:23 44:13,15
45:3,25 46:23 48:9 52:7,17 54:10
71:19 78:4

leasing 14:12 42:15,21,24 45:3,5
55:6,7 56:16,17 60:7

leaves 61:9

led 76:11

left 17:10 29:10 87:10

legal 10:19

legislative 16:16 23:15

legislative's 10:1 18:12

legislature 9:11,12 11:13,21
16:12 17:15,18,22,23 18:15,18,
19,23 19:1,4,6,15 23:15 33:6,14
34:2 35:16 81:18

legislature's 18:4,12 19:10
33:12

Leik 3:19 4:9,10,11 5:4 37:1
59:14,17,20,21 61:21 62:10
63:14,17 64:3 65:25 66:7,12
68:16,20 69:6,22,25 72:3,12,23
73:1,16 75:13,22 76:4,13,14
87:24 88:3 90:8,9,16,23 91:2,4

length 87:13

lessee 9:25 15:13,22 16:8 21:1,5
33:8 34:5 41:12 43:23 44:3,21
45:24 46:17 48:2 49:7 56:3 64:25
65:7 70:12

lessee's 16:1 21:24 79:19 84:18

lessees 8:17 9:24 11:25 13:23
39:16,23

lesser 34:24

lessees 83:23
lessor 13:22 16:6 43:22 44:20
71:18,21,23
lessors 21:4
limit 20:18,20 22:22 47:21 58:23
78:10
limitation 69:3
limitations 54:8 66:16
limited 9:14 18:1 20:14 32:13
38:4 39:23 40:1 41:6,8,17 42:23
43:1 46:1,19,23 49:8 51:21 52:2,
13,18 59:7 65:4,5 82:3 87:9
limiting 43:4 45:15 46:12 78:7,13
79:6
limits 23:3
list 33:23
listed 68:15
lists 82:15
literally 35:21
logistically 7:2
long 6:19 7:2,11 25:20 47:5 87:6
90:24
longer 87:21
looked 52:14 60:13 84:4
lopsidedly 86:9,11
loss 27:22
lot 25:20 28:8 32:9 77:16 80:20
86:3

M

Madam 3:8,22
made 19:4 38:8 59:10 66:20
72:14 77:3 79:8 86:12,14
magic 79:22
main 28:2 42:7
maintain 77:15
maintaining 25:9 26:2
maintenance 26:9,11 63:13
make 6:24 8:4 11:15 12:10 21:6
44:19 49:24 60:4 68:23 70:15
73:21 80:18 90:19

makes 14:6 15:9 58:20 72:4
making 44:10
manage 9:13 17:18,25 18:16,20
39:10 45:9,12 46:4 49:25 51:9
53:5 59:23 71:11,14,15,22
managed 53:13 72:19,20
management 46:7 54:1
manages 41:4
mandate 60:11,21,24 61:5 67:12
mandates 22:20 60:2,14 61:1
marathon 5:13
mark 6:23
Mary 4:13 37:5
material 25:18
materials 70:22
matter 7:13 12:14 14:23 25:23
32:13,14 50:13
matters 12:15 23:5
maximal 55:9
maximize 55:7 60:16
maximizing 58:3
maximum 22:21 59:4 60:4
Mcdaniel 16:14
meaning 47:8
means 10:23 15:3 65:18 78:10
81:7
measured 27:24
meet 32:2
mention 27:17 70:2 87:20
mentioned 71:9
middle 6:21
miles 38:12 77:10
milk 73:15,16,17
million 25:8 26:6,22 33:15 63:13
77:14
millions 25:6,7 80:19,20
mind 5:6 6:3 8:2 12:24 29:24
mineral 45:2

minimize 55:9 60:12
mining 24:2
minute 6:2
minutes 5:9 6:1,6,7,18 29:10
36:12,23 76:16
mirror 40:12
mirrored 20:1
miscellaneous 18:9 20:5 31:13
47:16 51:8 84:10
MLUP 9:4
moment 3:10
monetize 33:22
money 26:1 73:22 76:10
morning 5:12 69:10
motion 3:13 4:18
move 63:23
multiple 14:15 24:1 39:12 51:11
55:14
Mustang 33:16,21 49:12 62:6

