

THE ALBERTA ENERGY REGULATOR

IN THE MATTER OF Regulatory Appeal 1933054
to the Alberta Energy Regulator

AER PROCEEDING

VOLUME 1

VIA REMOTE VIDEO

Calgary, Alberta

March 8, 2022

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1 Proceedings Taken Via Remote Video

2

3 March 8, 2022

Morning Session

4

5 C. Low The Chair

6 C. McKinnon Hearing Commissioner

7 B. McNaughton Hearing Commissioner

8

9 M. LaCasse AER Counsel

10 L. Mosher AER Counsel

11 T. Turner AER Staff

12 A. Lung AER Staff

13 P. Rodricks AER Staff

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15

15

15 B. Kapel Holden For AER Enterprise Reclamation
16 Group

17 S. Poitras For AER Enterprise Reclamation
18 Group

19

20 D. Naffin For Whitecap Resources Inc.

21 T. Myers For Whitecap Resources Inc.

22

23 (No Counsel) For Herman Dorin, Shirley
24 Dorin, and Mark Dorin

25

26 A. Porco, CSR (A) Official Court Reporter

1 (PROCEEDINGS COMMENCED AT 9:00 AM)

2 Opening Remarks

3 THE CHAIR: Good morning.

4 I see our host is -- I just got a message saying
5 our host is spotlighting people, but I will wait --
6 I'll get -- wait till I get a nod from our hearing
7 coordinator telling me we're -- we're ready to go?
8 Okay.

9 So good morning, everyone. And thank you very
10 much for joining us today in our virtual hearing room.
11 We are using the Zoom platform for this electronic --
12 for this electronic hearing of Mr. Herman,
13 Mrs. Shirley, and Mr. Mark Dorin's regulatory appeal of
14 the AER's decision to issue a reclamation certificate
15 to Whitecap Resources Inc. dated July 18th, 2019.

16 The reclamation certificate covered land, assets,
17 and associated activities located at Didsbury, Alberta,
18 at Block 2, Lot 3, Plan 151 2407 or LSD 08, Section 18,
19 Township 31, Range 1, West of the 5th Meridian.

20 My name is Cecilia Low, and I will be chairing
21 this proceeding. With me are Hearing Commissioners
22 McNaughtan and McKinnon, who have also been assigned to
23 this proceeding. Our names should be visible to you on
24 the screen, and we each have a blue background, and I
25 think the intention is to keep us pinned at the top of
26 the screen so we are easy to find.

1 My colleagues and I would like to acknowledge the
2 fact that we are conducting this proceeding from
3 locations on the traditional territory of the Kainai,
4 Siksika, Piikani, Tsuut'ina, and Stoney Nakoda First
5 Nations. We also acknowledge the City of Calgary is
6 home to Métis Nation of Alberta Region 3.

7 So that you are aware and for the record, I will
8 introduce AER staff who are assisting the Panel with
9 this proceeding. I will ask them to identify
10 themselves with a hello and a wave as I say their name.
11 That way they can practice muting and unmuting
12 themselves.

13 First, Lindsey Mosher.

14 MS. MOSHER: Hello.

15 THE CHAIR: And Meighan LaCasse.

16 Thank you. And they are both with AER law branch.

17 Next, Andrew Lung, who many of you've probably met
18 already.

19 And Tammy Turner.

20 MS. TURNER: Hi.

21 THE CHAIR: Both with AER hearing
22 services.

23 And Mr. Lung is our Zoom host for this proceeding,
24 and he will be responsible for bringing material up on
25 the screen that anyone would like us all to be
26 referring to.

1 And last but not least, the technical staff
2 assisting us with this proceeding are Drew Lockwood.

3 MR. LOCKWOOD: Hello.

4 THE CHAIR: Thank you.

5 And Drew is a reclamation assessor from AER's
6 closure and liability branch.

7 And John Mekar.

8 MR. MEKAR: Hello.

9 THE CHAIR: And John is a remediation and
10 contaminated site specialist also with AER's closure
11 and liability branch.

12 As this is an electronic hearing, I want to
13 outline a few details before we start. I'll try not to
14 repeat what may have been covered in your practice
15 session and in the detailed procedures document that
16 was sent to you in February.

17 When you speak, please ensure that you do not
18 speak over each other, and particularly those of you
19 who are sitting together and sharing both camera and
20 microphone. When you do speak, please identify
21 yourself by stating your name. Then say what you have
22 to say slowly and clearly for the benefit of the court
23 reporter so an accurate transcript is obtained.

24 And, Angela, if we're going too fast, please just
25 let me know. Thank you.

26 I expect that we should encounter fewer

1 difficulties if we all slow everything down a bit. And
2 I'm often the first one to go racing off, so, Angela,
3 you may be telling me to slow down from time to time.

4 If you do need to speak when you are not giving
5 evidence, answering a question, or otherwise making a
6 submission, whether it's to raise a concern or for some
7 other reason, please let me know by actually waving on
8 camera -- that's the best way with a screen full of
9 people to get my attention -- and say "Madam Chair".
10 Otherwise, all participants should remain muted when
11 you are not speaking.

12 During the hearing, the Panel may be taking notes
13 from time to time. It will also likely appear when you
14 are speaking that we are not looking at you. That's
15 probably because we are actually looking at you but in
16 the frame where you appear on our screens, so we're not
17 looking directly at our camera. Please note that we
18 are still very much engaged with what is going on in
19 the proceeding.

20 We also all have phones at hand for communicating
21 if we are not able to do so online. So, for example,
22 if one of my colleague notices that a party has dropped
23 off and I haven't noticed that, they may send me a text
24 so as not to interrupt submissions.

25 Since we expect all parties also have phones for
26 similar purposes, I'll ask everyone does their best to

1 juggle their electronics in a way that is not
2 disruptive. And this is probably a good time,
3 actually, for us all to double-check that our phones
4 are on silent mode.

5 Since it is best to be prepared, we will assume
6 that we may have a technical glitch or two over this
7 proceeding. I've already had a notice that we've had
8 little banners flashing up on our AER screens telling
9 us that our internet connection is unstable, so we'll
10 just have to manage as best we can. We are all just
11 going to have to be patient if issues occur.

12 If you are an active participant and somehow you
13 do become disconnected or your connection drops, we
14 will pause the proceeding as soon as that fact does
15 come to our attention. Just as a reminder, if you do
16 become disconnected, you should try to reconnect using
17 the Zoom hearing link first that was sent to you by
18 hearing services. If that does not work, please text
19 Ms. Turner, or, alternatively, you can email
20 hearing.services@aer.ca.

21 If your video freezes or we encounter audio
22 difficulties, you may be asked to repeat something that
23 you said just before the video froze or we encountered
24 the audio problems. Please let me know if on your end
25 a video has frozen.

26 During breaks, I suggest that you mute your audio

1 if it isn't already muted because otherwise we will
2 hear everything that you're saying.

3 If you want to have an exhibit brought up on the
4 screen to share with everyone else in the virtual
5 hearing room, please ask the Zoom host to bring it up
6 by clearly stating the exhibit number, then pause while
7 they find that, and then the PDF page number. And if
8 anyone has questions about the process, please feel
9 free to send a direct message to Ms. Turner.

10 So as set out in the Panel's notice of
11 rescheduling of hearing of January 14th, 2022, this
12 proceeding is being audio webcast and is publicly
13 available for people to listen to through the AER's
14 website. Members of the public accessing the link will
15 be able to listen to the hearing but cannot
16 participate. If you have any concerns about being
17 webcast, please let Ms. Turner know right away.

18 Please also note that the webcast is not an
19 official transcript of this proceeding. The official
20 transcripts will be available on the AER's website the
21 next day.

22 So, Ms. Turner, now I will ask you to please read
23 out the safety procedures and the particulars of this
24 proceeding as well as the publication of notice of
25 hearing.

26 You're on mute.

1 MS. TURNER: I'm the first one to do it,
2 unfortunately.

3 Good morning. Although this is an electronic
4 hearing, we encourage everyone to carefully review any
5 potential safety hazards in your location from which
6 you are participating in the hearing. If an alarm
7 sounds at your location or any other issues arise,
8 please let me know, and we will pause the proceeding.
9 Then calmly collect your things and proceed to the
10 nearest safety exit. In the event of a medical
11 emergency, call 911. Then if you can alert me as to
12 the situation, we will pause the proceeding. For any
13 other emergency, please notify me immediately.

14 On July 17th, 2020, the AER received a request for
15 a regulatory appeal under Part 2, Division 3 of the
16 Responsible Energy Development Act and Part 3 of the
17 Alberta Energy Regulator Rules of Practice of the AER's
18 decision to issue Reclamation Certificate 382273 to
19 Whitecap Resources Inc. on July 18th, 2019, regarding a
20 wellsite, associate workspace, and access roads located
21 at Didsbury, Alberta, at Block 2, Lot 3, Plan 151 2407
22 or LDS 08, Section 18, Township 31, Range 1, West of
23 the 5th Meridian.

24 The AER granted the request for the regulatory
25 appeal in part on May 14th, 2021. Specifically, the
26 regulatory appeal was granted to consider the question

1 of whether the reclamation certificate was properly
2 issued.

3 The purpose of this hearing is to determine
4 whether the AER should confirm, vary, suspend, or
5 revoke its decision to issue that reclamation
6 certificate.

7 This summarizes, Madam Chair, the details of the
8 giving of this notice of hearing.

9 I would like to remind participants that the
10 materials filed for the proceeding, the notice of
11 hearing, and notice of scheduling of hearing and other
12 Panel records and correspondence were marked as
13 exhibits prior to the hearing. All parties to the
14 hearing were sent a copy of the list on March 4th,
15 2022. Thank you.

16 THE CHAIR: Thank you, Ms. Turner.

17 So I would now like to register the participants
18 in the hearing. We do have a court reporter to prepare
19 our official transcripts, so please unmute your
20 microphone as you are called to register. State your
21 name clearly for the record and confirm the party that
22 you are representing and then mute your microphone when
23 you're finished.

24 The first person I will ask to formally register
25 is the representative of our regulatory appeal
26 requesters, the Dorins. So Mr. Dorin.

1 MR. DORIN: Yes. My name is Mark Dorin,
2 D-O-R-I-N, and I'm representing Herman Dorin, Shirley
3 Dorin, and Mark Dorin in this proceeding.

4 THE CHAIR: Thank you.

5 And Whitecap Resources.

6 MR. NAFFIN: Thank you, Madam Chair. Daron
7 Naffin of Bennett Jones appearing on behalf of Whitecap
8 Resources Inc. With me is my colleague, Mr. Tim Myers.
9 Thank you.

10 THE CHAIR: Thank you.

11 And the AER Enterprise Reclamation Group, who I
12 may start referring to as "ERG".

13 MS. KAPEL HOLDEN: Good morning, Madam Chair and
14 Panel Members and AER staff. My name is Barbara
15 Kapel Holden, and together with Scott Poitras, we are
16 legal counsel for the AER's Reclamation Enterprise
17 Group [sic], which we also may refer to as the "ERG".
18 Thank you.

19 THE CHAIR: Thank you.

20 Now I'll take a little time to briefly explain the
21 process that we will follow for direct evidence,
22 questioning, and rebuttal evidence. According to
23 Section 21 of the Alberta Energy Regulator Rules of
24 Practice, all witnesses must give evidence, including
25 answering questions from the other party and the AER,
26 under oath or affirmation.

1 The court reporter will conduct the swearing in or
2 affirmation at the time the witnesses are to give
3 evidence.

4 Witnesses who choose to be sworn should have their
5 Bible or other sacred object at hand. If you prefer to
6 affirm, you may choose to do that as well. We do ask
7 that you state clearly for the record which option you
8 have chosen when the court reporter asks you.

9 We will be following the order of presentations
10 set out in the AER Rules of Practice. So, first, we
11 will be inviting Mr. Dorin to present the Dorins'
12 direct evidence. He will then, because he's acting as
13 both representative and witness, be available for
14 questioning by Whitecap, then ERG, then by AER staff,
15 and finally by the Panel.

16 Next, Whitecap will have the opportunity to
17 present its direct evidence and will then be available
18 for questioning by Mr. Dorin, ERG, and then by AER
19 staff and the Panel.

20 Then Enterprise Reclamation Group will have the
21 opportunity to present its direct evidence and then be
22 available for questioning by Mr. Dorin, Whitecap, AER
23 staff, and finally the Panel.

24 And lastly we will give Mr. Dorin the opportunity
25 to present any rebuttal evidence he may wish to
26 provide. And just a reminder that rebuttal evidence is

1 evidence that addresses only anything new that has
2 arisen during Whitecap or ERG's oral evidence or that's
3 come up through the course of questioning.

4 If Mr. Dorin does provide rebuttal evidence,
5 Whitecap, ERG, AER staff, and the Panel will have the
6 opportunity to ask questions about it.

7 Final argument, at the moment, we've got scheduled
8 to take place on Thursday, March the 10th, and the
9 order will be the same as evidence, except since
10 Enterprise Reclamation Group has said they don't expect
11 to present final argument, the anticipated order will
12 be the Dorins' final argument, Whitecap, and then
13 Mr. Dorin will have the opportunity to present any
14 rebuttal argument.

15 My plan is to ask the parties for their comments
16 on the specific timing for oral argument either at the
17 end of the day or sometime tomorrow morning. We'll see
18 how things roll out.

19 And, lastly, so you know how we see the day
20 unfolding, we will take breaks midmorning, midday, and
21 midafternoon. Those are planned breaks. I can't say
22 anything about unplanned technical-related breaks. And
23 those breaks have been indicated in the schedule that
24 Ms. Turner has provided to the parties.

25 We will also try and be flexible where necessary.
26 So, for example, if -- I'm thinking, for example,

1 Mr. Dorin, you've got an estimate of an hour and a half
2 for your direct evidence. If you think it would be
3 useful to have a break partway through that, we can
4 certainly do that rather than waiting till the very end
5 because that's a long time to be on your feet, as it
6 were, in one stretch.

7 If there's a matter relating to the electronic
8 process that you would like to raise, please let
9 Ms. Turner or AER counsel know. We want to ensure a
10 fair and efficient process for everyone.

11 Are there any questions at this point that anyone
12 has about the process that we plan to follow?

13 I don't --

14 MR. NAFFIN: None from Whitecap. Thank
15 you, Madam Chair.

16 THE CHAIR: Okay.

17 MR. DORIN: No questions, Madam Chair.

18 THE CHAIR: Thank you.

19 Okay. Don't see any other screens lighting up.
20 So with that, do any of the parties have -- oh, sorry.
21 There's one other thing that I wanted to say at this
22 point in time.

23 There's one observation and reminder that my
24 colleagues and I would like to share with all parties.
25 We already have a very well-developed record. You have
26 provided us with considerable information. Much of it

1 is relevant to the four specific issues we have
2 identified and must decide. Some of it is not. We
3 urge all parties to use the time that we do have for
4 this hearing to focus on the four issues identified for
5 hearing.

6 Now, with that, do any of the parties have any
7 preliminary issues to raise?

8 Again, I don't see any screens lighting up, so I
9 will ask the court reporter to swear in Mr. Dorin as
10 witness.

11 And then, Mr. Dorin, as representative, you can
12 begin with the direct evidence of the -- of yourself
13 and your parents. Thank you.

14 MARK DAVID DORIN, Affirmed

15 THE COURT REPORTER: And just for the record, can
16 you please state and spell your full name.

17 A My name is Mark David Dorin, D-O-R-I-N.

18 THE COURT REPORTER: Are your two other names the
19 traditional spellings, sir?

20 A Yes, ma'am. M-A-R-K D-A-V-I-D.

21 THE COURT REPORTER: Thank you, sir. I'm ready.
22 Go ahead.

23 Direct Evidence of Mark Dorin, Shirley Dorin, and
24 Herman Dorin

25 MR. DORIN: Good morning, Madam Chair. I
26 am the son of Herman and Shirley Dorin, and I'm going

1 to give evidence as myself now. I also -- I have filed
2 my CV. It is Exhibit Number 62.02, I believe, on the
3 record, just for reference.

4 I represent myself in this matter, my -- my
5 parents, and I also represent a number of other
6 landowners through the province of -- mainly in urban
7 areas as to regulatory matters and surface rights
8 matters.

9 I've been looking after the regulatory and surface
10 rights and other business matters of the subject lands
11 since about 2003. At that time, we had a Surface
12 Rights Board hearing, and -- and since about that time,
13 I've been looking after things, which also includes
14 negotiating land sales, dealings with the Town, you
15 know, area development plans with the Town, those sorts
16 of things.

17 For most of the time that the operations on the
18 subject land occurred, I was living in Edmonton.
19 However, since about 2014 -- my father had a heart
20 attack, so I've been spending a lot more time in
21 Didsbury since then. And I actually moved down to
22 Red Deer a few years ago, and I have an office in
23 Didsbury, so I'm spending most of -- most days in
24 Didsbury, and -- at least prior to the pandemic.

25 So some of my background, I'm 40-plus years in oil
26 and gas, mostly in operations before I started, you

1 know, dealing with things like regulatory and surface
2 rights matters, land matters by necessity in around
3 2003. And so I'm very familiar with oil and gas
4 production operations. I've been a field supervisor,
5 field superintendent in Canada and -- and oil fields
6 overseas, and I've been in the oil field service and
7 supply business for many decades.

8 So my -- my parents, Herman and Shirley Dorin,
9 unfortunately unable to give evidence for -- for health
10 reasons. I would just like to clarify that Herman
11 Dorin is now in Bethany Care Society next to the
12 wellsite and just is not able to -- would not be able
13 to testify. My -- my mother, Shirley Dorin, has
14 Parkinson's, and, you know, we didn't plan to have much
15 testimony from her anyway.

16 So I would just like to say that I have firsthand
17 knowledge about almost all the matters involved in this
18 hearing, with the exception of I -- I do not have any
19 personal knowledge of drilling waste spread when the --
20 at the time when the well was drilled because I was not
21 around the -- the land at that particular time. But I
22 have been on the wellsite on many occasions from 1977
23 until present day.

24 So to start -- to start with, I would like to deal
25 with some reclamation certificate facts. So if we
26 could please have Exhibit Number 23.02 up on the

1 screen. That's the -- that's the -- and go to PDF page
2 number 2, please.

3 That -- this is the reclamation certificate as
4 produced by the ERG, as we're calling them. And I
5 would just like to point out that -- that the -- some
6 of the concerns that the -- that the landowners had --
7 first of all, reclamation certificates are forever
8 from -- as far as we're concerned. They -- they attach
9 to the land and -- and probably attach to the land
10 forever. Land buyers have regard to them. Banks have
11 regard to them. The Town of Didsbury would have regard
12 to them. Land developers would have regard to them.
13 So they're very important documents. And -- and, very
14 importantly, they're required over at the Surface
15 Rights Board if one has a right of entry order to
16 terminate the right of entry or partially terminate the
17 right of entry order.

18 Some the -- some of the concerns we had, which --
19 which in large part led to the decision to request this
20 proceeding, this regulatory appeal of decisions to
21 issue the certificate, are -- are -- have to do with
22 some inaccuracies and have to do with what I'm going to
23 call "lack of security features".

24 So if we look first at the -- at the shaded rows
25 or what I'll call a "table" on the page 1 of the
26 Reclamation Certificate Number 382273, the -- the first

1 entry, it says "Activity Type", and that's blank. And
2 that's presumably the wellsite because of the well
3 licence number, 0065135, and the land location and
4 the -- and the asset name is the name of the well.

5 But the next entry is called "Access Road". And I
6 think as -- as we all -- as the record clearly shows
7 and we'll come to I'm sure in this proceeding, more
8 than one access road has been contemplated for
9 reclamation certification here, and only one is shown.

10 And then we have the double entry of what's been
11 called the "strip", what's been called an "additional
12 strip", what's been called a "workspace", and what has
13 been called a "trespass" there. So that's a -- that's
14 a double entry.

15 So if we could next just go to page 3, please.
16 There are either three or four plans of survey with
17 yellow marking on them, and -- and my understanding --
18 and I think it's accurate -- is that -- that one
19 applies yellow shading to a plan of survey to indicate
20 the portion of land for which a reclamation certificate
21 is requested, and then once it's associated with a
22 certificate, it signifies land certified as reclaimed.

23 So the -- the -- the first page here is what I
24 call "Plan 1B". So I personally have referred to these
25 as "Plan" -- you know, there's three different plans,
26 and there's a duplicate copy. So this would be Plan 1.

1 And so this is the -- this is the -- the page
2 that deals with some of the more, you know, sticky
3 issues here. And so I would like to have --

4 If Ms. -- if the person who's in charge of the
5 screen could please click on the access road area of
6 this survey. Just with -- with the arrow feature,
7 click on the access road, please.

8 And so you'll note that this -- this has been
9 added on top of the PDF page. Could that person please
10 hit "Delete". Now we no longer have a certified as
11 reclaimed east-west access road in this matter.

12 So as I said, security features are an issue.
13 There's lack of pagination. We submit that anyone
14 could add a plan to this, could take a plan out of
15 this, just lack of confidence at banks, land developers
16 in the future. It's already caused problems at the
17 Surface Rights Board. I'm going to come to that.
18 So -- so those are some of the reasons.

19 I would also add that I think it's fair to say
20 that it's extremely difficult, at times impossible, to
21 have the Alberta Energy Regulator turn its mind to
22 simple errors or complex errors in a decision like
23 this. It's very difficult. A regulatory appeal is
24 probably one of the few -- and those are rare -- you
25 know, reconsiderations are virtually nonexistent, and
26 so, you know, it's problematic for someone who owns

1 land who has a certificate that might contain
2 inaccuracies to deal with those matters. And so that's
3 a -- that's a key reason why the landowners applied for
4 regulatory appeal in this matter.

5 So -- so the next set of facts I would like to
6 deal with -- if we could please have Exhibit 04.01 up
7 on the screen, please. And -- yeah. Exactly. So we
8 have the -- the correct page here. This is a letter.
9 And if we could go to the next page, please. There is
10 a right of entry order, and a right of entry order as
11 per this -- it's a preliminary decision in this matter.
12 I think everyone realizes that if specified land is
13 created and -- and that's -- that occurs when land is
14 held or used for -- for an activity listed in the
15 schedule to the Act, in order -- you know, the -- the
16 right of entry order is the means of holding that land
17 and using that land. And a reclamation certificate is
18 required to terminate the right of entry order.

19 So there's a well-recorded history of this. And
20 this is Order Number C2377, and it's dated August 5th,
21 1977. And you -- we can take, you know -- well,
22 actually, we can leave it up. And I'll come to it, but
23 if we could go to the next page, please. And if we go
24 a couple more pages, there's a -- there's two copies
25 that I produced of this. And then go one more page,
26 please. Yeah. There we go. So that's a more clear

1 copy.

2 So -- so the -- the summarized right of entry
3 order facts are that the right of entry order does not
4 cover the original location that was applied for. That
5 location is covered in a plan of survey dated July 4th,
6 1977. And the -- the plan of survey that -- that is
7 associated with the well licence and with the right of
8 entry order is the plan of survey we looked at with the
9 yellow shading on -- on the reclamation certificate,
10 and it's dated August 3rd, 1977. So it -- it covers --
11 the right of entry order covers 2.81-acre wellsite and
12 the -- what we're all calling the "original east-west
13 access road", and it's 1.03 acres. And that's a total
14 of 3.84 acres, and that is directly related to
15 Well Licence Number 65135.

16 So pursuant to this right of entry order, the
17 original well licensee, Dyco Petroleum Corp., entered
18 the lands, constructed a wellsite. That -- that
19 wellsite was much closer to a manure corral than the
20 originally proposed site. A hill cut occurred on the
21 west side of the wellsite in -- in site construction,
22 and drilling waste that includes salts was disposed of
23 on-site. So the right of entry order includes fencing
24 conditions which are shown on the screen right now, and
25 those fencing conditions have never been amended.

26 So realizing that compensation issues are not, you

1 know, that relevant in any Alberta Energy Regulator
2 proceeding, it is, however, relevant that the original
3 compensation decision does state and does note that the
4 east-west access road covered by the right of entry
5 order was deemed to be temporary in nature, so -- as to
6 its location. So -- so there -- there was no what's
7 called "adverse effect compensation". It was -- the --
8 the right of entry order access road was deemed not to
9 cause an impact. It would not cause an impact to
10 surrounding land because the operator would simply move
11 its road or come in on town streets later, et cetera.
12 That's not exactly all that clear, but it was clarified
13 by the Court later. So -- so that's an important topic
14 because it gives -- it gives rise to the -- the next
15 topic.

16 So -- so there was -- based on reclamation
17 certificates that have been issued by -- by Alberta
18 Environment in the first instance and this particular
19 certificate that's undergoing review in this
20 proceeding, there's been two attempts to either
21 partially terminate the right of entry order or fully
22 terminate the right of entry order.

23 So the first was a 2013 request made by the -- the
24 landowners, and there -- there was a reclamation
25 certificate issued. We don't need to go look at it
26 right now, but for reference, I believe it's at

1 Exhibit 04.05, PDF pages 15 to 16. That -- that --
2 that reclamation certificate was issued, and the Dorins
3 applied to partially terminate the right of entry order
4 on the strength of that reclamation certificate and
5 because a north-south access road had been established.
6 And I'll come to that in a little more detail later.

7 But that -- that application was denied, and
8 the -- and the main reason it was denied, I think it's
9 fair -- quite fair to say, is that Whitecap objected
10 to that -- that termination. So Whitecap's argument at
11 the time was that -- that the north-south access road,
12 which is also at issue in this proceeding, did not
13 provide a means into the -- into the wellsite area
14 that's covered by the right of entry order for
15 reclamation activities and that the east-west road was
16 still needed, even though it had been certified as
17 reclaimed, for ongoing access to the wellsite. So that
18 was the first request, and it was made in 2013, and the
19 decision from the Surface Rights Board at the time in
20 2014 was to deny that partial termination request.

21 So the right of entry order remains in full force
22 and effect covering the entire area that it originally
23 covered because of that.

24 The second request occurred in 2019. And the
25 reclamation certificate was issued on or about
26 July 18th, 2019, and two days later, Whitecap filed

1 with the Surface Rights Board an application to
2 terminate the right of entry order fully, to -- to its
3 entire area covered by it. And supporting that
4 application was a -- was Reclamation Certificate
5 Number 382272 issued in this proceeding but without the
6 page we just looked at when we looked at the
7 reclamation certificate. So, in other words,
8 without -- without any yellow shading over the
9 east-west access road.

10 So according to the ERG's submissions in this
11 matter, Whitecap provided the wrong version of
12 Reclamation Certificate Number 382273 to the Surface
13 Rights Board, which caused some problems.

14 So -- so next I'd like to go over the --
15 specifically, there's some fencing issues that -- that
16 are cogent to the -- to more than one of the issues
17 that we're focusing on today. So if we could have
18 Exhibit Number 36.04 on the screen, please. Thank you
19 very much.

20 And if we could please start out -- I believe
21 it's -- the best place to go is page 16 for the start.
22 So I'd like to summarize some fencing facts, and
23 there's a lot of them, and so -- I think they're
24 important, and so that's what I'm going to endeavour to
25 do for the next few minutes.

26 So I have firsthand knowledge of the fencing. The

1 original fence as shown here was a chain-link fence,
2 and it was -- we don't know -- we can't -- we can't
3 give exact evidence of exactly where this fence was in
4 relation to survey monument boundaries, but suffice it
5 to say that it covered most of the wellsite area, if
6 not all of the wellsite area, and it was constructed
7 not long after the -- the wellsite was -- was --
8 was -- the black dirt was scraped off of it and put
9 into berm piles around the site and -- and not long
10 after the time it was levelled, which was well more
11 than a year, I think, after the -- after the well was
12 drilled. Again, I wasn't there that much at the time,
13 so I don't want to mislead anyone.

