1	IN THE SUPREME COURT OF THE UNITED STATES
2	x
3	NATIONAL ASSOCIATION OF HOME :
4	BUILDERS, ET AL., :
5	Petitioners :
6	v. : No. 06-340
7	DEFENDERS OF WILDLIFE, ET AL.; :
8	and :
9	ENVIRONMENTAL PROTECTION AGENCY, :
10	Petitioner :
11	v. : No. 06-549
12	DEFENDERS OF WILDLIFE, ET AL. :
13	x
14	Washington, D.C.
15	Tuesday, April 17, 2007
16	
17	The above-entitled matter came on for oral
18	argument before the Supreme Court of the United States
19	at 10:18 a.m.
20	APPEARANCES:
21	EDWIN S. KNEEDLER, ESQ., Deputy Solicitor General,
22	Department of Justice, Washington, D.C.; on behalf of
23	Petitioner.
24	ERIC R. GLITZENSTEIN, ESQ., Washington, D.C.; on
25	behalf of Respondents.

1	CONTENTS	
2	ORAL ARGUMENT OF	PAGE
3	EDWIN S. KNEEDLER, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF	
6	ERIC R. GLITZENSTEIN, ESQ.	
7	On behalf of the Respondents	24
8	REBUTTAL ARGUMENT OF	
9	EDWIN S. KNEEDLER, ESQ.	
10	On behalf of Petitioners	53
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 PROCEEDINGS 2 (10:18 a.m.) CHIEF JUSTICE ROBERTS: We'll hear argument 3 4 first today in 06-340, National Association of Home 5 Builders versus Defenders of Wildlife, and 06-549, 6 Environmental Protection Agency versus Defenders of 7 Wildlife. 8 Mr. Kneedler. 9 ORAL ARGUMENT OF EDWIN S. KNEEDLER 10 ON BEHALF OF THE PETITIONER 11 MR. KNEEDLER: Mr. Chief Justice, and may it 12 please the Court: 13 Section 402(b) of the Clean Water Act 14 provides that the Environmental Protection Agency shall 15 approve an application by a State to administer its own 16 NPDES program unless EPA finds that the state's program 17 does not satisfy nine criteria that are addressed to 18 whether the State has the legal authority under State 19 law to carry forward with the program. 20 There's no dispute in this case that 21 Arizona's program satisfies those criteria. The Ninth 22 Circuit nonetheless set aside EPA's approval of 23 Arizona's program. The Ninth Circuit held that EPA 24 could not approve Arizona's application unless it first 25 insured that there would be in place under Arizona's

3

administration protections equivalent to those that would be applicable under Section 7 of the Endangered Species Act when EPA itself issues permits. That holding is inconsistent not only with Section 402(b)'s mandatory directive, it's also inconsistent with Section 7 of the ESA itself. JUSTICE KENNEDY: Do we take the case and --

8 I'll ask the same question to your colleagues from the 9 other side -- on the assumption that if the nine -- the 10 factors in the statutes are met, that EPA has no 11 discretion to withhold the transfer?

12 MR. KNEEDLER: Yes. That is our position, 13 and that I think is clear from Section 402(b). It says 14 that the administrator shall approve unless he finds 15 that the state legal authority criteria are not 16 satisfied. I should also point out that that's 17 reinforced by 33 U.S.C. 1251(b), which expresses a 18 strong preference for State protection of waters and in 19 particular states that it's the policy of Congress that 20 the states administer the NPDES program. 21 JUSTICE STEVENS: How long has that been the 22 government's -- the EPA position? How long has that

23 been the EPA's interpretation of the statute?

24 MR. KNEEDLER: Well, until 1993 when the 25 vast majority -- by the time -- by that time the vast

4

1 majority of transfers or approvals had already taken 2 place. There had never been consultation, at least that 3 we're aware of under Section 7 of the Endangered Species 4 EPA did consult with the wildlife agencies on six Act. 5 programs but after the Fifth Circuit -- from then until 6 -- until this one, but after the Fifth Circuit's 7 decision in the American Forestry case, EPA never tried to impose any obligations on a State under Section 7 of 8 9 the Endangered Species Act.

What it did is, EPA and the Fish and 10 11 Wildlife Service worked out between themselves certain 12 arrangements by which EPA would look at endangered 13 species considerations, but it never conditioned the 14 approval of a State program after the Louisiana program 15 struck down in the American Forestry decision in 1998, 16 on the states having in place certain protections. And 17 in fact, I think EPA would not characterize what it did 18 even in the Louisiana programs as the sort of condition 19 that the Fifth Circuit understood.

JUSTICE STEVENS: Has that always been the EPA's position? Because there's an allegation in one of the briefs that you changed your position in this Court, to change the position you took even in the lower courts at issue. Is that --

25

MR. KNEEDLER: Well, I'm -- there may be two

5

1	different things that, referring to it. Section 7
2	imposes an obligation on Federal agencies in their own
3	actions not to jeopardize or to ensure that their
4	actions are not likely to jeopardize a species.
5	Ancillary to that, there is an obligation on Federal
6	agencies to consult with the fish and wildlife agencies.
7	As to the consultation obligation, as I mentioned, EPA
8	has engaged in consultation from 1993 until
9	JUSTICE STEVENS: But your position was they
10	didn't have to?
11	MR. KNEEDLER: Our position now is that it
12	did not have to, but and more fundamentally our
13	position is that because the transfer or the approval of
14	the State application is mandatory if these nine legal
15	authority criteria are satisfied, EPA could not withhold
16	approval of
17	CHIEF JUSTICE ROBERTS: So your position is
18	the consultation is a waste of time?
19	MR. KNEEDLER: Basically, yes. If in the
20	end EPA could not disapprove the State's application,
21	and since consultation is ancillary to the substantive
22	obligation not to jeopardize
23	JUSTICE GINSBURG: Isn't there a difference
24	between denying the application because the Endangered
25	Species Act hasn't been attended to adequately, and

6

1 saying you meet the nine criteria, you're going to get 2 your application. But then, so it's not just automatic 3 that the thing becomes the State's domain rather than 4 the Federal. But isn't there something rather detailed 5 called a memorandum of agreement that's worked out, and 6 couldn't the Endangered Species Act concerns be 7 accommodated that way instead of saying one statute is 8 out the window, even though EPA in a number of states has made an accommodation. 9 10 Why couldn't the Endangered Species Act 11 concerns be reflected in that memorandum of agreement? 12 MR. KNEEDLER: The memorandum, the 13 memorandum of agreement, is called for under EPA's 14 regulations as really a procedural mechanism for the EPA 15 and the State agency to work out the practicalities of 16 the State's administering the program. They typically 17 address such things as how the State agency will furnish 18 EPA draft permits and that sort of thing, time 19 limitations for EPA to look at, who to contact at the 20 State agency. 21 It's essentially procedural in order to 22 facilitate EPA's continuing oversight role. It's not a 23 vehicle for EPA to impose substantive obligations coming

24 from other statutes.

25

JUSTICE SOUTER: No, but the point is why

7

1 can't it be? 2 MR. KNEEDLER: Because we think that would 3 been consistent with Section 402(b), which requires, 4 which requires the EPA to approve the transfer. 5 Now, if a State agency chooses to cooperate 6 with Fish and Wildlife Service or NOAA in the Department 7 of Commerce with respect to species under its jurisdiction, that is all fine. And I should point 8 9 out --10 JUSTICE SOUTER: Doesn't the ESA require 11 something more than voluntary cooperation? I mean, you 12 quite rightly emphasize the mandatory nature of the 13 approval under the Clean Water Act. But the Endangered 14 Species Act mandate seems equally unconditional. 15 MR. KNEEDLER: It's unconditional with 16 respect in our view to actions that are within the 17 agency's discretion or consequences that the agency will 18 cause. But more fundamentally in response to your 19 question, Section 7 imposes obligations only on Federal 20 agencies, not on State agencies. Like 402(b), it is a 21 federalism-sensitive --22 JUSTICE SOUTER: I realize that that's your 23 point. But doesn't that sort of beg the question? 24 Because it's not that anyone is suggesting here, I 25 think, that under the Endangered Species Act the Federal

8

1	Government can keep control or that the Federal
2	Government can in effect provide guarantees of what may
3	happen in response to some future development proposal.
4	What I think they're arguing is that when,
5	when, when the agency gives the approval, it should
6	require that there be some kind of procedure in place on
7	the part of the State so that when problems arise the
8	States will probably respond to them with the same
9	values in mind that the feds would.
10	And the question is why cannot the
11	Endangered Species Act be enforced in that way, to
12	require, in effect, an advanced mechanism before, in
13	effect, the whole business is turned over to the States?
14	MR. KNEEDLER: Well, as to the latter, we
15	don't believe that EPA can condition the transfer. But
16	let me point out that in 2001
17	JUSTICE SOUTER: I know you say you don't
18	think they can do it. But the problem is we've got two
19	statutes each of which is mandatory. And your response
20	seems to be, well, we'll give full effect to one and we
21	will ignore the other. And I don't see how that is a
22	tie breaker. And why do you not have an obligation to
23	do what you can with respect to the Endangered Species
24	Act?
25	MR. KNEEDLER: First of all, with respect to

9

1 the Endangered Species Act, the memorandum of agreement 2 that was entered into in 2001 between EPA and the two 3 Federal wildlife services does furnish a way in which 4 after the transfer EPA can take into account endangered 5 species considerations within the scope of its --6 JUSTICE SOUTER: At which point EPA doesn't 7 have any authority left under the Clean Water Act. 8 MR. KNEEDLER: No, that's not correct. Under Section 402(d) EPA has the authority to object to 9 10 a State permit. And if the -- but to do so on, based on 11 a determination that the State permit would not satisfy 12 the guidelines and requirements of the Clean Water Act. 13 So if --14 JUSTICE SOUTER: That begs the question 15 because the concern is the enforcement of the Endangered 16 Species Act. 17 MR. KNEEDLER: With respect to water quality 18 issues that might affect an endangered species, EPA 19 takes the position -- and I think it's correct -- that 20 EPA can object to a State permit where that permit would not comply with State water quality standards that are 21 22 necessary to protect the endangered species. 23 JUSTICE SOUTER: Why don't they get that in 24 the memorandum of agreement up front? 25 MR. KNEEDLER: EPA doesn't need the State's

10

1 agreement to object to a State permit. That is 2 authority --JUSTICE SOUTER: Maybe it doesn't, but isn't 3 4 it the case that if it's in the agreement up front the 5 odds are better that the State will address it, as 6 opposed to the State ignoring the problem, requiring EPA 7 then to take affirmative action to object? 8 MR. KNEEDLER: And I wanted to get to the further mechanisms that are in place under EPA 9 10 regulations and the memorandum of agreement. 11 JUSTICE SOUR TER: No, but would you answer my question first? Isn't it likely that the States are 12 13 going to respond or deal with the problem if they have 14 an obligation in the memorandum of agreement right up 15 front? 16 I suppose. But let me, let me, let me 17 explain what is in place. EPA's regulations require 18 that a State furnish its draft permits to the public, 19 but also specifically to the Federal wildlife agencies. 20 That gives Fish and Wildlife Service an 21 opportunity to comment about endangered species concerns 22 that may be raised by the draft permit. 23 The regulations also require the State 24 agency to take into account the comments that are 25 submitted by anyone, including the Fish and Wildlife

#### 11

Service and NOAA. Those provisions built in allow the
 Federal agencies to bring their concerns to the State
 agency, and I think there is every reason to believe
 that the State agencies will --

JUSTICE SOUTER: Is there an obligation on the part of the State agency to take reasonable action in response to them, or can the State agency simply sit there, listen with a tin ear and then do whatever it wants to?

10 MR. KNEEDLER: Those regulations do not 11 because they are procedural. Then what happens if the State agency does not respond to the concerns raised or 12 13 does not remedy the concerns raised by Fish and Wildlife 14 Service or NOAA, EPA is notified and EPA can then try to 15 work it out with the State agency, or, failing that, EPA 16 can object to the State permit if it does not satisfy 17 the Clean Water Act standards.

And again with respect to water quality, those standards are set at a level that is necessary to protect endangered species. So as far as water quality impacts are concerned, EPA retains complete control under its ability to object to the permit.

JUSTICE SOUTER: You are in effect saying that the, that the, that the enforcement of water quality standards is, in effect, the indirect answer to

#### 12

1 the problem that the other side raises? That's the way 2 it's done?

MR. KNEEDLER: It is. EPA --3 4 JUSTICE SCALIA: Except to the extent that a 5 project may be endangering a species, not by reason of 6 change in water quality but, for example, by destroying 7 habitat, constructing a dam or that sort of thing. MR. KNEEDLER: Upland habitat, if it's water 8 habitat, water quality standards. EPA has to approve 9 10 State water quality standards. It consults with Fish 11 and Wildlife Service and NOAA in doing so to make sure endangered species would be protected by the water 12 13 quality standards. And then each individual State 14 permit is measured against those water quality standards 15 to make sure they comply. 16 So therefore, with respect to water quality, 17 Fish and Wildlife Service agreed that the mechanisms I 18 have just described would take care of any Endangered 19 Species Act concerns. 20 JUSTICE GINSBURG: Are you referring to, in 21 what you just described about the cooperation among the 22 Federal agencies, to what has been called in their 23 brief, it's referred to as a coordination agreement? 24 MR. KNEEDLER: Yes, the 2001, February 22, 25 2001, agreement between EPA and --

13

1	JUSTICE GINSBURG: And that agreement, I
2	take it from what you just said, is in full force? EPA
3	hasn't retreated from that agreement and it will
4	continue to
5	MR. KNEEDLER: That is correct. And some of
6	the things I described were embodied in EPA regulations
7	aside from the agreement, including an agreement that
8	State agencies furnish draft permits to Fish and
9	Wildlife Service and take into account comments that are
10	received in return.
11	Justice Scalia is correct that, that the
12	impacts that would not be covered by this would be
13	non-water quality-related impacts on upland habitat.
14	But in our view that simply reflects the nature of the
15	Clean Water Act and under 402(b) it is a Clean Water
16	Act. It deals with water quality, and we do not believe
17	that EPA is authorized to withhold the approval or
18	condition the approval of a transfer of permitting
19	authority to a State on the basis of what the State will
20	do with respect to upland, upland habitat.
21	JUSTICE SOUTER: Which is the the later
22	act is the Endangered Species Act?
23	MR. KNEEDLER: Essentially, the Endangered
24	Species there was a subsequent amendment to 402(b),
25	but for these purposes but

14

JUSTICE SOUTER: Why doesn't that control? MR. KNEEDLER: Because it is -- we do not think it repeals -- it's essentially a repeal by implication question.

5 JUSTICE SOUTER: No, but you can just as 6 well say that if it does not control then there is an 7 exception by implication, the exception being based on 8 the prior act. Neither of them is particularly 9 satisfactory, but neither answer gives you a reason to 10 ignore the problem.

MR. KNEEDLER: Beyond that, Section 7 of the 11 ESA is a generally applicable statute, whereas Section 12 13 402(b) speaks specifically and comprehensively to the 14 question of Federal approval of State programs. We also 15 think this would be a particularly unlikely candidate 16 for an exception to that because EPA's approval of the State program does not result in any immediate 17 18 on-the-ground consequences. That would only happen --19 or in-the-water consequences. That would only happen if 20 after the transfer the State agency actually issued, 21 issued a permit. So what we're talking about is --22 JUSTICE SOUTER: Well, but by that very 23 reasoning you could say that if assurance are required 24 that the Endangered Species Act is going to be honored, that does not in and of itself prevent any development 25

15

1 program. Each, in effect, is a kind of mechanism for 2 dealing with something that may happen in the future. MR. KNEEDLER: Well, if I could go back to 3 4 the point I was making earlier, that we think that the 5 central thrust of the court of appeals' opinion and 6 Respondent's position here is that EPA could not 7 transfer the authority unless it and the State together 8 replicated the sort of protections that were in place when EPA itself administered the Endangered Species Act. 9 10 And as I said, that's inconsistent not only with 402(b), 11 but with Congress's federalism-sensitive judgment, to 12 impose the sort of substantive and procedural 13 administrative requirements in Section 7 of the ESA only 14 on Federal agencies, not on State agencies. 15 And let me also stress that this does not 16 mean that the rest of the ESA is inapplicable once a 17 permitting program of the State is approved. The 18 central provision of the ESA, the prohibition against 19 taking endangered species act and other provisions 20 against trading in them and importing, exporting, all 21 those remain applicable. Those are the generally 22 applicable provisions that prohibit the taking

23 of endangered species.

JUSTICE BREYER: I understand very well your argument that if the EPA is going to transfer this, they

16

1 transfer it to Arizona and the first thing they say is, 2 we look at Arizona's laws and they protect everything. 3 And now we look at our own authority and if they get --4 start mucking around with this, we can refuse the 5 permit. And besides that, we have a memorandum of 6 understanding and the memorandum of understanding or 7 whatever it is, agreement or something, is going to be 8 they're going to pay as much attention as we are. So they'll pay attention to this, too, and if they don't we 9 10 have an enforcement mechanism. So no problem; we are 11 not putting any species in jeopardy. We satisfy the 12 standard. I've got that part of the argument. I think 13 I paraphrased it pretty well.

14 The part I don't get is then you say, 15 anyway, we don't have to do any of this because it says 16 "shall transfer," therefore, it's not discretionary, 17 it's mandatory. That part I don't get because there are 18 nine standards there and it seems to me to say that is 19 rather like saying, well, the ICC used to say you shall 20 let the railroad build a spur, provided it's in the 21 public interest, convenience, and necessity. 22 I mean, are you suddenly saying every

22 If mean, are you suddenly saying every 23 statute that uses the word "shall" is not subject to the 24 ESA?

25

MR. KNEEDLER: Well, I think it would

17

require a statute by statute evaluation.
 JUSTICE BREYER: All right, fine.
 MR. KNEEDLER: But we think this one is
 particularly clear.
 JUSTICE BREYER: Now, my problem with saying

6 it's clear is that they have nine criteria. One of the 7 criteria is you look to five other statutes, which they 8 have their own criteria and one of those criteria is you 9 have to be certain that the State will assure the 10 protection and propagation of a balanced population of 11 shellfish, fish, and wildlife.

12 And by the time you get through those nine 13 criteria, I don't think you'd have to be too imaginative 14 a lawyer to figure out ways that they involve everything 15 the ESA involves. So if there ever was an act prefaced 16 by the word "shall" where the ESA would apply, you would 17 think it would this be this one, which has to do with 18 water, environmental protection, nine criteria, many vague, and they use words like "wildlife," "shellfish," 19 20 et cetera.

21 MR. KNEEDLER: Several, several responses to 22 that. Those cross-references -- first of all, 402(b) 23 looks only to whether the State has the legal report 24 under State it law. Among other things, it requires a 25 certification or determination by the attorney general

18

of the State to establish that the State actually has
 the authority to administer.

And the references to, cross-references to 3 4 fish and wildlife that come from incorporating other 5 provisions have to do with the setting of the standards 6 or setting -- under section 302, which EPA has never 7 invoked, setting certain supplementary effluent 8 standards to protect fish and wildlife. Those are the standards. EPA does not evaluate the state's water 9 quality standards in deciding whether the State has the 10 11 legal authority under 402(b) to administer the program. 12 JUSTICE ALITO: Of the states to whom a 13 transfer has been made how many have agreed to comply 14 with this provision of the Endangered Species Act? 15 MR. KNEEDLER: I'm not sure. I don't think 16 \_\_\_ 17 JUSTICE ALITO: In the memorandum of 18 agreement with the states to whom transfers have been 19 made, in some of them, is there not language in which 20 the State has agreed that we'll consult with Fish and 21 Wildlife --22 MR. KNEEDLER: There was, there was in the 23 Louisiana memorandum of agreement that was involved in

25 was that provision that the Fifth Circuit held was

24

19

the Fifth Circuit's American Forestry decision, and it

unlawful on two grounds. That, that memorandum of agreement basically said we're trying to do something analogous to Section 7 of the ESA when the State is administering the program; and the Fifth Circuit said that went beyond EPA's authority by conditioning the approval on the State putting in place a compensation arrangement.

3 JUSTICE GINSBURG: You mentioned a whole 9 string of states, I think, Texas, Florida, Maine were 10 mentioned as states that -- in connection with the 11 transfer of the permitting authority had conditions that 12 made the Endangered Species Act applicable.

MR. KNEEDLER: That's not correct, Justice -- Justice Ginsburg. What, after the Fifth Circuit's decision, EPA never tried to impose on a State an obligation to go forward in the same way that EPA, or even in a similar way that EPA would under Section 7 of the Endangered Species Act.

JUSTICE GINSBURG: So what was done inTexas, Florida and Maine?

21 MR. KNEEDLER: They all provided what I've 22 described to Justice Souter, that -- that the 23 pre-existing ESA, EPA regulations require that draft 24 permits be furnished to the, to Fish and Wildlife and to 25 NOAA, and that they take into account the comments by

20

Fish and Wildlife and NOAA. That doesn't come from the 1 2 memorandum of agreement or -- or -- or EPA's memorandum 3 of agreement with the states. That's something that 4 comes from the regulations. Everything else --5 JUSTICE GINSBURG: So that, would that apply in this case? Would that apply to Arizona? 6 7 MR. KNEEDLER: Yes. And, and the 8 biological, the memorandum of agreement in this case applies to all State-administered programs including 9 10 those that were approved by EPA before 1993. This is a 11 nationwide memorandum of agreement. 12 And the basis --13 JUSTICE STEVENS: Mr. Kneedler, may I ask a 14 question about the memorandum of agreement? That's kind 15 of a new concept that I have a little difficulty 16 following. 17 Is there -- is that, is one of the nine 18 conditions of approval that the State enter into a 19 memorandum of agreement? 20 MR. KNEEDLER: No, it is -- no it is not. 21 The memorandum of --22 JUSTICE STEVENS: Is there not a regulation 23 that issues, that requires the states --24 MR. KNEEDLER: Yes. There, there's --25 JUSTICE STEVENS: What's the statutory

21

1 authority for the regulation? 2 MR. KNEEDLER: 33 U.S.C. 1314(i) allows -provides -- excuse me -- for EPA to establish 3 4 quidelines, basic quidelines, minimum standards for 5 State programs and -- part of that --6 JUSTICE STEVENS: What if -- what if the 7 State just refused to enter into a memorandum of agreement? Would that, could that be a ground for 8 refusing to transfer decision? 9 10 MR. KNEEDLER: If, if the, if its refusal 11 was based on an objection to things that are within the, 12 within the legitimate scope of a memorandum of 13 agreement. I think that --14 JUSTICE STEVENS: Just says don't want -- it 15 just says we don't want to enter into a memorandum of 16 agreement, period. 17 MR. KNEEDLER: Yeah. I -- I think -- I 18 don't think EPA has ever confronted that. But I think 19 it probably, it probably could be denied, but the 20 regulations do not -- as I recall -- specifically 21 condition the approval of the program on the memorandum 22 of agreement. 23 JUSTICE STEVENS: -- that require the making 24 of a memorandum of agreement. 25 MR. KNEEDLER: Yes. I would, I would

22

hesitate to say that EPA could not -- could not insist on that, but it's important again to come back to the --JUSTICE STEVENS: But how can that be consistent with your shall argument?