N

narrow 8:21
Natural 37:7,9
nature 74:24
necessarily 12:5,8
needed 57:18
negotiate 31:4 85:12,19
negotiating 38:19
negotiation 63:11
neighboring 47:16
never-before-used 22:17
night 69:10
noisy 37:4
nonexclusive 38:10
North 8:18 23:17 59:25 62:18
68:1 76:7 83:12
note 91:6
notebook 7:22 8:2,4

noted 90:7
notice 38:22 76:1,2
notion 23:12 24:6 32:10 81:5
nova 34:12
nullifies 51:12
number 29:20 64:16 70:22 78:12
nurseries 32:4
Nursery 31:23

O

OAS 62:3 66:6 75:8 86:15
OAS's 25:12
object 5:8 58:19 88:13 90:12
objecting 89:24
objection 90:6
objections 90:22
objective 63:21
obligated 60:3 77:4
obligation 60:4
obligations 23:14
observing 60:14
obtain 21:9 30:14
obtained 75:21
obtaining 60:23 75:20
obvious 60:19
occurs 74:6
offer 21:4 78:23
offered 62:2,6
offering 63:11
offers 61:23
office 66:5
oftentimes 35:4
oil 3:12 4:6,12 37:12 38:19,21
39:13,18,23,25 40:2,4,7,18,21
41:5,6,19 42:21,24 44:13,15,24,
25 45:23,24 46:20,24 47:3,6,10,
13 49:8 51:22 52:3,7,12 55:6
56:15,17 57:12 58:6,14 59:21,24
68:11,12 73:6,8,16 74:4,5,11

75:16
onerous 62:8
ongoing 26:22
open 8:9
opening 6:1
operate 73:23 74:19 80:16
operates 60:1
operations 40:9,19 45:25 70:12,
15 73:20
operator 23:17
operators 62:20 68:5
opine 42:10
opinion 31:23
opportunity 76:1,2 90:4
opposed 53:21
opposite 17:23 79:13 81:18
84:16
options 31:1,6
oral 3:13,16
order 18:6,7 52:1 73:21 83:16
87:13,16 88:2,5,9,15 89:6,9,13
90:11,16,20 91:7
orders 71:5 89:8
ordinarily 28:23
organizational 53:9,24 54:15
81:22
organize 7:3,8
organizers 32:2,7
original 26:24 36:23
OSA 6:15 9:8,20 10:3,7 15:25
18:9 22:2,5 24:11,23 25:1,19 26:5
29:2 30:8 31:2,5,10,14 33:4,6,21
34:3,7 42:1 43:18,20,21 44:10
77:3,17,22 80:15 81:3,15 83:25
85:4,11,15
OSA's 11:12 29:19 33:16 80:10
outcome 12:13 61:4 63:15 85:25
outlined 75:18
outrageous 23:16 79:7
overbroad 89:1

overcome 23:3
owing 39:24
owned 9:24 33:8,13
owner 71:18,20,23
ownership 19:2 64:18
owns 60:1

P

P-R-O-C-E-E-D-I-N-G-S 3:1
P.2d 16:15
packed 26:18 87:11
pages 8:9,19 17:15,16,17,21
39:2 81:24 87:19,20 89:16
paid 30:10
paragraph 11:7 13:20 14:16,17,
19,21 48:19,21 54:12,13
paragraphs 89:3
Pardon 69:22
parse 12:11
part 8:17 10:10 26:4 39:22 44:8
48:18 49:21 50:4 62:12,25 67:9
72:17 85:4,24 87:16
participate 56:4
parties 3:14,16,22 4:17,22 5:7,8,
19 7:12 9:7 10:2,24 13:17,19,20
14:3,16 20:22 21:11 22:14 29:2
30:15 31:7 38:14,23 40:13 43:24
45:6 48:3 57:18,22 58:21 61:9
63:3 73:4 79:12 80:12 81:3 83:9,
19 85:2,8,18 89:8
parties' 15:10
party 8:23 9:5,8 20:22 21:1,8,22
23:20 41:13 42:15 44:9 56:4
63:11 78:22,25 79:22 84:11 88:17
89:5,21
party's 25:18,24 79:16
pass 69:1
pattern 42:8
paved 26:17
pavements 26:16
pay 33:15 44:4 68:13 74:5