14 But -- but suffice it to say that we did have a
15 chain-link fence around the wellsite, and -- and
16 without question, along the south boundary; it was
17 right on the south boundary, and that's -- it's quite
18 visible from satellite photos and stuff. But the --
19 but the -- the fencing on the south boundary of the
20 wellsite was wrapped a little bit around the flare pit.

21 So if we could maybe go -- move on to -- I believe
22 it's page number -- bear with me a sec -- page
23 number 10. I've -- for the -- yeah. So -- so this --
24 this sketch was made by me, and I -- what I'm
25 attempting to show is a number of details of fencing,
26 fence location, fence ownership, and what fence was

1 removed, et cetera.

2 So the -- the fencing was changed. Camino
3 Industries took over the site in 1995 as the well
4 licensee. There was a few well licensees in between,
5 Dyco and Camino. And as -- as per the written evidence
6 filed with the Surface Rights Board, which has been
7 produced, they -- the -- the evidence of -- of
8 Camino Industries people in the Surface Rights Board
9 hearing was that the -- that the south fence -- the
10 south wellsite fence -- fencing was damaged, in their
11 words, from having it placed too close to the flare
12 pit. Well, the realities are, if one knows where the
13 site boundaries are, is that the flare pit was just
14 slightly -- the berm of that flare pit was just
15 slightly over or right on the south wellsite boundary
16 in the southeast corner.

17 So -- so Camino took out the chain-link fencing
18 and -- and added -- and then changed it to barbwire
19 fencing after -- sometime after 1995, within the first
20 year or so after taking over the well. And the -- the
21 access road fencing was always barbwire, and -- and
22 it's -- the location is shown there. The Texas gate at
23 the east end of the access road.

24 And I want to deal with some of these fence lines
25 that are here. So -- so there's two fence lines that
26 are well within the wellsite. One's going east and

1 west about, you know, 7,500 feet down into the
2 wellsite, and the other one's going north-south.
3 And -- and that one's shown here in sort of a dotted
4 line; that fence was down. I removed it in 2014.

5 And -- and so I want to say that the -- the
6 landowners have always complied with the terms of the
7 right of entry order, with the possible exception of
8 removing this fence. And so this fence was down in
9 2014. The east-west fence that it connects to above
10 was also down, but I removed this length of fence
11 that's the north-south one that's near -- it's -- it's
12 between the -- this -- this length of fence is west of
13 the wellbore and east of the west site boundary. So I
14 removed that, and then I repaired the -- the east-west
15 section that's there, and I made other repairs among --
16 around the wells. And the -- the -- the north fence
17 that's shown as barbwire with 'X's, I put that in in
18 2012 when we subdivided the lot for Bethany Care
19 Societies [sic] adjacent to the wells. So I put
20 that fence in because of the construction of the
21 Bethany Care lot.

22 Important fence is on the extreme west boundary.
23 There's two fence lines shown there in parallel. So,
24 you know, on the extreme west one, as also shown in a
25 video exhibit, Number 36.06, at about Minute 1, that
26 fence line is down. It's -- it -- that's Whitecap's

1 personal property. It's in disrepair. It's always --
2 it's been in disrepair for many years. And around -- I
3 think it was November 22nd, 2015 -- I'll come to this
4 in more detail in a minute -- Whitecap erected the
5 newer fence along the west boundary just inside the
6 site boundary, and that -- and then that went up to the
7 north, and then just a little bit across to the east
8 they put in a new gate there. And that's just prior to
9 them starting to contour the site.

10 So I think that gives the status. The -- the red
11 fence shown off-site on the bottom, that's around the
12 work area or additional strip. That was definitely
13 erected pursuant to trespass. And so -- then the --
14 the -- the fence that's on the very top that goes off
15 in a bit of an angle with the red circles, that was
16 erected by Bethany Care Society. I can't remember the
17 year exactly, but it was either 2013, 2014, about a
18 year after they -- the construction of the site. They
19 erected a chain-link fence there.

20 So -- so that's -- those -- that's the fencing.
21 The -- it's -- other than the removed section, it all
22 remains in place.

23 So just -- just for convenience, I'm going to
24 switch off fencing to deal with the -- if we could just
25 go up to the first page of this same document, please.
26 And -- sorry. Down just toward the -- one more. So

1 now we're at page -- PDF page 3.

2 So there is some -- this is just a -- a drawing
3 that I prepared. It's a two thousand -- 2002 Google
4 satellite image. There's some minor labelling errors
5 in the Phase 1 environmental site assessment report,
6 particularly saying that -- that there might be a
7 separator at the pumping unit location west of the
8 wellbore. That's incorrect. The -- the location of
9 the wellbore is exactly 89 feet to the east of the west
10 site boundary, exactly 100 feet north of the south site
11 boundary. There was a pumping unit there, and there --
12 that's where the wellbore is. The original picture
13 probably is showing -- there was a shack there for a
14 gas-powered or gasoline-powered engine for the pumpjack
15 that was used for a short time until the power was
16 brought in, and the power line is shown there coming in
17 from the north. And so that's probably what was
18 mislabelled on the Phase 2. We want to make sure this
19 is accurate.

20 There -- so straight to the east, almost, of the
21 wellhead was a separator -- a two-phase separator with
22 a associated green pump tank, and then the production
23 tank was originally near the separator. That was
24 regulatory noncompliant, and it was moved slightly to
25 the north and to the east in the current location -- or
26 the location where it's shown here. And the flare pit

1 was in the extreme southeast corner.

2 I want to draw your attention to the northwest
3 extreme corner of the wellsite shown in red here. I've
4 drawn it in on the satellite map. And this [sic] brown
5 areas, you'll see the corral is labelled. That's
6 what's called the "manure storage area", and there is
7 some areas where, you know, the manure has been tracked
8 out of the corral or high-traffic areas, and I think we
9 can clearly see that where the fencing is there,
10 those -- those do not extend onto the -- the wellsite.

11 So -- so that was sort of switching off -- so if
12 we could just quickly flip through these. The next
13 page, please.

14 This is the picture of the wellbore. Note
15 barbwire fencing. This is within the town of Didsbury.
16 The law is chain-link fencing around a pumpjack. We
17 had a lot of regulatory noncompliances here. But this
18 just shows the location of the pumpjack.

19 Next page, please.

20 And this shows the -- the separator and a metal
21 building with some barbwire fencing around it. Poor
22 weed control and the green pop tank. Next -- next,
23 please.

24 And this is the production tank location a bit to
25 the -- to the north and slightly to the east of the
26 separator location. So ...

1 The next exhibit I'm going to go to -- I guess
2 you've got it up, but, you know, I will switch back to
3 fencing. I made an offer to settle fencing issues. We
4 don't have to go to that exhibit, but -- but I've
5 produced it as Exhibit 58.01 behind Tab 5 at -- and
6 that's at PDF pages 102 to 114 of Exhibit 58.01. And
7 also at that exhibit, at pages 144 to 158, I provided a
8 number of emails. And those were emails that were
9 negotiations on fencing issues.

10 So, you know, just briefly, I offered to settle
11 all fencing issues with Whitecap on October 23rd, 2015,
12 by written letter. We engaged in a series of
13 discussions about that. I had also provided --
14 specified the fencing we wanted, type, location,
15 et cetera, as we're entitled to do, or as the landowner
16 or anyone acting through him is entitled to do on the
17 fencing terms of the right of entry order which we
18 looked at earlier. And Whitecap originally said,
19 Okay -- and then I had said, you know, I've done a
20 bunch of fencing, fixed up these fences, removed them,
21 you know, there's some outstanding charges for that.
22 And Whitecap said, Yeah, we'll have you do this. I
23 gave an option of, you know, getting the fence done by
24 a contractor; gave them a price estimate. And they
25 said, Yeah. Well, no, we'll just have you do it.
26 So -- so we sort of somewhat reached agreement on that.

1 But we -- we were unable to agree to the verbiage
2 of releases. In the landowners' view, the -- the
3 releases went a little bit beyond fencing, and they
4 didn't want to compromise their -- their -- their
5 rights in other regards, so there was -- there was
6 that.

7 But probably the big issue, at least from our
8 standpoint, was that we asked for a crossing for
9 12th Street in Didsbury -- and we'll come to that -- so
10 that we could extend 12th Street -- it's just beside
11 Bethany Care facility; it's a north-south street --
12 down across the right of entry order. The right of
13 entry order does not allow for any activities other
14 than oil and gas or grazing. So we cannot cross that,
15 and we cannot finish the planning of the residential
16 development of the land without being able to deal with
17 that. So Whitecap refused that crossing.

18 So those are the fences we wanted and would have
19 liked to have had, but we were never able to work that
20 out with Whitecap. So ...

21 When I -- if we can now go to Exhibit 04.01,
22 please, and go to page 416 of that.

23 And this is a letter. So I'm going to kind of try
24 to explain the circumstances around this letter. And
25 this -- this is a letter written to Whitecap, copied to
26 the AER, and it -- and it focuses on the fact that

1 there's a right of entry order. So when I received a
2 paper copy of Application 382272 for this reclamation
3 certificate in July of 2018, there were two particular
4 pages of information that were -- that were in the
5 paper copy, and then -- and these were called -- and
6 then these are now -- we don't have to go there, but
7 they're -- they're on the record as Exhibit 04.05, and
8 they're at -- the first one's at page 29, and the
9 second one's at page 30. And this -- the first one's a
10 document called "Lease Fence", and it's dated June 8th,
11 2018. And the -- and the second document's called
12 "Overview of Dispute with the Landowner", and it's
13 dated June 12th.

14 And so these two documents are, in our view, used
15 by Whitecap to explain to the Alberta Energy Regulator
16 that there was some fencing disputes and -- and the
17 fact that -- why they were providing a release for the
18 east-west access road to the Alberta Energy Regulator.
19 And so, you know, in -- in -- in our view and in my
20 view in particular, these -- these two documents didn't
21 accurately describe the nature of the fencing issues
22 that the parties have been unable to agree to for quite
23 some time.

24 So because of the inaccuracies of these two
25 documents and for other reasons, I decided to write
26 this letter that we're looking at. And so the -- so

1 the background here and the factors that -- that --
2 that led up to, you know, the decision to -- to -- to
3 write this letter, those factors were -- first of all,
4 I had contacted the Alberta Energy Regulator about the
5 status of this application, and that's the application
6 for this reclamation certificate. It had been delayed
7 for some time, and there -- on the AER's website, we
8 were showing a previous application for this
9 reclamation certificate that had been withdrawn. This
10 one wasn't really well-shown. We didn't know what was
11 going on. And there were issues going on over at the
12 Surface Rights Board that -- that -- that were -- would
13 have been impacted by this -- by this application.

14 So I wrote to the -- the Regulator, a letter dated
15 March 1st, 2019 -- this is six or seven months after
16 the application had been filed -- and I asked for an
17 update on the status. And so from what I now know from
18 Exhibit 04.01, that -- that may have triggered a
19 supplemental information request that was sent out in
20 April of 2019 to Whitecap by the AER.

21 So, in any event, I was provided with a copy of
22 that supplemental information request at that time.
23 And then -- and, you know, my version of -- you know,
24 the ERG says that we were given notice. Well, in my
25 opinion, it's because I had repeatedly asked for a copy
26 of this and sort of said we were entitled to know what

1 was going on with the application that we -- that we
2 were made aware of, the supplemental information
3 request.

4 So -- so because of all these things, the
5 inaccuracies of the information filed with the AER in
6 our opinion, and the supplemental information request,
7 I sent this letter. And so there's a cover email
8 associated with this letter dated May 13th, 2019,
9 and -- and it's at -- we don't have to go to it, but
10 it's just a few pages previous at page 412 of this
11 exhibit, and that's Exhibit 04.01. But I'll read it to
12 you. It's -- and this is to Whitecap. It says:
13 (as read)

14 Because compliance with the SIR request would
15 contravene Right of Entry Order
16 Number C26377, our copy and Whitecap's
17 incomplete copy of such order is also
18 attached for the AER's benefit (AER copy).
19 So -- so, in other words, I'm advising Whitecap and
20 copying the Alberta Energy Regulator with this letter
21 that -- that there is a right of entry order, that
22 right of entry order is attached, and -- and the nature
23 of -- of the right of entry order.
24 So the key -- the key information that was
25 provided at this time -- if we could just flip ahead,
26 there's -- to Section 4 of this letter. We'll just

1 have to -- one more page, I think. There we go. No.
2 One more page. The next page. There we go. Where the
3 yellow marking is. So go back one page, please. There
4 we go.

5 So Section 4 at page 421 of this exhibit, you
6 know, is titled "Why the Proposed Fencing Release
7 Cannot Be Signed". So -- so Whitecap is asking us to
8 provide a fencing release at this time. And I
9 explained to them that -- you know, why we're not
10 willing to do so. And we said that there would be an
11 exception, and the exception would be that -- that, you
12 know, if we could make arrangement for removal of
13 fencing, that would have to occur following termination
14 of the right of entry order as opposed to following
15 certification of the site as contemplated by Special
16 Enactment Direction 002. So -- so that Direction 002,
17 I think probably everybody knows, that's the
18 instructions of how to apply for a reclamation
19 certificate.

20 So -- so, you know, I'm not going to get into the
21 legal aspects because this is -- this is factual text
22 and testimony here and -- but, you know, long story
23 short is, you know, we're -- we're prohibited from
24 fencing in the area covered by the right of entry
25 order. We have to ask Whitecap for that fencing to be
26 put up. And if it gets removed -- this is an urban

1 area. You know, town of Didsbury residents don't
2 really like cattle and horses on their lawns, and, you
3 know, we -- this was the nature of the problem.

4 So -- so we go down. You know, the next page is
5 on page 422. You know, I did point out that there's an
6 option, and that option is to -- to -- to have the
7 right of entry order amended so -- so that, you know,
8 the -- the parties can deal with these fencing issues
9 without contravening the terms of the right of entry
10 order.

11 So -- so that's sort of -- you know, that --
12 that's -- that's the information that was given to
13 Whitecap. That's the information that was given to the
14 AER. And, in our view, there's no question whatsoever
15 that Whitecap and the AER knew or should have known
16 that the Dorins were relying on the fencing terms of
17 the right of entry order and -- and what those terms
18 were.

19 So -- so that's -- that pretty much wraps up
20 the -- the -- the fencing facts that I wanted to -- to
21 stress here. And the next issues I would like to get
22 into are the -- try to deal with the -- some of the --
23 how the different areas covered by this reclamation
24 certificate came to be, particularly the north-south
25 access road, the 2008 release that pertains to the
26 east-west access road area, and how we came to have a

1 previous reclamation certificate issued in 2008.

2 So, you know, I'm going to go to Exhibit
3 Number 36.03, and that begins at, I believe, page 4.

4 And -- yes. This -- so that's good.

5 So the -- so what I want to try to discuss is some
6 details of this -- this agreement. And it's called the
7 "land use agreement". And -- and we don't -- I'm not
8 going to get into the whole land use agreement. I just
9 want to get into two key portions of this land use
10 agreement and some background. So -- so I'll just --
11 this is just the first page. So if we could go to --
12 first to page 7, I believe it is. PDF page 7 of that.

13 Yeah. Yes. This is it.

14 So this is the -- this is the list of schedules to
15 the agreement, and most of them aren't important for
16 the purposes of this proceeding, but the ones that are
17 important are the one that's called "Schedule H", and
18 it's called an "Alberta Surface Lease Grant Agreement".
19 And, you know, I want to stress that up above, it says:
20 (as read)

21 The following is a list of the schedules and
22 reference names of each of the schedules
23 attached to and forming part of this
24 agreement.

25 So these schedules are part of the land use agreement.
26 That's the point I want to make.

1 And so the -- the Alberta surface lease and grant
2 agreement that's Schedule H, that is the verbiage of
3 the surface lease for the north-south access road
4 that's now been covered -- coloured in yellow by the
5 reclamation certificate.

6 And then Schedule I, which is -- follows it, is a
7 form of release by the owner. And so -- so, you know,
8 I'm trying -- want to explain how this agreement came
9 to be and what the parties were trying to accomplish
10 and -- and -- and factual background of how we came to
11 have these different portions of the land. So -- so
12 the best way to do that is if we could go to PDF
13 page 22, please. And this -- just scroll down a little
14 bit. Yeah.

15 So this is Schedule D to the land use agreement.
16 And -- and what it is is it's -- the background of this
17 agreement was that there -- there's really two factors.
18 And the first one is that -- that in the Surface Rights
19 Board proceeding in 2003 -- this is Camino Industries
20 now and then the landowners -- they're -- Camino
21 Industries undertook to cooperate with land development
22 issues, and -- and the relocation of the road was a
23 major issue in 2003 before the Surface Rights Board,
24 and they undertook to cooperate. And so -- and, in
25 fact, it took some -- it took some doing, but they
26 actually ended up cooperating in a major way. And

1 that's -- that's how we -- that's how we came to have
2 this agreement.

3 So -- so in May of 2007, which is about four years
4 after that hearing, the landowners were approached by a
5 company called Copperwood Development Corporation, and
6 Copperwood Development Corporation was seeking to
7 purchase quite a large tract of land in the area, most
8 of the undeveloped areas of the home quarter where the
9 wellsite is, all of the adjacent quarter to the east
10 that's shown just to the right across the road, and
11 then -- these are the areas coloured by a gold colour,
12 a copper colour in this -- in this schedule, plus
13 numerous lands, several quarter sections owned by the
14 Dorins' neighbours. And so -- so it was quite an
15 involved deal. The -- they -- all the lands from all
16 the people had to be purchased, and they needed to
17 maximize their -- the area which would be -- which
18 would be developed for residential and a world-class
19 36-hole golf course designed by Gary Player, a famous
20 professional golfer.

21 So -- so long story short is we had the issue of
22 the temporary roadway, which is shown in blue, and
23 that, for clarity, is the east-west access road, and
24 the purchaser, Copperwood, they wanted to purchase that
25 road area but not the wellsite. And so the -- the area
26 shown in white here, which is the -- labelled as "oil

1 lease plus wellhead", plus the area north of it in
2 white either are no longer owned by the Dorins or are
3 supposed to be subdivided off 20 acres around the
4 Dorins' residence, including the wellsite to be
5 retained by the Dorins.

6 So the key issue for Copperwood, the purchaser,
7 was that -- you know, being able to squeeze as many
8 lots in here. And they didn't want -- also didn't want
9 pipelines or anything like that. There was no
10 pipelines ever attached to this well, and they didn't
11 want the -- you know, a pipeline being built in --
12 across where it would -- where it would interfere with
13 land development.

14 So -- so prior to signing the agreement with
15 Copperwood, you know, there -- there was a problem for
16 the road. So we approached Camino, and we said, you
17 know -- you know, Are you willing to move the road?
18 And so after a few weeks of talks, they finally agreed.
19 And so -- so we did agree, but the problem was -- is
20 that Camino didn't keep its end of the bargain fully.
21 And so a few months later, this became a problem with
22 the buyer, and so we had to come up with this land use
23 agreement to try to salvage this deal. And so in
24 essence what happened is we agreed to -- to set out a
25 road map to -- to establish a second access and a new
26 location to the wellsite shown by the two areas in red.

1 And the one -- there's a Number 1, and that was the
2 preferred route, and that's at 12th Street at an angle
3 to the wellsite; and the other one was through the
4 landowner's driveway, Route Number 2.

5 And so the -- the agreement made was that
6 we would sign the -- the Schedule H lease for either
7 one of those roads or the other after we worked that
8 out with the Town, and then the landowners would
9 provide a release for the temporary roadway, and we had
10 checked this all out. There's a -- there's a --
11 there's a document that I've filed, Exhibit 58.01,
12 PDF page 162. It's called -- it's a guide. It's a
13 guide to certification and -- of wellsites and stuff,
14 and it deals with multiple access roads. So -- so, you
15 know, I had discussed this extensively, particularly
16 with Ms. Darlene Howat of Alberta Environment. We
17 spent weeks and weeks discussing this in 2007, how we
18 could get this done, and we were told that, you know,
19 the best way to do it was to establish two access
20 roads. And so the landowners provided the release, and
21 so that's what happened. So -- so that's sort of how
22 it came to be.

23 So if we could just scroll ahead quickly to -- I
24 think it's page -- I believe it's page 26 on this
25 exhibit. Yeah. This is the first page of the surface
26 lease and grant agreement, and this is just -- next

1 page, please. This is the agreement for the
2 north-south access road.

3 Next page, please. I just want to show that it's
4 been executed here by the parties. You can faintly see
5 that the lessee is Camino Industries there. You can
6 faintly see that their corporate seal has been applied
7 over it.

8 The next two pages are the affidavit of execution.
9 Mr. Tony Waddell of Britt Land Services was sent out
10 by -- by Camino. I -- I negotiated all this with a
11 person named Dayna Morgan, who's with Britt Land
12 Services on behalf of Camino, and we spent months
13 negotiating this agreement. So this all executed.
14 Affidavits of execution.

15 Next page, please. Just keep going, and we'll
16 come -- there's the -- this is the -- the plan of
17 survey showing what portion of the land's been leased.
18 And that's how we came to have the north-south access
19 road.

20 So if we go to the next page, please, we will see
21 that this is Schedule I. This is the -- this is the
22 form of release. So -- so what the parties were doing,
23 for clarity, is we -- we negotiated all these
24 agreements, what would the verbiage be; and when the
25 time comes, we'll attach them all; and when the time
26 comes, they're going to be executed.

1 And so -- so the -- on Valentine's Day,
2 February 14th, 2008, Mr. Waddell came out and the --
3 Herman and Shirley Dorin executed these agreements.
4 Some of them had been previously executed already by
5 Camino. The -- the north-south access road lease was
6 not. It was not executed by Camino until after the
7 surveys were done. Both surveys were done on February
8 29th, 2008. And one of them is now attached to the
9 reclamation certificate.

10 So -- so that's the form of release. And I wanted
11 to, you know, note it says "Schedule I" at the top. It
12 actually has the incorrect date there of 2007 because
13 it was negotiated in 2007, but it wasn't signed until
14 2008. And so -- and now we can go -- so, you know, we
15 can find this, you know, in the -- I think it's
16 Exhibit 04.05. Just -- I'm a little bit lost here on
17 my exhibit numbers. Just give me a second.

18 Yeah. I think if we go to -- switch back to
19 Exhibit 36 -- well, this is it. Sorry.
20 Exhibit 4.05 -- 04.05, I believe it is, pages 12 to 16.
21 Yeah.

22 So -- so here we have the -- the actual signed
23 form of release, and we can see that it's been signed
24 by Tony Waddell as witness, Herman and Shirley Dorin,
25 on February 14th, 2008, and that -- that "7"'s been
26 crossed out, and there's an "8". And I want -- please

1 note that it still says "Schedule I" at the top, "Form
2 of Release".

3 So the second page should be -- you know, it -- it
4 described -- the first page describes the 1.03-acre
5 area, says it's associated with the right of entry
6 order, and it's more accurately shown in red on the
7 attached page. So -- so that's the -- that's the
8 release, and that's -- so -- so what happened is that
9 from that point on -- so we can sort of maybe exit out
10 of this exhibit, and, you know, I'll just sort of
11 explain what -- what happened after that.

12 So now we're in -- we're in roughly March or April
13 of 2008. The wellhead was abandoned by Camino. They
14 had -- they had promised to do it the previous summer
15 but didn't. That's one of the reasons why we entered
16 into the land use agreement. And the -- the terms and
17 conditions of this agreement were that -- that Camino
18 would apply for a reclamation certificate for the red
19 area shown, the 1.03-acre east-west access road; that
20 Camino would apply for partial termination of the right
21 of entry order once the reclamation certificate was
22 obtained; and that the -- the reclamation of the lands
23 would be essentially done in two -- in two phases:
24 first, the east-west access road and then later the
25 wellsite. The wellsite was to be reclaimed and -- and
26 an application go in for that to be certified as

1 reclaimed no later than two years from the date of the
2 land use agreement or by February 14th, 2010.

3 So at this point in time, Ms. Morgan of Britt Land
4 Services told me that Abandonrite had applied for the
5 reclamation certificate for the east-west access road.
6 I had -- I had assisted in that application working
7 with Ms. Darlene Howard [sic] because the application
8 form didn't deal with, you know, the -- Camino had to
9 make a lot of representations it couldn't make because
10 we were releasing them. And so we sorted all that out,
11 what -- what portions of the application form to cross
12 out and all that, and -- and I was heavily involved.
13 And then at that point, I more or less left Camino
14 alone to do what it had contracted to do.

15 And so time went by. Nothing happened on the
16 wellsite. There was no entries whatsoever by Camino.
17 Two years went by. I tried to contact Camino. They
18 were unresponsive. And so I -- I contacted Ms. Dayna
19 Morgan of Britt Land Services, who was their agent, and
20 she advised me she felt that she had heard -- she told
21 me that perhaps the well had been sold, that Camino had
22 sold some stuff to Midway Energy Limited. Midway
23 Energy was later purchased by Whitecap -- amalgamated
24 into Whitecap; they're one and the same. So I did
25 contact Midway, and I did give notice -- formal notice,
26 as required under the land use agreement, that they

1 were in breach of that agreement.

2 So once I -- Whitecap wasn't very interested when
3 I first -- sorry. Midway -- or doesn't matter --
4 wasn't very interested. When I first contacted them,
5 they didn't even seem to know they had this site. And
6 then once I gave notice, that sort of triggered some
7 action. And I gave notice they're in breach of the
8 land use agreement, and then this sort of what I'll
9 call "finger pointing" started.

10 Midway says, Well, Camino's responsible. Mr. Tim
11 Reeve of Camino said, Well, I'll run right out quickly
12 and clean up this site. And Midway said, No, you
13 won't; it's our site now, et cetera. And -- and a lot
14 of problems started at this time.

15 So -- so that pretty much wraps up the -- the
16 facts of how we came to have these different four --
17 what Whitecap calls -- discrete portions of the land,
18 being the wellsite, the east-west access road -- both
19 those two areas are covered by the right of entry
20 order. Then we have the workspace or the additional
21 strip fenced by Camino, and then we have the
22 north-south access road that was leased. I want to
23 stress that at no time did anyone from any company, any
24 well licence ever use the north-south access road.
25 They never did. And so it was never entered upon.
26 But -- but we do disagree with the statements in the

1 application that it was only surveyed. I think the
2 facts show otherwise.

3 The next thing I want to deal with is a lot of
4 events that happened in the summer of 2011 associated
5 with the re-abandonment of the well and some other
6 things that happened, and these have relevance in terms
7 of the 2008 release.

8 So the first thing that happened is that Midway
9 failed to apply to the Surface Rights Board to have the
10 right of entry order amended to reflect Midway as the
11 operator or applicant named in that order. So just for
12 clarity, when land rights are acquired by surface
13 lease, most of those have assignment clauses in them.
14 In other words, the -- the lessor, the landowner,
15 pre-consents to transfers of the agreement from oil
16 company to oil company in the future. There's -- so --
17 so that's just done by pre-consent. But Surface Rights
18 Board right of entry orders aren't like that. So
19 the -- when the well licence transfers and a new
20 company wants to take over, they need to apply to have
21 the right of entry order amended so that they have a
22 formal legal right to use the area covered by that
23 right of entry order for the purposes set out in the
24 right of entry order, in this case, drilling of a well,
25 tank stations, and structures.

26 So Whitecap -- Midway failed to make the

1 application and had told me that they did make the
2 application, but I went into the Surface Rights Board
3 and looked at the file, and there had been no
4 application made. So -- so we were having a problem,
5 so I applied to the Surface Rights Board to have the
6 right of entry order amended to reflect Midway as the
7 operator. And at that point, the Surface Rights Board
8 ordered Midway to make an application to become the
9 operator. And -- and Midway did so, and so did
10 Whitecap later on at least three, maybe four occasions.
11 It's not really that important. What is important is
12 that each time they applied, the applications were
13 rejected by the Surface Rights Board administration for
14 incompleteness.

