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REPORTER'S RECORD
VOLUME 2 OF 8 VOLUMES
TRIAL COURT CAUSE NO. GV-14-000500

COUNTY OF LA SALLE) IN THE DISTRICT COURT
)
)
VS.) TRAVIS COUNTY, TEXAS
)
)
JOE WEBER, et al.) 353RD JUDICIAL DISTRICT

* * * * *

HEARING ON PLEA TO THE JURISDICTION

And

TEMPORARY INJUNCTION

* * * * *

On the 17th day of July, 2014, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Stephen
Yelenosky, Judge presiding, held in Austin, Travis
County, Texas.

Proceedings reported by machine shorthand.

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14:15:40 1 THE COURT: We're on the record in GV-14 --
14:15:46 2 this is the way it's written, it's not the way I usually
14:15:48 3 see these. GV-14-500. There's an extra seven on this
14:15:53 4 page, but it's 14-500, which is the County of La Salle
14:15:59 5 versus Joe Weber, et al. Please announce your
14:16:02 6 appearances.

14:16:03 7 MR. SILEO: Your Honor, Chris Sileo with
14:16:05 8 Scott Douglass & McConnico for the plaintiff, County of
14:16:08 9 La Salle.

14:16:09 10 MR. CRUSE: Don Cruse for the County of La
14:16:11 11 Salle.

14:16:11 12 MR. RAMOS: Donato Ramos, Sr., and Donato
14:16:14 13 Ramos, Jr., Your Honor, for the County of La Salle.

14:16:17 14 MS. BONNEN: Susan Bonnen for TxDOT and its
14:16:20 15 officers.

14:16:21 16 MR. HARRIGER: Matt Harriger for TxDOT and
14:16:24 17 its officers.

14:16:24 18 THE COURT: Okay. All right. We've gone on
14:16:27 19 the record to receive some evidence pertinent to the
14:16:31 20 Plea to the Jurisdiction, and perhaps to the Temporary
14:16:34 21 Injunction, if we get to that.

14:16:37 22 Do you want to offer those, Ms. Bonnen?

14:16:39 23 MS. BONNEN: Yes, Your Honor. TxDOT, its
14:16:44 24 officers, defendants, would offer State's Exhibit 1,
14:16:47 25 which is a disk containing all of the documents that

14:16:51 1 were produced by the defendants to the plaintiffs, which
14:16:54 2 are the counties' application folders with all of their
14:16:58 3 applications and the related correspondence concerning
14:17:03 4 their applications and the award letters that were sent
14:17:06 5 to all of the counties. And they're arranged very
14:17:11 6 usefully by county, and this disk is very easy to use.
14:17:15 7 I would offer State's Exhibit No. 1.

14:17:17 8 MR. SILEO: No objection.

14:17:18 9 THE COURT: All right. State's Exhibit No.
14:17:20 10 1 is admitted.

14:17:23 11 (State's Exhibit No. 1 admitted.)

14:17:25 12 THE COURT: Let's go ahead, go off the
14:17:27 13 record for now.

14:17:31 14 (Discussion off the record.)

15:02:48 15 THE COURT: We're back on the record. After
15:02:53 16 a discussion of the law, we're going back on the record
15:02:56 17 to accept evidence from the plaintiffs in the case
15:03:02 18 concerning both the plea, together with their request
15:03:06 19 for a temporary injunction. The Court hasn't made any
15:03:10 20 decision on the plea at this point. There is at least
15:03:15 21 some evidence that has been admitted. The Court is not
15:03:20 22 convinced that any of the evidence is pertinent to the
15:03:23 23 question before it, but witnesses are here and I will
15:03:27 24 permit them to make a record, should that become
15:03:31 25 necessary for the Court to decide. But before I

15:03:34 1 consider any of the evidence, I will consider whether or
15:03:37 2 not the plea can be decided without consideration of
15:03:41 3 evidence. And you object?

15:03:44 4 MS. BONNEN: Yes, Your Honor. For the
15:03:46 5 record, we object to going forward on evidence with
15:03:50 6 respect to a temporary injunction, and with any evidence
15:03:53 7 with respect to jurisdiction as the only evidence that
15:03:57 8 could possibly be relevant has already been offered and
15:04:01 9 admitted by agreement, and that's the applications.

15:04:04 10 THE COURT: Right. Well, and I would handle
15:04:07 11 it differently if we were talking about multi-day or
15:04:11 12 even a day of evidence, because then that would present
15:04:16 13 a burden on the State and on the Court that may be
15:04:19 14 unnecessary, but, here, I don't see a great burden.

