

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION
4

* * * * *

5 RANGE PRODUCTION
6 COMPANY,
7 Plaintiff,

*
*
*

7 VERSUS

8 UNITED STATES
9 ENVIRONMENTAL
10 PROTECTION AGENCY
11 AND LISA PEREZ

*
*
*

NO. A-11-CA-011-LY

12 JACKSON,
13 ADMINISTRATOR,
14 UNITED STATES
15 ENVIRONMENTAL
16 PROTECTION AGENCY,
17 Defendants.

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18 30(b) (6) Videotaped Deposition of the
19 U.S. ENVIRONMENTAL PROTECTION AGENCY, through
20 its designated representative, JOHN BLEVINS,
21 taken on Tuesday, January 25, 2011, commencing
22 at or about 9:17 a.m., in the offices of 500
23 Poydras Street, Suite B-210, New Orleans,
24 Louisiana.

25

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17 BY: BRIAN H. LYNK

18
19 ALSO PRESENT: Tina Arnold, EPA Region 6

20 Cheryl Seager, EPA Region 6

Keith Tashima, EPA, DOJ, via phone

21 Jeffrey Sands, EPA, DOJ, via phone

Aaron Palmer, Videographer

22
23 Reported by: Barbara S. McGee

24 Certified Court Reporter

State of Louisiana

25

S T I P U L A T I O N

1
2
3 It is stipulated and agreed by and
4 between counsel for the parties that the
5 30(b)(6) videotaped deposition of the U.S.
6 ENVIRONMENTAL PROTECTION AGENCY, through its
7 designated representative, JOHN BLEVINS, is
8 hereby being taken under the Federal Rules of
9 Civil Procedure for all purposes permitted under
10 the law.

11
12 That the formalities of sealing and
13 certification are hereby waived. The witness
14 reserves the right to read and sign the
15 deposition. The party responsible for service
16 of the discovery material shall retain the
17 original.

18
19 All objections are to be made in
20 accordance with the Code of Civil Procedure.

21
22 Barbara S. McGee, Certified Court
23 Reporter in and for the State of Louisiana,
24 officiated in administering the oath to the
25 above-named witness.

1 JOHN BLEVINS, U.S. Environmental
2 Protection Agency, Region 6 1445 Ross Avenue,
3 Dallas, Texas 75202-2733, after having been
4 first duly sworn, testified on his oath as
5 follows:

6 THE VIDEOGRAPHER:

7 This is the videotaped deposition
8 of EPA designee, John Blevins. This deposition
9 is being held at 500 Poydras Street, Suite
10 B-210, in New Orleans, Louisiana on January 25,
11 2011. The time indicated on the video screen is
12 9:17. My name is Aaron Palmer and I'm a
13 certified legal video specialist. The court
14 reporter is Barbara McGee with Gulf Stream Court
15 Reporting. Would counsel please introduce
16 themselves for the record.

17 MR. LYNK:

18 I'll go ahead and -- and introduce
19 everyone and then make a brief statement on
20 behalf of the Environmental Protection Agency.
21 My name is Brian Lynk from the Department of
22 Justice, representing EPA. There are two other
23 justice department attorneys listening to the
24 deposition by phone, Keith Tashima and Jeffrey
25 Sands, of the environmental enforcement section

1 there. I'm with environmental defense. Two
2 other EPA counsel are present, Tina Arnold and
3 Cheryl Seager, both from EPA Region 6. I
4 understand that Mr. John Riley and Andy Sims are
5 here as counsel for Range Production Company.
6 And the witness who will introduce himself, John
7 Blevins, has been designated by the
8 Environmental Protection Agency to appear here
9 today in response to the order issued by judge
10 Yeakel of the U.S. District Court for the
11 Western District of Texas on January 19th.

12 We have argued in -- in pleadings
13 filed with Judge Yeakel that the order was
14 issued in error. That main -- that remains our
15 position for all of the reasons that we have set
16 forth in those papers. Nonetheless, EPA is here
17 today to comply. But we want to make it clear
18 that we maintain all of our grounds of error,
19 both for purposes of the record in that case,
20 for purposes of any appeal, and to the extent
21 that the transcript of the proceeding may be
22 sought to be introduced in any other case in the
23 future in which EPA is a party.

24 Also with due respect to the
25 Railroad Commission of Texas I will note for the

1 record that EPA is not a party to the
2 proceedings pending before the Railroad
3 Commission and -- and it is not making an
4 appearance there by appearing here in compliance
5 with Judge Yeakel's order.

6 THE VIDEOGRAPHER:

7 Will the court reporter please
8 swear in the witness.

9 THE COURT REPORTER:

10 Will you raise your right hand,
11 please? Do you solemnly swear that the
12 testimony you're about to give will be the
13 truth, the whole truth and nothing but the truth
14 so help you God?

15 THE WITNESS:

16 I do.

17 EXAMINATION BY MR. RILEY:

18 Q. Good morning, Mr. Blevins.

19 A. Good morning.

20 Q. Excuse me. Sorry. For the record, let
21 me introduce myself again as well as my
22 co-counsel, Mr. Andy Sims, who's seated to my
23 left and I am John Riley with the law firm of
24 Vinson & Elkins and together with others we
25 represent Range Production Company in the

1 Railroad Commission proceeding and then more
2 broadly Range Production Company and Range
3 Resources Corporation who are listed on the
4 emergency order that to some degree brings us
5 here this morning. Is that clear to you --

6 A. Yes.

7 Q. -- who we represent? All right. Mr.
8 Blevins, let me start with some preliminary
9 matters that are to some degree a way for us to
10 warm up into the matters for examination this
11 morning. And first I'd like to ask you have you
12 ever had your deposition taken in any legal
13 proceeding whatsoever at any time?

14 A. Yes.

15 Q. And approximately how many times have
16 you had your deposition taken?

17 A. Twice.

18 Q. Have you given testimony in a legal
19 proceeding in court or before any tribunal --

20 A. No.

21 Q. -- at any time?

22 A. No.

23 Q. So your testimonial experience -- and I
24 may be over simplifying, please correct me if I
25 am -- is limited to two prior depositions?

1 A. That's correct.

2 Q. When was the most recent of those two
3 prior depositions?

4 A. They were like 1995 time frame,
5 generally.

6 Q. Were they in the same action or were
7 they in different --

8 A. No, they were for two separate
9 Superfund actions. I was deposed on behalf of
10 the Agency.

11 Q. And you anticipated my next question.
12 They were in the context of your work for the
13 United States Environmental Protection Agency;
14 is that right?

15 A. That's correct.

16 Q. Were they enforcement matters to the
17 best of your recollection?

18 A. They were not enforcement matters, they
19 were Superfund cases.

20 Q. So it's been some time then since
21 you've -- since you've given a deposition in any
22 proceeding; is that fair, 15 years or so?

23 A. That's correct.

24 Q. I'm going to go over some of the basics
25 then as I see them for purposes of taking a

1 deposition. Of course the objective of a
2 deposition is to get your truthful testimony.
3 In this instance you are testifying on behalf of
4 the United States Environmental Protection
5 Agency; is that correct?

6 A. That's correct.

7 Q. So you are the designated witness for
8 the Agency; is that true?

9 A. That's correct.

10 Q. There have been some exchanges among
11 counsel regarding the subject matter of this
12 deposition. There was a document that was
13 generated on behalf of Range Production Company
14 that in section 2 of that document the -- the
15 matters for examination were described. Do you
16 know what I'm talking about?

17 A. Yes, I've seen that document.

18 Q. Okay. I don't have -- unfortunately I
19 wasn't able to grab all the paper necessary or
20 that might be necessary for this morning's
21 deposition and that's a particular example. I
22 did not bring the document that has the matters
23 for examination with me. Fortunately,
24 co-counsel, though, has brought a copy and -- is
25 that a copy before you?

1 A. Is that --

2 MR. LYNK:

3 That -- that appears to be --

4 MR. RILEY:

5 Okay.

6 MR. LYNK:

7 -- what you may be referring to.

8 THE WITNESS:

9 Is this --

10 EXAMINATION BY MR. RILEY:

11 Q. It is. It is indeed. And I don't want
12 to belabor the point. I just wanted to make
13 sure that you had seen that and had reviewed the
14 section of that document that is entitled
15 "Matters for Examination."

16 A. Yes, I've seen it.

17 Q. There's some 24 matters that are
18 described or 24 items that are described in the
19 document?

20 A. Yes.

21 Q. There was -- at the end of the document
22 there is a mention of documentary evidence that
23 at least from our perspective we offered to
24 accept in this deposition to the extent anyone
25 or EPA wanted to offer documentary evidence to

1 answer any of the -- the areas of inquiry or to
2 respond to areas of inquiry. Is there any doc
3 -- are there any documents you want to provide
4 us this morning before we get on with the oral
5 examination?

6 A. I just have a copy of the record for
7 our action which I -- I believe that you have as
8 well.

9 Q. And I do. And that -- and that will
10 become an exhibit shortly.

11 A. Okay.

12 Q. But the notion here was that the judge
13 had ordered testimonial evidence. And because
14 there are a number of topics we thought that
15 maybe either -- or there might be some documents
16 that EPA wanted to offer. And I'm gathering
17 from your response that that's not the case?

18 A. I have no other documents to offer.

19 MR. LYNK:

20 And I'll note just preliminarily,
21 so I suppose it's not an objection, that, you
22 know, we -- we have received your list of
23 examination topics. We -- we also heard the
24 instructions of Judge Yeakel at -- at -- towards
25 the close of the first hearing before him on the

1 19th and again in the brief reconsideration
2 hearing that that -- and -- and I will think
3 accurately paraphrase or summarize his comments
4 that in general his expectation is -- is that
5 this deposition will examine the information
6 related to EPA's emergency order of December
7 7th, whatever additional documents or
8 information related to that order may or may not
9 exist and who within the Agency is familiar with
10 them and what has in fact been done by EPA in
11 connection with that order. And so in -- in
12 determining what witness to identify the EPA
13 particularly attempted to comply with those
14 instructions from the Court and -- and -- and
15 has certainly asked its witness in light of
16 those instructions to be prepared to testify
17 today.

18 MR. RILEY:

19 And that's just -- that's where I
20 was headed. So let me -- let me get to that
21 point then.

22 EXAMINATION BY MR. RILEY:

23 Q. Since you've seen the document, you've
24 looked at the matters for examination or a
25 description of the matters for examination have

1 you had opportunity to prepare for this
2 deposition this morning?

3 A. Yes, I have.

4 Q. The -- and at this stage are you fully
5 prepared to go forward with the deposition in
6 the role you've been designated?

7 A. Yes.

8 Q. All right. The objective as I
9 mentioned earlier is to get your truthful
10 testimony as EPA's designee in this matter. And
11 it is my personal objective to make sure that I
12 don't ask you questions that confuse you or
13 mislead you or otherwise do not serve the
14 objective to get truthful testimony from you.
15 If I do any of those things it is inadvertent
16 and I would ask you to call it to my attention
17 and I will try to rephrase the question or
18 correct whatever misstatement I've made. But as
19 I mentioned just a moment ago what I'm trying to
20 do is ask you straightforward questions and get
21 your honest responses; is that satisfactory?

22 A. That's fine.

23 Q. I think we have that agreement between
24 us that we'll at least try to communicate
25 accurately and -- and -- and in a courteous

1 fashion throughout this process?

2 A. Yes.

3 Q. There are a whole other list of things
4 that people ordinarily ask at the beginning of a
5 deposition that I don't think are necessarily
6 appropriate but is there anything that would
7 inhibit -- that you're aware of that would
8 inhibit your ability to give truthful testimony
9 this morning?

10 A. No.

11 Q. Can you describe for us your
12 educational background, Mr. Blevins?

13 A. I have a bachelor of arts in
14 environmental studies from Warren Wilson College
15 which is outside of Asheville, North Carolina.
16 I have a master's of the science in
17 environmental engineering from the University of
18 North Carolina at Charlotte.

19 Q. After you obtained your master's could
20 you describe your employment history?

21 A. Yes. I started with U -- U.S. EPA in
22 Region 9, which is San Francisco in the
23 Superfund program. I worked there for
24 approximately 10 years as a staff project
25 manager and as a first line supervisor in the

1 Superfund program. I went on an IPA, which is
2 an inner governmental transfer of personnel to
3 the state of Oregon. And I was a supervisor
4 there running a -- the eastern region of
5 Oregon's cleanup program for three years. I
6 then went to U.S. EPA Region 4, which is in
7 Atlanta, and was a project engineer manager in
8 the federal facilities program for approximately
9 three years. I left the Agency and went to work
10 for the state of Delaware as a division director
11 running their air and waste division. And then
12 I returned to U.S. EPA in the position I
13 currently sit in six years ago and about four
14 days as the division director for the compliance
15 assurance and enforcement division.

16 Q. What are your current day-to-day
17 responsibilities as division director for the
18 compliance and enforcement division?

19 A. I'm basically responsible for the civil
20 enforcement program for the region in Dallas.
21 So all the enforce -- not all the enforcement
22 work for the region but the majority of
23 enforcement work for the region is within my
24 purview so enforcement of the Clean Air Act, the
25 Clean Water Act, Resource Conservation Recovery

1 Act, all of that work is funneled through my
2 division and all of my staff and I oversee that
3 program for the region.

4 Q. How many staff do you oversee?

5 A. I have approximately 156 people within
6 my organization. It ebbs and flows, but that's
7 a good number.

8 Q. Are the folks within your organization
9 or in your staff is the term, are any of those
10 individuals lawyers or have a law degree?

11 A. None of the people within my staff
12 serve as lawyers for the Agency. Some of them
13 may actually have law degrees but that's not
14 their function or responsibility within my
15 organization. That is housed within the Office
16 of Regional Counsel within the region and we
17 work closely with that group on all our
18 enforcement actions.

19 Q. Are the people on your staff devoted to
20 different program areas or enforcement of
21 particular statutes?

22 A. I -- the way our -- my organization is
23 set up is I have three different branches as an
24 organizational structure. One is responsible
25 for air enforcement, one is responsible for

1 water enforcement, one is responsible for waste
2 enforcement, that's hazardous waste, in general.
3 So it's the RCRA program plus some of the other
4 programs like TSCA and the lead paint program --
5 or Lead-Based Paint Program, lead program PCB
6 program. And then I have a group that provides
7 support to the division as a whole and it also
8 does NEPA analysis.

9 Q. In rough strokes could you break down
10 the -- I think you said 156 people that are on
11 your staff and how they are proportioned in
12 those categories?

13 A. The air and water branches are probably
14 30 to 40 people staff member strong. The RCRA
15 group is 20 to 25 people strong. And then the
16 support group probably has about 15 to 20
17 people. And then there's just -- the rest would
18 make up administrative staff that reports to me
19 or to some of the other division direct -- or
20 branch chiefs.

21 Q. Did I understand you correctly that air
22 would be 30 to 40 people?

23 A. Right.

24 Q. And then separately water would be 30

25 --

1 A. Yes.

2 Q. -- to 40 people?

3 A. Correct. Those are the two biggest
4 branches that do those two enforcement programs.

5 Q. In terms of an organizational chart
6 who -- how many direct reports do you have?

7 A. I have a deputy director who reports
8 directly to me. I have four associate directors
9 who report directly to me that manage each of
10 those four groups that I just talked about. And
11 then I have administrative staff within my
12 office who report to me. Six people, seven
13 people. But the day-to-day management of those
14 people is shared between myself and my deputy
15 director.

16 Q. All right. Let's just get a couple of
17 individuals identified. Who is your deputy
18 director?

19 A. Stephen Gilrein.

20 Q. Who are your associate directors?

21 A. David Garcia is my associate director
22 for the air enforcement group; Jerry Saunders is
23 the associate director for the water enforcement
24 group; Mark Hanson is the associate director for
25 the hazardous waste enforcement group; and

1 Deborah Griffin is the associate director for
2 the support group and NEPA group.

3 Q. I'm sorry. Can you say the last name
4 again?

5 A. Deborah Griffin.

6 Q. The individual then who heads the
7 group, the water group, is Jerry Saunders,
8 correct?

9 A. That's correct.

10 Q. And that is the individual -- or that
11 area is the area which is the subject of the --
12 of this proceeding and this deposition this
13 morning; is that also correct?

14 A. That's correct.

15 Q. Could you tell me all of the EPA
16 personnel that were involved with the
17 development of any of the administrative record
18 or in the decision -- involved in the decision
19 making process to issue the emergency
20 administrative order, docket No. SDW -- excuse
21 me -- dash 06 dash 2011 dash 1208 which is the
22 subject of this proceeding?

23 A. Can you just clarify for me people
24 involved in creation of that document and
25 signing of that document or people who were

1 involved in knowing about that document?

2 Q. Well, let's -- let's start with -- I
3 don't know if it's an appropriate term but if it
4 works between us let's -- let's use it -- the
5 core group. Who participated in the development
6 of the factual information that in EPA's view
7 supports issuance of the order?

8 A. The core group for that would be Chris
9 Lister, Jerry Saunders, Scott McDonald. Those
10 would be the three primary people that did the
11 work. There were other people within my
12 organization and within regional counsel who
13 supported those -- those individuals in creating
14 the document and the order itself.

15 Q. Okay. Let's go out then from the core
16 group to the next layer. What individuals
17 participated in the next layer for lack of a
18 better phrase?

19 A. That would be Carl Wills was involved,
20 Willie Lane was involved. Oh, geez. If I can
21 look. Ron -- and I'm just losing, sorry --

22 Q. No --

23 A. -- his last name.

24 Q. -- that's fine. If there's something
25 you want to refer to that will be helpful to you

1 if you can just tell me what you're looking at
2 so I can --

3 A. I'm just looking at a copy of the --
4 the record.

5 Q. Okay.

6 A. And the --

7 Q. The index of the --

8 A. The index right now. Ron Van Wyk,
9 W-Y-K, was involved. I know -- and -- and
10 Tucker Hanson?

11 Q. Hanson (different pronunciation), I
12 believe.

13 A. Hanson, sorry.

14 MR. RILEY:

15 H-A-N-S-O-N, I believe.

16 THE WITNESS:

17 -- was involved. Steve Gilrein and
18 myself were involved as the management team.

19 EXAMINATION BY MR. RILEY:

20 Q. Is that it to the best of your
21 recollection?

22 A. Right, of the -- the extended core
23 group. Again there were other people that were
24 involved in periphery discussions and meetings
25 but that's the core.

1 Q. Okay. Let's go one more layer then
2 in -- in the periphery. And I understand if you
3 can't be complete but it's best you recall who
4 else was involved in to use your word the
5 periphery of the decision process to issue the
6 administrative order?

7 A. Well, Suzanne Murray would be involved.
8 Both Cheryl and Tina were involved in helping us
9 build the documents. Within the region we also
10 held briefings with the regional administrator,
11 the deputy regional administrator, so that would
12 be Dr. Armendariz, that would be Larry
13 Starfield, Miguel Flores who is the water
14 division director was briefed. We also included
15 discussions with personnel from our headquarters
16 group, OECA. So they were involved in
17 discussions with us and other personnel within
18 headquarters.

19 Q. Okay. I think I was clear but let me
20 just check to make sure I have an accurate list.
21 I'm talking about up to the point where the
22 order was issued.

23 A. Correct.

24 Q. So we're on the same wavelength in that
25 respect?

1 A. Correct. So there's a -- again,
2 there's people at headquarters. I don't know if
3 you would like those names or not. But we did,
4 before we issued the order, have discussions, as
5 we normally do in the course of business, with
6 our headquarters group.

7 Q. Please, if you would, give me the
8 names.

9 A. Adam Kushner, Bernadette Rapolppold.
10 And I don't think I could spell that one for
11 you. I always misspell it. I think it's
12 R-A-P-O-L-P-P-O-L-D. Cynthia Giles was involved
13 in a briefing, Katherine McCabe was involved,
14 Mark Pollins was involved.

15 Q. L-L-E-N-S, is it?

16 A. I-N-S.

17 Q. I-N-S.

18 A. Those were the key people. Some of
19 their staff -- those are mainly managers within
20 OECA. They may have had staff people in the
21 room and I just can't recall all those people's
22 names off the top of my head.

23 Q. Katherine McCabe, what function does
24 she --

25 A. She's a deputy assistant administrator

1 for OECA.

2 Q. In headquarters; is that --

3 A. That's correct.

4 Q. -- correct? Let me do a couple of
5 housekeeping things.

6 MR. RILEY:

7 Let me do a couple of housekeeping
8 things. Let's mark this Deposition Exhibit 1.

9 EXAMINATION BY MR. RILEY:

10 Q. Mr. Blevins, I've marked for the record
11 as Deposition Exhibit 1 what I believe to be a
12 true and correct copy of the section of the U.S.
13 code cited by EPA in the administrative order
14 that's subject of this proceeding. Specifically
15 Section 300i, 42 USC, Section 300i. Do you have
16 that before you and do you recognize it?

17 A. I do.

18 Q. Have you reviewed this -- this statute
19 prior to this morning's proceeding?

20 A. Yes.

21 Q. Am I correct that this is the section
22 under which EPA claims authority to issue the
23 administrative order?

24 A. Yes.

25 Q. As well as the -- the 42 the United

1 States code -- I'm sorry. That is -- this is
2 according to the United States code. Excuse me.

3 So we have before us then the -- the
4 proper authority which EPA cites in its
5 administrative order for issuance of the
6 administrative order as far as you know; is that
7 correct?

8 A. Yes.

9 Q. All right. Well, work through it with
10 me, if you would, as to which aspects of this
11 statute EPA believes applies in these
12 circumstances? That's the objective.

13 MR. LYNK:

14 I'll just -- I'll object to the
15 extent it calls for legal conclusions and in
16 saying that it has nothing to do with
17 qualification of the witness but rather to do
18 with whether the witness is here to speak for
19 the Agency in presenting legal conclusions
20 today.

21 However, to the extent you have an
22 understanding as a factual matter from your
23 position within EPA about how and why this order
24 was issued you may answer the question.

25 EXAMINATION BY MR. RILEY:

1 Q. Let's -- let's just read it together,
2 if you would and tell me if I'm reading
3 accurately. And I'll read and then I'll
4 interrupt to see if you agree with my
5 understanding of EPA's basis for issuance of the
6 administrative order.

7 Again, reading from 300i, paragraph A:
8 Notwithstanding any other provisions of this
9 subchapter the administrator, upon receipt of
10 information that a contaminant which is present
11 or is likely to enter a public water system or
12 an underground source of drinking water -- did I
13 read that correctly so far?

14 A. Yes.

15 Q. Do you agree that there's no allegation
16 in the administrative order that there is a
17 threat to a public water system?

18 A. Can you just ask that one more time
19 again?

20 Q. Certainly. I'm trying to parse out the
21 statute to see if I've understood EPA's theory
22 in issuing the administrative order. And maybe
23 a simpler way to say it is that the allegation
24 is that -- in the administrative order is that
25 there is information, according to the EPA, that

1 a contaminant is present or is likely to enter
2 an underground source of drinking water as
3 opposed to a public water system. Is that your
4 understanding?

5 A. I think the Agency's position on this
6 is that we definitely believe that there's been
7 a contaminant that's entered into an underground
8 drinking water system. We asked Range to
9 collect data that would help us determine if it
10 was likely to enter into a public water system.
11 That was part of the order which was to go out
12 and look at the public water system that was in
13 the area and collect data to determine if there
14 was any threat to that public water system.

15 So I think while we don't have data or
16 evidence in the -- or site evidence in the order
17 of the presence of contaminants in a drinking
18 water system we were trying to explore the
19 likely part of the language you read, likely to
20 enter as part of the data collection that we
21 asked Range to provide.

22 Q. Okay. And at -- at the time the order
23 was issued, though, there was no evidence of a
24 contaminant entering a public water system; is
25 that correct?

1 MR. LYNK:

2 Objection, asked and answered. Go
3 ahead.

4 THE WITNESS:

5 Yes, that's what I said. Correct.

6 EXAMINATION BY MR. RILEY:

7 Q. All right. Maybe this section will be
8 a little easier. After the comma, or that there
9 is a threatened or potential terrorist attack,
10 and then parentheses, or other intentional act
11 designed to disrupt the provision of safe
12 drinking water or to impact adversely the safety
13 of drinking water supplied to communities and
14 individuals.

15 There's no allegation that there's any
16 behavior on the part of Range that -- that is
17 relevant to that provision; is that correct?

18 A. That's correct.

19 Q. And then continuing on after that
20 comma, which may present an imminent and
21 substantial endangerment to the health of
22 persons. Is it EPA's allegation that there are
23 contaminants present that present or presented
24 at the time the order was issued an imminent and
25 substantial endangerment to the health of

1 persons?

2 MR. LYNK:

3 I'll -- I'll object as misleading
4 to the extent your question doesn't quite match
5 the statutory language you read.

6 MR. RILEY:

7 Okay. Will that will stand for
8 itself, Counsel.

9 MR. LYNK:

10 You can answer.

11 THE WITNESS:

12 The EPA's allegation is that we
13 believe there is evidence -- was evidence when
14 we issued the order that there may be an
15 imminent, substantial endangerment present, yes.

16 EXAMINATION BY MR. RILEY:

17 Q. Reconcile that for me. Is it that EPA
18 thought there might occur an imminent and
19 substantial endangerment or that there was
20 presently at the time the issuance of the order
21 an imminent and substantial endangerment?

22 MR. LYNK:

23 I'll reiterate my objection about
24 the distinction between questions that ask for
25 legal conclusions versus those that ask for his

1 factual understanding of what the Agency did.

2 MR. RILEY:

3 Well, that was a factual question,
4 Counselor.

5 MR. LYNK:

6 Okay.

7 MR. RILEY:

8 And I'd ask you not to make
9 speaking objections.

10 MR. LYNK:

11 If you will -- if you will --

12 MR. RILEY:

13 If you --

14 MR. LYNK:

15 -- recognize that that objection
16 stands to this line of questioning.

17 MR. RILEY:

18 Sure. And as you know your
19 objections are all reserved.

20 MR. LYNK:

21 Well --

22 MR. RILEY:

23 So you can say the word objection,
24 you can describe your -- without giving a
25 narrative what you think is wrong and the basis

1 for your objection and that will be preserved.

2 MR. LYNK:

3 Our procedural posture here is
4 unusual because this transcript presumably will
5 be introduced in the Railroad Commission
6 proceeding. We're not a party there. We won't
7 have the opportunity to seek relief with respect
8 to objections there. So I feel compelled to
9 make my objection clear for the record. With
10 that said on this particular one it's lengthy
11 and I don't want to -- I don't want to tie up
12 your time by reiterating it verbatim. So if
13 you'll recognize that line of objections.

14 MR. RILEY:

15 And actually the nature of my
16 objection is giving a narrative objection which
17 is recognized within federal and state law you
18 are instructing the witness. And I would ask
19 you to refrain from doing that. Give a legal
20 objection, that's fine. But instructing the
21 witness how you would like him to answer is
22 inappropriate as you well know.

23 MR. LYNK:

24 If I feel it necessary I'll
25 explain. But as I said I'm willing to just note

1 for the record that objection.

2 MR. RILEY:

3 Thank you.

4 THE WITNESS:

5 At the time that the Agency issued
6 the order we made a determination that there was
7 an imminent and substantial endangerment that
8 existed in regards to the situation for the
9 order, yes.

10 EXAMINATION BY MR. RILEY:

11 Q. If I understood your answer then, and
12 please correct me if I'm wrong, the order was
13 issued on December 7, 2010; is that correct?

14 A. That's correct.

15 Q. And on December 7, 2010 based on the
16 administrative record as well as the terms of
17 the order itself EPA found that there was an
18 occurring present imminent and substantial
19 endangerment; is that your understanding?

20 MR. LYNK:

21 Object to form.

22 THE WITNESS:

23 That is correct.

24 EXAMINATION BY MR. RILEY:

25 Q. All right. Reading on in the statute:

1 And that appropriate state and local authorities
2 have not acted to protect the health of such
3 persons. Did I read that accurately?

4 A. Yes.

5 Q. Tell me what facts EPA developed that
6 would support a finding on behalf of EPA that
7 appropriate state and local authorities have not
8 acted to protect the health of such persons.

9 A. At the time of the issuance of the
10 order EPA through discussions with state
11 regulatory agencies had not -- had -- did not
12 believe that any direct action was being taken
13 to address the imminent and substantial
14 endangerment that EPA had identified and
15 believed needed to be addressed.

16 Q. Okay. So list for me what local
17 agencies EPA contacted?

18 A. We had talked with the local fire
19 marshal, and that's the only local Agency that
20 we could identify that had if any -- if -- had
21 any input or any opportunity to address the
22 situation that existed at the -- at the two
23 wells that we identified in our order.

24 Q. Is there a ground water district that
25 covers the area that is the subject of our

1 discussion?

2 A. I don't know. But we didn't believe
3 that anybody had any authority to take action to
4 address the situation at the local level.

5 Q. Is this an incorporated area,
6 incorporated in any local government? By "this"
7 I mean the area of the Range wells and the
8 Lipsky water well and the Hayley water well.

9 A. It's part of a -- it's incorporated in
10 the county that I -- the county government or
11 it's incorporated in the county but that's the
12 extent of my knowledge.

13 Q. Tell me on how many occasions you spoke
14 with county officials regarding their ability to
15 address any endangerment issues?

16 A. None.

17 Q. Are there any other local authorities
18 that you can think of that EPA might have
19 contacted to determine their ability to address
20 any issues that EPA perceived?

21 A. At the time of the order EPA did not
22 believe there were any other local agencies that
23 we should contact because we do not believe
24 there was any other local agencies that had
25 authority to address the issues present.

1 Q. Let's talk about state agencies. What
2 state agencies did EPA contact or have
3 conversation with about their plans to address
4 any issues EPA perceived?

5 A. EPA had discussions with both the
6 Railroad Commission and with the Texas
7 Environmental Commission -- Quality
8 Commission -- TCEQ, Commission on Environmental
9 Quality, sorry.

10 Q. Are there any other state authorities
11 that have -- that have jurisdiction over water
12 resource in the state of Texas as far as you
13 know?

14 A. There are other state agencies that are
15 involved in water issues, yes, but not that
16 had -- that we believe had jurisdiction over the
17 situation that existed at the two wells that are
18 cited in the order based on our discussions with
19 TCEQ and the Railroad Commission.

20 Q. Were your discussions with TCEQ and the
21 Railroad Commission memorialized in any form?

22 A. There are documents in the record that
23 memorialized our discussions with the Railroad
24 Commission as the primary regulatory agency
25 involved in this matter. The discussions with

1 TCEQ are not in the record, but it was a
2 discussion that I had with my contact at TCEQ
3 regarding what if any role TCEQ would have in
4 relation to this situation. And TCEQ informed
5 me that they were not the regulatory agency that
6 would be engaged on this issue, that it would be
7 the Railroad Commission.

8 Q. And who -- who did you speak with, who
9 was your contact?

10 A. John Sadlier.

11 Q. When did you speak with Mr. Sadlier?

12 A. Without my calendar I wouldn't know the
13 date, but it was a few days before the issuance
14 of the order. So probably like on December 3rd
15 or 4th.

16 Q. Do you have any notes of that
17 conversation whatsoever?

18 A. No, I do not.

19 Q. And perhaps it's repetitive but indulge
20 me if you would. List for me to the best of
21 your knowledge all local and state authorities
22 that have jurisdiction or potential to address
23 any endangerment issues or water contamination
24 issues that are relevant to this proceeding.

25 A. As far as local agencies the EPA does

1 not know of any local agency that has authority
2 to address the situation that was identified in
3 our emergency order. As far as state agency
4 it's our belief based on the conversations with
5 TCEQ and the Railroad Commission that the
6 Railroad Commission is the state agency that has
7 the regulatory authority over the situation in
8 and around the situation identified.

9 Q. Do I have a complete list then, no
10 local agencies and two state agencies as far as
11 you understand it?

12 A. No. I think my answer would be I don't
13 know -- the Agency does not know of any local
14 agency and only knows of one state agency that
15 has authority in this situation.

16 Q. Okay. So you don't believe TCEQ has
17 authority?

18 A. Based on all of my conversations with
19 TCEQ, that's correct.

20 Q. Reading on from the statute: To the
21 extent he determines it to be practicable in
22 light of such imminent endangerment he shall
23 consult with the state and local authorities in
24 order to confirm the correctness of the
25 information on which action proposed to be taken

1 under this subsection is based and to ascertain
2 the action which such authorities are or
3 willing -- or excuse me -- are or will be taken.

4 Did I read that correctly?

5 A. Yes.

6 Q. Okay. And did EPA engage in the
7 directive, same as found the statute, to consult
8 with state and local authorities?

9 A. I believe we did, yes.

10 Q. Tell me first which state and local
11 authorities EPA consulted with.

12 MR. LYNK:

13 I'm -- I'm going to object, asked
14 and answered. I thought he gave those answers
15 to you already.

16 MR. RILEY:

17 I think it's a different part of
18 the statute. So let's be clear if we could.
19 And if it's asked and answered then, you know,
20 again, those are -- objections are reserved for
21 the time of trial.

22 MR. LYNK:

23 Well, again, not --

24 MR. RILEY:

25 You know, that's not my choice,

1 though, Counsel. You chose not to be a part of
2 the Railroad Commission proceeding. That's what
3 you decided to do. So the fact that your --
4 your objections won't be heard --

5 MR. LYNK:

6 I ask that we read back the earlier
7 answer in which he identified which local agency
8 he consulted with or that his staff consulted
9 with.

10 MR. RILEY:

11 No. I asked him which local --
12 state and local authorities had jurisdiction or
13 had the ability to address the endangerment
14 issues EPA perceived. Now I'm asking him which
15 state and local authorities they conferred with
16 according to this statute.

17 MR. LYNK:

18 I'm going to reiterate my
19 objection.

20 But you can answer, if you wish, if
21 you're able to.

22 THE WITNESS:

23 Regarding the order itself we had
24 discussions on numerous occasions with numerous
25 individuals within the Railroad Commission.

1 EXAMINATION BY MR. RILEY:

2 Q. How many occasions would you say
3 constitutes numerous as you just used the word?

4 A. Oh, more than 10.

5 Q. Who spoke to whom at the Railroad
6 Commission? Who from EPA spoke to whom at the
7 Railroad Commission?

8 A. Again there was contacts at all
9 different levels. From a staff level Chris
10 Lister dealing with the staff level at the
11 Railroad Commission and in fact going out into
12 the field with members of the Railroad
13 Commission to conduct sampling; as well as there
14 was discussions at the -- at higher levels
15 within the Railroad Commission from Jerry
16 Saunders. There was discussions at my level
17 with the Railroad Commission. And there was
18 also discussions between Mr. Armendariz and one
19 of the commissioners at the Railroad Commission.

20 Q. Who was Chris Lister's contact at the
21 Railroad Commission?

22 A. I don't know exactly. Within the
23 record I can look if there's some e-mail
24 exchange. But I don't know that the documents
25 in the record would capture each and every

1 contact that we had with the Railroad
2 Commission.

3 Q. So there may have been other contacts
4 that are not reflected in the record?

5 A. At the staff level, yes. But they
6 weren't -- they weren't deemed necessary as part
7 of the administrative record, but they were part
8 of our ongoing discussions with the Railroad
9 Commission.

10 Q. Is it safe to conclude that those
11 conversations were not documented and,
12 therefore, are not incorporated into the
13 administrative record?

14 A. It's safe to say that those
15 conversations are not included in the
16 administrative record.

17 Q. So they may be documented in other EPA
18 records but they're just not included in the
19 administrative record; is that correct?

20 A. That's correct.

21 Q. Why were those documents excluded then
22 from the administrative record?

23 A. They weren't deemed necessary to
24 support the action that we took. Those may have
25 been routine discussions with the Railroad

1 Commission just on setting up field visits.
2 They may have been conversations with the
3 Railroad Commission to confirm that certain
4 information was submitted to the railroad -- or
5 exchanged between us and the Railroad
6 Commission. We did not include all of those
7 conversations as -- or deem those as necessary
8 for the administrative record.