15 So eventually in 2014, relying on the well
16 licence, the Surface Rights Board did amend the right
17 of entry order to name Whitecap in 2014.

18 Moving back to the summer of 2011, that's --
19 that -- I was dealing with Midway on that, had filed
20 several applications with the Surface Rights Board,
21 including the one I just said, and -- and Midway
22 advised me that, you know, what I was not aware of is
23 that the reclamation certificate for the east-west
24 access road that's dated November 4th, 2008, had
25 actually been issued. The landowners did not receive a
26 copy, at least not that I was aware of. So we didn't

1 know that it had been issued. And -- and I had already
2 filed some applications with the Surface Rights Board
3 saying that -- you know, incorrectly stating there was
4 no reclamation certificate. So I had to make some
5 changes there.

6 So -- so meanwhile, I -- I -- I had raised
7 concerns with the former ERCB with Mr. Bill Starling in
8 particular of the Red Deer field office. Tim Reeve,
9 the president of Camino, was a welder, and he had -- he
10 had done the cut and cap on the -- on the wellbore
11 himself, and he had his own backhoe out there, and he
12 was out there for quite some time, and I was quite
13 concerned. Camino had told me when we were working
14 through all this that they had never abandoned a well
15 before, and they'd never done any site cleanup. This
16 was their first time. It shows.

17 So, in any event, I was concerned that the cut and
18 cap had not been done properly, so I expressed that to
19 Mr. Starling, and Mr. Starling of the ERCB ordered them
20 to produce their records. And they had no records,
21 and -- and you must keep records. So -- so they were
22 ordered to go out and excavate the -- the wellbore.
23 And that was scheduled for August 23rd, 2011. And that
24 actually occurred on that day.

25 But leading up to it, the issue arose as to, you
26 know, now we know that this east-west access road is

1 certified as reclaimed. There's a reclamation
2 certificate, and that's been done by way of a new road
3 put in -- north-south access road put in, or at least
4 an undertaking to use that road in future, as well as
5 the 2008 release.

6 And so -- so I said to, you know, Midway, If you
7 go in on the east-west access road, you're going to
8 have to get this recertified as reclaimed. And I -- so
9 I checked that out. I -- I contacted Mr. Dinwoodie in
10 particular this time of Alberta Environment. We
11 discussed that in detail. I've produced those emails.
12 And that's -- that's produced at Exhibit -- now --
13 anyways, it's in a reply submission. So I think it's
14 at Exhibit 58.01, PDF page 80, I believe.

15 So Mr. -- Mr. Dinwoodie undertook -- offered to
16 email Midway and explain that if they were to reenter
17 upon the previously certified access road, that that
18 would trigger a need to recertify it and that, in those
19 circumstances, the 2008 release would not be able to be
20 applicable, and the -- the land would have to be
21 physically reclaimed.

22 And so then what also occurred is that I also
23 applied -- as I previously mentioned, applied to the
24 Surface Rights Board to have the right of entry order
25 partially terminated as to the certified east-west
26 access road, and Whitecap objected. So Whitecap told

1 the Surface Rights Board the same thing as
2 Mr. Dinwoodie explained to Whitecap. And so I had
3 raised a concern with the Surface Rights Board, is if
4 the right of entry order was not partially terminated,
5 that the 2008 release could potentially be used again
6 in future as it is being used now by Whitecap. And
7 Whitecap said, No. That's not true. That was their
8 written submission to the Surface Rights Board. That's
9 not true. We cannot use this release. And so we would
10 have to get a new release from the Dorins, or we would
11 have to reclaim that road.

12 So -- so those are the facts. We say that there's
13 a dual confirmation, what I'm calling the "Dinwoodie
14 decision", and confirmed by Whitecap that -- that the
15 2008 release would not be used in future.

16 THE CHAIR: Mr. Dorin, we're about --

17 MR. DORIN: Yes.

18 THE CHAIR: -- we're roughly an hour in,
19 and --

20 MR. DORIN: Yes.

21 THE CHAIR: -- I just wanted to check in
22 with you. Do you -- and I'll also look at our court
23 reporter. Are you good --

24 MR. DORIN: Yes, ma'am.

25 THE CHAIR: -- to keep going for the rest
26 of your time -- I think you've got another half hour to

1 40 minutes or so -- or do you want to take a break now?

2 MR. DORIN: Madam Chair, if I may, I'm
3 going to suggest that I continue, and here's why: I'm
4 probably going to be done early, Madam Chair. So I'm
5 coming to the -- probably to the last part to wrap up
6 because these are the main facts already that I've
7 covered. So --

8 THE CHAIR: Okay. I'm fine with that.

9 MR. DORIN: -- that would be my respectful
10 submission, ma'am.

11 THE CHAIR: Yeah. If our court reporter
12 is good to keep going, we'll do that. Okay. Thank you
13 very much.

14 MR. DORIN: Thank you.

15 All right. So -- so essentially what happened --
16 I want to cover what happened because the official date
17 of abandonment of the well is August 23rd, 2011. So I
18 briefly want to go over that. And -- and leading up to
19 that, this was -- this was how we came to discuss, you
20 know, whether or not this release could be used in
21 future. But I do want to deal with some other
22 reclamation facts that occurred on that day.

23 So -- so Mr. Kolochuk is the land manager of
24 Whitecap, and he told me that they had the Phase 2
25 abandoned rights environmental site assessment, but we
26 were not given a copy. And at the time, we had

1 contracted with Bethany Care Society to subdivide and
2 purchase the lot immediately north of the wellsite and
3 sell it to Bethany Care Society, but it was up to the
4 Dorins to actually get that subdivision done. And
5 Herman Dorin had applied to the Town of Didsbury
6 Subdivision Authority to subdivide that lot.

7 That application was -- "denied" is not the right
8 word. They said they couldn't approve it. It was sort
9 of put on hold. And the reason was the well had not
10 been, despite being subsurfaced, abandoned in March of
11 2008, three years earlier, and surface abandoned just
12 after that by Mr. Reeve, Camino had neglected to list
13 the well as abandoned or apply to have the status of
14 the well changed at the ERCB, now the AER, from
15 "suspended" to "abandoned". So the well was still
16 listed as a "suspended", meaning that there's a
17 hundred-metre setback from it which extended onto the
18 Bethany lot, and then the Town was precluded by law
19 from -- from being able to subdivide. So the -- the
20 application was put on hold.

21 So the -- the deal was -- is -- on August 23rd,
22 Mr. Kolochuk told me that they're going to go into the
23 wellsite -- they have to check the cut and cap
24 anyway -- and there's a small amount of
25 salt-contaminated soil just right beside the wellhead
26 area somewhere -- we don't have a Phase 2 yet, as the

1 Dorins -- and that they're going to remove that
2 contaminated soil, and we can get a reclamation
3 certificate.

4 So -- so I received a phone call on that day, on
5 that morning, and I was in my Edmonton office, and
6 Mr. Kolochuk of Midway, the land manager, called me,
7 and I went into my employee's office, and there's two
8 employees listening. And I said, Mr. Kolochuk, you're
9 on speakerphone. He said he didn't care. And he
10 proceeded to tell me that -- that -- first of all, that
11 the 2008 release covered the entire wellsite and that
12 they didn't have to do anything. And I said, I'm
13 sorry, sir. That's incorrect. It only covers the
14 access road. And then he said, Well, you know, if you
15 don't release us from reclaiming the wellsite, we're
16 not going to apply. We'll just leave the well as a
17 "suspended", and, you know, if there's a setback, it
18 will cost you that land sale. And I said, Well, I've
19 already applied to the ERCB yesterday. I made a quick
20 application, and they relaxed the setback to 75 metres.
21 And so nice try, essentially.

22 And then he said, Well, you know, you don't get
23 annual compensation. He said, So, you know, if you
24 don't release us for the entire wellsite, we will just
25 drive out of here. We'll -- we'll check the cut and
26 cap. We won't take the salt-impacted soil out, and

1 we'll never reclaim this site, and we'll never apply
2 for a reclamation certificate, and you guys will be
3 stuck with this until the end of time. So -- so
4 that -- you know, there was a threat made. The Dorins
5 were extorted. At that point, all I can say is they
6 picked the wrong guy. So that is factual. There's
7 affidavits filed about that. They were filed with the
8 AER at the time or the ERCB at the time, and they're in
9 the Licence 65135 file.

10 So moving forward, quite a few years -- years went
11 by. I -- I told Midway that -- that Camino had done
12 some work with the abandoned right. Maybe they should
13 hook up. You know, Whitecap sold out to -- Whitecap
14 bought Midway. I called Whitecap. I recommended that
15 they not buy Midway and that they not touch anything
16 remotely connected to Camino. I spoke with Whitecap
17 people about that extensively. They chose to purchase
18 the site anyway. I advised Whitecap -- because all the
19 Midway employees left -- they didn't know what was
20 going on -- that abandoned right had been involved and
21 that they could, you know -- there was some work done.
22 They weren't aware of what had occurred on the site.
23 The records apparently weren't very good, so I advised
24 them of all of that.

25 Moving forward, you know, they did their work on
26 the site and eventually filed the application, and so I

1 filed a statement of concern. I was very busy on
2 another matter. I was involved in a Alberta Utilities
3 Commission hearing on some -- on an important matter in
4 Edmonton. These things often overlap, so it was very
5 difficult for me to crank out the statement of concern
6 within the allotted time. I did ask for an extension,
7 but I did not hear from the AER about whether I would
8 be granted an extension. So I had to sort of do it on
9 the last day. The AER is often not very responsive.
10 It's a problem, especially when there's public safety
11 concerns. It's a big problem.

12 I filed a statement of concern. And then, you
13 know, I filed the March 1st letter and inquiry, and
14 I've already discussed that. So -- so I got a copy of
15 the SIR, and, you know, filed our documents, tried to
16 advise everybody what was going on with the right of
17 entry order. I probably should add that I did speak
18 with Mr. Dunkle, the person -- before -- before
19 Whitecap applied. I -- you know, I asked for a
20 heads-up to be given on this site because it's a bit
21 unusual. And so he was kind enough to speak to me
22 ahead of time. And I did speak to someone else at the
23 AER about it ahead of time. I want to add that in.

24 I -- I think about the last thing I probably want
25 to talk about is the events on or about May 27th of
26 2019. Whitecap advised me by email that they would be

1 coming out the next day to remove the fence. This
2 is -- this is after the SIR request was issued, but
3 before Whitecap responded on May 31st with their SIR
4 response. And so I think -- I -- I don't actually
5 remember. I think my mother phoned me at the office
6 and said there was someone out at the wellsite. So I
7 went over with my father, and the surveyors were there,
8 and one of the soil consultant gentlemen were there,
9 and I was told that they -- there were survey stakes
10 there. My recollection was there was none along the
11 access road, only the wellsite. There was clearly
12 survey stakes where the boundary of where the wellsite
13 is, and this fence off to the south was clearly
14 off-site, and -- which I already knew.

15 But I said to the surveyor, you know, That fence
16 was installed by trespass. That's -- that's trespass
17 out there, isn't it? And he said, Obviously. So --
18 so, anyway, I was told that -- that they had phoned the
19 RCMP and that the RCMP was going to be there the next
20 day to remove the fence.

21 So Whitecap's evidence is that I was a bit
22 unfriendly, and I'll admit to that. You know, I was
23 pretty much losing patience at this point in time. You
24 know, in our view, absolute incompetence of -- of -- of
25 Whitecap people.

26 So -- so, anyway, when someone says they're going

1 to get the police and remove -- and -- and take your
2 personal property, you know, they better expect someone
3 to -- to react to that. So I -- I did. I did. I went
4 to the police station -- gathered up my right of entry
5 order, went down to the police station, spoke to the
6 corporal, had a little trouble getting in there. The
7 guy at the gate didn't want to do anything, but I think
8 the corporal overheard, and, you know, he knew that
9 this was going on the next day. So I met with him. We
10 looked at the right of entry order. He agreed with me
11 that -- that the landowner's in charge of fencing and
12 that, you know, there's a -- there's an order about
13 fencing. And so they assured me they would not show up
14 the next day. And they assured me that they would
15 contact Whitecap. And they assured me that -- that
16 they would tell Whitecap that if there was any, you
17 know, attempt to remove Dorin property, that they would
18 be charged with mischief.

19 So I think -- the only last thing I want to say is
20 that I did -- there's been almost no communication
21 between Whitecap and the Dorins other than by email.
22 There's -- there's been no meetings between landowner
23 and operator personnel over the 45-year history other
24 than a couple times out on the -- on the wellsite. I
25 was invited to Calgary -- and did go to Calgary -- by
26 Whitecap. I appreciated that. I can't remember

1 exactly when it was. It was right after Whitecap took
2 over. I met with Mr. Lebsack I was supposed to meet
3 also with the operations manager. We didn't resolve
4 anything. They more or less expressed they weren't
5 familiar with urban sites, and then they lawyered up.
6 And that is the last -- that's the only -- the single
7 only time we ever met face-to-face across the table.

8 So I don't think -- I think that pretty much wraps
9 it up, Madam Chair. I'll put my representative hat
10 back on and say that that -- that's the extent of the
11 Dorins' summarized direct evidence in this matter.

12 THE CHAIR: Thank you very much,
13 Mr. Dorin.

14 (WITNESS STANDS DOWN)

15 THE CHAIR: So I think what we will do
16 now -- we have a break scheduled for between your
17 direct evidence and then cross-examination. So we'll
18 take that break now. By my phone, it's 10:31, so why
19 don't we come back here at 10:50. So at ten minutes to
20 11, we will all be back in the virtual hearing room.

21 And my other Panel Members, we can exit through
22 our breakout room.

23 I think I need one of our hearing coordinators to
24 send us to our breakout room or invite us to the
25 breakout room. Otherwise our only other option is to
26 leave the meeting, it looks like.

1 (ADJOURNMENT)

2 THE CHAIR: So I'm just scanning to be --
3 it's always -- one of the disconcerting things about
4 doing these Zoom hearings is that every time anybody
5 does some -- adjusts their -- their camera, everybody
6 moves. So making sure that everybody that you expect
7 to be on the screen is back on the screen always is a
8 bit of a search. There we go.

9 So I do see Mr. Dorin, and I do see Mr. Naffin and
10 Mr. Myers and my co-panelists and our co-counsel, ERG's
11 counsel. So I think we are ready to go.

12 So, Mr. Dorin, I'll just remind you that you are
13 still -- in your capacity as a witness, you're still
14 under oath. I don't think we need to redo that unless
15 you would like to.

16 And, Mr. Naffin, Mr. Myers, I don't know which one
17 of you is taking the lead on this, but Mr. Dorin is now
18 available to you for questioning.

19 Mr. Naffin Cross-examines Mr. Dorin

20 MR. NAFFIN: Thank you, Madam Chair. I'll
21 be attending to the cross of Mr. Dorin this morning.

22 Q MR. NAFFIN: Mr. Dorin, can I have you turn
23 to your CV, which is at Exhibit 62.02, please.

24 MR. NAFFIN: And Mr. Lung or Ms. Turner, if
25 you'd like to bring that up, you can, but I'm not sure
26 that it's necessary, strictly speaking.

1 Q MR. NAFFIN: And, Mr. Dorin, if you could
2 let me know --

3 A MR. DORIN: Thank you. Yes.

4 Q We're there?

5 A We're there. Yes. Go ahead.

6 Q Great. Thank you, sir.

7 And, Mr. Dorin, can you confirm for me that
8 your --

9 (SIMULTANEOUS CROSS-TALK)

10 MS. TURNER: Okay.

11 THE COURT REPORTER: Excuse me. I'm having some
12 cross-talk --

13 MS. TURNER: Just on that one.

14 THE COURT REPORTER: Ms. Turner, is that you? I'm
15 not sure.

16 THE CHAIR: I'm really sorry to interrupt,
17 Mr. Naffin, but we seem to have some cross-talk going
18 on here, and which then makes it challenging for the
19 court reporter. So if everyone can make sure you're on
20 mute except for Mr. Naffin and Mr. Dorin when you need
21 to speak.

22 Okay. Let's try that again. Sorry for the
23 interruption.

24 MR. NAFFIN: No. That's okay. Thank you,
25 Madam Chair.

26 Q MR. NAFFIN: Mr. Dorin, can you confirm for

1 me that your formal education consists of a high school
2 diploma from Didsbury High School in 1976?

3 A MR. DORIN: Yes.

4 Q Thank you, sir.

5 And, Mr. Dorin, you're not a lawyer; correct?

6 A No, I'm not.

7 Q And, Mr. Dorin, you're not a professional agrologist;
8 correct?

9 A No, I'm not.

10 Q And, Mr. Dorin, you're not a licensed land agent;
11 correct?

12 A No, I'm not.

13 Q Thank you, sir.

14 And, Mr. Dorin, you have no specific education or
15 accreditation regarding soils or soil contamination or
16 remediation; correct?

17 A I learned everything I want -- ever want to know about
18 soil contamination in this matter. No, I don't have
19 any formal education.

20 Q Thank you, sir.

21 And, Mr. Dorin, if we look at paragraph 1 of your
22 CV, you indicate that you "negotiate land entry
23 agreements and compensation settlements for clients";
24 correct?

25 A That's correct.

26 Q And, Mr. Dorin, my understanding is that you charge a

1 fee for your services in that regard; correct?

2 A Sometimes. Not always.

3 Q Thank you, sir.

4 And, Mr. Dorin, under "Skills", you've
5 referenced -- and we're, again, on page 1 -- that you
6 "are specializing in reconsideration of administrative
7 decisions"; correct?

8 A Correct.

9 Q And, sir, when we see your letterhead for Dorin Land
10 and Oilfield Management Inc. throughout your written
11 submissions and correspondence in this proceeding, the
12 bottom of your letter has your -- what I would call a
13 "motto" or words to that effect on the bottom that say,
14 "Reconsiderations, regulatory, surface rights";
15 correct?

16 A (NO VERBAL RESPONSE)

17 Q Sorry, Mr. Dorin. If you answered the question, I
18 didn't hear you.

19 A I did say "correct". I'm sorry.

20 Q Oh, I'm sorry. Maybe it's on my end.

21 A I'll try to speak up.

22 Q No, it's okay.

23 A I'm sorry.

24 Q So essentially, Mr. Dorin, my understanding is that you
25 and your company operate as paid advocates for
26 landowners opposite the Alberta energy industry;

1 correct?

2 A That's part of what I do with that company. I also
3 manage lands for -- for clients that -- that are
4 impacted by energy activities and -- especially in
5 urban areas. So -- so I manage the whole thing. So if
6 that requires a reconsideration, then that's what it
7 requires, et cetera.

8 Q Sure. And, sir, your clients are landowners; correct?

9 A My clients are landowners, yes, indeed.

10 Q Right. And you don't work for energy companies, do
11 you, sir?

12 A Not normally. I have worked with some people that are
13 interested in doing energy-related things, et cetera,
14 although I would not represent them in a proceeding or
15 something like that. But I do -- you know, I have
16 definitely had clients that are interested -- for
17 example, I'm dealing with someone right now that's
18 interested in trying to get a source of -- of gas to
19 deal with, you know, purchase inactive wells, that sort
20 of thing, people that have contacted me. So I've given
21 some guidance in some of those regards.

22 Q That is fine, sir.

23 My understanding is that in this proceeding,
24 you're representing your parents, Herman and Shirley
25 Dorin; correct?

26 A And myself. I'm the land occupant. So yes, that's

1 correct, but I'm also representing myself because I
2 have an option to purchase this particular portion of
3 the land, and I am the -- the lessee, the legal land
4 occupant of the -- the land as well.

5 Q Sure. But, sir, you filed a number of written
6 submissions and correspondence on behalf of both
7 yourself and your parents; correct?

8 A That is correct.

9 Q And your parents didn't author any of the materials
10 that form your written submissions in this proceeding;
11 correct, sir?

12 A No.

13 Q Sorry. Was that "no"?

14 A No, they did not author any of the written
15 proceedings -- written materials. I would say my --
16 you know, I did file an affidavit for -- that was, you
17 know, sworn by each of my parents, so -- so, you know,
18 what's --

19 Q Yeah. What I'm getting at, sir --

20 A -- in an affidavit, I did not author that.

21 Q Sorry, sir. I keep thinking you're done, and then I
22 cut you off.

23 What I'm getting at, sir, is that you authored the
24 written submissions that were filed as part of this
25 proceeding; correct?

26 A That is correct, yes.

1 Q Thank you, sir.

2 MR. NAFFIN: Thank you, Madam Chair. Those
3 are my questions for Mr. Dorin.

4 THE CHAIR: All right. Thank you. A
5 little shorter than your estimated 45-minute time.

6 So that would bring us to AER staff questions.

7 Ahead of when you expected, but, Ms. Mosher, are you
8 ready to proceed?

9 MS. MOSHER: I'm ready to proceed, yes.

10 THE CHAIR: Okay. Thank you. Please go
11 ahead.

12 Alberta Energy Regulator Staff Cross-examines Mr. Dorin

13 Q MS. MOSHER: All right. Mr. Dorin, so
14 just -- just to make sure we're familiar with each
15 other, my name's Lindsey Mosher. I was introduced at
16 the start of this proceeding. So I'm here as counsel
17 for the Panel. What that means is that my role isn't
18 to advance a specific position on this regulatory
19 appeal. My role is to assist the Panel. So the
20 questions I'm going to be asking today are intended to
21 try to make sure that the record before the Panel is
22 complete as it can be on the issues that they will be
23 deciding. So if -- when I have questions for you
24 today, they're just going to be trying to make sure
25 that we all have a clear picture of what we're looking
26 at here. So if they seem a little straightforward,

1 forgive me. Sometimes the trickiest details just need
2 to be -- need to be set out as clear as they can.

3 A MR. DORIN: Understood, ma'am.

4 Q So what I'd like you to do is to go with me to
5 Exhibit 4.05. That's the reclamation certificate
6 application correspondence, the detailed site
7 assessment.

8 A Yes.

9 Q And so then on PDF page 49, it's titled "Reclamation
10 Certificate Application, Correspondence, Detailed Site
11 Assessment"?

12 THE CHAIR: I'll just ask -- can we get
13 that up, perhaps, on the screen for everyone to see,
14 Mr. Lung.

15 A MR. DORIN: Could you repeat the page,
16 please, ma'am.

17 Q MS. MOSHER: It's PDF page 49.

18 A 49.

19 Q So you might need to type in --

20 A Yeah. I'm on -- I'm on it on my copy, and I believe we
21 have the same on the screen now. Yes.

22 Q So if you scroll down, you see the diagram there? Are
23 we on the same page?

24 THE CHAIR: I noticed that in some of the
25 exhibits, the page -- the PDF page numbering was off,
26 sometimes by a page, in a couple of instances by -- by

1 ten pages.

2 MS. MOSHER: Yeah. Host, you might need --

3 yeah, there we go.

4 Q MS. MOSHER: So it's PDF page 49 of 104,
5 but it's listed as "page 48", taking the table of
6 contents into --

7 A MR. DORIN: So it's the site diagram,
8 nevertheless, ma'am; is that correct?

9 Q That's correct. That's --

10 A Yeah. And then I -- I -- I do know it, yes. So I am
11 on it now. Go ahead.

12 Q Perfect. Thank you.

13 So it sounds like you're going to confirm that
14 we're on the same page for me because it's down on that
15 lower two-thirds of that page. There's the diagram,
16 and it includes some fencing.

17 A Yes, ma'am.

18 Q And so then I'd also like to take you to Exhibit 36.04.
19 That's your photo evidence exhibits from your argument
20 on the merits?

21 A Yes.

22 Q And then on PDF page 10 of that exhibit.

23 A Yes.

24 Q So you took us there this morning. It shows your
25 depiction of the fencing at -- near the wellsite?

26 A Yes, ma'am.

1 Q Okay. So those two diagrams, the one in Exhibit 4.05
2 and this one here, they don't perfectly overlap, but
3 I'm going to tell you what I think the differences are
4 and see if -- see if you've caught something I haven't.

5 What I'm seeing is that your diagram follows the
6 east-west access road farther to the east whereas on --
7 and on the DSA diagram, there's a straight line in the
8 north along the southern line of the chain-link fence
9 next to the Bethany Care home. And then also on that
10 DSA diagram, it's a straight line northeast adjacent to
11 the wellsite. And then on your diagram, the lines are
12 diagonal. Is that fair to say?

13 A You mean on the access road -- on the original
14 east-west access road?

15 Q As the fence is depicted on the diagram here in
16 Exhibit 4.05.

17 A M-hm.

18 Q Up at the north of that --

19 A Oh.

20 Q -- diagram, again, south of the Bethany Care home or
21 the old folks home, as I believe it's labelled in 4.05,
22 the chain-link fence there is depicted in a straight
23 line. If we --

24 A Ah. Ah. I -- I -- I -- I know what you're getting at,
25 I think. So the Bethany Care lot originally -- it's
not a straight line. The -- the -- the -- then the --

1 if you look on the -- one of the surveys that's
2 attached to the right of entry order, it actually shows
3 the Bethany Care lot overlapping the wellsite slightly
4 in a small triangular area in the northwest corner of
5 the wellsite. And that was the original lot
6 boundaries, but that -- the small overlap area that's a
7 triangular area was subdivided back out of Bethany lot
8 and amalgamated back into the Dorins' parcel because
9 Bethany Care Society didn't want anything to do with
10 the right of entry order. And -- and -- well, it's a
11 bit of a long story, but -- so that boundary actually
12 changed. So I've -- you're talking about my -- in my
13 Exhibit 36.04 -- it's called "Photo Exhibit 2D" on PDF
14 page 10 -- I've shown this in a red line with white
15 circles outlined in -- in red, and it -- it follows the
16 wellsite for a while, and then it kicks off a little
17 bit to the northeast. So -- so that is a fairly
18 accurate depiction of the lot boundary so -- compared
19 to the wellsite boundary. So it's common for a few
20 feet on the -- sort of to the west. It follows the
21 wellsite, and then it -- and then it digresses further
22 away from the wellsite.

23 Q Thank you. Thank you for --

24 A Does that answer your question, ma'am?

25 Q It answers part of it, yes.

26 A Yes. Okay.

1 Q Because that is one of the differences that I noticed
2 between those two -- these two diagrams.

3 A M-hm.

4 Q And so then the other -- the diagonal straight line
5 difference that I've noticed is that on your diagram in
6 36.04 on PDF 10, that line is also diagonal. I'm
7 holding my hand in front of my face at a diagonal --

8 A Oh.

9 Q -- in case that's helpful. But I just said that for
10 the -- for the court reporter there.

11 A Okay. I can't see you. So ...

12 Q On the -- on the right side or -- that is the east side
13 of the wellsite on your diagram, the line is red with
14 little 'X's, and it's at a north --

15 A Yes.

16 Q -- to east diagonal?

17 A That is a -- there was some -- some laneways around the
18 wellsite, if you will, or at least there was some
19 laneways within the wellsite at one time, and so that
20 diagonal red line is sort of -- it goes in a
21 northwest-southeast direction. That's off the
22 wellsite.

23 Q Perfect. Well, thank you for helping explain that.

24 And so then I'm going to go back to 4.05, the
25 diagram there, just to note that there is a diagonal
26 line at that northeast end of the wellsite; it also

1 looks to be a straight line.

2 A Right. I think that's the same fence, but it's -- it's
3 a bit diagonal.

4 Q Okay. That's --

5 A And I think if you --

6 Q That was --

7 A If you -- I did provide also in my Exhibit 36.04
8 some -- some -- some pictures in the wintertime that
9 show up the fence post quite well against the snow.