5 MR. KNEEDLER: Because there's a separate 6 authority for the, for the, for EPA to issue quidelines 7 for minimum, minimum standards for State programs, but 8 those have to do with -- with communications with EPA and sort of running a program. And it's not a vehicle 9 10 as I said before for EPA to impose new substantive 11 requirements outside the Clean Water Act on the State. And that's why if -- that's why if EPA insisted that a 12 13 State enter into a memorandum of understanding that 14 basically said we will, we will act like EPA does under 15 Section 7 of the Endangered Species Act under the 16 administration of the program, I think the, I think the 17 State agency would be entitled to decline to enter into 18 that agreement. And again that's essentially what the 19 Fifth Circuit held in the American Forestry case, and to 20 what extent we agree with the American Forestry 21 decision. 22 If I may, I'd like to reserve the balance of 23 my time.

24 CHIEF JUSTICE ROBERTS: Thank you,25 Mr. Kneedler.

1	Mr. Glitzenstein?
2	ORAL ARGUMENT OF ERIC R. GLITZENSTEIN,
3	ON BEHALF OF RESPONDENTS
4	MR. GLITZENSTEIN: Mr. Chief Justice, and
5	may it please the Court.
6	I particularly start off with the memorandum
7	of agreement that was just being discussed, and to, I
8	think, at least try to clarify an answer, I think, to
9	Justice Ginsburg's question about compliance with that
10	memorandum of agreement. If you look at page 260 of the
11	NAHB appendix that was filed along with the petition,
12	one of the elements of that memorandum of agreement is
13	that there would be compliance with Section 7 of the
14	Endangered Species Act when there were transfer
15	decisions being made by the EPA. And
16	JUSTICE SCALIA: Where is this? Would you
17	
18	MR. GLITZENSTEIN: This is page 260.
19	JUSTICE SCALIA: Of
20	MR. GLITZENSTEIN: Of the NAHB appendix,
21	which is there are two volumes of that appendix,
22	Justice Scalia. Volume one was pages 1 to 317, which is
23	the white cover volume, and I can quote from the
24	paragraph that I was referring to. And it's the first
25	full paragraph and it reads

24

1	JUSTICE SCALIA: 270 you say?
2	MR. GLITZENSTEIN: 260, I'm sorry.
3	JUSTICE SCALIA: 260.
4	MR. GLITZENSTEIN: 260, around.
5	JUSTICE SCALIA: I got it.
6	MR. GLITZENSTEIN: And it's the first full
7	paragraph and it says: "EPA's current practice is to
8	consult with the Services where EPA determines that
9	approval of a State's or a Tribe's application to
10	administer the NPDES program may affect federally listed
11	species." And they actually complied with that
12	memorandum of agreement in this case when they consulted
13	in response to the Arizona application.
14	Now, this memorandum of agreement which
15	Mr. Kneedler just represented to the Court is continuing
16	to be complied with, specifically provides the
17	mechanisms by which the Clean Water Act and the
18	Endangered Species Act will be reconciled and will be
19	harmonized. This language was adopted after notice and
20	comment proceedings. It is reflected not only in the
21	application and the final decision made in this case,
22	where once again the EPA said point blank, we are
23	required to comply with Section 7 of the Endangered
24	Species Act; but essentially the same understanding of
25	the Agency's legal duties and how they would be

25

1 reconciled was set forth in all these past consultation 2 decisions that are described in the decisions below and 3 our brief.

JUSTICE SCALIA: Can that be read just to apply to any, any State permits that -- that violate Clean Water requirements? As opposed to upland habitat which -- which might be affected?

8 MR. GLITZENSTEIN: There's certainly there's nothing in the memorandum of agreement that says that. 9 10 But can I just add a critical point on that, 11 Justice Scalia? The Government's position now is that 12 it doesn't matter. Their new position in response to 13 Justice Stevens's question about the change in position, 14 before the Government came to this Court, they never 15 previously suggested what they're now saying, which is 16 that Section 7(A)(2) consultation obligations and the 17 no-jeopardy prohibition don't apply at all to these 18 transfer decisions.

So this distinction between aquatic species and upland species, which may be an interesting one to explore, we would submit on remand, is not the current reflection of their position. Their position now is we could have something causing the extinction of aquatic species as a result of a pollution impact but we are under no obligation to even take a look at that under

#### 26

1 the seemingly mandatory requirement of Section 7. 2 JUSTICE SCALIA: Well, how do you feel --CHIEF JUSTICE ROBERTS: That's not quite 3 They would look at that in the context of 4 right. 5 reviewing the permits that are issued by the State 6 agencies. 7 MR. GLITZENSTEIN: Your Honor, and I think 8 that's where we seem to have a little bit of a disconnect. The assumption that Mr. Kneedler seems to 9 10 be making is the end of the consultation process that 11 Section 7 requires, not the beginning of it. The purpose of the consultation process is to avoid 12 13 conflicts with other statutory obligations, note to 14 create them, and indeed as that memorandum of agreement 15 language suggests, the consultation process has been 16 used precisely --17 CHIEF JUSTICE ROBERTS: No, what he's 18 suggesting is there isn't going to be any impact on any endangered species until a particular permit is issued 19 20 by the State agency, and that those permits are 21 submitted to the Fish and Wildlife Service for their 22 review. 23 MR. GLITZENSTEIN: That's correct, Your 24 Honor. But to go back to the suggestion that I think

27

Justice Souter made, what the agencies have done in the

25

1 past, and this is a situation where we don't have to 2 speculate about whether the agencies can comply with 3 those statutes. They have done it. They've worked 4 these problems out. And what they have done when 5 they've consulted, if you go back and look at the 6 underlying consultation documents, they've spelled out 7 exactly what Your Honor just suggested should be the approach. They've said, all right, when we issue these 8 permits under Section 402 -- under 402(b) and do we 9 exercise our oversight responsibilities under 402(d), 10 11 here are the species we are going to pay special 12 attention to. For example, in the Maine delegation, one 13 of the principal species of concern was the Atlantic 14 salmon, which they were concerned about because of 15 impacts from the aquaculture industry. What they did in 16 the biological opinion prepared as a consequence of that 17 consultation was not say, we're not going to let this 18 transfer go through. They said we have this oversight 19 ability. We're going to work out with the Fish and 20 Wildlife Service the mechanism by when those permits 21 come to our attention, as they must under section 22 402(d), we will discuss the circumstances and criteria 23 for objecting to those, we will go to the State under 24 the following circumstances, and say we think this 25 permit is going to cause the jeopardy of the species --

#### 28

CHIEF JUSTICE ROBERTS: What does that have
 to do with the -- I'm sorry.

JUSTICE SCALIA: I thought that those are in place. As I understood Mr. Kneedler to say that that's exactly what they, what they continue to do.

6 MR. GLITZENSTEIN: Your Honor, and again --7 JUSTICE SCALIA: But that has nothing to do, 8 as the Chief was about to say before I interrupted him, 9 that has nothing to do with, with whether they have to 10 issue the NPDES authorization.

MR. GLITZENSTEIN: And I quess the point I'm 11 12 trying to make, Your Honor, is that the Court's 13 fundamental obligation when it has two statutes that 14 have shall provisions, is to see if there's a way they 15 can be reconciled and worked out. And What I'm saying 16 is that the consultation process has been and should be 17 precisely the process where those kinds of issues will 18 be reconciled and that's exactly how this process is 19 working. So for the Government to come in and say let's 20 not use the process that 7(a)(2) calls for, in order to 21 try to avoid the problems, is to really put the cart 22 before the horse in the most, I think, obvious way 23 imaginable.

JUSTICE SCALIA: Could I get back to the memorandum of agreement that you've called our attention

29

1 to on page 260? I read that paragraph, and I don't see 2 anything in it that imposes any obligation whatever on 3 the State. It is just a description of what -- what EPA 4 is, is going to do. 5 MR. GLITZENSTEIN: Right. 6 JUSTICE SCALIA: The same kind of 7 consultation with Fish and Wildlife that, that 8 Mr. Kneedler described to us. 9 MR. GLITZENSTEIN: I think, Your Honor, and 10 I think that's critical. I think we're making some 11 assumptions here that, at least on our side, we're not 12 making. We're not assuming that the outcome of the 13 consultation process has to be to impose new conditions 14 on the State. One of the outcomes of the prior 15 consultation process with Maine, with Texas, for 16 example, was to spell out how the Service and EPA would 17 address their post-transfer concerns. 18 JUSTICE SCALIA: But this is talking about 19 consultation when the permit is -- the permit 20 application is issued. Not consultation at the, at the 21 stage of approving the State plan. 22 MR. GLITZENSTEIN: With all deference, Your 23 Honor, it says: "The current practice to consult with 24 the Services where EPA determines that approval of a 25 State's or Tribe's application to administer the

30

1 program. And I think there is concession by the other 2 side that that in fact was a reflection of what the 3 practice was. They were consulting on the actual 4 transfer of the programs, and the reason they were doing 5 that, Chief Justice Roberts, was to do exactly what Your 6 Honor is suggesting, that is to work out a mechanism 7 beforehand, so that when the State permits are being issued, the agencies would know how to address their 8 9 concerns.

10 CHIEF JUSTICE ROBERTS: But the point -- the 11 point is that it's the issuance of a permit under the 12 program, whether administered by the Federal Government 13 or the State government that has the potential for 14 jeopardizing endangered species. It is not the 15 administration of the program. And EPA has in place the 16 procedures to allow them to review the particular 17 permits, which what is what might jeopardize an 18 endangered species. And they don't need to leverage 19 their limited authority, their non-discretionary 20 authority to approve a transfer, to have that authority 21 to review the actual act that might jeopardize an 22 endangered species.

23 MR. GLITZENSTEIN: That's true, Your Honor, 24 but again I think what the Court may be doing is 25 assuming that this consultation process is somewhat more

31

1 draconian than it frequently turns out to be. If the 2 only outcome of the consultation process under Section 3 7(a)(2) is for the Fish and Wildlife Service to reach 4 some understanding with EPA, it says when these permits 5 are issued by the states, here are the circumstances 6 under which you're going to lodge objections, because 7 we're the expert agency on species. And I think this record shows what we're talking about. 8

9 JUSTICE KENNEDY: Are you -- are you saying 10 that the consultation does beyond the nine factors that 11 are listed in the statute?

MR. GLITZENSTEIN: No, Your Honor. I think what we're saying is that consultation goes to the separate obligation under 7(a)(2) of the Endangered Species Act to address the impacts on a listed species. And if I could --

17 JUSTICE KENNEDY: But isn't that beyond the 18 nine factors?

MR. GLITZENSTEIN: I don't think -- I think what it is is an effort, as there's been discussion here, to reconcile two obligations, both of which Congress felt were important. And that's exactly what the agency has done in other circumstances. JUSTICE KENNEDY: I -- I understand that. But when they sit down and they have the consultation,

32

is it proper for the EPA to say now, we're consulting
 with you, but only with respect to the nine factors, as
 to permits that are issued by the states afterwards, but
 then that's something else.

MR. GLITZENSTEIN: Well, and Your Honor, 5 6 just on that point, I found the Government's reply brief 7 a little bit odd, because I think consistent with the 8 questioning from Justice Breyer, it acknowledges for the first time that these factors do encompass some 9 10 consideration of wildlife impacts. But putting that to 11 one side, I think it's very important to compare what 12 they're arguing now with how they dealt with other 13 cross-cutting legal obligations. If you look, for 14 example, at how they dealt with the Indian trust 15 responsibility -- I'm only bringing this up by way of 16 analogy, because I think the government's position is, 17 oh, we're trying to elevate the Endangered Species Act 18 to some exalted status, and in fact all we're saying on 19 this administrative record is that's the same status 20 that they accorded to other cross-cutting legal 21 obligations.

JUSTICE KENNEDY: But what is your position as to the propriety of the EPA's saying what I've said in my hypothetical instance? If they -- they say we're going to consult with you but we want to make it clear

33

1	we're only talking about the nine factors.
2	MR. GLITZENSTEIN: I think that my argument
3	is that the Endangered Species Act on its face says that
4	it prohibits jeopardy or the result of habitat
5	destruction, critical habitat destruction, for any
6	agency action that is authorized, funded or carried out.
7	Our view is that they should first look to the Clean
8	Water Act criteria and factors. We think
9	JUSTICE KENNEDY: Well, I think you are at
10	issue with the government on that point.
11	MR. GLITZENSTEIN: We are, Your Honor. What
12	I will say to you, with all respect, Justice Kennedy,
13	and the reason I bring up their other legal obligations,
14	and I think it also reinforces the value of a remand in
15	this case, so some of the issues raised by the
16	government's new position would be flushed out in the
17	administrative process. If you look at joint appendix,
18	page 203, when Native American tribes wrote to the
19	agency and said we are concerned about the impact of
20	this transfer on Native American historic properties and
21	cultural and religious attributes, the EPA did not write
22	back and say well, we're sorry, Native American tribes,
23	that doesn't fall within the nine criteria.
24	CHIEF JUSTICE ROBERTS: So what is is
25	there any limitation? Let's say that EPA says we're all

34

set to approve this transfer, except OSHA sent us a letter and they don't like the occupational safety rules you have at the State environmental agency; so until you change those rules, or enter a memorandum of agreement that you're going to change those rules, we're not going to approve the transfer.

7 MR. GLITZENSTEIN: I think the line, Your
8 Honor, is whether you've got another crosscutting
9 obligation --

10 CHIEF JUSTICE ROBERTS: Yeah, like the OSHA 11 act. It says, you know, the states should do this, and 12 they're not doing it. So EPA can leverage their 13 approval into any area of law?

14 MR. GLITZENSTEIN: Again, Your Honor, I 15 think the first problem is, with that question is that, 16 I don't mean to be evasive, but I think the problem is 17 you're assuming the outcome of the analysis, which is 18 that they'll have to impose some new condition on the 19 State. With the Native American tribes, they didn't do 20 that. They didn't impose any condition on the State. 21 They said we'll have an agreement with the Native American tribes that when we exercise our oversight 22 23 authority, we will look at the impact upon --24 CHIEF JUSTICE ROBERTS: But sometimes states say no. So if they say no, presumably they're going to 25

35

have to impose the obligation as a condition of
 approval.

3 MR. GLITZENSTEIN: Yeah. And what I will say, Your Honor, is we think that in the past they have 4 5 been able to work these problems out. But if they 6 can't, I think it's important to recognize that Congress 7 created a mechanism precisely for the very 8 rare situation where there is --JUSTICE BREYER: That isn't the -- what I'm 9 10 trying to figure out with Justice Kennedy's questions 11 and your answers is, is there really an issue here? And 12 I'm beginning to see maybe there is an issue when you 13 said what are they talking about. Can you -- it's a 14 cactus. They're kidnapping cactus, as apparently 15 happens. And if in fact this cactus, if the thing is

17 disappear. Now that isn't fish. It isn't wildlife. It 18 isn't water. It's a cactus.

transferred to the State, that cactus is going to

16

So can you take that into account? Is that theoretical? I think they're trying to raise this question of, suppose you know the IRS, that if you mail a refund check at the time, the person who gets it is going to use the \$500 to destroy the last salamander in the world. Okay? Now there we are, endangered species. Does the Act apply to the IRS? I would have thought the

36

1 answer's no.

2 MR. GLITZENSTEIN: The answer is no, Your 3 Honor.

JUSTICE BREYER: And then I would have thought the same reasoning is true here, but what the Act tells you to do is read your existing authority, but read it in light of informed by the endangered species objectives language, et cetera.

9 And now I wonder if with that approach, is 10 it possible that even the cactus could fall within the 11 nine criteria? You're not going to depart from them but 12 you're going to read them generously in light of the 13 objective of the Endangered Species Act, which is itself 14 an environmental objective. Now how does that work? Can you do that? You're an imaginative lawyer. Can you 15 16 do it?

17 MR. GLITZENSTEIN: Well, I think you can. 18 JUSTICE BREYER: All right. The answer is 19 you can. Then are you satisfied with this result in 20 this Court? One, it can be read that way. They're not 21 going to agree with that. It can be read that way, and 22 therefore, it applies. The ESA, the Endangered --23 Two, that means they consult. 24 But three, the result of the consultation 25 here which has been done means there's no real objection

37

1 to the transfer, because it's virtually inconceivable 2 given the weapon that the EPA has, withdrawing permits, 3 given a memorandum of agreement, given the possibility 4 of supervision, given the fact that the wildlife service 5 will object, writing them a letter or a phone call 6 immediately, given all that stuff, there's simply no 7 reason to believe that Arizona will fail to protect 8 endangered species.

9 MR. GLITZENSTEIN: I think that's a good 10 summary of what has happened with these consultations, 11 and on the cactus --

JUSTICE BREYER: So what's your view of an opinion that roughly wrote what I just said? MR. GLITZENSTEIN: Well, I think the concern I would have is that I think it goes beyond what's necessary here because we're not dealing, everybody agrees, with some purely ministerial situation like that one.

I think the other critical factor here, Your Honor, that we haven't talked about, is the funding of this program. And it's very interesting when the government points out, if I can just get across to the Court I think a critical citation, because the government says funding is not before us. And the reason they say that is because it didn't need to be

38

1	before us when they took the position that authorization
2	of the program was sufficient to trigger their
3	consultation duties. And in a footnote in their reply
4	brief, they say pay no attention to funding, which is of
5	course a discretionary activity, because that's
6	completely separate from the decision to authorize. If
7	you look at 40 C.F.R. Section 123.23(3), and I
8	apologize this is a response to their reply brief
9	point so there's not any appendix before the Court
10	but it specifically provides that funding opportunities
11	are part and parcel of the decision to authorize the
12	program.
13	JUSTICE SCALIA: I don't know what you're
14	talking about. Funding of what?
15	MR. GLITZENSTEIN: Funding of the NPDES
16	program carried out by Arizona that had to be approved
17	in order to allow
18	JUSTICE SCALIA: How does the government
19	fund it?
20	MR. GLITZENSTEIN: They have to there's a
21	Section 106 of the Clean Water Act provides the EPA
22	with an opportunity, and it's certainly not mandatory,
23	to provide funding to a State. And this is 40
24	percent Federal we're not talking about de minimis
25	funding. So it's one thing for the State to say well,

39

1 it should get the program. It's another thing to say 2 funding. And just to be clear about this, this is an 3 argument we're making to reinforce the propriety of 4 remand in this case.

5 JUSTICE SCALIA: Well, you -- you have 6 other -- let's assume that I disagree with you on 7 whether they could withhold approval of the NPDES transfer. Even so, I think you -- the point you're 8 making now is that apart from that approval, there were 9 10 other discretionary actions taken here, one of which is 11 this funding; and another one of which, I believe, is whether -- never mind the MOAs, but -- I have it written 12 13 down here, one of the other ones. Oh, whether existing 14 permits would be transferred to State authority or not. 15 And that is apparently discretionary and can be -- what 16 do we do about that?

17 MR. GLITZENSTEIN: Well, we suggest, Your 18 Honor -- and I think this goes back to Justice Stevens's 19 question about the change in position. I think we're in 20 an odd position in this Court quite frankly because we 21 have an administrative record where the administrator 22 conceded a duty to comply with Section 7 of the 23 Endangered Species Act. We have a new position here 24 saying they don't. And we think funding and the other 25 example you came up with is a good reason why a common

40

1 sense result in this case is to say we have a change in 2 position, there are new issues brought to the fore. As 3 a consequence of that --4 JUSTICE STEVENS: May I ask this question 5 about changing position? Have you agreed and conceded 6 that the nine statutory criteria are satisfied? 7 MR. GLITZENSTEIN: We have --8 JUSTICE STEVENS: You shift back and forth 9 on that point. 10 MR. GLITZENSTEIN: Your Honor, let me be 11 clear about that. We never conceded that. What 12 happened --13 JUSTICE STEVENS: What is your view now? 14 Are they or are they not? 15 MR. GLITZENSTEIN: I think that there are 16 actually arguments that, especially with regard to the 17 wildlife related parts of the criteria, that are not 18 satisfied. Let me -- let me try to explain why we 19 didn't feel it necessary to argue that in the court of 20 appeals. 21 JUSTICE BREYER: Before you say why you 22 didn't argue it, it's exactly that point I sort of 23 expected you might agree when I though maybe you have 24 hooks to hang the NSA, the Endangered Species Act on. But it was the other half, which I think is what 25

41

1 Justice Stevens is saying now. I read through this 2 record, not completely but pretty well, and I couldn't 3 find a single thing that would suggest that Arizona 4 presents any risk to you. And so, what is the risk to 5 an endangered species that you're actually worried about 6 there? And you rather -- I didn't think you'd like to 7 agree with that, but I want to press you to find out what actually is the problem. 8

9 MR. GLITZENSTEIN: If I can give Your Honor 10 some citations to the record, I think it will help 11 answer that. On page 54 of the joint appendix, the Fish and Wildlife Service biologists, the expert agency 12 13 employees, said that there would be significant effects 14 to survival and recovery of listed species through a 15 destruction, degradation and fragmentation of habitats. 16 They specifically pinpointed the flycatcher, the 17 southwestern willow flycatcher is a species that could 18 be devastated. That's at page --

JUSTICE BREYER: And how would that happen? How would it happen that they would get rid of the flycatcher in Arizona, considering the fact that they have laws themselves that protect endangered species, and that's a bird, and a bird is wildlife; and so if they decide they want to kill all their flycatchers, which I would doubt, you could intervene at EPA and stop

42

1	them. So how is that actually a problem?
2	MR. GLITZENSTEIN: Your Honor, the concern
3	that they had was that the mechanism that had been used
4	to protect these wildlife species, and particularly
5	plant species, which I want to get to in a moment,
6	because I think actually the concern is even greater
7	with plants, was that the consultation on federally
8	issued permits had in effect been used, and this was not
9	conjectural, they had been used to safeguard
10	considerable habitat for these species. And if I could
11	turn actually to the water level, which is I think
12	actually our best example, and
13	JUSTICE SCALIA: I mean, that's not enough.
14	Why wouldn't what would lead you to believe that it
15	wouldn't that the same would not happen when the
16	State issued the permits? I mean, you have to show some
17	reason why we don't trust Arizona to do what the Federal
18	government's doing.
19	MR. GLITZENSTEIN: Your Honor, it is not a
20	question of trusting them. I think part of the outcome
21	of the consultation
22	JUSTICE SCALIA: Well then, you have to
23	establish jeopardy. You have to establish jeopardy.
24	And the mere fact that you're giving it to a State which
25	Congress has been willing to trust with implementing

43

1 this law is not enough to show that there's jeopardy. 2 Prima facie, we would expect Arizona to do the right 3 thing.