15:04:24 15 MS. BONNEN: We do have a pending Motion to
15:04:26 16 Abate based on the fact that they haven't joined all
15:04:30 17 parties to these contracts.

15:04:32 18 THE COURT: Okay. All right. Well, all
15:04:34 19 that can still be considered. Okay.

15:04:36 20 We're on the record. Do you want to call
15:04:38 21 your first witness?

15:04:41 22 MR. SILEO: Judge, if we could start just
15:04:42 23 briefly with a housekeeping matter.

15:04:42 24 THE COURT: Sure.

15:04:43 25 MR. SILEO: I think subject to the State's

15:04:44 1 overall objection to proceeding at all, we have an
15:04:47 2 agreement to pre-admit Plaintiff's Exhibits 1 through
15:04:52 3 29. Exhibits 1 through 24 would be paper copies of some
15:04:56 4 select applications that are also on the disk, if that
15:04:59 5 will help the witnesses, and then Exhibits 25 through 29
15:05:02 6 are some other TxDOT documents.

15:05:04 7 THE COURT: Okay.

15:05:04 8 MR. RAMOS: And I would be putting on two
15:05:06 9 witnesses, Your Honor, Judge Joel Rodriguez, the County
15:05:10 10 Judge, and Mr. Charlie Graham. And I've offered -- I've
15:05:14 11 given them a package of Exhibits 40 through 49, and
15:05:18 12 basically it's correspondence between the agency and
15:05:21 13 Judge Joel Rodriguez, Your Honor.

15:05:21 14 THE COURT: Okay.

15:05:24 15 MR. RAMOS: And I believe they don't have a
15:05:26 16 problem with that, but --

15:05:28 17 MS. BONNEN: Subject to the overall
15:05:30 18 objection of proceeding with respect to any evidence,
15:05:33 19 correct.

15:05:33 20 THE COURT: Right. You have a running
15:05:35 21 objection on that. Subject to that, if you just offer
15:05:39 22 the exhibits you have, I'll admit them.

15:05:42 23 MR. RAMOS: And I have one other
15:05:43 24 housekeeping matter, Your Honor. We have a PowerPoint
15:05:45 25 presentation for Mr. Graham. These are all

15:05:48 1 demonstratives. And I would like to give you a copy in
15:05:51 2 advance, and I've already furnished defense counsel with
15:05:54 3 a copy.

15:05:55 4 THE COURT: That's fine, if you have seen
15:05:58 5 it.

15:06:00 6 MR. SILEO: To be clear, then we offer
15:06:02 7 Exhibits 1 through 29 in evidence.

15:06:06 8 THE COURT: And other than your running
15:06:09 9 objection, there's no additional objection to that,
15:06:12 10 Ms. Bonnen?

15:06:13 11 MS. BONNEN: Correct, Your Honor.

15:06:14 12 THE COURT: All right. Plaintiffs' 1
15:06:15 13 through 29 are admitted.

15:06:18 14 (Plaintiffs' Exhibit Nos. 1-29 admitted.)

15:06:20 15 MR. RAMOS: And the PowerPoint, Your Honor,
15:06:22 16 is Exhibits 30 --

15:06:24 17 THE COURT: Well, if it's a demonstrative,
15:06:25 18 it won't have an exhibit number.

15:06:28 19 MR. RAMOS: We will be offering parts of
15:06:30 20 that, Your Honor, so --

15:06:31 21 THE COURT: Okay. Well, whatever parts you
15:06:33 22 are offering, unless it's innocuous, and then you might
15:06:37 23 as well just offer the whole thing. But that's up to
15:06:38 24 you, Ms. Bonnen.

15:06:39 25 MS. BONNEN: We're going to -- we might have

15:06:42 1 more specific objections once they get to their expert
15:06:45 2 witness.

15:06:46 3 THE COURT: Okay. Then you will have to
15:06:49 4 offer that. There's no agreement on that. You will
15:06:51 5 have to offer that through a witness, and let them
15:06:54 6 object to whatever parts you offer.

15:06:57 7 MR. RAMOS: And I guess I won't give you the
15:06:58 8 PowerPoint at this point, Your Honor --

15:07:00 9 THE COURT: You can give it to me as a
15:07:01 10 demonstrative, regardless.

15:07:03 11 MR. RAMOS: -- subject to it being admitted.

15:07:06 12 THE COURT: Thank you.

15:07:09 13 MR. SILEO: Judge, if I could approach the
15:07:11 14 witness stand. These are a little voluminous and I
15:07:13 15 thought I would put an extra copy on the witness box,
15:07:16 16 with your permission.