9 Q. Who participated in going through each
10 of those documents and determining what would be
11 part of the administrative record and what would
12 be excluded from the administer --
13 administrative record?

14 A. That would be Chris Lister, Jerry
15 Saunders, Scott McDonald were the primary people
16 responsible for making sure the administrative
17 record was built for and submitted for this
18 case. And as the record indicates Jerry
19 Saunders was the one that certified the record.

20 Q. What criteria did they use to determine
21 what would go into the administrative record and
22 what would be withheld?

23 A. I guess I don't understand the
24 question.

25 Q. Sure. You had a group of folks that

1 you just described, Chris Lister, Scott
2 McDonald, Jerry Saunders, and they apparently
3 parsed through some EPA records, the best I
4 understand you just testified to, and they made
5 a decision and this will go into the record,
6 this one won't, this document will, this
7 document won't. So I'm assuming based on my own
8 personal experience in government that a list of
9 criteria for determining what would go into the
10 record was compiled before three staff members
11 were allowed to decide what's part of the
12 administrative record and what's not. So I'm
13 asking you for that list of criteria.

14 A. There's not to -- there's not a list of
15 written criteria. The criteria are the
16 documents that are necessary to support the
17 decision or the documents submitted into the
18 record.

19 Q. What about documents that didn't
20 support EPA's conclusion, were they also
21 included in the administrative record?

22 A. Again, I've already answered that once.
23 The documents that we believed were necessary to
24 support the conclusions within our admin -- our
25 order were submitted into the record.

1 Q. See, what I'm hearing, though, is that
2 there may be documents that were not in the view
3 of Mr. Lister, Mr. McDonald and Mr. Saunders
4 supportive of EPA's conclusions that may have
5 been withheld from the administrative record.

6 MR. LYNK:

7 Objection, assumes facts not in
8 evidence.

9 MR. RILEY:

10 Well, that's what I heard so...

11 THE WITNESS:

12 That's not what I stated.

13 EXAMINATION BY MR. RILEY:

14 Q. Okay. So, again, there's a -- imagine
15 a stack of documents.

16 A. I mean, that's not what I stated. I
17 said the documents that were necessary to
18 support our decision were put in the
19 administrative record.

20 Q. Okay. And what I'm understanding from
21 that is that there may be other documents that,
22 to use your words, were not necessary to support
23 the administrative order that were withheld from
24 the administrative record. Have I gotten that
25 piece right?

1 MR. LYNK:

2 Same objection.

3 Go ahead.

4 THE WITNESS:

5 I don't believe they were withheld.

6 I don't believe they were put into the record
7 because that's not the standard against which we
8 built the record. The record was built to
9 support our action. We reviewed our files and
10 put those documents that we deemed appropriate
11 to support our record.

12 EXAMINATION BY MR. RILEY:

13 Q. Okay. So let's suppose as a
14 hypothetical that there's a record that does not
15 support the order. Is that found in the
16 administrative record?

17 A. I'm not comfortable addressing a
18 hypothetical question as speaking for the
19 Agency.

20 Q. Okay. How is it that when you use the
21 word support the way I am interpreting your use
22 of that word is that there are documents that
23 validate or would lead one to conclude the way
24 EPA did in its administrative order, that's what
25 I'm understanding support to mean. Do you

1 understand -- am I understanding your use of the
2 word support correctly?

3 A. My use of support is that we made
4 certain determinations, findings of fact within
5 our administrative order, we built a record to
6 show what are the documents necessary to support
7 those facts that are included in the record.

8 Q. Okay. Now, are there any documents
9 that EPA possesses that don't support EPA's
10 findings of fact and conclusions of law that are
11 in the record? Excuse me. Let me try that
12 again.

13 Are there any documents in EPA's
14 possession that do not support EPA's findings of
15 fact in the administrative order?

16 A. Okay. Say that one more time.

17 Q. Certainly. Are there any records in
18 EPA's position that do not support, in other
19 words, contradict the findings of fact that are
20 in the administrative order?

21 A. The Agency does have documents in its
22 possession that were submitted by parties such
23 as Range which they contend do not support our
24 action.

25 Q. Why are they not included -- those

1 documents, why are they not included in the
2 administrative record?

3 A. Because those documents were not relied
4 upon or -- to support the decision that we made.

5 Q. So I haven't gotten it wrong, then.
6 Documents that contradicted any findings of fact
7 are not in your administrative record; is that
8 true?

9 A. Again, I would not --

10 MR. LYNK:

11 Object to form.

12 Go ahead.

13 Object to form.

14 THE WITNESS:

15 I would not say it that way. I
16 would say the documents in the record are the
17 records that we, the Agency, used to make our
18 decision.

19 EXAMINATION BY MR. RILEY:

20 Q. All right. But you specifically used
21 an example of there are documents that Range
22 submitted that would tend to contradict or
23 undermine the administrative order; is that
24 true?

25 MR. LYNK:

1 Object to form.

2 THE WITNESS:

3 There are documents that we possess
4 that other parties have submitted evidence from
5 their perspective that make alternate -- are
6 alternate facts or make alternate arguments.
7 But the Agency has not, again, used those in
8 making its determination because those are not
9 facts that we generated to support our order.

10 EXAMINATION BY MR. RILEY:

11 Q. Am I correct that the Agency did not
12 include in the administrative record
13 contradictory evidence or arguments as pertains
14 to the findings and conclusions in the
15 administrative order?

16 MR. LYNK:

17 I'm going to object that the
18 question is vague as to time frame. Are you
19 asking him about documents the Agency had before
20 prior to or on the 7th of December or after?

21 EXAMINATION BY MR. RILEY:

22 Q. Well, the administrative record was
23 compiled when?

24 A. The administrative record was certified
25 on January 13th.

1 Q. When did this sorting process you
2 described occur, the sorting process that Mr.
3 Lister and Mr. McDonald and Mr. Saunders engaged
4 in? When did they do that?

5 A. It occurred kind of over a period of
6 time leading up to the certification on January
7 13th.

8 THE VIDEOGRAPHER:

9 Counsel, you have five minutes of
10 tape left.

11 EXAMINATION BY MR. RILEY:

12 Q. So the sorting process to determine
13 what constituted the administrative record
14 occurred after December 7, 2010, true?

15 A. It occurred before and after.

16 Q. Okay. So let's use -- since counsel is
17 concerned about time frame, let's use the date
18 on which the record was compiled and certified.
19 Which is what again? I'm sorry. I've just
20 forgotten. What date was the administrative
21 record cer -- compiled and certified?

22 A. There is no specific date for
23 compilation of the record. The record was
24 certified on January 13th.

25 Q. Okay. But I thought I understood you

1 to say that that activity occurred after
2 issuance of the order?

3 A. Before and after.

4 Q. Okay.

5 A. It started before and it was finished
6 after.

7 Q. And the sorting process we talked about
8 with Mr. Lister, Mr. McDonald and Saunders, that
9 occurred both before and after?

10 A. That's correct.

11 Q. So during that sorting process some
12 matters were considered part of the
13 administrative record and some matters were
14 considered not part of the administrative
15 record?

16 A. That's correct.

17 MR. RILEY:

18 Why don't we take a break and
19 change tape.

20 THE VIDEOGRAPHER:

21 Going off the record. The time is
22 now 10:10. This is the end of tape 1.

23 (Recess was taken.)

24 THE VIDEOGRAPHER:

25 This is the continued videotaped

1 deposition of John Blevins. We're back on the
2 record. The time is now 10:17. This is the
3 beginning of tape 2.

4 MR. RILEY:
5 Counsel?

6 MR. LYNK:
7 Let me note for the record John
8 indicated to me during the break he wishes to
9 add to his answer regarding how the record was
10 compiled from just prior to the break.

11 MR. RILEY:
12 Certainly.

13 THE WITNESS:
14 Yeah. Just to clarify -- and I
15 apologize if I wasn't clear -- the record
16 includes documents that were in the Agency's
17 possession that we relied on up to the date of
18 the issuance of the order which was December
19 7th. So those were the documents that we -- the
20 administrative record was built on and that are
21 captured in the certified record that you have.
22 So there may -- the Agency has come into
23 possession of other documents after the decision
24 that are not included in the record because the
25 record is to support the decision which occurred

1 on December 7th.

2 EXAMINATION BY MR. RILEY:

3 Q. Okay. Let's talk about that just for a
4 second. With respect to information received by
5 EPA after December 7th, first, has there been
6 information received by EPA that bears on the
7 ultimate question of whether the Range wells,
8 the Butler and Teal wells are causing or
9 contributing to contamination of underground
10 source of drinking water?

11 A. There has been information submitted to
12 the Agency prior to December -- not prior to,
13 after December 7th related to additional
14 information by outside parties to the Agency
15 that they would like us to consider as we
16 consider the question of the relationship
17 between the Butler well and the two wells cited
18 in our order, yes.

19 Q. And has EPA considered that
20 information?

21 A. We are -- we have reviewed all that
22 information and are continuing to evaluate that
23 information, yes.

24 Q. Does EPA have the authority to withdraw
25 the emergency order that is the subject of this

1 proceeding?

2 A. Yes.

3 Q. Recently the EPA filed the -- the
4 United States Department of Justice on behalf of
5 EPA filed an action in the northern district of
6 Texas seeking to enforce the administrative
7 order; is that correct?

8 A. Yes.

9 Q. And I'm not trying to go into that
10 lawsuit, but I just want to understand whether
11 that lawsuit is premature in your mind because
12 EPA has not fully evaluated all of the
13 information it now has available?

14 MR. LYNK:

15 Object to form.

16 You can answer.

17 THE WITNESS:

18 No, I do not believe that the
19 enforcement of our emergency order is premature.

20 EXAMINATION BY MR. RILEY:

21 Q. Irregardless of whether you've
22 evaluated all of the information that's come in
23 after December 7, 2010?

24 A. We have and continue to evaluate that
25 information but to date and up to the date that

1 DOJ asked to enforce that order we have not seen
2 anything that would alter EPA's position that
3 the order is necessary and needs to be enforced.

4 Q. All right. So let me talk about then
5 prior -- I'm sorry. I dropped my microphone.

6 In compiling the record, which as you
7 explained would constitute information EPA had
8 available prior to issuance of the order on
9 December 7, 2010, in compiling the
10 administrative record did EPA have information
11 that tended to contradict its findings of facts
12 that are enumerated in the administrative order?

13 A. Will you ask that once again, please?

14 Q. Sure. And we're -- we're --

15 A. No, I understand.

16 Q. We were fumbling with time frame
17 earlier. Really what I'm trying to get to is
18 the process of sorting the EPA records to
19 compile the administrative record. As I
20 understood your earlier answers is that the
21 three individuals, Chris Lister, Scott McDonald
22 and Jerry Saunders, sorted through EPA documents
23 and determined based on some criteria that
24 certain items would be included in the
25 administrative record and certain records or

1 items would not be included. Am I right so far?

2 A. Yes.

3 Q. The -- with respect to the information
4 that was not included is there any information
5 in that -- in those documents that would tend to
6 contradict EPA's findings of fact or conclusions
7 of law that are enumerated in the administrative
8 order?

9 A. There are -- there is information that
10 the Agency possessed prior to our decision on
11 the 7th of December that within EPA's possession
12 it would -- there's additional information that
13 exists that would -- that helped to educate and
14 inform EPA on the situation that existed in --
15 related to these two wells. Some of that
16 information clearly was not put into the
17 administrative record.

18 Q. Let me try my question again. Is there
19 any part of that information that would
20 contradict EPA's findings that are enumerated in
21 the administrative order?

22 A. I'm struggling with the word
23 contradict.

24 Q. Okay. Let me give you an example.

25 A. I'm hesitant to use the word

1 contradict. I think there's evidence out there
2 as in any case that would -- that would exist
3 that you might -- somebody could create a
4 scenario that says: Oh, that evidence doesn't
5 support your decision. When EPA compiled its
6 record we don't believe we had any evidence in
7 front of us that would -- would undermine or
8 contradict our decision making that we made, the
9 findings of fact that we made in the order. We
10 think the findings of fact stand on their face
11 and that there isn't data that we had in our
12 possession prior to the decision that would say
13 a piece of our data was not scientifically
14 valid, a piece of our data was not drawn on
15 scientifically supported conclusions.

16 Q. All right. Let me give you an example.
17 Did EPA -- does EPA have any documents from any
18 source whatsoever indicating that domestic water
19 wells in the area that is the subject of our
20 discussion have been found to contain or have
21 associated with domestic water well's natural
22 gas?

23 A. Prior to our decision and post our
24 decision, yes, we were aware of those facts.

25 Q. Are those facts included in the

1 administrative record?

2 A. No, because we do not believe those
3 facts were part of the record that we used to
4 make our decision because we don't believe
5 they're germane or relevant to the issue at
6 hand.

7 Q. Well, explain to me EPA's position on
8 why in that area historically prior to any
9 Barnett shale production there have been
10 instances where natural gas has been found in
11 domestic water wells and how that is not germane
12 to EPA's conclusion that Range is causing or
13 contributing to contamination of the Lipsky or
14 Hayley water wells?

15 A. Because I don't think EPA anywhere in
16 its order or in its position that we've stated
17 related to this case has ever said that we don't
18 believe there's drinking water wells that can be
19 con -- can be impacted by natural gas. We in
20 fact know there are, there have been
21 historically, there always will be. We believe
22 the data we have it shows a direct relationsh --
23 relationship between the gas found in the
24 production well owned by Range Corporation and
25 the gas found in the Lipsky and Hayley wells.

1 Because of that fact we don't think that the
2 idea of gas from other sources is necessarily
3 contradictory to our findings nor does it
4 contradict what we found.

5 Q. Let me see if I understand that then.
6 Is it your position -- by "you" I mean EPA's
7 position -- that it has done sufficient testing
8 to conclusively determine that gas from the
9 Range production wells, the Butler and Teal
10 wells is that the gas found in those wells is
11 the same gas as found in the Lipsky and Hayley
12 water wells?

13 A. We believe that we have enough data --
14 the Agency believes we have enough scientific
15 data that is valid to support the issuance of an
16 order which, again, we made from information
17 that we believe the Range efforts in and around
18 the Butler and Teal well caused or contributed
19 to the contamination of the underground source
20 of drinking water and presented an imminent and
21 substantial endangerment.

22 Q. Okay. So let's try my question.
23 There's a -- there's a type of gas being
24 produced by Range. What term would you like to
25 apply to that gas? What -- what is comfortable

1 to you from the Butler and Teal wells?

2 A. We believe the gas that we found in the
3 Lipsky well and the Hayley well are sufficiently
4 similar to the gas that we found in the Butler
5 production stream to support the issuance of our
6 order under the provision of the statute that we
7 cited 1431.

8 Q. Okay. I'm really trying to get at your
9 earlier statement that the historical
10 information the EPA possesses and possessed
11 prior to December 7, 2010 is, for lack of a
12 better term, inconsequential to EPA's
13 determination to issue the order; is that true?

14 A. I would not use the word
15 inconsequential.

16 Q. Well, of what consequence then is it?

17 A. It was part of the data, it was part of
18 the information known. We looked at that
19 information. We did not believe it was germane
20 or relevant to the findings that we cited in our
21 order, that there was gas in one well that was
22 sufficiently similar to gas in another well, a
23 private well, coming from an underground source
24 of drinking water that we thought presented an
25 imminent and substantial endangerment. Again,

1 if you read the order itself, we don't use the
2 word conclusive. We don't use the word is the
3 same. We use very likely the source. We
4 believe there is a link between the two and we
5 believe that we were within the authority that
6 the Agency has to ask Range to undertake
7 activities to, one, eliminate the risk that we
8 perceived existed; and, two, to conduct
9 additional infor -- additional data gathering to
10 try to conclus -- to see if we could get to a
11 point of determining conclusively exactly where
12 that gas was coming from.

13 Q. So the way I'm hearing you and
14 particularly that last piece you're not sure,
15 EPA is not sure if the Range wells are causing
16 or contributing to any contamination of the
17 USDW; is that true?

18 A. No, that's not true. We issue --

19 Q. So you're certain?

20 A. No.

21 Q. So you're certain?

22 A. And I don't -- I didn't say I was
23 certain.

24 Q. Then you're uncertain?

25 A. No. I said we believe that Range

1 caused or contributed to the situation that led
2 to the contamination of the underground drinking
3 water source. That's the standard that we
4 believe we have to meet with the issuance of our
5 order. We believe that the data we have
6 supports that. At no point -- again, we have
7 not made a determination of the exact pathway.
8 We have made a determination that the gas
9 streams are sufficiently similar to believe
10 they're from the same source. And no data to
11 date, especially no data before our issuance of
12 the order, have been presented to the Agency
13 that would change our determination of that.

14 Q. All right. How would you characterize
15 EPA's level of certainty that gas from the Range
16 wells is being found in the Lipsky wells?

17 MR. LYNK:

18 Object to form.

19 EXAMINATION BY MR. RILEY:

20 Q. Well, what I heard so far is that you
21 think it's possible. Is that a fair
22 characterization of your answer?

23 A. No. Again, those are all very
24 qualitative words you're using. We believe
25 there's data that shows they are sufficiently

1 similar. Are they exactly the same, no. The
2 data -- the record doesn't support that, meaning
3 are they identical. But we've never said that.
4 We think they're sufficiently similar based on
5 the fact pattern in and around the data that we
6 have. We believe that that data shows to a
7 level of certainty to EPA that there is a
8 relationship between the gas that's in the Range
9 production well and the gas that we found in the
10 Lipsky and Hayley well. And we -- again, prior
11 to 12-7 and even today we have not been
12 presented data from any source that would
13 conclusively change our -- the Agency's position
14 on that. We believe the two gases are very
15 similar and we believe they're from the same
16 source, which is the area that Range has tapped
17 for production. We believe the gas from that
18 formation is the same gas we're seeing in the
19 Hayley and Lipsky well. We believe our data
20 supports it, and that's why we issued the order.
21 And if we had any uncertainty of that the Agency
22 would have not issued its order.

23 Q. Okay. So if in the course of this
24 discussion today if we establish the Agency is
25 uncertain then the order is misplaced; would you

1 agree?

2 A. No.

3 MR. LYNK:

4 Object to form.

5 EXAMINATION BY MR. RILEY:

6 Q. Let's try to answer -- limit your
7 answers to the questions I ask. Now, I'm going
8 to let you go on a little bit but -- but the
9 objective --

10 A. Okay.

11 Q. -- here is for me to ask you questions,
12 not for you to give narratives. So I'm going to
13 ask you --

14 A. Okay.

15 Q. -- specific questions. If I don't do
16 that --

17 A. My answer is no.

18 Q. All right. So you would not withdraw
19 the order even if you determine as you sit here
20 today that you were incorrect?

21 A. That's not what I said.

22 Q. Well, let's try it the other way then.
23 If some -- if some part of this discussion you
24 find that EPA has made an error, okay, would you
25 recommend to your bosses and all the powers that

1 be that the order be withdrawn?

2 MR. LYNK:

3 I'm going to object. I mean, this
4 assumes you're asking him if you prove to him
5 today that the order is wrong will he withdraw
6 it. I don't think that's the purpose of this
7 deposition. You're here to find out information
8 related to the order, he's here to answer that.
9 He's not here -- in fact your co-counsel has
10 told the Court he is not intending with this
11 deposition to review the merits of the order.
12 So I think perhaps this is straying beyond the
13 scope --

14 MR. RILEY:

15 Sure. And I --

16 MR. LYNK:

17 -- of the 30(b)(6).

18 MR. RILEY:

19 I apologize for going afield. But
20 when the witness gave his lengthy answer to a
21 discreet question I thought it was appropriate.
22 But let me -- let me not allow the witness to
23 broaden the scope. I'll adhere to your
24 instruction, Counsel, and try to ask specific
25 questions. I'd ask you to instruct your

1 witness, though, to confine his answers to the
2 question asked. Is that fair?

3 MR. LYNK:

4 Well --

5 MR. RILEY:

6 But if he's going to go afield and
7 make statements on the record then I'm going to
8 have the opportunity to expand the scope.

9 MR. LYNK:

10 Well, I mean, you can't have it
11 both ways. You're asking questions I think you
12 can see that he is making a genuine effort to
13 engage you on that. And I'm trying to allow
14 that. And I'm not trying to be overly
15 obstructionist with my objections. My point
16 though is that we're not here to get the
17 Agency's decision on whether it will take a new
18 action rescinding an order that it issued to
19 Range today. We're here for you to find out
20 information --

21 MR. RILEY:

22 And that's what I'm trying to do,
23 Counsel.

24 MR. LYNK:

25 -- that's considered to be

1 relevant.

2 MR. RILEY:

3 I'm seriously engaging that
4 endeavor. But if the witness is going to go
5 beyond the bounds of my question then I'm going
6 to ask follow-up questions.

7 THE WITNESS:

8 Well, I just want to go on the
9 record as the witness I do not believe --

10 MR. RILEY:

11 I haven't asked you a question,
12 sir.

13 THE WITNESS:

14 No, but --

15 MR. RILEY:

16 I haven't ask you a question.

17 THE WITNESS:

18 -- I don't believe I went beyond
19 the bounds of your question. I answered the
20 question you asked me.

21 MR. RILEY:

22 I haven't asked --

23 MR. LYNK:

24 John, let's wait until he asks you
25 another question.

1 THE WITNESS:

2 That's fine.

3 EXAMINATION BY MR. RILEY:

4 Q. So let's talk about the -- well, let's
5 re -- regroup for a second and let's get into
6 the deposition record the administrative record
7 of the United States Environmental Protection
8 Agency. I brought two copies with me. I think
9 you might have a copy before you just based on
10 the outside of your binder and the size of it.

11 MR. RILEY:

12 Let's mark this Deposition Exhibit
13 No. 2 in its entirety.

14 EXAMINATION BY MR. RILEY:

15 Q. Mr. Blevins, would you take a minute
16 and look at Deposition Exhibit No. 2 and just
17 see if you, again, on a quick review whether
18 it's complete?

19 A. It appears to be complete.

20 Q. Now, in fairness there were some blank
21 pages that were numbered in the -- sequentially,
22 and those are actually not in the deposition
23 exhibit. But I'll make the representation at
24 least to the best of my review that all that's
25 been removed from the deposition exhibit are

1 blank pages.

2 Now, as I understand then, Mr. Blevins,
3 this is the entire administrative record as
4 viewed from EPA's perspective in this matter; is
5 that correct?

6 A. Yes.

7 Q. As we established a moment ago there
8 are other records that are specific to this case
9 that are not included as part of the
10 administrative record -- the certified
11 administrative record; is that true? I'm sorry.
12 That may be a cumbersome question.

13 You described a sorting process
14 conducted by three staff members of yours in
15 compiling the administrative record. Am I
16 correct that there are other documents in EPA's
17 possession that were not placed into the
18 certified administrative record that are
19 specific to the issues that are the subject of
20 this proceeding?

21 A. Yes, we have other records related to
22 Range Resources and the issues addressed in our
23 order.

24 Q. So if the administrative record is
25 intended to be a complete compilation of all

1 records that bear on the issues presented then
2 the binder we just introduced is incomplete; is
3 that true?

4 A. No.

5 Q. If the administrative record is --
6 actually constitutes -- is constituted by all
7 records in EPA's possession that bear on the
8 issues in contention in this proceeding then the
9 administrative record is not complete; is that
10 correct?

11 MR. LYNK:

12 Objection. I -- I want to clarify
13 issues in contention in this proceeding. Are
14 you referring to the Railroad Commission
15 proceeding or are you referring to the admitted
16 emergency order itself and that action?

17 MR. RILEY:

18 I think they're actually the same
19 but -- but if you prefer me to confine it to the
20 adminis -- excuse me, the emergency order then
21 that's the scope of my question.

22 THE WITNESS:

23 So ask that again, please.

24 EXAMINATION BY MR. RILEY:

25 Q. Sure. If the term administrative

1 record is intended or applies to all records in
2 EPA's possession that bear on the issues
3 discussed in the administrative order then the
4 administrative record or Deposition Exhibit No.
5 2 is incomplete; is that true?

6 A. Again, my answer would be no. Again,
7 if you read the certification of the record I
8 believe that the attachment represents what the
9 certification for the record is.

10 Q. Okay. But to be clear there are
11 records that -- that EPA possesses that it
12 elected to not put into the administrative
13 record that bear on the issues addressed in the
14 administrative order; is that true?

15 A. There are records that the agent -- no.
16 Again -- again, I'm struggling because the
17 administrative record, if you read the
18 certification it says: I certify that the
19 attached is a true and correct index of the
20 administrative record pertaining to the Agency's
21 decision under review. My answer is yes, this
22 is the administrative record.

23 Q. Okay. Now, let's say that this
24 certification -- when one talks about an
25 administrative record, let's suppose that that

1 would include all documents in EPA's possession
2 that bear on the issues discussed in the
3 administrative order, all documents, emphasizing
4 all. Let's suppose that's the case. Do you
5 understand me?

6 MR. LYNK:

7 I'm just going to object, vague as
8 to time frame of the records.

9 MR. RILEY:

10 Sure.

11 EXAMINATION BY MR. RILEY:

12 Q. And, again, it's prior to December 7,
13 2010.

14 A. Again, ask that again. I'm just --

15 Q. Sure. If the administrative record is
16 actually -- as that term is employed if that is
17 intended to be a complete compilation of all
18 records that bear on the questions and issues
19 raised by the administrative order then the
20 administrative record in Deposition Exhibit No.
21 2 is incomplete; is that true?

22 A. That's a huge hypothetical question.
23 If you're asking me if all the records that the
24 Agency possesses related to the Range Resource
25 issue are in this administrative record for this

1 order the answer is no. But I do believe that
2 the documents that are here comprise the
3 administrative record for this order.

4 Q. Okay. Because that was EPA's ambition
5 only to find documents that supported its facts
6 and conclusions of law as described in the
7 administrative record; is that true?

8 A. We built an administrative record to
9 support the issuance of our order, yes.

10 Q. All right. Let me -- let me find out
11 as best I can EPA's position on, for lack of a
12 better phrase, the level of certainty it had to
13 reach before it issued the order. With me so
14 far?

15 A. Uh-huh (affirmative response).

16 Q. Okay.

17 A. Yes.

18 Q. So I'm imagining a spectrum, everywhere
19 from Range is not the cause to EPA is absolutely
20 sure that Range is the cause of the
21 contamination that's of concern. Okay? Can you
22 at least get a visual image of that?

23 A. Yeah, I have the image.

24 Q. Okay. So, again, from sure it's not to
25 sure it is. With me so far?

1 A. Yes.

2 Q. All right. Now, you emphasized earlier
3 that the order speaks to it's likely. Did I
4 understand your position correctly?

5 A. That's the language in the order.

6 Q. All right. So likely means what in
7 your mind?

8 A. Again, I'm not sure what you're asking
9 me.

10 Q. Sure. You know, as lawyers we -- we
11 deal with things like preponderance and stuff
12 like that. So I'm trying to figure out when EPA
13 uses the word likely its level of certainty that
14 Range is causing or contributing to
15 contamination of a USDW. Does that make sense
16 to you?

17 A. Yes. And I think I've answered before
18 that the Agency issued the order because we
19 believe we have enough certainty that Range
20 caused or contributed to issue the order. If we
21 did not we would not have issued the order.

22 Q. And that's why I -- since we got off
23 track a little while ago because you say enough
24 certainty. And to use our words early, those
25 are qualitative terms, they're not

1 quantitative --

2 A. Right.

3 Q. -- correct? I'm trying to understand,
4 perhaps even in a quantitative sense, what is
5 enough certainty in your -- in EPA's view to
6 issue an administrative order or this
7 administrative order in particular?

8 A. The certainty was that, again, we had a
9 contamination -- contaminant that entered into
10 an underground drinking water aquifer. We
11 believe that contaminant posed an imminent and
12 substantial endangerment. When we looked at all
13 the data in front of us we determined that we
14 believed that the gas in the two wells, the
15 production well and the Lipsky well
16 specifically, but the Hayley well as well, were
17 sufficiently similar to believe that there was a
18 causal relationship between the activities that
19 were undertaken by Range to cause a
20 contamination of the underground drinking water
21 aquifer that led to the imminent substantial
22 endangerment. So the Agency was certain that we
23 had met our threshold under our own guidance and
24 our own scientific data to issue the order to,
25 one, eliminate the threat, which was the first

1 part of the order; and, two, to collect data to
2 try to further understand the nature and extent
3 of the contamination and if possible to address
4 that contamination.

5 Q. Is it possible from EPA's perspective
6 that Range is not causing or contributing to
7 contamination in the Lipsky or Hayley wells?

8 A. I think anything is possible so...

9 Q. So what would you do to bring more
10 certainty to the situation?

11 A. Have Range collect the data that we
12 asked them to collect. Have Range work with us
13 to understand the data that they have in their
14 possession which to date hasn't been shared with
15 the Agency to understand, again, what we
16 ordered, the nature and extent of the
17 contamination, the potential pathways and then
18 potential solutions.

19 Q. Now, I'm going back to my question
20 because you haven't answered it.

21 A. Sorry.

22 Q. You said there was enough certainty.
23 Those are your words. Okay? What is enough
24 certainty?

25 A. Enough certainty is that we believe

1 there's enough scientific data, valid scientific
2 data to believe that Range caused or contributed
3 the contamination that exists in the underground
4 drinking water source.

5 Q. Okay. Please list for me all valid
6 scientific data that you rely upon, by "you" I
7 mean EPA, in making the statement you just made?

8 A. That data is contained in the record.

9 Q. Detail it --

10 A. That data --

11 Q. -- for me, please.

12 A. -- is we have isotopic fingerprinting
13 data; we have compositional data; and we have
14 data related to the timeline of what was
15 happening in the Hayley Lipsky well prior to the
16 drilling of the Range production well and after
17 the drilling of the Range production well. We
18 also have data to show that there is no other
19 active production wells in and around the Hayley
20 Lipsky property and there are wells that we
21 believe could have impacted them in the way
22 we're seeing in the field. And that's what
23 we've contained in the record.

24 Q. Okay. Let's break that down then.
25 First of all, let's start with the first item

1 you mentioned which is isotopic fingerprinting
2 data.

3 A. That's correct.

4 Q. Describe EPA's full body of information
5 that supports the administrative order as it
6 pertains to isotopic fingerprinting data.

7 A. We have data that we collected and sent
8 off to a lab, Isotech, that looked at the
9 isotopic fingerprints from the Butler well, the
10 braden part the Butler well, the Hayley or the
11 Lipsky property. When you run the analysis and
12 compare the results we believe that the
13 fingerprints are very, if not identical
14 extremely close to being identical and show that
15 the source of that gas is the same.

16 Q. So then you are convinced that the
17 source -- based on the sample you did prior to
18 December 7, 2010 that the gas in the Range
19 production wells, the Butler and the Teal, is
20 the same gas as that found in the Lipsky water
21 well; is that true?

22 A. I used the word similar. I will
23 stand --

24 Q. So it's substantially similar then you
25 said it is the same.

1 MR. LYNK:

2 I'm going to object, asked and
3 answered.

4 Answer again.

5 THE WITNESS:

6 Again, substantially similar is not
7 the same, if I used the same. I can't say it's
8 the exact same gas because it can't actually be
9 the same gas because one is going up one place
10 and another is coming up another place.

11 EXAMINATION BY MR. RILEY:

12 Q. Yeah, I took that to mean that it's
13 from --

14 A. We believe it's from the same natural
15 gas deposit.

16 Q. Who are the individuals within EPA
17 whether it be your staff or consultants to EPA
18 outside of the Agency, that interpreted the
19 isotopic data?

20 A. That would be, again, Chris Lister,
21 Jerry Saunders, Doug Beak who is with our Office
22 of Research and Development, and then it would
23 be the individuals at Isotech. And their -- I
24 just have to find their names if you need me to.

25 Q. Take your time.

1 A. They're in the record.

2 Q. Please take your time and find it for
3 me.

4 A. Can I use this?

5 Q. Certainly.

6 A. Your tabs are better than mine.

7 Q. Certainly.

8 A. Otherwise I've got to find the page.

9 On page 569, which is the deposition of Chris
10 Lister, he indicates he talked to Mr. Dennis
11 Coleman, co-founder of Isotech Laboratories.
12 And he talked to another gen -- he also talked
13 to a Mr. Steve Pelphrey, P-E-L-P-H-R-E-Y, the
14 lab manager at Isotech Laboratories. And that's
15 on 570. Those are the individuals that I know
16 that we discussed the results with. And, again,
17 there's a record of communication between Chris
18 Lister -- let me just make sure I get that
19 right -- and Mr. Doug Beak who's within EPA at
20 our Office of Research and Development. And
21 that is on page 724.

22 Q. Do I have a full list, Mr. Blevins?

23 A. That's, yes, the best of my knowledge.

24 Q. Of those individuals which of them
25 according to EPA is an expert in the

1 interpretation of isotopic fingerprinting data
2 of the type we've just discussed?

3 A. We would believe that both the
4 individuals at Isotech qualify as that as well
5 as Mr. Dr. -- Mr. Beak who is within our office
6 of research and development.

7 Q. I believe it's Dr. Beak --

8 A. Dr. Beak, yeah. It is Dr. Beak.

9 Q. I did a little research in the EPA Web
10 site panels and I came up with a description of
11 Dr. Beak's experience.

12 MR. RILEY:

13 Let me mark this for the record
14 Deposition Exhibit 3.

15 And off the record.

16 (Off-the-record discussion held.)

17 EXAMINATION BY MR. RILEY:

18 Q. Let me know when you've had an
19 opportunity review it.

20 A. Uh-huh (affirmative response). Yes.
21 I'm fine.

22 Q. I -- I will represent to you that I
23 pulled -- or better stated I printed Deposition
24 Exhibit No. 3 from EPA's Web site and to the
25 best of my knowledge it represents Dr. Beak's

1 qualifications to some degree at least. As you
2 can see the date on the bottom indicates when I
3 printed it, it's January 23, 2011. This is the
4 same Dr. Beak, Mr. Blevins, you described as
5 contributing his opinion to the decision process
6 which led to the issuance of the administrative
7 order?

8 A. Yes.

9 Q. Where is Dr. Beak located in EPA's
10 organization if you know?

11 A. The Office of Research and Development,
12 and that's located in Ada, Oklahoma.

13 Q. Who, if you know, consulted with Dr.
14 Beak in this matter?

15 A. Again, it's included in the record as a
16 record of communication between Chris Lister and
17 Dr. Beak. It's your tab No. 41.

18 Q. As far as I can tell based on what's
19 been provided to me as the administrative record
20 I didn't see any -- any more than appears to be
21 a single contact with Dr. Beak; is that correct?

22 A. There is a single contact included in
23 the administrative record, yes.

24 Q. Okay. To the best of your information
25 and knowledge were there other contacts with Dr.

1 Beak that are not reflected in the
2 administrative record by Chris Lister as
3 pertains to this matter?

4 A. I -- I'd only know of the one.

5 Q. Let's put that aside for a moment, if
6 you would. Let's get this out of the way as
7 well.

8 MR. RILEY:

9 I'd like to enter the actual
10 emergency administrative order as Deposition
11 Exhibit 4.

12 MR. LYNK:

13 What number will this be?

14 MR. RILEY:

15 4.

16 MR. LYNK:

17 4.

18 EXAMINATION BY MR. RILEY:

19 Q. Do you have Deposition Exhibit 4 or a
20 copy of it before you --

21 A. Yes, I do.

22 Q. -- Mr. Blevins? All right. Let's --
23 let me draw your attention to some of the items
24 in the -- in the exhibit. Among the things you
25 mentioned supporting EPA's decision to issue the

1 administrative order you describe some timing as
2 being a factor in EPA's decision.

3 A. That's correct.

4 Q. All right. Could you describe how
5 timing in the context of our discussion is
6 relevant to EPA's decision to issue the
7 administrative order?