paying 85:15	placing 51:12	preexisting 51:5
pennies 21:7	plain 82:12	preference 91:6
people 6:25 15:16 57:3 73:22 77:6	plan 36:23 76:5	preliminary 7:13 55:25
perceive 71:12	planned 36:13	prepare 87:13
perceptions 86:8	play 46:3	preparing 3:14
perform 54:18	plea 34:8	present 3:22
performing 47:7	plenty 7:9	presents 30:23
period 29:17,21 30:8 33:1 61:23 91:3	plot 66:2	presiding 3:5
permit 9:20,25 10:3,6 13:8 17:9 18:7,9,25 19:14,17 20:3,5,7,11 21:9,19 22:1,11 27:14 28:3,6,12 29:6,12,18 30:3,7,21 31:14 32:21, 24 33:1 35:9,10,20 36:6,8 37:12 38:2,9,10,13,18 39:6,7,13,15 40:3,11,16,17,23 46:1 48:24 52:14 56:23 57:14,20 58:7,8,9,17 59:3,5 61:19 71:9 73:21,25 74:3, 16 75:4 77:25 78:11 79:2,5,23 80:2 81:2,24 82:7,13,14 83:8,16 84:8,10 85:1,7,10,17	point 6:10 19:19 22:5 23:18 25:3 31:15,23,25 32:19 33:20,21 34:6 41:23 42:7 52:25 55:23 56:9 59:25 61:14,25 63:11 64:15 74:19 82:9 85:16	pressed 20:15
permits 19:11,20 35:25 47:17 51:8 65:16 71:2 82:11 89:8	points 7:3 33:3 38:7,8 64:4 77:3	pressured 6:13
permitting 74:25 75:14	policy 10:14 23:2	presuppose 55:20
person 8:9	posit 41:24	presupposes 57:14
personal 64:8,11	position 12:13 33:4 45:8 46:12 47:10,20 48:1 49:22 50:15 52:21 53:3,6,17,24 58:8,15 59:8 63:17, 19 69:3 86:24 87:4	pretty 8:10 36:22 41:1 87:3
persons 72:14,15	possibly 68:25	prevent 70:10
perspective 63:21	potential 32:3 57:7	preventing 24:7
persuaded 86:13	potentially 40:8 47:15 70:5	prevention 48:24
physical 55:8	power 8:23 9:3,20 10:4,15,17 11:18 12:23 13:8 16:11,16,19 17:8,18,20 18:2,6,25 19:5,6,11, 14,20,22,23,24 20:3 22:2,3,4,10 23:4 28:5 30:1,3,20 31:6 34:18 35:15,17,22,24 36:7,8 54:3 55:24 56:2 60:7 78:21 79:7 83:2 84:3 88:19	previously 58:22
pick 3:9	powers 17:14,15 55:4	primacy 39:17
picture 45:8	practical 66:16	primary 12:3
piece 29:23	practice 68:2,4 76:7 83:11 88:16	principle 43:4 46:12 69:2 78:7, 13 79:6
Pikka 24:25 30:22 33:22 60:17,19 80:17	pre-statehood 53:12	principles 45:15 55:14
pipeline 21:2,7 41:25 42:2 44:2, 4,5 45:19 68:15,18,22 69:4,14,15	precedent 10:2 42:12,14 79:4	prior 53:11 71:13 74:1
pipelines 42:3,6 69:7	precise 17:12 61:22 82:6	priority 40:20 74:2,5,17
pivots 22:9	precisely 65:6	private 9:6,7 10:18 11:23 17:19 19:2,7,16,17 20:22 21:23 22:7,14 81:1 82:1 84:11
place 45:23 53:11 61:7 64:24 77:25 85:11	precluded 24:17	privately 8:24 11:14 18:2
	precondition 75:9	problem 8:7 47:20 56:7
	predevelopment 24:24 80:16	procedure 3:21 28:20