JUSTICE SOUTER: Just as a technical matter, 4 5 don't they have to show there's no jeopardy?

6 MR. GLITZENSTEIN: Yes, Your Honor. The 7 burden is on the Agency in the consultation process. 8 And it's at, as TVA versus Hill makes clear, the benefit of the doubt is accorded to the species. But, could I 9 10 try to answer that question?

11

CHIEF JUSTICE ROBERTS: Yes.

12 MR. GLITZENSTEIN: We're not saying we don't 13 trust the State. And In fact, one of the outcomes of 14 one these prior consultation processes has been where 15 it's appropriate, the service works had an agreement 16 with the State where it says here are our concerns where 17 the expert Federal agency, we listed these species, you didn't. Part of it's expertise, not trust. And in 18 19 fact, if the State comes back and says we understand, 20 we'll deal with that problem, that is one aspect of a 21 consultation process that the government is now saying 22 we should never have to go through.

23 On the plants however, Your Honor, there is a very serious concern. In this respect the service 24 25 biologists said we have protected these plants' habitats

44

1 through the Section 7 mechanism. The State of Arizona 2 acknowledges that it has no law or regulation which 3 forbids the destruction of federally listed plant 4 species.

5 Section 9 of the Endangered Species Act, 6 which Mr. Kneedler brought up and said it was the most 7 important provision, and I would beg to differ. I think 8 Sweet Home, both the majority and dissenting opinions agree that Section 7 -- and Hill -- that Section 7 is 9 10 the most important provision. But plant species are not 11 protected generally by Section 9 of the Endangered 12 Species Act, the take provision, except when they're on 13 Federal lands.

14 So we have a situation where the service 15 biologists were saying, and this is how I read the 16 record, and if I can give a couple more citations, page 17 128 and 139 of the joint appendix. On one plant 18 species, joint appendix page 436. On the water on both, 19 they were essentially predicting jeopardy, unless 20 additional protections could be worked out in this 21 process.

CHIEF JUSTICE ROBERTS: Jeopardy from the issuance of a prospective future issuance of a permit by Arizona if they get the delegated authority. And that issuance of the permit would be subject to objection and

45

1	review by EPA and the Fish and Wildlife Service.
2	MR. GLITZENSTEIN: With regard to the plant,
3	Your Honor, EPA's position to date has been that they do
4	not have the authority to protect that plant species
5	under their Clean Water Act authorities. Now we may
6	disagree with that, but that is the position they've
7	taken so far.
8	CHIEF JUSTICE ROBERTS: The position that
9	EPA has taken.
10	MR. GLITZENSTEIN: That's correct, Your
11	Honor.
12	CHIEF JUSTICE ROBERTS: Under their
13	authority.
14	MR. GLITZENSTEIN: Under their Clean Water
15	Act authority, which is what informs their oversight
16	activities.
17	CHIEF JUSTICE ROBERTS: So how does it
18	matter whether they have it or if it's transferred to
19	Arizona?
20	MR. GLITZENSTEIN: Because again, what the
21	consultation process is designed to accomplish, either
22	through the funding, discretionary decision that was
23	made, other mechanisms that can come into play, the idea
24	behind the consultation on the transfer and I think
25	this is critical to our position is to say if we're

46

1 not going to be able to protect the species through the 2 State issuance of the permits and the other authorities 3 we have, what understanding can we come to, consistent 4 with our --5 JUSTICE SCALIA: I don't understand --6 MR. GLITZENSTEIN: -- other obligations to 7 protect the plant species. JUSTICE SCALIA: I don't understand that 8 answer. The Chief Justice is asking, if EPA cannot do 9 10 it itself, how is it creating any jeopardy in 11 transferring the authority to somebody else who can't do 12 it? 13 MR. GLITZENSTEIN: Your Honor, what the --14 JUSTICE SCALIA: I mean, if you assume that 15 EPA can't protect these plant species under its 16 legislation, what harm is there in transferring the 17 authority to somebody else who can't protect it? 18 MR. GLITZENSTEIN: Well, I should just first 19 say that we disagree with the premise of that question. 20 In terms of EPA's position, we happen to think that EPA can protect those kind of plant species, and I think 21 that's one of the additional bases s for a remand. 22 23 But I think the more important answer to 24 Your Honor's question is that the Fish and Wildlife 25 Service biologist said in this administrative record

47

1 that the loss of those protections was an indirect 2 effect of the transfer, that because we have used these 3 protections when we've issued Federal permits to prevent 4 species like these plant species from going extinction 5 -- and this was not speculative --6 JUSTICE KENNEDY: If the EPA can protect the 7 plants when the permit is under its own jurisdiction, 8 why can't it use that same basis for objecting when it's under the State's jurisdiction? 9 10 MR. GLITZENSTEIN: Your Honor, that's an 11 awfully good question. And in fact we believe that should have been one of the outcomes of the 12 13 consultations. On the transfer. If one of the results of 14 15 the transfer -- and I think this was -- I think what's 16 happening is that the government has basically assumed 17 the answer to the consultation before we've gotten to 18 that point. They've assumed --19 JUSTICE ALITO: What's the difference 20 between Arizona's situation and all the other States that can issue permits? Are they under legal obligation 21 2.2 to consult? 23 MR. GLITZENSTEIN: I believe that --24 JUSTICE ALITO: And where is --25 MR. GLITZENSTEIN: It's not the State's

48

obligation to consult, Your Honor. Just to be clear,
 Section 67 imposes no obligation on the State. We
 completely agree with that. It imposes an obligation on
 a Federal agency.

5 JUSTICE ALITO: You say it imposes an 6 obligation on EPA to require the States to consult. 7 MR. GLITZENSTEIN: We don't disagree with that either, Your Honor. We believe that there are 8 mechanisms that have been used in past consultations, 9 10 especially after the Louisiana decision that came down, 11 which involve the State not at all, which involve only the Fish and Wildlife Service and the EPA recognizing 12 13 how they would exercise their --

JUSTICE ALITO: I still don't understand the difference between what you think is going to happen in Arizona and what is happening in all the other States that issue permits.

MR. GLITZENSTEIN: Your Honor, we're not saying that -- particularly with regard to Texas, Florida, Oklahoma, Louisiana and other States that have gone through the consultation process, we're not saying that anything different should happen. We're saying go through a full consultation process, agree on mechanisms that can protect these species.

JUSTICE ALITO: No, in the issuance of a

25

49

permit in any of these States, pick any State you like, what is the difference between what you envision would happen in Arizona, if Arizona can issue permits, and what's happening in these other States?

5 MR. GLITZENSTEIN: Again, with regard to 6 consultation with Arizona, all we're asking for and all 7 we've ever asked for in this case, and this was what the 8 service biologist said, was use the consultation process 9 to agree on measures that can be put in place 10 post-transfer that will prevent the species from going 11 extinct. That's what happened --

12 JUSTICE SOUTER: May I ask you to follow up 13 on that? A few minutes -- I quess your time is getting 14 short and I'd like to get away from some of the 15 specifics and back to the general. A minute ago, 16 Justice Breyer in effect offered you an opinion and he 17 spelled it out and he said, if I put that in writing is 18 that what you want? You said, well, it's really more 19 than we need.

20 Would you please at this point summarize as 21 succinctly as you can what you need to win this case? 22 MR. GLITZENSTEIN: Well, the narrowest thing 23 we need is simply a decision that the government changed 24 its position and the case should be remanded.

25

JUSTICE SOUTER: No, tell me substantively,

50

1 what do you want? What substantively do you want at the 2 end of this case? 3 MR. GLITZENSTEIN: Your Honor, what we would like is a ruling that says that 7(a)(2) imposes 4 5 obligations on Federal agencies just like the Clean 6 Water Act does, that the agency should make a good faith 7 -- and this is the words of Congress -- "a good faith 8 effort to use the consultation process provided by 7(a)(2) to devise mechanisms to protect species. 9 10 JUSTICE SOUTER: And how will they put those 11 mechanisms in legal form? 12 MR. GLITZENSTEIN: They would put those 13 mechanisms in legal form either through memorandum of 14 agreement, which is what's been used in the past, 15 separate agreements between EPA and the Fish and 16 Wildlife Service --17 JUSTICE SCALIA: By coercing, by coercing 18 the States to sign those agreements on pain of not 19 getting NPDES authority? 20 MR. GLITZENSTEIN: No, Your Honor. In fact 21 \_\_\_ 22 JUSTICE SCALIA: What do they do then? They 23 just whistle and this comes forth? States don't sign 24 stuff just, just for the sake of it. 25 MR. GLITZENSTEIN: Your Honor, I think part

51

1 of this, these agreements, wouldn't have to be signed by 2 the State at all.

3 JUSTICE SOUTER: Justice Scalia's got a fair point. What if the States say, we don't want a 4 5 memorandum of agreement? What does the Federal 6 Government do at that point? Doesn't the Federal 7 Government at that point say, okay, we're not going to 8 issue the transfer under Clean Water because we have an independent obligation under Endangered Species and 9 10 there's got to be both or there will be neither? Isn't 11 that the Federal Government's position? 12 MR. GLITZENSTEIN: At the end of the day I 13 think it is. And there is an endangered species 14 committee. Once again --15 JUSTICE SCALIA: It's your position, not the 16 Federal Government's position. It's your position of 17 what the Federal Government's position ought to be, 18 right? 19 MR. GLITZENSTEIN: What I was trying to 20 suggest was -- I think if in the end of the day you look 21 at all of these opportunities to protect species and you say there's nothing we can do about it and the State 22 23 refuses to cooperate, you have what's called jeopardy or 24 destruction of critical habitat, and Congress said that 25 the mechanism for working out the conflict with another

52

1	law is the endangered species committee, which we have
2	not talked about very much. That was Congress's answer.
3	But what I was trying to suggest was, long
4	before you get to that point and without imposing a
5	single obligation on the State, simply using the
6	authority under 402(d) of the Clean Water Act, which
7	provides for this oversight opportunity, the service and
8	the EPA can come to their own understanding as to how
9	EPA will in fact carry out its post-transfer review of
10	these. And we think that is, that is an acceptable
11	answer to the question.
12	CHIEF JUSTICE ROBERTS: Thank you, counsel.
13	MR. GLITZENSTEIN: Thank you.
14	CHIEF JUSTICE ROBERTS: Mr. Kneedler, you
15	have four minutes remaining.
16	REBUTTAL ARGUMENT OF EDWIN S. KNEEDLER
17	ON BEHALF OF THE PETITIONERS
18	MR. KNEEDLER: Mr. Chief Justice:
19	First, with respect, stepping back and
20	looking at the legal theory, we think that this case is
21	really on all fours with the Public Citizen case. In
22	fact, the court of appeals recognized that the operative
23	regulation here, the definition of "indirect effect,"
24	meaning something caused by the agency, is just like the
25	one in Public Citizen. In Public Citizen this Court

53

1 held that where an agency has a mandatory duty and does 2 not have the ability to control subsequent events, that 3 the agency cannot be regarded as the legal cause of 4 whatever effects happen. That is exactly the case here. 5 Section 402(b) mandates that EPA approve the 6 State's application. EPA therefore, EPA's decision 7 therefore is not the legal cause of any effects that 8 might happen with respect to endangered species. 9 I should point out that in this Court's 10 decision in Sweet Home this Court in footnotes 9 and 13 11 read the other principal provision of the ESA, the take 12 provision, to incorporation a proximate cause 13 limitation. We think it follows that the jeopardize 14 prohibition in Section 7 also incorporates a proximate 15 cause or here legal cause restriction. 16 JUSTICE SCALIA: Mr. Kneedler, I hate to eat 17 up any of your rebuttal time, but would you state 18 briefly what -- how you would treat these other matters 19 that were resolved by the agency and that were not 20 mandatory, its decision to transfer prior certificate 21 authority to the States, for example, and the other 22 instance raised by opposing counsel? What if I agree 23 with you on whether you can deny the NPDES permit, but 24 I'm concerned about these other actions by the agency 25 that were discretionary?

1	MR. KNEEDLER: There has been no challenge
2	to that, so I'm not in a position to give a definitive
3	answer. But I believe to the extent it would be
4	discretionary that Section 7 may well kick in.
5	JUSTICE SCALIA: Should we remand?
6	MR. KNEEDLER: No, because there was no
7	challenge to that. There was no challenge to that
8	aspect of it. This was a challenge to the transfer of
9	authority, not ancillary matters addressed under the
10	agreement.
11	Also, footnote 18 of the court of appeals
12	opinion makes clear that Respondents did not challenge
13	anything to do with funding, which is an entirely
14	separate administrative determination that there's a
15	regulatory set of criteria for how funding gets
16	distributed, it is not dependent on whether the State
17	has NPDES authority. Section 106 of the Clean Water Act
18	has a separate funding mechanism for Clean Water Act
19	authority generally. So funding is simply not, it's
20	simply not in the case.
21	JUSTICE STEVENS: And it's in your
22	discretion your distinction to the snail darter case
23	is that the decision to built the dam is discretionary,
24	not mandatory?
25	MR. KNEEDLER: Yes, and in fact this Court's

55

1	decision in Hill can't be understood in any other day
2	because the Court went out of its way to say that, while
3	Congress committee reports indicated, for the
4	appropriations bills, indicated an expectation that the
5	dam would be built, the Court emphasized the fact that
6	there was no mandate in the appropriations statute
7	itself. That would have been
8	JUSTICE SCALIA: Do you mean the executive
9	can ignore earmarks?
10	MR. KNEEDLER: Yes. That part of the
11	Court's decision would have been unnecessary.
12	JUSTICE BREYER: What's a mandatory
13	decision? No, what's a discretionary decision? I mean,
14	in the sense you're using it. I've never heard of an
15	agency that could just give out money to whoever they
16	want, like you or me. There are always criteria. Write
17	a "shall"; there are always criteria.
18	MR. KNEEDLER: But there are few statutes
19	like this, that say the agency shall unless certain
20	things happen.
21	JUSTICE BREYER: You mean is it the word
22	"unless," because here we have nine and they're broad.
23	Probably with funding we have 32. Maybe with some
24	others we have 14. But I can't get my mind around
25	MR. KNEEDLER: There may be particular

56

1 applications of the standard, but that did not deter 2 this Court in Public Citizen, where the Court applied 3 the same principle and said where the agency has a 4 mandatory duty and no discretion it is not the legal 5 cause. That's the general principle. If there are other cases where that general principle has to be 6 7 applied, there will be time enough for that consideration to arise. 8

9 Another important aspect of Hill is this 10 Court quoted Representative Dingell, the sponsor of it, 11 saying that agencies are to take actions within their power, which suggest that -- and we think it's clear 12 13 through the history, as we recite in our brief at pages 14 27 and 28, from the text of the Act and from the 15 evolution of Section 7, it was always understood to 16 apply to situations where the agencies had the existing 17 authority to take action, not to require them to 18 countermand statutory directives the way the Department 19 of Transportation could not countermand statutory 20 directives in Public Citizen. 21 Thank you. 22 CHIEF JUSTICE ROBERTS: Thank you, counsel. The case is submitted. 23 (Whereupon, at 11:19 a.m., the case in the 24

25 above-entitled matter was submitted.)

57

A	activities 46:16	32:7,23 34:6	American 5:7	36:25 57:16
ability 12:22	activity 39:5	34:19 35:3	5:15 19:24	approach 28:8
28:19 54:2	actual 31:3,21	42:12 44:7,17	23:19,20 34:18	37:9
<b>able</b> 36:5 47:1	<b>add</b> 26:10	49:4 51:6	34:20,22 35:19	appropriate
above-entitled	additional 45:20	53:24 54:1,3	35:22	44:15
1:17 57:25	47:22	54:19,24 56:15	analogous 20:3	appropriations
acceptable	address 7:17	56:19 57:3	analogy 33:16	56:4,6
53:10	11:5 30:17	agency's 8:17	analysis 35:17	approval 3:22
accommodated	31:8 32:15	25:25	ancillary 6:5,21	5:14 6:13,16
7:7	addressed 3:17	<b>ago</b> 50:15	55:9	8:13 9:5 14:17
accommodation	55:9	<b>agree</b> 23:20	<b>answer</b> 11:11	14:18 15:14,16
7:9	adequately 6:25	37:21 41:23	12:25 15:9	20:6 21:18
accomplish	administer 3:15	42:7 45:9 49:3	24:8 37:2,18	22:21 25:9
46:21	4:20 19:2,11	49:23 50:9	42:11 44:10	30:24 35:13
accorded 33:20	25:10 30:25	54:22	47:9,23 48:17	36:2 40:7,9
44:9	administered	<b>agreed</b> 13:17	53:2,11 55:3	approvals 5:1
account 10:4	16:9 31:12	19:13,20 41:5	answers 36:11	<b>approve</b> 3:15,24
11:24 14:9	administering	agreement 7:5	answer's 37:1	4:14 8:4 13:9
20:25 36:19	7:16 20:4	7:11,13 10:1	<b>anyway</b> 17:15	31:20 35:1,6
acknowledges	administration	10:24 11:1,4	<b>apart</b> 40:9	54:5
33:8 45:2	4:1 23:16	11:10,14 13:23	apologize 39:8	approved 16:17
<b>act</b> 3:13 4:3 5:4	31:15	13:25 14:1,3,7	apparently	21:10 39:16
5:9 6:25 7:6,10	administrative	14:7 17:7	36:14 40:15	approving 30:21
8:13,14,25	16:13 33:19	19:18,23 20:2	appeals 16:5	April 1:15
9:11,24 10:1,7	34:17 40:21	21:2,3,8,11,14	41:20 53:22	aquaculture
10:12,16 12:17	47:25 55:14	21:19 22:8,13	55:11	28:15
13:19 14:15,16	administrator	22:16,22,24	APPEARAN	aquatic 26:19,23
14:22,22 15:8	4:14 40:21	23:18 24:7,10	1:20	<b>area</b> 35:13
15:24 16:9,19	adopted 25:19	24:12 25:12,14	appendix 24:11	argue 41:19,22
18:15 19:14	advanced 9:12	26:9 27:14	24:20,21 34:17	arguing 9:4
20:12,18 23:11	affect 10:18	29:25 35:4,21	39:9 42:11	33:12
23:14,15 24:14	25:10	38:3 44:15	45:17,18	argument 1:18
25:17,18,24	affirmative 11:7	51:14 52:5	applicable 4:2	2:2,5,8 3:3,9
31:21 32:15	agencies 5:4 6:2	55:10	15:12 16:21,22	16:25 17:12
33:17 34:3,8	6:6,6 8:20,20	agreements	20:12	23:4 24:2 34:2
35:11 36:25	11:19 12:2,4	51:15,18 52:1	application 3:15	40:3 53:16
37:6,13 39:21	13:22 14:8	agrees 38:17	3:24 6:14,20	arguments
40:23 41:24	16:14,14 27:6	AL 1:4,7,12	6:24 7:2 25:9	41:16
45:5,12 46:5	27:25 28:2	ALITO 19:12	25:13,21 30:20	Arizona 17:1
46:15 51:6	31:8 51:5	19:17 48:19,24	30:25 54:6	21:6 25:13
53:6 55:17,18	57:11,16	49:5,14,25	applications	38:7 39:16
57:14	agency 1:9 3:6	allegation 5:21	57:1	42:3,21 43:17
action 11:7 12:6	3:14 7:15,17	<b>allow</b> 12:1 31:16	applied 57:2,7	44:2 45:1,24
34:6 57:17	7:20 8:5,17 9:5	39:17	applies 21:9	46:19 49:16
actions 6:3,4	11:24 12:3,6,7	allows 22:2	37:22	50:3,3,6
8:16 40:10	12:12,15 15:20	amendment	apply 18:16 21:5	Arizona's 3:21
54:24 57:11	23:17 27:20	14:24	21:6 26:5,17	3:23,24,25
L				