8 A. Well, as part of our investigation that
9 was conducted related to the citizen's complaint
10 received by Mr. Lis -- Lipsky and Mr. Hayley we
11 entered into discussions with them and gained
12 information from them about when their wells
13 were drilled, what the status of their wells
14 were at the time of drilling, their ability to
15 use their wells, when their wells and their --
16 from their perspective became problematic in
17 terms of having contamination or problems with
18 the operation of their wells. Comparing that to
19 when the production wells, Butler and Teal wells
20 were drilled by Range Corporation and
21 establishing at least a mental timeline as to
22 the timing of events we believe that helps or
23 that was information we used in deciding whether
24 or not to issue our order.

25 Q. Are you familiar with the Latin phrase

1 post hoc ergo proctor hoc?

2 A. I am not.

3 Q. All right. Well, trust me when I tell
4 you it means after this therefore because of
5 this. It's a description of a legal -- a
6 logical fallacy.

7 Is EPA's possession that because
8 natural gas was detected in the Lipsky well
9 after Range began production in the Butler and
10 Teal wells that that is an indication of
11 causality?

12 A. No. It's part of the fact pattern that
13 we considered along with the other data and we
14 believe it does support our position, our
15 issuance of the order. So in and of itself it
16 does not make the determination or drive the
17 decision but it's part of a fact pattern that we
18 consider.

19 Q. How is it relevant in a fact pattern
20 context to bear on any indication of cause or
21 contribute?

22 A. Well, from EPA's perspective this well
23 had no -- was used for active production. They
24 were drinking from it. They were using it to
25 fill their pool. They were using it for

1 agricultural uses. They had no problems. And
2 then upon a certain time they started
3 experiencing problems with their well that over
4 time grew worse. So looking for what might have
5 been the trigger for that change in the -- their
6 ability to use their well one of the -- one of
7 the facts that came to our attention was the
8 drilling of the Range production wells near
9 their -- near their homes, near their wells,
10 looking at how those two were located within a
11 certain geographic area we believe that there
12 was potential for causality. We then collected
13 other data based on that to see if there were
14 indicators that we could rely on to say that we
15 believe that the two were linked. Again, the
16 Agency's position is we believe there is a
17 link --

18 Q. And we'll get to that --

19 A. -- because --

20 Q. -- I promise you. But my question --

21 A. Okay.

22 Q. -- is about, simply about the fact that
23 Range went into production, some time passed and
24 based on Mr. Lipsky's information or information
25 he provided to EPA some part of the conclusion

1 is that since Mr. Lipsky's problems occurred
2 after Range began production from the subject
3 wells that that is an indicator of causality; is
4 that what I heard you say?

5 MR. LYNK:

6 Object to form.

7 THE WITNESS:

8 It is part of the facts that we
9 considered, yes.

10 EXAMINATION BY MR. RILEY:

11 Q. What other potential facts might result
12 in the exact same phenomenon? Are there other
13 scenarios that could result in Mr. Lipsky
14 experiencing contamination of his well that
15 don't involve Range?

16 MR. LYNK:

17 I'm going to -- well, objection,
18 vague. Are you asking did EPA consider any
19 other scenarios prior to making its decision as
20 reflected in the order?

21 MR. RILEY:

22 Sure. If you like that question
23 better, why not.

24 THE WITNESS:

25 Again, it's a hard question.

1 There's a lot of scenarios that might play out.
2 As we investigated the case, again, we believe
3 the scenario we issued the order on is the
4 scenario that the Agency stands behind. I can't
5 enumerate all the scenarios because, again, you
6 and I could sit here and create 10 scenarios
7 that weren't considered by the Agency. Again,
8 there are other scenarios. We know about them.
9 The methane could come from other sources. And
10 that's part of why we collected data, that's
11 part of why we've asked Range to collect data as
12 part of our order is to try to, again, see if
13 there's other data out there that might identify
14 or change our conclusions. But based on the
15 data we have we believe there is a link.

16 EXAMINATION BY MR. RILEY:

17 Q. Well, let's actually just drill down on
18 it a little bit. Look at I think it's
19 Deposition Exhibit 4, paragraph 46 on page 6.
20 Would you read it into the record, please?

21 A. "Respondents caused or contributed to
22 the endangerment identified herein."

23 Q. Now, I don't see any qualifying words
24 there. It seems as though that is EPA's
25 conclusion. Am I misunderstanding how to

1 interpret that paragraph?

2 A. No.

3 Q. So EPA's conclusion is that respondents
4 caused or contributed to the endangerment
5 identified herein?

6 A. That's correct.

7 Q. And that's an absolute? It's not
8 qualified in any way, it don't say likely or
9 may? It's --

10 A. No.

11 Q. -- an absolute conclusion?

12 MR. LYNK:

13 I'm going to object that that calls
14 for a legal conclusion.

15 MR. RILEY:

16 Well, he's been giving legal
17 opinions throughout. But I'm asking --

18 MR. LYNK:

19 No. He's been attempting to ask --
20 give factual information in response to your
21 questions.

22 MR. RILEY:

23 Okay. Well, this is a fact --

24 MR. LYNK:

25 We're here to comply --

1 MR. RILEY:
2 This is a finding of fact,
3 Counselor.

4 MR. LYNK:
5 -- with the Court's order.

6 MR. RILEY:
7 It's a finding of fact.

8 MR. LYNK:
9 He's not here to testify as to
10 legal conclusions. And I'll note that I believe
11 in the Railroad Commission proceeding itself the
12 Commission sustained an objection --

13 MR. RILEY:
14 Well, you're not a party --

15 MR. LYNK:
16 -- to testimony specifically about
17 this paragraph.

18 MR. RILEY:
19 So you weren't there, Counsel.

20 MR. LYNK:
21 I'm going to instruct him not to
22 answer questions about this conclusion of law.

23 MR. RILEY:
24 Okay. There's a finding of fact,
25 Counsel. I'm not misreading the order.

1 MR. LYNK:

2 You read from paragraph 46.

3 MR. RILEY:

4 Yes, sir.

5 MR. LYNK:

6 That would be in the conclusions of
7 law.

8 MR. RILEY:

9 So you're instructing him not to
10 answer as to whether EPA has concluded in --
11 conclusion of law, excuse my mistake, that
12 respondents have caused or contributed to the
13 endangerment identified herein? You're
14 instructing him not to answer --

15 MR. LYNK:

16 Yes.

17 MR. RILEY:

18 -- is that correct? Okay.

19 EXAMINATION BY MR. RILEY:

20 Q. So I assume you'll adhere to that
21 instruction, Mr. Blevins?

22 A. Yes.

23 Q. And you're refusing to answer that
24 question, correct?

25 A. Yes.

1 Q. Now, we were talking about you
2 mentioned that there were a lot of different
3 scenarios that could explain contamination
4 with -- in the Lipsky water well; is that right?
5 Did I understand you correctly?

6 A. I said there -- yes. There's always a
7 lot of potential scenarios.

8 Q. Would you tell me what some of those
9 scenarios are?

10 A. As the Agency, no. As a person I could
11 speculate. But as speaking for the Agency I
12 don't think I can.

13 Q. So the Agency has not looked at any
14 other scenarios or considered any other
15 scenarios; is that true?

16 A. No, but I -- I can't today tell you all
17 the scenarios that the Agency might possess
18 related to how -- my understanding is your
19 question is how natural gas might come to reside
20 in the drinking water aquifer.

21 Q. Okay. And as EPA's designee are you
22 able to articulate any other potential scenarios
23 that may lead -- may have led to contamination
24 in the Lipsky water well?

25 A. That may have led?

1 Q. Yes, sir.

2 MR. LYNK:

3 Again, I'm going to object to the
4 extent it calls for more than what the Agency
5 actually considered in making its decision as
6 reflected in the order.

7 MR. RILEY:

8 Are you instructing him not to
9 answer?

10 MR. LYNK:

11 Subject to that objection, if
12 you're able to answer you may go ahead.

13 THE WITNESS:

14 Are you asking -- again, let me
15 just be clear. Are you asking what we
16 considered or what are some possible scenarios?

17 EXAMINATION BY MR. RILEY:

18 Q. Well, let's suppose, okay, that it was
19 incumbent on EPA to consider alternative
20 scenarios, do you think that was an obligation
21 of EPA to consider what other sources there
22 might be for contamination of the Lipsky water
23 well?

24 MR. LYNK:

25 I'm going to object to form.

1 THE WITNESS:

2 I think we -- the Agency has a
3 responsibility to consider alternative
4 scenarios, yes.

5 EXAMINATION BY MR. RILEY:

6 Q. In that case, then, what alternative
7 scenarios did the Agency consider?

8 A. Again, we started our investigation
9 looking to see what scenarios might be out
10 there. Is there another source of the methane
11 gas and other contaminants that entered into the
12 Hayley and Lipsky well that might account for
13 the levels that we found and the concentrations
14 that we found and the risk that we found. So
15 those could include somebody tampering with the
16 well; those could include the Hayley well or the
17 Lipsky well being drilled or screened in a -- in
18 a part of the geologic formation that contains
19 its own source of methane gas. So we, again, as
20 part of our investigation considered those
21 options as we move forward. That's again not
22 where we landed. We landed with our order.

23 Q. Tell me what steps EPA took to exclude
24 the other scenarios it considered?

25 A. Again, the record is very clear on

1 that. We collected air data; we collected water
2 data; we made some analysis on the composition
3 of the water; we made some analysis on the
4 composition of the head space air and then based
5 on that we -- it led us to the conclusions that
6 we ended up with.

7 Q. Well, I didn't see in the record, and
8 please point me to the part of the record that I
9 missed, where it shows that you tested any other
10 natural gas production well in the area.

11 A. Again, as the record says our belief is
12 there is not another natural gas production well
13 in the area that had the potential to impact
14 those wells. And that is part of the record.

15 Q. Then I didn't see in the record where
16 you evaluated the geology below the Lipsky site.

17 A. Correct, we did not.

18 Q. Okay. So I'm looking for -- since you
19 had a list of scenarios that you obviously were
20 under obligation and duty to consider, which you
21 just explained a moment ago, I would like to
22 know what other things you did to consider
23 alternate sources of methane gas or natural gas
24 in the Lipsky water well.

25 A. Again, one, I did not say or use the

1 words obligation or duty. You used those words,
2 I did not. Two, I've told you what we did.

3 Q. So --

4 A. I've answered the question. We took
5 samples, analytical samples to determine if
6 there were -- what the composition of the gas
7 was, what the composition, what the contaminants
8 in the water itself were and looked for, again,
9 as you would say scenarios that might lead to
10 that. We did not find any. We did not find any
11 evidence in the construction information that's
12 contained in the record about the construction
13 of the Lipsky well that would lead us to
14 believe, as I said in my earlier answer, that
15 potentially let's say it was screened in a part
16 of the formation that could have led to the
17 contaminants we found being present in the well.
18 We did not look underneath the Lipsky well nor
19 did -- I would state that we had the obligation
20 to look at the geology beneath the Lipsky well.

21 Q. Well, how were you able to determine
22 whether the Lipsky well is screened in a
23 geologic formation that may contain natural gas
24 if you didn't look at the geology below the
25 Lipsky property?

1 A. We read the well logs provided to us as
2 to the well logs from the driller who drilled
3 and -- and analyzed that. And nothing in the
4 record, nothing in the drill welling logs that
5 were provided to us would indicate there was
6 anything found in the Lipsky well when was
7 drilled that would indicate this problem. And
8 then again as we move into the compositional
9 data that's in the record and the isotopic data
10 we think it showed the link back to the source
11 of the natural gas which is where the --

12 Q. And I know you --

13 A. -- formation --

14 Q. -- want to keep saying that, Mr.

15 Blevins --

16 A. Okay.

17 Q. -- but I didn't ask you that question.

18 A. Okay. I think you did, so I'm sorry.

19 Q. All right. And I apologize to you too.

20 I'll try to be more precise --

21 A. Okay.

22 Q. -- if you'll try to be more succinct.

23 My question is about your investigation into the

24 geology below the Lipsky well. That's the --

25 A. And I answered that.

1 Q. -- the context of my question. So my
2 question is --

3 A. I said no.

4 Q. It's going to be helpful if you wait
5 for me -- until I stop speaking before you start
6 speaking and I'll do the same for you.

7 A. Okay.

8 Q. The -- can you name me the
9 stratigraphic layers from surface to the Barnett
10 shale underneath the Lipsky property?

11 A. No.

12 Q. Can you tell me what if any
13 stratigraphic formation has or contains natural
14 gas?

15 A. No.

16 Q. Can you tell me whether in any
17 stratigraphic formation that is below the Lipsky
18 property whether there is any thermogenic
19 natural gas found?

20 A. Yes, of course there's thermogenic
21 natural gas found below the Lipsky well. That's
22 the -- that's the thermogenic natural gas that
23 you guys have tapped into with your production
24 well.

25 Q. Okay. So that's the only thermo --

1 only --

2 A. I don't know if that's the only one.

3 You said did I know of any. I said yes.

4 Q. Okay. So you know of the Barnett
5 shale?

6 A. Right.

7 Q. Do you know of any other?

8 A. No.

9 THE VIDEOGRAPHER:

10 Five minutes left, Counselor.

11 EXAMINATION BY MR. RILEY:

12 Q. Have you ever heard of the Strawn
13 formation?

14 A. Yes.

15 Q. And what is that?

16 A. I've heard of the Strawn formation. I
17 do not know the technical details of what it is.

18 Q. Is it a natural gas bearing zone
19 underneath the Lipsky property to the best of
20 your knowledge?

21 A. I know it's a natural gas bearing zone
22 but I do not know where it exists or where it
23 does not exist based on the size and nature of
24 the formation.

25 Q. Tell me all the things that EPA did to

1 investigate alternate sources of natural gas
2 underneath the Lip -- Lipsky property in the
3 concept -- context of geologic formations?

4 MR. LYNK:

5 Object to form.

6 Go ahead.

7 THE WITNESS:

8 Again, I think I've already
9 answered that. We have done no geologic
10 investigation.

11 EXAMINATION BY MR. RILEY:

12 Q. Distinguish for me the -- the label
13 thermogenic and biogenic.

14 A. Thermogenic is -- well biogenic is the
15 easier one. Biogenic means it's methane
16 produced from a biological activity that occurs
17 in certain substrates. Thermogenic is natural
18 gas that's formed by, to the best of my
19 knowledge, heat or pressure or maybe the better
20 answer is and/or pressure but...

21 Q. Did EPA's isotopic fingerprint --
22 fingerprinting determine anything more than
23 the -- whether the methane gas was isogenic or
24 biogenic -- excuse me, thermogenic or biogenic?

25 A. It indicates whether it's thermogenic

1 or biogenic.

2 Q. Okay. So the -- the methane analysis,
3 the isotopic fingerprinting that you've repeated
4 several times, that only determines whether the
5 gas tested is thermogenic and biogenic; is that
6 correct?

7 A. Yes.

8 Q. To the best of your awareness would you
9 agree that all gas, natural gas -- I'm sorry,
10 methane gas would share the thermogenic
11 characteristic if it were formed through heat
12 and pressure?

13 A. Ask that one more time.

14 Q. Certainly. Let's sort of make this a
15 little more vivid, I suppose. Thermogenic,
16 biogenic, that's what we're -- that's what the
17 isotopic fingerprinting as it pertains to
18 methane demonstrate; is that correct, in your
19 mind?

20 A. Yes. Again, it can also -- it tells
21 you that but it can also tell you the extent of
22 that.

23 Q. Okay.

24 A. Meaning you can have at least in my
25 understanding you can have a source of methane

1 that may have signs of both thermogenic and
2 biogenic indicators. And that will give a
3 different fingerprint than something that let's
4 say is solely thermogenic or solely biogenic in
5 nature.

6 Q. So it can be one or the other or both,
7 a mixture of both; is that right?

8 A. Right.

9 Q. As pertains to the EPA sampling --
10 well, let me -- let me interrupt for a second
11 because I think we're running out of tape.
12 Let's take a five-minute break if that's okay
13 with you.

14 THE VIDEOGRAPHER:

15 Going off the record. The time is
16 now 11:15. This is the end of tape 2.

17 (Recess was taken.)

18 THE VIDEOGRAPHER:

19 This is the continued videotape
20 deposition of John Blevins. This is the
21 beginning of tape 3. The time is now 11:37.

22 EXAMINATION BY MR. RILEY:

23 Q. Mr. Blevins, I think we left off
24 generally just in the subject matter of geology
25 and particularly geology below the Lipsky

1 property which I -- I would expect, but I'm not
2 a geologist, is the same as the geology below
3 the Hayley property. Would you agree generally
4 that we're talking about a small area that you
5 wouldn't expect a wide difference or big
6 difference in the geologic formations below the
7 Hayley and the Lipsky property?

8 MR. LYNK:

9 I'm going to object just to the
10 extent that some of these questions may be
11 calling for an expert opinion on geology. He
12 hasn't been identified as such in the foundation
13 laid to date nor designated as such.

14 With that said you may answer if
15 you know.

16 THE WITNESS:

17 Generally I would agree with you.
18 But without knowing the specifics that's as far
19 as I can go.

20 EXAMINATION BY MR. RILEY:

21 Q. Okay. Let me take another cue from
22 your counsel and ask you if you are -- if you
23 personally are -- you would consider yourself an
24 expert in the science of geology?

25 A. No.

1 Q. Are any of the EPA folks or outside
2 consultants you've mentioned in this deposition
3 so far geologists?

4 A. I don't know without looking.
5 Especially for the Isotech people I don't know
6 their -- their resumes. I don't know about, to
7 be honest about Chris Lister what his background
8 is. And Dr. Beak is a geochemist I think is
9 what his says. Yes, a geochemist. A little bit
10 different than a geologist.

11 Q. I agree. So are there geologists
12 employed by EPA to the best of your knowledge?

13 A. Yes.

14 Q. And can you say with any degree of
15 certainty that a geologist, someone who holds
16 that credential, was consulted as part of the
17 team that recommended issuance of the emergency
18 order?

19 A. No, I can't. I don't believe that a
20 geologist was consulted nor would I have
21 expected one to be consulted.

22 Q. Why would you not expect a geologist to
23 be consulted as pertains to geology or geologic
24 stratum below the Lipsky and Hayley properties?

25 A. Because for the order that we issued

1 and the facts that we based the order on that
2 wasn't part of the decision making that we made.

3 Q. So whether Mr. Lister is a geologist or
4 not really doesn't bear on any decisions EPA
5 made in issuing the order. He didn't offer any
6 geologic opinions that would support the
7 administrative order; is that true?

8 A. Can you ask that again because --

9 Q. Sure.

10 A. -- there was two parts. I got -- sorry
11 I got lost.

12 Q. I'm sorry. What I took you to say is
13 you're uncertain about Mr. Lister's
14 qualifications --

15 A. Right.

16 Q. -- whether he's a geologist or not.

17 A. Right.

18 Q. Am I right so far?

19 A. That's correct.

20 Q. And then regardless of whether he holds
21 that qualification I didn't find in the
22 administrative record any instance where Mr.
23 Lister offered an opinion in the field of
24 geology. Did I miss something in the
25 administrative record?

1 A. I do not believe you did miss anything.

2 Q. So even if he holds that qualification
3 and is a geologist he didn't offer any opinions
4 as a geologist in support of the administrative
5 order; is that the best of your understanding?

6 A. There's nothing in the record that
7 would say that, yes. Now, he may have as he
8 developed his case have geologic opinions that
9 he used to lead his data collection and fact
10 finding but it's not captured in the record.

11 Q. Okay. So in order to know whether Mr.
12 Lister employed any training he might have in
13 the science of geology in making any part of his
14 recommendations or participation in this case
15 we'd have to talk to Mr. Lister to find that
16 out; is that right?

17 A. That's correct.

18 Q. Is -- there's a Strawn formation -- let
19 me withdraw that portion.

20 I think you said a moment ago or a
21 short while ago that you were familiar with the
22 Strawn formation in broad strokes; is that
23 correct?

24 A. I'm aware that it exists and it exists
25 in the general vicinity of the Lipsky and Hayley

1 wells.

2 Q. Do you know if it's a natural gas
3 producing formation?

4 A. I don't know that for a fact but it's
5 my understanding that it is.

6 Q. Did EPA do any testing of Strawn
7 formation natural gas to determine whether it is
8 thermogenic or biogenic?

9 A. Not related to this case, no.

10 Q. In other cases has EPA done any
11 analysis of Strawn formation natural gas in that
12 context as to whether it's thermogenic or
13 biogenic?

14 A. Not to my knowledge. But, again, EPA
15 is a large organization.

16 Q. Sure. But to the best of your
17 knowledge there's no record that is in the
18 assembly of documents that may or may not be
19 administrative record as it pertains to this
20 case where there's any analysis of Strawn
21 formation natural gas; is that right?

22 A. For this case, no. Yes, you're
23 correct. Sorry.

24 Q. And, by the way, documents that were
25 evaluated by the review team to compile and

1 certify the administrative record if they
2 weren't included in the administrative record
3 were they preserved as to your knowledge?

4 A. Yes. They're still part of the
5 Agency's records.

6 Q. So they wouldn't have been destroyed;
7 is that correct?

8 A. That's correct.

9 Q. Okay, Mr. Blevins, let's talk about
10 with precision the isotopic and compositional
11 analysis that EPA relied upon in issuing the
12 administrative order. All right? Just to
13 orient you to the subject.

14 A. Okay.

15 Q. Let's talk first about compositional
16 analysis. What is EPA's position on the value
17 of compositional analysis in this case?

18 A. We believe there is compositional data
19 that again was used to support the issuance of
20 our order.

21 Q. Okay. Could you -- could you detail
22 that compositional data precisely as to what
23 components of the analysis or components that
24 were detected in the analysis that would lead to
25 the conclusion that natural gas found in the

1 Lipsky water well is tied to, related to or
2 otherwise connected to the production gas from
3 the Range wells?

4 A. We looked at the concentrations and the
5 ratios of concentrations of ethane and propane
6 and propane and butane. And we believe there's
7 a significant correlation between those
8 compositional elements in both of the gas
9 streams that would again lead us to believe that
10 they're related. And so, for example, when you
11 look at the ratios of those compounds in the gas
12 collected from the bradenhead of the Butler unit
13 production well you don't see those same
14 relationships, but we do see it in the gas from
15 the production well in the Lipsky well.

16 Q. So tell -- tell me, you've used the
17 term at least twice, once just now and earlier,
18 what you're referring to when you refer to
19 bradenhead?

20 A. My understanding is that's the gas that
21 exists in the production well outside the
22 casing, so between the wall of the -- the bore
23 hole and the casing there's gas that exists
24 there that can be sampled. It was actually
25 sampled I believe by the Railroad Commission.

1 Q. So that's not a -- that's not a sample
2 that EPA took; is that correct?

3 A. It was -- no. It was a sample that the
4 Railroad Commission took.

5 Q. Okay. Is it something EPA relied upon
6 in its analysis of the situation?

7 A. Yes, it's in the record.

8 Q. When did -- when did the Railroad
9 Commission take the bradenhead sample?

10 A. September 20th.

11 Q. 2010?

12 A. Yes.

13 Q. Did the Railroad Commission take other
14 samples at that -- at that time?

15 A. That is the sample that we included in
16 the record that we reviewed prior to making our
17 decision, yes.

18 Q. Okay. And I'm not -- I'm asking you
19 whether the Railroad Commission took other
20 samples that are not included in the record.

21 A. They may have.

22 Q. And on that date what specifically did
23 the Railroad Commission sample and what results
24 do you rely upon from that sampling?

25 A. Again, there's a whole list of

1 analytical -- if you look at Exhibit -- well,
2 the first exhibit, the first page, there's a
3 table. And you can see the bradenhead sample
4 contained in that table. The table is labeled
5 "Comparative Gas Analysis." And the only point
6 I was trying to make is if you look at the --
7 the proportion, the ratios of methane to propane
8 and propane to butane, they're different in that
9 air sample than they are in the Lipsky well and
10 in the -- excuse me -- production part of the
11 Butler/Teal well.

12 Q. Okay. Let's do that. Let's use the
13 table that you pointed to --

14 A. Okay.

15 Q. -- and just work our way across from
16 left to right. There's a -- the first column is
17 a description of various compounds.

18 A. Right.

19 Q. And then various indicators for the
20 later columns. But the second column which is
21 labeled Dom 1?

22 A. Domestic well 1, right.

23 Q. And it appears to be a sample that was
24 taken on August 26, 2010.

25 A. That's correct.

1 Q. It looks like based on the annotation
2 here that it's a Railroad Commission sample?

3 A. That's correct.

4 Q. And then there's something after the
5 colon on that same -- or in that same box Anacon
6 slash SPL, is that the lab that --

7 A. That's my understanding, yes.

8 Q. And then analytes slash units and then
9 there's in the same column we were describing
10 there's a mol percentage; is that correct?

11 A. Right.

12 Q. Monthly percent?

13 A. Correct.

14 Q. And so is that where I'd go to look at
15 the ratios of the compounds that we've been
16 discussing?

17 A. You -- the ratios aren't contained in
18 there. You'd have to actually calculate them.
19 But, yes, you could find them so -- like ethane
20 and propane you could calculate a ratio between
21 those.

22 Q. Okay. And it's that ratio that you
23 refer to as supportive of EPA's determination in
24 this --

25 A. That's correct.

1 Q. The -- without tediously going through
2 all of these various columns let's just skip a
3 bit to the third column or fourth column
4 actually which -- I'm sorry. Let me change my
5 direction.

6 The third column location again
7 domestic water well one, correct? That's the --

8 A. Which column? I'm sorry.

9 Q. Yeah. I'm sorry. It's the third one.
10 It's going to be the EPA colon Isotech
11 samples --

12 A. Oh, yes.

13 Q. -- I think. That is the -- from EPA's
14 perspective it took samples from domestic water
15 well 1 and from Butler unit 1 production gas on
16 October 26, 2010, am I right?

17 A. That's correct.

18 Q. Those are the only two -- well, it's
19 single sampling event in terms of number of days
20 when he goes out there to sample. And there are
21 two different sources, correct?

22 A. For the gas sampling, yes.

23 Q. But this -- the gas sampling is where
24 you did your isotopic fingerprinting, correct?

25 A. That's correct. And that's -- those

1 results are at the bottom of the table.

2 Q. All right. Okay. And the other
3 samples identified in the table are taken by the
4 Railroad Commission and there's one --

5 A. Taken by Range.

6 Q. The 5th column taken by Range, right?

7 A. That's correct.

8 Q. Now, the Range sampling seems to
9 predate EPA's investigation in this matter. It
10 looks like it was taken on February 16, 2010; is
11 that true?

12 A. The Range was taken --

13 Q. February 2010?

14 A. Yes, February.

15 Q. When did EPA's investigation begin as
16 it pertains to this matter?

17 A. Let me just see if it's -- I just need
18 to find when we started -- got the contact from
19 the Listers and/or the Hayleys. I'm trying
20 to --

21 Q. You said Lister, did you mean Lipsky?

22 A. Or Lipsky. Sorry. Yeah. Let me look
23 at Chris' declaration. I just don't remember
24 the date. It was well after that date. But I
25 don't know the exact date.

1 Q. Take your time because I'm going to
2 have some questions along the line of the
3 initiation of the EPA investigation.

4 A. I mean one place it's clearly marked is
5 in Exhibit 18 which is the Railroad Commission
6 initial report regarding the Lipsky complaint.
7 And I can pull the date of their complaint.
8 Because Mr. Lipsky contacted I think the
9 Railroad Commission, EPA and TCEQ all at the
10 same time. And that's, again, Exhibit 18 and
11 19. There's two of them.

12 Q. Okay. Exhibit --

13 A. So now Exhibit 18 or -- that's 19,
14 sorry. No, that is 18. On August 6, 2010
15 there's one inspection that we followed up on or
16 one contact. And then the other one was on
17 August 8 a joint inspection of the -- or on
18 August 26th a joint inspection of the property
19 was conducted where we were involved on the
20 26th.

21 Q. Okay.

22 A. But let me -- I can also look. So it
23 was in August that we started our investigation.

24 Q. Okay. So August 2010?

25 A. Yes.

1 Q. Would you agree with me toward the
2 later part of the month?

3 A. The middle to late part of the month,
4 yes.

5 Q. Who is Alisa Rich?

6 A. She is an environmental consultant
7 hired by Mr. Lipsky.

8 Q. Have you had any dealings directly
9 with -- you personally have any dealings
10 directly with Alisa Rich?

11 A. Myself personally?

12 Q. Yes.

13 A. No, sir.

14 Q. Does any work performed by Ms. Rich or
15 her company, Wolf Eagle, support EPA's decision
16 to issue the emergency order?

17 A. We definitely considered the
18 information and it's part of the record.
19 Document 13 is report comprehensive well water
20 analysis, Hayley well, which is dated September
21 of '10. And there should be one other. Yes,
22 document No. 9, which is August 10th is the date
23 on it, water well results for Stephen Lipsky
24 property done by Wolf Eagle. So there's two
25 reports and associated analytical data sheets

1 that are contained in the record.

2 Q. What -- what -- in what way did EPA
3 rely upon the work performed by Alisa Rich and
4 submitted to EPA?

5 A. We looked at the analytical data that
6 was contained within those reports and
7 considered that data and some of those are
8 contained in the findings of fact. So I think,
9 for example, one of the benzene concentrations
10 that was identified in one of the Wolf reports
11 is in one of our findings of fact.

12 Q. And what steps did EPA take to verify
13 the reliability of the work performed by Wolf
14 Eagle?

15 A. We reviewed the report and the QA
16 packages that were contained within those
17 reports and those are part of the record.

18 Q. What would that data tell you about the
19 method about which samples were taken?

20 A. It would tell you the method used and
21 the -- so the specific method used for either
22 gas or water sampling and then the -- the
23 results and the QA results and whether through
24 the QA results at the lab did they find any
25 deviations that they needed to point out.

1 Q. And what I'm driving at is do you --
2 does EPA train its employees in taking
3 environmental samples?

4 A. We have training events that, yes, are
5 different depending on what part of the program
6 and what your actual job title is. We do
7 have -- the Agency does have training that we
8 send people to to learn how to take samples.

9 Q. Were the individuals that took samples
10 in this case trained in EPA's sampling
11 protocols?

12 A. Yes. All of EPA's inspectors actually
13 have inspector credentials. And there's a body
14 of training that they are required to take by
15 the Agency to maintain those inspector
16 credentials. And part of that is being trained
17 to be able to take field samples.

18 Q. Okay. And what's the importance of
19 that, Mr. Blevins?

20 A. To make sure that valid samples are
21 taken in the field.

22 Q. Would you agree with me that laboratory
23 QAQC data does not -- does not reach the lab or,
24 excuse me, the field sampling methodology?

25 A. Yes. Yes, I agree with you.

1 Q. So the lab QAQC doesn't indicate
2 whether the samples were properly taken?

3 A. That's correct.

4 Q. And I assume that EPA trains its
5 inspectors for the purpose of consistency and
6 getting valid information; is that a fair
7 statement?

8 A. That is our goal, yes.

9 Q. You mentioned a certification that EPA
10 employees would gain when they've been properly
11 trained in the methods for taking samples. What
12 is that again?

13 A. All of our inspectors nationwide have
14 to be certified as inspectors. And there's --
15 depending on, again, the media program that
16 you're certified as an inspector for there's a
17 list of training events that you have to certify
18 that you've taken to maintain your inspection
19 credentials.

20 Q. I'm having a little trouble.

21 A. I know. It's not going to stay.

22 Q. It just keeps slipping down. There we
23 go.

24 A. So they have -- they're certified as
25 inspectors and they have to maintain their

1 inspection credentials by keeping up their --
2 the required training. That training is
3 specified by the OECA, the headquarters office
4 for enforcement. So each of our inspectors have
5 to meet certain requirements to maintain their
6 inspector credentials. And then -- I'm sorry.

7 Q. Go ahead. Is there something more?

8 A. When you go -- we take samples in the
9 field we have sampling plans that our field
10 inspectors or samplers are supposed to follow to
11 ensure data collection consistency. And the
12 record actually includes a sampling plan for the
13 sampling that took place by EPA staff.

14 Q. Now, in your career with EPA you've
15 worked a lot with consulting firms,
16 environmental consulting firms; is that a --

17 A. Yes.

18 Q. -- correct assessment?

19 A. Yes.

20 Q. Would you agree with me that they --
21 like any other group of companies or individuals
22 they vary in quality?

23 A. That's a true statement.

24 Q. The Wolf Eagle, do you have any prior
25 experience with Wolf Eagle Environmental and its

1 personnel?

2 A. Me personally or --

3 Q. Yes, sir.

4 A. Personally, no.

5 Q. So then as far as you know does EPA

6 have any prior history with Wolf Eagle

7 Environmental?

8 A. I don't know -- for EPA I don't know.

9 That's a broad question. You know, they could
10 be -- because they collect -- they do some
11 drinking water work. They could be involved in
12 some other parts of the Agency that I'm not
13 aware of. But I don't know of any interaction
14 between us and Wolf Environmental.

15 Q. Do you know if EPA -- excuse me. Do
16 you know if any employees at Wolf Eagle are
17 trained in the proper methodology for taking
18 environmental samples?

19 A. I don't know either way, yes or no.

20 Q. Do you know Ms. Rich's individual
21 qualifications for either sampling or
22 interpreting data as it pertains to this case?

23 A. No.

24 Q. Do you know her 19-year-old son's
25 qualifications for taking samples or

1 interpreting any results from analysis as it
2 pertains to this case?

3 A. No.

4 Q. Are you aware that Ms. Rich relies upon
5 her 19-year-old son in taking environmental
6 samples that are relevant in this matter?

7 A. No.

8 Q. Do you know what training her
9 technician or 19-year-old son has in taking
10 environmental samples?

11 A. No. Since they weren't a contractor to
12 EPA we would not know that information.

13 Q. Would that be relevant to assessing the
14 reliability of any information you received from
15 Wolf Eagle or any environmental consulting firm?

16 A. If we knew there was a problem it would
17 be relevant but absent knowing a problem I don't
18 know that it's relevant.

19 Q. So wouldn't be important to EPA to know
20 the method by which samples were taken that EPA
21 put into the administrative record and is
22 relying upon to some degree in this matter?

23 A. It would be important if it was the
24 only piece of data for that particular
25 constit -- constituent or decision that we made,

1 if we were relying on it exclusively. But since
2 we have our own data that EPA took and ran
3 through our own contractors I think it takes --
4 it has less relevance.

5 Q. Does EPA's order stand on -- in any way
6 on any information received from Wolf Eagle
7 Environmental or from Ms. Rich?

8 A. It definitely was considered but it
9 does not stand alone on her -- the data supplied
10 by Wolf Environmental.

11 Q. In any portion -- and I'm sorry. I
12 don't want to drill down on this but is the data
13 received from Wolf Eagle Environmental or Ms.
14 Rich in any way relied upon by EPA in issuing
15 the administrative order?

16 A. Well, it was concluded in our
17 administrative record so we definitely
18 considered it and -- and used it in our decision
19 making.

20 Q. So is a shorter way to that answer yes,
21 you relied upon data from Wolf Eagle
22 Environmental and Ms. Rich in issuing the
23 administrative order?

24 MR. LYNK:

25 Objection, asked and answered.

1 THE WITNESS:

2 Again we -- it's part of our
3 record. We did use it. We considered it. It
4 was weighed in the decision making. Was it the
5 sole factor, no. I'm sorry. I'm just not sure
6 what -- I struggle with relied upon. If the
7 definition of relied upon is used, the answer is
8 yes. If the definition of relied upon was it
9 like the key to my decision -- the decision
10 making, the answer is no.

11 EXAMINATION BY MR. RILEY:

12 Q. Well, and just --

13 A. I know.

14 Q. -- bear with me.

15 A. I'm just struggling.

16 Q. Sure. Let's suppose there are 10
17 different things that EPA considered before it
18 issued the administrative order and Wolf
19 Eagle -- Wolf Eagle's data is the 11th thing.
20 Okay?

21 A. Uh-huh (affirmative response).

22 Q. It's in the administrative record but
23 it's not relied upon. Using that as a context
24 for our discussion is the Wolf Eagle and Ms.
25 Rich's data one of the 10 things EPA relied upon

1 or is it an 11th thing that you just looked at
2 and considered?