profit 68:25	put 12:24 15:21 79:21	reasons 24:1 27:12 89:9
profitable 44:1 68:24	putting 13:2 64:14	recall 3:16
profiting 44:9		receive 28:15
project 63:23	<hr/> Q <hr/>	recess 6:24 7:20 36:14,17 76:16,18
promise 77:1	quality 87:17	recognition 33:12
prompt 87:7	quarter 7:19	recognize 10:15
promulgated 10:13 11:10	question 8:19 9:2,12 10:19 13:16 27:6 28:5 29:1 30:6,7 37:16 55:25 56:1 67:4 75:3,7 78:5 81:20	recognized 33:7,19 41:5 57:5
proper 31:21	questioning 58:13	recognizes 15:19 39:15 40:20 81:13
properly 75:4	questions 6:8,10 38:7 46:11 55:1 85:21,22	reconcile 33:4
property 15:22 19:2 32:2,7,8,11 47:2 54:11,21 64:8,9,11,22 66:4, 11	quote 16:15	reconciled 20:1
proposal 4:22,25	<hr/> R <hr/>	record 3:7,10,23 7:25 21:17 24:22 25:11,15 26:5 27:3 36:16, 18 37:15,19 38:17,21 39:4 61:17, 22,24,25 62:14 74:13 76:17,19,23 80:7,10 83:7 85:13 86:20 87:20 88:5 89:2,14 91:16,17,18
proposed 4:23 5:8 6:6 88:14 89:6,8 90:11,16,20 91:7	race 5:13	recover 68:25
protect 54:18,20 70:5 74:1	raise 73:12	recovery 55:8 58:3
protected 77:20 85:15	rare 86:6	red 13:5 17:7 20:7
protections 28:20,23	raw 50:16	refer 14:16
protects 70:4	reach 30:16 38:14 60:19 80:4	reference 11:6 14:4,18 53:18
prove 18:7 20:2 30:1,2 33:25 34:1	reached 29:14,15,17 61:25 68:6	references 10:21 11:9,11 14:21
proves 32:20 79:6	read 5:22 89:15	referred 90:9
provide 54:6 66:9	readily 24:20	referring 8:1 50:11 60:9
provided 28:22	ready 7:12 59:19	refers 14:15,19
provision 9:17,19 12:20,22 16:9 20:19 22:6 27:11 28:16 29:8 57:16 78:15	real 59:2	reflected 20:9
provisions 12:19 14:16 15:2 23:25 34:17 35:21 40:24 45:14 48:11 70:23 71:3	realistic 73:4	regime 36:4
public 22:25 23:8,13 24:9,20 31:10 55:15	reality 34:4 78:13	regulate 55:21 71:5
Pull 20:4	reason 9:9 39:20,25 43:2 59:11 87:5	regulation 9:4,18 10:13 11:16 16:10 19:25 20:4 22:1,4 32:1 35:4,9 57:21 61:7,8,12,14 71:8 81:23 82:22 84:7,8
pun 70:5	reasonable 22:21 23:7,13,21 24:3,7 27:5 35:5,13,19 37:17 38:15 39:9,10 40:14 42:10 43:8 44:12,16 45:5,7,16,17 47:22 48:16 50:22,23 51:9 52:15 53:5 54:2 56:25 57:1,19 58:1,10,16 59:3 60:5 61:5,10 65:17,18 66:15, 22,24,25 67:13,16 68:7 69:18 80:21,23 81:10	regulations 8:5 10:22 11:1 12:2 20:6 23:5,22 28:11 35:3 71:5 78:3,9,16 81:6
purely 41:10	reasonableness 46:8 48:5 51:4, 17 55:18 58:18	regulatory 36:4 38:2
purpose 20:25 39:17,20,22 44:14 46:21,23 49:5,9 55:14 58:10 72:9 83:25	reasoning 89:15	reimburse 40:21
purposes 41:19 42:24 43:1 44:25 46:19 47:12 49:11 54:15 55:5 87:24		reinforces 15:21
		reiterate 37:13