15:07:18 17 THE COURT: Sure.

15:07:42 18 (Pause.)

15:07:44 19 MR. SILEO: Your Honor, plaintiffs would
15:07:45 20 start by calling the corporate representative of TxDOT
15:07:49 21 on the topics that were subpoenaed.

15:07:51 22 THE COURT: All right. Why don't I have all
15:07:53 23 the witnesses stand so I can swear them all in at once.
15:07:53 24 Five individuals, I think.

15:08:13 25 (Witnesses sworn.)

15:08:13 1 THE COURT: Please have a seat.

15:08:23 2 Your first witness was to be the County
15:08:25 3 Judge?

15:08:26 4 MR. SILEO: No, Your Honor, the TxDOT
15:08:29 5 corporate representative.

15:08:30 6 THE COURT: Okay. So the TxDOT
15:08:32 7 representative -- yes, sir. Yes.

15:08:35 8 MS. BONNEN: Your Honor, we did file a
15:08:36 9 Motion For Protection From Subpoena with respect to this
15:08:39 10 witness.

15:08:40 11 THE COURT: On the grounds that it's
15:08:43 12 irrelevant to the plea?

15:08:45 13 MS. BONNEN: Yes. And that the subpoena --
15:08:47 14 the Court hasn't authorized a hearing for live
15:08:49 15 testimony. I mean, effectively what we are getting here
15:08:53 16 is additional discovery. What the Court authorized was
15:08:57 17 production of the applications. And the fact that
15:09:02 18 there -- to the extent that any of this has anything to
15:09:04 19 do with injunctive relief, that they're not entitled to
15:09:07 20 injunction at this time, that we have pending motion to
15:09:11 21 abate, and that the testimony that they're seeking is
15:09:15 22 either irrelevant or cumulative. It's just asking about
15:09:19 23 the applications that have already been offered into
15:09:21 24 evidence.

15:09:22 25 THE COURT: Let me back up a bit, because

15:09:27 1 you did say earlier that you didn't think you really had
15:09:30 2 notice that temporary injunction would be heard today;
15:09:32 3 is that right?

15:09:33 4 MS. BONNEN: Not until, I guess, late last
15:09:37 5 week when the plaintiff finally, you know, verified
15:09:42 6 their petition that it started becoming clear that
15:09:46 7 perhaps that they -- that was what they were seeking.

15:09:48 8 But, no, they never sought an agreement to
15:09:52 9 proceed to a hearing on the Motion For Temporary
15:09:55 10 Injunction today.

15:09:57 11 MR. CRUSE: I could speak to the earliest
15:09:59 12 part of the process, which was that our original hearing
15:10:02 13 in this case did originally include a TI, as well as a
15:10:06 14 discovery request. And we, at that time, made the
15:10:08 15 decision to go forward with the discovery, instead of
15:10:10 16 TI. I believe we discussed that in Court.

15:10:10 17 THE COURT: Right.

15:10:13 18 MR. CRUSE: I don't think this is a
15:10:14 19 surprise. It is true that we verified our petition
15:10:17 20 alleviating one objection the State might have had, but
15:10:19 21 I don't think that changes anyone's understanding of
15:10:21 22 what relief we have been seeking.

15:10:24 23 MS. BONNEN: There's never been a separate
15:10:25 24 Motion For Temporary Injunction filed. The only thing
15:10:29 25 on a temporary relief is two paragraphs in their

15:10:33 1 petition, which up until a few days ago wasn't even
15:10:35 2 verified.

15:10:35 3 THE COURT: Well, an application for
15:10:36 4 temporary injunction in the petition would be sufficient
15:10:39 5 pleading, wouldn't it, plus a setting?

15:10:42 6 MS. BONNEN: Well, with respect to a
15:10:44 7 setting, it was set without our agreement.

15:10:46 8 THE COURT: Okay. Well, if there's an
15:10:49 9 objection on notice or procedurally to the temporary
15:10:52 10 injunction that's convincing to me, then you could
15:10:56 11 object to anything that is irrelevant to the plea, from
15:11:00 12 your perspective, which is everything. But to the
15:11:03 13 extent it's irrelevant to the plea vis-a-vis the
15:11:07 14 injunction, you could object to it.

15:11:09 15 On the other hand, if you're prepared to do
15:11:13 16 it, to do both, that's the most efficient. So do you
15:11:19 17 want to stand on that or not?

15:11:21 18 MS. BONNEN: Just a minute.

15:11:24 19 (Pause.)

15:11:29 20 MS. BONNEN: Yes, Your Honor, we will stand
15:11:32 21 on that.