10 Q Thank you.

11 I just wanted to make sure we shared an
12 understanding that those two lines seem to be
13 indicating the same -- the same boundary, just one is
14 angled and one is straight?

15 A Right. And there is a -- there is a barbed-wire fence
16 that is just alongside of the Bethany Care Society
17 chain-link fence. I erected that when the lot was
18 under construction, and they built their chain-link
19 fence just on the side of it. And I -- I started to
20 remove that fence this summer, but I didn't get
21 finished, so -- so that was erected by me.

22 Q Okay. And is that depicted on your diagram?

23 A It is. It is.

24 Q Okay.

25 A On my diagram , it's just inside of the -- it's the --
26 it's the -- it's shown in a black line with little 'X's

1 just inside the -- the -- the line we discussed that's
2 red that has the red circles on it that kicks off on
3 the -- on the boundary of Bethany Care.

4 Q Thank you.

5 So that -- that leads me nicely into the next
6 place I want to go through this with you, is I just
7 want to -- well, let's -- we'll go mostly north to
8 south. I just want to make sure that I'm clear on what
9 all the different parts of the fencing are and what
10 type they are.

11 A Yes, ma'am.

12 Q So as you said, on your diagram, the chain-link fence,
13 it's in a red line with red circles?

14 A Yes, ma'am.

15 Q And that is the fence on the boundary of the Bethany
16 Care centre, and is that the Bethany Care centre's
17 fence?

18 A Yes, ma'am. It belongs to Bethany Care centre. They
19 erected it.

20 Q Thank you.

21 And then you've said on your diagram, immediately
22 south of the chain-link fence, it's a straight line.
23 It is a black line with little 'X's on. On your
24 legend, it says "Barbed-wire fence left in place".

25 A That's correct.

26 Q Is that the fence we were talking about that you've

1 said you've erected, or is that --

2 A I erected that when the Bethany lot was under
3 construction, and it -- it connects up to the fence
4 that's -- that -- that turns to the southeast and is
5 diagonal that's off-site that we previously discussed,
6 exactly where the little hand is now.

7 Q Okay.

8 A It connects with that fence.

9 Q Was there a fence there prior to when you erected --

10 A No, there was not.

11 Q Okay. Thank you.

12 And so then if we go -- let's go south of the
13 fence that you erected -- the barbed-wire fence you
14 erected. There's another solid black line with little
15 black 'X's inside the --

16 A Yes.

17 Q -- inside the blue box?

18 A Yes. And maybe someone could put a hand on it for
19 everyone. Yeah. That's -- that's the one you're
20 talking about?

21 Q That's the one I'm talking about. We're all following
22 the same --

23 A Yes. I testified -- my evidence on that was that that
24 fence was down in 2014, and I -- I re-erected it.

25 Q Okay. And that fence --

26 A So that fence was originally built by Camino.

1 Q Thank you.

2 So that fence goes with the wellsite? Is that
3 fair to say?

4 A In -- in my view, it was erected by Camino within the
5 wellsite. Yes.

6 Q Thank you.

7 And then we're going to follow -- we'll go all the
8 way down to the south, then. And we've got more
9 barbed-wire fence on your diagram; however, the line is
10 red. The little black 'X's, I understand that this is
11 the indication of the barbed-wire fencing that exists
12 over the additional strip of land to the south of
13 the --

14 A Yes. My evidence --

15 Q -- wellsite?

16 A My evidence was that -- the -- the chain-link fence was
17 originally along the blue line where there's no fence
18 shown now. It was removed in favour of this red
19 barbwire fence, which was pushed about 10-and-a-half
20 feet, 3.2 metres or so, off the wellsite. And that was
21 done by Camino in -- after they -- we -- we don't know
22 the exact date, ma'am -- after Camino took over the
23 well licence in 1995. I think that was in February of
24 1995. I believe it might have been February the 5th
25 that they amended the right of entry order.

26 Q Thank you.

1 And so then --

2 A Sometime after that. I'm -- we're not exactly sure
3 when, yeah.

4 Q No, that's helpful. Thank you.

5 And so then if we go to the west on your diagram
6 here, there is a dashed black line with little 'X's.
7 In your legend, it says -- that type of line is
8 described as "Barbwire fence removed".

9 A Yes, ma'am. Yeah. My evidence was -- I'm sorry. I --
10 maybe I interrupted you. But my evidence was that I
11 removed that fence line, and I did so in 2014. And I
12 guess related to that on -- on the proposed release of
13 Whitecap attached to their written submission, they
14 have a diagram up at the northeast corner of the
15 wellsite that says there's a pile of fence posts.
16 That's where those fence posts came from. Those fence
17 posts belonged to the operator, so I left them on the
18 wellsite, but I removed them.

19 Q Okay. So the fence itself is no longer there?

20 A That is correct, ma'am.

21 Q And so then let's continue to go to the west.

22 A Yes.

23 Q And there's -- there's two lines of -- straight black
24 lines with little black 'X's running north to south
25 right beside each other parallel.

26 A Yes.

1 Q Are both of those fences still there?

2 A Yes. The -- the most -- the westerly one on the site
3 boundary, more or less, is fallen. It's not -- there's
4 still some fence posts there, but all the wires are
5 down and have been for a very long time. That -- and
6 then just inside of it -- I believe the date was
7 November the 22nd, 2022 [sic], and I have it in the --
8 the video -- there's a video. My -- I gave it in
9 the -- exhibited in my evidence, and I could find that.
10 I just don't remember offhand which of the videos it
11 is.

12 So the inner fence of those two close together
13 parallel was erected by Whitecap on November 22nd,
14 2015, just prior to their starting some Cat work to
15 recontour the site.

16 So the -- to be clear, the fence that -- that --
17 the new stretch that they erected is barbwire. It's
18 the inner one. It goes the entire length of the west
19 site boundary, and then there's a gate. So it turns to
20 the east along the north boundary, and there's a gate
21 there that corresponds with where the north-south
22 access road comes into the wellsite. There's -- so
23 that's the new stretch that they erected.

24 And at that time, they also repaired somewhat
25 the -- some of the fence around, and they built a --
26 they built a gate across -- a wire gate across the

1 access road -- the east-west access road where it comes
2 into a wellsite. They erected a gate there at that
3 time as well.

4 Q Okay.

5 A I remember a big wide gate, wire gate.

6 Q Okay. Thank you.

7 So it looks to me that it has the little -- it has
8 this -- we're talking about the -- the interior line on
9 the west, so that fence -- that line looks relatively
10 continuous around the square of the wellsite to me. It
11 looks like --

12 A Yes, that's --

13 Q -- it goes across the front of the east-west access
14 road. Is that the gate that you just mentioned?

15 A Yes. There's a gate that goes across the east-west
16 access road area. So, you know, I didn't really show
17 the gate in my diagram, if you will. I just showed --
18 so -- so the -- correct. Correct, it would be a gate
19 at the -- on the eastern boundary of the wellsite where
20 the east-west access road enters it.

21 Q Okay. Thank you.

22 And then it turns into the -- to the solid red
23 line barbwire fence around the additional strip at the
24 south. It jogs --

25 A Correct.

26 Q -- back up a little bit to the north and continues to

1 the west?

2 A That is correct, yes.

3 Q And that fence is all in place?

4 A That is correct.

5 Q And then on the -- to the outside of that fence,

6 there's the solid black line with the little black

7 'X's. That's the -- the old fence, I guess we could

8 say, where -- is -- is that accurate?

9 A I don't know where you --

10 Q Oh, sorry.

11 A -- mean. Could you please repeat that.

12 Q So looking again at those two parallel north-south

13 lines.

14 A Yes. Okay.

15 Q We discussed the inside line --

16 A M-hm.

17 Q -- that's still in place. And then the outside line,

18 so the most exterior western line of fencing, that's

19 also still there; is that correct?

20 A It's still there, but it's laying on the ground. And

21 I -- I took a video of that. I walked along the entire

22 fence line of that north -- those two fences that are

23 close together there. And if you'll just give me one

24 second, ma'am, there is some evidence on that, and I --

25 I just don't recall the -- I have it written in my

26 notes here when I testified about that. And I'll try

1 to find that.

2 So that is Video Exhibit 36.06, at Minute 1. I
3 walk between those two close-together fence lines, and
4 I'm walking from the north to the south. And the --
5 the newly erected intact fence that's the innermost
6 line -- it's new, built by Whitecap -- is on one side
7 of me, and the broken, dilapidated fence line is on the
8 other side of me.

9 Q Thank you.

10 A There's still a few items left there on the landowners'
11 land. There's -- there's the -- there's the stack from
12 the production tank still there. A few other items
13 that were -- that were originally wellsite equipment
14 are, you know, pushed off the edge of the lease there
15 at that point as well.

16 Q Thank you, Mr. Dorin.

17 And then just -- I think we're at the -- we're at
18 the last bit of fencing shown on your diagram here, and
19 that is the -- this is all the way to the east. It is
20 the solid black line with the little black 'X's that
21 goes down the length of the east-west access road. And
22 so just to confirm, that fence is still there?

23 A Yes. There's a fence on both sides. I did also, you
24 know, provide some photos of that. According to
25 Whitecap's surveyors, some of that fence is, you know,
26 5 or 6 feet off of the right of entry order area on the

1 easternmost end on the southern fence. They had done
2 some stakes there and showed that it's somewhat off --
3 off-site.

4 But, yes, there's fence on both sides, and there's
5 also a Texas gate that I've shown with about four black
6 bars crossing the east-west access road that's --
7 that's somewhat in -- I don't know -- it's maybe a
8 hundred feet or so in from the county road there.

9 Q Okay. Thank you.

10 And so the fence on either side -- on both sides
11 of that east-west access road, that was installed by
12 either Whitecap or an earlier operator of the wellsite?
13 Is that accurate?

14 A Yeah. That -- that fence was installed when they -- on
15 the day -- that fence was installed on August 5th,
16 1977, the day that the well licence was issued and the
17 day that the right of entry order was issued.

18 Q Okay. Thank you for walking me through that --

19 A Dyco contracted a contractor that, contrary to the
20 Surface Rights Board's evidence, was not my father to
21 build a fence there.

22 Q Thank you, Mr. Dorin.

23 A Yeah.

24 Q I appreciate you walking through that with me.

25 A My pleasure.

26 Q So then I want to switch to a different exhibit now

1 just to make sure that I'm following some of the
2 statements I've heard. So if we could go to -- we
3 looked at this this morning. It's Exhibit 36.03, and
4 that's -- it's titled the "Dorin DE Documentary
5 Evidence Exhibits".

6 A Yes, ma'am.

7 Q And if we could go to PDF 23 of that. So this is --

8 A Yes.

9 Q So it's Schedule E to -- to Tab 1, which was the --
10 which was the land use agreement.

11 A Yes, ma'am.

12 Q So what I'm looking at here is the blue line that's
13 labelled in the legend in this map as the "Subdivision
14 Boundary".

15 A Yes. This is the -- this is -- this is part of the
16 option to purchase agreement proposed by Copperwood
17 Development, the golf course and residential land
18 developer, who -- who Herman and Shirley Dorin
19 contracted with to purchase their land, but the deal
20 was never completed.

21 Q Okay.

22 A This is the proposed subdivision. The blue line
23 outlines those lands that would have been retained had
24 this deal been consummated by the Dorins. It includes
25 the wellsite, but not the east-west access road, and
26 20 acres around their residence that would have been

1 retained by them. The remaining lands shown in green
2 or gold -- green denotes undevelopable lands down in
3 the coulee or a setback from the wellsite -- the
4 circular setback from the wellsite, and gold represents
5 developable land, and there was two different prices
6 offered.

7 Q Right.

8 A One price for developable and one for undevelopable.

9 Q Okay.

10 A So I think that is why -- that's what the blue line was
11 meant to do. And just to -- to clarify that the main
12 reason for the land use agreement was to try to salvage
13 this sale because the -- the road -- the -- the
14 Caminos -- Camino didn't keep its time frames to
15 abandon the well and -- and partially terminate the
16 right of entry order with the road. So we -- we came
17 up with this agreement to try to salvage the sale and
18 to keep -- Camino was afraid they were going to get
19 sued by the land buyer, and --

20 Q Right.

21 A -- we were afraid we were going to get sued by the
22 neighbours, and on -- on and on and on. So -- yeah.

23 Q Okay. No, thank you, Mr. Dorin. I've gone to this
24 because it was one of the clearer representations I
25 could -- of the Dorin lands within the context of some
26 of the surrounding area that I -- that I could point

1 to.

2 A Right. Although that --

3 Q And so --

4 A You know, the -- as long as we're clear on the facts
5 that that blue line, that subdivision never occurred.

6 Q No. I understand that.

7 A Yeah. It --

8 Q Thank you for confirming that for me.

9 THE CHAIR: Mr. Dorin, sorry to interrupt,
10 and Ms. Mosher as well. I'm going to suggest that -- I
11 know you've got lots of information to share, but maybe
12 just wait until you get the question because I don't
13 think we quite got there yet to find out what -- what
14 the question was for this particular exhibit.

15 MS. MOSHER: Thank you, Madam Chair.

16 Q MS. MOSHER: So, Mr. Dorin, where I was
17 going with this is: Understanding that this
18 subdivision never happened, is the area inside the
19 subdivision -- so it's in white; it's the portion of
20 the lands that includes the wellsite, the Dorins'
21 residence, a little bit that's labelled as a barn -- is
22 this a fairly accurate representation of those portions
23 of the Dorin lands that are still used to graze cattle?

24 A MR. DORIN: Well, the Bethany -- the
25 Bethany Care Society lot is within the blue boundary.
26 It's --

1 Q Okay.

2 A -- adjacent to the wellsite to the north and

3 essentially --

4 Q Right. Okay.

5 A -- takes up the -- the entire area between what's

6 called "Deer Coulee Ranch Phase 1 Residential Area" at

7 the --

8 Q M-hm.

9 A -- top right and -- in between that and the -- what's

10 labelled the "Residence" down to the north boundary of

11 what's labelled "Oil Lease", that's the Bethany lot.

12 Q Okay. Thank you.

13 A And I would just direct you to the one plan of survey

14 appended to the reclamation certificate showing the

15 north-south access road. It -- you know, it -- it --

16 it -- it shows that --

17 Q Okay. And I think --

18 A -- very well, and there's another one that shows the --

19 the -- the additional strip. That -- that's a --

20 December 1st, 2014. That's the most recent survey, and

21 it shows the Bethany lot.

22 Q Okay. Thank you. I appreciate that. That is helpful.

23 So the area that I -- I'm wondering about is --

24 like, I can give you the context for what I'm trying to

25 understand, is: In the context of the fencing, so for

26 the fences that were erected by Whitecap or earlier

1 operators that are along the borders of the wellsite, I
2 understand that when those fences are broken or if --
3 if they're broken, if -- if your cattle can pass
4 through, that is when the cattle can leave your lands.
5 And so I'm trying to understand where the wellsite
6 fences come up against the boundary of your lands that
7 would allow the cattle to exit your lands.

8 So with that context, down at the southern
9 boundary of the oil lease where the oil lease is into
10 one of those little green half circles -- and I'm
11 looking still at Exhibit 36.03, PDF 23 -- where the oil
12 lease square is overlapped by the blue boundary, are
13 the Dorins currently using any of the lands outside
14 that blue boundary to graze their cattle, down in the
15 south there?

16 A Yes. The -- the -- there's grazing occurring on the
17 wellsite and south of the wellsite and east of the
18 wellsite and west of the wellsite as well. Only not on
19 the north into the Bethany Care Society lot at the
20 moment.

21 Q Okay. Thank you.

22 So what I'm trying to understand is -- I just
23 don't have a clear picture of where the wellsite fence
24 comes up against the edge of the land that the Dorins
25 are using to graze cattle. Can -- can you help me
26 understand that. If the cattle are escaping the Dorins

1 land because the wellsite -- when the wellsite fence is
2 in disrepair, where is that happening?

3 A Well, the -- the -- the -- it depends what we're
4 calling the "wellsite". The -- the -- you know, the
5 east-west road is part of the right of entry order and
6 so is the wellsite. So those are all -- you know,
7 including the -- where the Texas gate is. So that's
8 all covered by the right of entry order. So, you know,
9 the -- that's the entire area. So, I mean, animals can
10 definitely get out the end of the east-west access road
11 into the town, for example, and then -- you know, now
12 we have a chain-link fence that's built by Bethany so
13 the animals aren't going to get into Bethany through
14 that chain-link fence. But that's the only -- that's
15 the only part now where they could -- so the -- the --
16 only the north boundary of the wellsite is adjacent to
17 lands that are no longer owned by the Dorins, if that
18 answers your question.

19 Q No, I think that does.

20 And then, just to be -- just to confirm, the only
21 other place where the cattle would exit your land via
22 lands that we'll say are associated with the wellsite
23 would be that east-west access road --

24 A That's correct.

25 Q -- if they got through the little gate that is now
26 between the east-west access road and the wellsite,

1 they went down the length of the east-west access road
2 and somewhere along the east-west access road, if the
3 fence was in disrepair on either side, that is where
4 they would escape?

5 A Well, if they escape from either side of the access
6 road, they're still going to be on grazing land.

7 Q Okay.

8 A So all -- all of the area that's coloured in -- in gold
9 in the picture we're looking at or in green, that's all
10 grazing land, as is the -- you know, the -- the -- the
11 wellsite and the east-west access road, the right of
12 entry order grants the right for the landowners to
13 graze those lands.

14 Q Okay. Thank you.

15 A And so they are grazed, definitely. You know, they're
16 not -- the -- the -- they're not maintained by the oil
17 companies, so, you know, this is a -- this is a town.
18 We have fire hazards, we have to keep the grass down,
19 et cetera.

20 Q Okay. No, thank you. I just wanted to make sure I --
21 make sure I -- I could understand where the cattle --
22 where the cattle would get out.

23 So those are my questions about the fence. I'd
24 like to switch topics a little bit now, and I just want
25 to talk a bit more about that east-west access road.
26 So what I'd like to do is, at this time, let's go to

1 the SIR response from Whitecap. I know it's in a
2 couple places in the record. So I'd like to go to
3 PDF 33 of Exhibit 4.05, since we should have that
4 open already, which -- it's PDF 33, but you might need
5 to type in "34" or -- sorry. You might need to type in
6 "32".

7 A I have it on the screen and on my own screen. So this
8 is --

9 Q Perfect.

10 A -- the SIR response dated May 31st. I'm familiar with
11 it.

12 Q Excellent.

13 And then I'd actually like to scroll down to the
14 last page with -- with responsive text, so that is
15 PDF 36, and this is for Question Number 3. So
16 Question 3 there -- and I'll just read it -- is:
17 (as read)

18 Please show the east-west access road also in
19 red to be released to the landowners and left
20 unreclaimed and confirm that this is still
21 the case.

22 That's the first sentence of Question 3?

23 A Yes.

24 Q And so then Whitecap's response was: (as read)

25 We confirm this road is to be released.

26 Please see the attached map, as requested.

1 A Yes.

2 Q And so I understand from the record that on April 4th,
3 I believe, this SIR was provided to the Dorins, and so
4 you did have the opportunity to review it before the
5 reclamation certificate was issued. Is that accurate?

6 A Yes. I was provided a copy, yes.

7 Q Okay. Thank you.

8 So then I just want to make sure I'm clear on this
9 because I couldn't find it in the response that the
10 Dorins provided in the context of this SIR to ERG, is:
11 Do the Dorins want the east-west access road?

12 Regardless of the 2008 reclamation certificate,
13 regardless of the release, do the Dorins use that road?

14 A I don't -- I don't know what you mean by "use" the
15 road. Do we use it for an entry -- did we use it as a
16 road? Is that --

17 Q Yeah.

18 A -- what you're asking me?

19 Q Do you use it as a road at this time? Does it --

20 A No. We've never used it as a road. This is the road
21 to the wellsite.

22 Q Okay.

23 A So we do use it. The uses that we use it for are to
24 graze, according to the right granted in the right of
25 entry order. So it's used for grazing. And we also
26 use it -- we own the land to the -- we own the quarter

1 section across the road to the east, so -- so we often
2 use it to move livestock from this quarter section
3 or -- with the remaining parts of it across the road to
4 the other quarter section and bring them back if
5 they're -- so the -- you know, especially now, the land
6 is rented; the cattle are not owned by the Dorins. So
7 the land gets rented out for the last several years to
8 a renter, and that -- that laneway is used often, if
9 the cattle are across the road, to bring them up and
10 into the area where they can be loaded onto the trucks
11 to be taken home for the winter.

12 Q Okay. Thank you, Mr. Dorin. I --

13 A So that would be the only reasons we have -- we -- uses
14 we have for the road in that location. To be clear, we
15 want to develop that road area for residential use, but
16 we can't because there's a right of entry order overtop
17 of it.

18 Q Okay. No, that is -- that is helpful. Thank you.

19 And then just to confirm, did you have a
20 conversation or did either of your parents have a
21 conversation with Whitecap about the 2008 release
22 between the time that the SIR response was -- sorry,
23 between the time that the SIR was asked of Whitecap and
24 between the time that the reclamation certificate was
25 issued?

26 A I would have to say, first of all, there was no verbal

1 conversation. The only communication between Whitecap
2 and the Dorins between the date of the SIR request and
3 the date of this May 31st SIR response would have been
4 in writing and would be on the record 'cause I copied
5 all parties.

6 Q Okay. So nothing -- nothing extra that isn't already
7 on the record in this proceeding. That's -- that's
8 helpful to know.

9 A No. You know, my -- my recollection -- this matter
10 goes back quite a ways, and so, you know, I think on --
11 it's fair to say that on numerous occasions, I informed
12 Whitecap that, you know, we needed to have a Phase 1
13 now for the road, we needed -- the road needed -- the
14 east-west road needed to be assessed, and that the
15 release was not going to be applicable any longer.

16 And, you know, I'll also say this: You know, had
17 anyone come and talked to me, Mark, let's sit down.
18 Let's work this out. You know, I don't want the Texas
19 gate. Costs me money to get the Texas gate out. These
20 landowners do not get paid annual compensation, unlike
21 almost every other landowner in the province. If this
22 happens to anyone else, they can trip over to the
23 Surface Rights Board and get their money back for
24 removing a Texas gate, but not the Dorins. This is
25 unique; it's highly unique, and that's the root of the
26 problem here.

1 So if someone would have said to me, Hey. We'll
2 get the Texas gate out of there, I probably would have
3 released the east-west access road again, but no one
4 ever did.

5 Q Okay.

6 A Whitecap isn't very good at talking to the Dorins.
7 There's no -- there's no cooperation here in trying to
8 get land development done.

9 Q Thank you, Mr. Dorin. That was helpful. And thank you
10 for your patience with me as we --

11 A No problem at all. That's -- we definitely want the
12 facts to come out, so I think we did that on fencing.
13 Thank you very much.

14 Q Thank you. That was my last question for you.

15 MS. MOSHER: So, Madam Chair, Panel
16 counsel's questions for Mr. Dorin are complete.

17 THE CHAIR: Thank you.

18 So I will just ask my two colleagues to indicate
19 to me whether you want to have a quick meeting to talk
20 about what questions we might have, if any, or whether
21 you're prepared to proceed now. We've got 20 minutes,
22 so we could finish up our part now if we were to go
23 ahead.

24 MS. MCKINNON: Madam Chair, I'd appreciate a
25 five-minute break.

26 THE CHAIR: Okay. So --

1 MS. MCNAUGHTAN: (INDISCERNIBLE - OVERLAPPING
2 SPEAKERS)

3 THE CHAIR: Oh. Sorry, Ms. McNaughtan.

4 MS. MCNAUGHTAN: I would as well. Thank you.

5 THE CHAIR: Okay. So we'll take a brief
6 break. We'll take about five minutes to just cross
7 questions off our list, which is always an efficient
8 way to go, and then come back and see what, if any,
9 questions the Panel has for you, Mr. Dorin.

10 We -- I will let the hearing coordinators know
11 right before we're ready to come back into the room.
12 Thank you.

13

14 PROCEEDINGS ADJOURNED UNTIL 1:00 PM

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1 Proceedings Taken Via Remote Video

2

3 March 8, 2022 Afternoon Session

4

5 C. Low The Chair

6 C. McKinnon Hearing Commissioner

7 B. McNaughton Hearing Commissioner

8

9 M. LaCasse AER Counsel

10 L. Mosher AER Counsel

11 T. Turner AER Staff

12 A. Lung AER Staff

13 P. Rodricks AER Staff

14

15 B. Kapel Holden For AER Enterprise Reclamation
16 Group

17 S. Poitras For AER Enterprise Reclamation
18 Group

19

20 D. Naffin For Whitecap Resources Inc.

21 T. Myers For Whitecap Resources Inc.

22

23 (No Counsel) For Herman Dorin, Shirley
24 Dorin, and Mark Dorin

25

26 A. Porco, CSR(A) Official Court Reporter

1 (PROCEEDINGS RECOMMENCED AT 1:00 PM)

2 THE CHAIR: Good afternoon. It looks like
3 we've got everyone back. I will just note that our --
4 Mr. Lung, who has been the Zoom host thus far, has had
5 to step out for an appointment, and so now I'm just
6 looking -- no, maybe not everybody's here. Oh, there
7 we are. Ms. Turner will be the Zoom host for at least
8 the beginning of the afternoon for when we want things
9 up on the screen.

10 So before we turn to -- the Panel does have a
11 couple of questions for Mr. Dorin, but before we get to
12 that, does anybody have any housekeeping or other
13 matters arising?

14 No? I don't see anybody's screens lighting up.

15 Alberta Energy Regulator Panel Questions Mr. Dorin

16 Q THE CHAIR: So, Mr. Dorin, my colleagues
17 and I were able to cross a number of questions off our
18 list and consolidate the questions, and I'm going to
19 put them to you. And I'll just remind you that you're
20 still under oath?

21 A MR. DORIN: I acknowledge that, yes,
22 ma'am.

23 Q Okay. Thank you.

So my first question is about the Texas gate. We don't need to go to it, but so that if people want to see what triggered this question, they can go and have

1 a look themselves, in Exhibit 36.11, which is one of
2 your videos, and at about the 7 minute 21 second mark,
3 according to my note, it clearly shows the Texas gate.
4 And the question is: Is it -- what is its current
5 purpose or use, if any?

6 A The -- you know, the purpose of a Texas gate is -- I
7 could answer what it normally is, as a -- as a, you
8 know, ex-cattle rancher, is to, you know, be a barrier
9 for -- or a method of containment of livestock without
10 a fence, so -- but it doesn't serve that purpose.
11 It -- I've had to -- I've had to put wires overtop of
12 it 'cause horses in particular just jump over and
13 cattle do too. So it's not useful. There's -- I think
14 that you could quite clearly see that there's wires put
15 over it, and that's difficult to do. So -- so there is
16 no useful -- it -- it never served its proper purpose.

17 Q Okay. Thank you.

18 And the other question that we had is this: Is
19 if -- and this is an "if". If this Panel were to
20 decide that it would be appropriate to issue the
21 reclamation certificate with a condition relating to
22 fencing, what should or would that condition, in your
23 view, look like?

24 A Well, in my view -- I have to -- I have to answer that
25 from a bit of a legal perspective. In my view, the
26 Surface Rights Board, now the Land and Property Rights

1 Tribunal, has exclusive jurisdiction over fencing. And
2 so I've applied to have that -- the fencing conditions
3 changed so that the landowners do have some options,
4 but as it stands today, in my -- I -- very
5 respectfully, I submit that it would be a collateral
6 attack and an incorrect forum to -- for the -- to be
7 done, unless -- unless that condition was that the
8 fencing got removed subject to termination of the right
9 of entry order. That -- in my humble view, that's the
10 only way it could work, and -- and that would probably
11 work for us.