rejects 51:13	5,6,16	67:1,17,18 69:9,11 74:6,17,21 75:10,12 80:9
related 27:6 43:1	respectfully 10:5 85:17	
relating 24:14 25:11	respond 77:2	roadbeds 26:16
relation 27:16 28:1	response 36:15 81:12,19 82:11	roads 9:23 11:12 14:9,12 18:10, 22 19:8 21:23 24:12,17,23 25:1,9, 20 26:17,23,25 27:2 28:25 29:3,5, 7 30:9 31:3,10,14,18 32:22 33:7, 13,19,22 34:4 38:12 39:15,17 43:5,7,18 44:12 48:8 52:11 60:25 62:19 63:1 64:7 66:18 67:4,5,7,8, 9,10,15,24 73:8,9,19 74:2,3,8,11 75:17 76:6,8,10 77:5,6,9,11,18,22 78:11,12,17 79:11 80:7,10,15,19 83:5,6,10,12,25 84:15 85:16
relevant 16:23 39:4 70:1	responsible 89:4	Romerdahl 4:11
relied 16:10 81:23 84:3,7	rest 16:16	routinely 43:6
relies 10:12 13:7 16:4,21	restrain 23:16	rule 73:3 89:7
rely 10:7 20:23 48:19	restrictions 74:15	ruled 24:17
remain 14:20	result 13:6 15:18	rules 35:12 37:23,24,25 69:11 71:5 85:2,3 89:19,21,22 90:10
remains 52:8	retained 65:9 71:20,22,24	run 21:8 79:1
remand 59:11	retread 78:2	running 19:3
remanding 27:25	revenue 47:14	rush 5:20
remedy 32:23	reversing 89:10	
remember 33:10 87:19 89:7	review 34:6,12 35:5,19 38:6 87:15 88:24	<hr/> S <hr/>
remove 18:13 52:8	reviewed 66:22	sale 33:20
rent 57:7	reviewing 38:18 64:15 66:24	Sanders 86:23 87:1
repeatedly 9:22 33:7	revocation 32:24	save 68:21,23
reply 27:18 53:2 85:5	revoke 10:5 30:7	scale 46:6
representatives 37:8	revoked 28:12 29:18 35:20 36:9 79:5 85:1,7,17	scheme 36:4
representing 4:13 37:6	rewrite 11:20 13:5 17:7 18:12,24 19:1,12,13,21 21:25	school 65:2
request 10:5 35:14 61:19	rewriting 11:15,16,17 18:4	scratch 90:5
requested 32:23 52:15 80:12	rewritten 12:23	screen 67:2
require 40:17 56:3 80:19	rights 15:20 16:8 19:2 38:3 39:24 41:7,13 45:24 48:5,6 49:6,7,11 52:13 54:19,21 64:24,25 65:7 70:11 71:14,20,23,24 82:2,3 84:2, 18	Search 3:12 4:6,12 37:13 38:19, 21 39:13 40:4,8,18,21 44:13 57:13 59:21 68:11,13 74:4,5,11 75:16
required 9:7 20:11 26:18 28:24 32:1 84:2	rise 36:16 76:17,20	seated 3:6 36:20 76:22
requirement 56:15	risk 23:18 42:18 62:22 68:9 75:11 78:22	secret 36:1
requires 34:21 39:13 56:17	River 8:18	section 17:13 60:8,10 71:2,4
reservation 10:12 12:4,12,16,17 13:3,9,15 15:2,7,23,24 16:3 22:2 48:4,18 49:4 50:10 65:11,15 70:8 71:19,24 83:4,21,23	road 8:25 10:8 25:12 26:2,8,9,10, 13,15 29:20 33:16,21 38:16,20 39:21,22,25 40:6,13 41:7,16,18, 20 43:3,6,17 44:7,14,18 45:18 46:2,14,16 47:5,11,19,23 48:8,14, 15,17 49:2,3,9,20,21 50:5,24,25 51:3,21,23,25 52:1,4,6,8,10,16 57:3,8,11 61:1 62:6,21 64:19	sections 54:5
reservations 13:22 15:20 38:3 45:3 49:4 52:18 56:12		seek 32:25
reserved 12:4 15:5 65:10 71:23		
reserves 46:20 48:22 56:13		
resolved 30:12		
resource 60:15,20		
resources 24:8 37:7,9 39:19 54:10 55:8 58:3 59:5,23,24 60:1,		