15:11:32 22 THE COURT: Okay. All right.

15:11:34 23 Yes, sir, if you would come up. I'll
15:11:38 24 hear -- we will proceed at this point on the plea. I
15:11:41 25 don't know if that will affect the witnesses called, but

15:11:45 1 it may affect parts of their testimony.

15:11:49 2 MR. RAMOS: Your Honor, just so the record
15:11:51 3 is clear, are you willing to consider the evidence that
15:11:56 4 will be presented as part of the plea for the purposes
15:11:58 5 of the temporary injunction so we won't have to repeat
15:12:01 6 testimony?

15:12:02 7 THE COURT: Well, that's what I was saying
15:12:02 8 would be the most efficient, but if they're not prepared
15:12:07 9 to go forward on the temporary injunction, that means
15:12:09 10 they're not prepared to go forward on their
15:12:11 11 cross-examination for a temporary injunction.

15:12:14 12 So should we get to the temporary
15:12:15 13 injunction, I don't see a way around having that back,
15:12:19 14 unless they're willing.

15:12:21 15 MR. RAMOS: That's fine.

15:12:23 16 MR. SILEO: Perhaps there's been some
15:12:25 17 unclarity. We've conferred about this. We advised the
15:12:28 18 State several weeks ago that we wanted to move forward.
15:12:31 19 This hearing was noticed. No motion for continuance of
15:12:34 20 the hearing was set. I don't think there's any
15:12:36 21 legitimate procedural basis to object to the evidence
15:12:39 22 being taken on the temporary injunction today. They
15:12:43 23 have their overarching argument that there's just --
15:12:47 24 that there should be no hearing whatsoever, but I
15:12:49 25 haven't --

15:12:49 1 THE COURT: Let me see the notice from the
15:12:53 2 original hearing or this hearing or both. Just e-mail
15:13:03 3 it to me.

15:13:03 4 MR. SILEO: Would this be okay?

15:13:05 5 THE COURT: Sure. Show it to her.

15:13:11 6 (Pause.)

15:13:14 7 MR. RAMOS: By the way, Judge, our County
15:13:16 8 Judge is here if you wanted to swear him in.

15:13:18 9 THE COURT: I will just wait till he
15:13:19 10 testifies.

15:13:21 11 MR. SILEO: Forgive us, we did not realize
15:13:23 12 there was a notice concern.

15:13:33 13 THE COURT: Okay. And that was sent on July
15:13:35 14 3rd. Seems adequate to me. So I will reverse my
15:13:41 15 position based on that notice as to the testimony.

15:13:45 16 The testimony can go both into the plea and
15:13:48 17 the injunction. And, again, I won't decide anything
15:13:52 18 about the injunction until I have decided the plea. Go
15:13:56 19 ahead.

15:13:56 20 **MARK A. MAREK,**
15:13:56 21 having been first duly sworn, testified as follows:

15:13:56 22 **DIRECT EXAMINATION**

15:13:56 23 BY MR. SILEO:

15:13:57 24 Q. Would you introduce yourself, please, sir.

15:13:58 25 A. My name is Mark, middle initial A, Marek,

15:14:03 1 M-a-r-e-k.

15:14:15 2 Q. Was it Marek, sir?

15:14:17 3 A. Pronounce it Marek.

15:14:19 4 Q. Marek, okay. Thank you.

15:14:21 5 Mr. Marek, you are here today pursuant to a
15:14:25 6 subpoena that was served on the Texas Department of
15:14:27 7 Transportation; is that correct?

15:14:28 8 A. Yes.

15:14:29 9 Q. Have you had an opportunity to review the
15:14:31 10 subpoena that was served on TxDOT that you're here today
15:14:35 11 to testify about?

15:14:35 12 A. Yes.

15:14:36 13 Q. And had an opportunity to prepare to testify
15:14:38 14 about the topics that were set forth in that subpoena?

15:14:41 15 A. Yes.

15:14:42 16 Q. Would it be helpful to you, sir -- I have an
15:14:44 17 extra copy of that subpoena. Would that be something
15:14:46 18 that would be helpful to you to refer to during your
15:14:48 19 testimony?

15:14:48 20 A. Yes.

15:14:50 21 MR. SILEO: Your Honor, may I approach?

15:14:51 22 THE COURT: Yes.

15:15:04 23 Q. (BY MR. SILEO) Mr. Marek, can you describe,
15:15:06 24 briefly for me, your position at TxDOT?

15:15:09 25 A. I'm the director of engineering operations for

15:15:14 1 TxDOT, and I oversee the offices that handle the
15:15:18 2 applications for these grants.