$\begin{array}{c c c c c c c c c c c c c c c c c c c $					I
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	17:2 48:20	authorization	beyond 15:11	candidate 15:15	29:1,8 31:5,10
$\begin{array}{c c c c c c c c c c c c c c c c c c c $			,		,
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
aside $3:22$ 14:17 34:6 automatic 7:2 avoid 27:1228:16 biologist 47:25 50:8cart 29:21 case $3:20$ 47:57 chooses 8:5asked 50:7 asking 47:9 50:6 appert 44:20 55:8 57:929:21 aware 5:3 aware 5:3 aware 5:3 awfully 48:11 a.m 1:19 3:2 biologist 42:23,2353:18 57:22 case $3:20$ 47:757 d4:25 45:1553:18 57:22 chooses 8:5 Circuit 3:22,23 d4:15 40:4Association 1:3 3:4 assume 40:6 48:16 48:18 assuming 30:12 27:24 28:529:21 aware 5:3 awfully 48:11 a.m 1:19 3:2 bit 27:833:7 bit 27:833:7 bit 27:833:7 50:24 51:250:22 57:21 50:22 57:23 50:24 51:2 53:20,21 54:4 breaker 9:22 53:20,22 57:23 53:20,22 57:23 27:9Circuit's 5:6 circuit's 5:6 29:24 34:22 29:24 34:22 38:12 41:21 36:19 40:18 41:8 57:13Circuit's 5:6 circuit's 5:6 56:12,21 brief 13:23 26:3 central 16:5,18 certain 5:11,1654:15 57:5 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25Circuit's 5:6 citizen 53:21 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,2556:12,21 cause 8:18 28:25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:21,25 citizen 53:22 citizen 53:21 citizen 53:21,25 citizen 53:21 citizen 53:22 citizen 53:22 citizen 53:21,25 citizen 53:21,25 citizen 53:21 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:21 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:22 citizen 53:24 citizen 53:22 citizen 53:24				• • • • •	
asked 50:7 asking 47:9 50:6 aspect 44:20automatic 7:2 avoid 27:12biologist 47:25 50:8case 3:20 4:7 5:7 11:4 21:6,8chooses 8:5 Circuit's 2:2,23Association 1:3 3:4awrare 5:3 awrare 5:344:25 45:15 44:25 45:1534:15 40:4Circuit's 5:6Association 1:3 assume 40:657:24bird 42:23,23 57:2441:1 50:7,21 50:24 51:2Circuit's 5:647:14 48:18 <b>B</b> back 16:3 23:2 31:25 35:17 <b>B</b> 29:24 34:22Breyer 16:24 36:9 37:4,1857:24 38:12 41:2157:24 57:24Circuit's 5:6assuming 30:12 31:25 35:1729:24 34:22 29:24 34:2238:12 41:21 38:12 41:2157:24 55:12,21 56:12,21cause 8:18 28:25 citation 38:23 citation 38:23citation 38:23 citation 38:2330:11 assumptions 30:11 assure 18:9balance 23:22 balance 23:2233:6 39:4,8 brief 13:23 26:3 brief 13:23 26:3 brief 13:23 26:3 brief 13:23 26:3 brief 55:12,21cause 3:12 4:21 causing 26:23 causing 26:23clarity 24:8 cartin 5:11,16 citation 38:13 citation 38:13 citation 17:8,939:4 attention 17:8,9 28:12,21 29:25base 410:10 briefly 54:18 bring 12:23 4:13 bring 33:15 citations 36:22bring 12:23 4:13 citations 36:22 bring 33:15 citations 23:24certain 5:11,16 citation citation 17:8,9 28:12,21 29:2539:4 47:2 authority 3:18 47:220:2 23:14 bring 23:17 briefly 54:18 bring 33:17bring 33:17 cita 45:2037:8 cita 45:20 cita 45:2041:10 40:7 20:5,11 22:12beg 10:14 beg 10:14 beg 10:14 20:5,11 22:12build 17:2				v	· · · ·
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	8			,	,
Association 1:3 3:4 assume 40:6 47:14awfully 48:11 a.m 1:19 3:2 57:24bird 42:23,23 bit 27:8 33:7 bit 27:8 33:7 bit 27:8 33:7 50:24 51:241:1 50:7,21 19:24 20:15 53:20,21 54:4 57:24Circuit's 5:6 19:24 20:15assumed 48:16 48:18 48:18 31:25 35:17 31:25 35:17 31:25 35:17 27:9B back 16:3 23:2 27:24 28:5 27:9 44:19 50:15 53:19 27:9B bit 27:8 33:7 breaker 9:22 36:9 37:4,18 38:12 41:2157:24 55:20,22 57:23 25:20,22 57:23 28:22,24 32:5 27:24 38:22 citation 38:23 citation 42:10 citation 38:24 citation 28:24 biref 13:23 26:3 caused 53:24 citation 17:8,9 basic 22:4 biring 12:2 34:13 biring 33:15 biring 12:2 34:13 biring 33:15 biring 13:15 biring 13:15 biring 13:15 biring 13:15 biring 13:15 biring 33:15 biring 13:15 biring 13:15 biring 33:15 biring 33:15 biring 33:15 biring 33:15 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 13:15 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 13:16 biring 33:15 biring 33:15 biring 33:15 biring 33:15 biring 33:15 biring 33:15 biring 33:15 biring 33:16 biring 33:15 biring 33:16 biring 33:16 biring 33:16 biring 33:16 biring 33:16 biring 33:16 biring 33:16 biring 33:17 biring 33:17<	-		8	,	,
3:4 assume 40:6 $47:14$ a.m $1:19 3:2$ $57:24$ bit $27:8 33:7$ blank $25:22$ $50:24 51:2$ $53:20,21 54:4$ $55:20,22 57:23$ $28:22,24 32:5$ assumed 48:16 48:18 assuming 30:12 $31:25 35:17$ $31:25 35:17$ <b>B</b> back $16:3 23:2$ $27:24 28:5$ $27:9$ <b>Breyer</b> $16:24$ $38:12 41:21$ $50:20,22 57:23$ $57:24$ $28:22,24 32:5$ $32:23$ assumption 4:9 $27:9$ $40:18 41:8$ $41:18$ $41:19 50:15$ $53:19$ $27:24 28:5$ $27:9$ $36:19 37:4,18$ $44:19 50:15$ $56:12,21$ cause $8:18 28:25$ $54:3,7,12,15$ citation $38:23$ $45:16$ assumptions $30:11$ assurance $15:23$ attention $17:8,9$ $39:4$ $33:6 39:4,8$ $57:13$ central $16:5,18$ $56:19$ $25:17 22:11$ Citation $31:3 8:13$ $57:13$ attended $6:25$ $39:4$ base $47:22$ $basic 21:4$ briefly $54:18$ $bring 12:2 34:13$ $39:22$ $18:9 19:7$ $14:15,15 23:11$ Atlantic $28:13$ $39:4$ $15:7 22:11$ $briefly 54:18$ $bring 12:2 34:13$ $56:19$ $25:17 26:6$ $25:17 26:6$ attended $6:25$ $attention 17:8,920:2 23:14briefly 54:18bring 12:2 34:13bring 13:3:1539:2239:2246:5,14 51:5attorney 18:2547:2authority 3:1847:214:15 6:15 10:710:9 11:212:1 24:8begs 10:1420:2,11 22:4build 17:2056:5allenge 55:1,755:7,8,1233:25 40:237:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:841:11 44:8$					
assume 40:6 47:14 $57:24$ blank 25:22 breaker 9:22 $53:20,2154:4$ $55:20,2257:23$ circumstances $28:22,2432:5$ $32:23$ assumed 48:16 48:18 <b>B</b> back 16:323:2Breyer 16:24 $31:2535:17$ $57:24$ $28:22,2432:5$ $32:23$ assumption 4:9 27:9 $40:1841:8$ $40:1841:8$ $18:2,533:8$ $44:1950:15$ cause 8:1828:25 $56:12,21$ citation 38:23 cause 8:1828:25assumptions 30:11 $53:19$ balance 23:22 $brief 13:2326:3$ $53:19$ cause $53:24$ $56:12,21$ cause $53:24$ cause $53:24$ citation $38:23$ citation $38:23$ assurance 15:23 assurance 15:23balance 18:10 balance 18:10 $57:13$ briefly 54:18certain $5:11,16$ $15:722:11$ briefly 54:18Clean $3:138:13$ $10:7,1212:17$ attended 6:25 $39:4$ basic 22:4 basic 22:4briefly 54:18 basic 22:4 $18:9 19:7$ $14:15,15 23:11$ briefly 54:18 $10:7,12 12:17$ $25:17 26:6$ attributes $34:21$ $39:4$ basic 22:4 basis 14:19 $21:12 48:8$ beg $8:23 45:7$ beg $8:10:14$ build 17:20 $8:16 43:6$ certainly 26:8 $37:8$ $34:7 39:21$ $44:16$ $47:2$ $10:9 11:2$ beg $8:10:14$ $1:4:19 16:7$ beg $8:10:14$ $24:3 53:17$ build 17:20 $56:5$ certain $8:20$ $37:8$ $31:25 40:2$ $57:12$ $41:11 44:8$ $47:2$ beg $10:14$ $48:16$ $45:6$ $18:25$ $13:6 26:13$ $37:8$ $41:11 44:8$ $47:2$ $10:9 11:2$ beg $10:14$ $14:19 16:7$ behalf $1:22,25$ $37:8$ $56:5$ $41:11$ $13:6 26:13$ $51:17$ $51:17$ $41:10:$			,	,	
47:14 assumed 48:16 48:18 assuming 30:12 31:25 35:17 <b>B</b> back 16:3 23:2 27:24 28:5 29:24 34:22 38:12 41:21breaker 9:22 57:24 $55:20,22 57:23$ 57:24 cases 57:6 citation 38:23 citation 38:13 sita 38:13 sita 39:22 citation 38:13 sita 48:19 sita 48:16 difield					
assumed 48:16 48:18 $\blacksquare$ back 16:3 23:2Breyer 16:24 18:2,5 33:8 $57:24$ $32:23$ assuming 30:12 31:25 35:17 $27:24 28:5$ 29:24 34:22 $36:9 37:4,18$ 36:9 37:4,18 $cases 57:6$ cause 8:18 28:25 $citation 38:23$ citation 34:210assumption 4:9 27:940:18 41:8 41:19 50:15 $42:19 50:16$ 56:12,21 $54:3,7,12,15$ cause 63:24 $55:25$ cause 63:24assumptions 30:11 assure 18:9 $53:19$ balance 23:22 $brief 13:23 26:3$ $33:6 39:4,8$ $57:13$ $certain 5:11,16$ certain 5:11,16 $Citaen 3:13 8:13$ $10:7,12 12:17$ Atlantic 28:13 attended 6:25 $28:12,21 2925$ $15:7 22:11$ basic 21:4 $briefs 5:22$ bring 12:2 34:13 bring 33:15 $39:22$ $46:5,14 51:5$ $52:8 53:6$ attended 6:25 $39:4$ $20:2 23:14$ basis 14:19 $20:2 23:14$ $bringing 33:15$ $56:5$ $39:22$ $46:5,14 51:5$ $55:7,8,12$ attributes 34:21 $0:9 11:2$ $basis 14:19$ $beg 10:14$ $build 17:20$ $14:15 6:15 10:7$ $36:12$ $build 17:20$ $56:5$ $certai 18:20$ $37:8$ $33:25 40:2$ authorities 46:5 $17:3 19:2,11$ $2:4,7,10 3:10$ $citaen 3:13 8:13$ $2:4,7,10 3:10$ $build 17:20$ $13:6 26:13$ $certai 18:20$ $37:8$ $17:3 19:2,11$ $2:4,7,10 3:10$ $citaen 3:13$ $2:4,7,10 3:10$ $citaen 4:13 18:4,6$ $2:4,7,10 3:10$ $17:3 19:2,11$ $2:4,7,10 3:10$ $citaen 3:13$ $2:4,7,10 3:10$ $citaen 3:13$ $2:13:1$ $2:4,7,10 3:10$ $17:3 19:2,12$ $2:4,3 53:17$ $2:4,7,10 3:10$ $citaen 3:13$ $2:13:1$ $2:4,7,10 3:10$ $citaen 3:13$		57:24		<i>,</i>	
assume 48:18 48:18back 16:3 23:2 27:24 28:518:2,5 33:8 36:9 37:4,18case 57.6 cause 8:18 28:25citation 38:23 citation 38:23assuming 30:12 31:25 35:17 $27:24 28:5$ $29:24 34:22$ $36:9 37:4,18$ $38:12 41:21$ cause 8:18 28:25 $54:15 57:5$ citation 38:23 citation 38:23assumption 4:9 27:9 $40:18 41:8$ $41:9 50:15$ $42:19 50:16$ $56:12,21$ $54:15 57:5$ caused 53:24Citizen 53:21,25 $53:25 57:2,20$ assumptions 30:11 $53:19$ balance 23:22 $brief 13:23 26:3$ $33:6 39:4,8$ caused 53:24 central 16:5,18 certain 5:11,16Citizen 3:13 8:13 to:7,12 12:17assurance 15:23 attended 6:25balance 18:10 base 47:22 $57:13$ brief 5:22causing 26:23 central 16:5,18clean 3:13 8:13 certain 5:11,16Atlantic 28:13 39:415:7 22:11 basic 22:4briefly 54:18 bring 13:1518:9 19:7 39:2214:5,15 23:11 25:17 26:6attended 6:25 attention 17:8.9basically 6:19 bosic 22:4bring 33:15 brought 41:239:22 certificate 54:20 s3:25 40:252:8 53:6 certificationattorney 18:25 47:248:16 beg 8:23 45:7 beg 8:23 45:7build 17:20 built 12:1 55:23cetera 18:20 s3:25 40:2authorities 46:5 47:221:12 48:8 beg 8:23 45:7 beg 10:14build 17:20 built 12:1 55:23cetera 18:20 s3:4,5 40:194:15 6:15 10:7 17:3 19:2,11 20:5,11 22:136:12 certificationcetera 18:20 s3:4,5 40:1933:25 40:2 corecing 51:17 s1:1714:19 16:7 17:19:2,11 20:5,11 22:1behaff 1:22,25 certifi		R			
assuming $30:12$ $27:24\ 28:5$ $36:9\ 37:4,18$ cause $8:18\ 28:25$ citation $50:2.5$ assumption $4:9$ $40:18\ 41:8$ $42:19\ 50:16$ $54:3,7,12,15$ $54:3,7,12,15$ $55:16$ assumption $53:19$ $56:12,21$ $54:15\ 57:5$ $cause\ 8:18\ 28:25$ $53:25\ 57:2,20$ assumptions $53:19$ $56:12,21$ $brief\ 13:23\ 26:3$ $cause\ 8:18\ 28:25$ $53:25\ 57:2,20$ assurance $15:23$ balance $23:22$ $33:6\ 39:4,8$ $certain\ 5:11,16$ $10:7,12\ 12:17$ assure $18:9$ balance $18:10$ $57:13$ $certain\ 5:11,16$ $10:7,12\ 12:17$ Atlantic $28:13$ $15:7\ 22:11$ briefly $54:18$ $18:9\ 19:7$ $14:15,15\ 23:11$ Atlantic $28:13$ $15:7\ 22:11$ briefly $54:18$ $18:9\ 19:7$ $14:15,15\ 23:11$ attended $6:25$ base $47:22$ bring $12:2\ 34:13$ $39:22$ $65:19$ $25:17\ 26:6$ $39:4$ $20:2\ 23:14$ bring $33:15$ $broght\ 41:2$ $certificat\ 54:20$ $52:8\ 53:6$ $39:4$ $20:2\ 23:14$ brought\ 41:2 $certificat\ 54:20$ $52:8\ 53:6$ $47:2$ $basis\ 14:19$ $bill\ 17:20$ $Builders\ 1:4\ 3:5$ $18:25$ $certa\ 18:20$ $31:25\ 47:2$ $beg\ 8:23\ 45:7$ $buil\ 112:1\ 55:23$ $56:5$ $55:7,8,12$ $corectig\ 55:1,7$ $41:11\ 44:8$ $45:6$ $13:6\ 26:13$ $51:17$ $51:17$ $41:19\ 16:7$ $besi\ 10:14$ $besi\ 12:2,25$ $52:8\ 53:6$ $51:17\ 55:7,8,12$ $57:12\ 55:7,8,12$ $17:19:2,11\ 24:3\ 53:17$ <			v		
assumption29:24 34:22 $38:12 41;21$ $56:5 241;21$ $54:3,7,12,15$ $45:16$ assumption $31:25 35:17$ $40:18 41:8$ $42:19 50:16$ $54:15 57:5$ Citizen $53:21,25$ assumptions $53:19$ brief $13:23 26:3$ $33:6 39:4,8$ $56:12,21$ causing $26:23$ <			· ·		
$\begin{array}{c c c c c c c c c c c c c c c c c c c $			,		
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $					
assurance 15:23 assurance 15:23balance 23:22 balanced 18:10 based 10:10bit is 15.25 20.5 33:6 39:4,8 57:13central 16:5,18 central 16:5,18Clean 3:13 8:13 10:7,12 12:17Atlantic 28:13 attended 6:25 39:415:7 22:11 basic 22:4briefly 54:18 briefly 54:18central 16:5,18 57:13Clean 3:13 8:13 10:7,12 12:17Atlantic 28:13 attended 6:25 39:415:7 22:11 basic 22:4briefly 54:18 briefly 54:18friefly 54:18 briefly 54:18central 16:5,18 18:9 19:7Clean 3:13 8:13 10:7,12 12:1728:12,21 29:25 39:4basic 22:4 basis 14:19briefly 54:18 bringing 33:15set 39:22 set 12:2 34:13central 16:5,18 18:9 19:7Clean 3:13 8:13 14:19 26:8attorney 18:25 47:2 authority 3:18 4:15 6:15 10:7 10:9 11:2basis 14:19 21:12 48:8 beginning 27:11 36:12brid 17:20 build 17:20certain 18:20 37:8 set 14:13 18:4,6delean 4:13 18:4,6 33:25 40:24:15 6:15 10:7 10:9 11:2 10:9 11:236:12 behalf 1:22,25 2:4,7,10 3:10 2:5,11 22:1behalf 1:22,25 2:4,7,10 3:10 2:4,7,10 3:10central 16:5,18 2:13:1 build 17:20certain 5:11,16 35:23certain 16:5,18 39:2217:3 19:2,11 2:5,11 22:1 2:6 31:19,202:4,7,10 3:10 2:4,7,10 3:10certain 2:20 2:11 2:4;3 53:17certain 2:20 2:11 2:13:1 certain 2:23certain 16:5,18 39:22clean 4:13 18:4,6 33:25 40:217:3 19:2,11 2:5,11 22:1 2:6 31:19,202:4,7,10 3:10 2:4,7,10 3:10certain 4:17 2:13certain 2:20 35:4,5 40:1917:3 19:2,11 2:6 31:19,202:4,7			<i>,</i>		,
billb	-			0	
assure 18:9based 10:10briefly 54:1818:9 19:714:15,15 23:11Atlantic 28:1315:7 22:11briefly 54:1818:9 19:714:15,15 23:11attended 6:25bases 47:22bring 12:2 34:1356:1925:17 26:6attention 17:8,9basic 22:4bring 33:1556:22certainly 26:834:7 39:21 $28:12,21 29:25$ basically 6:1920:2 23:14brought 41:2certificate 54:2052:8 53:6 $39:4$ 20:2 23:14brought 41:2certification55:17,18attorney 18:2548:16build 17:20Builders 1:4 3:5seg 8:23 45:7authorities 46:521:12 48:8build 17:20Builders 1:4 3:537:841:11 44:847:2beginning 27:1136:12built 12:1 55:23challenge 55:1,749:1 55:1210:9 11:2begis 10:14buils 12:2,2556:555:7,8,12coercing 51:1710:9 11:2begis 10:14certification51:1710:9 11:2bedaff 1:22,25CCC17:3 19:2,112:4,7,10 3:10C11:1change 5:23coercing 51:1720:5,11 22:12:4,3 53:17certification51:17collagues 4:820:5,11 22:1believe 9:15cactus 36:14,1450:2320:2220:919 46:2320:220:2220:22			· · · · · · · · · · · · · · · · · · ·	,	
Atlantic 28:13 attended 6:25 $39:4$ 15:7 22:11 bases 47:22 basic 22:4 $20:2 23:14$ briefs 5:22 bring 12:2 34:13 bringing 33:1510:9 17.7 56:1911:9,10 25.11 25:17 26:6 $39:4$ $20:2 23:14$ $20:2 23:14$ bringing 33:15 broad 56:22 brought 41:2 $48:16$ brought 41:2 $45:6$ $34:7 39:21$ $39:22$ attorney 18:25 attributes 34:21 authorities 46:5 $47:2$ basis 14:19 $21:12 48:8$ beg 8:23 45:7 $10:9 11:2$ briefs 5:22 brought 41:2 $45:6$ briefs 5:22 bring 12:2 34:13 $39:22$ certainly 26:8 $39:22$ $34:7 39:21$ $46:5,14 51:5$ authorities 46:5 $47:2$ $20:2 23:14$ $48:16$ briefs 5:22 brought 41:2 $45:6$ brought 41:2 $45:6$ $33:25 40:2$ authority 3:18 $4:15 6:15 10:7$ $10:9 11:2$ beginning 27:11 $36:12$ build 17:20 $56:5$ cetera 18:20 $37:8$ $33:25 40:2$ authority 3:18 $4:15 6:15 10:7$ $10:9 11:2$ begin 10:14 behalf 1:22,25 $2:4,7,10 3:10$ build 17:20 $56:5$ cetera 18:20 $35:4,5 40:19$ $31:17 toold 20:11 $					,
attended 6:25 attention 17:8,9 28:12,21 29:25bases 47:22 basic 22:4 basic 22:4 basic 22:4 basic 22:4 basic 22:4 $39:4$ bring 12:2 34:13 bring 12:2 34:13 bring 33:15 broad 56:22 brought 41:2 d5:6certainly 26:8 39:22 $34:7 39:21$ d6:5,14 51:5attorney 18:25 attributes 34:21 authorities 46:5 47:248:16 basis 14:19 21:12 48:8 beg 8:23 45:7 beg 8:23 45:7 beg 8:23 45:7 beg 10:14bring 12:2 34:13 bring 33:15 broad 56:22 brought 41:2 d5:6certainly 26:8 39:22 $34:7 39:21$ d6:5,14 51:5authorities 34:21 authority 3:18 4:15 6:15 10:7 10:9 11:248:16 beg 8:23 45:7 beg 10:14 behalf 1:22,25 2:4,7,10 3:10 20:5,11 22:1 2:5,11 22:1 23:6 31:19,20basis 14:19 believe 9:15bring 9:12 bring 12:2 34:13 bring 33:15certainly 26:8 39:22 certificate 54:20 55:17,18authority 3:18 4:19 16:710:9 11:2 2:4,7,10 3:10 2:5,11 22:1 2:6 31:19,20believe 9:15build 17:20 built 12:1 55:23 56:5cetera 18:20 37:8 55:7,8,1233:25 40:2 41:11 44:8 49:1 55:12 55:7,8,12authority 3:18 14:19 16:7behalf 1:22,25 2:4,7,10 3:10 2:4,7,10 3:10build 17:20 50:23coercing 51:17 51:17authority 3:12 13:6 26:13coercing 51:17 51:1751:17 2:2:1 2:1 2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:2:			v		· · · · · · · · · · · · · · · · · · ·
attention 17:8,9 28:12,21 29:25basic 22:4 basically 6:19 20:2 23:14bringing 33:15 broad 56:22 brought 41:2 $39:22$ certificate 54:20 certification $46:5,14 51:5$ 52:8 53:6attorney 18:25 attributes 34:21 authorities 46:5 47:248:16 basis 14:19 21:12 48:8 beg 8:23 45:7 beg 8:23 45:7 beg 8:23 45:7 beg 8:23 45:7 beg 8:23 45:7 beg 8:23 45:7 beg 8:12 5build 17:20 Builders 1:4 3:5 56:539:22 certificate 54:20 certification46:5,14 51:5 52:8 53:6 55:17,18authorities 46:5 47:221:12 48:8 beg 8:23 45:7 beg 8:23 45:7 beg 10:14 behalf 1:22,25build 17:20 Builders 1:4 3:5 56:533:25 40:2 41:11 44:84:15 6:15 10:7 10:9 11:236:12 beg 10:14 behalf 1:22,25burden 44:7 business 9:13challenge 55:1,7 55:7,8,12 change 5:2351:17 colleagues 4:8 come 19:4 21:117:3 19:2,11 20:5,11 22:1 23:6 31:19,202:4,7,10 3:10 believe 9:15C C 2:1 3:1 cactus 36:14,1431:2 22 core 30:14,1423:2 28:21 29:19 46:23					
attention 17.0,7 28:12,21 29:25 39:4basically 6:19 20:2 23:14 48:16broad 56:22 brought 41:2 45:6certificate 54:20 certification52:8 53:6 52:8 53:6attorney 18:25 attributes 34:21 authorities 46:5 47:2basis 14:19 21:12 48:8 beg 8:23 45:7 beg 8:23 45:7 built 12:1 55:23 coercing 51:17 colleagues 4:8 come 19:4 21:1 changed 5:22 core 19:4 21:1 colleagues 4:8 come 19:4 21:1 colleagues 4:8 come 19:4 21:1 colleagues 4:2 core 19:4 21:1 core 19:4 21:1 <th></th> <th></th> <th>0</th> <th></th> <th></th>			0		
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	· · · ·		0 0		· · · · · · · · · · · · · · · · · · ·
48:1648:1648:16 $45:6$ 18:25 $certaineanin35:17,16authorities 46:548:1645:6build 17:2018:25certa 18:2033:25 40:2authorities 46:521:12 48:8beg 8:23 45:7beg 8:23 45:7beginning 27:1136:12built 12:1 55:23challenge 55:1,749:1 55:12authority 3:18beg 8:23 45:7beginning 27:1136:12built 12:1 55:23challenge 55:1,749:1 55:1210:9 11:2begs 10:14behalf 1:22,2556:555:7,8,12coercing 51:1714:19 16:72:4,7,10 3:102:4;3 53:17CCCCCC2:5,11 22:12:4,7,10 3:10CCC$		•			
attributes $34:21$ authorities $46:5$ basis $14:19$ $21:12 48:8$ beg $8:23 45:7$ 			8		
authorities 46:5 47:2 $21:12 48:8$ beg 8:23 45:7 beginning 27:11 $36:12$ Builders 1:4 3:5 built 12:1 55:23 $56:5$ $37:8$ challenge 55:1,7 $55:7,8,12$ $41:11 44:8$ $49:1 55:12$ $57:12$ authority 3:18 4:15 6:15 10:7 $10:9 11:2$ begs 10:14 begs 10:14 behalf 1:22,25 $2:4,7,10 3:10$ $20:5,11 22:1$ Builders 1:4 3:5 $56:5$ $37:8$ challenge 55:1,7 $55:7,8,12$ $41:11 44:8$ $49:1 55:12$ $57:12$ $0:0:120 10:20$ $0:0:120 10:20$ $0:111 120$ $0:0$					,
47:2       beg 8:23 45:7       built 12:1 55:23       challenge 55:1,7       49:1 55:12         authority 3:18       36:12       built 12:1 55:23       challenge 55:1,7       57:12         10:9 11:2       begs 10:14       built 1:22,25       change 5:23       51:17         17:3 19:2,11       24:3 53:17       24:3 53:17       C       13:6 26:13       51:17         20:5,11 22:1       24:3 53:17       believe 9:15       C       13:1       changed 5:22       23:2 28:21         23:6 31:19,20       believe 9:15       cactus 36:14,14       50:23       29:19 46:23       29:19 46:23					
authority 3:18 4:15 6:15 10:7 10:9 11:2 14:19 16:7 $20:5,11 22:1$ $20:5,11 22:1$ beginning 27:11 $36:12$ behalf 1:22,25 $2:4,7,10 3:10$ $24:3 53:17$ bediate 121 00:12 56:5 burden 44:7 business 9:1357:12 coercing 51:17 51:17 $0.9 11:2$ $13:6 26:13$ $35:4,5 40:19$ $41:1$ come 19:4 21:1 $23:6 31:19,20$ beginning 27:11 $24:3 53:17$ believe 9:1556:5 $52:7,8,12$ $55:7,8,12$ $55:7,8,12$ $13:6 26:13$ $35:4,5 40:19$ $41:1$ come 19:4 21:1 $23:2 28:21$ $29:19 46:23$					
$\begin{array}{c c c c c c c c c c c c c c c c c c c $		0		U ,	
$\begin{array}{c ccccccccccccccccccccccccccccccccccc$		8			
$\begin{array}{c ccccccccccccccccccccccccccccccccccc$				0	0
$\begin{array}{c ccccccccccccccccccccccccccccccccccc$		0	business 9:13		
$\begin{array}{c ccccccccccccccccccccccccccccccccccc$			<u> </u>	,	0
23:6 31:19,20     believe 9:15     cactus 36:14,14     50:23     29:19 46:23	· · ·				
2010 0 1119,20	· ·			0	
			,		
31:20 35:23 12:3 14:16 36:15,16,18 changing 41:5 47:3 53:8				0 0	
37:6 40:14         38:7 40:11         37:10 38:11         characterize         comes 21:4           42:14 48:11 22         aall 28:5         aall 28:5         aall 28:5         aall 28:5					
45:24 46:4,13 43:14 48:11,23 call 38:5 5:17 44:19 51:23	,				
46:15 47:11,17 49:8 55:3 called 7:5,13 check 36:22 coming 7:23	· · ·		,		0
51:19 53:6     benefit 44:8     13:22 29:25     Chief 3:3,11     comment 11:21				· · · · ·	
54:21 55:9,17 <b>best</b> 43:12 52:23 6:17 23:24 25:20	· · · · · ·				
55:19 57:17         better 11:5         calls 29:20         24:4 27:3,17         comments 11:24	55:19 57:17	better 11:5	cans 29:20	24:4 27:3,17	comments 11:24
				<u> </u>	