12 You know, I'd like to stress that we want the land
13 reclaimed and the use of it returned to the landlords
14 at the earliest possible moment. And so --

15 Q Okay.

16 A -- I don't know if I've properly answered your
17 question, ma'am.

18 Q You have. That's helpful. I'm just going to ask one
19 follow-up question so that I make sure that we have an
20 accurate understanding.

21 So when you say fencing removed subject to
22 termination of the reentry order, you wouldn't want the
23 fencing removed before the order is terminated, but
24 upon termination of the order; is that --

25 A Well, that would depend on the fencing. For example,
26 the --

1 Q Okay.

2 A -- fallen fencing line along the west could be removed
3 at any time and, in my view, should be removed.

4 It's -- I broke the terms of the right of entry order
5 previously to remove fallen fencing. I felt I had no
6 choice. There was -- a horse got hurt, and I felt I
7 had no choice. But the landowners are trying to abide
8 by the right of entry order and the well licence and
9 everything else. So these are -- you know, either
10 these things are in place and binding on people or
11 they're not. And so I want to stress that the
12 landowners believe that the right of entry order was
13 illegally issued, and we have for years been -- been
14 pursuing due process of law methods of having it
15 rescinded. That hasn't happened yet. Until that
16 happens, it's binding on us. We recognize that. So
17 even the most flawed administrative orders is binding
18 on the parties to it as the most impeccably issued
19 ones. So this is -- this is -- there's a lot of things
20 going on here, ma'am, that I'm not going to raise in
21 this proceeding, but -- but we try to adhere strictly
22 to the -- to the rule of law. So that's -- that's one
23 of the issues here.

24 So it's -- it's -- it's -- you know, that's --
25 that's quite difficult, but, you know, some of the
26 fencing could certainly be removed. The Texas gate

1 would certainly be removed. And -- but I've asked
2 that. It's our right to ask for removal of those
3 things, and I did that, and Whitecap would not comply
4 with our request. They broke the terms of the right of
5 entry order, not us.

6 So, I mean, I can -- I can ask Whitecap to remove
7 the stuff again, but they'd just ignore it. What do we
8 do? So -- and I -- I've got to wait eight, ten years
9 to get a hearing at the Surface Rights Board. What do
10 we do?

11 Q Okay. Thank you. I think that answers our questions.
12 So I don't think I had anything else by way of
13 follow-up. So then --

14 A Excuse me, Madam Chair.

15 Q Yes.

16 A I might just -- if I may, I don't want to -- you know,
17 a mediation or a dispute resolution with the AER where
18 we could sort something out -- you know, we're not
19 trying to delay things here. You know, that -- that
20 might work too. I don't know. I really don't know.
21 But we're a bit at our wits' end because we've tried
22 everything, and it just didn't work. So what do we do?
23 We just try to get by day to day.

24 Q Okay. That's helpful. Thank you.

25 THE CHAIR: So now I'm going to say that
26 you can take off your witness hat and, as a witness,

1 you are excused, and I thank you for giving your
2 evidence. And then I'm going to say to you with your
3 representative's hat on that if there is anything that
4 you wish to clarify about anything that has come up,
5 just during the cross-examination, now is your
6 opportunity to do so.

7 MR. DORIN: No, I don't think there's
8 anything to clarify. I think that clarification will
9 come on the points I am seeking to -- you know, when I
10 ask questions of Whitecap's witnesses. So I think
11 there -- we don't have anything at this time, Madam
12 Chair. Thank you.

13 THE CHAIR: Okay. Thank you.

14 So with that, then, we -- Whitecap, you're next
15 with your direct evidence.

16 MR. NAFFIN: Thank you, Madam Chair. We're
17 ready to go. Mr. Myers will be conducting the
18 presentation of the direct evidence of Whitecap.

19 THE CHAIR: Excellent. So I will ask our
20 court reporter to swear and/or affirm your witness
21 panel, and you can proceed.

22 KENT O'SHEA, JENNIFER CARSCALLEN, TONY KNAFLA,
23 ED TOEWS, SHANE MILLARD, Affirmed

24 MR. MYERS: Thank you, Madam Court
25 Reporter.

26 Direct Evidence of Whitecap Resources Inc.

1 MR. MYERS: Good afternoon, Madam Chair,
2 Panel Members. I'm pleased to introduce Whitecap's
3 witness panel this afternoon. As you've just seen, the
4 Whitecap witness panel members are Mr. Kent O'Shea with
5 Whitecap Resources, Mr. Tony Knafla with Equilibrium
6 Environmental, Mr. Ed Toews with Toews Land Services
7 and previously with Shalor Consulting, Ms. Jennifer
8 Carscallen with Arletta Environmental Consulting, and
9 Mr. Shane Millard with Shalor Consulting.

10 The CVs for Mr. O'Shea, Mr. Toews, Ms. Carscallen,
11 and Mr. Millard are located at Tab 3 of Whitecap's
12 submission, which is Exhibit 39.01. And the CV for
13 Mr. Knafla is attached to the Equilibrium reply report,
14 which is located at Tab 4 of Whitecap's written
15 submission.

16 I'll ask each member of Whitecap's witness panel
17 to provide a brief description of their background,
18 their position, and their role with respect to the
19 subject matter of this proceeding.

20 Mr. O'Shea, I'll begin with you. Can you please
21 describe your background, position, and role with
22 respect to this proceeding.

23 A MR. O'SHEA: Yes. I've been a licensed
24 land agent in Alberta since 2005. I have been with
25 Whitecap over seven years and have worked in
26 land-related roles with the oil and gas industry for

1 nearly 20 years. I managed the surface land team at
2 Whitecap and coordinate land acquisitions for
3 Whitecap's northern Alberta and BC operations. I have
4 coordinated this specific file for Whitecap and
5 gathered the required internal information to provide
6 responses to the appellants. I'm here today on behalf
7 of Whitecap to present its case regarding the
8 reclamation of the subject wellsite and access roads.

9 0 Thank you, Mr. O'Shea.

10 MR. MYERS: Madam Chair, Whitecap is
11 putting Mr. Knafla, Mr. Toews, Ms. Carscallen, and
12 Mr. Millard forward as experts in this proceeding in
13 the following areas: Mr. Knafla is being put forward
14 as an expert in the areas of environmental site
15 assessments and, in particular, soil and groundwater
16 assessments and guideline development.

17 Mr. Toews is being put forward as an expert in the
18 areas of detailed site assessments and reclamation
19 certificate applications.

20 Ms. Carscallen is being put forward as an expert
21 in the areas of environmental site assessments and
22 environmental program coordination.

23 And Mr. Millard is being put forward as an expert
24 in the areas of reclamation and detailed -- detailed
25 site assessments.

26 In addition to describing their role on the

1 witness panel this afternoon, I'll ask each of
2 Whitecap's expert witnesses to provide a brief summary
3 of their qualifications and their experience in these
4 areas.

5 Q MR. MYERS: Mr. Knafla, we'll start with
6 you. Can you please summarize your relevant
7 qualifications and expertise as it relates to the areas
8 of environmental site assessments, soil and groundwater
9 assessments, and guideline development?

10 A MR. KNAFLA: Hello. Yes. My name is
11 Anthony Knafla. My experience for about 29 years has
12 been in various aspects of the environmental sciences
13 field, including soil investigations and groundwater
14 investigations. These -- this type of work I've done
15 myself in the field as well as managed other staff
16 doing the work.

17 My background is chemistry, biochemistry, and
18 medical science. And we do a lot of work on guideline
19 development supporting federal regulators, provincial
20 regulators with guidance to develop science-based
21 environmental quality guidelines that could be
22 implemented by practitioners.

23 In terms of our involvement with this hearing,
24 we -- my company completed two Phase 2 reports. In
25 addition, we did a Tier 1 assessment report that
26 developed modified Tier 1 guidelines. And, in

1 addition, we provided a final submission regarding the
2 regulatory appeal.

3 Q Mr. Knafla, are you willing and able to fulfill the
4 duty of an independent expert by providing fair,
5 objective, and nonpartisan evidence in this proceeding?

6 A I am.

7 Q Thank you.

8 Mr. Toews, can you please summarize your relevant
9 qualifications and expertise as it relates to the areas
10 of detailed site assessments and reclamation
11 certificate applications.

12 THE COURT REPORTER: I'm sorry. I can't hear you,
13 Mr. Toews.

14 Q MR. MYERS: Just turn your microphone on.

15 A MR. TOEWS: My name is Ed Toews. I'm a
16 professional agrologist, and I have a bachelor's degree
17 in -- in agriculture and plant science and then later
18 received a master's degree -- a master of science
19 degree in agriculture and soil chemistry and fertility.
20 I've worked at -- as an agronomist and as an educator
21 and as a rec/rem consultant over the past 30 years.

22 I've conducted many DSAs myself. Began the first
23 one in 1998 and probably done several hundreds and
24 reviewed several hundred more for junior individuals.

25 I've supervised reclamation/remediation
26 activities, Phase 1s, 2s, and 3s. I taught reclamation

1 and remediation courses at Olds College, and I've made
2 applications to the AER for rec certificates and
3 Alberta Environment before that, since 2005. And my --
4 my focus in this is -- is around the detailed site
5 assessment, which I -- which I conducted myself.

6 Q Thank you, sir.

7 And are you willing and able to fulfill the duty
8 of an independent expert by providing fair, objective,
9 and nonpartisan evidence in this proceeding?

10 A Yes, I am.

11 Q Thank you, Mr. Toews.

12 Ms. Carscallen, can you please summarize your
13 relevant qualifications and expertise as it relates to
14 the areas of environmental site assessments and
15 reclamation program coordination.

16 THE COURT REPORTER: I can't hear you.

17 A MS. CARSCALLEN: Hi, there. I'm Jennifer. I'm
18 an environmental professional with about 20 years of
19 experience in the field. Currently, I'm president and
20 CEO of Arletta Environmental Consulting. I have a
21 bachelor in environmental science and a master's degree
22 in environmental engineering specializing in
23 contaminant hydrogeology.

24 I'm certified as a professional biologist in
25 Alberta as well as a professional agrologist. And over
26 my career, I've planned and managed corporate-level

1 environmental ARO programs for numerous oil and gas
2 corporations, and I've provided direction and oversight
3 on hundreds of Phase 1s and Phase 2s.

4 For my role in this, from 2018 to 2020, I was
5 working in-house at Whitecap Resources doing
6 environmental program coordination. I oversaw and
7 coordinated the assessment and reclamation work for
8 this site as well as the subsequent reclamation
9 application.

10 Q Thank you.

11 And are you willing and able to fulfill the duty
12 of an independent expert by providing fair, objective,
13 and nonpartisan evidence in this proceeding?

14 A I am.

15 Q Thank you.

16 And, finally, Mr. Millard, can you please
17 summarize your relevant qualifications and expertise as
18 it relates to the areas of reclamation and detailed
19 site assessments.

20 A MR. MILLARD: Yes. My -- I'm Shane Millard.
21 I'm president of Shalor Consulting. I have a diploma
22 in land resource management from the -- Olds College.
23 I'm a registered technologist in agrology, as well as
24 an active member of the Alberta Institute of Agrology.
25 I'm a senior environmental specialist with -- with over
26 25 years' experience in the environmental field. This

1 includes environmental assessments, Phase 1s, Phase 2s,
2 remediation/reclamations, DSAs, environmental liability
3 in site construction.

4 And my role here today is I was involved with the
5 landowner engagements, and I was a consultant on-site
6 back in May of 2019 with the surveyors to survey, to
7 stake the lease boundaries, and to execute the fence
8 removal the following day, which subsequently never
9 happened.

10 Q And, Mr. Millard, are you willing and able to fulfill
11 the duty of an independent expert by providing fair,
12 objective, nonpartisan evidence in this proceeding?

13 A Yes.

14 Q Thank you.

15 MR. MYERS: Madam Chair, Whitecap's
16 written evidence in this proceeding consists of the
17 following materials: the Abandonrite Phase 1
18 environmental site assessment dated May 2011 and
19 located at pages 8 to 66 of Exhibit 4.04; the
20 Abandonrite Phase 2 ESA dated August 2011 and located
21 at PDF pages 67 to 207 of Exhibit 4.04; Whitecap's
22 Reclamation Application Number 382272 dated June 12th,
23 2018, and located at PDF pages 2 to 38 of Exhibit 4.05;
24 Whitecap's letter response to the AER Supplemental
25 Information Request Number 1188429 dated May 31st,
26 2019, and located at PDF pages 473 to 479 of

1 Exhibit 4.01; Whitecap's submission on the preliminary
2 issue dated August 3rd, 2021, and marked as
3 Exhibit 19.01; Whitecap's reply submission on the
4 preliminary issue dated August 10th, 2021, and marked
5 as Exhibit 21.01; and Whitecap's written submission
6 dated December 9th, 2021, and marked as Exhibit 39.01.

7 Q MR. MYERS: Mr. O'Shea, were these
8 materials prepared by you or under your direction?

9 A MR. O'SHEA: Yes.

10 Q And are there any corrections that you would like to
11 make at this time?

12 A No.

13 Q And are these materials accurate to the best of your
14 knowledge and belief?

15 A Yes.

16 Q And do you adopt these materials as the written
17 evidence of Whitecap in this proceeding?

18 A Yes.

19 Q Thank you.

20 Mr. Knafla, the written evidence of Equilibrium in
21 this proceeding consists of the following: the
22 Equilibrium Phase 2 environmental site assessment dated
23 April 2016 and located at PDF pages 383 to 467 of
24 Exhibit 4.04; the Equilibrium supplemental Phase 2 ESA
25 dated February 2018 and located at PDF pages 468 to 562
26 of Exhibit 4.04; the Equilibrium assessment of impacts

1 against Tier 1 guidelines dated February 2018 and
2 located at PDF pages 563 to 1162 of Exhibit 4.04; and
3 the Equilibrium reply report, which is located at Tab 4
4 of the Whitecap written submission, which is
5 Exhibit 39.01.

6 Sir, were these materials prepared by you or under
7 your direction?

8 A MR. KNAFLA: Yes, they were.

9 Q And are there any corrections that you would like to
10 make at this time?

11 A There are none.

12 Q Are these materials accurate to the best of your
13 knowledge and belief?

14 A They are.

15 Q And do you adopt these materials as your evidence in
16 this proceeding?

17 A I do.

18 Q Ms. Carscallen, the written evidence of Arletta in this
19 proceeding consists of the Arletta Phase 2 ESA dated
20 March 2015 and located at PDF pages 208 to 382 of
21 Exhibit 4.04. Were these materials prepared by you or
22 under your direction?

23 A MS. CARSCALLEN: Yes, they were.

24 Q And are there any corrections that you would like to
25 make at this time?

26 A No.

1 Q Are these materials accurate to the best of your
2 knowledge and belief?

3 A Yes.

4 Q And do you adopt these materials as your evidence in
5 this proceeding?

6 A Yes.

7 Q Mr. Toews and Mr. Millard, the written evidence of
8 Shalor in this proceeding consists of the detailed site
9 assessment dated July 26, 2017, and located at PDF
10 pages 39 to 104 of Exhibit 4.05. Were these materials
11 prepared by you or under your direction?

12 A MR. TOEWS: Yes.

13 A MR. MILLARD: Yes, they were.

14 Q Are there any corrections that you would like to make
15 at this time?

16 A MR. TOEWS: No.

17 A MR. MILLARD: No.

18 Q Are these materials accurate to the best of your
19 knowledge and belief?

20 A MR. TOEWS: I believe they are.

21 A MR. MILLARD: Yes, they are.

22 Q And do you adopt these materials as your evidence in
23 this proceeding?

24 A MR. TOEWS: Yes.

25 A MR. MILLARD: Yes.

26 Q Thank you.

1 Mr. O'Shea, I understand that you've prepared a
2 brief opening statement which I'd ask you to read now.

3 A MR. O'SHEA: Yes. Thank you, Tim.

4 Good morning, Madam Chair and Panel Members. As
5 Mr. Myers mentioned, my name is Kent O'Shea, and I am
6 the manager surface land at Whitecap. I've been with
7 Whitecap for seven years, and I've worked in
8 land-related roles with the oil and gas industry for
9 nearly 20 years. Along with the other witnesses on the
10 Whitecap panel, I am pleased to be here today on behalf
11 of Whitecap to present its case regarding the
12 reclamation of the subject wellsite and access roads
13 and the decision of the Enterprise Reclamation Group,
14 or the "ERG", to issue a reclamation certificate in
15 respect of these areas.

16 Whitecap is an oil and gas producer that values
17 its relationships with all stakeholders and is
18 committed to conducting its operations in a manner that
19 minimizes impacts to the environment. Whitecap
20 fulfills this commitment through its compliance with
21 all applicable regulatory requirements and its
22 implementation of sound environmental programs and
23 processes. Whitecap endeavours to reclaim all lands
24 affected by its operations to a high standard and in
25 alignment with all applicable criteria. The subject
26 lands are no exception.

1 Whitecap's position is that the ERG was correct in
2 deciding that the subject site had been reclaimed in
3 satisfaction with all applicable requirements and that
4 the ERG's decision to issue the reclamation certificate
5 should be confirmed.

6 Whitecap's positions and the decision of the ERG
7 are based on the results of several environmental site
8 assessments and other reports prepared by independent
9 experts which support the conclusion that the subject
10 lands have been reclaimed in satisfaction of all
11 applicable regulatory requirements and have been
12 returned to an equivalent land capability.

13 This conclusion is further supported by the
14 written evidence that Whitecap has prepared and
15 prefilled in this proceeding, including the Equilibrium
16 reply report, as well as oral testimony that will be
17 given by members of Whitecap's witness panel during
18 this hearing.

19 I will touch briefly on the four issues within the
20 scope of this proceeding. First, regarding fencing.
21 Whitecap's efforts to reach an agreement with
22 appellants date back to 2015 and precede the completion
23 of the reclamation activities which occurred in 2016.
24 Negotiations aimed at resolving the wellsite fencing
25 issues have spanned a period of several years. During
26 this time, the one constant has been the appellants'

1 refusal to either sign a release or allow the removal
2 of the wellsite fencing on reasonable terms.

3 This impasse was noted in the ERG's decision on
4 Whitecap's application for the reclamation certificate.
5 In the course of its efforts to resolve the fencing
6 issue, Whitecap sought advice from the ERG and went so
7 far as asking the AER to issue an environmental
8 protection order directing Whitecap to remove the
9 fencing. Despite Whitecap's efforts, the appellants
10 simply have not permitted this issue to be resolved.

11 Second, regarding the east-west access road. The
12 condition of this road has not changed since it was
13 first certified in 2008. Since the first reclamation
14 certificate in respect of the east-west access road was
15 issued, this feature has been used as a road as the
16 appellants intended. The east-west access road does
17 not require further reclamation because it has not been
18 modified by Whitecap and continues to serve its
19 intended purpose as contemplated under the 2008
20 release. Moreover, at no point have the appellants
21 requested that the east-west access road be removed.

22 Third, regarding wellsite soil conditions. It is
23 well-documented that both the movement of cattle and
24 the storage of manure has historically occurred on and
25 in close proximity to the subject wellsite. Livestock
26 were also present on the lands before any drilling

1 activities occurred. Assessments of the wellsite by
2 Whitecap's independent experts, including Equilibrium,
3 have concluded that manure-related impacts are the
4 cause of elevated levels of salt within the wellsite
5 soil. In addition, these assessments have concluded
6 that the oil and gas activities are not the cause of
7 the elevated salinity at the wellsite.

8 Fourth, while procedural fairness concerns do not
9 relate to Whitecap's reclamation of the subject lands,
10 Whitecap notes that the AER's decision to implement the
11 communications protocol is consistent with the
12 difficulties Whitecap encountered in its dealings with
13 the appellants and, in particular, Mr. Mark Dorin.

14 In Whitecap's experience, Mr. Mark Dorin's
15 adversarial nature and his general unwillingness to
16 work with Whitecap towards final reclamation of the
17 subject lands is evident throughout the record of this
18 proceeding.

19 None of these four issues taken together or on
20 their own affect the validity of the reclamation
21 certificate. When these issues are considered in light
22 of the appellants' uncooperative conduct, the
23 activities that have historically occurred on the
24 lands, and other related circumstances, Whitecap's
25 submission is that the ERG was correct in issuing the
26 reclamation certificate.

1 The appellants have made significant efforts to
2 portray the subject matter of this proceeding as highly
3 complex. Whitecap's position is that the issues before
4 the Panel are straightforward and simply require the
5 Panel to determine whether the subject lands meet the
6 applicable reclamation criteria. In Whitecap's view,
7 the clear answer is that these lands have been
8 reclaimed in accordance with all applicable criteria,
9 and, on that basis, the issues of the reclamation
10 certificate should be confirmed.

11 Finally, in the hearing -- in hearing this
12 regulatory appeal, Whitecap urges the Panel to keep in
13 mind the purposes of the regulatory framework and the
14 overarching principle that landowner interference
15 should not prevent the reclamation of specified land.
16 At its core, the conservation and reclamation framework
17 requires that specified land be returned to an
18 equivalent land capability. Despite the appellants'
19 efforts to interfere with and prolong the reclamation
20 process, Whitecap has met this requirement.

21 In conclusion, Whitecap respectfully asks that the
22 ERG's decision to issue the reclamation certificate be
23 confirmed.

24 Q Thank you, Mr. O'Shea.

25 Sir, can you please summarize Whitecap's various
26 efforts to remove the fencing that was left in place

1 around the site prior to filing the reclamation
2 certificate application.

3 A Yes. Whitecap undertook all reasonable efforts to work
4 with Mr. Dorin to remove the fencing. Whitecap
5 attempted to negotiate a standard form of release with
6 Mr. Dorin in respect of the fencing. Whitecap
7 attempted to enter the site to remove the fencing but
8 was prevented from doing so as a result of Mr. Dorin
9 escalating matters with the Didsbury RCMP. Whitecap
10 took the extraordinary step of requesting the AER to
11 issue an environmental protection order directing
12 Whitecap to remove the fencing, which it declined to do
13 so. The only reason the fencing remains in place is
14 because of Mr. Dorin's extensive efforts to prevent
15 Whitecap from removing the fencing.

16 Whitecap also sought advice from the ERG in May of
17 2019 as to how it should proceed in response to the
18 Dorins' refusal to sign a release or allow the removal
19 of the fencing. Ultimately, Whitecap needed to
20 complete reclamation of the site and proceeded to file
21 the reclamation certificate application.

22 Q Mr. O'Shea , I understand that Mr. Dorin provided
23 Whitecap with a settlement offer related to the fencing
24 in October of 2015, and that's included at Tab 5 of the
25 Dorins' reply submission. Can you please explain why
26 Whitecap chose not to accept this offer?

1 A Yes. In effect, the offer was for Whitecap to either
2 construct or pay for the construction of a brand-new
3 fence. The offer was not reasonable, in Whitecap's
4 view. It far exceeded any of Whitecap's obligations
5 under the right of entry order, and Whitecap was in the
6 process of reclaiming the site, not developing again.
7 It would also note that Whitecap completed repairs to
8 the fence on November 20th, 2015.

9 Q Thank you, Mr. O'Shea.

10 Mr. Knafla, can you please -- can you please
11 briefly discuss the various soil salinity and sodicity
12 assessments you've undertaken in respect of the site
13 and the conclusions you've reached based on those
14 assessments?

15 A MR. KNAFLA: Yes, I can. So we -- our
16 first Phase 2 that we conducted at the site was
17 investigating areas across the lease and in some
18 off-lease areas to identify the nature and extent of
19 salinity impacts as part of a typical Phase 2
20 assessment.

21 Following that work, we identified some, what I
22 would call, unusual impacts due to the ion chemistry
23 signature up in the northwest of the site, and as a
24 consequence, we completed an additional supplementary
25 Phase 2 with further exploration of the salinity levels
26 off lease to the northwest.

1 And the next document that we completed was to
2 basically define cleanup objectives for the site and
3 modified Tier 1 guidelines so that the equivalent land
4 use capability could be met on lease that matches
5 off-lease conditions.

6 Q And, sir, can you explain how you were able to confirm
7 that the wellsite's salinity impacts that you'd
8 identified were related to the presence of manure on
9 the site?

10 A There's varying -- there's several lines of evidence,
11 but there's, first of all, very clear chemistry impacts
12 that are associated with manure that are distinct. So,
13 for example, there's very high levels of potassium that
14 are present in soil. Those potassium impacts are
15 highest off lease and then extend down into the lease
16 area from the northwest.

17 Two, we collected soil -- so in the Phase 2 that
18 was conducted by Abandonrite, in the borehole logs,
19 they clearly identified an area where drilling waste
20 was mix-bury-cover on the lease area, basically to the
21 south and east of the wellbore. And so we took an
22 analysis of the soil samples directly from where it
23 said waste material was present. And we looked at the
24 salinity levels of those soils, and they were very low.

25 Q Mr. Knafla, are you familiar with the concept of
26 salinization occurring at the bottom of slopes as

1 discussed at paragraph 223 in Tab 11 of the Dorins'
2 reply submission, which is Exhibit 58.01?

3 A Yes. So the classical situation that involves
4 salinization at the bottom of slopes is tied to what we
5 can call "discharge conditions". And it's -- it's --
6 develops when you have a water table that's carrying
7 salt ions that is approaching the soil surface at the
8 bottom of a slope and you have evapotranspiration
9 occurring and the water is leaving the soil through the
10 surface, and it's leaving behind the salt ions, and
11 over time you will find an accumulation of salt ions in
12 those areas.

13 Q And, sir, in your opinion, could the salinity impacts
14 that you identified at the wellsite have been caused by
15 a natural hill cut or slope factors, as referred to by
16 the appellants?

17 A That -- that refers to construction practices, so there
18 are certainly cases in Alberta where resalinization of
19 shallower soils has occurred from construction
20 practices. But if you take a close look at the
21 chemistry data for the site, particularly the deeper
22 soil profiles, you'll see that for this particular site
23 the salt concentrations are very low, and that would
24 not explain the exceedances that have been measured in
25 the upper northwestern portion of the lease.

26 Q And, sir, would you expect elevated salinity levels to

1 affect whether the site meets the standard of
2 equivalent land capability in this case?

3 A The site does meet equivalent land use capability
4 currently, as the guidelines were developed based on
5 background conditions surrounding the site.

6 Q Thank you, sir.

7 Mr. Toews, can you please explain why the
8 east-west access road was not specifically addressed in
9 the detailed site assessment that you performed?

10 A MR. TOEWS: The east-west access road had
11 a -- a release related to data from 2008, and it's
12 not -- it's not a practice to -- to assess portions of
13 a lease that had been released. The east-west access
14 road also had not been altered in any way since it was
15 certified in 2008 and had simply been being used for
16 its purpose.

17 That's -- that's the main reason. We never had
18 any request to remove the east-west access road, to
19 reclaim it, to -- to -- to do anything, but that's why
20 I didn't assess it as a detailed site assessment.

21 I think it's -- it's perhaps not exactly correct
22 to say it was never assessed in any -- any kind of
23 assessment 'cause the Phase 1 assessment, including the
24 aerial overview, would have looked at the east-west and
25 the north-south access road, all parts, to look for
26 facilities which were not present.

1 Q And, sir, can you discuss how the east-west access road
2 was treated in -- in this case, in the context of your
3 detailed site assessment as compared to other detailed
4 site assessments you've performed where features like
5 access roads have been left in place?

6 A This was very typical. There's an access road that has
7 a release. It's not assessed, and we can continue with
8 a -- rec cert applications. It's -- it's normal.

9 Q Thank you, sir.

10 Mr. Millard, can you please discuss your
11 conversations with the landowners related to the
12 condition of the subject site?