3 A. Wow. I'd have to say we definitely
4 considered it and relied upon it in our decision
5 making but it wasn't -- again using your
6 scenario it wasn't one of the main factors in
7 our decision making.

8 Q. If that data had been falsified or has
9 been falsified how does that weigh on EPA and
10 its decision process?

11 MR. LYNK:

12 Objection, assumes facts not in
13 evidence.

14 MR. RILEY:

15 That's exactly right.

16 MR. LYNK:

17 Calls for speculation.

18 THE WITNESS:

19 Say -- ask it again.

20 MR. RILEY:

21 Sure.

22 THE WITNESS:

23 Sorry.

24 EXAMINATION BY MR. RILEY:

25 Q. If the data has been falsified how does

1 that bear on EPA's decision to issue the
2 administrative order?

3 MR. LYNK:

4 Same objections.

5 THE WITNESS:

6 If we -- it were determined and
7 presented to the Agency that the data was
8 invalid data, we'd have to weigh that in
9 reviewing the order. But as I sit here today I
10 don't believe that it would change our decision,
11 the decision we made in the order because the
12 order was based on other data that was proving
13 other things than the Wolf Environmental data
14 proved. But it was part of our decision making;
15 it was part of our consideration. That's why
16 it's in the record. But it's hard because again
17 I'd have to know -- before the Agency could --
18 speaking for the Agency as I am in this
19 situation we'd have to know exactly what
20 falsification occurred, why it was invalid, what
21 it meant and then have to weigh the impact of
22 that on the overall picture of what we decided.

23 Q. Let's talk in a bit more context.

24 Let's say that Ms. Rich in taking her air
25 samples purposely positioned the air canister in

1 proximity to the source of natural gas for the
2 Lipsky well. In other words, tipped the garden
3 hose and put it near the air canister. And
4 let's suppose that's the case. Would that be a
5 valid sampling methodology from your perspective
6 within EPA?

7 A. Okay. I'm struggling a bit with your
8 example. I'm sorry. Because part of what the
9 gas samples are is the gas that would come out
10 of that garden hose. So I'm just struggling how
11 to frame the answer that -- that I would give.
12 Again, I would say if we found that there was
13 something from a quality assurance, quality
14 control standpoint related to the data that Wolf
15 Environmental collected and it was presented to
16 us and again we were able to analyze it and make
17 the assumption that we thought it was
18 problematic we would -- again, the Agency would
19 look at that and look at the impacts it would
20 have or potentially have on the data, the
21 decision we made. But I will tell you that I
22 don't believe that the Wolf Environmental data
23 was the driving force for our decision making
24 because, again, as we've -- we've -- I've tried
25 to say, you know, I think we believe the

1 isotopic analysis which Wolf Environmental
2 didn't do is significant to us. Some of the
3 compositional analysis which we talked about a
4 minute ago wasn't collected by Wolf
5 Environmental and then the timeline issues were
6 kind of the significant data we looked at moving
7 forward and the Wolf Environmental data is more
8 supporting supplemental to those data points
9 that we have.

10 Q. Well, are you trained, by the way, in
11 proper sampling methodologies?

12 A. Long ago and far away.

13 Q. Okay. Are you at least familiar with
14 the in general terms protocols that are
15 maintained by EPA to ensure quality sampling?

16 A. Yes. I mean, generally I -- yes, I
17 remember, but it's been a long, long time.

18 Q. If I were to climb up on a drinking
19 water storage tank on the Lipsky property and
20 stick my hand in with a bottle taped to a stick
21 is that consistent with EPA's proper protocol
22 for sampling water?

23 A. Again, I can answer generally. It
24 would be no. But again I would need to see the
25 sampling plan and exactly whether situations

1 exist in the field that may have led to that
2 sampling method. And you'd have to weigh those.
3 Like were there other reasons, was that the only
4 way to get a sample? And then you might say
5 that that then wasn't an appropriate protocol.
6 It just depends on the situation of the facts in
7 the field. But in general I would say a bottle
8 taped to a stick is probably not the way the EPA
9 would want to see a sample taken. But there are
10 situations that might warrant that because of
11 health and safety concerns and other things like
12 people entering into a confined space.

13 Q. Tell me all the things that EPA did to
14 verify that Wolf Eagle employed proper sampling
15 protocols as EPA would view them to gain the
16 analysis that is part of the administrative
17 record.

18 A. All that EPA did related to the Wolf
19 Environmental information that's included in the
20 administrative record was review what was
21 submitted to us.

22 Q. Okay. So no investigation was done
23 into whether those samples were validly taken,
24 whether they were validly preserved or properly
25 preserved and ultimately whether the analysis

1 has any meaning whatsoever; is that correct?

2 MR. LYNK:

3 Object to form.

4 THE WITNESS:

5 No investigation was performed to
6 validate the sampling or the sampling protocols
7 that were used by Wolf Environmental.

8 EXAMINATION BY MR. RILEY:

9 Q. Was Ms. Rich interviewed by any of the
10 EPA employees?

11 A. It's not part of the record that we
12 interviewed Ms. Rich. So if there was there
13 might have been -- I wouldn't call it an
14 interview. There might have been discussions
15 with Ms. Rich by Chris Lister as he was forming
16 his investigation and trying to understand the
17 scope of the data before us. And part of that
18 data was data collected by Wolf Environmental.

19 Q. So as far as you know, though, you
20 can't testify with any certainty as to how much
21 contact there was with Ms. Rich or Wolf
22 Environmental or Wolf Eagle Environmental,
23 excuse me?

24 A. That's correct.

25 Q. Would Mr. Lister be a better person to

1 ask those questions of?

2 A. Potentially.

3 Q. Is there anybody other than Mr. Lister
4 that you would think in the scope of his
5 responsibilities or her responsibilities at EPA
6 would have had contact with Wolf Eagle
7 Environmental?

8 A. Mr. Lister would be the primary person.
9 There may have been contact with some of the
10 other people that supported Mr. Lister as he
11 conducted his investigation.

12 Q. Did Dr. Armendariz have any contact
13 with Ms. Rich as it pertains to the
14 administrative order?

15 A. Not -- to the best of my knowledge not
16 direct contact. Ms. Rich may have actually sent
17 some information to Dr. Armendariz that he sent
18 down to me but it was more of a transfer of
19 e-mail than a direct interaction.

20 Q. Do you know if Dr. Armendariz replied
21 to Ms. Rich's e-mail where I believe she
22 forwarded a videotape or some sort of video file
23 to Dr. Armendariz?

24 A. To the best of my knowledge he did not.

25 Q. Would Dr. Armendariz be a better person

1 to ask those questions of?

2 A. If you're asking for something that he
3 might have personally done I would assume he
4 would be a better witness on that.

5 Q. In some of Dr. Armendariz's public
6 statements he references -- it's on the topic
7 list, for lack of a better term, of quoting Dr.
8 Armendariz from I believe an interview he
9 granted to the TV station that EPA scientists
10 and engineers have reviewed the data and are
11 certain of cause. Are you aware of what I'm
12 talking about?

13 A. I'm aware of the interview, yes.

14 Q. And have you reviewed the interview in
15 any way with the video? Has anybody shown it to
16 you?

17 A. I have not personally.

18 Q. If you look at item No. 4 if you have
19 it in front of you on the topic list you
20 reference a quote of Dr. Armendariz that refers
21 to EPA scientists and engineers who have looked
22 extensively at a lot of data. I don't think I
23 put it into the record. It was --

24 MR. LYNK:

25 This is 4. The order is 4.

1 MR. RILEY:

2 I'm sorry. It's --

3 THE WITNESS:

4 You did say 4? I just wanted to
5 make sure I'm looking at 4.

6 EXAMINATION BY MR. RILEY:

7 Q. Not in the emergency order though.
8 It's in the scope of matters for examination
9 document that you had --

10 A. Okay.

11 Q. -- awhile ago.

12 A. Sorry. I just wanted to make sure I
13 was looking --

14 Q. I just didn't bring copies of that. I
15 apologize.

16 A. That's okay. I have it here somewhere.

17 Q. When you get to it if you'd look at
18 item No. 4 in the matters for examination.

19 A. Okay.

20 Q. I'm looking -- I'm asking you to detail
21 for me who the EPA scientists and engineers are
22 that are referred to in that quote by Dr.
23 Armendariz. Specifically let's start with
24 scientists. Who are the EPA scientists that
25 looked at the data -- excuse me, looked at --

1 looked extensively at a lot of data in this
2 case?

3 MR. LYNK:

4 I'm going to object as asked and
5 answered to the extent that I thought the
6 witness spent a substantial portion of time
7 identifying to you every Agency individual he
8 could possibly name --

9 MR. RILEY:

10 Yeah. Now I want to find out --

11 MR. LYNK:

12 -- who prepared this order.

13 MR. RILEY:

14 -- which of those individuals are
15 scientists.

16 THE WITNESS:

17 Again, it's the same list of people
18 I've already given. Those would be Chris
19 Lister; those would be Jerry Saunders; those
20 would be --

21 EXAMINATION BY MR. RILEY:

22 Q. Okay.

23 A. -- Ron Van Wyk.

24 Q. Specifically -- specifically, Mr.
25 Blevins, which of those individuals you've

1 listed fit the description scientist?

2 A. I just -- that's what I was giving you.

3 Q. Please. Okay. Then I apologize for
4 interrupting you. Give me that again.

5 A. That would be Jerry Saunders; that
6 would be Chris Lister; that would be Dr. Beak;
7 that would be Ron Van Wyk; that would be Chris
8 Wills and Willie Lane.

9 Q. Tell me the last name. I couldn't hear
10 you.

11 A. Lane.

12 Q. Thank you. Is my list complete now
13 with Jerry Saunders, Chris Lister, Dr. Beak, Ron
14 Van Wyk, Chris Wills and Willie Lane as the list
15 of scientists?

16 A. Yes.

17 Q. Okay. Could you also list for me EPA
18 engineers who have looked extensively at a lot
19 of data?

20 A. I don't -- I guess no because those
21 people who I just listed to you may be
22 engineers. I think Dr. Armendariz was speaking
23 generically because the Agency doesn't hire
24 necessarily by engineer or scientist. We do in
25 some cases. So I don't know specific engineers.

1 The only two that I can give you clearly that
2 are engineering by schooling would be Steve
3 Gilrein and myself. But some of those other
4 people may be, I just don't know, to tell you
5 the truth. I consider them all scientists
6 because of the work we do.

7 Q. All right. Within EPA is there a
8 classification of employment as EPA scientists?

9 A. Yes.

10 Q. Do any of those individuals hold that
11 classification?

12 A. Most likely all of them do. They most
13 likely -- again, I would have to go back and
14 pull their personnel records. EPA has three
15 classifications, broad classifications we hire
16 under and then we have a wide list. But the
17 broad classifications would be environmental
18 scientist, environmental engineer and
19 environmental specialist. And just depending on
20 again what position you fill you might get one
21 or all of the above in your career.

22 So, for example, I was hired as an
23 environmental engineer. But I -- as I moved
24 through my career at EPA I moved into a
25 scientist position. I moved into a specialist

1 position just depending on the job I took.

2 Q. Okay. Specifically since it's within
3 the scope that we announced some days ago can
4 you be more precise as to who Dr. Armendariz was
5 referring to in his description of EPA
6 scientists and engineers specifically that
7 looked extensively at a lot of data?

8 A. That I believe he was referring
9 generically when he said those two words to the
10 first list of people I gave you.

11 Q. Are you familiar with the licensing
12 requirements for professional engineers in the
13 state of a Texas?

14 A. I am.

15 Q. Are any of the individuals identified
16 so far in any portion of this deposition
17 licensed professional engineers in the state of
18 Texas?

19 A. The only person that I know for a fact
20 that's a licensed professional engineer is Mr.
21 Gilrein, and I would have to check on the
22 others. Again, just for clarification, EPA --
23 as part of employment of EPA we don't require
24 people to maintain PE's. Even in
25 classifications as environmental engineer, if

1 that's your job title there is no requirement
2 within the Agency to maintain a PE to be that.
3 The only requirement is, again, if you want to
4 sign it as a professional engineer you need to
5 maintain your -- your standing.

6 Q. Yes, sir. And I believe under Texas
7 law someone who's in a governmental position who
8 holds the title engineer is exempt from the
9 licensing requirements --

10 A. Okay. That may be.

11 Q. -- as best I understand.

12 A. Yeah. So I just -- okay. But Steve
13 Gilrein is the only one I know that has a PE.

14 Q. All right. Now, back to the quote in
15 the media about Dr. Armendariz. I believe the
16 question Dr. Armendariz was responding to is
17 accurately paraphrased as whether there was any
18 doubt in EPA's mind that Range was the cause of
19 the contamination in the Lipsky and Hayley
20 wells. If I'm right do you think that's a true
21 statement?

22 A. Can you read his quote again?

23 Q. Sure. And really the -- the quote --
24 I'll paraphrase. But what I understood to be a
25 question and Dr. Armendariz's response. When

1 asked is there any question -- Mr. Armendariz
2 was asked whether there was any question as to
3 whether Range was the cause of the contamination
4 as the subject of our discussion. And Dr.
5 Armendariz's response was: No, EPA scientists
6 and engineers have looked extensively at a lot
7 of data and have conclusively determined Range
8 to be the source. Do you agree with that
9 statement as a representative of EPA taking this
10 deposition?

11 MR. LYNK:

12 I'm going to object to as beyond
13 the scope. I mean, I -- I understand you're
14 interested in Dr. Armendariz's statements. I
15 understand it's listed as a topic. I also
16 understand that the court after initially
17 considering whether to order Dr. Armendariz to
18 appear ultimately ruled instead that there
19 should be a deposition to find out the basis for
20 the order and it is in that capacity that he's
21 appearing today. And I'll object -- so I'll
22 object that it's beyond the scope and that it
23 calls for speculation. I'm not instructing.

24 THE WITNESS:

25 I don't think I can answer that

1 question. I don't know -- again, I was not at
2 the interview. I don't know the exact question
3 that was asked of Dr. Armendariz, nor do I know
4 exactly his frame of mind when he answered it.
5 My -- so... I can give you my belief but I
6 can't give you an answer from a fact standpoint.

7 EXAMINATION BY MR. RILEY:

8 Q. Okay. Then as representative of EPA
9 for purposes of this deposition is it EPA's
10 position that there is absolutely factually
11 totally the case that Range Resources and the
12 production wells of Butler and Teal are the
13 source of the contamination in the Lipsky and
14 Hayley water wells?

15 MR. LYNK:

16 Objection, asked and answered.

17 You can answer again.

18 THE WITNESS:

19 Again, I think I would -- as EPA's
20 representative my answer is the order says we
21 believe that Range caused or contributed to the
22 contamination.

23 EXAMINATION BY MR. RILEY:

24 Q. Yeah. I was sort of deflective when I
25 tried to ask you about that. But now that

1 you've brought it up is it conclusive in EPA's
2 opinion that Range caused or contributed to the
3 endangerment identified in the administrative
4 order?

5 MR. LYNK:

6 Objection, asked and answered.

7 THE WITNESS:

8 Based on the data that we had in
9 front of us on 12-7 the Agency made a
10 determination and issued an order that we
11 believe that Range caused or contributed to the
12 contamination that we found.

13 EXAMINATION BY MR. RILEY:

14 Q. Okay. Do you see cause or contributed
15 as a linked phrase? In other words, can one
16 cause and then separately can one contribute or
17 are those cause and contribute together?

18 A. I think they can stand alone or stand
19 together. I think you can cause and contribute
20 or you can cause or contribute, depending on the
21 facts of the case and the case that we're
22 bringing.

23 Q. Let's talk about cause then since they
24 seem separable at least for discussion purposes.
25 In EPA opinion what is the meaning of the word

1 cause in the context we're discussing?

2 MR. LYNK:

3 I'm going to object, calls for a
4 legal conclusion.

5 EXAMINATION BY MR. RILEY:

6 Q. Factually speaking what is the -- what
7 facts would EPA look to in this case to
8 determine whether Range caused the contamination
9 of the Lipsky well?

10 A. Again, I think those are the facts that
11 we talked about, the timeline that shows that
12 there was a well drilled and that there was a
13 contamination of a drinking water source; the
14 analytical data that we presented from a
15 fingerprinting standpoint and from a composition
16 standpoint. When we compile that all together
17 and look at it we believe that there -- that
18 Range did something to cause the contamination
19 or contributed to the contamination.

20 Q. Okay. So when I hear contributed what
21 I'm imagining is that there's already a
22 situation existing, some level of concern and
23 some natural gas that existed in the Lipsky
24 water well before Range engaged in any activity
25 in the area. Would you agree with me that

1 contributed to means that it's not the sole
2 source but it's a part of perhaps several
3 sources that contribute to the issue?

4 A. No, I probably wouldn't agree. I think
5 I would consider contribute to also mean that
6 there was a static situation, some action
7 happened that then caused that situation to
8 change. And in this instance that caused
9 contamination to again find its way to an
10 underground drinking water source that then led
11 to an imminent and substantial endangerment that
12 the Agency felt it was necessary because of the
13 situation to act upon.

14 Q. Okay. So let's suppose the Lipskys had
15 no natural gas in their water prior to Range
16 production activities. Is that EPA's position
17 that there was no natural gas in the Lipsky well
18 prior to Range engaging in the construction of
19 the Butler and Teal wells?

20 A. We believe that the Lipsky -- again no
21 is a hard word. We believe that there were not
22 significant levels of natural gas in the Lipsky
23 well at the levels we found prior to the
24 drilling of the Range.

25 Q. Tell me all the information EPA relies

1 upon to make that assessment.

2 A. Again as contained in the record it's
3 data and information provided by Mr. Lipsky to
4 us to indicate that he operated his well for a
5 period of time with no problems. He believed he
6 had water that he could drink, that he could
7 fill his pool with and that he could use for
8 agricultural purposes and that he did not
9 believe and there were no signs that it was
10 significantly impacted.

11 Q. So all of your information is derived
12 from Mr. Lipsky's representations that that was
13 the case prior to Range's production?

14 A. Well and also the information presented
15 that's in the record that was, you know,
16 contained in the state's records regarding the
17 well log, the report filed by the well driller
18 at the time that they drilled the Lipsky's well,
19 that report does not indicate at that time there
20 was any problems with the well that was drilled.

21 Q. Okay. So we have two sources now. We
22 have Mr. Lipsky told you so and we have a well
23 log from a water well driller who I believe is
24 Mr. Peck; is that correct?

25 A. Yes.

1 THE VIDEOGRAPHER:

2 Five minutes left, Counsel.

3 EXAMINATION BY MR. RILEY:

4 Q. Did any EPA investigator interview Mr.
5 Peck?

6 A. I know that Chris and/or Jerry
7 Saunders, I'm not sure which, had discussions
8 with Mr. Peck. I don't know that I would call
9 it an interview. But, again, as we built our
10 case or conducted our investigation. Not built
11 our case but conducted our investigation we
12 definitely had discussions with Mr. Peck.

13 Q. And were those discussions documented
14 in the administrative record that's before us?

15 A. I don't believe they are.

16 Q. Did either Mr. Lister or Saunders have
17 any discussions with Mr. Peck about other wells,
18 drinking water wells he's drilled in that area
19 and identification of natural gas in those water
20 wells?

21 A. To the best of my knowledge, yes, they
22 had generic discussions with Mr. Peck about his
23 experience in the -- in that general area and
24 more specifically again about Mr. Lipsky's well.

25 Q. One of the ordering provisions in the

1 administrative order expresses concern about a
2 public water sys -- supply system known as Lake
3 Country Acres; is that correct?

4 A. That's in your -- this document?

5 Q. It's in the administrative order, which
6 I believe is Exhibit 4. Should be the --

7 A. So in the order part of the --

8 Q. Yes, sir.

9 A. Okay.

10 Q. Paragraph 50-D.

11 A. Okay. Right. We wanted to have
12 sampling and an investigation conducted in and
13 around Lake Country Acres to make sure that
14 their public water supply system was not in any
15 way being impacted.

16 Q. Did -- does Lake Country Acres file
17 water quality reports with any administrative
18 agency that you're aware of?

19 A. My understanding is they do with the
20 state.

21 Q. And did you review or you, meaning EPA,
22 review those water quality records?

23 A. My understanding is that we did but
24 they don't -- those water quality standards
25 don't include the compounds like methane as a --

1 it's not a required reporting element.

2 Q. Do I understand you correctly that
3 methane is not a -- the concentration of methane
4 in a public water supply is not a constituent
5 that EPA requires the public water supply to
6 analyze for?

7 A. It's not part of the list of compounds
8 that are required to be analyzed for on a
9 regular basis and reported out; that's correct.
10 That's a --

11 Q. Does EPA --

12 A. -- list of MCLs, maximum contaminant
13 limits. There's a long list of compounds.

14 Q. There is a long list of compounds.
15 Methane is not one of those; is that correct?

16 A. That's my understanding; that's
17 correct.

18 Q. Is propane one of those compounds?

19 A. To the best of my knowledge no.

20 Q. Do you know if any volatile or organic
21 compounds that are required by EPA to be
22 analyzed under its Safe Drinking Water Program?

23 A. Oh, yes. I could not read you the
24 whole list. But, for example, benzene is a
25 volatile organic compound and it has an MCL and

1 it's -- you have to report out on it.

2 Q. Do you know what the benzene MCL is?

3 A. Five parts per billion.

4 MR. RILEY:

5 Is this a convenient time to take a
6 break for lunch?

7 MR. LYNK:

8 Seems like it.

9 THE VIDEOGRAPHER:

10 Going off the record. The time is
11 now 12:34. This is the end of tape 3.

12 (Recess was taken.)

13 THE VIDEOGRAPHER:

14 This is the continued videotape
15 deposition of John Blevins. This is the
16 beginning of tape 4. The time is now 1:28.

17 MR. LYNK:

18 I'm going to disclose that I -- I
19 did ask Mr. Blevins during a break if there was
20 anything he felt he needed to add to his earlier
21 answers about the compilation of the record and
22 that process to clarify what he meant by the
23 terms, including documents that support the
24 record. He did indicate that he thought he
25 should add --

1 MR. RILEY:

2 Counsel, let's -- let's do this the
3 sort of the ordinary way. If at the end of my
4 questioning you have questions you want to ask
5 then certainly you'll have that opportunity. So
6 let's do it that way.

7 MR. LYNK:

8 I would be happy to do it that way.
9 I am cognizant of the fact that you would
10 probably want your standard day of deposition.
11 I know redirect may lead to recross. And I
12 don't want to get in a situation where we're
13 disagreeing over whether we can close at the end
14 of the day.

15 MR. RILEY:

16 Sure.

17 MR. LYNK:

18 Given that the airlines are going
19 to impose a deadline for us to get out of here.

20 MR. RILEY:

21 Yeah.

22 MR. LYNK:

23 So far I think I've managed to
24 hopefully avoid redirect.

25 MR. RILEY:

1 Well, let's see how it goes and
2 then -- unfortunately I don't want to -- I don't
3 want to get into a pattern of going off the
4 record and then coming back and asking
5 clarifying questions. I'd rather you do that in
6 a proper fashion at the end of the deposition.

7 MR. LYNK:

8 That's fine.

9 MR. RILEY:

10 When it's your turn.

11 MR. LYNK:

12 That's fine.

13 MR. RILEY:

14 Okay.

15 EXAMINATION BY MR. RILEY:

16 Q. Mr. Blevins, let's go -- I want to
17 clarify one thing as pertains to documents you
18 have seen, you personally have seen. Did I
19 understand you correctly that you have seen
20 documents that are not part of the
21 administrative record that -- that reflect
22 correspondence or communication between members
23 of EPA and Alisa Rich?

24 MR. LYNK:

25 I'll object as to vague as to time

1 frame.

2 EXAMINATION BY MR. RILEY:

3 Q. In the context of this discussion, say
4 from the onset of EPA's investigation, middle of
5 August, to the issuance of the administrative
6 order on December 7, 2010.

7 A. Okay. Ask me again.

8 Q. Sure. Do you have the context that I'm
9 asking so I --

10 A. I think so.

11 Q. -- don't have to repeat all that? I'm
12 looking to see what -- I'm trying to find out
13 whether you've seen additional documentation in
14 EPA's records that reflect communication between
15 any member of EPA and Alisa Rich in the context
16 of the administrative order that's the subject
17 of this proceeding.

18 A. I have not seen any documentation
19 records of communication, records of
20 communication between any of my -- any of the
21 EPA team and Alisa Rich. I'm aware that there
22 have been conversations but I have not seen any
23 documentation.

24 Q. All right. And if there is
25 documentation of those communications then that

1 would be in the set of documents that were
2 reviewed by your staff in compiling the
3 administrative record, is that a reasonable
4 expectation?

5 A. If there is any documentation it would
6 have be reviewed as the administrative record
7 was compiled.

8 Q. Okay. Excuse me. Let's talk -- we
9 somewhat left off before we took a break
10 discussing EPA's drinking water, water quality
11 standards. Are you familiar with those
12 standards?

13 A. I'm familiar with them, yes.

14 Q. Okay. Now, tell me EPA's position on
15 its water quality standards. Is it indicative
16 of EPA's position as to whether drinking water
17 is safe to drink or consumed by humans?

18 A. I guess I don't --

19 Q. Sure.

20 A. -- get the question.

21 Q. What's an MCL?

22 A. It's a maximum contaminant level.

23 Q. What does it indicate as it pertains to
24 drinking water?

25 A. For those specific compounds or

1 chemicals that have MCLs it's a health based
2 standard that's been derived and approved by the
3 Agency related to concentrations of that
4 compound that are acceptable under the Safe
5 Drinking Water Act in drinking water.

6 Q. So if I have a constituent in drinking
7 water that's below the MCL then EPA's position
8 on that -- the presence of that constituent is
9 that it does not render the drinking water
10 unsafe; is that correct?

11 MR. LYNK:

12 I'm going to object to the extent
13 it calls for a legal conclusion.

14 MR. RILEY:

15 Health based standard.

16 THE WITNESS:

17 Again, those are -- you can't
18 say -- I don't think the Agency would say you
19 can look at the individual, you have to look at
20 the totality of all the contaminants in the
21 water and make a decision as to whether it's
22 safe. You just can't say: Well, that one
23 compound is above or below an MCL so therefore
24 the water is safe. You have to look at
25 everything in totality. But if you were looking

1 at one specific compound the Agency says if it's
2 below a certain level then we don't believe
3 there's a health threat.

4 Q. Okay. Where would I look in the Agency
5 discussion or guidance for the combined effect
6 of constituents in drinking water that you were
7 describing?

8 A. That would be -- a risk assessment
9 would have to be performed.

10 Q. What is a risk assessment as you view
11 it?

12 A. Well --

13 Q. In the context of our discussion.

14 A. A risk assessment would be actual
15 assessment performed by a party that looks at
16 all the potential sources of exposure to a set
17 of chemicals singular or multiple and would
18 assess under different exposure scenarios a risk
19 both from a cancer standpoint and a noncancer
20 standpoint.

21 Q. Was a risk assessment done by EPA as it
22 pertains to the samples taken by EPA of the
23 Lipsky drinking water?

24 A. No. And it wasn't necessary for one
25 for the action we took.

1 Q. Okay. I didn't ask you that last part
2 of the question. And I'd ask you not to
3 volunteer information unless the question calls
4 for it so we can expedite this process, have Mr.
5 Lynk make his plane, help me make my plane and
6 make this a shorter exchange.

7 A. I thought it was necessary. Sorry.

8 Q. Well, necessary versus what I'm asking
9 you is different.

10 MR. LYNK:

11 Can we just --

12 MR. RILEY:

13 Sure.

14 MR. LYNK:

15 -- ask the next question, please.

16 EXAMINATION BY MR. RILEY:

17 Q. So the question I asked you and I want
18 to be clear that was a risk assessment done to
19 evaluate the safety of the Lipsky drinking water
20 by EPA?

21 A. And I answered you no.

22 Q. Were any contaminants identified by EPA
23 that were above maximum concentration levels
24 according to EPA's drinking water quality
25 standards?

1 A. As contained in the record there is a
2 sample that was analyzed for benzene and that
3 sample was above the MCL.

4 Q. Who took that sample?

5 A. The Railroad Commission did.

6 Q. On what date?

7 A. On August 17, 2010. It's item No. 19
8 in the order.

9 Q. After August 17, 2010 EPA performed its
10 own sampling of the drinking water in the Lipsky
11 well; is that correct?

12 A. Yes.

13 Q. On what date did that occur?

14 A. October 26th was the sampling of the
15 Lipsky well.

16 Q. What was the -- what did the EPA's
17 analysis reveal as it pertains to the
18 constituent benzene at the -- based on the
19 October 26th sampling of that?

20 A. The level was report at 4.55 parts per
21 billion.

22 Q. 4.55 ppb?

23 A. Parts per billion.

24 Q. And that's below the maximum
25 concentration level that EPA considers safe as

1 it pertains to the constituent benzene; is that
2 true?

3 A. That is true.

4 Q. On December 7, 2010 when the EPA issued
5 the administrative order what constituents, if
6 any, found in the Lipsky drinking water were of
7 concern from a human health perspective?

8 A. I think there was a wide Range of
9 compounds found that were of a concern from a
10 human health perspective.

11 Q. Okay. I didn't seek to limit you so
12 please tell me what those constituents were.

13 A. Well, basically, again, any of the
14 sam -- any of the compounds that were tested for
15 in the water. There's a long list. I mean, I
16 can go through all of them. But the reason we
17 test for them is we want to make sure we know
18 what the concentrations are and whether they
19 exist above or below a standard.

20 Q. Okay. So you tested on October 26,
21 2010. EPA took samples, had them analyzed and I
22 would say based on your last response concerned
23 itself with a long list of constituents that
24 potentially could be in the Lipsky drinking
25 water, correct?

1 A. Correct.

2 Q. And was an analysis complete as to each
3 of those constituents?

4 A. That's what's the date that's in the
5 record you can see, yes.

6 Q. Now, from that list based on EPA's
7 sampling what constituents remained a concern
8 after EPA's sampling and analysis?

9 A. Well, as shown on Exhibit 2 there's
10 concentrations of benzene in the Lipsky water;
11 there's concentration of hexane in the Lipsky
12 water; there's concentrations of toluene in the
13 Lipsky water; there's concentration of ethane,
14 methane and propane. Plus there's other
15 indicator compounds that exist as well. I can
16 go through all of them. There's boron; there's
17 chlorides; there's total alkalinity. All of
18 those had positive results based on EPA's
19 sampling on 10-26.

20 Q. When you say positive results, what do
21 you mean?

22 A. Above the detection limit.

23 Q. For each of those compounds were any of
24 them identified as above any applicable drinking
25 water standard?

1 A. Not in the 10-26 sampling event, no.

2 Q. So at that stage would you agree with
3 me that the Lipsky water well was safe for human
4 consumption based on EPA's maximum concentration
5 levels for the various constituents you've
6 described?

7 MR. LYNK:

8 Object to the extent it calls for a
9 legal conclusion.

10 THE WITNESS:

11 I don't think I can say either way.
12 We have a sample collected by the Railroad
13 Commission that shows an exceedance of the MCL
14 for benzene. We have a sample by EPA that is
15 slightly below the MCL. As you know those are
16 snapshot samples. So I would say there's still
17 a concern but not an exceedance on the 26th.
18 But we do have a sample that showed an
19 exceedance in the same general time frame.

20 EXAMINATION BY MR. RILEY:

21 Q. But not a sample EPA took, that's
22 one -- that's a sample the Railroad Commission
23 took; is that correct?

24 A. That is correct.

25 Q. But based on EPA's careful sampling and

1 analysis there was no constituent above an EPA
2 approved maximum concentration level; is that
3 true?

4 A. Based on EPA's sampling that is true.

5 Q. Did EPA take any action with respect to
6 the Lipsky family and their use of their water
7 well prior to issuance of the December 7, 2010
8 order?

9 A. What are you -- can you clarify what
10 you mean by action?

11 Q. Certainly. Did you instruct the
12 Lipskys in any form or fashion as to the use of
13 their drinking water well?

14 A. Yes.

15 Q. What did you do?

16 A. We recommended to the Lipskys that they
17 stop using the water as the domestic water
18 supply.

19 Q. Why?

20 A. Because of the high concentrations of
21 natural gas in their water well and the Agency's
22 concern that an emergency situation could exist
23 if the gases collected in their house and an
24 ignition source was present.

25 Q. Did you do any testing, air quality

1 testing in the Lipsky residence?

2 A. We did not.

3 Q. As I understand it Mr. Lipsky had
4 before even receiving that advisory from EPA
5 discontinued use of that water well. Is that
6 your understanding as well?

7 A. That is my understanding.

8 Q. Describe then if you would, assuming it
9 to be the case that Mr. Lipsky had voluntarily
10 discontinued use of the drinking water well;
11 that is, domestic well No. 1 as identified in
12 the emergency order, how Mr. Lipsky was in
13 imminent and substantial peril?

14 A. Because exactly the reason the words
15 you used. He was doing that on a voluntary
16 nature and there was no guarantee that at any
17 time he might not start using that water again
18 and introduce the potential for those gases to
19 be transmitted by the water into his home, the
20 gas is released into his home and be collected
21 in an area that could be subject to an ignition
22 source and an explosion could occur.

23 Q. What action has EPA taken to prevent
24 Mr. Lipsky from using the water well we're
25 discussing?

1 A. The action was we ordered Range to
2 provide alternative water supply under the order
3 which is an enforceable order.

4 Q. How does that prevent Mr. Lipsky from
5 using his well if he decides to?

6 A. It doesn't but there's -- we believe
7 there's a better guarantee that if he's provided
8 alternative water supply that he's not
9 financially responsible for that he won't turn
10 on the water in his house.

11 Q. Do you know Mr. Lipsky's financial
12 means?

13 A. That's not relevant to me or to the
14 Agency.

15 Q. Okay. But could you have ordered Mr.
16 Lipsky to -- to not use the water well? Could
17 EPA have done that?

18 A. No.

19 Q. What depth is Mr. Lipsky's well drilled
20 to?

21 A. I'd have to look at the well log. It's
22 going to take me a minute to find.

23 Q. Take your time.

24 A. The exact well log for his well. Based
25 on the well report which is No. 437 in the

1 administrative record it looks like it was --
2 the bore hole is completed to 200 feet.

3 Q. How was the well completed according to
4 the document you're reviewing?

5 A. There was a gravel pack placed --
6 gravel pack from 60 feet to 200 feet.

7 Q. Was the well cemented in any way?

8 A. It indicates that there was cementing
9 but I couldn't tell you the exact information.
10 The document says it was cemented by Larry Peck.

11 Q. Does it indicate to you that cement was
12 placed at the bottom of the well bore?

13 A. Again there's no information for me to
14 tell that.

15 Q. Do you know the distance from the
16 bottom of the Lipsky well at 200 foot depth to
17 the top of the Strawn formation?

18 A. I do not.

19 Q. Would it surprise you to learn that
20 it's a matter of 20 or 30 feet?

21 A. That wouldn't surprise me.

22 Q. Would you expect there to be natural
23 gas in proximity to the Strawn formation in that
24 distance if a water well was drilled to that
25 depth?

1 A. Can you ask that again?

2 Q. Sure. If a water well was drilled --
3 drilled at -- let's phrase it differently. If a
4 water well was drilled into the Strawn formation
5 which we talked about earlier has historically
6 produced natural gas would it surprise you to
7 learn that natural gas was found in that water
8 well?

9 A. I don't have a surprise either way on
10 that one. It would just be a piece of data that
11 the Agency would look at.

12 Q. Okay. Did the Agency look at the
13 relationship of the Lipsky water well to the
14 Strawn formation in this case?

15 A. Again we were aware of it, yes. Did we
16 do an investigation to collect data, no.

17 Q. Did anyone ever advise you internally
18 or externally that that was a necessary element
19 to any conclusion as to the source of natural
20 gas in the Lipsky water well?