	1	1	1	1
14:9 20:25	conditions 20:11	46:24 48:17	courts 5:23	decision 5:7,15
Commerce 8:7	21:18 30:13	49:21,23 50:6	<b>Court's</b> 29:12	19:24 20:15
committee	conflict 52:25	50:8 51:8	54:9 55:25	22:9 23:21
52:14 53:1	conflicts 27:13	consultations	56:11	25:21 39:6,11
56:3	confronted	38:10 48:13	<b>cover</b> 24:23	46:22 49:10
<b>common</b> 40:25	22:18	49:9	covered 14:12	50:23 54:6,10
communicatio	Congress 4:19	consulted 25:12	create 27:14	54:20 55:23
23:8	32:22 36:6	28:5	created 36:7	56:1,11,13,13
compare 33:11	43:25 51:7	consulting 31:3	creating 47:10	decisions 24:15
compensation	52:24 56:3	33:1	<b>criteria</b> 3:17,21	26:2,2,18
20:6	Congress's	consults 13:10	4:15 6:15 7:1	decline 23:17
complete 12:21	16:11 53:2	contact 7:19	18:6,7,8,8,13	<b>Defenders</b> 1:7
completely 39:6	conjectural 43:9	context 27:4	18:18 28:22	1:12 3:5,6
42:2 49:3	connection	continue 14:4	34:8,23 37:11	deference 30:22
compliance 24:9	20:10	29:5	41:6,17 55:15	definition 53:23
24:13	consequence	continuing 7:22	56:16,17	definitive 55:2
complied 25:11	28:16 41:3	25:15	critical 26:10	degradation
25:16	consequences	control 9:1	30:10 34:5	42:15
<b>comply</b> 10:21	8:17 15:18,19	12:21 15:1,6	38:19,23 46:25	delegated 45:24
13:15 19:13	considerable	54:2	52:24	delegation 28:12
25:23 28:2	43:10	convenience	crosscutting	denied 22:19
40:22	consideration	17:21	35:8	deny 54:23
comprehensiv	33:10 57:8	cooperate 8:5	cross-cutting	denying 6:24
15:13	considerations	52:23	33:13,20	depart 37:11
conceded 40:22	5:13 10:5	cooperation	cross-references	Department
41:5,11	considering	8:11 13:21	18:22 19:3	1:22 8:6 57:18
concept 21:15	42:21	coordination	cultural 34:21	dependent
<b>concern</b> 10:15	consistent 8:3	13:23	<b>current</b> 25:7	55:16
28:13 38:14	23:4 33:7 47:3	correct 10:8,19	26:21 30:23	<b>Deputy</b> 1:21
43:2,6 44:24	constructing	14:5,11 20:13	<b>C.F.R</b> 39:7	described 13:18
<b>concerned</b> 12:21	13:7	27:23 46:10	D	13:21 14:6
28:14 34:19	<b>consult</b> 5:4 6:6	<b>counsel</b> 53:12 54:22 57:22	$\overline{\mathbf{D}}$ <b>D</b> 3:1	20:22 26:2
54:24	19:20 25:8		dam 13:7 55:23	30:8
<b>concerns</b> 7:6,11	30:23 33:25	countermand	56:5	description 30:3
11:21 12:2,12	37:23 48:22	57:18,19	darter 55:22	designed 46:21
12:13 13:19 30:17 31:9	49:1,6 consultation 5:2	<b>couple</b> 45:16	date 46:3	destroy 36:23
44:16	6:7,8,18,21	<b>course</b> 39:5	day 52:12,20	destroying 13:6 destruction 34:5
<b>concession</b> 31:1	26:1,16 27:10	<b>court</b> 1:1,18 3:12 5:22 16:5	56:1	34:5 42:15
condition 5:18	27:12,15 28:6	24:5 25:15	de 39:24	45:3 52:24
9:15 14:18	28:17 29:16	26:14 31:24	deal 11:13 44:20	<b>detailed</b> 7:4
22:21 35:18,20	30:7,13,15,19	37:20 38:23	dealing 16:2	deter 57:1
36:1	30:20 31:25	39:9 40:20	38:16	determination
conditioned	32:2,10,13,25	41:19 53:22,25	<b>deals</b> 14:16	10:11 18:25
5:13	37:24 39:3	54:10 55:11	dealt 33:12,14	55:14
conditioning	43:7,21 44:7	56:2,5 57:2,2	decide 42:24	determines 25:8
20:5	44:14,21 46:21	57:10	deciding 19:10	30:24
20.0	11.17,2170.21	57.10		JU.2T
		l		I

	I		1	
devastated	draft 7:18 11:18	31:14,18,22	34:21,25 35:12	example 13:6
42:18	11:22 14:8	32:14 33:17	38:2 39:21	28:12 30:16
development	20:23	34:3 36:24	42:25 46:1,9	33:14 40:25
9:3 15:25	duties 25:25	37:7,13,22	47:9,15,20	43:12 54:21
devise 51:9	39:3	38:8 40:23	48:6 49:6,12	exception 15:7,7
differ 45:7	<b>duty</b> 40:22 54:1	41:24 42:5,22	51:15 53:8,9	15:16
difference 6:23	57:4	45:5,11 52:9	54:5,6	excuse 22:3
48:19 49:15	<b>D.C</b> 1:14,22,24	52:13 53:1	<b>EPA's</b> 3:22 4:23	executive 56:8
50:2		54:8	5:21 7:13,22	exercise 28:10
different 6:1	E	endangering	11:17 15:16	35:22 49:13
49:22	<b>E</b> 2:1 3:1,1	13:5	20:5 21:2 25:7	existing 37:6
difficulty 21:15	ear 12:8	enforced 9:11	33:23 46:3	40:13 57:16
<b>Dingell</b> 57:10	earlier 16:4	enforcement	47:20 54:6	expect 44:2
directive 4:5	earmarks 56:9	10:15 12:24	equally 8:14	expectation 56:4
directives 57:18	eat 54:16	17:10	equivalent 4:1	expected 41:23
57:20	EDWIN 1:21	engaged 6:8	ERIC 1:24 2:6	expert 32:7
disagree 40:6	2:3,9 3:9 53:16	ensure 6:3	24:2	42:12 44:17
46:6 47:19	effect 9:2,12,13	enter 21:18 22:7	ESA 4:6 8:10	expertise 44:18
49:7	9:20 12:23,25	22:15 23:13,17	15:12 16:13,16	explain 11:17
disappear 36:17	16:1 43:8 48:2	35:4	16:18 17:24	41:18
disapprove 6:20	50:16 53:23	entered 10:2	18:15,16 20:3	explore 26:21
disconnect 27:9	effects 42:13	entirely 55:13	20:23 37:22	exporting 16:20
discretion 4:11	54:4,7	entitled 23:17	54:11	expresses 4:17
8:17 55:22	effluent 19:7	environmental	especially 41:16	extent 13:4
57:4	<b>effort</b> 32:20 51:8	1:9 3:6,14	49:10	23:20 55:3
discretionary	<b>either</b> 46:21	18:18 35:3	<b>ESQ</b> 1:21,24 2:3	extinct 50:11
17:16 39:5	49:8 51:13	37:14	2:6,9	extinction 26:23
40:10,15 46:22	elements 24:12	envision 50:2	essentially 7:21	48:4
54:25 55:4,23	elevate 33:17	EPA 3:16,23 4:3	14:23 15:3	
56:13	embodied 14:6	4:10,22 5:4,7	23:18 25:24	F
discuss 28:22	emphasize 8:12	5:10,12,17 6:7	45:19	face 34:3
discussed 24:7	emphasized	6:15,20 7:8,14	establish 19:1	<b>facie</b> 44:2
discussion 32:20	56:5	7:18,19,23 8:4	22:3 43:23,23	facilitate 7:22
dispute 3:20	employees 42:13	9:15 10:2,4,6,9	et 1:4,7,12 18:20	fact 5:17 31:2
dissenting 45:8	encompass 33:9	10:18,20,25	37:8	33:18 36:15
distinction	endangered 4:2	11:6,9 12:14	evaluate 19:9	38:4 42:21
26:19 55:22	5:3,9,12 6:24	12:14,15,21	evaluation 18:1	43:24 44:13,19
distributed	7:6,10 8:13,25	13:3,9,25 14:2	evasive 35:16	48:11 51:20
55:16	9:11,23 10:1,4	14:6,17 16:6,9	events 54:2	53:9,22 55:25
documents 28:6	10:15,18,22	16:25 19:6,9	everybody	56:5
<b>doing</b> 13:11 31:4	11:21 12:20	20:15,16,17,23	38:16	factor 38:19
31:24 35:12	13:12,18 14:22	21:10 22:3,18	evolution 57:15	factors 4:10
43:18	14:23 15:24	23:1,6,8,10,12	exactly 28:7	32:10,18 33:2
domain 7:3	16:9,19,23	23:14 24:15	29:5,18 31:5	33:9 34:1,8
<b>doubt</b> 42:25	19:14 20:12,18	25:8,22 30:3	32:22 41:22	fail 38:7
44:9	23:15 24:14	30:16,24 31:15	54:4	failing 12:15
draconian 32:1	25:18,23 27:19	32:4 33:1	exalted 33:18	fair 52:3
L	-	-		-

	I	I	I	I
faith 51:6,7	51:15	40:2,11,24	38:14 39:15,20	guess 29:11
<b>fall</b> 34:23 37:10	<b>five</b> 18:7	46:22 55:13,15	40:17 41:7,10	50:13
far 12:20 46:7	Florida 20:9,20	55:18,19 56:23	41:15 42:9	guidelines 10:12
February 13:24	49:20	furnish 7:17	43:2,19 44:6	22:4,4 23:6
Federal 6:2,5	flushed 34:16	10:3 11:18	44:12 46:2,10	
7:4 8:19,25 9:1	flycatcher 42:16	14:8	46:14,20 47:6	<u> </u>
10:3 11:19	42:17,21	furnished 20:24	47:13,18 48:10	habitat 13:7,8,9
12:2 13:22	flycatchers	further 11:9	48:23,25 49:7	14:13,20 26:6
15:14 16:14	42:24	future 9:3 16:2	49:18 50:5,22	34:4,5 43:10
31:12 39:24	follow 50:12	45:23	51:3,12,20,25	52:24
43:17 44:17	following 21:16		52:12,19 53:13	habitats 42:15
45:13 48:3	28:24	G	<b>go</b> 16:3 20:16	44:25
49:4 51:5 52:5	follows 54:13	<b>G</b> 3:1	27:24 28:5,18	half 41:25
52:6,11,16,17	footnote 39:3	general 1:21	28:23 44:22	hang 41:24
federalism-se	55:11	18:25 50:15	49:22	happen 9:3
8:21 16:11	footnotes 54:10	57:5,6	goes 32:13 38:15	15:18,19 16:2
federally 25:10	forbids 45:3	generally 15:12	40:18	42:19,20 43:15
43:7 45:3	<b>force</b> 14:2	16:21 45:11	going 7:1 11:13	47:20 49:15,22
feds 9:9	fore 41:2	55:19	15:24 16:25	50:3 54:4,8
feel 27:2 41:19	Forestry 5:7,15	generously	17:7,8 27:18	56:20
felt 32:22	19:24 23:19,20	37:12	28:11,17,19,25	happened 38:10
Fifth 5:5,6,19	form 51:11,13	getting 50:13	30:4 32:6	41:12 50:11
19:24,25 20:4	forth 26:1 41:8	51:19	33:25 35:5,5	happening
20:14 23:19	51:23	Ginsburg 6:23	35:25 36:16,23	48:16 49:16
figure 18:14	forward 3:19	13:20 14:1	37:11,12,21	50:4
36:10	20:16	20:8,14,19	47:1 48:4	happens 12:11
filed 24:11	<b>found</b> 33:6	21:5	49:15 50:10	36:15
final 25:21	four 53:15	<b>Ginsburg's</b> 24:9	52:7	harm 47:16
<b>find</b> 42:3,7	fours 53:21	give 9:20 42:9	good 38:9 40:25	harmonized
<b>finds</b> 3:16 4:14	fragmentation	45:16 55:2	48:11 51:6,7	25:19
<b>fine</b> 8:8 18:2	42:15	56:15	gotten 48:17	hate 54:16
<b>first</b> 3:4,24 9:25	frankly 40:20	given 38:2,3,3,4	government 9:1	hear 3:3
11:12 17:1	frequently 32:1	38:6	9:2 26:14	heard 56:14
18:22 24:24	<b>front</b> 10:24 11:4	gives 9:5 11:20	29:19 31:12,13	held 3:23 19:25
25:6 33:9 34:7	11:15	15:9	34:10 38:22,24	23:19 54:1
35:15 47:18	full 9:20 14:2	<b>giving</b> 43:24	39:18 44:21	help 42:10
53:19	24:25 25:6	Glitzenstein	48:16 50:23	hesitate 23:1
<b>fish</b> 5:10 6:6 8:6	49:23	1:24 2:6 24:1,2	52:6,7	Hill 44:8 45:9
11:20,25 12:13	<b>fund</b> 39:19	24:4,18,20	government's	56:1 57:9
13:10,17 14:8	fundamental	25:2,4,6 26:8	4:22 26:11	historic 34:20
18:11 19:4,8	29:13	27:7,23 29:6	33:6,16 34:16	history 57:13
19:20 20:24	fundamentally	29:11 30:5,9	43:18 52:11,16	holding 4:4
21:1 27:21	6:12 8:18	30:22 31:23	52:17	Home 1:3 3:4
28:19 30:7	funded 34:6	32:12,19 33:5	greater 43:6	45:8 54:10
32:3 36:17	funding 38:20	34:2,11 35:7	ground 22:8	Honor 27:7,24
42:11 46:1	38:24 39:4,10	35:14 36:3	grounds 20:1	28:7 29:6,12
47:24 49:12	39:14,15,23,25	37:2,17 38:9	guarantees 9:2	30:9,23 31:6
L	-	-	-	-

	1	1	•	
31:23 32:12	impose 5:8 7:23	49:11,11	15:22 16:24	kind 9:6 16:1
33:5 34:11	16:12 20:15	involved 19:23	18:2,5 19:12	21:14 30:6
35:8,14 36:4	23:10 30:13	involves 18:15	19:17 20:8,14	47:21
37:3 38:20	35:18,20 36:1	in-the-water	20:14,19,22	kinds 29:17
40:18 41:10	imposes 6:2 8:19	15:19	21:5,13,22,25	Kneedler 1:21
42:9 43:2,19	30:2 49:2,3,5	<b>IRS</b> 36:21,25	22:6,14,23	2:3,9 3:8,9,11
44:6,23 46:3	51:4	issuance 31:11	23:3,24 24:4,9	4:12,24 5:25
46:11 47:13	imposing 53:4	45:23,23,25	24:16,19,22	6:11,19 7:12
48:10 49:1,8	inapplicable	47:2 49:25	25:1,3,5 26:4	8:2,15 9:14,25
49:18 51:3,20	16:16	issue 5:24 23:6	26:11,13 27:2	10:8,17,25
51:25	including 11:25	28:8 29:10	27:3,17,25	11:8 12:10
honored 15:24	14:7 21:9	34:10 36:11,12	29:1,3,7,24	13:3,8,24 14:5
<b>Honor's</b> 47:24	inconceivable	48:21 49:17	30:6,18 31:5	14:23 15:2,11
hooks 41:24	38:1	50:3 52:8	31:10 32:9,17	16:3 17:25
horse 29:22	inconsistent 4:4	issued 15:20,21	32:24 33:8,22	18:3,21 19:15
hypothetical	4:5 16:10	27:5,19 30:20	34:9,12,24	19:22 20:13,21
33:24	incorporates	31:8 32:5 33:3	35:10,24 36:9	21:7,13,20,24
	54:14	43:8,16 48:3	36:10 37:4,18	22:2,10,17,25
I	incorporating	issues 4:3 10:18	38:12 39:13,18	23:5,25 25:15
<b>ICC</b> 17:19	19:4	21:23 29:17	40:5,18 41:4,8	27:9 29:4 30:8
<b>idea</b> 46:23	incorporation	34:15 41:2	41:13,21 42:1	45:6 53:14,16
ignore 9:21	54:12		42:19 43:13,22	53:18 54:16
15:10 56:9	independent	J	44:4,11 45:22	55:1,6,25
ignoring 11:6	52:9	jeopardize 6:3,4	46:8,12,17	56:10,18,25
imaginable	<b>Indian</b> 33:14	6:22 31:17,21	47:5,8,9,14	know 9:17 31:8
29:23	indicated 56:3,4	54:13	48:6,19,24	35:11 36:21
imaginative	indirect 12:25	jeopardizing	49:5,14,25	39:13
18:13 37:15	48:1 53:23	31:14	50:12,16,25	
immediate	individual 13:13	jeopardy 17:11	51:10,17,22	L
15:17	industry 28:15	28:25 34:4	52:3,3,15	lands 45:13
immediately	informed 37:7	43:23,23 44:1	53:12,14,18	language 19:19
38:6	informs 46:15	44:5 45:19,22	54:16 55:5,21	25:19 27:15
<b>impact</b> 26:24	insist 23:1	47:10 52:23	56:8,12,21	37:8
27:18 34:19	insisted 23:12	joint 34:17	57:22	law 3:19 18:24
35:23	instance 33:24	42:11 45:17,18		35:13 44:1
impacts 12:21	54:22	judgment 16:11	K	45:2 53:1
14:12,13 28:15	insured 3:25	jurisdiction 8:8	keep 9:1	laws 17:2 42:22
32:15 33:10	interest 17:21	48:7,9	Kennedy 4:7	lawyer 18:14
implementing	interesting	<b>Justice</b> 1:22 3:3	32:9,17,24	37:15
43:25	26:20 38:21	3:11 4:7,21	33:22 34:9,12	lead 43:14
implication 15:4	interpretation	5:20 6:9,17,23	48:6	left 10:7
15:7	4:23	7:25 8:10,22	Kennedy's	legal 3:18 4:15
important 23:2	interrupted	9:17 10:6,14	36:10	6:14 18:23
32:22 33:11	29:8	10:23 11:3,11	kick 55:4	19:11 25:25
36:6 45:7,10	intervene 42:25	12:5,23 13:4	kidnapping	33:13,20 34:13
47:23 57:9	invoked 19:7	13:20 14:1,11	36:14	48:21 51:11,13
importing 16:20	involve 18:14	14:21 15:1,5	kill 42:24	53:20 54:3,7
	1	1	1	1