13 A MR. MILLARD: Yes. Back in June of 2017, I
14 was doing a -- a site inspection, just a routine check
15 on the veg, see how it was doing out there, and
16 Mr. Herman Dormin [sic], he -- he drove out to site
17 with his car, and we were chatting away, and he was
18 happy with the conditions of the site. He was -- he
19 was a little concerned regarding the fencing; however,
20 he indicated that those -- the fencing-related issues
21 are with his son and left it at that.

22 Q Thank you, sir.

23 MR. MYERS: Madam Chair, that concludes
24 the direct examination of the Whitecap witness panel.
25 They're now available for questioning.

26 THE CHAIR: Getting my mute off. So thank

1 you, Mr. Myers.

2 Mr. Dorin, the witness panel is available for you
3 to cross-examine.

4 Mr. Dorin Cross-examines Whitecap Resources Inc.

5 Q MR. DORIN: Thank you. Can you hear me?

6 Can you hear me?

7 MR. MYERS: Yes.

8 Q MR. DORIN: Okay. Thank you.

9 So, yes. Mr. O'Shea, I'd like to ask you some
10 questions first, please. We've never met, have we?

11 A MR. O'SHEA: No, we haven't, in person.

12 Q Yeah. And you said that -- that there's never been a
13 request to -- to -- I think the words you used were to
14 remove the east-west land road. Is that -- is that --
15 was that your evidence?

16 A Yes. We've never received a request from the
17 landowners to remove the east-west access road.

18 Q And you're aware that -- that the landowners filed a
19 request with the Surface Rights Board in 2013, and that
20 was a formal request to -- to have the east-west access
21 road certified as reclaimed and removed as a -- as a
22 legal, you know, right of entry on the land and that
23 Whitecap objected to that? Are you aware of that?

24 A I'm not in a position to speak to those specifics. I
25 wasn't involved in those matters at the time.

26 Q I didn't ask you if you could speak to it. I asked if

1 you are aware with it -- aware of it.

2 A Could you repeat the question that you were asking,

3 Mr. --

4 Q I asked if you were aware that the landowners filed an
5 application with the Surface Rights Board in 2013 and
6 asked for the right of entry order to be partially
7 terminated. The outcome of that is Decision
8 Number 20140890 dated December 11th, 2014, the --
9 that's been filed. Are you aware that that occurred
10 and -- and that Whitecap objected to that partial
11 termination request?

12 MR. NAFFIN: Sorry, Madam Chair. If I may,
13 we're talking about a request to remove the road.
14 We're not talking about a termination application of a
15 particular disposition in the form of the right of
16 entry order. So maybe in fairness to the witness, we
17 can quit conflating the two and be clear. There seems
18 to be a series of questions woven together.

19 MR. DORIN: Madam Chair, to be fair,
20 removal of a road from a legal standpoint within this
21 right of entry order means one has to go to the Surface
22 Rights Board. You know, we need a reclamation
23 certificate to do that. So I think the question is
24 clear. Is Mr. Kent O'Shea aware of what the landowners
25 did to try to, you know, remove, as they say, the right
26 of entry order?

1 MR. NAFFIN: So, again, Madam Chair, that's
2 not --
3 THE CHAIR: Sorry. Every time --
4 MR. NAFFIN: -- (INDISCERNIBLE -
5 OVERLAPPING SPEAKERS) a question. And if we're going
6 to engage in legal argument, I can indicate that to get
7 a right of entry order terminated you have to have a
8 reclamation certificate. That doesn't mean you have to
9 have the road removed. So we're melding together a
0 bunch of different concepts, and I don't think it's
1 fair to the witness.

12 If Mr. Dorin has specific questions, he's at
13 liberty to ask those questions, but they have to be
14 capable of being understood by the witness.

15 THE CHAIR: Yeah. Mr. Dorin, a couple
16 things. First, I'm going to ask you to make sure to
17 slow it back down and keep it slow for the court
18 reporter and perhaps for the witnesses as well.

19 And, two, the question you got to needs to be
20 linked, I guess, to the premise you gave to the
21 witness. So --

22 MR. DORIN: I'll ask again.

23 Q MR. DORIN: Are you aware that Whitecap
24 objected to a partial termination request made by the
25 landowners with respect to the east-west road in 2003?
26 Are you aware of that?

1 A MR. O'SHEA: Yes.

2 Q Thank you.

3 So you said that the principle should be observed
4 that landowners -- a well-established principle that
5 landowners should not be allowed to interfere. Can you
6 enlighten us to where this principle comes from?

7 A Could you please direct me to that quote? I'm not sure
8 if --

9 Q You said this in your opening statement. You said
10 that -- that there's a well-established principle that
11 landowners shouldn't interfere with reclamation.
12 That's what -- those were your words. So I'm just
13 wondering where this principle comes from that you're
14 referring to.

15 THE CHAIR: I think we can either get the
16 court reporter to read that bit back. My note is a
17 little bit different.

18 MR. NAFFIN: As is mine, Madam Chair.

19 THE CHAIR: So it was back under the
20 procedural fairness topic, and I don't know if you have
21 a search, but "landowner interference should not
22 prevent achieving ..."

23 THE COURT REPORTER: One minute while I search,
24 please.

25 THE CHAIR: Thank you.

26 THE COURT REPORTER: (by reading)

1 Finally, in the hearing -- in hearing
2 this regulatory appeal, Whitecap urges
3 the Panel to keep in mind the purposes
4 of the regulatory framework and the
5 overarching principle that landowner
6 interference should not prevent the
7 reclamation of specified land.

8 Would you like me to continue, or is that enough?

9 THE CHAIR: No. I think that's enough.
10 Thank you.

11 THE COURT REPORTER: Thank you.

12 Q MR. DORIN: So I'm just wondering, you
13 know, where does this overarching principle that you
14 mentioned -- where does this (INDISCERNIBLE -
15 OVERLAPPING SPEAKERS) --

16 A MR. O'SHEA: I'm describing -- I'm
17 describing our -- the landowners interference with our
18 process of attempting to complete our reclamation and
19 application work.

20 Q Okay. So let's move on.

21 So you agree there's a right of entry order in
22 place here; correct?

23 A Yes.

24 Q And it covers the east-west access road and the
25 wellsite; is that correct?

26 A Yes.

1 Q And what are -- what lands does the -- does the
2 reclamation certificate not cover?

3 MR. NAFFIN: Sorry. Madam Chair, the first
4 question was about the right of entry order. The
5 second was about the reclamation certificate. I
6 just -- I'm not sure if that's what Mr. Dorin
7 intended --

8 MR. DORIN: My apologies. I'll rephrase
9 the question.

10 Q MR. DORIN: What lands covered by the
11 reclamation certificate does the right of entry order
12 not cover?

13 A MR. O'SHEA: The right of entry order
14 covers the 3.84 acres.

15 Q So you would agree, then, it doesn't cover the
16 northwest access road?

17 A Correct.

18 Q You would agree, then, that it doesn't cover the
19 small -- what Whitecap describes as a 3.2-by-96-metre
20 strip?

21 A Correct.

22 Q Okay. So -- and you agree there's no annual
23 compensation paid to the Dorins under that right of
24 entry order?

25 A Correct.

26 Q And there's no annual compensation paid to the Dorins

under the northwest access road --

2 THE CHAIR: Sorry, Mr. Dorin.

3 MR. DORIN: Yes.

4 A MR. O'SHEA: Madam Chair, you're muted.

5 THE CHAIR: Yeah. Sorry. Every time I
6 hit mute and then somebody else comes on, it mutes me.

7 Mr. Dorin, we can't deal with compensation here,
8 and we can't deal with the right of entry order, so --

9 MR. DORIN: I understand that, Madam
0 Chair, but --

11 THE CHAIR: I'm wondering if we can focus
12 on the issues that we can deal with.

13 MR. DORIN: I understand that, but these
14 are facts, and -- and these are directly related facts
15 to argument and final argument. So I've asked the
16 question. That's all. He's agreed.

17 Q MR. DORIN: So did you prepare an
18 application to be filed with the Surface Rights Board
19 for termination of the right of entry order relying on
20 this reclamation certificate?

21 MR. NAFFIN: So, again, Madam Chair, I'm
22 not sure how that's relevant to the four issues
23 identified by the Regulator in its preliminary
24 decision.

25 THE CHAIR: Yeah. Mr. --

26 MR. DORIN: It's relevant as to how many

1 acres are covered by the reclamation certificate and
2 what portions of the land.

3 MR. NAFFIN: Madam Chair, I don't think it
4 is. I think it's well-established what the acreage is
5 that's applicable to the reclamation certificate.

6 Whether or not Whitecap applied for a termination of a
7 portion of the right of entry order is unrelated to
8 determining that acreage in this proceeding, and, as I
9 say, I think it's well-established.

10 THE CHAIR: I guess that -- my guess is
11 that based on the record that we've got from the
12 written materials, that the concern arises from the
13 reclamation certificate that was first issued that did
14 not appear to include or incorporate the east-west
15 access road. But, Mr. Dorin, you need to draw a
16 clear -- you need to draw a clear link -- if you're
17 going to keep going to the Surface Rights Board, you
18 need to draw for us a clear link to why and how that
19 applies to what we can do with respect to the four
20 issues in front of us, please.

21 MR. DORIN: Well, Madam Chair, we've had a
22 clarification on the issues just last week that one of
23 the issues that would be decided would be the total
24 acreage covered by the reclamation certificate, and
25 that's where this question goes to. So -- and I'm not
26 speaking about a partial termination. So --

1 THE CHAIR: Okay. No, thank you for the
2 clarification.

3 MR. DORIN: This is --

4 THE CHAIR: You're right.

5 MR. DORIN: In my submission, it's highly
6 relevant, Madam Chair.

7 THE CHAIR: No. Fair enough. So --

8 MR. DORIN: Okay.

9 THE CHAIR: -- with that clarification --

10 Q MR. DORIN: So I'll re-ask the question.
11 Mr. O'Shea, did you file an application relying on
12 Reclamation Certificate 382273 that's under regulatory
13 appeal in this proceeding? Did you rely on that
14 certificate to make an application for full termination
15 of the right of entry order filed with the Surface
16 Rights Board?

17 A MR. O'SHEA: Yes. Whitecap put that
18 application forward.

19 Q And what -- which -- how many acres did that
20 certificate cover that you relied on?

21 A Can you repeat that, please.

22 Q When you filed for termination of the right of entry
23 order on July 20th, 2019, you know, how many acres did
24 the reclamation certificate cover? And more
25 specifically, did it cover the east-west access road?

26 MR. NAFFIN: You know, Madam Chair, I

1 hesitate again, but I'm not seeing how this is relevant
2 to the issuance of the subject reclamation certificate.
3 The acreage that was applied for to a separate tribunal
4 to terminate the right of entry order, again, strikes
5 me as entirely irrelevant. If Mr. Dorin wants to ask
6 questions about the acreage covered for the purposes of
7 the subject reclamation certificate, certainly I have
8 no issue with that. I think it's, as I say, already on
9 the record, but in terms of what was included in an
10 application to a separate tribunal, I'm not seeing how
11 that's relevant. But, of course, I'm in your hands.

12 THE CHAIR: Yeah. So, Mr. Dorin, maybe
13 you can completely reframe the questions and focus on
14 the acreage issue because you're right, we did say that
15 was something that you could deal with in this
16 proceeding. And it strikes me that based on the
17 information on the record -- well, it's not entirely
18 clear to me there's actually ultimately disagreement
19 about the total acres that would be intended to be
20 covered by a reclamation certificate, but I might be
21 wrong. So maybe try rephrasing the questioning about
22 acreage but leaving Surface Rights Board applications
23 out of it.

24 Q MR. DORIN: Okay. So after you filed this
25 application, did the Surface Rights Board issue a
26 deficiency notice?

1 A MR. O'SHEA: Yes, the Surface Rights Board
2 issued a supplemental information request.

3 Q And did -- did -- and what did you do? Did you not
4 file the old reclamation certificate with the Surface
5 Rights Board in response to that request, the 2008
6 reclamation certificate?

7 A That's correct. Whitecap provided the Surface Rights
8 Board with the 2008 reclamation certificate.

9 Q Okay. So just to be clear, the so-called amended
10 reclamation certificate that covers 4.53 acres and
11 covers the east-west access road, that was never filed
12 with the Surface Rights Board by Whitecap; is that
13 correct?

14 A It was ultimately applied, yes.

15 Q So let me -- because I didn't understand your -- what
16 was ultimately applied? I mean, did you -- did you
17 inform the Surface Rights Board that -- did you provide
18 a copy of -- to the Surface Rights Board of a
19 reclamation certificate that covered the east-west
20 access road? Yes or no?

21 A Madam Chair, I'm just going to take a moment and
22 discuss with my panel here.

23 THE CHAIR: Okay. That's fine. Just with
24 your panel, not with counsel.

25 And, Mr. Dorin , we really need to -- to -- given
26 the time -- the limited time that we've got here today,

1 stay focused on the four issues that we as an Alberta
2 Energy Regulator Hearing Panel can deal with. So
3 either you need to help us better understand why
4 there's a connection that we need to deal with in terms
5 of the Surface Rights Board applications or what the --
6 the relevant information is out of this line of
7 questioning that we need to be aware of.

8 MR. DORIN: Well, Madam Chair, it's very
9 simple. Section 144 of the Environmental Protection
10 and Enhancement Act says that a -- an expropriation
11 board such the Surface Rights Board may not terminate a
12 right of entry order until a reclamation certificate
13 has been issued.

14 And so the Surface Rights Board very clearly
15 outlined that Whitecap only provided a reclamation
16 certificate that did not cover the east-west access
17 road. So we have this whole issue of, you know, how
18 many acres were covered here, and this has all been to
19 the Surface Rights Board, and now that's all been
20 rescinded, and it's all back here again. And I want to
21 make sure that we don't end up back and forth again.

22 So, you know, this specifically deals with how
23 many acres were certified and whether or not the
24 east-west access road was recertified or not. And
25 that -- you know, this is all relevant evidence.

26 MR. NAFFIN: Madam Chair, I don't know

1 whether you want to hear from me. If you do, I'd be
2 happy to comment, but otherwise I'm happy to leave it
3 in your hands.

4 Sorry. I think you're on mute again.

5 MS. TURNER: Madam Chair, you're on mute.

6 THE CHAIR: I was going to say I have to
7 get IT to check my mouse. Why don't you say what you
8 have to say on the topic.

9 MR. DORIN: Well, I think he's already --
10 you know, I've asked the question did they clarify with
11 the Surface Rights Board that the east-west access road
12 was recertified or not, and -- and he wanted to confer
13 with the other panel members. So I think we're waiting
14 for an answer.

15 A MR. O'SHEA: Yeah. So Whitecap responded
16 to the supplemental information request from the
17 Surface Rights Board and provided them with the 2008
18 release for the east-west access road.

19 Q MR. DORIN: Do you not mean, sir, that --
20 the 2008 reclamation certificate for the east-west
21 access road? Is that what -- would that be correct?

22 A Yes. That is what we provided the Surface Rights
23 Board, the 2008 reclamation certificate.

24 Q So, in other words, you did not rely on the reclamation
25 certificate as issued in pursuing -- and that's --
26 that's up for reclamation -- or for, sorry, regulatory

1 appeal -- in this proceeding, you did not rely on that
2 reclamation certificate; is that true?

3 THE CHAIR: So, Mr. Dorin, I'm sorry.

4 Again, I don't -- I'm having trouble understanding
5 how -- whether or not Whitecap relied on something
6 before a different tribunal is relevant to your
7 clarification about the total acreage that was intended
8 to be covered by the reclamation certificate issued by
9 the Alberta Energy Regulator.

10 MR. DORIN: Well, it's highly relevant
11 because if the -- if Whitecap goes to the Surface
12 Rights Board with a 3.50-acre reclamation certificate
13 that does not cover the east-west access road and asks
14 for the right of entry order to be fully terminated,
15 the Surface Rights Board can't do it 'cause that's the
16 law.

17 So when the deficiency notice got issued, they
18 provided the 2008 reclamation certificate. And I think
19 if we move on, we'll confirm that the Surface Rights
20 Board refused to terminate the reclamation certificate
21 because the -- the -- the amount of acreage certified
22 as reclaimed by the AER was unclear.

23 THE CHAIR: So maybe, Mr. Dorin, let's
24 move on from this line of questioning because I think
25 you've got more information about the Surface Rights
26 Board on the record, and let's move back to the

1 application made to the Alberta Energy Regulator for
2 the reclamation certificate and the four issues that we
3 have to decide here, and, as you say, including the
4 question of whether -- what total number of acres a
5 reclamation certificate, based on the application that
6 was made, should cover.

7 MR. DORIN: Right. Okay.

8 So my next question is for Ms. Carscallen. And if
9 we could please have Exhibit Number -- I want to have
10 the reclamation -- sorry, the application. So I
11 believe that it's in 04 point -- I'm sorry --

12 A MS. CARSCALLEN: 05?

13 MR. DORIN: -- 05, and it's close to the
14 front. It's -- yeah. So it's page number -- PDF page
15 number 2, please.

16 A MS. CARSCALLEN: I'm there.

17 MR. DORIN: 04.05, PDF page 2.

18 Do we have that up or not? I'm not seeing it.

19 THE CHAIR: No, I don't see it either.

20 Ms. Turner, are you still our Zoom host? Can you
21 pull up Exhibit 4.05, PDF page 2, please.

22 MR. DORIN: Okay. Thank you. So -- yeah.

23 Q MR. DORIN: So, Ms. Carscallen, your
24 evidence was you're in charge of this application; is
25 that correct?

26 A MS. CARSCALLEN: I oversaw the reclamation

1 application process.

2 Q Okay. So I have a question about the Table 1.1,
3 "Assets", and that's listed there. It's described as
4 the "Well". So that -- is that the 2.81-acre wellsite
5 area in Table 1.1, "Assets"?

6 A It would be relating to the wellsite, yeah.

7 Q That's the wellsite.

8 Okay. So I'd like to call your attention down
9 into the -- just a bit further down, it says,
10 "Table 2.2, Associated Activities" --

11 A M-hm.

12 Q -- near the bottom of the screen. So the first one
13 says "Access Road"; correct?

14 A Yeah.

15 Q And it says "If Other, Describe"; that's blank. And
16 then we have -- so what -- could you describe which of
17 the two access roads you are, you know, seeking
18 certification for here, please?

19 A So this looks like it's the east-west access road.
20 It's labelled as --

21 (SIMULTANEOUS CROSS-TALK)

22 THE COURT REPORTER: I'm sorry --

23 Q MR. DORIN: Thank you. So the next row
24 down --

25 THE COURT REPORTER: Excuse me --

26 Q MR. DORIN: -- it says --

1 THE COURT REPORTER: Excuse me, sir --

2 Q MR. DORIN: -- "Other See Comments" --

3 THE COURT REPORTER: Excuse me. Excuse me. I

4 didn't hear the full answer because you interrupted

5 Ms. Carscallen. Can you maybe just slow down a little

6 bit.

7 A MS. CARSCALLEN: I'll pull the mic a little

8 closer. Does that help?

9 THE COURT REPORTER: No. It was just that you were

10 interrupted, and I lost your word. The last thing I

11 have is: (by reading)

12 So this looks like it's the east-west access

13 road. It's --

14 A MS. CARSCALLEN: It's labelled as "Full

15 Disturbance".

16 THE COURT REPORTER: Thank you.

17 MR. DORIN: Sorry. My apologies.

18 Q MR. DORIN: So the next row down says

19 "Other See Comments", and it says "Proposed Access

20 Road". Could you describe what portion of the lands is

21 being described there, please?

22 A MS. CARSCALLEN: I believe that would probably

23 be referring to the north-south access road.

24 Q Okay. And the acreage of that is 0.61 acres. You'd

25 agree with that, then?

26 A Can I ask where you're seeing that?

1 Q Well, we have a -- attached to the reclamation
2 certificate we have four surveys, do we not?

3 A I would have to look up the specifics. Do you need me
4 to look up the --

5 Q Well, we'll go -- I guess we'll go to the reclamation
6 certificate in a minute.

7 So that's the north-south access road. And then
8 the -- below that it says "Other See Comments", and
9 there's a -- it's described as a "3.2-by-96-metre
10 strip" there. Could you describe that, please, what
11 land we're trying to have certified there?

12 A So I believe that refers to that strip of land where
13 the fencing was put outside of the southern part of the
14 wellsite --

15 Q Okay.

16 A -- boundary.

17 Q Okay. So would you agree with me that the wellsite is
18 2.81 acres?

19 A If you just wait one moment, I can -- yes, I would
20 agree with that.

21 Q And would you agree that the north-south access road is
22 0.61 acres?

23 A Yeah, I would agree.

24 Q And would you agree that the 3.2-by-96-metre strip is
25 around 0.08 acres?

26 A Yes.

1 Q And so -- and those three numbers, if we total that up,
2 the wellsite, the north-south access, and the
3 additional strip, that equals 3.5 acres; correct?

4 A The wellsite, the east-west access, the north-south
5 access, and the strip?

6 Q No. The wellsite, the east-west access, and the strip.
7 That equals 3.5 acres; correct?

8 A I'd have to just run my calculator here 'cause the
9 reclamation application was a total of 4.53, but that
10 included the north-south access road. So I just have
11 to minus that out. So what did you say it was?

12 Q Well, I was -- I was just trying -- so you've just said
13 now that it's 4.53 acres. So could you -- could you
14 read what it says to me under "Site Information,
15 Section 2.1, Total Land to Be Certified Acres"; what
16 does it say there?

17 A So in this page here, it says "3.5 acres". That was
18 before the statement -- the information request went in
19 with follow-up information.

20 Q So -- but you originally applied for 3-and-a-half
21 acres; correct?

22 A Yes, 'cause the -- originally the north-south -- or the
23 east-west access road was not included in the
24 reclamation application.

25 Q But we've just been through the table in 2.2, and we
26 have two roads listed there.

1 A Yes.

2 A MR. TOEWS: I think maybe -- maybe if I
3 could --

4 Q So --

5 A I think maybe what -- what -- the problem is that -- I
6 prepared this application, and it was submitted
7 through -- through Whitecap. I've been involved with a
8 lot of applications, but I don't think I've ever been
9 involved with one where a certified area overlapped
10 another certified area. So it was unclear to me what
11 exactly had to be included. And when the -- when the
12 AER got back to us and asked for -- for the extra
13 information, I submitted it, and that came out to 4.53.

14 Q Okay. So -- but we also had an -- we also had a
15 reclamation certificate issued for 3.5 acres that
16 didn't include the east-west access road, and then that
17 found its way to the Surface Rights Board.

18 A I don't know anything about what happened at the
19 Surface Rights Board.

20 THE CHAIR: Mr. Dorin, was there a
21 question there?

22 Q MR. DORIN: Yeah. Well, the -- the whole
23 point is that -- the question is -- is: Did we apply
24 for 3-and-a-half acres, as stated here, and, if so, you
25 know -- you know, why -- why do we have four activities
26 listed that total 4.53 acres but a total stated of

1 3-and-a-half acres?

2 MR. NAFFIN: So, Madam Chair, again, I'm
3 not sure that's a question, but also, again, this has
4 been clarified on the record repeatedly in the SIR that
5 was referenced by the witness by ERG -- I believe it
6 was last week -- to which Mr. Dorin indicated he
7 consented to that material going on the record, so,
8 again, I'm in your hands, but it strikes me that these
9 questions are repetitive and cover material already
10 included in the record.

11 MR. DORIN: Well, Madam Chair, I'm just
12 trying to establish how many acres we originally
13 applied for here, and, you know -- because we have this
14 problem of -- of a 3-and-a-half -- we have this problem
15 of two reclamation certificates out there. Two -- two
16 reclamation certificates --

17 THE CHAIR: Yeah --

18 MR. DORIN: -- one for 3-and-a-half acres
19 and one for 4.53 acres.

20 THE CHAIR: And we have that on the
21 record, Mr. Dorin.

22 MR. DORIN: Okay.

23 THE CHAIR: And we now have Mr. Toews',
24 actually, helpful clarification about the original form
25 that went in and what happened there.

26 MR. DORIN: Fair enough.

1 THE CHAIR: So maybe we can move on. And
2 I'll just ask you again, just keep it slow for the
3 court reporter, and you -- sometimes I can hear the
4 real -- the intensity of feeling in your voice, and
5 that comes through loud and clear. So let's just all
6 maybe sort of take a -- take a breath and slow down a
7 bit and carry on. Thank you.

8 Q MR. DORIN: So, Ms. Carscallen, you filed
9 the SIR response; correct?

10 A MS. CARSCALLEN: Yes, I did.

11 Q Okay. Did anyone call or email the Dorins to see if
12 the 2008 reclamation release should be relied upon
13 again?

14 A I don't recall if that occurred or not, but I guess
15 that was beside the point because we did have a
16 release, and we already had a reclamation certificate
17 on that access road, so to us it was a nonissue because
18 it was already certified.

19 Q Thank you.

20 So the SIR request required you to either remove
21 fencing or obtain a release; correct? Agreed?

22 A Yes.

23 Q And you didn't reply with -- you didn't comply with
24 that, did you?

25 A I think it's outlined quite well in our response letter
26 to the AER, the efforts that we made to both obtain a

1 release and to remove the fence. Mr. O'Shea can speak
2 to that matter more thoroughly if you'd like.

3 Q Okay. But in -- in your SIR response, you said, and I
4 quote: (as read)

5 Whitecap believes that the terms of the right
6 of entry order grant Whitecap the right to
7 access the lands to complete such reclamation
8 certificates as may be required. Whitecap --
9 You know -- so is it your belief that the right of
10 entry order allows you to remove the fencing?

11 MR. NAFFIN: Madam Chair, I'm not sure
12 Ms. Carscallen is able to provide a legal
13 interpretation about the terms of the right of entry
14 order, so I don't think that's a fair question.

15 MR. DORIN: I don't --

16 THE CHAIR: Yeah. Agreed, Mr. --

17 MR. DORIN: I don't --

18 THE CHAIR: Sorry, Mr. Dorin. The time
19 for legal argument and -- and description of what the
20 legal conclusion should be based on the evidence and
21 the facts is yet to come, so if you could frame your
22 questions to get evidence or clarification of evidence,
23 that would be helpful.

24 MR. DORIN: Yeah.

25 Q MR. DORIN: So you asked the AER to
26 resolve this fencing dispute; did you not?

1 A MS. CARSCALLEN: We asked the AER for guidance
2 on how to resolve this dispute because we -- we weren't
3 going to be able to get resolution by either getting a
4 release or being able to remove the fence.

5 Q So the request in your SIR says: (as read)

6 In light of the foregoing and given the
7 unique circumstances of this case, Whitecap
8 hereby formally requests the AER exercise its
9 discretion and continue to process the
10 application with the fencing left in place.

11 A Yes.

12 Q And you -- you had advised the AER that there was a
13 dispute with respect to the fencing; correct?

14 A Yes. It's laid out quite well there in the --

15 Q Okay.

16 A -- the response.

17 Q Fair enough.

18 So I just have one brief question for either
19 Mr. Millard or Mr. Toews, and I think it might have
20 already been clarified, but am I correct that the
21 detailed site assessment pertains only to the wellsite
22 and only to the additional area fence south of the
23 wellsite? In other words, it does not pertain to
24 either access road. Am I correct in that
25 understanding?

26 A MR. TOEWS: Yes, that's -- that's correct.

1 Just the wellsite and the -- and the additional strip
2 got a detailed site assessment. The only assessment
3 that I carried out at that time regarding the access
4 roads was the fact that -- that they didn't require
5 assessments because one was released, and the other one
6 was untouched.

7 Q And did you consider that the -- that the reclamation
8 certificate might need to be recertified after someone
9 entered on the -- the road in your consideration?