seeking 29:6,7	solely 42:24	6,11 38:3,15,20 39:11 40:15,24, 25 41:2,4,7,11 42:15 43:3,8,11, 12,20 44:6,17 45:1,4,21,22 46:14 47:12,15,21 48:12,13,16,22 49:24,25 50:6,7,22,25 51:1,8,13 52:9,14,15,25 53:10,20,25 54:14 55:12,13,16 56:23 57:15,19,25 58:1,10,17 59:4,22 60:1,12,22 61:20 63:1,22,25 64:10,17,18 65:3,9 66:5,13,14,18,21 68:24 69:1 71:9,12,13,16,17,18,20,21 72:2,6,7,8,9,11,15,16,19 73:12 74:23 78:9,19 81:15 82:4,15 83:20,21
seismic 21:20	solution 60:23	
sell 33:22 51:24,25 52:1,4	somebody's 80:3	
sells 73:12	someone's 83:12	
Senate 85:6	sooner 90:1	
sense 14:6 15:9 21:6 49:24 58:20 72:4 80:18 84:22	sort 21:14 27:10,25 43:4 46:12 58:9 60:25 61:9 63:19 67:20 75:19	
sentence 54:17	space 66:5	
sentences 89:11	span 88:11	
serve 73:20	speak 75:22	
session 3:4 36:19 76:21	speaks 17:10,12	
set 3:13,20 42:12 50:9 63:2 67:13 79:4	specific 60:6 61:11 65:14 71:1 82:1,17 90:15	
sets 64:1	specifically 14:3 22:19 53:3 55:11 65:10 75:22 82:2	
setting 42:14	specifies 20:10	state's 24:8 31:9 37:25 39:2 42:9 45:8,9,11 46:3,6,12 47:9 48:4 49:22 50:25 51:13 52:20,21 53:3, 6,17,23 54:19,21 58:2,8,15 60:5, 6,16 63:23 64:18 65:7,14,17 67:11 71:13 72:3 80:22 82:2
share 42:1 56:3 63:12 66:5 67:17,23 86:8	speed 86:24	statehood 54:16
sharing 24:17 43:17 67:18,19	spends 26:1	statements 10:14 23:2
shift 89:20	spent 3:14 28:8 32:9	stating 60:18
short 5:13 61:19 62:1 90:13	splitting 37:11	status 64:15
show 41:3	spoken 25:13	statute 9:18 11:22 16:17,18 17:8, 9,10,21 18:8,11,24 19:9,10,12,13, 18,19,21 20:12 23:5 53:4,8,9,10, 12,17,25 54:6,13 71:1 81:21,22, 23 82:6,9,24
shows 38:18,21	spreading 44:9	statutes 10:11,22 11:1,8,17,20 12:2 16:13,20,22,24 17:4 19:23 20:2,13 21:13 22:3 23:22 28:10 34:17 35:1 36:2 42:22 78:3,8,16 81:6,12,14,17 82:18,25 84:14
side 5:10 6:2,7,15 41:10 86:10	square 66:3 81:20	statutory 34:14 36:4 38:1 53:7 60:2,24 61:2
sides 87:18	squarely 49:3	stick 36:23
signed 88:2	stand 6:20 22:5	sticking 74:19
significant 25:17 47:13,14	standard 34:6,25 35:13,18 38:6	sticks 65:3,5
similar 58:21 62:16 69:18	standing 5:15	stipulations 40:12,17
simply 8:25 27:14,17 28:9 30:4 72:12 79:23 80:8	standpoint 40:6	straightforward 8:21 29:25
single 22:6 82:21	stands 73:10	strictly 74:24
sitting 26:12	start 7:14 11:25 37:3 77:4 88:7	strike 88:10 89:3
situation 49:14 61:6 62:7 65:6 66:22 68:6 69:8	started 29:24	stronger 86:17
situations 67:1	starting 7:19	structures 14:19 77:12
Skipping 54:25	starts 82:21	stuff 8:5
slippery 70:6	state 3:3,12 5:7 9:1,14,15,23 10:16,20,21,23 11:2,4 13:22 14:11 15:4,7,14 16:11 18:1,2,17, 20,21,22 19:7 20:10,14,16 21:12 22:13 23:25 24:8 28:24 31:11,16, 25 32:5 33:7,13,17 34:4,21 37:4,	
slope 8:18 23:17 59:25 62:18 68:1 70:6 76:7 83:12		
snowplowing 26:18		