21 A. No. But, again, I don't think that's a
22 necessary element. The Agency doesn't believe
23 that's a necessary element to support the
24 decision we make.

25 Q. So alternate sources of natural gas in

1 the Lipsky water well is not something the
2 Agency needs to investigate prior to issuing the
3 December 7, 2010 order; is that a correct
4 statement?

5 A. No.

6 Q. Okay. Tell me --

7 A. Again, we went through this earlier.
8 There -- there are other potential migration
9 pathways. We followed the data we had before
10 us. We did not have anything in the data that
11 was in front of us on December 7th that would
12 show that there was gas from the Strawn
13 formation entering into the Lipsky well or that
14 the Lipsky well was drilled into the Strawn
15 formation. So that data was not in front of us
16 when we made our decision.

17 Q. Did you investigate it?

18 A. And, again, I've answered that before
19 and I said no.

20 Q. So you didn't look to see whether there
21 was --

22 A. We did not investigate it.

23 Q. Okay. It's going to be helpful for the
24 transcript purposes for me to get my question --

25 A. Sorry.

1 Q. -- completed before you --

2 A. Sorry.

3 Q. -- answer. So it's possible then as
4 best you know then that the Lipsky water well is
5 actually drilled into the Strawn formation?

6 A. Based on the information --

7 MR. LYNK:

8 Objection, calls for speculation.

9 Go ahead.

10 THE WITNESS:

11 Yeah. Based on the information we
12 have I don't have anything that would indicate
13 that. And anything is possible.

14 EXAMINATION BY MR. RILEY:

15 Q. Okay. So the source of the natural gas
16 if that's possible in the Lipsky water well
17 could be naturally occurring gas that is
18 contained in the Strawn formation; is that true?

19 MR. LYNK:

20 Same objection.

21 THE WITNESS:

22 Again, I can't -- I don't know
23 because you're asking me to speculate. I don't
24 have that data in front of me. The Agency did
25 not have any data in front of it at the time we

1 made the decision to indicate that there was gas
2 emanating from the Strawn formation entering
3 into the Lipsky well.

4 EXAMINATION BY MR. RILEY:

5 Q. Can the Agency in your opinion simply
6 remain ignorant of factual information that's
7 documented in public record and then simply say:
8 We didn't have that before us? Is that EPA's
9 position?

10 MR. LYNK:

11 Objection, assumes facts.

12 THE WITNESS:

13 I don't think that's what I said
14 EPA's position was.

15 EXAMINATION BY MR. RILEY:

16 Q. No. I'm saying -- you just keep
17 telling me that you didn't have data in front of
18 you or information in front of you. That's
19 been --

20 A. No.

21 Q. That's been in your responses the last
22 several sets of questions.

23 A. No. There's no definitive data as in
24 analytical data contained in the record that
25 would indicate that there is a -- a

1 scientifically proven connection between the
2 Strawn formation and the gas that we found in
3 Lipsky's well. The Agency I don't believe --
4 and I don't believe as the Agency's
5 representative that the Agency is ignorant in
6 the decision we made. We evaluated the data and
7 we made a decision --

8 Q. You seem --

9 A. -- based on the extendency of the
10 circumstance.

11 Q. Sure. And I'm going to go over that.
12 You seem to have made this decision. By you
13 again I'm not speaking about you personally but
14 EPA since you're the designated
15 representative -- made this decision without
16 consultation with a geologist that defined or
17 illuminated the geological stratum underneath
18 the Lipsky formation. Have I stated that
19 correctly?

20 A. Say it again, please.

21 Q. Sure. You didn't consult a geologist
22 before issuing the order; is that true?

23 A. We did not because we didn't deem it
24 necessary for the order.

25 Q. I -- I understand that.

1 A. Yeah.

2 Q. And you've deemed many things necessary
3 and unnecessary.

4 A. Okay.

5 Q. But simply stated you did not consult a
6 geologist, correct?

7 A. Again, no.

8 Q. You did not review any geologic
9 information available through federal and state
10 agencies regarding natural gas formations or
11 formations underneath the Lipsky property, true?

12 A. No. We did review data and it's part
13 of our investigation. It's not documented in
14 the record. Again, we reviewed data. I can't
15 point to the exact data because we do look at
16 everything that we can find and make decisions.
17 Specifically what piece of data I can't tell you
18 but the Agency looked at all the information.
19 We understand -- the people who review this
20 order for the Agency understands that there's
21 other -- like that the Strawn formation exists.
22 I told you that in my responses before. We
23 understand there's other potential pockets of
24 natural gas in and around the formations in
25 and -- in the geologic formation in and around

1 the Hayley and Lipsky well. What we said is in
2 the order supported by the record is that we
3 believe that the gas we found in the Lipsky well
4 is, as I've said before, significantly similar
5 and related to the gas found in the formation
6 that you guys are -- you're producing. That's
7 all we've said. We haven't said that it didn't
8 exist, that there's not gas out there, that
9 there aren't geologic formations that contain
10 gas. We believe we have enough data to make the
11 link to issue an order because of the situation
12 that we were presented with, which was explosive
13 gas levels in a wellhead and potentially that
14 gas entering into homes.

15 Q. Now, let's pick that apart a bit, Mr.
16 Blevins. Is the gas that is found in the Strawn
17 formation substantially similar to the gas found
18 in the Lipsky water well?

19 A. I have no data, the Agency has no data
20 to say that it is.

21 Q. Tell me all the things, every single
22 thing the Agency did to discover whether the gas
23 found naturally occurring in the Strawn
24 formation is substantially similar to the gas
25 found in Lipsky water well.

1 A. We have no data, as I've told you, that
2 would say it does. We did nothing to go find
3 the gas in a Strawn formation and test it
4 because as our investigation evolved we found
5 the gas in the formation as being produced by
6 Range and compared it to the gas we found in the
7 Lipsky formation. And if you refer to, you
8 know, item 2 in the record, page 3 in the record
9 we believe that there's a close correlation
10 between those two gas sources.

11 Q. What is the nitrogen content of natural
12 gas found in Barnett shale formation?

13 A. I don't know. I'm not an expert in
14 that area.

15 Q. What is the nitrogen content of the
16 natural gas found in the Lipsky water well?

17 A. Again, based on the sample that EPA
18 took -- sorry. Did you ask about the Lipsky
19 well?

20 Q. Yes, sir.

21 A. Based on the information presented in
22 the record, based on our sampling on 10-26 the
23 concentration by percent was 4. -- almost 7
24 percent. 4. I think that's 89.

25 Q. 7 percent or --

1 A. 4.89 percent --

2 Q. 4.89.

3 A. -- by molecular weight.

4 Q. And is there -- from EPA sampling is
5 there a nitrogen content for the Range
6 production units?

7 A. Well, EPA did not sample the Range
8 production well. Range sampled that well. And
9 the data that we have in front of us for the
10 production well there's two data points,
11 10-16 -- or 2-16 and 9-20. And one is at 1.24
12 percent and one is at 1.28 percent.

13 Q. Would you agree with me that those are
14 not similar, the 1.24 and 1.28 percent versus
15 4.89 percent?

16 A. I would agree they're different, yes.

17 Q. Did EPA investigate potential reasons
18 for the difference of nitrogen content in the
19 two sampled gases?

20 A. I know it was discussed but, again, it
21 wasn't the reason the fingerprinting did not --
22 it's not the basis for the decisions we make.

23 Q. I realize that it may be a basis for
24 undermining the decision. But I'm asking you
25 whether you investigated --

1 A. We look at -- yes, we discussed --

2 MR. LYNK:

3 Object to form.

4 THE WITNESS:

5 -- and we were aware of the
6 differences between the nitrogen levels in the
7 different wells, yes.

8 EXAMINATION BY MR. RILEY:

9 Q. And is that significant in -- in
10 identifying the source of the natural gas in the
11 Lipsky water well? Is the nitrogen content
12 significant?

13 A. It's a factor, yes. Its significance
14 is again up to discussion. And there, again,
15 are a variety of reasons why those nitrogen
16 numbers can be different.

17 Q. Tell me all the --

18 A. Including the sampling methods used to
19 collect the data.

20 Q. Tell me all the reasons those nitrogen
21 values might be different.

22 A. Well, one is, again, the sampling
23 method. Atmospheric air could have been
24 introduced into any of the samples that would
25 change the nitrogen concentration found in the

1 gas analysis. Another option is, again, that
2 you're looking at different sources for those
3 gases. And I'm sure there's plenty of others.
4 Again, this is not an area that I'm an expert in
5 of all the possibilities of why nitrogen might
6 be different in two distinct gas sources.

7 Q. Who within EPA was the expert consulted
8 as it pertains to this order and the nitrogen
9 values we're discussing?

10 A. The same people that --

11 MR. LYNK:

12 Object to form.

13 THE WITNESS:

14 Sorry.

15 MR. LYNK:

16 Object to form.

17 THE WITNESS:

18 The same people that we've already
19 discussed that were responsible for analyzing
20 the data and bringing forth the recommendation
21 for an order.

22 EXAMINATION BY MR. RILEY:

23 Q. So all of those folks, everybody you've
24 mentioned in EPA is capable of opining as an
25 expert on the significance of the nitrogen

1 concentration of the different gases?

2 A. Sorry. I don't believe that I could
3 say EPA has an expert to opine on the nitrogen
4 levels within any gas source. The best person
5 we might have would be, again, the ORD contact
6 that was contacted for this case.

7 Q. I'm sorry who is it?

8 A. The ORD contact, Dr. --

9 Q. Dr. Beak?

10 A. Yes.

11 Q. Now, to be clear could you describe
12 from EPA's perspective the -- I heard you -- let
13 me start again.

14 I thought you said earlier is that
15 there was some concern about gas accumulation in
16 the Lipsky home and potential explosive --
17 explosivity; is that correct?

18 A. That's correct.

19 Q. And how many samples did EPA take from
20 the Lipsky home, whether it be water samples or
21 air samples?

22 A. Again, I've already answered that. We
23 did not take any samples from the Lipsky home.
24 The samples that's presented in the record are
25 the samples from the wellhead, from the water

1 within the well.

2 Q. And tell me the treatment system, if
3 any, Mr. Lipsky has at his home before it would
4 enter his home? How is his water well plumbed
5 to his home?

6 A. He passes it through a -- into a tank
7 and through a treatment system. But I'm not
8 exactly sure that I know what the treatment
9 system is. I'd have to look in the depositions
10 to see if we mentioned it in the record.

11 Q. Please take your time.

12 A. Again, the letter from Mr. Lipsky's
13 lawyer to us talks about a purification system
14 that includes a purging cycle on the holding
15 tanks. Let me -- I'll have to see if Chris
16 Lister in his declaration mentions anything. I
17 don't see anything in the record that would go
18 beyond what was contained in Exhibit 33.

19 Q. To address what appears to be one of
20 EPA's concerns at least, namely accumulation or
21 pooling of natural gas in the Lipsky residence,
22 would it be more valuable to test the water at
23 the wellhead or more valuable to test the water
24 that's actually entering the home?

25 A. I think we need to clarify that it's

1 not only the gases in the wellhead that were --
2 we believe constituted the imminent and
3 substantial endangerment. It was the gases that
4 were building up in the wellhead itself because
5 that presents its own risk. So, again, we
6 tested at the wellhead, the concentrations we
7 saw were so significant, so far above the lower
8 explosive limit that we felt and, you know,
9 there -- an imminent and substantial
10 endangerment existed that could impact human
11 health either from buildup in the house which we
12 think is very concerning -- again, one of the
13 things we asked Range to do is collect --

14 Q. Sir -- sir, I asked you a question --

15 A. Okay.

16 Q. -- about the house, about the
17 residence, okay. I didn't ask you --

18 A. Sorry.

19 Q. -- all of your concerns and to give me
20 the litany of concerns you've described
21 repeatedly throughout. I've tried to be
22 courteous and let you answer. But I'm asking
23 you to confine your answers to the questions I
24 ask.

25 A. And I thought I was. So I'm sorry.

1 Q. My question was specific to the home.
2 As it pertains to the potential of natural gas
3 to be transmitted from the Lipsky water well
4 into the home in your opinion or EPA's opinion
5 does it make sense to test the gas concentration
6 at the wellhead or after the treatment system,
7 after the water enters the home?

8 A. I think we tested the appropriate
9 place.

10 Q. For determining what potential there
11 is --

12 A. Yes. I answered yes.

13 Q. -- for determining what potential there
14 is for gas to accumulate in the Lipsky home
15 through transmission of well water into the
16 house the proper place to test for that is at
17 the wellhead; is that correct? Did I accurately
18 restate your answer?

19 A. Well, that's not my answer. My answer
20 is we believe we tested at the proper place and
21 the data indicated that there was a threat and
22 that's what we took action on.

23 Q. What type of threat then, Mr. Blevins,
24 is it that EPA took action on? What
25 specifically was EPA concerned with might happen

1 at the Lipsky residence or around the Lipsky
2 property that EPA's order seeks to address?

3 A. The threat of explosion.

4 Q. From where?

5 A. From the gases that are contained in
6 the wellhead, anywhere that they can potentially
7 migrate to, collect and explode.

8 Q. Tell me all the places EPA has
9 concluded the gases could migrate to on the
10 Lipsky property.

11 A. Within the wellhead, within the holding
12 tank, within the home.

13 Q. Did EPA test anywhere other than the
14 wellhead, namely the holding tank and the home?

15 A. Again, as the record says, no.

16 Q. Mr. Blevins, I think you said earlier
17 you're a scientist. Tell me what happens to a
18 gas under pressure when the pressure is relieved
19 or gas dissolved in liquid, particularly water,
20 after pressure is removed?

21 A. It expands.

22 Q. And what happens? Let's use this Coke
23 can as an example. When I open it up, contents
24 are under pressure; would you agree with me?

25 A. Uh-huh (affirmative response).

1 Q. And it fizzes; would you agree with
2 that?

3 A. Uh-huh (affirmative response).

4 Q. Tell me what -- what scientific
5 principle is at work in that context?

6 A. I guess I don't --

7 Q. Familiar with Henry's law?

8 A. Again, I -- I don't feel com -- I don't
9 understand what you want me to answer.

10 Q. Sure.

11 A. It expands and it collects in the area
12 that it's in.

13 Q. Or not, right? I mean --

14 A. Or not. It expands and releases.

15 Q. Right. And so one would expect that a
16 liquid under pressure with some gas above that
17 liquid there would be some component that's
18 dissolved in a liquid, right? Right so far?

19 A. Well, I'd like you to finish.

20 Q. Sure. And when the pressure is
21 relieved or pressure is taken off that
22 environment then the gas is released from the
23 liquid depending on the pressure resulting?

24 A. In principle, yes. Not all the --
25 depending on the chemical concern and the

1 compound it -- it has a different release.

2 Q. Let's talk about natural gas.

3 A. Methane will release from water.

4 Q. Okay. So if I take water from a well
5 put it into an open-top holding tank what would
6 you expect to happen with the gas concentration
7 as compared to the wellhead under pressure to
8 where the holding tank is?

9 MR. LYNK:

10 I'm going to object, beyond scope.

11 THE WITNESS:

12 Again, if you're saying it's an
13 open top it's going to release to the
14 environment, to the atmosphere, which is where
15 the gas always releases.

16 EXAMINATION BY MR. RILEY:

17 Q. So the expectation being my example
18 would be that the gas concentration in solution
19 would be less in an open-top holding tank; would
20 you agree, from a wellhead under pressure?

21 A. Again, I don't understand the question.
22 The two don't relate.

23 Q. They don't? Okay. Well, sorry that
24 that's confusing to you.

25 MR. RILEY:

1 Let's mark this Deposition Exhibit
2 5.

3 EXAMINATION BY MR. RILEY:

4 Q. Mr. Blevins, you have before you what's
5 now been marked as Deposition Exhibit 5.

6 A. Yes.

7 Q. And have you seen this photograph
8 before?

9 A. No.

10 Q. Well, I'll represent to you that it's a
11 photograph of a water well in the area we've
12 been discussing called the Hurst water well.
13 And as you can see on the exhibit itself there's
14 an indication of the year of 2005. Would you
15 agree with me that 2005, the year of 2005
16 predates any of Range Production Company's
17 activities in the area we've been discussing
18 around the Lipsky and Hayley residence?

19 A. Yes.

20 MR. LYNK:

21 I'm going to object as to lack of
22 foundation and beyond the scope.

23 EXAMINATION BY MR. RILEY:

24 Q. So are you saying that EPA does not
25 have any record or any documents in its records

1 that are the same as Deposition Exhibit 5?

2 A. I may have misinterpreted your
3 question. I have not seen this photo myself. I
4 think the Agency is aware of this photo, yes.

5 Q. Okay. Again, you are the EPA
6 representative. And I've tried to be careful
7 about saying EPA but it gets cumbersome. So --

8 A. I know. I apologize. But we have
9 shifted so I just --

10 Q. Certainly.

11 A. -- assumed I was me. So I apologize.

12 Q. So you've seen then all the documents
13 EPA has available in this matter as it pertains
14 to the issuance of the order, correct?

15 A. I have seen all the documents contained
16 in the administrative record.

17 Q. Okay. So that's a different ques --
18 different answer to my question. All the
19 documents that we've discussed earlier would be
20 a bigger set of documents than what's contained
21 in the administrative record; is that true?

22 A. Do we -- there are other documents that
23 exist, yes. I have not seen all of them, no.

24 Q. So there are 42 documents that are
25 contained in the administrative record and that

1 means at least in EPA's records there might be a
2 document 43 up to who knows what that might
3 pertain to the administrative order; is that
4 correct?

5 A. I guess I'm confused on the term
6 contained or pertaining to. Do we have other
7 records related to the situation in and around
8 Parker County, yes. Do they pertain to the
9 order, the administrative record, are those
10 documents that we compiled to support the
11 issuance of the order, and that includes all
12 documents pro or con that we had at the time
13 that we used in making the decision to issue our
14 administrative order, our emergency order.

15 Q. Right. And if I understood correctly
16 your objective or your staff's objective was to
17 select out of that larger set of documents only
18 documents that supported EPA's decision to issue
19 the administrative order, correct?

20 A. Again, this was a clarification we
21 wanted to try to make earlier. The use of the
22 word support, I think you're using it in a
23 different connotation than I do. Support in
24 terms of only positive things, no. Support in
25 terms of the documents we reviewed and we relied

1 on to make sure decision to issue an emergency
2 order, yes. But that includes any and all
3 information positive or negative about the
4 situation as we knew it prior to issuing the
5 order on 12-7. And I think that's a slight
6 difference in the use of support. Because I
7 believe -- well, I'll stop there.

8 Q. I've asked you earlier then to tell me
9 the criteria that were used to select documents
10 that went into the administrative record. Do
11 you remember me asking you that question?

12 A. Yes.

13 Q. And you told me that there weren't any.

14 A. No, I did not say that.

15 Q. Okay. Tell me what they are then.

16 A. All documents as Jerry certified were
17 used by the Agency in making a decision to issue
18 an emergency order are contained in the
19 administrative record --

20 Q. Why didn't --

21 A. -- as criteria.

22 Q. Please continue. I interrupted you.

23 A. That's the criteria is those things
24 that were used to make -- take the action we
25 took was the issuance of an imminent and

1 substantial endangerment order under Section
2 1431. That's what we included in the
3 administrative record.

4 Q. Why didn't you just include all records
5 that EPA had that had gathered as part of its
6 investigation from any source whatsoever and put
7 that in the administrative record?

8 A. I don't -- I mean, I'm not an expert on
9 the subject for EPA but I don't believe that is
10 our practice for administrative records in any
11 of our programs. We build a record to
12 support -- to include those documents that we
13 used and relied on to make an action. Again,
14 any and all records is a very exclude -- a very
15 long list and in fact, you know, you can get at
16 those records through a different way which is
17 FOIA. And I believe there's an active FOIA
18 request out on this project that will supply
19 vastly more documents related to this.

20 Q. Well, it's interesting you mention that
21 because, yes, there has been a FOIA request
22 pending, it's been pending for some time and EPA
23 has asked for several extensions. But
24 regardless of that and independent of that
25 separate legal activity under a different law

1 entirely, what is it that was used to pick from
2 a large subset of documents -- a large set of
3 documents the specific documents in the
4 administrative record?

5 A. Those documents that we considered and
6 relied upon to make our decision to issue that
7 1431 order, which is an emergency order to
8 address an imminent and substantial endangerment
9 determination by EPA when we issued the order.

10 Q. Back to the picture.

11 A. Uh-huh (affirmative response).

12 Q. Okay. Have you seen this? Is this
13 document contained in EPA's records, this
14 picture?

15 A. To the best of my knowledge it is but I
16 have not seen it personally.

17 Q. Sorry to hear that. But as the
18 designated representative of EPA and this being
19 one of the records that was not included in the
20 administrative record and assuming its caption
21 to be correct --

22 MR. LYNK:

23 Well -- I --

24 MR. RILEY:

25 These are records -- these are

1 records of yours.

2 MR. LYNK:

3 Are you representing that it in
4 fact does not -- is that what you're --

5 MR. RILEY:

6 I'm sorry.

7 MR. LYNK:

8 In your question are you making a
9 representation for the record that it is in fact
10 not part of the certified --

11 MR. RILEY:

12 What I've heard the witness say,
13 Counsel, is that he believes this photograph is
14 in the records of EPA. That's my understanding.

15 MR. LYNK:

16 I thought your question then
17 contradicted his testimony and maybe you
18 should --

19 MR. RILEY:

20 No. I'm asking him.

21 MR. LYNK:

22 -- restate it.

23 MR. RILEY:

24 I'm trying to find out. I don't
25 know. Because I unlike some of the folks in

1 this room have not had an opportunity to review
2 those records, even though I've tried and I've
3 tried mightily through all systems and manners
4 available to me. So the fact that I don't have
5 the record I'm at a bit of a disadvantage.

6 EXAMINATION BY MR. RILEY:

7 Q. What I understood you to say is you
8 believe this photograph to be in the records of
9 EPA. Am I understanding correctly?

10 A. That's -- yes. But I do need to
11 clarify because I don't know today sitting here
12 on behalf of EPA whether that document, that
13 photograph existed in our records prior to 12
14 dash 7.

15 Q. And I have no way of knowing that, Mr.
16 Blevins. Who would be the person I should
17 depose then to answer the question I have as to
18 what was in the complete set of records as
19 opposed to the administrative record and
20 available to EPA before December 7, 2010?

21 MR. LYNK:

22 Object to form.

23 Go ahead.

24 THE WITNESS:

25 I don't know who to tell you to

1 depose to get to that level of detail. Again,
2 there's a FOIA request. If it's in our record
3 it will come out in our record unless we claim
4 one of the exemptions under FOIA that would not
5 release it. And I'm not the person to decide
6 that. That decision hasn't been made by the
7 Agency. When it's made I think that's where
8 you'll see that document produce itself. But
9 we -- I don't -- it's not in the record that we
10 built for this case.

11 EXAMINATION BY MR. RILEY:

12 Q. I heard you say earlier under oath that
13 there were three individuals that put together
14 the record, Scott McDonald, Jerry Saunders and
15 Chris Lister; is that correct?

16 A. Those are the primary people yes.

17 Q. And is it fair for me to conclude then
18 based on your testimony that those are the
19 individuals that would know -- have seen the
20 full body of information available to EPA prior
21 to December 2010?

22 A. They would have seen all the documents
23 in our possession, yes.

24 Q. Okay. So in order to find out whether
25 this photograph that's now been marked as

1 Deposition Exhibit 5, whether that was in your
2 records before December 7, 2010 I would have to
3 speak with or depose the three individuals you
4 just mentioned or I mentioned, correct?

5 A. Either that or you see if it's released
6 as part of the FOIA request that you have which
7 it very well may be.

8 Q. Well, I'm just not sure if that would
9 tell me what date it was in your possession. So
10 I would have to find out from folks in your
11 agency as to what you had and when you had it.

12 MR. LYNK:

13 Objection, argumentative.

14 EXAMINATION BY MR. RILEY:

15 Q. Obviously it's been some time since the
16 December 7th date has passed, correct?

17 A. To the last part of that, correct, it's
18 been some time since December 7th.

19 Q. Okay. What does this indicate? What
20 does Deposition Exhibit No. 5 indicate to you?

21 A. Based on the picture in and of itself
22 with no additional data it looks like flaring of
23 some sort of gas and the gas has been lit on
24 fire.

25 Q. Can you see the stream below the gas

1 flame that appears to be a clear liquid flowing
2 out onto the ground?

3 A. Vaguely.

4 Q. Do you know where the Hurst water well
5 identified in the picture is located?

6 A. The answer to the Agency, yes, the
7 Agency knows where the Hurst water well is
8 located.

9 Q. Did the Agency sample gas from the
10 Hurst water well as part of its investigation
11 prior to issuance of the emergency order?

12 A. No.

13 Q. Mr. Blevins, I understood your
14 background to be, to a large degree at least
15 from your early years with EPA involved the
16 Superfund program; is that correct?

17 A. That's correct.

18 Q. And as part of your work for EPA I
19 assume that you've -- you're familiar with
20 contaminant plumes and time -- how a contaminant
21 plume might change over time?

22 A. Yes.

23 Q. Do you know what depth below surface
24 Range's production or hydraulic fracturing in
25 the Barnett shale occurs in the area of the

1 Lipsky water well?

2 A. Yes, the Agency does. I don't know the
3 exact depth off the top of my head.

4 Q. Okay. Let's take a look at another
5 exhibit then because it would help.

6 A. Thank you.

7 Q. Take a moment and look at Deposition
8 Exhibit 6.

9 THE VIDEOGRAPHER:

10 Five minutes left, Counsel.

11 MR. RILEY:

12 Thank you.

13 EXAMINATION BY MR. RILEY:

14 Q. Do you have any appreciation for what's
15 depicted on Deposition Exhibit 6?

16 A. Conceptually, yes. Specifically, no,
17 not in the amount of time I've had to look at
18 it.

19 Q. Okay. Do you want more time?

20 A. I think it would take an extensive
21 amount of time for me to, if you want me to
22 render a technical opinion, to look at this.

23 Q. I'm not asking you any opinions. I'm
24 asking if you can appreciate what's depicted in
25 the figure.

1 A. Well, appreciate, again, I don't know
2 what that means.

3 Q. Well, see when I look at a figure
4 here's what I would do. I'd look at the legend
5 and then the lines and the figure, scale and the
6 various component of figure and then I'd render
7 an opinion one way or the other whether I knew
8 what it meant or not. Is that a reasonable
9 approach?

10 A. Well, that's not appreciate. But, yes,
11 I know what this graph depicts.

12 Q. Okay. So let's take a break, maybe
13 take a few more minutes and look at it so I can
14 ask you some questions about it.

15 A. Okay.

16 Q. Thank you.

17 THE VIDEOGRAPHER:

18 We're going off the record. The
19 time is now 2:22. This is the end of tape 4.

20 (Off the record.)

21 THE VIDEOGRAPHER:

22 This is the continued videotape
23 deposition of John Blevins. This is the
24 beginning of tape 5. The time is now 2:32.

25 EXAMINATION BY MR. RILEY:

1 Q. Mr. Blevins, we ended or before the
2 break we were discussing Deposition Exhibit 6.
3 Have you had a few minutes to look at this?

4 A. Yes.

5 Q. All right. And you see it's entitled
6 "Hydraulic Fracturing in the Barnett shale,
7 Parker County, relative to mapped aquifers." Do
8 you see that at the title?

9 A. Yes.

10 Q. And at least as per the document or
11 diagram the deepest aquifer depth in the area of
12 the Parker County -- which would include the
13 Lipsky and Hayley property, would you agree?

14 A. Say that again.

15 Q. Yes. Lipsky and Hayley properties are
16 in Parker County; is that right?

17 A. Oh, yes.

18 Q. And based on EPA's review of available
19 information do you agree that the depth of the
20 deepest aquifer is somewhere in the 100, 200
21 foot range?

22 A. Based on the representations contained
23 in this chart, yes.

24 Q. Okay. Do you know -- well, did EPA
25 look at the depth of the aquifers underneath the

1 Lipsky and Hayley properties?

2 A. We were aware of the depth of the
3 aquifers and the depth of the Barnett shale,
4 yes.

5 Q. Okay. And just -- you anticipated my
6 next question. What is the depth of the Barnett
7 shale in the area of the Lipsky and Hayley
8 property?

9 A. Somewhere between -- based on this
10 graph somewhere in the vicinity of 5 to 7,000
11 feet. I don't know exactly where the Lipsky
12 well set over the Barnett shale.

13 Q. Well, let's take the most -- according
14 to this diagram at least the shallowest depth to
15 the Barnett shale. Would you agree with me
16 based on the diagram, again, it's about 4500
17 feet?

18 A. Yes, based on this graph.

19 Q. And if we subtract 4500 feet -- or 200
20 feet from 4500 feet we get about 4300 feet; is
21 that right?

22 A. Yes.

23 Q. Now, is it EPA's theory in this case
24 that hydraulic fracturing in the Barnett shale
25 caused or contributed to natural gas being found

1 in the Lipsky water well?

2 MR. LYNK:

3 Would you read back the question
4 again? I'm sorry.

5 THE COURT REPORTER:

6 Now, is it EPA's theory in this
7 case that hydraulic fracturing in the Barnett
8 shale caused or contributed to natural gas being
9 found in the Lipsky water well?

10 EXAMINATION BY MR. RILEY:

11 Q. Are you waiting?

12 MR. LYNK:

13 I have no objection.

14 THE WITNESS:

15 No, I just --

16 MR. LYNK:

17 Sorry.

18 THE WITNESS:

19 I believe the EPA -- the best
20 position I can give you for the Agency is EPA
21 believes that activities related to the drilling
22 of the production wells and the associated
23 fracturing may have caused or contributed the
24 migration of gas to the Lipsky well.

25 EXAMINATION BY MR. RILEY:

1 Q. I'm trying to isolate the activity
2 known as hydraulic fracturing. What would
3 you -- how would you describe hydraulic
4 fracturing, what terms would you like to use?

5 A. I think you're going beyond my --
6 the -- that would call somebody with a technical
7 expertise beyond what I possess to answer that
8 question.

9 Q. And who on your staff or participated
10 in the issuance of the -- the administrative
11 order or would support the statement you just
12 made should I speak with in deposition to answer
13 the question?

14 MR. LYNK:

15 Object, beyond the scope.

16 But go ahead.

17 THE WITNESS:

18 The Agency has people you could
19 talk to about hydraulic fracturing. Nothing in
20 our order and nothing in our record talks about
21 the activities of hydraulic fracing and the
22 direct link or indirect link to the gas in
23 Lipsky's well. So nobody on my staff and nobody
24 that created the order is an expert in hydraulic
25 fracing.

1 EXAMINATION BY MR. RILEY:

2 Q. So if Mr. Lister expressed the opinion
3 in a meeting that I attended that EPA is not
4 concerned that the activity of hydraulic
5 fracturing in the Barnett shale caused the
6 natural gas to accumulate in the Lipsky well
7 then he was speaking outside of his expertise;
8 is that right?

9 MR. LYNK:

10 Objection, beyond scope.

11 But go ahead.

12 THE WITNESS:

13 I can't comment on that because I
14 wasn't in the meeting. I don't know the context
15 of Mr. Lister's question and the question posed
16 to him and his response. Again, the order
17 itself and the record for that order does not
18 get into or discuss hydraulic fracturing and the
19 activities related to hydraulic fracturing in
20 the relation to the imminent and substantial
21 endangerment that we claimed and responded to.

22 EXAMINATION BY MR. RILEY:

23 Q. I realize it doesn't and that's what
24 I'm trying to explore.

25 A. Okay.

1 Q. What is the theory that EPA is
2 operating under that leads to the conclusion
3 that Range's activities whether it be in the
4 drilling of the well or operation of the well or
5 hydraulic fracturing activity caused or
6 contributed to natural gas in the Lipsky water
7 well?

8 A. EPA's position is it could be all of
9 the above.

10 Q. So EPA currently holds the position
11 that hydraulic fracturing in the Barnett shale
12 could lead to natural gas transmission some 4300
13 feet up through the subsurface of the earth to
14 the Lipsky water well; is that correct?

15 A. Again, EPA has not taken a definitive
16 position either way. Again, as we talked it's a
17 possibility it could occur. Whether it's an
18 actual fact we have not opined on that in this
19 case. It's not part of the decision that was
20 made nor the record.

21 Q. So EPA doesn't know whether hydraulic
22 fracturing contributed one way or the other?

23 A. That's correct. And as I said earlier
24 part of the order was to have Range conduct
25 investigations to try to determine that one way

1 or the other.

2 Q. The other activities associated with
3 hydraulic fracturing, that would be drilling of
4 the well and construction of the well; is that
5 correct?

6 A. That's correct.

7 Q. Tell me your understanding of how the
8 well -- wells, sorry, the Butler and Teal wells
9 were constructed in this case?

10 A. I don't have specific knowledge nor was
11 that knowledge that was relied on for the
12 issuance of the order.

13 Q. No, you specifically didn't look into
14 that; is that correct? EPA did not look into
15 how the wells were constructed and whether they
16 had integrity; is that true?

17 A. No. There's information within the
18 record that talks about that but I'm not an
19 expert on that subject.

20 Q. Who is the expert that you consulted
21 with to determine that there's any possibility
22 of Range contributing to the natural gas that
23 was found in the Lipsky water well?

24 A. Say that again.

25 Q. Sure. I'm assuming that EPA was

1 conscientious and went step wise through a
2 process to reach a conclusion that it should
3 issue this emergency order.

4 A. Right.

5 Q. And so it seems reasonable to expect
6 that you consulted with all available resources
7 within EPA before you took this unilateral
8 action. Is that a reasonable expectation from a
9 company engaged in an enterprise in this
10 country?

11 A. We, the Agency, consulted with and
12 reviewed all the appropriate data to make a
13 decision based on an ISE situation. The
14 extendency of the circumstance drove the
15 decision.

16 Q. You keep inserting words into your
17 explanations like appropriate. Who made that
18 decision? Who made a decision as to what was
19 appropriate, was that you?

20 A. I made the decision as to whether the
21 issuance of the order was appropriate based on
22 the fact base in front of me, yes.

23 Q. Okay. And you have not reviewed all
24 the documents in the case, correct?

25 A. I have reviewed all the documents in

1 the record upon which I made my decision.

2 Q. You've not reviewed all relevant Agency
3 records; is that true?

4 MR. LYNK:

5 Objection. Object to form.

6 THE WITNESS:

7 I have -- again, I have reviewed
8 all appropriate documents for the decision that
9 was made.

10 EXAMINATION BY MR. RILEY:

11 Q. Who decided what was appropriate
12 documents for you to review and what wasn't?

13 A. I think I've already answered that.
14 The record was built by Jerry Saunders, Chris
15 Lister and Scott McDonald.

16 Q. All right. There was a day, it was
17 December 7, 2010. And at that point in time you
18 had reviewed a certain amount of information,
19 correct?

20 A. I had -- yes, I had been briefed; I had
21 reviewed information; I had asked questions; I
22 had gotten responses from my staff and I made a
23 determination to sign the order that you know
24 about.

25 Q. All the information you saw is

1 contained in this administrative record; is that
2 your testimony?

3 A. Yes.

4 Q. So you saw nothing of the other
5 documents that are not contained in the
6 administrative record?

7 MR. LYNK:

8 Object to form.

9 EXAMINATION BY MR. RILEY:

10 Q. Well, did you see any other documents
11 that are not contained in the administrative
12 record?

13 A. Did I see other documents, no.

14 Q. So you've only seen what's in the
15 administrative record?

16 A. Right, because it's the basis of the
17 action that I took on behalf of the Agency.

18 Q. So you cannot personally testify as to
19 whether the other information in the EPA files
20 are relevant to the issues in the -- in the
21 administrative order?

22 MR. LYNK:

23 Object to the form. Go ahead.

24 THE WITNESS:

25 I can testify as the Agency's

1 representative that we built the administrative
2 record and the record supports the decision we
3 made.