10 A No. It was never a consideration for me. I -- I
11 conducted the detailed site assessment in the same way
12 as I would on any other site with a released access
13 road, and it's -- it's not unusual to -- to -- to have
14 a situation where you have a release before you do an
15 assessment because we often get the releases at the
16 time or just before you do reclamations so that we
17 don't run into these kinds of problems.

18 Q But I'm -- I'm not really speaking about the release
19 here. I'm speaking about -- that the -- that the road
20 was certified -- an east-west access road was certified
21 as reclaimed.

22 A I believe it was, yes.

23 Q Yes. So did you consider whether a dated release would
24 apply after a certified road area had been reentered
25 upon?

26 A As I said earlier, it's an unusual situation, but as

1 far as a dated release, it's not uncommon to have
2 releases that are several years old because we like to
3 get the landowners' intentions on the record and -- and
4 clear so that we don't have a situation where
5 afterwards they say, Well, you gotta come back and --
6 and redo the access road when they previously said they
7 wanted -- wanted to keep it. So that's not -- that's
8 not unusual to me.

9 Q Okay. Thank you.

10 So, Mr. Knafla, if I could ask a few questions,
11 please. What -- what -- what portion of the lands are
12 included in your definition of "site"? You've used the
13 term -- capital term "Site".

14 A MR. KNAFLA: Right. The site is
15 classically the lease boundary -- within the lease
16 boundary.

17 Q The lease boundary. So would -- do you mean the
18 wellsite here, then, and perhaps the extra strip? Is
19 that -- is that fair to say that's what you assessed
20 and not any roadways?

21 A Which extra strip are you referring to?

22 Q Okay. So it's the wellsite, then?

23 A The wellsite. Correct.

24 Q Okay. Could you explain a little -- can you give us an
25 explanation of SAR, sodium absorption ratio? Can you
26 just briefly explain what it is?

1 A Certainly. So basically it's a ratio of a predominant
2 monovalent ion, so that's sodium, divided by two
3 divalent ions, calcium and magnesium. And what SAR is
4 an indicator of is situations where if you have a lot
5 of monovalent ions present and dependent on EC, you can
6 wind up with situations where soils, particularly
7 clays, can become dispersed or can have lower
8 permeability to water flow. That -- that's its
9 environmental significance.

10 Q So in your direct evidence, I'm not -- I didn't quite
11 catch it, and I wonder if you could clarify it for me,
12 please. And you've said that based on background,
13 that -- that there was no exceedances of -- on the
14 site. Is that -- was that your evidence?

15 A No, that's -- that's not correct. So we developed some
16 modified Tier 1 guidelines for EC and SAR, which I'm
17 sure you saw that were in the report. And then we have
18 several sections in our report where we show SAR values
19 that are higher than those Tier 1 guidelines for the
20 site. And it is further explained that the reason they
21 are higher is because there's a naturally lower
22 concentration of calcium and magnesium present in those
23 soils, which is the denominator of that equation. So
24 it gives you a higher SAR value.

25 Q So we have SAR exceedances over Tier 1 guidelines at
26 some certain points in the site; is that correct?

1 A Not related to oil and gas activities, but due to
2 naturally low calcium and magnesium levels. Correct.
3 Q But there are SAR exceedances on the site?
4 A There are SAR values greater than the Tier 1 guidelines
5 that are unrelated to oil and gas activities, correct,
6 yes.
7 Q On the site, though?
8 A Within the lease boundary, correct.
9 Q Yeah. So -- and how much of the lease boundary is
10 impacted this way? How much within the lease boundary
11 is impacted this way?
12 A Well, I believe you said some auxiliary information. I
13 don't know what it would be referred to, but it's --
14 you have a diagram here where you've drawn a boundary.
15 Q Well, excuse me, sir. Could we have Ms. Turner bring
16 up the cross-examination aid that I sent in, please.
17 A That would be helpful.
18 Q And if you want to refer to that, Mr. Knafla, please go
19 ahead once it's on the screen.
20 A The freshest information I have from you, so it's
21 probably the best one to refer to.
22 Q So let me just help here. I've taken this from the --
23 the page of your report that -- that -- that -- that's
24 related to Table 14 in your Tier 1 report, and -- and
25 in the table, it says that the -- the boreholes from
26 which samples came from are these ones I've shown in

1 black with arrows. And so, you know, is that accurate?
2 Am I accurate to assume this?

3 A To assume that these are locations where the SAR value
4 was higher than the modified Tier 1 guideline for the
5 site? Is that specifically your question?

6 Q Yes, sir.

7 A I'm in agreement with you --

8 Q That's exactly it.

9 A I'm in agreement with you, yes.

10 Q Okay. And if we could just move to the next page,
11 please, then. And so what I've shown here is the blue
12 excavation area, and that's where Arletta excavated in
13 2014, and just tried to -- all I've tried to do is show
14 where these samples come from without all the other
15 background samples so it's more clear. Is this
16 accurate?

17 A Is what specifically accurate?

18 Q The -- the -- are these -- does this show the locations
19 of where the high -- where the SAR exceedances are --
20 have been found?

21 A Yes. In addition to the samples of manure that were
22 taken in the corral, they had -- you had elevated
23 values there as well. Correct.

24 Q Thank you.

25 But these are the on-site locations, then.

26 Those --

1 (SIMULTANEOUS CROSS-TALK)

2 Q MR. DORIN: -- were not on-site --

3 A MR. KNAFLA: That's right, yeah. No, it's
4 related, but it's off-site, yeah.

5 Q Okay. And so we would go to the next page, and what
6 I've done here is I've outlined an area that's -- and
7 I've circled it in white, and I -- and I measured the
8 acreage of that roughly, and it's around 0.15 acres.
9 So would you agree that that's the -- the only portion
10 of the site that's impacted by SAR? 'Cause you --
11 you -- you referred to the northwest corner of the
12 site.

13 A I think we have to be -- be clear about the term
14 "impacted". So this is an area where you have sodium
15 contribution to the ion concentrations from an
16 off-lease source, and due to the low calcium and
17 magnesium that's clearly present in this area, as a
18 consequence, your SAR ratio is elevated.

19 So the reason the SAR is elevated here is because
20 of the elevated sodium that's also correlated with the
21 potassium that's present in some of those sample
22 locations, with the nitrate that's present there, and
23 the sulphate and the chloride, which are all tied to
24 the manure source that's off lease to the northwest.
25 So that is why the SAR values are elevated there.

26 Q Okay. So -- but the -- I'm more concerned with: Is

1 this the only portion of the wellsite that's --

2 that's -- that's negatively impacted by SAR?

3 A So it's not negatively impacted. This is -- this is --

4 it depends on how you define "negative". So maybe if

5 you could clarify that term in terms of how you --

6 Q Well, let me --

7 (SIMULTANEOUS CROSS-TALK)

8 Q MR. DORIN: Let me just -- I'm sorry.

9 Because I'm not a soil scientist, is this the only area
10 of the wellsite where we have SAR exceedances that are
11 still above Tier 1 guideline values? That's probably
12 the best way to characterize it.

13 A MR. KNAFLA: From the investigation that's
14 been completed to date, yes.

15 Q Thank you.

16 So now, you know, there's been -- you've put in a
17 reply to evidence of the landowners, and your evidence
18 was that you believe that this manure now came by
19 tracking of animal hooves; is that correct?

20 A Well, it's -- we have lots of information in our report
21 that talks about different ways that manure got
22 on-site. So there's the tracking, there's the tracking
23 along the north, there's the tracking along the west,
24 and, in addition, there was the storage of manure that
25 was really basically overlapping with the lease
26 boundary up in the northwest corner. And then in

1 addition to that, based on the information you provided
2 or your father provided, it was a clarification of --
3 and it was provided in your video evidence as well -- I
4 could get you the exact minute as well -- where you
5 indicated clearly manure was being tracked from that
6 area onto the lease. And so that was very important to
7 me in terms of an additional potential source that you
8 probably knew more about than we did. And then when we
9 looked at the air photos, you could actually see quite
10 clearly the -- the tracks, which corroborated with what
11 you were saying and made more sense to us.

12 Q But here we can see the track you referred to coming
13 out of the northwest corner and heading to the
14 east-west access road. That's the track --

15 A Well, that one's --

16 Q -- that we see --

17 A No. That's not exactly the one I was referring to.
18 That's one track. But there's some other tracks as
19 well. So let me get to the page number here. Just
20 give me a second to look through this.

21 There's also some ground-level pictures. So if we
22 could go to Exhibit 04.04 and start with page twenty --
23 well, it says 25 of 1164. It's an air -- or it's a
24 ground-level photo with a truck -- that's it -- in the
25 background.

26 This is what's coming out onto the lease from the

1 northwest off-lease area. And you can see the -- the
2 slight disturbance of the soil surface with what
3 appears to be possibly cattle or horse hooves, and you
4 can see the -- the manure deposits. And you can see it
5 almost heads off towards that -- that east access road,
6 kind of, area.

7 Q Well, Mr. Knafa [sic], I know this --

8 A Knafla.

9 Q -- site extremely well. What we're looking at here --
10 this is disturbance with raised soil. This is where
11 the -- Camino had its pipes buried only about 2 inches
12 beneath this surface, and this is where the pipeline
13 between the wellhead and the separator pad was pulled
14 out. That's the cause of that disturbance. This is
15 not a cattle track. This is where the -- this is where
16 the --

17 THE CHAIR: Mr. Dorin --

18 Q MR. DORIN: -- pipeline was barely
19 buried -- buried. So --

20 THE CHAIR: Mr. Dorin --

21 MR. DORIN: Yeah.

22 THE CHAIR: Mr. Dorin, I'm sorry. But
23 we're now in the phase where you're asking questions,
24 and Mr. Knafla and other Whitecap witnesses are
25 answering questions. So --

26 MR. DORIN: Fair enough. But --

1 THE CHAIR: -- if you can frame it as a
2 question.

3 Q MR. DORIN: So do you know the cause of
4 this surface disturbance here?

5 A MR. KNAFLA: You're asking me?

6 Q Yeah. Do you know the cause of the surface disturbance
7 that we see here?

8 A I -- to me, it looks like a disturbed soil surface, and
9 surrounding it there is clear indication of manure
10 deposits. That's all I can really tell.

11 But I'd like to go to another diagram. This is on
12 Exhibit 39.01, and this would be PDF page 54 of 81.

13 So here I've gone and highlighted with some blue
14 arrows to -- to better define and distinguish some
15 areas where you see a track, and I -- those don't all
16 overlap with the pipelines. I think we both agree with
17 that. And we see they're sourced from an area off to
18 the west, and there is one that goes off to the north.
19 And you can see there's, like, a brown staining, if you
20 like, just in terms of interpretation of the colouring,
21 coming from areas where we know manure is stored, and
22 it follows along the tracks, and then it slowly
23 disappears kind of in intensity as you move further to
24 the east along the tracks.

25 So there -- there's more than one track that comes
26 down into this area, despite, you know, the one you

1 were disputing there that may be the pipeline you had
2 indicated. In addition to that, there's plenty of
3 ground-level photos that show widespread distribution
4 of manure across the lease area, particularly up in the
5 northwest and then down along the cattle run which was
6 on the west side and the cattle run on the north side.

7 Q Okay. Thank you.

8 So -- but, you know, there's other possible causes
9 of this SAR; correct? You're -- this is not
10 conclusive? It's not conclusive that this is manure;
11 is that correct?

12 A I would say it is quite conclusive that it is the
13 manure because of the other analytical -- if you look
14 at the concentrations of analytical parameters that are
15 in the manure -- and I think the best way to do that
16 would be to take another look at the same exhibit,
17 39.01. Let me just find that table. There it is. So
18 that would be page 56 of 81. This is a very important
19 table.

20 THE CHAIR: Is there any way to zoom in on
21 that table, Ms. Turner? Maybe not.

22 A MR. KNAFLA: If you hit the plus sign.

23 THE CHAIR: Yeah. You need that little
24 plus button at the top there.

25 A MR. KNAFLA: A couple times.

26 THE CHAIR: There we go.

1 A MR. KNAFLA: Okay. So if you look -- so
2 what we have here is a table with sampling locations as
3 rows and analytical parameters as columns. And you'll
4 see at the bottom three rows of that table, Sample
5 Manure Number 1, Manure Number 2, and Manure Number 3.
6 So these were samples that were taken up in the corral
7 area there, and the whole purpose of that was to
8 determine if the patterning of salt ions that we were
9 seeing in the northwest corner of the lease were
10 related to that manure source. Because it's really
11 important if we're going to say something's a
12 third-party impact, we need to have some supporting
13 evidence and information for that. So that's why we
14 went up and collected those samples.

15 And so -- so what you find here is if you look at,
16 for example, 'K', which represents potassium, a typical
17 soil in this area, not uncommon to see up to maybe
18 50 milligrams per kilogram, which is the units, but if
19 you see those bottom three rows, the manure is 7,000 ,
20 6,000, 9,000. Those are relatively high potassium
21 concentrations that you don't commonly see at impacted
22 oil and gas sites. In addition to that, you see
23 elevated chloride, elevated sulphate, and elevated
24 sodium. And this is not uncommon because cows get
25 salts through consuming vegetation, through incidental
26 ingestion of soil, and then they're often provided salt

1 licks and ultimately salt sources, which is good for
2 the health of the cow, but as a consequence, it results
3 in a salty excretion product, a salty manure.

4 So if you look at the patterning of potassium and
5 chloride and sulphate across the site, it all ties into
6 the northwest portion and to where the manure areas
7 were. And so this is one of the clear indicators that
8 the elevated SAR there which is tied to the elevated
9 sodium here -- it's always associated with elevated
10 chloride and sulphate. And so where you see the --
11 these SAR exceedances, you're also seeing these other
12 analytical parameters being present in elevated
13 concentrations.

14 Q MR. DORIN: Okay. So -- and, you know,
15 what -- I want to -- you made another comment in your
16 report twice in places that said: (as read)

17 Vegetation growth observed on this site is
18 consistent with off-site vegetation with no
19 evidence of stress associated with areas of
20 elevated EC and/or SAR.

21 So --

22 A Can you direct me to -- to where that is, Mark, please.

23 Q Sure. It's in -- actually, in both of your reports.

24 I'd have to go find it 'cause I cut and pasted it out.
25 But it -- it just -- the -- there's -- it's in your
26 Phase 2 and in your Tier 1. I think I can find it if

1 you just give me a second.

2 A Sure.

3 Q Yeah. So Exhibit 04.04, PDF page 421, that's the one
4 place where it is.

5 A Is that under "Summary and Recommendations"?

6 Q It's under, I believe -- well, I'm not sure, but if we
7 go to 04.04, 421, we'll find it.

8 MR. NAFFIN: Mr. Knafla, let's just wait
9 until it gets up on the screen so you and Mr. Dorin
10 are --

11 A MR. KNAFLA: Yeah.

12 MR. NAFFIN: -- acting in harmony for the
13 court reporter.

14 A MR. KNAFLA: Okay.

15 MR. DORIN: So I think we'll have to go
16 down a little bit. Yeah. Up a bit. A little further
17 up, please.

18 A MR. KNAFLA: Oh. Oh, I think --

19 Q MR. DORIN: Did you see it?

20 A -- it's there in that bottom paragraph there, yeah.
21 It's under the second --

22 Q Yeah. There you go. It's the last paragraph on --
23 you're correct. So I'm curious, you know, if we have
24 SAR elevation --

25 A Yeah.

26 Q -- on this site, and it's -- it's only -- the only --

1 correct me if I'm wrong. The only receptor that it can
2 bother is -- is -- is vegetation; correct?

3 A Not necessarily. So -- well, yes, SAR itself. It's --
4 it's -- it's -- it's a little complicated, so let me
5 explain it so that's it clear. So SAR alone in itself
6 will not tell you whether it will cause any adverse
7 effects on plant growth, and it's kind of an indirect
8 effect, sort of.

9 So what's really important is the ratio between
10 electrical conductivity and SAR, so EC and SAR. That
11 ratio is critical. So if you have a soil that has very
12 high SAR values and very low EC values, that's when you
13 start to see an adverse effect on soil structure. It
14 starts to become impermeable. It's a moisture
15 infiltration, and in extreme cases, clays can become
16 dispersed, it's called, which is -- you know, they just
17 become a big amorphous blob, if you like, and they
18 don't allow water to infiltrate.

19 So how SAR can adversely affect plants is if you
20 have that kind of situation, and it's particularly
21 hazardous if it's at the soil surface where it can make
22 the soil surface impermeable to water flow, and now
23 your roots don't get any moisture.

24 Now, when SAR is located deeper down in the soil
25 column, it represents a much lower potential risk.
26 And, again, it's crucial that if you're trying to

assess the potential for adverse effect that you
examine both SAR and electrical conductivity
simultaneously.

4 Q And so how would this impact residential land?

5 A There would be no impact on residential land in terms
6 of people being able to grow a garden, develop good
7 grass cover for kids to play on, things like that.
8 There would be no adverse effect.

9 Q So then would you agree with me we've got a little bit
10 of an issue here if the land is, you know, to be for
11 residential use and there's a bit of a pause there, you
12 know, with the guidelines, you know? They're the same
13 for residential as they are for agriculture, are they
14 not?

15 A In terms of EC and SAR?

16 Q Yes, sir.

17 A Yes. Yes. It's -- EC and SAR, the way that the Tier 1
18 guidelines are developed in Alberta is based on certain
19 soil quality rating categories and background
20 conditions.

21 Q Okay. So -- and if -- if there was fencing up around
22 this site, would this have occurred, in your opinion?

23 A Would this have occurred --

24 MR. NAFFIN: Sorry. Can Mr. Dorin ask a
25 clearer question. We've heard a lot of evidence that
26 there is fencing on the site and so on, so maybe some

1 clarity --

2 MR. DORIN: Fair enough.

3 MR. NAFFIN: -- for the witness --

4 Q MR. DORIN: If -- if livestock were
5 completely fenced out of this area, would we see the
6 same SAR impacts?

7 A MR. KNAFLA: I think you have to -- like I
8 said before, there's, like, several sources of -- of
9 manure distribution on -- on the site. So one is, you
10 know, the widespread deposits of manure. Clearly cows
11 had access to the lease, and that was one of the
12 potential sources. We have the -- the cattle tracks
13 that come onto the lease area. That potentially could
14 have -- well, clearly, if you had a fence, those
15 particular paths wouldn't be active. But you also have
16 cattle running along the -- in close proximity right on
17 the boundary, running northwest on the west -- or,
18 sorry, north-south on the western margin of the site
19 and east-west on the northern margin of the site. And
20 you have to understand that, you know, salts by nature
21 tend to be water soluble, and -- and they're diffusive
22 in the environment, and they'll move with surface water
23 flow and things like that. It's -- it's -- it's not
24 uncommon. In fact, it can actually create challenges
25 for people doing investigations.

26 So I would say that even if you had the fencing in

1 place, you would still have impacts within the lease
2 boundary that would have elevated EC and SAR values.
3 Would they be exactly the same as what's been measured
4 here? I can't answer that because there's multiple
5 sources. But we do know that there was manure storage
6 also in the upper northwest portion of the site, and
7 that's certainly a potential source that's irrespective
8 of the fence.

9 Q Right. But -- but there -- on the east portion of the
10 wellsite, there's no -- there's no impacts like this
11 whatsoever. The soil's all good. Am I not correct
12 there?

13 A Yes, you are correct.

14 Q Okay. So -- so proximity of the wellsite to the
15 farming operations was definitely a factor. Would you
16 agree with that?

17 A Proximity of the wellsite to the farming operations and
18 nearby operations around the lease, yes, I would. Yes.

19 Q Okay.

20 MR. DORIN: Madam Chair, I believe that's
21 the extent of my questions.

22 THE CHAIR: Thank you, Mr. Dorin. Before
23 you -- before you step aside, though, I want to ask
24 you: Did you want to have your three aids to
25 cross-examination marked as exhibits? And, if so, I
26 want to get clear -- and just for everyone's sake, it

1 appeared as though you had taken photographs/charts
2 that were already in evidence, made some modifications
3 of your own. But if you do want to have them marked as
4 exhibits, then I need to hear from Mr. Naffin and
5 Mr. Myers about their views and from Ms. Kapel Holden
6 about her views on that, and then we can take it from
7 there. So, first, would you like to have them marked
8 as exhibits?

9 MR. DORIN: Well, first of all, Madam
10 Chair, in the Dorins' reply submission -- I believe
11 it's 58.01 -- the -- the -- the third illustration is
12 included. It --

13 THE CHAIR: Okay.

14 MR. DORIN: It showed that whiteout line
15 area. I just wanted to try to confirm with -- with the
16 expert, you know, just what portion of the wellsite --
17 you know, if there was accurate -- because there are so
18 many sample points. So --

19 THE CHAIR: Yeah. I understand.

20 MR. DORIN: Yeah.

21 THE CHAIR: I just want to make sure that
22 if there was anything in there that's not already
23 clearly on the record --

24 MR. DORIN: I don't think --

25 THE CHAIR: -- that you want on the
26 record --

1 MR. DORIN: -- it's necessary --
2 THE CHAIR: Okay.
3 MR. DORIN: -- to mark them as exhibits.
4 I'm sorry. I should have been more clear. I don't
5 think it's necessary, is my submission.
6 THE CHAIR: Excellent. Thank you. Then
7 we don't need to hear from anybody else.
8 So --
9 MR. DORIN: Madam Chair --
10 THE CHAIR: Yeah.
11 MR. DORIN: -- just one moment.
12 There's -- there's an alarm going off here, and it's
13 one of my vehicles in my driveway, and I just need to
14 deal with that. I'm sorry.
15 THE CHAIR: Let's take a 15-minute break,
16 then. Okay. He's gone. We'll take a break, and when
17 we come back, then we will move into AER staff and
18 Panel questions for Whitecap. So let's be back --
19 well, we'll check and see if Mr. Dorin is back at --
20 2:30, 2:40 -- let's say 2:55, at five to 3. Okay?
21 MR. NAFFIN: That's great. Thank you,
22 Madam Chair.
23 THE CHAIR: Thank you.
24 MR. DORIN: Sorry. 2:55?
25 THE CHAIR: Yes, Mr. Dorin.
26 MR. DORIN: I am very sorry --

1 THE CHAIR: That was quick.

2 MR. DORIN: -- for that. My apologies.

3 THE CHAIR: No need to apologize. It
4 happens to all of us.

5 (ADJOURNMENT)

6 THE CHAIR: So I see -- there we are.

7 Mr. Dorin. Okay. We were comparing technology issues.

8 I'm still having the same issue. My cursor does not
9 look like a cursor. It looks like a hand, and the hand
10 is not effective for working very well on my little
11 mute button, which is what my issues have been. But on
12 that same note, Mr. Naffin, Mr. Myers, I'll say to you
13 when you leave yourselves unmuted all the time, anytime
14 you do anything that sort of triggers your mic, your
15 frame lights up making me think you want to say
16 something. But most of the times that hasn't been the
17 case, and then when you do want to say something, I'm
18 not sure if it's because you've moved or you want to
19 say something. So if you're not fussed with that,
20 that's fine. Otherwise maybe just mute yourselves
21 until you do want to say something, and your screen
22 lighting up is sort of the giveaway for that. I'll let
23 you decide.

24 MR. NAFFIN: Thank you, Madam Chair. I
25 don't think it's something I've been doing
26 deliberately, so I will keep an eye on it. Thank you.

1 THE CHAIR: I understand. I just wanted
2 you to know that on the occasions when you have wanted
3 to say something and I haven't gone to you right away,
4 it's because, oh, their screen is lighting up again.

5 So we have everybody we need, and I believe that
6 AER counsel is ready to proceed with their questions
7 for Whitecap. So I'll remind the Whitecap panel that
8 you are still under oath.

9 And, Ms. Mosher, please proceed. Thank you.

10 MS. MOSHER: Thank you.

11 Alberta Energy Regulator Staff Cross-examines Whitecap
12 Resources Inc.

13 Q MS. MOSHER: Good afternoon, panel.

14 So you would have heard me this morning when I
15 began questioning Mr. Dorin, but just -- just to say it
16 again, I'm here as panel for the counsel -- "for the
17 counsel" -- I'm here as counsel for the Panel --
18 forgive me -- and my questions -- oh, Mr. Naffin.

19 MR. NAFFIN: My apologies, Ms. Mosher.

20 We're having a hard time hearing you. We were this
21 morning as well. You're very muffled, so I don't know
22 if there's a way we can address that. We're hearing
23 you, but it's a bit of a strain on our end, just to
24 make that comment. Thanks.

25 MS. MOSHER: No. Thank you for letting me
26 know. Is this any better? I will endeavour to hold my

1 microphone by my mouth. So I'll start again.

2 Q MS. MOSHER: Hello, panel. So my name is
3 Lindsey Mosher, and I'm here as counsel for the Hearing
4 Panel, and the questions that I will ask today are
5 intended to just make sure that the record is just as
6 clear as we can get it on the issues the Panel has been
7 tasked with deciding. So I may seem like I'm asking
8 some very straightforward questions, but thank you for
9 giving me your time to make sure those details are
10 clear.

11 So what I'd like to do is I'd like to go through a
12 lot of what I went through with Mr. Dorin this morning
13 regarding the fencing. And I had Mr. Dorin look at two
14 diagrams that are on the record, and so I'd like to
15 refer to those again. And those were in Exhibit 4.05,
16 which is the application DSA. And it was PDF page 49,
17 and if I recall, that meant entering "48" into the --
18 into the document itself. And then also it was
19 Exhibit 36.04, and it was PDF page 10.

20 And so if we're all there, one of the first things
21 Mr. Dorin and I went over was that there's a few
22 discrepancies between the diagram of fencing as they're
23 depicted on -- in Exhibit 36.04 and in Exhibit 4.05.
24 They largely over -- overlap. The differences that
25 Mr. Dorin and I noted were that the diagram in 36.04
26 depicts more of the east-west access road, as well as

1 it depicts the -- what is on the diagram in 36.04, the
2 chain-link fence south of the Bethany Care centre at a
3 slight angle running north. This is at the north of
4 the wellsite boundary. And the line of the chain runs
5 slightly north as it approaches the east end. And then
6 that the line of barbed-wire fencing at the northeast
7 of the wellsite boundary runs to the southeast from
8 where it begins at the north end.

9 And I just would like to confirm with the panel --
10 and I don't know if it might be better that I address
11 my questions to you, Mr. Millard, or to you,
12 Mr. O'Shea, or -- or anyone else. I just want to
13 confirm that there aren't -- that those discrepancies
14 between the 36.04 and the 4 point -- 4.05 diagrams are
15 reflective of what you see.

16 A MR. TOEWS: Yes. There's -- there's
17 the -- the discrepancy. I would -- I would agree.
18 When I was putting together the diagram on the -- on
19 the application, I don't consider that to be a scaled
20 diagram; it was -- it was close. But I believe, in my
21 recollection, the chain-link fence does run at a -- at
22 a kind of an angle like that towards the northeast.

23 The -- the other one that begins at the northeast
24 and heads down to the east-west access road, I think
25 it's more parallel to the side of -- to the side of the
26 lease, like, maybe 5, 6, 7 metres wide. It's more

1 parallel. It's not quite an angle like that. But I'm
2 not sure if that makes a difference, but that's how I
3 recall it.

4 Q Thank you, Mr. Toews.

5 And then is there anything -- so because Mr. Dorin
6 and I walked primarily through the diagram in
7 Exhibit 36.04, is there anything on this diagram that
8 you disagree with and would be uncomfortable working
9 through this analysis with me using the 36.04 diagram?