subject 13:21 35:5 45:5 46:19
48:24 50:17 54:8 66:4,7,16 79:11

submit 4:22 28:12 34:19 89:8
90:18 91:7,11

submitted 4:25

subparagraphs 54:24

subpart 13:9

subsection 84:3

substantial 77:12

subsurface 39:24 42:25 50:8

Suffice 77:11

sufficient 37:18

suggest 24:5 30:20 80:18

suggested 72:16

suggests 24:3 57:5,17

suitable 43:7

summarize 83:15

Superior 3:3 36:19 76:20

support 12:23 15:24,25 16:5,24
20:8 22:2,3,4 28:10 37:19 83:2

supports 18:8 21:16,19 36:7
82:7

supposed 15:12 75:10

supposedly 22:25

Supreme 16:14 25:22 31:22 32:9
84:20 86:20,25 88:17 89:14

surface 39:23 40:1 41:7,8,17
42:25 46:19 48:23 51:21 52:3,13
59:7

surplus 72:5

surprise 76:9

surprising 19:22

synonymous 20:17

system 8:25 10:8 61:1

T

tab 12:18 17:2

table 3:24 4:2,7

takes 25:6

taking 25:23 27:19,20,21 28:14
29:14 32:16,21 54:20 75:1

takings 28:16 31:15 38:5 59:5

talk 75:25 80:20

talked 23:24 32:22,24 77:14

talking 27:13,24 28:1 31:15
43:14,16 47:1 56:5 70:8 72:18
80:25 81:1 90:11

talks 56:12 82:10

tall 77:10

tap 42:1

taxing 33:18

teaching 65:2

tear 26:22

technology 67:21

telling 12:7 64:10

temporary 25:20 27:20 39:1
46:1

ten 6:25 25:8 26:6,13,21 29:10
63:12 77:14 78:23 90:18,20,21

ten-acre 66:2

ten-minute 7:4 36:14 76:15

term 9:24 12:22 13:5,17 15:22
33:8 34:5,21

terminate 38:24

terms 14:10 21:4 36:2 62:3,5,8
63:25 66:8,9,10,14,17

terribly 86:2

testimony 85:6

that'll 6:18

theories 27:7

theory 27:17 28:25 66:12,14

thing 15:1 49:17 62:23 67:19,22,
24 70:1

things 10:10 43:7 46:22 47:17
51:16 62:22 65:10 67:8 72:22
75:2 82:15 83:17 85:12