4 EXAMINATION BY MR. RILEY:

5 Q. And I know that's your opinion, sir.
6 But I'm asking you whether you've seen every
7 document in person?

8 A. As an Agency representative, no.

9 Q. Okay. As a human being no, correct?

10 A. Personally, no. I've already answered
11 that numerous times.

12 Q. All right. And I'm not sure who's
13 keeping count but I'm trying to get at a
14 succinct answer. So you can keep saying you've
15 answered it numerous times. I don't believe you
16 have. And I can object not responsive.

17 A. Okay.

18 Q. And I can continue to talk.

19 A. That's fine.

20 Q. I'll even raise my volume so you know
21 when I stop. But the objective here is to get
22 your truthful testimony, sir. All right?

23 MR. LYNK:

24 John, I think your volume is fine.

25 MR. RILEY:

1 Thank you. I'll reduce it.

2 MR. LYNK:

3 I'll object if I need to object.

4 He'll answer -- he'll ask questions, you'll

5 respond. Let's all stay within our roles.

6 THE WITNESS:

7 That's fine.

8 EXAMINATION BY MR. RILEY:

9 Q. The -- I want to be clear. Since you
10 were the decision maker, correct, to issue the
11 administrative order, correct?

12 A. Yes.

13 Q. I want to know what you now personally
14 saw before you made that decision and is -- and
15 ask you succinctly is all the information you
16 saw contained in the administrative record?

17 A. Yes.

18 Q. Now beyond that there was some other
19 documents which we've talked about numerous
20 times that exist in EPA's records that are
21 relevant to the subject matter of our discussion
22 that I'm expecting you didn't see; is that true?

23 MR. LYNK:

24 I'm going to object to the term
25 relevant, misstates his prior testimony.

1 EXAMINATION BY MR. RILEY:

2 Q. Okay. There are other documents
3 that -- that EPA has compiled in this matter
4 that you did not review, true?

5 A. Again, I struggle with the word in this
6 matter because I don't know what you mean. Do
7 we have other files, yes.

8 Q. Okay. Let's take a look at Exhibit 5
9 again. It's just an example. Exhibit 5 is the
10 picture.

11 A. Yeah.

12 Q. Exhibit 5 is one of the documents you
13 said you've seen and you know you have an
14 awareness of it is in EPA's records. I'm trying
15 to get at how much information have you not seen
16 before you made the decision -- or had you not
17 seen before you made the decision to issue the
18 administrative order?

19 MR. LYNK:

20 I'm going to object, vague as to
21 the time frame when the record was --

22 MR. RILEY:

23 Prior to December 7, 2010.

24 THE WITNESS:

25 I believe I saw all the relevant

1 information to make the decision I made.

2 EXAMINATION BY MR. RILEY:

3 Q. Okay. So recapping just a bit, see if
4 I've got a full understanding. All the
5 information that you saw is contained in the
6 administrative record, everything outside of the
7 administrative record, in your opinion, is
8 irrelevant to the decision you and EPA made to
9 issue the administrative order; is that a
10 correct statement?

11 A. I would not use the word irrelevant. I
12 did not use it to make the decision I made.
13 That does not render it irrelevant, it just
14 renders it not used for the decision.

15 Q. All right.

16 A. In my mind.

17 Q. Mr. Blevins, can you understand how
18 someone who's trying to find out what
19 information EPA had available to it on December
20 7, 2010 could be a little frustrated at this
21 point?

22 A. Actually, no, not for the decision I
23 made.

24 Q. Well --

25 A. You've asked me numerous times what

1 decision (sic) I relied on to make my decision.
2 Here it is. If -- I understand that you believe
3 there should be additional information in here,
4 that's fine. But this is the information that I
5 made my decision on, that the Agency made its
6 decision on to move forward to issuance of an
7 ISE order under 1431.

8 Q. I just think the record should be
9 complete. I don't think that EPA should have
10 selectively chosen documents to put in the
11 administrative record. That's the frustration
12 I'm expressing. Do you understand that?

13 MR. LYNK:

14 Objection, argumentative.

15 EXAMINATION BY MR. RILEY:

16 Q. I'm just saying do you understand why
17 someone might be frustrated in these
18 circumstances?

19 A. I understand your position.

20 Q. The -- do you have any sense of time as
21 it pertains to hydraulic fracturing activity --
22 what is EPA's position on how long it would take
23 for a gas that may be released through hydraulic
24 fracturing activity in the Barnett shale to --
25 to move through the earth, to arrive at the

1 Lipsky water well?

2 A. I think that goes beyond the technical
3 expertise that I possess.

4 Q. In between the Barnett shale and the
5 Lipsky water well is another natural gas bearing
6 formation we talked about earlier, the Strawn,
7 correct?

8 A. That's my understanding.

9 Q. All right. Would you consider the
10 Strawn since it's a formation that has retained
11 natural gas and there's been production from the
12 Strawn that that would be a barrier for gas
13 coming from the Barnett before it reached the
14 Lipsky water well?

15 A. I think potentially, again, I would
16 need a lot more facts to answer that question.

17 Q. What happens to hydrocarbons in the
18 subsurface of the earth if there's no barrier,
19 do you know, particularly gas?

20 A. That's a broad question.

21 Q. Sure.

22 A. If there's a pathway, it will find the
23 pathway and go to the atmosphere. If there's
24 not it may get trapped somewhere which is why
25 you have natural gas pockets.

1 Q. Right. Like the Strawn formation,
2 correct?

3 A. Like the Strawn and other formations.

4 Q. Okay. So if the Strawn is between the
5 Barnett and the 200-foot aquifer would you
6 expect it to act differently than it did over
7 geologic time in trapping hydrocarbons?

8 A. I don't think I can answer that
9 question because it's very broad.

10 Q. No, it's simple in my mind. Is that
11 there's a formation which has trapped
12 hydrocarbons, natural gas in particular, that
13 intervenes between the Barnett shale and the
14 Lipsky -- the aquifer the Lipsky water well is
15 drilled into. That's called the Strawn
16 formation; do you agree with me?

17 A. Conceptually I do. But, again, without
18 additional data you'd have to see if the
19 formation pinches out, if it's discontinuous, if
20 there's pathways through the formation that
21 exist to allow gas to migrate. I don't have
22 that information in front of me to answer that
23 question for you. And it goes beyond my
24 technical expertise level on this situation, nor
25 was it information that we relied on for our

1 decision.

2 Q. No, I'm saying EPA should have
3 investigated. I understand you didn't, and
4 that's very clear, abundantly clear that you
5 didn't look into any of the issues I've been
6 trying to ask you about. But let's talk about
7 Strawn formation in particular. Did anybody in
8 EPA take -- make itself aware of the geological
9 phenomena called the Strawn formation and its
10 characteristics?

11 A. I think I've answered that and the
12 answer is we know about the Strawn formation.
13 It was considered in the decision we made and we
14 made the decision we made.

15 Q. Okay. There's no information in the
16 record that indicates the Strawn formation was
17 considered, is there?

18 A. No -- no, there's no document in the
19 record; that's correct.

20 Q. Okay. So I just have to rely on you
21 without documentation as to the extent of your
22 consideration of the Strawn formation?

23 A. I guess so.

24 Q. Let's look at the administrative order
25 itself. Let's look at the ordering provisions

1 beginning on page 6 paragraph 50.

2 A. Okay.

3 Q. I asked you a little while ago whether
4 EPA could have issued an order to Mr. Lipsky
5 and/or Mr. Hayley -- actually, I asked you about
6 Mr. Lipsky to be fair -- precluding Mr. Lipsky
7 from using domestic water well No. 1. Remember
8 that question?

9 A. Yes.

10 Q. And you said you could not, EPA could
11 not issue that order; is that correct?

12 A. That's my understanding, yes.

13 Q. And to your understanding why not?

14 A. I don't believe we have the statutory
15 authority to issue an order to a private well
16 owner. Now, that's, again, a legal decision.
17 But that's my understanding.

18 Q. Was it considered by EPA to prevent
19 imminent and substantial endangerment in this
20 case to simply order the property owners, the
21 Lipskys and the Hayleys, not to use their water
22 wells until further investigation could be
23 conducted to determine the source of natural gas
24 in those wells?

25 A. It was not considered.

1 Q. Is it proper practice to vent a
2 natural -- excuse me, a water well from a safety
3 perspective?

4 A. I think all water wells have venting
5 capabilities. Again, practices probably very
6 widely observed throughout the country.

7 Q. The -- is the Lipsky water well vented?

8 A. I know it has ability to be vented
9 because there's where we tested.

10 Q. Is it your understanding and opinion
11 that the water that is pumped from the Lipsky
12 water well would contain natural gas?

13 A. Are you -- I --

14 Q. I think you mentioned at least to some
15 degree you're familiar with well construction.
16 So let's talk about water well construction.
17 You have a well completion report. Where does
18 the water come from in a water well? Does it
19 come off the top, off the bottom?

20 A. It comes from the aquifer that it's
21 screened across.

22 Q. So water enters the well, correct?

23 A. Correct.

24 Q. Where's the pipe? Or, excuse me,
25 where's the pump?

1 A. Pump's either within the well somewhere
2 or could be towards the top of the well. Again,
3 it depends on the well construction.

4 Q. Where it is in Lipsky's case?

5 A. That I don't know.

6 Q. Where is it in the Hayley's case?

7 A. That I don't know without looking at
8 the record to see if the well completion report
9 documents that. It's in the record.

10 Q. Okay. Well, what is the -- if -- I
11 think I heard you say, I may be wrong, that
12 the -- well, let -- let me go a different
13 direction. Is it EPA's understanding that there
14 have been issues in domestic water wells
15 involving natural gas that predate any activity
16 by Range Resources in the context of the Butler
17 and Teal wells?

18 A. Yes.

19 Q. And does EPA have a theory as to those
20 prior instances of natural gas occurring in
21 domestic water wells in the area we're
22 discussing?

23 A. I don't think we have a generic theory,
24 no.

25 Q. And has EPA done any investigation into

1 those historic episodes of natural gas
2 occurrence in domestic water wells?

3 A. In -- the Agency has -- has some
4 investigative work looking at this issue. But
5 as far as Parker County not that I know of, no.

6 Q. What did EPA do in response to the
7 occurrence that's depicted in the Deposition
8 Exhibit No. 5 the Hurst water well?

9 A. This one?

10 Q. Yes, sir.

11 A. Sorry. I thought there's a different
12 number at the bottom. At the time in 2005 I
13 don't know to be -- that this issue was brought
14 to our attention in 2005. So I don't believe
15 the Agency responded to this event.

16 Q. What did the Railroad Commission do in
17 response to this event to the best of your
18 knowledge?

19 A. I do not know.

20 Q. What did anyone do in response to this
21 event to the best of your knowledge?

22 A. I do not know.

23 Q. What efforts were made by you, the
24 Railroad Commission or anybody that EPA is aware
25 of to determine whether the gas occurring in the

1 Hurst well in 2005 is substantially similar to
2 the Lipsky -- the gas in the Lipsky well?

3 A. I can't speak for the Railroad
4 Commission. You'd have to ask them. They're a
5 state agency. They have their own independent
6 authority. At the time, as I've said, we did
7 not do anything. Since the issuance of the
8 order we have sampled the Hurst well.

9 Q. What have your samples revealed?

10 A. That we believe the gas contained in
11 the Hurst well is different from the gas found
12 in the Hayley and Lipsky well.

13 Q. Why?

14 A. Based on the compositional information
15 that we talked about earlier as well as the
16 fingerprinting that we did.

17 Q. Specifically what was different that
18 you're relying upon?

19 A. Again we believe that the compositional
20 data, the propane to ethane -- I've got to look
21 at those and make sure I get them right. Ethane
22 to propane con -- ratios, the propane to butane
23 ratios and the fingerprint is different. So the
24 fingerprint -- if you look at figure 2 on page 2
25 I think. Let me just get it right. Sorry. If

1 you look at page 3 and this page shows that the
2 Butler well and the domestic well 1, which is
3 Lipsky well, the fingerprint signatures are very
4 close to each other. If you plotted the Hurst
5 well it would not be in close proximity to those
6 two points.

7 Q. Which -- when did you -- when did EPA
8 sample the Hurst well?

9 A. The 21st of December.

10 Q. And what caused EPA to sample on the
11 21st of December?

12 A. We I think were aware that there were
13 concerns expressed to the Agency about the
14 issues related to the Hurst well. And based on
15 that information we decided it would make sense
16 to go out and sample.

17 Q. And you said when the sampling was
18 done. When did you receive results from the
19 sampling?

20 A. I don't have the exact date in front of
21 me yet. I just know --

22 Q. Would you have the various ratios
23 you've referenced?

24 A. I do not have those in front of me. I
25 just know that they were different.

1 Q. Have you provided that information to
2 Range?

3 A. No.

4 MR. TASHIMA:

5 Mr. Riley, this is Keith Tashima.
6 I'm going to have to sign off now. But thank
7 you and if I rejoin I'll let you know.

8 MR. RILEY:

9 Thanks, Keith.

10 MR. LYNK:

11 Thanks.

12 EXAMINATION BY MR. RILEY:

13 Q. I'm sorry. I didn't hear your answer.

14 A. No.

15 Q. Have you sampled other wells other than
16 the Hurst well?

17 A. EPA has not.

18 Q. Just the Hurst well then?

19 A. Yes.

20 Q. And is my understanding correct you
21 don't have the information today with you to
22 give me the ratios you say distinguish the
23 Hurst -- gas in the Hurst well from the Lipsky
24 well?

25 A. That's correct.

1 Q. But you're confident that those results
2 of your December 21st sampling would indicate a
3 difference between the gases found in the Hurst
4 well and the Lipsky well; is that correct?

5 A. Yes.

6 Q. Who interpreted those results for you,
7 for EPA?

8 A. Again, Jerry Saunders, Chris Lister
9 were involved in the sample collection and the
10 valuation of the data submitted to us by our
11 lab.

12 Q. What lab did you use; do you recall?

13 A. Isotech.

14 Q. Is there a reason you've withheld those
15 results from Range?

16 A. I don't believe we've withheld the
17 results from Range.

18 Q. Range hasn't been provided the results,
19 have they?

20 A. They have not.

21 Q. Okay. My use of the word withheld
22 meaning you haven't given them to us. Is
23 that --

24 A. My meaning of withheld is that I
25 purposely withheld them. We haven't -- again,

1 we just got the data back. We haven't been
2 requested to release it. And, again, it's not
3 normal course of business for the enforcement
4 program within EPA to release data as we're
5 investigating enforcement actions.

6 Q. All right. So, obviously, based on
7 that sampling event EPA has only gained in
8 confidence that it's made the right
9 determination in the administrative order; is
10 that correct?

11 A. I would say we didn't find any data
12 that would alter our conclusions made in the
13 order.

14 Q. Did I -- am I mischaracterizing your
15 earlier answers to say that EPA is uncertain
16 whether Range's activities are causing or
17 contributing to natural gas being found in the
18 Lipsky water well?

19 MR. LYNK:

20 Object to form.

21 THE WITNESS:

22 Again, I think we have -- we
23 believe they have caused or contributed. That
24 was part of the order itself, and that was a
25 finding we made and we issued the order.

1 EXAMINATION BY MR. RILEY:

2 Q. Then what would be the purpose of any
3 additional investigation?

4 A. The same purpose for asking Range to
5 collect data as part of our order, which is to
6 expand our knowledge of the situation existing
7 in and around the Parker area and as to are
8 there other wells at risk from --

9 Q. But you --

10 A. -- from the same issues that we've
11 identified.

12 Q. So you've concluded Range caused or
13 contributed to transmission of natural gas to at
14 least domestic water well 1 and domestic water
15 well 2, correct?

16 A. That's the basis of our order.

17 Q. All right. That's not a hypothetical,
18 it's not a possibility, you've saying that
19 you've concluded that?

20 A. That they may have contributed to --

21 Q. See, that's the word I keep trying to
22 get to is may. That sounds to me like there's
23 an uncertainty as to whether it's actually
24 caused or that there's a suspicion it's causing.
25 You understand what I'm saying?

1 A. I think the determination we made was
2 that Range may have caused or contributed and
3 that's the Agency's position.

4 Q. Okay. So you're -- the Agency's
5 position is then Range needs to investigate that
6 to find out whether they are indeed causing or
7 contributing as opposed to maybe causing and
8 contributing; is that right?

9 A. We asked Range to collect additional
10 data to define the scope and nature of the
11 threat, if the threat exists beyond the two
12 wells that we identified in our order. And as
13 part of that we gave Range the opportunity to
14 present additional data, conduct a study to
15 determine if the exact pathway and cause could
16 be defined.

17 Q. So it's Range's obligation in EPA's
18 view to determine whether there is a pathway
19 from Range's -- that relates to Range's
20 activities; is that correct?

21 A. I think it's Range's obligation to
22 collect data to satisfy the order. And as part
23 of collecting that data Range collects data they
24 want to present to the Agency that would either
25 support or deny their liability they have that

1 opportunity.

2 Q. Well, that's not what the order says,
3 is it, sir? The order says different. Let's
4 look at the ordering provisions. The order
5 says -- let's skip A because that's just asking
6 for EPA's response -- excuse me, Range's
7 response to EPA. The second one says do
8 something to Range, provide potable water
9 supplies -- water supplies to consumers of water
10 from domestic well No. 1 and domestic well No.
11 2, correct?

12 A. Uh-huh (affirmative response).

13 Q. So that's not an investigative step,
14 that's a remedy step?

15 A. That is to address the imminent
16 substantial -- the imminent threat that we
17 identified.

18 Q. Okay. Now, by this point, December 7,
19 2010, the Lipskys have stopped using the water
20 well and are actually obtaining water from an
21 alternate source, having a truck to their
22 property; is that right?

23 A. That's correct.

24 Q. So that's not imminent and substantial
25 endangerment. The Lipskys have already taken

1 care of order in provision B, 50-B by the time
2 this order is issued, correct?

3 A. The Lipskys had on their own
4 voluntarily provided themselves potable water
5 supply, yes.

6 Q. Why is it you think Range was then
7 obligated based on the base of information you
8 had on December 7, 2010 to take over that
9 activity --

10 A. Because --

11 Q. -- for the Lipskys?

12 A. Again, I think I've answered this once.
13 We believe that Range caused or contributed --
14 may have caused or contributed to the problem
15 and that Mr. Lipsky should not carry that burden
16 himself.

17 Q. So the other side of may is may not.
18 So Range may not have caused or contributed to
19 the natural gas in the Lipsky well too? That's
20 another possibility, right?

21 A. That's a possibility but that's not the
22 determination the Agency made.

23 Q. Now, your determination you've repeated
24 several times is they may have caused or
25 contributed, that Range may have caused or

1 contributed.

2 A. Yes.

3 Q. So the exact opposite side of that coin
4 is they may not have, correct?

5 A. That's a theoretical question.

6 Again --

7 Q. So is the first part.

8 A. No. The first part we had to make a
9 formal determination, we did that in our order.
10 And that's what I'm here to give you the
11 Agency's position on. So our determination, our
12 position as the -- as EPA is that we believe
13 Range may have caused or contributed the
14 contamination in the drinking water supply that
15 led to an imminent and substantial endangerment.
16 We did not make a determination that Range may
17 not have caused or contributed to that -- those
18 two things and we still wanted them to do work.

19 Q. Okay. Distinguish for me the use of
20 the word may from the use of the word it's
21 possible or the words it's possible.
22 Distinguish that for me. When the Agency
23 determined Range may have caused or contributed
24 to natural gas in the Lipsky water well how is
25 that different from it's possible Range may

1 have -- it's possible Range -- Range's
2 activities led to the finding of natural gas in
3 the Lipsky water well.

4 A. Again, as the Agency's representative
5 the determination we made was may have caused or
6 contributed. I did not make a determination or
7 the Agency didn't make a determination if
8 possible. Those are words. They can -- people
9 can decide if they want to interchange them.
10 That's not the Agency's decision or
11 determination. Me speaking for the Agency, or
12 we believe the words we used is the words we
13 wanted to use which is may have caused or
14 contributed.

15 Q. And if I'm understanding then
16 correctly, Mr. Blevins, the Agency has not
17 conclusively determined that Range has --
18 Range's activities have caused or contributed to
19 natural gas in the Lipsky water well; is that
20 correct?

21 MR. LYNK:

22 Object, asked and answered.

23 THE WITNESS:

24 We have used the word may. I did
25 not use the word did cause or contribute, we

1 used the word may. I think it speaks for
2 itself.

3 EXAMINATION BY MR. RILEY:

4 Q. Okay. The way it speaks to me for
5 itself is there's not -- the Agency has not
6 concluded Range has caused or contributed to
7 natural gas being found in the Lipsky well. Am
8 I being obtuse or am I understanding you
9 accurately that that's the Agency's conclusion?

10 MR. LYNK:

11 Object to form. Objection, asked
12 and answered.

13 THE WITNESS:

14 Again, I understand what you're
15 saying but the Agency's position in speaking on
16 behalf of the Agency is we believe Range has --
17 may have caused or contributed. That's the
18 basis for the issuance of our order.

19 EXAMINATION BY MR. RILEY:

20 Q. So since you've made a may conclusion,
21 may have caused or contributed, the onus in your
22 mind then shifted to Range to disprove that it
23 was causing or contributing to contam -- or
24 excuse me, to natural gas being found in the
25 Lipsky water well?

1 MR. LYNK:

2 Object to form.

3 EXAMINATION BY MR. RILEY:

4 Q. All right. That's what the order does,
5 right? It shifts from EPA is done. We think it
6 may be that Range has caused or contributed so
7 now Range we want you to do some things and
8 those are enumerated in paragraph 50 of the
9 emergency order, correct?

10 MR. LYNK:

11 I'll object to form to the extent
12 it calls for a legal conclusion.

13 You can answer.

14 THE WITNESS:

15 Again, I can't answer from a legal
16 standpoint. I can tell you that we -- what the
17 order says and what determinations the Agency
18 made.

19 EXAMINATION BY MR. RILEY:

20 Q. Okay. So would you expect it's free
21 for Range to provide water to the Lipskys?

22 A. That's it's free?

23 Q. Yes, sir.

24 A. No.

25 Q. No. So there's cost associated with

1 that requirement, correct?

2 A. Yes.

3 Q. And would you expect that the
4 installation of domestic -- excuse me, of
5 explosivity meters in the dwelling served by
6 domestic wells 1 and 2 that that's a -- at some
7 cost to Range?

8 A. Yes.

9 Q. And so even on the strength of a may
10 have caused or contributed Range would be
11 compelled, according to this order, to do
12 certain things, correct?

13 MR. LYNK:

14 I'm going to object to that to the
15 extent it calls for a legal conclusion.

16 EXAMINATION BY MR. RILEY:

17 Q. Is that correct?

18 MR. LYNK:

19 I'm going to object as beyond the
20 scope as well.

21 In fact, I'm going to object it's
22 beyond the scope and instruct you not to answer.

23 THE WITNESS:

24 Okay.

25 EXAMINATION BY MR. RILEY:

1 Q. Okay. You accept that instruction?

2 A. Yes.

3 Q. And finally with respect to 50-D -- I'm
4 sorry, not finally. Let's skip to the bottom
5 line, so to speak. With respect to 50-F -- see
6 that?

7 A. Yes.

8 Q. Within 60 days of receipt of this order
9 respondents shall develop and submit to EPA for
10 approval a plan to identify gas flow pathways to
11 the Trinity Aquifer to eliminate gas flow to the
12 aquifer if possible and, 3, remediate areas of
13 the aquifer that have been impacted.

14 A. That's correct.

15 Q. Did I read that correctly?

16 A. Yes.

17 Q. Is it correct then that regardless
18 of -- this seems to be broader than Range's
19 activity, this ordering provision. It doesn't
20 seem to limit it to pathways connected to
21 Range's activities. Do you see a limitation in
22 this provision that I'm missing?

23 A. Do I see a limitation on --

24 Q. It says identify gas flow pathways to
25 the Trinity Aquifer. Let's suppose that the

1 Strawn formation as natural -- generates natural
2 gas that flows through a pathway to the Trinity
3 Aquifer.

4 A. Right.

5 Q. Okay. Is that one of the pathways
6 you'd want Range to identify here?

7 A. If it was -- we would want Range to
8 identify the pathways. And then again I think
9 in compliance with the order if Range were able
10 to present data to the Agency that the Agency
11 believed was valid and appropriate we may --
12 that showed that it wasn't related to your
13 activities there's always the option that we
14 would not pursue asking Range to do anything
15 beyond what they did.

16 Q. That's not what the order says, though,
17 right?

18 A. That's not what the order --

19 Q. There's a step two.

20 A. The order --

21 Q. Read to me the step two.

22 A. The order asks you to present a report
23 that says: Here's what needs to be done.

24 Q. Right. And it's a plan to, one,
25 identify gas flow pathways --

1 A. Right.

2 Q. -- at Trinity Aquifer?

3 A. Right.

4 Q. And, two, eliminate the gas flow to the
5 aquifer?

6 A. Right.

7 Q. Right?

8 A. Right.

9 Q. And then, three, to remediate the
10 aquifer, correct?

11 A. Right.

12 Q. That doesn't seem to be attributable to
13 any Range activities exclusively.

14 MR. LYNK:

15 I'm going to object as beyond
16 scope. You can answer.

17 THE WITNESS:

18 Again, I understand your question.
19 Again, if the Agency received data to say that
20 none of these activities were the responsibility
21 of actions of Range conclusively I think the
22 Agency would discuss with Range whether they
23 complied with the order and satisfied the orders
24 which is what, again, common practice for the
25 Agency to do as we move through these cases.

1 EXAMINATION BY MR. RILEY:

2 Q. Well, I didn't see that in the order.

3 Is that in the order somewhere --

4 A. No.

5 Q. -- that I've missed?

6 A. No. That's -- you're right, it's not
7 explicit in the order.

8 Q. So when 50-A asks Range to say yea or
9 nay so to speak, whether it would comply or not,
10 there's not a provision in here that says: Even
11 if you're not responsible for natural gas
12 occurring in the Lipsky well you can stop
13 complying. It says: Will you comply or not,
14 correct?

15 MR. LYNK:

16 Object, calls for legal conclusion
17 and beyond the scope.

18 THE WITNESS:

19 It asks you if you intend to comply
20 with the order, that's correct.

21 EXAMINATION BY MR. RILEY:

22 Q. All right. And the provision we talked
23 about just a moment ago that you said is Agency
24 policy and it may prove up that Range isn't
25 responsible and then the Agency would further

1 negotiate or consider its ordering provisions,
2 that's not in here; is that right?

3 A. It's not explicit in here, no.

4 Q. Is it implicit somewhere? Did I miss
5 it? Am I looking at --

6 A. It's the Agency's.

7 Q. -- if I read between the lines?

8 MR. LYNK:

9 Same objection. Go ahead.

10 THE WITNESS:

11 It's the Agency's -- again, in an
12 enforcement case it's the Agency's practice to
13 work with companies that we've issued order to
14 and to -- again, if data comes to light that we
15 believe would indicate they don't have to take
16 action we will work with them to that. But it's
17 not explicit. It's just part of how we write
18 our orders, you're correct.

19 EXAMINATION BY MR. RILEY:

20 Q. How many orders of this type have you
21 personally signed and issued?

22 A. How many --

23 Q. Orders of this type have you personally
24 signed as you did this one --

25 A. ISE orders --

1 Q. -- previously?

2 A. -- or administrative orders for water
3 or -- that's a broad question to me.

4 Q. Well, this one I'm going with emergency
5 administrative orders under the authority of
6 Section 1431 of the Safe Drinking Water Act?

7 A. I have personally signed -- I'd have to
8 go back and look but I can tell you it's in the
9 ballpark of less than five, three to five.

10 Q. Over what time frame?

11 A. Since I've been with the Agency in
12 Region 6, six years.

13 Q. How many has EPA issued at the time
14 you've been at EPA, Region 6 in that six years?

15 A. ISE orders under 1431?

16 Q. Yes, sir. You keep using a term that
17 I'm not familiar with.

18 A. Sorry. Imminent and substantial
19 endangerment, ISE. Sorry. I apologize.
20 Emergency orders under this authority, that's
21 what I'm saying, three to five.

22 Q. Okay.

23 A. If they were issued in the last six
24 years I would have been the person to sign them.

25 Q. What's the most recent of those three

1 to five orders?

2 A. It was -- we issued an order to a
3 tribal government entity related to issues with
4 their drinking water supply. I would have to go
5 back and pull -- find exact name. But we issued
6 it. The other again orders that we've issued to
7 date have been to tribal entities related to
8 their providing drinking water.

9 Q. At the time of the emergency order on
10 December 7, 2010 were the Hayleys still using
11 their water well for consumption?

12 A. Yes, to the best of my understanding
13 they were.

14 Q. Do -- did EPA conduct any sampling of
15 the Hayley's water?

16 A. Yes. It's in the record. It's
17 contained in that same table that we're looking
18 at, 00 or page 2.

19 Q. Page 2.

20 A. And it's listed in a few of the
21 findings of fact within the order itself.
22 Domestic well 2 is the Hayley property.

23 Q. And I may have misled you but I thought
24 I read in the administrative order that you
25 relied on -- you being EPA relied upon sampling

1 conducted by the Hayleys, not that EPA
2 conducted.

3 A. No. If you look on table 2.

4 Q. Yes, sir.

5 A. Where it says domestic well 2 you can
6 see that we did collect -- so not the first page
7 of the table but the second page of the table.

8 Q. I'm looking at page 2, right, Bates
9 labeled page 2?

10 A. Yeah. If you look at domestic well 2,
11 that's the Hayley well, and you can see that the
12 EPA collected those water samples. We did not
13 collect air samples from the Hayley well.

14 Q. Maybe that's what I'm remembering.

15 A. Yeah. So we did collect a water
16 sample.

17 Q. All right. Now, based on table 2 what
18 constituents were above MCLs in the Hayley water
19 based on EPA's testing?

20 A. None.

21 Q. Now, you did rely on some testing done
22 by the Hayley's or a consultant for the Hayleys
23 as to gas in the Hayley well. Am I remembering
24 that part correctly?

25 A. I don't -- the record does not contain

1 anything related to gas samples for the Hayley
2 well and the order itself. If you look at
3 paragraph 37 talks about water samples. I
4 believe all the data is -- for the Hayley well
5 was previous water samples and our water sample
6 in comparing what we saw in those.

7 Q. And I apologize. I just didn't
8 remember accurately. You're absolutely right.
9 In paragraph 37 it details that the consumer,
10 meaning the Hayleys, contracted for water
11 samples to be taken --

12 A. Right.

13 Q. -- from their well, correct?

14 A. Right, that's what I was reading.

15 Q. And what constituents if any detailed
16 in paragraph 37 are above EPA standards or MCLs?

17 A. Again, there was no MCL exceedance
18 recorded. MCL, sorry.

19 Q. Do you know who took the samples that
20 are referred to in paragraph 37, what firm or
21 what individual?

22 A. Let me check real quick. I believe --
23 I just want to double check. I believe a report
24 was issued by Wolf Eagle Environmental.

25 Q. Wolf Eagle?

1 A. Wolf Environmental I think.

2 Q. Now, we've heard that name before in
3 the deposition. That is Rich's firm; is that
4 correct?

5 A. That is correct. So document
6 identification 15 in the record is -- relates to
7 the Wolf Eagle report prepared for the Hayley
8 well. And document 14 also, sorry.

9 Q. Did --

10 A. Act --

11 Q. -- Ms. Rich -- I'm sorry.

12 A. I was just going to say looking --
13 sorry, I should have -- but like 14, 15 and 16
14 in our record, 17 in our record all related to
15 the Hayley well and the testing done by Wolf
16 Eagle on the water. So it's various analytical
17 reports submitted related to the Hayley well in
18 the record.

19 Q. Did Ms. Rich influence EPA's decision
20 to act in this matter?

21 A. No.

22 Q. You're confident of that answer as a
23 representative of EPA?

24 A. Yes.

25 Q. Was Ms. Rich's desire made known to EPA

1 as to what she would like to see happen as it
2 pertains to the Lipsky or Hayley water wells?

3 A. Not that I know of, no. It may have
4 been in conversation but it wasn't documented in
5 the record.

6 MR. RILEY:

7 Let me mark this paper quickly as
8 Deposition Exhibit --

9 THE COURT REPORTER:

10 7.

11 MR. RILEY:

12 -- 7.

13 EXAMINATION BY MR. RILEY:

14 Q. Now, I know you haven't had time to
15 study this article but let me ask you if you're
16 familiar with this bunch called the United
17 States Geologic Service?

18 A. Yes.

19 Q. All right. And this other gang they
20 call the United States Department of Interior
21 Office of Surface Mining?

22 A. Yes.

23 Q. They're pretty reputable folks in those
24 agencies?

25 A. They're sister agencies.

1 Q. So no reason to -- let me ask you
2 preliminarily, have you ever seen this article
3 before?

4 A. In what capacity?

5 Q. Really in any capacity. Have you
6 ever --

7 A. I don't know if the Agency has seen
8 this article. I would assume that the Agency
9 has. I have not seen it in a personal capacity
10 related to this case.

11 Q. Now, this article at least in a quick
12 review and I know you haven't had a lot of time,
13 discusses methane in West Virginia ground water
14 and discusses at least an opinion of those
15 sister agencies what are concentrations of
16 concern for methane in ground water. Do you see
17 that?

18 A. Oh, the part that's titled "Action
19 Levels"? Is that what you're talking about? I
20 just --

21 Q. Yes, sir. Yes, sir. I'm generally
22 speaking. I'm not trying to belabor this point
23 but I'm wondering how much consideration EPA
24 gave in this instance as it pertains to
25 concentrations of methane or other gases in

1 either of the domestic water wells that are in
2 discussion and whether the levels themselves are
3 harmful to potential consumers of the water.

4 A. Sorry. Can you state that again?

5 Q. Sure.

6 A. I was reading and lost you. I
7 apologize.

8 Q. No, that's perfectly fine. There's
9 this notion that constituents in ground water
10 may be harmful to human health if consumed. Is
11 that generally speaking any level of concern of
12 EPA in this case? There's the explosive aspect
13 if methane accumulates it could blow up. And
14 then there's the other aspect at least I'm
15 interpreting EPA's order to cover that
16 consumption of the domestic -- of water from the
17 domestic wells in discussion could be harmful to
18 human health. Is that -- am I misunderstanding
19 EPA's concern?

20 A. I think EPA -- if I understood your
21 question, so I apologize if I missed it. But
22 EPA was concerned that there were other
23 constituents beyond the methane, propane, the
24 natural gas constituents showing up in the
25 drinking water which while not over the MCLs

1 could have health impacts. The primary driver
2 for our action again was the concentrations of
3 the natural gas in the -- both in the water
4 solubilized as well as in the head space. So I
5 don't know if I answered you or not.

6 Q. Sort of. But let's go to it then --
7 let's -- the concentration in the water, that's
8 separate from the concentration in the head
9 space, correct?

10 A. Separate but related, yes.

11 Q. And so we've had the pressure
12 discussion we had and what happens when the
13 water comes out of the well and goes to the
14 holding tank. But the concentrations in the
15 well water itself as --

16 A. Right.

17 Q. -- identified by EPA are they a health
18 concern from EPA's perspective?

19 A. Not from ingestion of the water as
20 drinking it because the methane or the natural
21 gas components will quickly volatilize. So the
22 health impacts related to methane and other
23 natural gas components will probably be through
24 the inhalation pathway and there are studies out
25 there that look at that. But you're talking --

1 apart from the explosion risk you're talking at,
2 you know, significant concentrations. Because
3 of the ability of methane and other organic
4 compounds like methane to basically produce an
5 environment that they may be oxygen starved so
6 you -- there's no air to breathe because you've
7 got too much of something else in the air, it
8 could cause health problems that way.