	1	I		1
54:15 57:4	22:23 27:10	26:9 27:14	56:14	11:14 12:5
legislation 47:16	30:10,12 40:3	29:25 35:4	new 21:15 23:10	20:16 26:25
legitimate 22:12	40:9	38:3 51:13	26:12 30:13	29:13 30:2
letter 35:2 38:5	mandate 8:14	52:5	34:16 35:18	32:14 35:9
let's 29:19 34:25	56:6	mentioned 6:7	40:23 41:2	36:1 48:21
40:6	mandates 54:5	20:8,10	<b>nine</b> 3:17 4:9	49:1,2,3,6 52:9
level 12:19	mandatory 4:5	mere 43:24	6:14 7:1 17:18	53:5
43:11	6:14 8:12 9:19	<b>met</b> 4:10	18:6,12,18	obligations 5:8
leverage 31:18	17:17 27:1	mind 9:9 40:12	21:17 32:10,18	7:23 8:19
35:12	39:22 54:1,20	56:24	33:2 34:1,23	26:16 27:13
light 37:7,12	55:24 56:12	minimis 39:24	37:11 41:6	32:21 33:13,21
limitation 34:25	57:4	minimum 22:4	56:22	34:13 47:6
54:13	matter 1:17	23:7,7	Ninth 3:21,23	51:5
limitations 7:19	26:12 44:4	ministerial	NOAA 8:6 12:1	<b>obvious</b> 29:22
limited 31:19	46:18 57:25	38:17	12:14 13:11	occupational
line 35:7	matters 54:18	<b>minute</b> 50:15	20:25 21:1	35:2
listed 25:10	55:9	minutes 50:13	non-discretio	odd 33:7 40:20
32:11,15 42:14	mean 8:11 16:16	53:15	31:19	odds 11:5
44:17 45:3	17:22 35:16	<b>MOAs</b> 40:12	non-water 14:13	offered 50:16
listen 12:8	43:13,16 47:14	moment 43:5	<b>note</b> 27:13	<b>oh</b> 33:17 40:13
little 21:15 27:8	56:8,13,21	money 56:15	<b>notice</b> 25:19	okay 36:24 52:7
33:7	meaning 53:24	mucking 17:4	notified 12:14	Oklahoma
<b>lodge</b> 32:6	means 37:23,25		no-jeopardy	49:20
long 4:21,22	measured 13:14	N	26:17	<b>once</b> 16:16
53:3	measures 50:9	N 2:1,1 3:1	<b>NPDES</b> 3:16	25:22 52:14
look 5:12 7:19	mechanism 7:14	NAHB 24:11,20	4:20 25:10	ones 40:13
17:2,3 18:7	9:12 16:1	narrowest 50:22	29:10 39:15	on-the-ground
24:10 26:25	17:10 28:20	National 1:3 3:4	40:7 51:19	15:18
27:4 28:5	31:6 36:7 43:3	nationwide	54:23 55:17	operative 53:22
33:13 34:7,17	45:1 52:25	21:11	NSA 41:24	opinion 16:5
35:23 39:7	55:18	Native 34:18,20	number 7:8	28:16 38:13
52:20	mechanisms	34:22 35:19,21		50:16 55:12
looking 53:20	11:9 13:17	nature 8:12	$\left  \frac{0}{0.2121} \right $	opinions 45:8
looks 18:23	25:17 46:23	14:14	<b>O</b> 2:1 3:1	opportunities
loss 48:1	49:9,23 51:9	<b>necessary</b> 10:22	<b>object</b> 10:9,20	39:10 52:21
Louisiana 5:14	51:11,13	12:19 38:16	11:1,7 12:16	opportunity
5:18 19:23	<b>meet</b> 7:1	41:19	12:22 38:5	11:21 39:22
49:10,20	memorandum	necessity 17:21	objecting 28:23	53:7
<b>lower</b> 5:23	7:5,11,12,13	<b>need</b> 10:25 31:18 38:25	48:8	opposed 11:6
M	10:1,24 11:10		<b>objection</b> 22:11 37:25 45:25	26:6
mail 36:21	11:14 17:5,6	50:19,21,23		opposing 54:22
Maine 20:9,20	19:17,23 20:1	neither 15:8,9 52:10	objections 32:6 objective 37:13	oral 1:17 2:2,5
28:12 30:15	21:2,2,8,11,14	never 5:2,7,13	37:14	3:9 24:2
<b>majority</b> 4:25	21:19,21 22:7	19:6 20:15	objectives 37:8	order 7:21 29:20
5:1 45:8	22:12,15,21,24	26:14 40:12	obligation 6:2,5	39:17 OSUA 25:1 10
<b>making</b> 16:4	23:13 24:6,10	41:11 44:22	6:7,22 9:22	<b>OSHA</b> 35:1,10
making 10.4	24:12 25:12,14	71.11 77.22	0.1,22 9.22	ought 52:17