thinking 23:11 27:16

third-party 35:25

Thomas 3:24

thought 16:3 40:14 57:10 70:13
83:3 86:3

thoughts 7:8

threat 23:13

threatened 23:1,8 24:21 31:9

threatening 24:8

thrust 29:11

tie 47:5

timber 24:2

time 3:13 5:24 6:1,4,14 7:7,10
11:19 15:10,11 25:21 28:9 29:17,
21 30:8 32:10 33:1 34:23 37:11
54:16 58:23 61:24 72:21,25 77:13
79:16 83:8 87:2,6,9 90:5,13,21

times 72:24 78:12

timing 40:5 75:23

title 20:9

today 3:21 4:3 5:13 6:20 27:13
37:16,22 38:1 53:1 66:18 83:13

told 84:21

top 8:8

track 6:3,17 36:22 86:19

tracks 89:14

tract 13:25

traffic 25:12 26:8

transfer 33:15

transportation 53:22

traverse 50:24

treat 11:2

treated 48:8

treats 20:16

trial 37:22

triggered 87:25

triggers 26:10

truck 25:2 26:15

trucking 40:7

true 9:21 23:16 35:3 68:20 80:8,9

trump 11:20 22:21 23:3

truth 77:8 79:13

tune 25:8	urge 87:1	26:11 34:22 62:8 86:23
turn 19:24 54:7	utilization 59:4	work 6:10 31:5 85:8 87:2 89:20
turned 61:7		works 62:11
turning 38:9 39:6 52:25		workup 5:24
type 9:8 83:8,9 85:19		world 20:25 42:10
typically 26:15,20		worry 7:11 49:16
	V	wrap 6:18
		write 11:22 90:4
	vacate 59:11	writing 90:2
	vary 45:17	written 12:21 13:4 16:1 88:1,5 90:2
	versions 53:11 64:7	wrong 63:19
	versus 3:12 16:14 45:18 86:10	
	vet 73:14	Y
U.S. 25:22 31:24 32:9 84:19,20	vicinity 14:21	year 3:14 25:8 26:1,6,22 33:10 38:19 77:15 85:7
Uh-huh 8:14 76:3	view 28:21 30:5 42:9 78:6	years 9:1,4,22 10:2 14:9 18:24 20:25 24:24 25:8 27:21 29:20 31:3 33:5,17 34:3 36:1 68:4 79:3 80:1 83:14 84:9 86:19
ultimate 23:3 77:20	violated 10:4 29:7	yellow 13:4 17:7 20:7
Ultimately 35:14 89:4	violation 84:19	you-all 91:15
unable 38:14 61:13,18	virtue 52:3	
unauthorized 27:12,14 28:3 29:13 30:20	vital 59:24	
uncommon 89:2	voided 27:15	
unconstitutional 32:16	vote 85:25	
underlies 64:5		
underneath 39:19	W	
underscore 59:25	wait 87:21 88:8	
understand 27:7 74:10	walk 12:1,20	
undue 60:22	walking 28:9 32:10	
uneconomic 21:4	wand 79:22	
unequivocally 9:2 36:7 83:1	wanted 11:13 25:1 28:24 47:19 74:20 79:22	
unified 72:17	wanting 74:11	
union 32:2,3,7	warrants 69:18	
uniquely 67:9,15	warranty 13:24 44:21	
unit 8:18 24:25 48:9 60:17,19 62:19 73:8 75:15 76:6 80:13,17	ways 42:5 51:7	
units 67:25 76:8 80:13	wear 26:22	
unnecessary 70:10	weekend 90:25	
unreasonable 40:18 48:25 51:17 70:11	wells 14:18	
unused 26:12	wide 77:10	
unusual 57:10	wins 5:15	
uphold 9:25	word 34:9 81:4	
upkeep 26:23 80:20	wording 20:8 78:16	
upkeeping 25:9	words 9:21 12:14 18:14 25:19	