9 Q. Because you could die if there's no
10 oxygen, right?

11 A. You could die and there's other things
12 you could -- you know, there's other health
13 affects, short-term health affects that you
14 might --

15 Q. If we filled this room with pure water
16 that would be bad for us --

17 A. That would be bad for us.

18 Q. -- sitting here, right?

19 A. Yeah. So --

20 Q. So it's not just -- it's an asphyxiant
21 but only to the extent that it displaces oxygen;
22 is that correct?

23 A. Correct. That's what EPA believes the
24 literature would indicate.

25 THE VIDEOGRAPHER:

1 Five minutes.

2 EXAMINATION BY MR. RILEY:

3 Q. Do you know if EPA has a similar paper?

4 Have you ever seen any information from your
5 experience and particularly with respect to this
6 order that supports that any of the
7 concentrations of any of the components of
8 natural gas are in that context in terms of
9 ingestion are -- endanger human health?

10 A. I don't know if EPA has a specific
11 paper. Again, we're aware of the scientific
12 literature and the health impacts related to
13 like methane. I think we actually -- there may
14 be a reference in the order.

15 Q. Why don't you take -- let's take a
16 break. Why don't you look at that reference and
17 then --

18 A. Yeah. See if you read No. 32 --
19 sorry -- 32 in the order says hexane, propane,
20 ethane and toluylene may also cause health --
21 adverse health impacts if inhaled or ingested.
22 So that's kind of a broad statement. But I
23 think the Agency as a whole realizes that
24 methane, propane doesn't -- they don't want to
25 stay in water. They're compounds that want to

1 get out of water. So ingestion directly like
2 through drinking a cup of water is probably very
3 hard unless the concentrations are significant.

4 Q. As a matter to bring this all home I
5 brought in some glasses of hexane for us. And
6 would you -- I'm just teasing. I mean, what I'm
7 really trying to say is that this statement is
8 so broad it would suggest that, yeah, if I drank
9 hexane or if I ingested propane that that
10 probably wouldn't be good for me. But is there
11 some constituent level that's associated with
12 these compounds that EPA would consider unsafe
13 in drinking water?

14 A. Not that I'm aware from an MCL
15 standpoint. To be honest I'd have to go look to
16 see if a secondary MCL is set for any of these
17 compounds -- MCL secondary. I'm not aware of
18 one but I would have to go back and check.

19 MR. RILEY:

20 Let's take a break and we'll resume
21 in a few minutes.

22 THE VIDEOGRAPHER:

23 Going off the record. The time is
24 now 3:29. This is the end of tape 5.

25 (Recess was taken.)

1 THE VIDEOGRAPHER:

2 This is the continued videotaped
3 deposition of John Blevins. This is the
4 beginning of tape 6. The time is now 3:46.

5 EXAMINATION BY MR. RILEY:

6 Q. Only a few more hours to go, Mr.
7 Blevins.

8 MR. RILEY:

9 Let's mark another exhibit,
10 Deposition Exhibit 8.

11 Let me give a copy to Mr. Blevins
12 and counsel.

13 THE WITNESS:

14 Thank you.

15 EXAMINATION BY MR. RILEY:

16 Q. Mr. Blevins, have you had an
17 opportunity to look at what's been now marked as
18 Deposition Exhibit No. 8?

19 A. Yes.

20 Q. Okay. And do you recognize it to be in
21 broad strokes again generally the area we've
22 been discussing around the pad site for the Teal
23 and Butler Range Production Company wells?

24 A. Yes.

25 Q. And I'm not asking you to confirm or

1 otherwise validate the exhibit but I'm asking if
2 you -- if you have sufficient knowledge to
3 discuss the relative locations and approximate
4 distances of the various items labeled on the
5 diagram.

6 A. I have -- I don't have any reason to --
7 to question them.

8 Q. All right. As pertains to ground water
9 in the Trinity Aquifer do you know the direction
10 of ground water flow?

11 A. The Agency does. I couldn't tell you
12 off the top of my head, no.

13 Q. Okay. Who would be best qualified of
14 the folks that have been discussed in this
15 deposition to testify about ground water flow
16 direction of the Trinity Aquifer in the area
17 we've been discussing?

18 A. That would be Jerry Saunders and
19 Chris --

20 Q. Mr. Saunders and Mr. Lister?

21 A. Yes, Chris Lister. Sorry.

22 Q. It's okay.

23 A. Just spaced out on that one.

24 Q. All right. And you see the oval to the
25 right-hand side, lower right-hand corner of the

1 diagram?

2 A. It's the big green or the big yellow
3 oval, yeah.

4 Q. Yes, sir. And it's labeled: Center
5 mill, parentheses, Strawn, S-T-R-A-W-N, closed
6 parentheses, BUQW 370 feet perf interval 358 to
7 426 feet. Do you see that?

8 A. Yes.

9 Q. All right. Now do you -- do you have
10 any appreciation of -- that the oval as
11 depicting the historic -- or area of historic
12 production of natural gas from the Strawn
13 formation in the general vicinity of the area
14 we've been discussing?

15 A. Say that again. You're representing
16 that the oval represents --

17 Q. Best of my understanding. I didn't put
18 this diagram together but I believe that's what
19 it represents. And the perf interval talks
20 about or is speaking to the depth from surface.

21 A. Right. I know what those are. But you
22 would think the circle -- I thought you were
23 trying to say what you believe the circle
24 represented.

25 Q. I believe it's the historic production

1 from the Strawn formation in the area we've been
2 discussing.

3 A. Okay. I have no data to dispute that.

4 Q. All right. So just sort of thinking
5 through the rest of the diagram or looking at
6 the rest of the diagram you see the Lake Country
7 Acres public water supply about midway on the
8 left-hand -- excuse me, right-hand edge of the
9 diagram?

10 A. Yes.

11 Q. And according to the diagram that's
12 about 6,000 feet from the Butler and Teal well
13 pad site?

14 A. Yes.

15 Q. And you've got the Lipsky well to the
16 northwest or north northwest?

17 A. Right.

18 Q. And you've got the Hayley well further
19 north but generally in the direction of north
20 and west from the Butler and Teal well site.
21 And you've got the Hurst well. See that?

22 A. Yes. Yes.

23 Q. And I'm going to go with Oujesky, but
24 it's spelled O-U-J-E-S-K-Y, water well drilled.
25 See that?

1 A. Uh-huh (affirmative response). I'm
2 sorry. Yes.

3 Q. And then the Lipscomb well again
4 further to the west from the Range --

5 A. Yes.

6 Q. -- site. Now, without asking you to
7 confirm the information contained in the various
8 boxes it appears that there has been incidents
9 of natural gas occurrence in water wells in the
10 area of the Lipsky/Hayley and ultimately the
11 Butler and Teal wells historically. Is that --

12 A. Yes.

13 Q. -- fair? And is that basically you
14 have a general understanding that's the case?

15 A. Yes.

16 Q. Now, we talked a moment ago before the
17 break that EPA did some testing of the Hurst
18 well; is that correct?

19 A. We took a ground water sample -- or,
20 no, sorry, an air sample, yes.

21 Q. Yeah. I think you did some isotopic
22 analysis if I understood your testimony.

23 A. That's correct.

24 Q. All right. Did you test any of the
25 other wells depicted on this diagram for --

1 again, take an air sample from any of the other
2 wells that are --

3 A. Oh, an air sample, no.

4 Q. All right. And by other wells, let me
5 be clear. We've talked about Lipsky; we've
6 talked about Hayley. I'm talking about the
7 other wells being the Oujesky, the Lipscomb or
8 the Lake Country Acres wells.

9 A. Yes, I understand that. No, we have
10 not. The only well that we've sampled beyond
11 Lipsky and Hayley to date, EPA has sampled, is
12 the Hurst well.

13 Q. All right. Based on your recent
14 sampling has the Hurst well proved to be -- the
15 gas in the Hurst well -- let, me start again.
16 Did EPA detect gas in the Hurst well, natural
17 gas in the Hurst well?

18 A. Yes.

19 Q. Has EPA determined the source of that
20 gas?

21 A. No.

22 Q. Are there any -- other than apparently
23 you've distinguished it from the Range
24 production gas that's been discussed throughout
25 this deposition and that is part of the

1 evidentiary record or the administrative record?

2 A. Correct.

3 Q. So what we know then based on EPA's
4 opinion is that the gas that EPA detected in the
5 Hurst well is not related to Range production
6 activities; is that correct?

7 A. We believe it's not -- yes, it's not
8 the same gas that we're finding in the Lipsky
9 and Butler well, yes.

10 Q. What is the source of the Hurst gas?

11 A. We have not gone that far to determine
12 that.

13 Q. What -- let me start again. Have
14 you -- has EPA issued an emergency order as it
15 per -- as it pertains to the Hurst well?

16 A. No.

17 Q. Has EPA looked for production
18 activities surrounding the Hurst property to
19 determine whether any of those production
20 activities are the source of the gas in the
21 Hurst well?

22 A. No. Again I gave you the date that we
23 did that sampling and I couldn't give you the
24 exact date as to when we got the data back but
25 it's with -- been within the last probably two

1 weeks. So we're still -- we just got the data.
2 We're just starting to analyze it. Again, we
3 did an isotopic testing so we could look at
4 those results and compare them to existing
5 results. And we did some compositional water
6 testing data. And we can compare those to the
7 existing wells. That's the extent of our
8 investigation to date.

9 Q. The Hurst well is still in use,
10 correct?

11 A. Um --

12 Q. Is in use. I shouldn't say still in
13 use.

14 A. That I don't know.

15 Q. Are you concerned for the well-being of
16 consumers of water from the Hurst well?

17 A. Based on the data that we have to date
18 and the initial review of it we don't see the
19 same conditions existing in that well that we
20 see -- that we saw on the Lipsky and Hayley
21 well. So we have not made a determination that
22 there's an imminent and substantial threat that
23 we would need to act on.

24 Q. Well, there's natural gas in the well,
25 right?

1 A. There is natural gas but at different
2 concentrations --

3 Q. Is it --

4 A. -- and makeup.

5 Q. -- different natural gas from the type
6 that explodes?

7 A. No.

8 Q. Okay.

9 A. I mean all natural gas at certain
10 concentrations can explode.

11 Q. Well, if it's piped into the Hurst
12 residence or some confined structure --

13 A. Right.

14 Q. -- then it has a potential to
15 accumulate and explode; am I --

16 A. It could --

17 Q. -- incorrect?

18 A. -- yes, if the concentrations are
19 significant enough.

20 Q. Well, insignificant or significant
21 that's the nat -- excuse me, the nature of
22 accumulation is that if gas accumulates in a
23 confined space, regardless of what the
24 concentration is of the wellhead it could --

25 A. Right.

1 Q. -- lead to an explosion?

2 A. And we have not concluded our
3 investigation or analysis of the data related to
4 Hurst to make a determination if EPA needs to
5 take action.

6 Q. All right. But we know it's not
7 related to the Range production activities,
8 correct, according to EPA?

9 A. Based on the data we have to date and
10 an initial review of that data we do not believe
11 it so. But, again, we are still evaluating the
12 data and will make further determinations based
13 on that evaluation.

14 Q. What isotopes were considered in your
15 isotopic analysis of the gas sample from the
16 Hurst well?

17 A. We basically -- it's the same two,
18 the -- looking at the hydrogen, the hydrogen and
19 the carbon monomers, 1 and 2 and 12 and 13,
20 sorry. So it's the same exact isotopic analysis
21 that we did on -- performed on the Butler gas
22 that we were provided a sample of and on the
23 Lipsky well.

24 Q. All right. And that would tell you
25 whether the gas is thermogenic or biogenic; is

1 that right?

2 A. It will, yes.

3 Q. And was the gas determined -- or excuse
4 me, the gas in the Hurst well determined to be
5 thermogenic or biogenic?

6 A. I -- we just have the results back.
7 Again, I don't know that we made a final
8 determination as to where it fits on that --
9 where it would land on the -- that graph that's
10 on page 3 and whether it's thermogenic. I do
11 believe we think it -- based on the numbers I
12 saw, we haven't done the analysis, but I think
13 it probably has thermogenic characteristics, but
14 it may also have biogenic. And we talked about
15 that earlier that sometimes you can have gas
16 that might exhibit both.

17 Q. Okay. Now, let's go back and talk a
18 little bit about -- well, let me ask it
19 differently then or one more question as it
20 pertains to this exhibit.

21 A. Okay.

22 Q. Tell me all the things EPA is doing to
23 investigate other wells, whether depicted on
24 this diagram or not, but in the general area
25 depicted on this diagram. What is EPA currently

1 doing as pertains to furthering its
2 investigation?

3 MR. LYNK:

4 Object as beyond scope.

5 You can answer.

6 THE WITNESS:

7 We are moving to enforce our order
8 that asks Range to perform that work for the
9 Agency.

10 EXAMINATION BY MR. RILEY:

11 Q. Interesting characterization of it.
12 You would like Range to perform the work to
13 prove that Range is not the source of the gas in
14 the Lipsky well; is that an accurate
15 characterization of EPA's desire?

16 MR. LYNK:

17 Objection to scope and form.

18 THE WITNESS:

19 Will you ask that again --

20 MR. RILEY:

21 Sure.

22 THE WITNESS:

23 -- just so I can make sure.

24 EXAMINATION BY MR. RILEY:

25 Q. You would like Range to perform an

1 investigation to prove that it is not the source
2 of natural gas detected in the Lipsky well; is
3 that a fair characterization of EPA's desired
4 response from Range?

5 MR. LYNK:

6 Objection, scope and form.

7 THE WITNESS:

8 Again, I would say no. I believe a
9 fair characterization is we've asked Range in
10 our order to perform -- collect data that would
11 help us define the scope and nature of the
12 contamination problem in the underground
13 storage, underground water aquifer and help us
14 collect data to find the scope and nature. And
15 then also we've asked that Range perform a study
16 to look to see if the pathways can be
17 determined; two, if they can be determined how
18 we might go about addressing those pathways to
19 eliminate the contamination in the underground
20 water aquifer.

21 EXAMINATION BY MR. RILEY:

22 Q. So Range's responsibility is to step
23 into the shoes of EPA, identify the pathways and
24 then advise EPA on how to solve the issue; is
25 that correct?

1 A. Range's responsibility is to respond to
2 the Agency's order that we issued under the
3 authority of the act.

4 Q. And you have Range response to the
5 order, right? You've received a response from
6 Range as it -- as it pertains to the emergency
7 order?

8 A. That's correct.

9 Q. And Range respectfully disagrees with
10 EPA's both factual and legal conclusions as you
11 understand, correct?

12 A. That's correct.

13 Q. And is it EPA's position that
14 regardless of responsibility and despite Range's
15 belief that EPA's factual and legal conclusions
16 are flawed that it must move forward according
17 to the emergency order?

18 MR. LYNK:

19 Object to it, beyond the scope.

20 And I object it calls for legal conclusion.

21 THE WITNESS:

22 I believe the Agency's position is
23 that Range should -- has the responsibility to
24 respond to our order and implement it. And
25 we've asked that that order be enforced.

1 EXAMINATION BY MR. RILEY:

2 Q. When I read to you one of the
3 provisions of that order which -- it talked
4 about that there's an unwritten law or policy
5 that talks about: Well, if we're wrong and you
6 do all these things and you show us you're not
7 responsible well then, naturally, we wouldn't
8 make you complete the ordering provisions. Did
9 I mischaracterize our earlier discussion?

10 MR. LYNK:

11 Same objection.

12 THE WITNESS:

13 I don't think there's a law or a
14 policy. I think the Agency has established a
15 longstanding practice that when we issue
16 administrative orders that we are willing to sit
17 down and discuss the contents of those orders
18 and the completion of the provisions under those
19 orders with the affected parties. And we've
20 offered that to Range.

21 EXAMINATION BY MR. RILEY:

22 Q. Who would be doing the analysis of the
23 additional sampling you recently did on the
24 Hurst well?

25 A. The --

1 MR. LYNK:

2 Object to scope.

3 You can answer it.

4 THE WITNESS:

5 The same staff that I've talked
6 about before. Isotech performed the analysis
7 for us. We'll talk to Isotech about how they
8 interpret the data. We will use Jerry, Chris
9 and Scott McDonald to look at that data as well
10 as we move forward as part of our investigation.

11 EXAMINATION BY MR. RILEY:

12 Q. Let's get your binder open, if you
13 don't mind and look at I think some handwritten
14 notes of conversations with I believe it's Mr.
15 Coleman and a Mr. -- I think it will help you to
16 turn to page 639. Is it Polesky I think?

17 A. 639.

18 Q. This is part of the administrative
19 record this document Bates labeled page 639?

20 A. Right.

21 Q. And it appears to be someone's
22 handwritten notes of conversations with Dennis
23 Coleman and a Stephen something that begins with
24 a P.

25 A. Correct. They're Chris Lister's

1 handwritten notes that he has attached as part
2 of his declaration.

3 Q. Can you read them?

4 A. I can't read all of them, no.

5 Q. Let's see if we can read the portion
6 under Mr. Coleman's name. The date of --
7 apparently the discussion was November 19, 2010.
8 I can't make out the time. Looks to be 10:05
9 a.m.

10 A. Right.

11 Q. See at least for reference to the
12 document you can see where --

13 A. Right.

14 Q. -- where I am?

15 A. I'm with you.

16 Q. Okay. This conversation apparently
17 predated the issuance of the -- of the order.

18 A. That's correct.

19 Q. And let's try to read -- let me try to
20 read the note and see if you agree with my
21 reading.

22 A. Right.

23 Q. It says, after the arrow: Said that
24 the isotopic signatures being as close as -- I
25 can't make out that word -- as our two samples

1 indicates that, one, both are thermogenic in
2 origin; and, two, that they're like to be from
3 the same source given the proximity of the
4 production well to the water well.

5 And the next sentence: One must
6 evaluate the potential for other sources that
7 would be thermogenic and the geology or
8 structures that would store or transmit the gas
9 from origin to aquifer to be certain.

10 Do you see that?

11 A. Yes.

12 Q. Do you agree with me that EPA did not
13 follow the recommendation of one of the experts
14 it cites in investigating the geology or
15 structure that would store or transmit the gas
16 from origin to aquifer to be certain?

17 A. One, I would just say Chris captures
18 this on page 569. He recounts in his depo -- or
19 his declaration of what -- there's text in there
20 that matches up with his handwritten notes.

21 But --

22 Q. Which one are you referring to?

23 A. 569, No. 10.

24 Q. No. 10.

25 A. He talks about his discussion with Mr.

1 Coleman at Isotech. He goes through bullet 1
2 and 2, so...

3 Q. Okay. Seems like I read it correctly
4 then?

5 A. I think you did.

6 Q. Go ahead.

7 A. I just wanted to point out it was
8 there.

9 Q. Thank you. That's helpful.

10 A. And his notes also in No. 11 he talks
11 about his discussion with Stephen Pelphrey. Can
12 you ask -- your question was --

13 Q. Sure.

14 A. -- did we not follow --

15 Q. No. It says that Mr. Coleman stated
16 that to be concern one must evaluate the
17 potential for other sources that would be
18 thermogenic in origin and evaluate the geology
19 or structure that would store or transmit the
20 gas from the origin to the Trinity Aquifer. EPA
21 did not act on Mr. Coleman's recommendation; is
22 that correct?

23 A. EPA acting on Mr. -- oh, sorry.

24 MR. LYNK:

25 Object to the form.

1 Go ahead.

2 THE WITNESS:

3 EPA acting on Mr. Coleman's opinion
4 based -- captured in the order when the order
5 asked Range to work on that information for us
6 as part of the order. We did an evaluation,
7 again, to start that investigation but we've
8 asked Range to provide additional information in
9 that regard as part of the order.

10 EXAMINATION BY MR. RILEY:

11 Q. Well, define for me where in the order
12 it says that Range should evaluate the geology
13 or structure that would store or transmit the
14 gas from the origin to the Trinity Aquifer.

15 A. I believe that would be the -- where
16 we've asked them to look at pathways.

17 Q. Okay. So Range should do a full-scale
18 all-out investigation of all of their sources in
19 geology to satisfy EPA; is that correct?

20 MR. LYNK:

21 Object to form.

22 THE WITNESS:

23 Again, I will just --

24 MR. LYNK:

25 Object as beyond scope as well.

1 Go ahead.

2 THE WITNESS:

3 The order asked Range to look at
4 pathways to do exactly what Mr. Coleman
5 suggested before a certain determination was
6 made. EPA's position is we haven't made a
7 certain determination. We made -- consistent
8 with the language earlier in here that we
9 believe that the gases are likely to be from the
10 same source.

11 EXAMINATION BY MR. RILEY:

12 Q. What does likely mean, Mr. Blevins? Is
13 it 50 percent possibility, 75 percent? Is there
14 any percentage you can affix to the word you
15 keep using likely?

16 MR. LYNK:

17 Objection, asked and answered.

18 Go ahead.

19 THE WITNESS:

20 I don't have a percentage to give
21 you. Again, there's no hard binder that I can
22 go to and pick a percentage up for you.

23 EXAMINATION BY MR. RILEY:

24 Q. Well, you could have -- EPA could have
25 taken the step recommended by Mr. Coleman

1 itself, correct?

2 A. Yes, but...

3 Q. I reviewed your budget just recently.
4 It's the highest in history. So you have the
5 resources to do the investigation recommended by
6 Mr. Coleman, no?

7 MR. LYNK:

8 Object to form.

9 THE WITNESS:

10 No. Again, I think that's a
11 misstatement the Agency's budget as a whole.
12 The Agency could do the work. The Agency
13 doesn't believe that we need to do the work.
14 The Agency believes that the statute gives us
15 the authority to ask a company who we believe
16 may have caused or contributed to do the work,
17 to collect the data and that's what we've done.
18 And, in fact, that's consistent with again how
19 enforcement works for the Agency across the
20 nation.

21 EXAMINATION BY MR. RILEY:

22 Q. Well, you know, I was in the
23 enforcement game myself for a good number of
24 years and I don't recall that particular aspect.
25 But maybe I just had a different experience from

1 the suspicion leads to accusation. But let's
2 just move on and look at other recommendations
3 within EPA to do a similar thing. I believe
4 it's from Dr. Beak. He is an EPA employee,
5 correct?

6 A. Correct.

7 Q. And he so far as I can tell is your
8 most credentialed expert in the topic or on the
9 topic of isotopic analysis or gas
10 fingerprinting; would you agree with me?

11 A. He's the most -- what word? Sorry.

12 Q. Credentialed.

13 A. He is a doctor, yes.

14 Q. Written a number of papers, seems to be
15 a fellow with some experience in the subject,
16 would you agree?

17 A. He's written numerous papers, yes.

18 Q. Would you look at -- I believe it's
19 item 41 in the administrative record.

20 A. Page 724?

21 Q. Yes, sir.

22 A. Yes.

23 Q. If you start with the second paragraph.

24 A. Uh-huh (affirmative response).

25 Q. And I'm looking for the particular

1 provision. I'm going to pick up about four
2 lines down with the sentence: With that said,
3 this is not conclusive evidence because of the
4 limited data set; however, it also does not rule
5 out gas migration from the production well to
6 the Lipsky well. Do you see that?

7 A. Sorry. You're in the --

8 Q. Sure.

9 A. -- which paragraph?

10 Q. Second paragraph.

11 A. The little paragraph? Oh the big --

12 Q. The big paragraph.

13 A. -- paragraph. I'm sorry I was counting
14 paragraphs.

15 Q. That's okay. Begins with the word
16 with, fourth line down.

17 A. Right. I'm with you.

18 Q. Okay. And tell me if I read it
19 correctly. With that said, and the width
20 referring to -- well, let me read it. At the
21 beginning of the paragraph: The isotope data
22 for the Lipsky well and the production well look
23 to be identical and are thermogenic in origin.
24 The gas composition of the production well and
25 the Lipsky are similar. And the compositional

1 changes are what one might expect for a gas that
2 has migrated from the production well to the
3 Lipsky well. With that said, this is not
4 conclusive evidence because of the limited data
5 set; however, it also does not rule out gas
6 migration from the production well to the Lipsky
7 well. Did I read that correctly?

8 A. Yes.

9 Q. So -- and Dr. Beak's been in the
10 evidence collected by EPA to that date at least,
11 November 28, 2010, was not conclusive; is that
12 right?

13 A. That's what he says in his e-mail, yes.

14 Q. And then it says what will be very
15 important to document is the timeline of when
16 the well went into production and the appearance
17 of gas in the Lipsky well. You see that?

18 A. Yes.

19 Q. I could not compare the analysis from
20 the Texas Railroad Commission with your
21 analysis. The problem here is that the data
22 from any of the three analytical labs is present
23 as normalized data. Did I read correctly so
24 far?

25 A. Uh-huh (affirmative response).

1 Q. This means that the data is normalized
2 to -- excuse me, normalized at least to what was
3 analyzed for and not all the labs analyzed the
4 same components or possibly used the same
5 method. See that?

6 A. Yes.

7 Q. I would suggest in the future that the
8 data provided in terms of non-normalized data in
9 mass or concentration units. Right so far?

10 A. Uh-huh (affirmative response).

11 Q. This way we can directly compare data
12 and normalize all data to the same set of
13 criteria. The only way now to compare the data
14 would be to make assumptions to fill in data
15 gaps and I don't believe we have enough
16 experience at this site or data to do this at
17 this time. Do you see that?

18 A. Uh-huh (affirmative response).

19 Q. Now, it doesn't seem as though Dr. Beak
20 felt that the time was right for EPA to conclude
21 that Range was the source or caused or
22 contributed to gas in the Lipsky well. Do you
23 agree with --

24 A. I don't agree with your summation, no.
25 I agree with what you've read.

1 Q. Well, you agree with what I read
2 because I read it correctly.

3 A. No. All right. I'm just saying --

4 Q. But do you agree with the conclusions
5 reached by Dr. Beak in that paragraph?

6 A. I agree with Dr. -- we agree with Dr.
7 Beak's analysis but that in no way precludes or
8 affects our ability to issue an order under the
9 statute.

10 Q. So what is your -- since you brought it
11 up, I'm sure I'll get an objection as to scope.
12 You've said that it doesn't affect your ability
13 that the factual or the -- the analysis of the
14 data available to EPA from its most credentialed
15 consultant --

16 A. He says additional data is necessary to
17 make a definitive conclusion. We did not make a
18 definitive conclusion. The Agency reacted to
19 what we believe is an imminent and substantial
20 endangerment. We believe that the Agency needed
21 to take immediate action to address that
22 imminent and substantial endangerment. And we
23 believe that consistent with Dr. Beak's
24 recommendation as well as recommendations from
25 Isotech, the people we worked with there, that

1 we needed to collect -- have additional data
2 collected. We've asked Range to do that.

3 Q. Well, you didn't ask them to do it,
4 right?

5 A. No. We ordered them to do that.

6 Q. Right. So you didn't send them a note
7 saying: Yeah, it would be nice if you could do
8 that?

9 A. Right.

10 Q. Correct? You just --

11 A. That's not EPA's way of proceeding in
12 these efforts.

13 Q. These efforts are -- how many -- how
14 many emergency orders have you issued in Region
15 6 that are similar in circumstances to the
16 present case?

17 A. Again, I think earlier I answered under
18 1431 we've issued three or four, under five.
19 And we've issued other emergency orders under
20 our other statutory authorities.

21 Q. In any of those instances was the --
22 was the source of the contamination less than
23 certain in EPA's view?

24 A. Again, each case has its own facts. I
25 can tell you, for example, we've issued an ISE

1 order because of pathogen contamination of a
2 drinking water source. And the pathogens were
3 there just like we believe the contaminants were
4 here. And we've issued that order to basically
5 undertake the same sort of assessment in that
6 circumstance that we've asked Range to take here
7 which is to collect additional data to try to
8 determine where the pathogens were deriving from
9 and what actions could be taken to address those
10 pathways once they were identified.

11 Q. Sorry. And what was the title or style
12 of that order? What was the name of it?

13 A. It was an emergency order under 1431.

14 Q. To whom was it issued?

15 A. It was issued to one of the, again,
16 tribes. And I don't have a name off the top of
17 my head. But I can -- we can get that for you
18 very quickly. It was a tribe that was
19 delivering drinking water to their tribal
20 constituents, it was contaminated.

21 Q. So they were in the business of
22 supplying water to their --

23 A. Right.

24 Q. -- constituents as you mentioned.

25 A. Right. They were --

1 Q. There were pathogens in the water.

2 A. They were more consistent with what you
3 might -- in this situation everybody considers a
4 PWS, a public water supplier.

5 Q. And you see a parallel there because
6 you wanted the supplier of the water with
7 pathogens in the water to the Range
8 circumstances?

9 A. No. I see the parallel. You asked was
10 there anything similar. I see the parallel and
11 there was contamination of an aquifer; water was
12 being served; an imminent and substantial health
13 situation existed; consistent with the language
14 in the statute we issued an order addressing the
15 imminent and substantial endangerment and then
16 asking the water supplier to figure out where
17 the contamination was coming from and to address
18 it because we believe under the statute that's
19 their responsibility.

20 Q. That would be consistent in all
21 emergency orders, right, there was suspicion,
22 there was ordering provisions? I'm asking you
23 specifically in what instances where you have
24 been less than certain of the cause whether an
25 entity caused or contributed to natural gas in a

1 water well or some analogous situation and
2 you've ordered that entity to assume the
3 responsibility of investigating whether it is or
4 it isn't?

5 MR. LYNK:

6 Object as beyond scope. You can
7 answer.

8 THE WITNESS:

9 Again, I believe they are
10 analogous. That's the answer the Agency would
11 give. We weren't certain in that situation that
12 I laid out to you where the pathogens originated
13 from, what pathway they were migrating into the
14 drinking water supply. But they were there.
15 They needed to be addressed because we should
16 not serve water that's contaminated and -- so I
17 think they're analogous. That's the best answer
18 I can give you.

19 EXAMINATION BY MR. RILEY:

20 Q. Is there an imminent and substantial
21 endangerment occurring today as we sit here on
22 January 25, 2011 in the area of the Lipsky or
23 Hayley water well?

24 MR. LYNK:

25 Objection, beyond scope.

1 THE WITNESS:

2 I believe -- the Agency believes
3 there is because we have not finished the work
4 under the order to address where the
5 contamination is coming from and its potential
6 migration. The Agency's position would be that
7 there still exists concerns about the gas in the
8 wellhead at both the Lipsky and Hayley property.
9 We do believe that the actions taken by Range to
10 provide alternative water and put in the
11 explosive meters were helping with the situation
12 but they have not resolved the situation.

13 EXAMINATION BY MR. RILEY:

14 Q. Well, who is in imminent and
15 substantial endangerment? What individuals are
16 in imminent and substantial endangerment in
17 EPA's view presently today?

18 A. Anybody that --

19 MR. LYNK:

20 Object as beyond the scope.

21 THE WITNESS:

22 Anybody that encounters the gas
23 building up in the wellheads and near or with a
24 potential ignition source.

25 EXAMINATION BY MR. RILEY:

1 Q. You mean like if Mr. Lipsky were to
2 take a hose, jerry-rig it to the top of his well
3 and light it on fire, that would be imminent and
4 substantial endangerment?

5 MR. LYNK:

6 Object to form.

7 THE WITNESS:

8 That's an example.

9 EXAMINATION BY MR. RILEY:

10 Q. Right. And that's what happened with
11 Mr. Lipsky in this case. He jerry-rigged a hose
12 to the top of his water well and lit it on fire;
13 is that right?

14 A. That -- there is -- yes. There is
15 video evidence that that's what occurred.

16 Q. Well, and that video evidence was sent
17 by Mr. -- excuse me, Ms. Rich to Dr. Armendariz,
18 was apparently received at some point by you and
19 you've reviewed it that Mr. Lipsky is opening
20 his well, allowing natural gas to escape and
21 lighting it on fire; is that right?

22 A. I don't think that's -- there's a
23 dispute of that, no.

24 Q. There's no dispute that he's done that,
25 correct?

1 A. He's done that.

2 Q. All right. And that's conscientious in
3 your mind, correct?

4 A. The Agency has no position on that.
5 That's an act of an individual homeowner related
6 to property that they own.

7 Q. And so he's allowed to do that
8 according to EPA?

9 A. EPA can't stop him from doing that.

10 Q. That's your view, correct?

11 A. That's the Agency's belief.

12 Q. So EPA couldn't order this well to be
13 sealed; is that your understanding?

14 A. I think I've answered that before. We
15 believe we couldn't order Mr. Lipsky to seal the
16 well.

17 Q. What if the well is drilled into a
18 producing formation and is contaminating the
19 aquifer by its own -- as to how it was drilled?
20 Have you investigated that possibility?

21 MR. LYNK:

22 Objection, beyond the scope.

23 THE WITNESS:

24 Have we investigated --

25 EXAMINATION BY MR. RILEY:

1 Q. Yeah, sure.

2 A. Again --

3 Q. As of December 7, 2010 tell me all the
4 things you did to make sure that Mr. Lipsky's
5 activities were not responsible for his own
6 issues.

7 MR. LYNK:

8 I'm going to note the objection
9 that we're here to testify about the basis for
10 the order. There's no order to Mr. Lipsky. By
11 definition it's beyond the scope.

12 THE WITNESS:

13 And I think, again, I've answered
14 that before. We don't have any information
15 before us that would show that the well that was
16 drilled on Mr. Lipsky's property caused or
17 contributed to gas migration that we're finding
18 in his wellhead.

19 EXAMINATION BY MR. RILEY:

20 Q. Well, suppose it's -- I mean, certainly
21 it could contribute, right? I mean, if it's
22 contributing in the sense that it creates --

23 THE VIDEOGRAPHER:

24 You dropped your microphone, sir.

25 MR. RILEY:

1 Oops.

2 EXAMINATION BY MR. RILEY:

3 Q. Mr. Lipsky's water well could be
4 creating a pathway for contamination of an
5 aquifer; is that true or not?

6 MR. LYNK:

7 Object to form. Objection, beyond
8 the scope.

9 THE WITNESS:

10 Again, I think I've answered it.
11 We don't believe that the data shows that the
12 gas that Mr. Lipsky is encountering in his
13 wellhead is the gas -- is actually we believe it
14 is similar to the gas that's coming from the
15 Barnett shale formation, not from the formations
16 that might exist near his well that his well
17 could have penetrated.

18 EXAMINATION BY MR. RILEY:

19 Q. So you're trying to make the world safe
20 from people who try to light their water wells
21 on fire. Is that basically the imminent and
22 substantial endangerment that existed on
23 December 7, 2010 that you're seeking to avoid?

24 MR. LYNK:

25 Object to form. Objection, asked

1 and answered.

2 THE WITNESS:

3 No. Again, I tried to say in
4 multiple ways we believe that there was
5 contamination of an underground drinking water
6 aquifer. We believe that contamination has led
7 to situations that could be -- cause harm to
8 somebody's health. We believe that the Agency
9 needs to address the contamination of that
10 aquifer and make sure those pathways are
11 addressed to the best of our ability.

12 EXAMINATION BY MR. RILEY:

13 Q. Are there any producers of natural gas
14 from Barnett shale that might also be causing or
15 contributing to the natural gas in the Lipsky
16 water well?

17 A. Based on the information in our record
18 we don't believe that's so.

19 Q. Well, I noticed in your administrative
20 order you fix a distance of 2,000 feet that you
21 looked apparently in the diameter of 2,000 feet
22 or maybe it's a radius of 2,000 feet from the
23 Lipsky well for additional producers. Why --
24 why is that? Why did you choose 2,000 feet as
25 your limitation?

1 A. I think it's just a -- was a convention
2 of form because it's the -- the closest
3 production well that we know of is the
4 Butler/Teal well. And we didn't see any other
5 production wells in the close vicinity. So we
6 used that in the order to basically make sure
7 that it was clear that we wanted to look at the
8 But -- or Teal well.

9 Q. How many --

10 A. If --

11 Q. I'm sorry.

12 A. If somebody has evidence that they
13 think another production well is responsible
14 they're free to submit that to the Agency for
15 consideration.

16 Q. And that's their responsibility again.
17 They must go out and investigate other producers
18 of Barnett shale gas to provide to the Agency an
19 alternate theory; is that right?

20 A. If they believe there's somebody else
21 that has potential liability I think it's in
22 their best interest. I don't want to say it's
23 their responsibility.