$\begin{array}{c c c c c c c c c c c c c c c c c c c $		i		1	1
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	outcome 30:12	28:25 30:19,19	39:9 40:8 41:9	48:3 50:10	31:1,12,15
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	32:2 35:17	31:11 45:23,25	41:22 48:18	previously	38:21 39:2,12
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	43:20	48:7 50:1	50:20 52:4,6,7	26:15	39:16 40:1
outside 23:11         11:18 14:8         policy 4:19         Prima 44:2         22:5 23:7 31:4           28:10,18 35:22         28:20 31:7,17         pollution 26:24         principal 28:13         probibit 16:22           28:10,18 35:22         27:5,20 28:9         28:20 31:7,17         still         principal 28:13         probibit 16:22           P         46:15 53:7         28:20 31:7,17         18:10         principal 28:13         probibit 34:4           P         32:4 33:3 38:2         position 4:12,22         57:6         54:14         project 13:5           page 2:2 24:10         49:17 50:3         10:19 16:6         probably 9:8         project 33:1           page 2:2 24:10         20:11         34:16 39:1         11:6,13 13:1         proper 33:1           page 24:22         person 36:22         40:19,20,23         15:10 17:10         proper 33:1           paragraph         1:23 3:10         50:24 52:11,15         44:20         prospective           24:24,25 25:7         pointoat         11:6,17         26:22 34:20         prosecture 17:14         prosecture 10:22           paragraph         1:23 3:10         50:24 52:11,15         44:20         prosecture 10:22         prosecture 10:22           paratelap:11         pinpointed         30:17 50:10<	outcomes 30:14	54:23	53:4 54:9	pre-existing	programs 5:5,18
oversight 7:22 28:10,18 35:22         20:24 26:5 27:5,20 28:9 28:20 31:7,17         pollution 26:24 population         principal 28:13 54:11         prohibit 16:22 probibiton           P         40:15 53:7         20:24 26:5 23:43:33 38:2         postion 4:12,22 57:6         57:6         54:14           P         40:14 43:8,16         5:21,22,23 6:9         principle 57:3,5         54:14           Page 2:2 24:10         47:2 48:3,21         6:11,13,17         44:14 54:20         propetible 57:3,5           24:18 30:1         permitting         26:11,12,13,22         22:19,19 56:23         propetible 57:3,5           34:18 42:11,18         14:18 16:17         26:22 33:16,22         probably 9:8         propetisl 34:4           page 2:2 24:10         permitting         26:11,12,13,22         22:19,19 56:23         propetisl 34:20           pages 24:22         person 36:22         person 36:22         propetisl 34:20         propetisl 32:23           paragraph         12:3 3:10         52:24 52:11,15         44:20         procedural 7:14           paragraph         pick 50:1         possibilty 38:3         36:5         protectl 32:19           paragraph         11:17 16:8         20:6 9:4         30:17 50:10         16:12         46:4 47:1,7,15           paragraph         11:17 16:8	44:13 48:12	permits 4:3 7:18	points 38:22	20:23	15:14 21:9
28:10,18 35:22         27:5,20 28:9         population         54:11         prohibition           46:15 53:7         28:20 31:7,17         18:10         principle 57:3,5         16:18 26:17           9         32:4 33:3 38:2         position 4:12,22         57:6         54:14         project 13:5           page 2:2 24:10         49:17 50:3         10:19 16:6         probably 9:8         project 13:5           34:18 42:11,18         14:18 16:17         26:22 33:16,22         probably 9:8         properties 34:20           9ages 24:22         person 36:22         40:19,20,23         15:10 17:10         properties 34:20           paragraph         1:23 3:10         50:24 52:11,15         44:20         propecal 9:3           paragraph         1:23 3:10         50:24 52:11,15         procedural 7:14         9rospective           paragraph         1:23 3:17         post-transfer         7:21 12:11         42:22 43:4           17:12         pinpointed         power 57:12         procedural 7:14         19:8 38:7           particular 4:19         31:15 50:9         7:15         9:16,16:17         52:21           protectiol 1:9         protectial 31:13         procedures         49:24 47:2           perotiol 2:0         pertiol 2:0         7:4:18 <th>outside 23:11</th> <th>11:18 14:8</th> <th>policy 4:19</th> <th><b>Prima</b> 44:2</th> <th>22:5 23:7 31:4</th>	outside 23:11	11:18 14:8	policy 4:19	<b>Prima</b> 44:2	22:5 23:7 31:4
46:15 53:7         28:20 31:7,17         18:10         principle 57:3,5         16:18 26:17           P         40:14 43:8,16         52:1,22,23 6:9         prior 15:8 30:14         probitis 34:4           P 3:1         47:2 48:3,21         6:11,13,17         probably 9:8         propagation           24:18 30:1         9         permitting         26:11,12,13,22         22:19,19 56:23         properties 34:20           34:18 42:11,18         14:18 16:17         26:22 33:16,22         problem 9:18         properties 34:20           pages 24:22         person 36:22         40:19,20,23         15:10 17:10         properties 34:20           paragraph         1:23 3:10         50:24 52:11,15         44:20         prospective           paragraph         1:23 3:10         50:24 52:11,15         44:20         protect 10:22           paragraph         1:23 3:10         50:24 52:17,0         problems 9:7         28:4 29:21         protect 10:22           pare 97:12.6         Petitioners 1:5         52:16,16,17         problems 9:7         28:4 29:21         protect 10:22           paraframe         pinopinted         post-transfer         procedure 9:6         47:17,21 48:6           part 97:12.6         42:16         30:17 50:10         31:16         22:20 17:2	oversight 7:22	20:24 26:5	pollution 26:24	principal 28:13	prohibit 16:22
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$		27:5,20 28:9	population	54:11	prohibition
P40:14 43:8,165:21,22,23 6:9prior 15:8 30:14prohibits 34:4P 3:147:2 48:3,216:11,13,1744:14 54:20project 13:5page 2:2 24:1049:17 50:310:19 16.622:19,19 56:23probably 9:824:18 30:134:18 42:11,1814:18 16:1726:22 33:16,2222:19,19 56:23properties 34:20pages 24:22person 36:2240:19,20,2315:10 17:10properties 34:20properties 34:20pages 24:22person 36:2240:19,20,2315:10 17:10properties 34:20properties 34:20paragraph1:23 3:1050:24 52:11,1544:28 43:140:3paragraph1:23 3:1050:24 52:11,1544:20prospective24:24,25 25:7Petitioners 1:552:16,16,17problems 9:745:23parcel 39:11pick 50:1possible 37:10procedural 7:1419:8 38:7parcel 39:11pick 50:1post-transfer7:21 12:1142:24 43:4part 9:7 12:642:1630:17 50:1016:1244:24 54:1921:25 56:10po:6 11:9potential 31:13procedures49:24 51:9particular 4:1931:15 50:97:1525:2044:25 45:11particular 4:1931:15 50:97:1525:2044:25 45:11particular 4:19plan 30:21precisely 27:1629:18,20 30:1318:10,18particularly45:10,17 46:2precisely 27:1629:18,20 30:1318:10,18particularlyplan 43:5 45:3greciel 8:1544:7,21 45:2151:6 16:8<	46:15 53:7	28:20 31:7,17	18:10	principle 57:3,5	16:18 26:17
P 3:1         40.14 + 3.6,16         3.21,22,23 + 0.53         Prior 15.3 + 0.14         Products + 4.4           Page 2:2 24:10         47:14 + 5.4,20         Project 13:5         project 13:5           24:18 30:1         47:14 + 5.4,20         project 33:1         project 33:1           34:18 42:11,18         14:18 16:17         26:22 33:16,22         problem 9:18         properties 34:20           page 24:22         person 36:22         40:19,20,23         15:10 17:10         properties 34:20           paragraph         1:23 3:10         50:24 52:11,15         44:24 42:0         properties 34:20           paragraph         2:3:10         50:24 52:11,15         44:20         properties 34:20           paragraph         2:3:10         50:24 52:11,15         44:20         properties 34:20           paragraph         2:3:10         50:24 52:11,15         44:20         properties 34:20           pinpointed         possibility 38:3         pointer 17:14         19:838:7           parcel 39:11         pinpointed         post-transfer         procedural 7:14         19:22 43:4           43:20 44:18         11:17 16:8         power 57:12         31:16         52:21           particular 4:19         pina 30:21         preactie 25:7         proces 27:10,12		32:4 33:3 38:2	position 4:12,22	57:6	54:14
page 2:2 24:10         49:17 50:3         10:19 16:6         probably 9:8         propagation           24:18 30:1         14:18 16:17         26:22 33:16,22         problem 9:18         propagation           34:18 42:11,18         14:18 16:17         26:22 33:16,22         problem 9:18         properties 34:20           pages 24:22         person 36:22         40:19,20,23         11:6,13 13:1         properties 34:20           paragraph         1:23 3:10         50:24 52:11,15         42:8 43:1         40:3           paragraph         1:23 3:10         50:24 52:11,15         problems 9:7         45:23           join 1         2:4,10 53:17         55:2         possible 37:10         procedural 7:14         12:20 17:2           paragraph         pick 50:1         postible 37:10         procedural 7:14         19:8 38:7           parcel 39:11         pinpointed         pott-transfer         7:21 12:11         42:24 24:54           particular 4:19         31:15 50:9         protectial 31:13         procedure 9:6         47:17,21 48:6           particular 4:19         31:15 50:9         7:15         25:20         44:25 45:19         3:16.16         52:21           protectial 31:17         plan 30:21         practica 25:7         30:15 31:25         3:6:14 4:18 </th <th></th> <th>40:14 43:8,16</th> <th>5:21,22,23 6:9</th> <th><b>prior</b> 15:8 30:14</th> <th>prohibits 34:4</th>		40:14 43:8,16	5:21,22,23 6:9	<b>prior</b> 15:8 30:14	prohibits 34:4
24:18 30:1 34:18 42:11,18 45:16,18permitting 14:18 16:17 20:22 33:16,22 34:16 39:1 34:16 39:1 34:16 39:1 34:16 39:1 34:16 39:1 34:16 39:1 34:16 39:1 15:18 pages 24:22 24:24,25 25:7 30:1permont ting 12:3 3:10 petition 24:11 41:2,5 46:3,6,8 45:25 47:20 41:2,5 46:3,6,8 45:25 47:20 24:24,25 25:7 30:1 24:4,10 53:17 		47:2 48:3,21	6:11,13,17	44:14 54:20	project 13:5
34:18 42:11,18       14:18 16:17       26:22 33:16,22       proper 33:1         45:16,18       20:11       34:16 39:1       11:6,13 13:1       proper 33:1         pages 24:22       person 36:22       40:19,20,23       15:10 17:10       proper 33:1         paragraph       1:23 3:10       50:24 52:11,15       44:20       proper 33:1         paragraph       1:23 3:10       50:24 52:11,15       44:20       prosper 33:1         paragraph       2:4,10 53:17       55:2       28:4 29:21       prosper 138:7         paragraph       2:4,10 53:17       55:2       28:4 29:21       protect 10:22         paragraph       pinpointed       post-transfer       7:21 12:11       49:8 38:7         parcel 39:11       pinpointed       post-transfer       7:21 12:11       49:8 38:7         particular 4:19       31:15 50:9       7:15       procedure 9:6       47:17,21 48:6         particular 4:19       31:15 50:9       7:15       25:20       protection 1:9         30:23 31:3       greaticalities       prodecdirgs       25:21       protection 1:9         particular 4:19       31:15 50:9       7:15       25:20       protection 1:9       3:6,14 4:18         particular 4:19       31:15 50:9       7:15<	10	49:17 50:3	10:19 16:6	probably 9:8	propagation
45:16,18       20:11       34:16 39:1       11:6,13 13:1       properties 34:20         pages 24:22       person 36:22       40:19,20,23       15:10 17:10       proposal 9:3         jain 51:18       petitioner 1:10       40:25 46:3,6,8       18:5 35:15,16       40:3         paragraph       1:23 3:10       50:24 52:11,15       44:20       properties 34:20         paragraph       2:23 3:10       50:24 52:11,15       44:20       properties 34:20         paragraph       2:4:24,25 25:7       Petitioner 1:10       50:24 52:11,15       44:20       properties 34:20         parcel 39:11       pinpointed       post-transfer       36:5       propeetive       45:23         part 9:7 12:6       pick 50:1       pinpointed       post-transfer       70:12 12:11       42:24 47:17,21 48:6         particular 4:19       51:16 9:6 11:9       potential 31:13       poceedure 9:6       protected 13:12         particular 4:19       31:15 50:9       7:15       proceedings       25:20       protected 13:12         particular 4:19       31:15 50:9       7:15       protected 13:12       44:25 45:11       protected 13:12         particular 4:19       31:15 50:9       7:15       29:17 36:7       30:15 3 1:25       30:23 31:3       protected 13:12		permitting	26:11,12,13,22	22:19,19 56:23	18:10
pages 24:22 57:13person 36:22 petition 24:1140:19,20,23 41:12,5 46:3,6,815:10 17:10 42:24,22 52:17,15proposal 9:3 propriety 33:23 40:3paragraph 24:24,25 25:7 30:11:23 3:10 2:4,10 53:1750:24 52:11,15 52:16,16,1744:20 problems 9:7 28:4 29:21prospective 45:23 protect 10:22paraphrased 17:13 parcel 39:11 part 9:7 12:61:23 3:10 2:4,10 53:17post-transfer post-transfer 30:177:21 12:11 16:1242:22 43:4 40:3parcel 39:11 part 9:7 12:6pinpointed 15:16 9:6 11:9 place 3:25 5:2post-transfer 53:97:21 12:11 procedures42:22 43:4 47:17,21 48:6 proceduresparticular 4:19 43:20 44:1811:17 16:8 11:17 16:8potential 31:13 proceduresproceedings 25:20protected 13:12 31:16particular 4:19 49:1911:15 50:9 plan 43:5 45:3 a0:21 31:15protected 13:12 29:17 36:7protection 1:9 30:15 31:25parts 41:17 pay 17:8,9 28:11 39:4plans 43:7 plans 43:7prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 process 42:16 proses 42:1630:15 31:25 30:23 31:330:16 13:12 30:23 31:339:4 perint 10:10,11 10:20,20 11:1plans 43:7 10:61:64prefaced 18:15 35:257:16 15:17 30:15 31:25provide 9:2 39:23particularly 41:17,21 22:16,22pinpoint 4:16 7:25 50:20prefaced 18:15 32:2530:23 31:3 30:23 31:330:15 31:25 30:23 31:330:16 13:10 30:15 31:25particularly 99:4plants 43:7 <th></th> <th>14:18 16:17</th> <th>26:22 33:16,22</th> <th>problem 9:18</th> <th>proper 33:1</th>		14:18 16:17	26:22 33:16,22	problem 9:18	proper 33:1
57:13 pain 51:18 paragraph 24:24,25 25:7 	· ·	20:11	34:16 39:1	11:6,13 13:1	properties 34:20
pain 51:18 paragraph 24:24,25 25:7 30:1Petition 24:11 1:23 3:10Hisp 40:25 47:20 42:8 43:1Hor of 30:25 40:324:24,25 25:7 30:1Petitioners 1:5 1:23 3:1050:24 52:11,15 55:244:20 prospectiveparaphrased parcel 39:11 parcel 39:11 part 9:7 12:6Petitioners 1:5 2:4,10 53:1755:2 55:228:4 29:21 procedural 7:14prospective 45:23 procedural 7:1417:13 parcel 39:11 part 9:7 12:6pinpointed 42:16post-transfer 30:17 50:107:21 12:11 16:1242:22 43:417:12,14,17 22:5 39:11 43:20 44:18pine 3:25 5:2 51:25 56:10 particular 4:1951:6 9:6 11:9 31:15 50:9potential 31:13 proceduresprocedures 49:24 51:9particular 4:19 56:25plan 30:21 plant 43:5 45:3practicalities 30:23 31:3procedures 25:20protection 1:9 36:4 4:18particular 4:19 49:19plant 43:7 plant 43:7precisely 27:16 prefaced 18:1529:17 36:7 44:721 48:4 prefaced 18:1530:15 31:25 44:721 45:21 45:20 48:1,3 prefaced 18:15processes 44:14 45:20 48:1,3 prefaced 18:15provide 9:2 44:22 14:4particularly 49:19plant 43:7 plant 43:7preference 4:18 46:21 49:21,23 prefaced 18:15processes 44:14 provide 9:2particularly 49:49plant 43:7 prefaced 28:16 present 42:4program 3:16 program 3:1620:21 51:8 provide 9:2particularly 49:49plant 43:7 prefaced 28:16 present 42:4provide 3:14 provide 3:14provide 17:20 provide 9:2particularly 49:40plant 4	10	-		15:10 17:10	proposal 9:3
paragraph 24:24,25 25:7 30:11:23 3:1050:24 52:11,1544:20prospective 45:23 prospective24:24,25 25:7 30:1Petitioners 1:5 2:4,10 53:1755:228:4 29:21 possibility 38:3 possibility 38:3problems 9:7 28:4 29:21prospective 45:23paraphrased 17:13 parcel 39:11 partel 39:11 partel 39:11 partel 42:16pinpointed post-transfer post-transferprocedural 7:14 7:21 12:11 16:1219:8 38:7 42:22 43:417:12,14,17 22:5 39:11 43:20 44:18 51:6 9:6 11:9 11:17 16:8 23:25 56:10 24:6 43:4 24:6 43:4pinpointed potential 31:13 power 57:12 plant 30:21 plant 30:21 pratice 25:7procedure 9:6 procedures procedures49:24 51:9 49:24 51:927:19 31:16 56:25 particularly 15:8,15 18:4 49:19 parts 41:17 parts		petition 24:11	41:2,5 46:3,6,8	18:5 35:15,16	propriety 33:23
24:24,25 25:7 30:1Petitioners 1:5 2:4,10 53:1752:16,16,17 55:2problems 9:7 28:4 29:2145:23 protect 10:22paraphrased 17:13phone 38:5 pippointedpossible 37:10 post-transferprocedural 7:14 7:21 12:1145:23 16:12pared 39:11 partel 39:11pippointed 42:16gost-transfer 30:17 50:107:21 12:11 16:1246:4 47:1,7,15 42:22 43:417:12,14,17 43:20 44:18fil:17 16:8 11:17 16:8gott file 9:6 potential 31:13 power 57:12procedure 9:6 procedures47:17,21 48:6 49:24 51:927:19 31:16 56:2520:6 29:4 plant 43:5 45:3 46:4 47:7,15gractice 25:7 30:23 31:3proceedings 27:15 29:16,17grotection 1:9 36:14 4:1815:8,15 18:4 49:1946:4 47:7,15 plant 43:7grecisely 27:16 prefaced 18:15 prefaced 18:15grecisely 27:16 29:17 36:7grotection 4:1 30:15 31:2539:4 9erent 22:16 percent 39:24 percent 39:24 period 22:16 percent 39:24gresents 42:4 prefaced 18:15 presents 42:4 presents 42:4gresents 42:4 presents 42:4 presents 42:4 program 3:16grovide 17:20 20:21 51:8 provide 9:2 39:2339:4 9:19glass 3:12 24:5 plant 4:16 7:25 persent 42:4gresents 42:4 presents 42:4 presents 42:4grovide 3:14 2:2:3 25:1610:20,20 11:1 10:61 6:435:25rife 15:17 39:10,21 53:7grey 3:14 2:3:25:1611:22 12:16,22 13:14 15:2129:11 31:10,11 29:11 31:10,11grey 42:229:11 31:10,11 14:2:242:220:4 2:2110:20,20 11:1 10:61 6:4g	-	Petitioner 1:10		42:8 43:1	40:3
30:12:4,10,53:1755:228:4,29:21protect 10:22paraphrased 17:13phone 38:5 pick 50:1possibility 38:3 possible 37:1036:512:20,17:2parcel 39:11 parcel 39:11pinpointed 42:16gost-transfer 30:17,50:107:21,12:1142:22,43:4part 9:7,12.6 22:5,39:1142:1630:17,50:1016:1246:4,47:1,7,15part 9:7,12.6 22:5,39:115:16,9:6,11:9 5:16,9:6,11:9potential 31:13 potential 31:13procedure 9:6 procedure 9:647:17,21,48:6particular 4:19 56:2531:15,50:9 plant 43:5,45:37:15 30:23,31:3procedings 25:20protected 13:12 25:20particularly 49:1945:10,17,46:2 plant 43:5,45:3precisely 27:16 30:23,31:329:18,20,30:13 30:23,31:318:10,18 18:10,18particularly 49:1945:2,548:7 plant 43:7prefaced 18:15 prefaced 18:1544:7,21,45:21 44:7,21,45:21 stileprovide 9:2 39:23,39:23gay 17:8,9,28:11 39:4plant 43:7 plax 43:7preference 4:18 presents 42:16 presents 42:16process 44:14 program 3:16 35:25provide 9:2 3:16,19,21,23gay 17:8,9,28:11 10:20,20,11:110:6,16:4 8:8,23,9:16present 42:16 present 42:4projegram 3:16 35:25goind 4:16,7:25 perunt 10:10,11 13:14,15:21 29:11,31:10,11presumably 42:23:16,19,21,23 39:10,21,53:711:22,12:16,22 13:14,15:2125:22,26:10 29:11,31:10,11pretty 17:13 42:216:1,17,19:11 19:11,20:12,3213:14,15:21 13:14,15:2129:11,31:10,11 29:11,31		1:23 3:10	50:24 52:11,15	44:20	prospective
paraphrased 17:13 parcle 39:11phone 38:57 pick 50:1possibility 38:3 possibile 37:10possibility 38:3 possibile 37:10protect 10:22 12:20parcel 39:11 parcel 39:11pinpointed 42:16possibile 37:10 post-transfer 30:17 50:10post-transfer 16:1236:5 procedural 7:1419:8 38:7 42:22 43:417:12,14,17 22:5 39:11place 3:25 5:2 5:16 9:6 11:953:9 potential 31:13 power 57:12procedure 9:6 procedures47:17,21 48:6 49:24 51:920:6 29:4 31:15 50:9practice 25:7 plant 43:5 45:3procedures 31:15 50:931:1652:21 protected 13:12particularly 49:19jlan 30:21 plant 43:5 45:3practice 25:7 so:23 31:3proceedings 27:15protection 1:9 3:6;14 4:18particularly 49:1946:4 47:7,15 plant 43:7 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 parts 41:17 percent 39:24 percent 39:24 period 22:16 point 4:16 7:25prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 prefaced 18:15 presents 42:4 presents 42:4 presents 42:4 presents 42:4 present 42:4 present 42:4 proscess 44:14 provide 9:2 39:23provide 17:20 20:21 51:8 provide 9:2 39:23 39:23part 10:10,11 10:20,20 11:1 10:20,20 11:1 11:22 12:16,22point 4:16 7:25 present 42:4 proscess 42:7 present 42:4 proscess 42:4 program 3:16 proscess 44:14 provide 3:14 22:3 25:16provide 17:20 20:21 51:8 provide 3:14 22:3 25:1610:20,20 11:1 10:20,20 11:1 10:6 16:4prest 42:7 35:25 <th>· ·</th> <th>Petitioners 1:5</th> <th>52:16,16,17</th> <th>problems 9:7</th> <th></th>	· ·	Petitioners 1:5	52:16,16,17	problems 9:7	
17:13 parcel 39:11 parcel 39:11pick 50:1 pinpointed 42:16possible 37:10 possible 37:10procedural 7:14 7:21 12:1119:8 38:7 42:22 43:4part 9:7 12:6 17:12,14,17 22:5 39:1142:16 5:16 9:6 11:9 13:12 5 56:10jost-transfer 5:16 9:6 11:9jost-transfer post-transfer 30:17 50:10jrocedural 7:14 16:1219:8 38:7 42:22 43:4a3:20 44:18 51:25 56:10 20:6 29:411:17 16:8 20:6 29:4jott 10:10,11 potential 31:13 power 57:12jott 10:10,11 15:8,15 18:4 46:4 47:7,15jott 10:10,11 42:2jott 10:10,11 10:10,11a9:19 percent 39:24 percent 39:24plans 43:7 plas 41:17prefaced 18:15 point 4:16 7:25 point 4:16 7:25present 42:16 protecting 45:19 present 42:16jott 10:10,11 provide 17:20a9:4 period 22:16 percent 39:24 period 22:16point 4:16 7:25 point 4:16 7:25present 42:7 present 42:7jott 10:10,11 protection 1:9jott 10:10,11 jott 4:16 7:25a1:12 period 22:16 period 22:16 period 22:16 period 22:16point 4:16 7:25 point 4:16 7:25present 42:7 present 42:7jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25a1:12 period 22:16 period 22:16 period 22:16 period 22:16jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25a1:12 period 22:16 period 22:16jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25jott 10:10,11 jott 4:16 7:25a1:12 period 22:16 period 22:16 <th></th> <th>· ·</th> <th>55:2</th> <th>28:4 29:21</th> <th>protect 10:22</th>		· ·	55:2	28:4 29:21	protect 10:22
parcel 39:11 part 9:7 12:6pinpointed 42:16post-transfer 30:17 50:107:21 12:11 16:1242:22 43:4 46:4 47:1,7,1517:12,14,17 22:5 39:11place 3:25 5:2 5:16 9:6 11:9 43:20 44:185:16 9:6 11:9 11:17 16:8potential 31:13 power 57:12procedure 9:6 9rocedure 9:647:17,21 48:6 49:24 51:931:15 50:9 56:2520:6 29:4 9lan 30:21 56:25protectial 31:13 plan 30:21 plan 30:21protectial 31:13 power 57:12procedures 31:1642:24 51:9 52:2127:19 31:16 56:25plan 30:21 plant 43:5 45:3practice 25:7 30:23 31:3proceedings 27:15 29:16,17protectial 19:12 30:15 31:2524:6 43:4 49:1945:10,17 46:2 plant 43:7 pay 17:8,9 28:11 39:446:4 47:7,15 44:23,25 48:7 plase 3:12 24:5 50:20preference 4:18 prefaced 18:15 present 42:4 present 42:4 present 42:6proceedures proceedings 29:17 36:7 prefaced 18:15protection 1:9 32:2 34:1739:4 perent 39:24 period 22:16 permit 10:10,11plans 43:7 s0:20prefaced 18:15 present 42:4 present 42:4 present 42:4provide 3:14 20:21 51:8permit 10:10,11 10:20,20 11:1 10:6 16:435:25 25:22 26:10 25:22 26:10prety 17:13 20:1 51:1730:16,1,71 9:11 39:10,21 53:711:22 12:16,22 13:14 15:21 13:14 15:2129:11 31:10,11 42:242:220:4 22:2119:14,25 45:7		L			
part 9:7 12:6part 9:7 12:6part 9:7 12:6pose 0:17 50:1016:1216:1217:12,14,17place 3:25 5:253:9procedure 9:647:17,21 48:622:5 39:1151:6 9:6 11:9potential 31:13procedure 9:647:17,21 48:643:20 44:1811:17 16:8power 57:1231:1652:2151:25 56:1020:6 29:4practicalitiesproceedingsprotected 13:1227:19 31:1631:15 50:97:1525:2044:25 45:1156:25plant 43:5 45:330:23 31:327:15 29:16,173:6,14 4:1815:8,15 18:446:4 47:7,1529:17 36:730:15 31:25protection 1:924:6 43:447:21 48:4preference 4:1846:21 49:21,23provide 9:2pay 17:8,9 28:11play 46:23preference 4:1846:21 49:21,23provide 9:2partiol 22:16point 4:16 7:25pres 42:73:16,19,21,23provide 17:20pereind 22:16point 4:16 7:25pres 42:73:16,19,21,23provide 3:14permit 10:10,1110:6 16:435:257:16 15:1739:10,21 53:711:22 12:16,2225:22 26:10pretty 17:1316:1,17 19:1120:21 51:813:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7		-	1	-	
17:12,14,17       place 3:25 5:2       53:9       procedure 9:6       47:17,21 48:6         22:5 39:11       5:16 9:6 11:9       53:9       procedure 9:6       49:24 51:9         43:20 44:18       11:17 16:8       power 57:12       31:16       52:21         particular 4:19       31:15 50:9       7:15       25:20       protected 13:12         particularly       15:10,17 46:2       practice 25:7       process 27:10,12       3:6,14 4:18         particularly       45:10,17 46:2       precisely 27:16       29:18,20 30:13       18:10,18         15:8,15 18:4       46:4 47:7,15       29:17 36:7       30:15 31:25       protection 1:9         parts 41:17       plants 43:7       prefaced 18:15       44:7,21 45:21       45:20 48:1,3         period 22:16       point 4:16 7:25       presents 42:4       program 3:16       20:21 51:8         permit 10:10,11       10:6 16:4       35:25       7:16 15:17       39:10,21 53:7         11:22 12:16,22       25:22 26:10       pretty 17:13       16:1,17 19:11       39:10,21 53:7         13:14 15:21       29:11 31:10,11       42:2       20:4 22:21       19:14,25 45:7	1		-		
22:5 39:11 43:20 44:18 51:25 56:10 particular 4:19 27:19 31:16 56:25pice of 11:9 11:17 16:8 20:6 29:4 31:15 50:9potential 31:13 power 57:12 practicalitiesprocedures 31:16 proceedings 25:2049:24 51:9 52:21particularly 27:19 31:16 56:25a):15 50:9 plant 43:5 45:3practice 25:7 30:23 31:3proceedings 25:20protected 13:12 44:25 45:11particularly 49:1945:10,17 46:2 plant 43:5 45:3precisely 27:16 29:17 36:729:18,20 30:13 30:15 31:25protection 1:9 3:6,14 4:1849:19 49:19plants 43:7 plants 43:7predicting 45:19 prefaced 18:15 prefaced 18:1530:15 31:25 30:23 31:3protections 4:1 39:439:4 period 22:16 period 22:16 perint 10:10,11 10:20,20 11:1plants 4:16 7:25 8:8,23 9:16presents 42:4 presumably 35:25provide 17:20 20:21 51:8provided 17:20 20:21 51:820:21 51:8 provided 17:20 20:21 51:8provides 3:14 22:3 25:16permit 10:10,11 13:14 15:2129:11 31:10,11 29:11 31:10,1142:220:4 22:2113:14 15:21 13:14 15:2129:11 31:10,1142:220:4 22:21	1				
43:20 44:18 51:25 56:10 particular 4:1911:17 16:8 20:6 29:4 31:15 50:9power 57:12 practicalities31:16 proceedings52:21 protected 13:1227:19 31:16 56:25plan 30:21 plant 43:5 45:3practice 25:7 30:23 31:3proceedings 25:20protection 1:9 3:6,14 4:18particularly 15:8,15 18:4 24:6 43:4 49:1945:10,17 46:2 46:4 47:7,15precisely 27:16 29:17 36:729:18,20 30:13 30:23 31:318:10,18 protection 1:9parts 41:17 pay 17:8,9 28:11 39:4play 46:23 play 46:23 percent 39:24play 46:23 prepared 28:16 presents 42:4preference 4:18 present 42:4 present 42:446:21 49:21,23 provide 9:2provide 9:2 39:23parti 10:10,11 10:20,20 11:18:8,23 9:16 10:20,20 11:1s:8,23 9:16 10:6 16:4presumably 35:253:16,19,21,23 7:16 15:17provides 3:14 22:3 25:1611:12 12:16,22 13:14 15:2129:11 31:10,11 29:11 31:10,1142:220:4 22:2119:14,25 45:7	, , , , , , , , , , , , , , , , , , ,	1		-	<i>'</i>
51:25 56:1020:6 29:4practicalitiesproceedingsprotected 13:12particular 4:1931:15 50:97:1525:2044:25 45:1127:19 31:16plan 30:21practice 25:7proceess 27:10,1244:25 45:1156:25plant 43:5 45:330:23 31:327:15 29:16,173:6,14 4:18particularly45:10,17 46:2precisely 27:1629:18,20 30:1318:10,1815:8,15 18:446:4 47:7,1529:17 36:730:15 31:25protections 4:124:6 43:447:21 48:4predicting 45:1932:2 34:175:16 16:849:19plants 43:7prefaced 18:1544:7,21 45:2145:20 48:1,3parts 41:1744:23,25 48:7preference 4:1846:21 49:21,23provide 9:2pay 17:8,9 28:11glay 46:23presents 42:4program 3:1620:21 51:8period 22:16point 4:16 7:25press 42:73:16,19,21,23grovides 3:14permit 10:10,118:8,23 9:16mesumably4:20 5:14,1422:3 25:1610:20,20 11:110:6 16:435:257:16 15:1739:10,21 53:711:22 12:16,2225:22 26:10pretty 17:1316:1,17 19:1120:4 22:2113:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7			-	-	
particular 4:19 27:19 31:16 56:2531:15 50:9 plan 30:21 plan 30:21 plan 43:5 45:3practice 25:7 so:23 31:3process 27:10,12 25:2044:25 45:11 44:25 45:11particularly 15:8,15 18:4 24:6 43:4 49:1946:4 47:7,15 46:4 47:7,1529:17 36:7 predicting 45:19 prefaced 18:1527:15 29:16,17 30:23 31:33:6,14 4:18 18:10,18parts 41:17 pay 17:8,9 28:11 39:4plans 43:7 plase 3:12 24:5predicting 45:19 prefaced 18:1530:15 31:25 so:15 31:25protections 4:1 29:17 36:7 prefaced 18:15parts 41:17 pay 17:8,9 28:11 39:4plase 3:12 24:5 premit 10:10,11preference 4:18 presents 42:4 presents 42:446:21 49:21,23 processes 44:14 program 3:16provide 9:2 39:23period 22:16 period 22:16 period 22:16 period 22:16 period 22:16point 4:16 7:25 stas 23 9:16presents 42:4 presents 42:7 presumablyproocesses 44:14 35:25provide 17:20 20:21 51:810:20,20 11:1 10:6 16:4 13:14 15:2129:11 31:10,11 29:11 31:10,1142:220:4 22:21provision 16:18 19:14,25 45:7			-		
27:19 31:16 56:25plan 30:21 plant 43:5 45:3practice 25:7 30:23 31:3process 27:10,12 27:15 29:16,17protection 1:9 3:6,14 4:18particularly 15:8,15 18:4 24:6 43:4 49:1945:10,17 46:2 46:4 47:7,15precisely 27:16 29:17 36:729:18,20 30:13 30:15 31:2518:10,18 protections 4:1 5:16 16:8parts 41:17 pay 17:8,9 28:11 39:4plans 43:7 44:23,25 48:7 precent 39:24 period 22:16 permit 10:10,11predicting 45:19 prefaced 18:1532:2 34:17 44:23,25 48:7 prefaced 18:155:16 16:8 45:20 48:1,3 prefaced 18:15period 22:16 permit 10:10,11 10:6 16:4point 4:16 7:25 8:8,23 9:16presents 42:4 presumablyproocesses 44:14 program 3:16 35:25provide 17:20 20:14,1410:20,20 11:1 11:22 12:16,2225:22 26:10 29:11 31:10,11pretty 17:13 42:23:16,19,21,23 16:1,17 19:11 20:4 22:21provision 16:18 19:14,25 45:7			-		-
56:25 particularly 15:8,15 18:4 49:19plant 43:5 45:3 (46:4 47:7,15)30:23 31:3 (27:15 29:16,17)protection 1.9 (27:15 29:16,17)24:6 43:4 49:1946:4 47:7,15 (44:23,25 48:7)29:17 36:7 (29:17 36:7)29:18,20 30:13) (30:15 31:25)30:15 31:25 (30:15 31:25)30:16 16:8 (44:7,21 45:21)parts 41:17 parts 41:17 parts 41:17plants 43:7 (44:23,25 48:7)predicting 45:19 (44:23,25 48:7)30:15 31:25 (29:17 36:7)30:15 31:25 (30:15 31:25)protections 4:1 (30:15 31:25)parts 41:17 parts 41:17plants 43:7 (44:23,25 48:7)preference 4:18 (44:23,25 48:7)preference 4:18 (44:23,25 48:7)46:21 49:21,23 (30:8 51:8)provide 9:2 (30:20 48:1,3)percent 39:24 period 22:16 period 22:16point 4:16 7:25 (50:20)presents 42:4 (7:16 15:17)provide 17:20 (20:21 51:8)permit 10:10,11 10:6 16:435:25 (25:22 26:10)presty 17:13 (16:1,17 19:11)30:10,21 53:7 (16:1,17 19:11)13:14 15:21 13:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7	-				
particularly 15:8,15 18:4 24:6 43:4 49:1945:10,17 46:2 46:4 47:7,15 47:21 48:4precisely 27:16 29:17 36:7 predicting 45:19 32:2 34:1729:18,20 30:13 30:15 31:25 30:15 31:2518:10,18 protections 4:1 5:16 16:8parts 41:17 parts 41:17 pay 17:8,9 28:11 39:4plants 43:7 44:23,25 48:7 play 46:23 percent 39:24 period 22:16 period 22:16 permit 10:10,11 10:20,20 11:1 11:22 12:16,22predicting 45:19 10:6 16:429:18,20 30:13 30:15 31:2518:10,18 protections 4:1 5:16 16:8parts 41:17 pay 17:8,9 28:11 39:4plants 43:7 44:23,25 48:7 play 46:23 period 22:16 period 22:16 period 22:16 period 22:16preference 4:18 presents 42:4 press 42:7 press 42:		-	-	- '	
15:8,15 18:4 24:6 43:4 49:1946:4 47:7,15 47:21 48:4 plants 43:7 44:23,25 48:729:17 36:7 predicting 45:19 32:2 34:1730:15 31:25 32:2 34:17 44:7,21 45:21 44:7,21 45:21protections 4:1 5:16 16:8 45:20 48:1,3parts 41:17 pay 17:8,9 28:11 39:4plants 43:7 44:23,25 48:7 play 46:23 period 22:16 period 22:16 perind 22:16 permit 10:10,11 10:20,20 11:1 11:22 12:16,22play 46:23 piase 3:12 24:5 50:20preference 4:18 prefaced 18:15 prefaced 28:16 presents 42:4 press 42:7 presumably 35:25processes 44:14 program 3:16 3:16,19,21,23 4:20 5:14,14provide 9:2 39:23point 4:16 7:25 permit 10:10,11 10:6 16:4 13:14 15:21pint 4:16 7:25 25:22 26:10 29:11 31:10,11presumably 42:23:16,19,21,23 4:20 5:14,14 7:16 15:17provides 3:14 29:10 20:4 22:21provision 16:18 19:14,25 45:7		1			
24:6 43:4 49:1947:21 48:4 plants 43:7 44:23,25 48:7 pay 17:8,9 28:11 39:4predicting 45:19 prefaced 18:1532:2 34:17 44:7,21 45:215:16 16:8 45:20 48:1,3 provide 9:2 39:23pay 17:8,9 28:11 39:4play 46:23 please 3:12 24:5 50:20preference 4:18 prepared 28:16 press 42:732:2 34:17 44:21,21 45:215:16 16:8 45:20 48:1,3 provide 9:2 39:23period 22:16 period 22:16 period 22:16 10:20,20 11:1 11:22 12:16,22point 4:16 7:25 8:8,23 9:16 10:6 16:4press 42:7 35:25program 3:16 3:16,19,21,23provided 17:20 20:21 51:8provide 3:14 provide 3:14 22:3 25:16press 42:7 39:10,21 53:7provide 3:14 22:3 25:16period 22:16 period 22:16 period 22:16 period 22:16 period 22:16 period 22:16 period 22:16press 42:7 25:22 26:10 29:11 31:10,11presumably 42:23:16,19,21,23 39:10,21 53:7provides 3:14 29:10,21 53:7		,		,	<i>'</i>
49:19 parts 41:17 pay 17:8,9 28:11 39:4plants 43:7 44:23,25 48:7 play 46:23 percent 39:24 period 22:16 permit 10:10,11 10:20,20 11:1plants 43:7 44:23,25 48:7 play 46:23 point 4:16 7:25 8:8,23 9:16prefaced 18:15 44:7,21 45:21 addition 4:16 7:25 presents 42:444:7,21 45:21 44:7,21 45:21 addition 4:16 7:25 presents 42:445:20 48:1,3 provide 9:2 39:23period 22:16 permit 10:10,11 10:20,20 11:1point 4:16 7:25 10:6 16:4presents 42:4 presents 42:4program 3:16 3:16,19,21,23provided 17:20 20:21 51:8period 22:16 permit 10:10,11 11:22 12:16,22point 4:16 7:25 10:6 16:4presents 42:4 presumablyprogram 3:16 3:16,19,21,23provides 3:14 22:3 25:1613:14 15:21 13:14 15:2129:11 31:10,1142:220:4 22:21provision 16:18 19:14,25 45:7	,	,			-
parts 41:1744:23,25 48:7preference 4:1846:21 49:21,23provide 9:239:4please 3:12 24:5prepared 28:16precent 39:24point 4:16 7:25presents 42:4program 3:16period 22:16point 4:16 7:25s8.8,23 9:16presumably3:16,19,21,23provides 3:1410:20,20 11:110:6 16:435:257:16 15:1739:10,21 53:711:22 12:16,2225:22 26:10pretty 17:1316:1,17 19:1139:10,21 53:713:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7					
pay 17:8,9 28:11 39:4play 46:23 please 3:12 24:5premise 47:19 prepared 28:16 presents 42:450:8 51:8 processes 44:14 program 3:1639:23 provided 17:20 20:21 51:8period 22:16 permit 10:10,11 10:20,20 11:1point 4:16 7:25 8:8,23 9:16presents 42:4 press 42:7program 3:16 3:16,19,21,2339:23 provided 17:20 20:21 51:8permit 10:10,11 10:20,20 11:110:6 16:4 25:22 26:10 13:14 15:21press 42:7 25:22 26:10 29:11 31:10,113:16,19,21,23 4:20 5:14,14provides 3:14 22:3 25:16 39:10,21 53:7		-	-	· · ·	· · · · · · · · · · · · · · · · · · ·
39:4 percent 39:24 period 22:16 permit 10:10,11 10:20,20 11:1please 3:12 24:5 50:20 point 4:16 7:25 8:8,23 9:16 10:6 16:4prepared 28:16 presents 42:4 presumably 35:25processes 44:14 program 3:16provided 17:20 20:21 51:8 provides 3:14 22:3 25:1611:22 12:16,22 13:14 15:2125:22 26:10 29:11 31:10,11prepared 28:16 presumably 4:20 5:14,14provides 3:14 22:3 25:16	-		1	· · · · · · · · · · · · · · · · · · ·	-
percent 39:24 period 22:16 permit 10:10,11 10:20,20 11:1product 51:12 21:0 50:20 point 4:16 7:25 8:8,23 9:16prophred 20:10 presents 42:4 press 42:7 presumably 35:25program 3:16 3:16,19,21,23 4:20 5:14,14 7:16 15:17 16:1,17 19:11 20:4 22:2120:21 51:8 20:21 51:8 provides 3:14 22:3 25:16period 22:16 permit 10:10,11 10:6 16:4 13:14 15:21presents 42:4 presumably 25:22 26:10 29:11 31:10,11presents 42:4 presumably 35:25program 3:16 3:16,19,21,23 4:20 5:14,14 7:16 15:17 16:1,17 19:11 20:4 22:2120:21 51:8 provides 3:14 22:3 25:16	1 0 /		-		
period 22:16point 4:16 7:25press 42:73:16,19,21,23provides 3:14permit 10:10,1110:6 16:45:255:253:16,19,21,23provides 3:1411:22 12:16,2225:22 26:105:257:16 15:1739:10,21 53:713:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7		1		-	-
permit 10:10,11 10:20,20 11:1 11:22 12:16,228:8,23 9:16 10:6 16:4 25:22 26:10 29:11 31:10,11presumably 35:25 pretty 17:134:20 5:14,14 7:16 15:17 16:1,17 19:11 20:4 22:2122:3 25:16 39:10,21 53:7 provision 16:18 19:14,25 45:7	-			1 0	
10:20,20 11:110:6 16:435:257:16 15:1739:10,21 53:711:22 12:16,2225:22 26:10pretty 17:1316:1,17 19:11provision 16:1813:14 15:2129:11 31:10,1142:220:4 22:2119:14,25 45:7	-	-			-
11:22 12:16,22 13:14 15:2125:22 26:10 29:11 31:10,11pretty 17:13 42:216:1,17 19:11 20:4 22:21provision 16:18 19:14,25 45:7	-	,		,	
13:14     15:21     29:11     31:10,11     42:2     20:4     22:21     19:14,25     45:7	· ·				· ·
	-			· ·	-
<b>prevent</b> 15:25 23:9,16 25:10 45:10,12 54:11		,			· · · · · · · · · · · · · · · · · · ·
	11.3 21.17	33:0 34:10	prevent 15:25	25:9,10 25:10	45:10,12 54:11