10 MR. NAFFIN: Sorry, Ms. Mosher. Just so
11 I'm clear, these are, you know, handwritten -- one is a
12 set of field notes in the case of -- of the Whitecap
13 diagram. This is Mr. Dorin's hand-generated computer
14 [sic], so I'm just wanting to make sure the panel
15 understands what you're asking. These are sketches.
16 We've heard they're not to scale. They're not surveys.
17 They're not anything else. So I just want to make sure
18 the panel understands what -- what task you're asking
19 them to embark on. I don't have any issue or objection
20 to the question. I just want to make sure they
21 understand and that you're on all fours as to what the
22 purpose of these documents is and what you're asking
23 them.

24 MS. MOSHER: Thank you, Mr. Naffin. I
25 appreciate that.

26 Q MS. MOSHER: So no, I -- oh, yes,

1 Mr. Toews.

2 A MR. TOEWS: Yeah. I have one -- one
3 comment in -- in -- in that context. The -- on
4 Mr. Dorin's diagram, on the west side, he has the one
5 barbwire fence that's labelled as "Barbwire Fence
6 (Removed)". So that would be the -- the third fence in
7 from the left if you're looking at it. Do you know
8 what I mean?

9 Q Yeah.

10 A I have that marked on mine, and, in fact, that -- that
11 fence is incorrect on mine. I hadn't noticed until --
12 until you brought that up. The barbwire fence that I
13 have indicated there that was removed, there's a little
14 piece of it remaining at the north end. And I think in
15 my recollection when I was making this, I -- I extended
16 it the entire way, but that alleyway doesn't exist
17 anymore.

18 Q Okay.

19 A And it was assessed all the way to the west boundary of
20 the lease, yeah.

21 Q Thank you for clarifying that.

22 So to Mr. Naffin's point, what I -- what I was --
23 what I will be asking is -- really what I'm looking to
24 do is clarify what fence -- what fencing is on the
25 lands and who constructed it and to the degree why
26 it's -- why it's there. You know, is it because it

1 goes along the length of an access road? Is it because
2 it goes around the wellsite? Is it because it's the
3 Bethany Care centre's fence and so it marks -- it marks
4 wherever the Bethany Care centre chose to put up the
5 fence? I understand these aren't to scale. It's just
6 so we have a clear understanding of where the fencing
7 on the lands actually -- actually is and whose fence it
8 may be insofar as who constructed it.

15 A MR. TOEWS: I can't --

16 Q MS. MOSHER: Yes.

17 A I can't speak with certainty about who built which part
18 of the fences, but as far as what's on the site or not,
19 the idea of getting the -- of getting the surveyors in
20 there in 2019 was to determine exactly whether the
21 posts were inside or outside. I believe Mr. Dorin said
22 earlier that the -- that the fence furthest to the
23 west, which is in disrepair, was the one originally
24 built; and I believe he built the one just inside it,
25 which is inside the lease; and -- and then Camino built
26 the -- the piece that's outside the lease that's got

1 the extra strip. And otherwise, the -- I believe all
2 the other fences were built by the operator, by the oil
3 field operator, but -- I don't know if somebody else
4 can do better than that, about who built them. It was
5 one of the things I wanted to know but we were unable
6 to determine.

7 Q No. And that's helpful for -- for me to know too.

8 A MR. O'SHEA: Kent O'Shea with Whitecap
9 here. I just -- I think there -- there might be some
10 confusion on that. I believe the inside fence on the
11 west edge, the second one in, was constructed by
12 Whitecap. Just wanted to clarify that.

13 Q Okay.

14 A Some of the other fences, Whitecap's unclear what fence
15 was installed by who on some of the other ones, just
16 due to the nature of, over the years, different
17 operators and fencing going on.

18 Q Yes. No. That -- that makes sense, and I -- I
19 understand that. I -- I appreciate your willing --
20 your willingness to -- to help me clarify -- clarify
21 these questions here as much as we can.

22 So understanding all of that, that you certainly
23 can't speak to actions you didn't take and you only
24 have the knowledge you have, just to try to get a sense
25 of what Whitecap's understanding about the fences of
26 the lands are.

1 So Mr. Dorin has it indicated along the north --
2 the top -- it's the most north fence. It is a solid
3 red line with red circles. In his legend, that's
4 indicated as a chain-link fence. And there is a
5 similar blue box fence indicated as a chain-link fence
6 on the sketch in 4.05 in the DSA. And I just want to
7 confirm the understanding that that is a fence that
8 does not -- is not associated with the wellsite insofar
9 as one that Whitecap is responsible for.

10 A MR. TOEWS: That's correct. That was my
11 intention in making that diagram, yes.

12 Q Thank you.

13 And then moving south, there is -- on Mr. Dorin's
14 diagram, it is a solid black line with little black
15 'X's on it that says "Barbed-wire fence left in place"
16 in the legend. And then there is also a similar --
17 similar indication of a barbed-wire fence just south of
18 the chain-link fence on the DSA diagram. And then that
19 fence runs in a box all the way around the wellsite
20 on -- on both diagrams. Is that, as far as Whitecap is
21 aware, a fence that Whitecap, while -- while operating
22 the well, that is the fence put up by the operator of
23 the well to go around the wellsite boundary?

24 A So just to be clear, then, you're saying the -- the --
25 the solid black line with the 'X's on the north all the
26 way down on the east, the part that extends outside of

1 the -- of the surveyed wellsite to the south, and then
2 the inside solid fence on the west side, I believe
3 those are all Whitecap fences. Is -- is that correct?

4 We think -- we think that they are -- yes --

5 Q Thank --

6 A -- were built by Whitecap. Yes.

7 Q Thank you, Mr. Toews. Yes. It -- it is a box that
8 connects the inside of the two west fences.

9 A MR. O'SHEA: Well, just to clarify too,
10 those fences are -- are there, but we can't confirm who
11 built all of them.

12 Q Yes. Thank you for clarifying.

13 And, of course, you can speak to where they were
14 the last time you were able to -- to observe them. I
15 don't expect this to be a response based on what the
16 conditions might be exactly today.

17 And so then we sort of went over this, but the
18 most outside west fence that's on Mr. Dorin's
19 diagram -- it's a solid black line with little black
20 'X's -- this is the fence that is no longer there. It
21 was a -- it was previously there, and as far as
22 Whitecap's aware, it's no longer --

23 A MR. TOEWS: No, I don't think so. I
24 believe the -- the most -- when I'm looking at the
25 diagram on the left-hand side, so the furthest west, I
26 believe that fence is there or portions of it are

1 there, but it's in disrepair. And the inside fence is
2 in good condition and the third one from the west, so
3 the one that I indicated on my diagram existed, it's
4 actually been removed. And I believe Mr. Dorin removed
5 it in 2014, I think he said.

6 Q Thank you, Mr. Toews.

7 A Just -- just a little piece of it is -- is still at the
8 north end. Yeah.

9 Q Thank you.

10 And then the -- I think we've largely addressed
11 it, but I -- I wasn't specific. At the very southern
12 end of the wellsite on Mr. Dorin's diagram, there is a
13 line -- a solid red line with little black 'X's
14 indicating a barbed-wire fence that goes over that
15 additional strip of land at the south of the wellsite.
16 And then on the 4.05 diagram, there's also the -- the
17 additional strip of land is indicated, and the
18 barbed-wire fence, the outside of it is indicated.
19 This is part of -- this is part of Whitecap's fencing
20 that went around the wellsite?

21 A Yeah. That's all part of what was assessed. And I
22 believe in Mr. Dorin's submission he indicated -- I
23 think it was in 2010 or '11 or something like -- that
24 Camino built -- built that in order to accommodate
25 the -- a flare pit or some work that was being done.

26 Q Thank you.

1 And then the last question about the fencing is --
2 and I understand if you -- if you can't confirm this --
3 or at least the last time you saw the east-west access
4 road, if you have -- are you aware if there is a -- if
5 there is barbed-wire fencing running along the length
6 of it both north and south?

7 A There is, yes.

8 Q Thank you. And thank you for working through that with
9 me. I understand we are working from sketches, and
10 they're -- they're particular questions that can be
11 hard to indicate and that the -- the background may --
12 may or may not be known to you today. So thank you
13 again.

14 And then those were my questions on fencing. So I
15 would like to just jump over to the issue of -- it's
16 Issue Number 2 for this proceeding, and it's the
17 east-west access road. And so I just wanted to
18 confirm -- perhaps you can speak to this, Mrs. -- or,
19 sorry, Ms. Carscallen.

20 After the -- after ERG issued the SIR to
21 Whitecap that addressed the fencing as well as the
22 previously [sic] rec cert at east-west access road and
23 asked Whitecap to confirm if it would be relying on the
24 2008 release for the east-west access road, do you
25 recall if Whitecap's plan to rely on the 2008 release
26 was discussed with the Dorins at all?

1 A MS. CARSCALLEN: I do not believe it was
2 discussed with the Dorins. We did respond to the SIR
3 and tell them that we were planning on relying on that
4 release because -- because the road was already
5 released and had already been rec certified.

6 Q Thank you.

7 A Yeah. So the SI -- sorry. Just to clarify. When the
8 SIR came in, the request was to ensure that it -- it
9 included the east-west access road. Originally, we had
10 not included it because it already did have a
11 reclamation certificate. It's a little unusual for us
12 to have to apply for a reclamation certificate on lands
13 that are already rec certified, but -- but that was the
14 request, and so that's why we included that in the SIR.

15 Q Thank you. That is -- that's helpful. Thank you very
16 much.

17 And so I'm going to jump topics again. And
18 Mr. Knafla and then -- and maybe Ms. Carscallen as
19 well, if we look at the record for this proceeding,
20 there are a number of successive Phase 2 environmental
21 site assessment reports that were included with the
22 application, and they're collected in Exhibit 4.04.
23 And so I'm hoping that, understanding that you can't
24 speak to Abandonrite's reports, I'm just hoping you can
25 help me understand why there is more than one Phase 2
26 ESA report that -- that were submitted with this

1 application.

2 A MR. KNAFLA: It's very common. I'm sure
3 the -- the industry would prefer there was only ever
4 one Phase 2 done, but that never really happens.
5 And -- and there's reasons for it. So, for example,
6 say -- say a company is released with a certain budget
7 to do a Phase 2 investigation. They may not be able to
8 reach the maximum delineation of impact. So, for
9 example, they may not be able to drill all the way down
10 to get vertical closure or drill far enough laterally
11 to -- to get lateral closure. Then they could
12 encounter things like an important water-bearing zone
13 that may be capable of transporting impacts to another
14 location. And so you might come into a second Phase 2
15 and do groundwater wells as part of that assessment and
16 then confirm your delineation.

17 And in this case, the supplementary Phase 2 that
18 we did was triggered by an unusual chemistry signature
19 on part of the lease that suggested an alternate source
20 of salinity impact. And so that's what triggered the
21 supplement. So -- so really they each build upon each
22 other, and hopefully you reach the point, you know,
23 where you have sufficient site information that you can
24 make good decisions. But that often doesn't happen
25 with the first Phase 2.

26 And -- and the other thing I guess I should

1 mention is that a lot of times the very first Phase 2,
2 some people call it a "scratch and sniff" for lack of a
3 better explanation, but really they're just trying to
4 poke around and see if there's anything there. And
5 then oftentimes another one will get done, much greater
6 level of detail, more investigation, background
7 conditions, things like that.

8 Q Thank you, Mr. Knafla. That is quite helpful.

9 A You're welcome.

10 Q And I'm just going to -- I'm just going to look at my
11 questions here and make sure that I haven't left
12 anything off that wasn't already covered by
13 cross-examination and your evidence this afternoon.

14 All right. I have one more question, and --
15 forgive me -- it relates to the fencing. I did think
16 we were -- we had moved on from fencing, but I have one
17 last question. And, Mr. O'Shea, this may be for you.
18 So in -- oh, it's okay. I -- well, it's in
19 Exhibit 4.05, and it's PDF page 35, but you may need to
20 enter a "34" into the PDF to pull it up. Now , you'll
21 probably recognize this. It's on the record a couple
22 of times. This is Whitecap's response to ERG's SIR.
23 And so I'm looking at the paragraph -- it is the
24 second -- it's the second-to-last full paragraph of the
25 response to the first question. It's near the bottom
26 of that page 34. It begins "as set out above".

1 And so this is where Whitecap took the -- took the
2 position to request that ERG, if necessary, issue an
3 EPO directing it to remove the fencing from the Dorins'
4 lands. I'll give you a minute to review.

5 MR. NAFFIN: Yes. Sorry, Ms. Mosher. It
6 just came up on the screen right now, so Mr. O'Shea
7 will take a look at it.

8 Q MS. MOSHER: So where I'm getting with
9 this, Mr. O'Shea, is that the position of Whitecap at
10 the time of the application was that, if necessary, it
11 felt that the ERG should issue an EPO directing it to
12 remove the fencing from the Dorins' lands. And I
13 understand that by asking -- by -- by asking that ERG
14 issue that EPO, if necessary, Whitecap would have been
15 amenable to that EPO and would have acted on that EPO
16 to remove the fencing. Is that fair to say?

17 A MR. O'SHEA: Yes, that's correct.

18 Q And, if necessary, would Whitecap still be responsive
19 to an EPO issued to require it to remove the fencing
20 from the Dorins' lands?

21 Should the Panel decide that -- in order to
22 resolve the issues in this regulatory appeal,
23 particularly those relating to the fencing that is
24 still on the Dorins' lands, if the Panel decided to
25 issue an EPO directing Whitecap to remove the fencing,
26 is Whitecap still as amenable to that solution as it

1 was at the time of its rec cert application?

2 A We'd be hesitant to take that approach. We feel we've
3 exhausted ways of removing the fencing or engaging the
4 landowners in signing a release, so we feel the route
5 that's been taken and the submissions provided to the
6 AER and the reclamation certificate in hand is
7 confirmed.

8 Q Thank you, Mr. O'Shea.

9 And that was the last of my questions.

10 MS. MOSHER: Madam Chair, that concludes
11 Panel counsel's questions for the Whitecap witness
12 panel.

13 THE CHAIR: Thank you.

14 So, Ms. McNaughtan, do you have any questions for
15 the Whitecap panel?

16 MS. MCNAUGHTAN: I would have one question for
17 Mr. Knafla, Madam Chair.

18 Alberta Energy Regulator Panel Questions Whitecap
19 Resources Inc.

20 Q MS. MCNAUGHTAN: A number of reports were
21 submitted, three reports by Equilibrium, a Phase 2 --
22 supplemental Phase 2, and then a Tier 1 site
23 assessment. And in the supplemental Phase 2 as well as
24 the Tier 1 assessment, each of those contain a Tier 1
25 site-specific assessment. One of them uses background
26 conditions with chloride less than 100, and the other

1 uses -- could you just help me understand the process
2 of using two Tier 1 site-specific assessments?

3 A MR. KNAFLA: Yeah, certainly. Absolutely.
4 So as mentioned, the -- for EC and SAR, your Tier 1
5 guidelines are typically based on background
6 conditions. So it becomes important to distinguish any
7 facility-related impact from a background impact. So
8 the 100-milligram-per-kilogram chloride delineation
9 criteria is something that's tied to an Alberta
10 Environment and Parks policy around subsoil and root
11 zone contamination for identifying where your extent of
12 impacts are.

13 So when that -- that Phase 2 was done, the
14 second -- the supplemental Phase 2 and Tier 1 criteria
15 were developed, if you look at how they were developed,
16 they didn't involve rigorous advanced statistical
17 techniques. They were just someone, you know, just
18 looking up background numbers and then coming up with a
19 tabulation of guidelines. It -- the Tier 1 assessment
20 document that came after that was done because we had
21 an unusual situation where you weren't just
22 distinguishing simply an easy background from your
23 facility-related impacts. We have an issue where we
24 now have chloride and other salt ions present in the
25 background environment due to a different source of
26 impact. And so that's why that -- that supplementary,

I guess if you like, Tier 1 assessment, the third document, got produced where you see a lot of detailed calculations where we're looking at, you know, can the salt mass in the drilling mud help explain the situation, what is the relationships between different ions doing statistical regressions and things like that. You won't find those kinds of analyses in a -- in a typical Phase 2 report or a supplemental Phase 2 report just because it's a level of analysis that kind of exists beyond that. It's -- it's unusual. But you do do it sometimes but just not typically.

12 So that's why you see an earlier version of
13 defining Tier 1 criteria and then really something that
14 looked into the chemistry at a high level of detail,
15 supported with statistics, spatial examination of data.
16 It's just -- it's almost kind of a different product,
17 if you like. It just -- it requires a higher level of
18 analysis than what you'll find in a typical Phase 2.

19 Q Thank you, Mr. Knafla.

20 A You're welcome.

21 THE CHAIR: Ms. McKinnon, any questions?

22 MS. MCKINNON: No. Thank you, Madam Chair.

23 THE CHAIR: Okay.

24 Q THE CHAIR: I do have one, and it's the
25 same one that I put to Mr. Dorin, and so I will repeat
26 it. And I -- Mr. O'Shea, it's probably for you, but if

1 it's not, then you can ask one of your co-panel members
2 to answer it, and that is: If this Panel -- if we --
3 the -- the Panel of Hearing Commissioners were to
4 decide that it is appropriate to issue a reclamation
5 certificate with a condition relating to fencing, what
6 would or should that condition look like, from your
7 perspective?

8 A MR. O'SHEA: As I previously mentioned,
9 Whitecap would be hesitant to go down that road, as we
10 feel the materials provided to the AER and to the
11 reclamation certificate confirm the reclamation
12 certificate issued.

13 Q So it looks like you've frozen or maybe you've just
14 paused. Sorry.

15 A No. I'm live.

16 Q Okay. So that's -- that's your answer? You'd be
17 hesitant to go down that road?

18 A Correct.

19 Q What if we were taking you down that road? I guess
20 that's my -- if we decided we were going to take you
21 down that road and you had input into a condition on
22 fencing, what would you tell us it should look like?
23 And if your answer is the same, no fencing condition at
24 all and ...

25 A That's hard to answer at this stage. You know, we'd
26 want to review and -- and discuss and come up with the

1 right provisions or clauses and limitations on -- on
2 how we would exercise such a path forward. But if it
3 was something that the AER was wanting to lead, we'd be
4 open to discuss it.

5 Q Okay. And that's maybe a useful point to leave at.

6 And I note that Mr. -- I just want to go back to
7 my notes. I believe Mr. Dorin said, when asked the
8 question, that mediation with the AER to sort these
9 things out could work. Do you have any thoughts about
10 that?

11 A We'd be hesitant to go that route as well. Again, just
12 to reiterate that we feel the reclamation certificate
13 issued for the lands meets the criteria.

14 A MR. TOEWS: May I add something on -- on
15 that point? I can't speak for -- for Whitecap, but
16 just in terms of -- of continuing negotiation, the
17 issue has been that it never seems to end, and -- and
18 it's just another opportunity to delay.

19 I heard earlier today that Mr. Dorin said that he
20 would have been happy to -- to -- to sign a new release
21 for the east-west access road if the cattle gate were
22 removed, but he's never mentioned that to any of us, to
23 remove the cattle gate; it probably could have been
24 done. But it's -- it's such a slippery road. It's
25 been a long time.

26 Q Okay. Thank you.

1 THE CHAIR: I don't have any more
2 questions. So, Mr. Naffin, Mr. Myers, do you have any
3 re-direct?

4 MR. NAFFIN: No re-direct, Madam Chair, and
5 in terms of the question posed about conditions --
6 excuse me -- that certainly is something I'm prepared
7 to speak to in final argument as well.

8 THE CHAIR: Okay. I think that's
9 appropriate.

10 And, Mr. Dorin, you can take that opportunity as
11 well. If you want to address that question again in
12 final argument, you should do so.

13 So thank you, witness panel, for your time today,
14 and you are now excused from your places in the hot
15 seats.

16 (WITNESSES STAND DOWN)

17 THE CHAIR: So we are at 3:30. If we
18 start on the ERG panel now, it's probably -- assuming
19 they're ready to go, I think we're probably unlikely to
20 finish them by the sort of 4:45, 4:50 PM time we had
21 scheduled. So my question for the representatives of
22 the parties is: Shall we finish now for the day and
23 then reconvene tomorrow morning starting with the
24 Enterprise Reclamation Group witness panel?

25 Let's start with Mr. Dorin. Mr. Dorin -- oh,
26 there you are. You're on mute.

1 MR. DORIN: Sorry. I'm in your hands,
2 Madam Chair. You know, I'm -- I'm -- I'm happy either
3 way. So I'll just leave it in your hands. I think
4 we're a bit ahead of schedule is the only thing I would
5 note.

6 THE CHAIR: We should have a pool at the
7 beginning of these on how many times you have to say in
8 the course of a proceeding somebody's on mute.

9 Mr. Naffin, Mr. Myers.

10 MR. NAFFIN: Madam Chair, we're in your
11 hands as well. We're happy to keep going today. We're
12 also happy to start in the morning. And probably just
13 in terms of argument, you know, also happy to proceed
14 with final argument tomorrow afternoon or leave it for
15 Thursday morning. We're in your hands in terms of
16 timing on that as well. So happy to follow your lead.
17 Thank you.

18 THE CHAIR: Okay. Ms. Kapel Holden.

19 MS. KAPEL HOLDEN: Thank you, Madam Chair.

20 The Enterprise Reclamation Group's preference
21 would be to start tomorrow fresh. I'm not sure, given
22 the timing schedule, that we would wrap up the panel
23 today. But, again, I will leave that up to you, Madam
24 Chair, to decide.

25 THE CHAIR: Well, maybe I will just have a
26 quick -- we can -- well, I was going to say we can do

1 it by text, but the -- maybe I'll ask my co-hearing
2 commissioners on the Panel with me just to step quickly
3 into our breakout room, and we will get right back to
4 you.

5 (ADJOURNMENT)

6 THE CHAIR: So since the consensus seemed
7 to be to leave it in my -- and that means the
8 Panel's -- hands to make the decision, we've decided
9 we're going to wrap for the day now, and we'll come
10 back tomorrow morning, starting at 9, to do the ERG
11 panel. We are just concerned that if we start now, we
12 won't necessarily finish them. Then they're split over
13 the course of the day. If we start tomorrow morning,
14 we -- we will have no problems finishing them tomorrow.

15 And, you know, the idea of when we do final
16 argument, also, I think, our view is -- is Thursday.
17 That will likely give people at least some of the
18 afternoon tomorrow, if not all the afternoon tomorrow
19 to sort of prepare and focus their thoughts for that
20 purpose. So unless anybody has anything further that
21 we need to deal with this afternoon, we will adjourn
22 till 9 tomorrow morning. Is that ...

23 I don't see anything.

24 MR. NAFFIN: That all sounds fine. Thank
25 you, Madam Chair.

26 MR. DORIN: Thank you, Madam Chair.

1 THE CHAIR: Thank you.
2 All right. Have a good evening, everyone. We'll
3 see you tomorrow.

4

5 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, MARCH 9, 2022

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1 CERTIFICATE OF TRANSCRIPT:

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3 I, Angela Porco, certify that the foregoing pages
4 are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

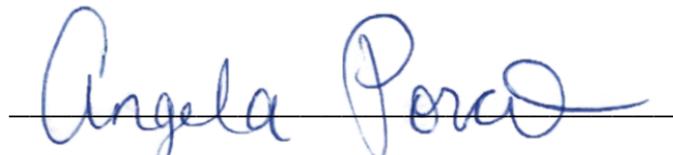
8 Dated at the City of Calgary, Province of Alberta,
9 this 8th day of March 2022.

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Angela Porco, CSR(A)

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Official Court Reporter

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<p>0</p> <p>0.08 143:25</p> <p>0.15 155:8</p> <p>0.61 142:24 143:22</p> <p>002 38:16</p> <p>0065135 20:3</p> <p>04 140:11</p> <p>04.01 22:6 34:21 36:18 37:11</p> <p>04.04 157:22 163:3,7</p> <p>04.05 25:1 35:7 46:16,20 140:17</p> <p>05 140:12,13</p> <p>08 4:18 10:22</p> <hr/> <p>1</p> <p>1 4:19 10:22 19:25 20:26 29:25 31:5 44:1 65:21 66:5 83:2 85:9 88:6 95:12 107:25,26 111:17 113:1 122:3 124:23 152:16, 19,25 153:4,24 154:4 156:11 161:5 162:26 165:17 186:22,24 187:2,4,14,19 188:1,13</p> <p>1.03 23:13</p> <p>1.03-acre 47:4,19</p> <p>1.1 141:2,5</p> <p>10 27:23 71:22 73:14 74:6 172:19</p> <p>10-and-a-half 78:19</p>	<p>100 31:10 186:26</p> <p>100-milligram-per-kilogram 187:8</p> <p>102 33:6</p> <p>104 71:4 114:10</p> <p>10:31 62:18</p> <p>10:50 62:19</p> <p>10th 14:8 112:4</p> <p>11 62:20 123:1 180:23</p> <p>114 33:6</p> <p>1162 113:2</p> <p>1164 157:23</p> <p>1188429 111:25</p> <p>11th 127:8</p> <p>12 46:20</p> <p>12th 34:9,10 35:13 44:2 111:22</p> <p>13th 37:8</p> <p>14 153:24</p> <p>144 33:7 137:9</p> <p>14th 9:11 10:25 46:2,25 48:2</p> <p>15 25:1</p> <p>15-minute 169:15</p> <p>151 4:18 10:21</p> <p>158 33:7</p> <p>16 25:1 26:21 46:20</p> <p>162 44:12</p> <p>17th 10:14</p> <p>18 4:18 10:22</p> <p>18th 4:15 10:19 25:26</p> <p>19.01 112:3</p> <p>1976 65:2</p> <p>1977 18:22 22:21 23:6,10 84:16</p>	<p>1995 28:3,19 78:23,24</p> <p>1998 108:23</p> <p>1:00 97:14 99:1</p> <p>1B 20:24</p> <p>1s 108:26 110:3 111:1</p> <p>1st 36:15 59:13 88:20</p> <hr/> <p>2</p> <p>2 4:18 10:15,21 19:2 31:18 44:4 55:24 56:26</p> <p>107:24 111:20,23 112:22,24 113:19</p> <p>121:16,19,25</p> <p>122:17 140:15, 17,21 158:11 161:5 162:26 181:16 182:20,25 183:4,7,14,17,25</p> <p>184:1 186:21,22, 23 187:13,14 188:8,18</p> <p>2.1 144:15</p> <p>2.2 141:10 144:25</p> <p>2.81 143:18</p> <p>2.81-acre 23:11 141:4</p> <p>20 43:3 85:26 96:21 106:1</p> <p>2002 31:3</p> <p>2003 17:11 18:3 41:19,23 128:25</p> <p>2005 105:24 109:3</p> <p>2007 42:3 44:17 46:12,13</p> <p>2008 39:25 40:1 46:2,8,14,25 47:13 50:7 51:24 53:5,19 54:5,15</p>	<p>56:11 57:11 93:12 94:21 117:13,19 124:11,15 136:5, 8 138:17,20,23 139:18 147:12 181:24,25</p> <p>2010 48:2 180:23</p> <p>2011 50:4 51:18 52:23 55:17 111:18,20</p> <p>2012 29:18</p> <p>2013 24:23 25:18 30:17 126:19 127:5</p> <p>2014 17:19 25:20 29:4,9 30:17 51:15,17 77:24 79:11 88:20 127:8 154:13 180:5</p> <p>20140890 127:8</p> <p>2015 30:3 33:11 80:14 113:20 116:22 120:24 121:8</p> <p>2016 112:23 116:23</p> <p>2017 114:9 125:13</p> <p>2018 35:3,11</p> <p>20 110:4 111:23 112:25 113:1</p> <p>2019 4:15 10:19 25:24,26 36:15, 20 37:8 59:26 111:6,26 120:17 134:23 176:20</p> <p>2020 10:14 110:4</p> <p>2021 10:25 112:2, 4,6</p> <p>2022 9:11 11:15 80:7 98:3 194:5 195:9</p>
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