24 Q. Well, let's talk about the distance
25 selected, 2,000 feet. Why that distance? What

1 specifically, what technical expertise was
2 applied to come up with 2,000 foot radius around
3 the Lipsky well, in order to investigate other
4 production possibilities?

5 A. I think I answered that. Again, it was
6 convention picked to -- to address and make sure
7 the distance included the Teal/Butler well which
8 we, the Agency, believes it possesses
9 information to link the gas and the
10 Lipsky/Hayley well to the gas coming up through
11 the production well.

12 Q. Okay. I get that. That's the
13 fingerprinting. But that would be true of all
14 Barnett shale gas, correct? The fingerprinting
15 from the Barnett shale gas that is in the Range
16 wells would not be distinguishable from Barnett
17 shale gas produced from some other producer,
18 correct?

19 A. Right.

20 Q. All right. So what -- what have you
21 done to look at other producers in the area?

22 A. We looked at, again, what other
23 producers exist in the area. The only producer
24 we've been able to identify is the Range
25 production well.

1 Q. And that's because you looked within a
2 2,000 foot radius?

3 A. No, we looked wider. We -- we keyed
4 the order to 2,000 feet. But we did not know of
5 any other production wells in the area.

6 Q. Would you look at page 153 of the
7 record under section 5.0 entitled "Discussion."

8 A. Okay. I'm there.

9 Q. Okay. Would you read the first
10 paragraph under that section?

11 A. (Witness complies.)

12 Q. Out loud, please.

13 A. Recent activities related to natural
14 gas exploration, mining and production have
15 occurred in the area surrounding client's
16 residence. The region is know for having a thin
17 shale and thus a higher incident rate for
18 environmental impact. In approximately 2008 a
19 natural gas well was blown directly under the
20 area in a subdivision which is located to the
21 north and east of the client's residence.
22 Recent impacts of the region include a major
23 impact to well water on a neighboring property
24 just west of the client's residence.

25 Q. Do you know who drilled that well, what

1 company drilled the well?

2 A. It's not in the record so I don't know.

3 Q. Tell me all the things that EPA did in
4 its diligent effort prior to issuing this order
5 to explore the situation described in the Wolf
6 Eagle report.

7 A. Again, we did nothing. It's not in the
8 record. We didn't believe that the Agency was
9 responsible to do that. As per the order we've
10 asked Range to do that if they think it's a
11 viable pathway.

12 Q. So Range could be totally innocent but
13 the EPA still would believe that Range's
14 obligation attaches with the issue of the order
15 to prove its innocence or lack of
16 responsibility; is that right?

17 MR. LYNK:

18 Object as beyond the scope and
19 calls for a legal conclusion.

20 THE WITNESS:

21 We believe that under the order
22 Range has a responsibility to comply with the
23 order.

24 EXAMINATION BY MR. RILEY:

25 Q. Well, under the order Range has a

1 responsibility to comply with the order is a bit
2 circular; would you agree with me?

3 A. No.

4 Q. Okay. The Railroad Commission of the
5 State of Texas, what is your opinion regarding
6 their efforts in this matter, EPA's opinion,
7 excuse me?

8 A. EPA has no opinion regarding the
9 Railroad Commission's efforts in this matter.
10 The Railroad Commission is a state agency that
11 has its own regulatory authority that is
12 responsible for implementing. And EPA believes
13 it needs to do what it believes its
14 responsibility is.

15 Q. Well, that's not exactly what the
16 statute you cited as authority for your order
17 requires; is that right?

18 A. Well, I would disagree. I think --

19 Q. Well, tell me where you disagree, sir.
20 Just let's go to the statute. Why don't you
21 read the words and tell me --

22 MR. LYNK:

23 Why don't you make sure he's
24 finished answering --

25 MR. RILEY:

1 Certainly.

2 MR. LYNK:

3 -- before you launch into the next
4 question.

5 MR. RILEY:

6 That's fair. But let's try to
7 confine our answers; otherwise were going to run
8 into a time problem.

9 MR. LYNK:

10 Okay. But let's both respect each
11 other --

12 MR. RILEY:

13 I'm trying.

14 MR. LYNK:

15 -- when we talk.

16 MR. RILEY:

17 I'm trying, Counsel.

18 EXAMINATION BY MR. RILEY:

19 Q. Let's find I think it's Deposition
20 Exhibit 1.

21 A. Right.

22 Q. That is the statutory provision,
23 correct?

24 A. Correct.

25 Q. Would you find in the statute where it

1 says that EPA must make a finding as it pertains
2 to the Railroad Commission or --

3 A. Right.

4 Q. -- local and state authorities. We
5 talked about this at the outset.

6 A. Right.

7 Q. What specific finding must EPA make in
8 order to proceed with issuance of an emergency
9 order?

10 A. If the state and local agencies do not
11 plan -- have any -- are not planning to take any
12 action, immediate action to address the
13 situation that EPA is issuing the emergency
14 order related to.

15 Q. No, that's not exactly right, is it?
16 Did you read the full sentence or the clause
17 that begins: And that?

18 MR. LYNK:

19 I'm going to object. The statute
20 speaks for itself.

21 MR. RILEY:

22 Sure.

23 MR. LYNK:

24 If you're asking for a
25 conclusion --

1 MR. RILEY:

2 And I'm asking for --

3 MR. LYNK:

4 -- I object.

5 MR. RILEY:

6 Sure. I'm not. I'm asking him to
7 read it out loud.

8 THE WITNESS:

9 He shall consult with the state and
10 local authorities in order to confirm the
11 correctness of the information on which action
12 proposed to be taken.

13 EXAMINATION BY MR. RILEY:

14 Q. Let me try to read it then since you're
15 not finding the right spot.

16 A. I missed where you wanted me to read.

17 Q. That's fair. Tell me if I'm reading
18 correctly. And that appropriate state and local
19 authorities have not acted to protect the health
20 of such persons. Is that EPA's position that
21 the Railroad Commission and any other
22 authorities that might be encompassed by that
23 clause have not or had not acted to protect the
24 health of such persons? Is that EPA's position?

25 A. I think EPA's position is we issued the

1 order and we believe that the state did not take
2 the action necessary.

3 Q. Well, I'm reading you the requirement
4 of the statute.

5 A. And I --

6 Q. And I'm trying to find in your order --
7 which I think we can look at paragraph 40 for
8 that purpose. Last sentence, paragraph 40, tell
9 me if I'm reading it correctly. EPA has
10 determined that -- that that appropriate state
11 and local authorities have not taken sufficient
12 action to address the endangerment described
13 herein and do not intend to take such action at
14 this time. Did I read that correctly?

15 A. Yes.

16 Q. Now the entirety of the order ties back
17 to the statutory authority, correct?

18 A. Right.

19 Q. And that the finding the EPA must make
20 is that appropriate state and local authorities
21 have not acted to protect the health of such
22 persons, correct?

23 A. Right.

24 Q. And so is that what EPA found in this
25 matter?

1 A. That's in the conclusions of law
2 section. I think that section addresses that
3 and it's section 48. And I think it speaks for
4 itself.

5 Q. Well, it doesn't seem to. So let me
6 ask as a factual matter what facts EPA is
7 relying upon to meet the statutory requirement
8 that at least the Railroad Commission did not
9 take the necessary action in order to protect
10 the health of such persons.

11 MR. LYNK:

12 I'm going to object to the extent
13 it calls for legal conclusions on the
14 conclusions of law to the extent you're asking
15 about findings of fact.

16 MR. RILEY:

17 I found only one finding of fact
18 that even bears on topic. So I'm looking for
19 the facts that back up that finding of fact.
20 Because that's a conclusion. The finding of
21 fact is a conclusion. It's not a factual
22 statement in any way. So I'm asking for it now
23 as EPA's designated representative to provide
24 this evidence.

25 EXAMINATION BY MR. RILEY:

1 Q. What facts support --

2 A. Again --

3 Q. -- the finding we just discussed?

4 A. EPA had discussions with the Railroad
5 Commission. EPA shared its concerns with the
6 Railroad Commission. EPA communicated clearly
7 to the Railroad Commission what actions EPA felt
8 were necessary to address the imminent and
9 substantial endangerment. We clearly asked the
10 Railroad Commission if they were planning to
11 undertake any action to address that threat that
12 is addressed by our order and the clear answer
13 from the Railroad Commission is at this time we
14 do not plan to take any action.

15 Q. What was the reason given by the
16 Railroad Commission?

17 A. They said they would like to collect
18 more data.

19 Q. Similar to the recommendation of Dr.
20 Beak, similar to the recommendation of Mr.
21 Coleman, correct?

22 A. They wanted to collect more data.

23 Q. Similar to the recommendation of Dr.
24 Beak and similar to the recommendation of Mr.
25 Coleman, correct?

1 MR. LYNK:

2 Object to form.

3 THE WITNESS:

4 Their recommendation -- we did not
5 get any more recommendation from them other than
6 they wanted to collect more data. I have no
7 clue or the Agency has no understanding of what
8 data the Railroad Commission wanted to collect
9 so I can't say its similar to the
10 recommendations of those two other people that
11 we talked about.

12 EXAMINATION BY MR. RILEY:

13 Q. Well, that certainly might have come up
14 in your conversation, right, of what the
15 Railroad Commission intends to do by way of
16 collecting more data?

17 A. We -- no. In our conversations -- in a
18 conversation that I had personally with the
19 Railroad Commission it did not come up as to
20 what they wanted to do. I --

21 Q. So the Railroad Commission said --

22 MR. LYNK:

23 He has not finished his answer.

24 EXAMINATION BY MR. RILEY:

25 Q. Please, go ahead.

1 A. What the Railroad Commission did after
2 we issued our order is they called a hearing
3 which clearly dictates what their next step was.

4 EXAMINATION BY MR. RILEY:

5 Q. See, the problem though is the finding
6 needs to be made before you issue your order.
7 So I'm asking you is what was your information
8 from the Railroad Commission before you issued
9 your order, not after and what they did in
10 reaction.

11 A. No. And I thought I answered that. We
12 talked to the Railroad Commission. We've asked
13 them a specific question, did they plan to take
14 any action to address what EPA had defined as
15 the imminent threat and their answer was no.
16 And based upon that answer we issued our order.

17 Q. See, what I heard you say that their
18 answer was: No, we need to take more -- we need
19 to collect more data.

20 A. They did need to collect more data.
21 But the question, as I said, was are you
22 planning to take action now to address the
23 threat that EPA has identified and their answer
24 was no.

25 Q. Okay. And so EPA -- at some point the

1 Railroad Commission said: We need to collect
2 more data to be certain of --

3 THE VIDEOGRAPHER:

4 Microphone.

5 EXAMINATION BY MR. RILEY:

6 Q. Would you take a look at page of 668 of
7 the record?

8 A. 668?

9 Q. Yes, sir. It documents a conversation
10 between Dr. Armendariz and Mr. Carrillo or
11 Chairman Carrillo of the Texas Railroad
12 Commission.

13 A. Uh-huh (affirmative response).

14 Q. And tell me if I read this correctly.
15 I believe it's correspondence from Mr. Carrillo
16 to Dr. Armendariz. Al, after our conversation I
17 had a conference call with Keith's staff at the
18 Railroad Commission. They confirm that we have
19 seen the analysis upon which EPA determined the
20 water well gas and the deep production gas are
21 the same source. To date we have not reached
22 the same conclusion and that is why we've asked
23 for additional information from Range.

24 Okay. So the Railroad Commission --

25 A. Correct.

1 Q. -- was taking action, correct, that's
2 described in this e-mail?

3 A. The Railroad Commission asked for
4 additional information from Range.

5 Q. Right. And you've mentioned a moment
6 ago that -- described for me it sounded like a
7 phone call where you or someone on your staff
8 called up the Railroad Commission and said:
9 Hey, are you guys going to do something? And
10 they said: Well, we're not going to do
11 something till we have more data. And you said:
12 Okay. Gotta go.

13 A. That's not a correct --

14 Q. Okay.

15 A. -- characterization.

16 Q. So where do I look for the
17 memorialization of the interaction you or your
18 staff or Dr. Armendariz had with the Railroad
19 Commission?

20 A. Again, in the record there's a record
21 communication between Jerry Saunders and Chris
22 Lister that supplements what's here in this
23 e-mail exchange between the Commissioner and Dr.
24 Armendariz.

25 Q. What page are you on, sir?

1 A. It's 728. I went over the -- I'll read
2 from it if you don't mind.

3 Q. No, I don't mind at all.

4 A. I went over the content of our draft
5 order with her. I also told her why we were
6 going forward at this time, compositional
7 analysis, isotopic testing results and timing of
8 well contamination. I asked her if they were
9 going to be -- if they were going to be moving
10 forward with any action soon. She said not at
11 this time. She did not anticipate doing
12 anything until they understand the flow pathway.

13 So that was the feedback we got. EPA
14 did not believe that was a sufficient answer to
15 address the imminent and substantial
16 endangerment that we communicated to the
17 Railroad Commission so understanding their
18 response to our inquiry we decided to move
19 forward.

20 THE VIDEOGRAPHER:

21 Five minutes, Counselor.

22 EXAMINATION BY MR. RILEY:

23 Q. So the Railroad Commission wanted to
24 understand the pathway; is that correct?

25 A. That's what their communication to us

1 indicates, yes.

2 Q. Okay. You think that was responsible
3 on their part?

4 A. I think under the state's authority and
5 what the Railroad Commission is responsible for
6 it's not an inappropriate concern but it did
7 not -- again, the issuance of our order was not
8 predicated on understanding the pathway.

9 Q. And, in fact, you didn't understand the
10 pathway and you still don't understand the
11 pathway, correct?

12 A. That was not what we needed to issue
13 the order on.

14 Q. Well, that's your say-so and --

15 A. Okay.

16 Q. -- I'll submit that that's a legal
17 conclusion. But you didn't understand the
18 pathway; you don't understand the pathway; you
19 may never understand the pathway unless EPA
20 actually goes out and does some investigation,
21 correct?

22 MR. LYNK:

23 Object to form.

24 THE WITNESS:

25 Unless somebody goes out and

1 collects extra data, yes.

2 EXAMINATION BY MR. RILEY:

3 Q. Okay. And you'd like that to be Range?

4 A. We've order Range to do that, yes.

5 Q. The Railroad Commission has interacted
6 with Range and Range is involved in
7 investigating the pathway, correct?

8 A. That's what it indicates here. We have
9 no factual data to support that from either the
10 Railroad Commission or Range.

11 Q. Tell me what steps EPA has taken with
12 regard to water well drillers in the area, any
13 cautions issued, any advisories, any orders
14 issued to Mr. Peck regarding the depth of
15 drilling for domestic water wells in the area?

16 A. None.

17 Q. And why not?

18 A. We don't believe that's within our
19 regulatory purview. We believe if those
20 warnings or cautions need to be issued there's a
21 state regulatory agency responsible for that.

22 MR. RILEY:

23 Can I have just a minute? This
24 should only take a minute.

25 THE VIDEOGRAPHER:

1 Do you want me to go off the video?

2 MR. RILEY:

3 Do you want to switch out? Is
4 that --

5 THE VIDEOGRAPHER:

6 If you want me to I can. Three
7 minutes left.

8 MR. RILEY:

9 I'll take a little more than three
10 minutes.

11 THE VIDEOGRAPHER:

12 Going off the record. The time is
13 now 4:42. This is the end of tape 6.

14 (Off the record.)

15 THE VIDEOGRAPHER:

16 Back on the record. The time is
17 now 4:45. This is the beginning of tape 7.

18 EXAMINATION BY MR. RILEY:

19 Q. All right. Mr. Blevins, just a few
20 more matters and then I think we'll break for
21 the time being. The exhibit I just had marked
22 and put before you is an e-mail that's been
23 previously validated by the sender in another
24 deposition of Ms. Alisa Rich is who is the
25 principal of Wolf Eagle Environmental, as I

1 understand it, and as she testified to in her
2 deposition. As you can see it's an e-mail
3 correspondence to I believe Steve, being Steve
4 Lipsky, and it describes a strategy for getting
5 EPA involved in Mr. Lipsky's issues pertaining
6 to his domestic water well, domestic water well
7 No. 1. Do you see that?

8 A. Yes.

9 Q. See where she describes a scheme, for
10 lack of a better term, for collecting a sample
11 that would necessitate EPA's involvement?

12 MR. LYNK:

13 I'm going to object as beyond the
14 scope.

15 EXAMINATION BY MR. RILEY:

16 Q. Well, Wolf Eagle's records are some
17 part of the administrative record and do you
18 agree, Mr. Blevins, this bears on Ms. Rich's
19 objectives and her credibility?

20 A. I don't --

21 MR. LYNK:

22 I'm going to renew the objection
23 specifically no foundation as to whether this
24 would have been before to Agency prior to the
25 decision.

1 MR. RILEY:

2 That's unfortunate that there
3 wasn't an investigation into this. But let's
4 just talk about it for what it is.

5 EXAMINATION BY MR. RILEY:

6 Q. It's an e-mail from an environmental
7 consultant that disparages the enforcement
8 program of the Railroad Commission, the
9 enforcement program of the TCEQ and schemes to
10 involve EPA by taking a nonrepresentative
11 sample. Would you agree with my
12 characterization of Ms. Rich's e-mail?

13 MR. LYNK:

14 Object to form and the scope.

15 THE WITNESS:

16 All I can say is it talks about how
17 she would like to take a certain type of sample.
18 In terms of representative it depends on how
19 that sample would be characterized to those
20 receiving the data to determine if it was
21 nonrepresentative or not.

22 EXAMINATION BY MR. RILEY:

23 Q. Well, so you received the data. So
24 that part's done. You've received the data.
25 You put it in the administrative record. You

1 said it's a portion you're relying upon and
2 here's the underlying --

3 A. I don't know --

4 Q. -- scheme -- may I finish?

5 A. Okay. Sorry.

6 Q. Here's the underlying scheme that Ms.
7 Rich employed to get a sample that it was --
8 that was designed to insight EPA to take
9 jurisdiction of the matter.

10 MR. LYNK:

11 I'm going to object again beyond
12 the scope. I don't know how a witness can speak
13 for EPA as to a personal e-mail not circulated
14 to EPA as to which there's no foundation that it
15 was presented to the Agency prior to its
16 decision.

17 MR. RILEY:

18 Well, that's sort of the point.

19 EXAMINATION BY MR. RILEY:

20 Q. But go ahead and answer if counsel will
21 allow.

22 A. Again, from the Agency I can't comment
23 on this e-mail other than I see the e-mail. I
24 understand that she wrote it. I don't know if
25 this is the air sample that we looked at. She

1 may have taken this air sample, she may not
2 have. The record doesn't tie the two together.
3 So the air sample that we looked at from Wolf
4 Environmental may actually be a different air
5 sample.

6 Q. Does this e-mail, assuming all things
7 you just stated under oath, does it affect your
8 opinion as to the value of any data submitted by
9 Wolf Eagle Environmental consultants?

10 MR. LYNK:

11 I'm going to object again, renew my
12 same objections.

13 THE WITNESS:

14 Again, I don't know that it does
15 one way or another. It's a personal e-mail that
16 the Agency has no way of validating the -- what
17 happened after this e-mail was sent, whether it
18 occurred this way or not. So the Agency has no
19 position on this e-mail other than it is here.

20 EXAMINATION BY MR. RILEY:

21 Q. What's the date of the e-mail, sir?

22 A. August 12th.

23 Q. Okay. What's the date of the sampling
24 that Wolf Eagle did regarding the Lipsky and
25 Hayley water wells?

1 A. Sorry. I'd have to go look at their
2 reports. They're in the contemporary same time
3 frame with us but I don't know the exact dates.

4 Q. Let me represent to you that certainly
5 the sampling of air, reportedly representative
6 sampling of air around the Lipsky well postdated
7 the date of this e-mail.

8 A. So it was after this e-mail?

9 Q. Yes, sir.

10 A. Right.

11 Q. Well, let see. Let go back a bit.
12 You've had lots of experience with environmental
13 consultants. Have you ever seen an e-mail like
14 this in the entirety of your career that schemes
15 and proposes a strategy to circumvent state
16 authority and instigate action by EPA? Have you
17 ever seen anything like this before?

18 MR. LYNK:

19 Same objections as stated.

20 THE WITNESS:

21 I've seen lots of e-mails that
22 scheme to circumvent EPA's authority as well as
23 a number of state agencies' authority. So is --
24 I think this just falls under that category.
25 This is not an e-mail that I would say I've

1 never seen one like this before.

2 EXAMINATION BY MR. RILEY:

3 Q. Okay. So you get this all the time,
4 this kind of scheming; is that right?

5 A. I wouldn't say all the time. I'd
6 say --

7 MR. LYNK:

8 Same objections.

9 THE WITNESS:

10 We've seen -- in my experience
11 representing EPA I've seen e-mails in similar
12 vein from a lot of people.

13 EXAMINATION BY MR. RILEY:

14 Q. And what has your view been of those
15 people when you've seen documentary evidence of
16 a scheme such as depicted in the e-mail that's
17 now Deposition Exhibit 9?

18 MR. LYNK:

19 Same objections.

20 THE WITNESS:

21 I don't think the Agency has an
22 opinion one way or the other. We take it on
23 face value and move forward.

24 EXAMINATION BY MR. RILEY:

25 Q. Sure. Face value. That's what you're

1 basing all your conclusions on here is face
2 value of some sample results that may or may not
3 indicate that Range is responsible for any
4 natural gas in the Lipsky well. Does that about
5 sum it up, Mr. Blevins?

6 MR. LYNK:
7 Object to form.

8 THE WITNESS:
9 Please say that again.

10 MR. RILEY:
11 Sure.

12 THE WITNESS:
13 I was trying to --

14 EXAMINATION BY MR. RILEY:

15 Q. Taking at face value all the evidence,
16 whether it be EPA generated, Wolf Eagle
17 generated, you're just taking that at face value
18 which may indicate Range is responsible and
19 that's good enough to issue an emergency order.
20 Does that sum up your testimony in this matter?

21 MR. LYNK:
22 Objection to form.

23 THE WITNESS:
24 And we presented -- evaluate the
25 data before us. We created a record. That

1 record speaks for itself in terms of the
2 validity of that data. And the Agency made a
3 determination to move forward with the emergency
4 order.

5 EXAMINATION BY MR. RILEY:

6 Q. Okay. Let me cover that component of
7 your testimony here today. The record is the
8 record is the record. Is that about it?

9 A. The record --

10 MR. LYNK:

11 Object to form.

12 THE WITNESS:

13 The record is the record for the
14 action taken and issuing the emergency order.

15 EXAMINATION BY MR. RILEY:

16 Q. All right. The incomplete record that
17 we have before us in the sense that it does not
18 comprise all the documents that EPA possesses
19 that bear on this topic is the record you've
20 compiled, EPA has compiled, to support the
21 issuance of its order?

22 MR. LYNK:

23 Object, that misstates testimony.

24 MR. RILEY:

25 It speaks for itself.

1 THE WITNESS:

2 Again, the record that we used to
3 support the decision, the data we used to make
4 the decision is captured in our record. It's --
5 if -- you have it. We made our decision based
6 on the information that's contained in this
7 record.

8 EXAMINATION BY MR. RILEY:

9 Q. All right. And excluded other
10 information that you had available, correct?

11 MR. LYNK:

12 Objection, misstates testimony.

13 THE WITNESS:

14 We did not exclude other
15 information. This is the information that we
16 compiled to support the order, we used to make
17 the decision to support the issuance of the
18 order itself, the emergency order. And this is
19 the data that supports the findings of fact
20 within those orders. There's other information
21 in our possession as we've talked about
22 throughout the day that the Agency has, but this
23 was the information compiled by the Agency to
24 support the administrative action. So I do not
25 view this as an incomplete administrative

1 record. The Agency has certified that this is
2 the record for the action that we've taken and
3 that's the Agency's position.

4 EXAMINATION BY MR. RILEY:

5 Q. Who signed the certification?

6 A. Jerry Saunders.

7 Q. To understand better why Mr. Saunders
8 felt comfortable signing the certification would
9 you agree with me I need to speak to Mr.
10 Saunders?

11 A. No. I think the certification speaks
12 for itself and the documents within the record
13 speak for themselves.

14 Q. Well, it speaks volumes, sir. The EPA
15 has selectively included materials it has in the
16 administrative record and I think that's clear
17 from your testimony.

18 MR. LYNK:

19 Objection. And now we're going to
20 use additional time now to make your legal
21 arguments for the record.

22 MR. RILEY:

23 I don't think it's --

24 MR. LYNK:

25 If you have any other questions --

1 MR. RILEY:
2 I was --
3 MR. LYNK:
4 -- I think we need to --
5 MR. RILEY:
6 -- summing it up.
7 MR. LYNK:
8 -- sum it up.

9 EXAMINATION BY MR. RILEY:
10 Q. Tell me if you have any internal
11 documents, briefing memos, anything that you're
12 aware of that is not comprised or not contained
13 in the administrative record. Say, for
14 instance, a memo prepared for Dr. Armendariz.
15 Any of that exist in EPA's records?
16 A. In EPA's record there is information
17 related to this case. We've stated that before.
18 This is the administrative record.
19 Q. Let me try to be really careful. Is
20 there any -- are there any memoranda that were
21 prepared by EPA staff regarding the
22 circumstances surrounding the Lipsky water well
23 and the emergency order we've been discussing,
24 any EPA memoranda, addressed to Dr. Armendariz
25 from staff?

1 A. I guess I'm confused about the
2 question.

3 Q. There's a guy name Dr. Armendariz.
4 He's the head of the Agency.

5 A. Has the information been sent to Dr.
6 Armendariz?

7 Q. Yeah. Is there a memo that's been
8 written by anybody under your authority, anybody
9 in the EPA whatsoever that is a recommendation
10 to Dr. Armendariz?

11 A. A recommendation, no.

12 Q. Okay. Is there a description in a
13 memorandum form that's gone to Dr. Armendariz
14 regarding the subject of this deposition?

15 A. There has been material provided to Dr.
16 Armendariz related to this situation that was
17 not part of the record used to make the decision
18 but to provide Dr. Armendariz information.

19 Q. Okay. And you elected not to -- you
20 meaning EPA elected not to include that in the
21 administrative record, true?

22 A. It was not included in the
23 administrative record.

24 Q. Okay. Is there some problem you're
25 having with my word elected?

1 A. Yeah, because, again, I struggle
2 because I can tell you I wrote Dr. Armendariz a
3 memo and I forwarded Dr. Armendariz that memo
4 electronically that said: Oh, by the way here's
5 the three article -- or two or three of the
6 articles that Isotech has provided us about
7 fingerprinting. FYI for you in case you're
8 interested. We did not include that in the
9 record nor do I think it's appropriate to
10 include that in a record because it was not a
11 memorandum that was used as a basis for our
12 decision. It was peripheral information that I
13 provided to Dr. Armendariz. But it's related to
14 the situation but I provided him information.
15 It was not used to make the decision that was
16 made that I signed, not Dr. Armendariz, and the
17 record that we base that decision on is the
18 record, and we certified that record.

19 Q. What approvals did you obtain
20 specifically from what individuals in the EPA
21 organization to sign the order and issue it?

22 A. I received no approvals because the
23 signature authority for this document is
24 delegated to me as specified in the order.

25 Q. So there was no documentation within

1 EPA's records as to who signed off on the
2 issuance of the administrative record?

3 MR. LYNK:

4 I'm going to object, misstates his
5 testimony.

6 MR. RILEY:

7 That's what I'm asking. I'm asking
8 the question.

9 MR. LYNK:

10 Asked and answered and misstates
11 the testimony.

12 THE WITNESS:

13 Again, I said I have the authority
14 to sign this document. I don't need to get
15 approval from anybody to sign the document.
16 That's my responsibility --

17 EXAMINATION BY MR. RILEY:

18 Q. Now, let me ask you my question --

19 A. -- and delegation.

20 Q. -- this time. Did anybody approve it?

21 Did you -- regardless of whether you have the
22 signature authority, it's in your purview, any
23 of those words that you want to use did someone,
24 anyone other than yourself, review the
25 information and approve issuance of the permit?

1 MR. LYNK:
2 Objection, asked and answered.
3 MR. RILEY:
4 No, he didn't.
5 MR. LYNK:
6 Yes, he did.
7 MR. RILEY:
8 Counsel, with all due respect now
9 he's avoiding answering the question. I'm
10 asking him specifically.
11 MR. LYNK:
12 He answered it.
13 MR. RILEY:
14 Regardless of his
15 signature authority.
16 MR. LYNK:
17 But you can answer it again.
18 THE WITNESS:
19 Nobody -- other people reviewed the
20 action, other people had information about the
21 action but I did not seek approval from anybody
22 to issue this order.
23 EXAMINATION BY MR. RILEY:
24 Q. So when I find -- eventually go through
25 all the documents that EPA possesses that have

1 been withheld at this point I'm not going to
2 find any document from anybody other than
3 yourself that says: Approved, issue; is that
4 correct?

5 A. Yes. I have the delegated authority to
6 sign this order and I signed this order.

7 Q. What specific input did Dr. Armendariz
8 have into issuance of this order?

9 A. To the fact of issuing the order Dr.
10 Armendariz was briefed on the timing of the
11 order, the content of the order. That's the
12 extent of his role. Again, he did not have or
13 issue -- make a decision as to whether this
14 order should be issued or not. That decision
15 rests solely on my shoulders as a representative
16 for the Agency.

17 Q. Did Dr. Armendariz express any kind
18 of -- did Dr. Armendariz express any approval in
19 any form whatsoever, either orally,
20 documentation, that said he in his position was
21 comfortable or otherwise authorized the issuance
22 of the emergency order?

23 MR. LYNK:

24 Objection, asked and answered.

25 You can answer again.

1 THE WITNESS:

2 Again, Dr. Armendariz provided his
3 thoughts to us as we briefed him. But, again,
4 at no time did he express approval authority or
5 disapproval authority of moving forward with the
6 order.

7 EXAMINATION BY MR. RILEY:

8 Q. Did he give you a thumbs up?

9 MR. LYNK:

10 Objection, asked and answered. You
11 can answer again.

12 THE WITNESS:

13 Dr. Armendariz did not indicate
14 that he did not want me to issue this order.

15 EXAMINATION BY MR. RILEY:

16 Q. So he sat with you after his briefing
17 and said --

18 A. No.

19 Q. -- John, this is your baby.

20 A. He said it's my decision.

21 MR. LYNK:

22 Objection, asked and answered.

23 If you can answer, okay, fine.

24 THE WITNESS:

25 It was my decision. He did not

1 object to the order nor did he say that he felt
2 it was his decision to issue this order.

3 EXAMINATION BY MR. RILEY:

4 Q. Okay. Could he have stopped you from
5 issuing the order? Is it within his authority
6 to say: John, I understand you have signature
7 authority here but I'm hereby telling you I'm
8 not comfortable with where you are in this case,
9 I need more investigation. I don't want you to
10 issue the order. Is that within his authority?

11 A. If it's within his ability as regional
12 administrator to raise concerns they would be
13 discussed among all of us who have the decision
14 making authority. So not unilaterally he would
15 not make that decision nor is it in his
16 authority to make that decision.

17 Q. So he cannot -- he does not have the
18 authority, as you understand the office of
19 regional administrator, to have stopped
20 issuance; is that correct?

21 A. Not the way the delegation is specified
22 in this action.

23 Q. All right. Now, he is actually an
24 important piece of your support and that's that
25 he had conversation with the chairman of the

1 Railroad Commission, correct?

2 A. He had discussions with Railroad
3 Commission.

4 Q. So he participated in the development
5 of this order and in some part you've offered
6 into the record Dr. Armendariz's direct
7 participation to satisfy one of the elements
8 necessary to issue the order, namely what was
9 the Railroad Commission doing, correct?

10 A. We -- Dr. Armendariz had a
11 communication with his counterpart at the
12 Railroad Commission about our intent to move
13 forward and it is part of the record, yes.

14 Q. No. What did he say on the telephone?
15 Because the e-mail from Mr. Carrillo references
16 a conversation, telephone conversation. What
17 did Dr. Armendariz say to Mr. Carrillo and what
18 did Mr. Carrillo say to Dr. Armendariz
19 specifically?

20 A. I was not a party to all those
21 conversations so I cannot tell you.

22 Q. So I need to ask Dr. Armendariz that
23 question, right?

24 A. No. I think the record includes a
25 record of communication between the two that

1 addresses what they talked about.

2 Q. Well, that may be your opinion but in
3 order to know what they said on the telephone --
4 you can't tell me what they said on the
5 telephone, right?

6 A. I cannot tell you. But the Agency's
7 position is you don't need to talk to Dr.
8 Armendariz because the record is clear on the
9 discussion they had.

10 Q. I understand the Agency is just
11 absolutely adverse to us talking to Dr.
12 Armendariz, I understand that. But you cannot
13 tell me, nor can anyone else tell me what was
14 said on the telephone between Dr. Armendariz and
15 the chairman of a state agency; is that correct?

16 MR. LYNK:

17 Object to form. Object, beyond the
18 scope.

19 THE WITNESS:

20 Again, I think I've answered that
21 for you. I said I was not privy to those
22 discussions and I do not know what was said.

23 EXAMINATION BY MR. RILEY:

24 Q. Do you know anybody else who was privy?

25 A. Not to all the discussions, no.

1 Q. Okay. So I'd have to ask Dr.
2 Armendariz about that, correct?

3 MR. LYNK:

4 Object to form.

5 EXAMINATION BY MR. RILEY:

6 Q. In order to understand Dr. Armendariz's
7 total recollection of his conversations with the
8 chairman of the Texas Railroad Commission?

9 MR. LYNK:

10 Object to form, asked and answered.

11 THE WITNESS:

12 Again, you -- that's your -- you
13 position. I won't disagree with it.

14 MR. RILEY:

15 Let me just check with my
16 colleague.

17 MR. LYNK:

18 I'm going to have to leave now.

19 MR. RILEY:

20 Yeah. Let me just check quickly.

21 Thank you, Mr. Blevins. Thank you,
22 Counsel. Thank you other counsel. We're out of
23 here.

24 THE VIDEOGRAPHER:

25 This is the conclusion of the

1 videotaped deposition of John Blevins. We're
2 going off the record. The time is now 5:03.

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1 W I T N E S S ' A T T E S T A T I O N

2 I have read or have had the foregoing
3 testimony read to me, pursuant to Rule 30(e) of
4 the Federal Rules of Civil Procedure and/or
5 Article 1445 of the Louisiana Code of Civil
6 Procedure, and hereby attest that, to the best
7 of my ability and understanding, it is a true
8 and correct transcription of my testimony, with
9 the exception of any attached corrections or
10 changes, complete with reasons for changes, on
11 the Witness' Amendment Pages;

12 I have in no way altered the printed
13 transcript pages containing testimony herein,
14 tampered with the seal on the last numbered page
15 herein, or tampered with the security strip on
16 the binder hereof. The integrity of this
17 certified transcript has been maintained in the
18 identical form as it was received by me, with
19 the exception of any changes on the Witness'
20 Amendment Pages.

21
22 Signature _____

JOHN BLEVINS

23 _____
Date

24
25

1 C E R T I F I C A T E

2 This certification is valid only for a
3 transcript accompanied by my original signature
4 and original stamp on this page.

5 I, BARBARA S. McGEE, Certified Court
6 Reporter in and for the State of Louisiana, as
7 the officer before whom this testimony was
8 taken, do hereby certify that JOHN BLEVINS,
9 after having been duly sworn by me upon
10 authority of R.S. 37:2554, did testify as
11 hereinbefore set forth in the foregoing (325)
12 pages;

13 That this testimony was reported by me
14 in the stenotype reporting method, was prepared
15 and transcribed by me or under my personal
16 direction and supervision, and is a true and
17 correct transcript to the best of my ability and
18 understanding;

19 That I am not related to counsel or to
20 the parties herein, nor am I otherwise
21 interested in the outcome of this matter.

22
23

BARBARA S. McGEE

24 Certified Court Reporter
State of Louisiana
25 Certificate No. 87384