	1		1	•
54:12	raised 11:22	reflection 26:22	9:12 11:17,23	retreated 14:3
provisions 12:1	12:12,13 34:15	31:2	18:1 20:23	return 14:10
16:19,22 19:5	54:22	reflects 14:14	22:23 49:6	review 27:22
29:14	raises 13:1	refund 36:22	57:17	31:16,21 46:1
proximate 54:12	rare 36:8	refusal 22:10	required 15:23	53:9
54:14	reach 32:3	refuse 17:4	25:23	reviewing 27:5
<b>public</b> 11:18	read 26:4 30:1	refused 22:7	requirement	<b>rid</b> 42:20
17:21 53:21,25	37:6,7,12,20	refuses 52:23	27:1	<b>right</b> 11:14 18:2
53:25 57:2,20	37:21 42:1	refusing 22:9	requirements	27:4 28:8 30:5
purely 38:17	45:15 54:11	regard 41:16	10:12 16:13	37:18 44:2
purpose 27:12	<b>reads</b> 24:25	46:2 49:19	23:11 26:6	52:18
purposes 14:25	real 37:25	50:5	requires 8:3,4	rightly 8:12
put 29:21 50:9	realize 8:22	regarded 54:3	18:24 21:23	<b>risk</b> 42:4,4
50:17 51:10,12	really 7:14	regulation 21:22	27:11	<b>Roberts</b> 3:3 6:17
<b>putting</b> 17:11	29:21 36:11	22:1 45:2	requiring 11:6	23:24 27:3,17
20:6 33:10	50:18 53:21	53:23	reserve 23:22	29:1 31:5,10
	reason 12:3 13:5	regulations 7:14	resolved 54:19	34:24 35:10,24
Q	15:9 31:4	11:10,17,23	respect 8:7,16	44:11 45:22
quality 10:17,21	34:13 38:7,25	12:10 14:6	9:23,25 10:17	46:8,12,17
12:18,20,25	40:25 43:17	20:23 21:4	12:18 13:16	53:12,14 57:22
13:6,9,10,13	reasonable 12:6	22:20	14:20 33:2	role 7:22
13:14,16 14:16	reasoning 15:23	regulatory	34:12 44:24	roughly 38:13
19:10	37:5	55:15	53:19 54:8	<b>rules</b> 35:2,4,5
quality-related	rebuttal 2:8	reinforce 40:3	respond 9:8	<b>ruling</b> 51:4
14:13	53:16 54:17	reinforced 4:17	11:13 12:12	running 23:9
question 4:8	recall 22:20	reinforces 34:14	Respondents	
8:19,23 9:10	received 14:10	related 41:17	1:25 2:7 24:3	<u> </u>
10:14 11:12	<b>recite</b> 57:13	religious 34:21	55:12	s 1:21 2:1,3,9
15:4,14 21:14	recognize 36:6	remain 16:21	<b>Respondent's</b>	3:1,9 47:22
24:9 26:13	recognized	remaining 53:15	16:6	53:16
35:15 36:21	53:22	remand 26:21	response 8:18	safeguard 43:9
40:19 41:4	recognizing	34:14 40:4	9:3,19 12:7	safety 35:2
43:20 44:10	49:12	47:22 55:5	25:13 26:12	sake 51:24
47:19,24 48:11	reconcile 32:21	remanded 50:24	39:8	salamander
53:11	reconciled 25:18	remedy 12:13	responses 18:21	36:23
questioning	26:1 29:15,18	repeal 15:3	responsibilities	salmon 28:14
33:8	record 32:8	repeals 15:3	28:10	satisfactory
questions 36:10	33:19 40:21	replicated 16:8	responsibility	15:9
<b>quite</b> 8:12 27:3	42:2,10 45:16	reply 33:6 39:3	33:15	satisfied 4:16
40:20	47:25	39:8	<b>rest</b> 16:16	6:15 37:19
<b>quote</b> 24:23	recovery 42:14	report 18:23	restriction	41:6,18
<b>quoted</b> 57:10	references 19:3	reports 56:3	54:15	satisfies 3:21
R	referred 13:23	Representative	result 15:17	satisfy 3:17
$\frac{\mathbf{R}}{\mathbf{R} 1:24\ 2:6\ 3:1}$	referring 6:1	57:10	26:24 34:4	10:11 12:16
<b>K</b> 1.24 2.0 3.1 24:2	13:20 24:24	represented	37:19,24 41:1	17:11
<b>railroad</b> 17:20	reflected 7:11	25:15	results 48:14	saying 7:1,7
raise 36:20	25:20	require 8:10 9:6	retains 12:21	12:23 17:19,22
1 aist 30.20				
	1		1	

	1	1	1	
18:5 26:15	service 5:11 8:6	sorry 25:2 29:2	51:9 52:9,13	43:16,24 44:13
29:15 32:9,13	11:20 12:1,14	34:22	52:21 53:1	44:16,19 45:1
33:18,23 40:24	13:11,17 14:9	sort 5:18 7:18	54:8	47:2 49:2,11
42:1 44:12,21	27:21 28:20	8:23 13:7 16:8	specifically	50:1 52:2,22
45:15 49:19,21	30:16 32:3	16:12 23:9	11:19 15:13	53:5 54:17
49:22 57:11	38:4 42:12	41:22	22:20 25:16	55:16
says 4:13 17:15	44:15,24 45:14	SOUR 11:11	39:10 42:16	states 1:1,18
22:14,15 25:7	46:1 47:25	Souter 7:25 8:10	specifics 50:15	4:19,20 5:16
26:9 30:23	49:12 50:8	8:22 9:17 10:6	speculate 28:2	7:8 9:8,13
32:4 34:3,25	51:16 53:7	10:14,23 11:3	speculative 48:5	11:12 19:12,18
35:11 38:24	services 10:3	12:5,23 14:21	<b>spell</b> 30:16	20:9,10 21:3
44:16,19 51:4	25:8 30:24	15:1,5,22	spelled 28:6	21:23 32:5
Scalia 13:4	set 3:22 12:19	20:22 27:25	50:17	33:3 35:11,24
14:11 24:16,19	26:1 35:1	44:4 50:12,25	sponsor 57:10	48:20 49:6,16
24:22 25:1,3,5	55:15	51:10 52:3	<b>spur</b> 17:20	49:20 50:1,4
26:4,11 27:2	setting 19:5,6,7	southwestern	stage 30:21	51:18,23 52:4
29:3,7,24 30:6	shellfish 18:11	42:17	standard 17:12	54:21
30:18 39:13,18	18:19	speaks 15:13	57:1	state's 3:16 6:20
40:5 43:13,22	<b>shift</b> 41:8	special 28:11	standards 10:21	7:3,16 10:25
47:5,8,14	<b>short</b> 50:14	species 4:3 5:3,9	12:17,19,25	19:9 25:9
51:17,22 52:15	<b>show</b> 43:16 44:1	5:13 6:4,25 7:6	13:9,10,13,14	30:25 48:9,25
54:16 55:5	44:5	7:10 8:7,14,25	17:18 19:5,8,9	54:6
56:8	<b>shows</b> 32:8	9:11,23 10:1,5	19:10 22:4	State-adminis
Scalia's 52:3	side 4:9 13:1	10:16,18,22	23:7	21:9
scope 10:5 22:12	30:11 31:2	11:21 12:20	start 17:4 24:6	status 33:18,19
section 3:13 4:2	33:11	13:5,12,19	state 3:15,18,18	statute 4:23 7:7
4:4,5,13 5:3,8	<b>sign</b> 51:18,23	14:22,24 15:24	4:15,18 5:8,14	15:12 17:23
6:1 8:3,19 10:9	signed 52:1	16:9,19,23	6:14 7:15,17	18:1,1 32:11
15:11,12 16:13	significant	17:11 19:14	7:20 8:5,20 9:7	56:6
19:6 20:3,17	42:13	20:12,18 23:15	10:10,11,20,21	statutes 4:10
23:15 24:13	<b>similar 2</b> 0:17	24:14 25:11,18	11:1,5,6,18,23	7:24 9:19 18:7
25:23 26:16	simply 12:7	25:24 26:19,20	12:2,4,6,7,12	28:3 29:13
27:1,11 28:9	14:14 38:6	26:24 27:19	12:15,16 13:10	56:18
28:21 32:2	50:23 53:5	28:11,13,25	13:13 14:8,19	statutory 21:25
39:7,21 40:22	55:19,20	31:14,18,22	14:19 15:14,17	27:13 41:6
45:1,5,9,9,11	single 42:3 53:5	32:7,15,15	15:20 16:7,14	57:18,19
49:2 54:5,14	sit 12:7 32:25	33:17 34:3	16:17 18:9,23	stepping 53:19
55:4,17 57:15	situation 28:1	36:24 37:7,13	18:24 19:1,1	Stevens 4:21
see 9:21 29:14	36:8 38:17	38:8 40:23	19:10,20 20:3	5:20 6:9 21:13
30:1 36:12	45:14 48:20	41:24 42:5,14	20:6,15 21:18	21:22,25 22:6
seemingly 27:1	situations 57:16	42:17,22 43:4	22:5,7 23:7,11	22:14,23 23:3
sense 41:1 56:14	six 5:4	43:5,10 44:9	23:13,17 26:5	41:4,8,13 42:1
sent 35:1	snail 55:22	44:17 45:4,5	27:5,20 28:23	55:21
separate 23:5	Solicitor 1:21	45:10,12,18	30:3,14,21	Stevens's 26:13
32:14 39:6	somebody 47:11	46:4 47:1,7,15	31:7,13 35:3	40:18
51:15 55:14,18	47:17	47:21 48:4,4	35:19,20 36:16	stop 42:25
serious 44:24	somewhat 31:25	49:24 50:10	39:23,25 40:14	<b>stress</b> 16:15
		<u> </u>		<u> </u>

string 20:9	11:7,24 12:6	30:10 31:1,24	46:18	25:24 32:4
strong 4:18	13:18 14:2,9	32:7,12,19,19	transferring	47:3 53:8
struck 5:15	20:25 26:25	33:7,11,16	47:11,16	understood 5:19
stuff 38:6 51:24	36:19 45:12	34:2,8,9,14	transfers 5:1	29:4 56:1
<b>subject</b> 17:23	54:11 57:11,17	35:7,15,16	19:18	57:15
45:25	taken 5:1 40:10	36:4,6,20	Transportation	United 1:1,18
submit 26:21	46:7,9	37:17 38:9,14	57:19	unlawful 20:1
submitted 11:25	takes 10:19	38:15,19,23	treat 54:18	unnecessary
27:21 57:23,25	talked 38:20	40:8,18,19,24	tribes 34:18,22	56:11
subsequent	53:2	41:15,25 42:6	35:19,22	upland 13:8
14:24 54:2	talking 15:21	42:10 43:6,11	<b>Tribe's</b> 25:9	14:13,20,20
substantive 6:21	30:18 32:8	43:20 45:7	30:25	26:6,20
7:23 16:12	34:1 36:13	46:24 47:20,21	tried 5:7 20:15	use 18:19 29:20
23:10	39:14,24	47:23 48:15,15	trigger 39:2	36:23 48:8
substantively	technical 44:4	49:15 51:25	<b>true</b> 31:23 37:5	50:8 51:8
50:25 51:1	tell 50:25	52:13,20 53:10	<b>trust</b> 33:14	uses 17:23
succinctly 50:21	tells 37:6	53:20 54:13	43:17,25 44:13	<b>U.S.C</b> 4:17 22:2
suddenly 17:22	<b>TER</b> 11:11	57:12	44:18	
sufficient 39:2	<b>terms</b> 47:20	thought 29:3	trusting 43:20	
suggest 40:17	<b>Texas</b> 20:9,20	36:25 37:5	<b>try</b> 12:14 24:8	v 1:6,11
42:3 52:20	30:15 49:19	three 37:24	29:21 41:18	vague 18:19 value 34:14
53:3 57:12	text 57:14	thrust 16:5	44:10	values 9:9
suggested 26:15	Thank 23:24	tie 9:22	trying 20:2	values 9.9 vast 4:25,25
28:7	53:12,13 57:21	time 4:25,25	29:12 33:17	vast 4.23,23 vehicle 7:23
suggesting 8:24	57:22	6:18 7:18	36:10,20 52:19	23:9
27:18 31:6	theoretical 36:20	18:12 23:23	53:3	versus 3:5,6
suggestion 27:24	<b>theory</b> 53:20	33:9 36:22 50:13 54:17	<b>Tuesday</b> 1:15 <b>turn</b> 43:11	44:8
suggests 27:15	thing 7:3,18	57:7	turned 9:13	view 8:16 14:14
suggests 27.15	13:7 17:1	tin 12:8	turns 32:1	34:7 38:12
50:20	36:15 39:25	today 3:4	<b>TVA</b> 44:8	41:13
summary 38:10	40:1 42:3 44:3	trading 16:20	two 5:25 9:18	violate 26:5
supervision 38:4	50:22	transfer 4:11	10:2 20:1	virtually 38:1
supplementary	things 6:1 7:17	6:13 8:4 9:15	24:21 29:13	volume 24:22,23
19:7	14:6 18:24	10:4 14:18	32:21 37:23	volumes 24:21
suppose 11:16	22:11 56:20	15:20 16:7,25	typically 7:16	voluntary 8:11
36:21	think 4:13 5:17	17:1,16 19:13		
Supreme 1:1,18	8:2,25 9:4,18	20:11 22:9	U	W
sure 13:11,15	10:19 12:3	24:14 26:18	unconditional	want 22:14,15
19:15	15:3,15 16:4	28:18 31:4,20	8:14,15	33:25 42:7,24
survival 42:14	17:12,25 18:3	34:20 35:1,6	underlying 28:6	43:5 50:18
Sweet 45:8	18:13,17 19:15	38:1 40:8	understand	51:1,1 52:4
54:10	20:9 22:13,17	46:24 48:2,14	16:24 32:24	56:16
	22:18,18 23:16	48:15 52:8	44:19 47:5,8	wanted 11:8
	23:16 24:8,8	54:20 55:8	49:14	wants 12:9
T 2:1,1	27:7,24 28:24	transferred	understanding	Washington
<b>take</b> 4:7 10:4	29:22 30:9,10	36:16 40:14	17:6,6 23:13	1:14,22,24
				<b>waste</b> 6:18
L				

water 3:13 8:13	10.4 9 21	<b>Yeah</b> 22:17		
10:7,12,17,21	19:4,8,21 20:24 21:1	<b>Yean</b> 22:17 35:10 36:3	4	
10:7,12,17,21 12:17,18,20,24	27:21 28:20	55.10 50.5	40 39:7,23	
13:6,8,9,10,12	30:7 32:3	\$	<b>402</b> 28:9	
13:14,16 14:15	33:10 36:17	<b>\$500</b> 36:23	<b>402(b)</b> 3:13 4:13	
14:15,16 18:18	38:4 41:17		8:3,20 14:15	
19:9 23:11	42:12,23 43:4	0	14:24 15:13	
25:17 26:6	46:1 47:24	<b>06-340</b> 1:6 3:4	16:10 18:22	
34:8 36:18	49:12 51:16	<b>06-549</b> 1:11 3:5	19:11 28:9	
39:21 43:11	willing 43:25		54:5	
45:18 46:5,14	willow 42:17	1	<b>402(b)'s</b> 4:4	
51:6 52:8 53:6	win 50:21	1 24:22	<b>402(d)</b> 10:9	
55:17,18	window 7:8	<b>10:18</b> 1:19 3:2	28:10,22 53:6	
waters 4:18	withdrawing	<b>106</b> 39:21 55:17	<b>436</b> 45:18	
waters 4.18 way 7:7 9:11	38:2	<b>11:19</b> 57:24	5	
10:3 13:1	<b>withhold</b> 4:11	<b>123.23(3)</b> 39:7	$\frac{3}{532:10}$	
20:16,17 29:14	6:15 14:17	<b>1251(b)</b> 4:17		
29:22 33:15	40:7	<b>128</b> 45:17	<b>54</b> 42:11	
37:20,21 56:2	wonder 37:9	<b>13</b> 54:10	6	
57:18	word 17:23	<b>1314(i)</b> 22:2	<b>67</b> 49:2	
ways 18:14	18:16 56:21	<b>139</b> 45:17	07 19.2	
weapon 38:2	words 18:19	<b>14</b> 56:24	7	
went 20:5 56:2	51:7	<b>17</b> 1:15	74:2,65:3,86:1	
we'll 3:3 9:20	work 7:15 12:15	<b>18</b> 55:11	8:19 15:11	
19:20 35:21	28:19 31:6	<b>1993</b> 4:24 6:8	16:13 20:3,17	
44:20	36:5 37:14	21:10	23:15 24:13	
we're 5:3 15:21	worked 5:11 7:5	<b>1998</b> 5:15	25:23 27:1,11	
20:2 28:17,19	28:3 29:15	2	40:22 45:1,9,9	
30:10,11,12	45:20		54:14 55:4	
32:7,8,13 33:1	working 29:19	<b>2001</b> 9:16 10:2	57:15	
33:17,18,24	52:25	13:24,25	<b>7(a)(2)</b> 26:16	
34:1,22,25	works 44:15	<b>2007</b> 1:15	29:20 32:3,14	
35:5 38:16	world 36:24	<b>203</b> 34:18	51:4,9	
39:24 40:3,19	worried 42:5	<b>22</b> 13:24		
44:12 46:25	wouldn't 43:14	<b>24</b> 2:7	9	
49:18,21,22	43:15 52:1	<b>260</b> 24:10,18	<b>9</b> 45:5,11 54:10	
50:6 52:7	write 34:21	25:2,3,4 30:1 <b>27</b> 57:14		
we've 9:18 48:3	56:16	<b>270</b> 25:1		
48:17 50:7	writing 38:5	<b>270</b> 25:1 <b>28</b> 57:14		
whistle 51:23	50:17	20 37.14		
white 24:23	written 40:12	3		
<b>wildlife</b> 1:7,12	wrote 34:18	<b>3</b> 2:4		
3:5,7 5:4,11	38:13	<b>302</b> 19:6		
6:6 8:6 10:3		<b>317</b> 24:22		
11:19,20,25	<u> </u>	<b>32</b> 56:23		
12:13 13:11,17	<b>x</b> 1:2,13	<b>33</b> 4:17 22:2		
14:9 18:11,19		<b>_</b>		
	Y			
		•		•