15:15:21 3 Q. Okay. For the -- and the grants you are
15:15:25 4 referring to are the Transportation Infrastructure Fund
15:15:28 5 grants?

15:15:28 6 A. Yes.

15:15:29 7 Q. And are those sometimes referred to as TIF
15:15:31 8 grants?

15:15:31 9 A. Yes.

15:15:32 10 Q. For the 2014 fiscal year, how many counties
15:15:37 11 applied for TIF grant funds?

15:15:39 12 A. 191.

15:15:41 13 Q. Did TxDOT award TIF grants to all the counties
15:15:45 14 that applied?

15:15:46 15 A. Ultimately, yes.

15:15:48 16 Q. With respect to TxDOT's -- would TxDOT's rules
15:15:58 17 and correspondence speak in terms of eligibility, on the
15:16:00 18 one hand, or validity on the other hand, is there a
15:16:03 19 distinction between those terms in the TIF grant
15:16:06 20 context?

15:16:09 21 A. I am not sure I understand.

15:16:10 22 Q. Sure. Might an applicant be eligible, but submit
15:16:16 23 an invalid application, or submit a valid application
15:16:20 24 and be ineligible? Is there any difference in that
15:16:22 25 nomenclature as TxDOT used it in connection with the TIF

15:16:26 1 grant program?

15:16:27 2 A. I guess you could use those terms. I guess there
15:16:32 3 could be some difference in whether or not the original
15:16:35 4 application was valid or not. Say, if it came in during
15:16:40 5 the correct period of time, they could be submitted.

15:16:44 6 Q. Okay. I think that's what I am trying to get at.
15:16:46 7 Is there -- does validity speak in terms, from TxDOT's
15:16:50 8 perspective in administering this program, in terms of
15:16:52 9 an application being completed and having the types of
15:16:55 10 information in it that you need to see?

15:16:59 11 A. Yes.

15:17:00 12 Q. Is eligibility a more fundamental concept, in
15:17:03 13 terms of whether -- regardless of being on time and
15:17:07 14 having the forms filled out correctly, whether you are
15:17:10 15 among the people who substantively should be able to
15:17:13 16 receive funds?

15:17:15 17 A. Yes.

15:17:15 18 Q. Were any counties determined to be ineligible for
15:17:21 19 TIF grants?

15:17:22 20 A. There were some that were determined to be
15:17:26 21 deficient on their initial application, but after
15:17:29 22 offering those an opportunity to cure, they were all
15:17:33 23 found to be eligible.

15:17:34 24 Q. Okay. As part of TxDOT's review process, is it
15:17:40 25 correct that there was a preliminary review period that

15:17:43 1 resulted in TxDOT sending deficiency letters to various
15:17:46 2 applicant counties?

15:17:48 3 A. Yes.

15:17:48 4 Q. And if I'm understanding you correctly, what you
15:17:52 5 are saying is that as a result of that review process,
15:17:55 6 counties were able to cure any infirmities in response
15:17:58 7 to those deficiency letters?

15:18:00 8 A. Yes.

15:18:01 9 Q. If TxDOT had ultimately concluded that one or
15:18:06 10 more counties were ineligible, or had determined that
15:18:08 11 one or more applications are invalid, is it correct that
15:18:12 12 all of the other applicant counties would have received
15:18:15 13 larger grants?

15:18:17 14 A. That's true from the perspective that -- I guess
15:18:25 15 using an example, the State allocated so much money.
15:18:27 16 That's how large the pie was. If you took less slices
15:18:31 17 of that pie then each slice that was taken would be
15:18:35 18 bigger. So from that, I would interpret from your
15:18:38 19 question, the answer to be yes.

15:18:40 20 Q. And that's because the way TxDOT allocated the
15:18:47 21 funds was using the -- you heard some discussion of it a
15:18:50 22 few minutes ago -- using this 20 percent for weight
15:18:52 23 tolerance permits and so forth. The number of counties
15:18:55 24 that were in the bucket, so to speak, if you take one
15:18:59 25 out of the bucket, every other county gets a little more

15:19:01 1 money at that point and time?

15:19:03 2 A. Yes.

15:19:03 3 Q. What was TxDOT's understanding with respect to
15:19:11 4 whether a county was required to be entirely or
15:19:14 5 partially in an area affected by increased oil and gas
15:19:18 6 production to be eligible for an TIF grant?

15:19:26 7 A. Well, the county -- the legislation was written
15:19:30 8 to apply to counties, so there was no differentiation of
15:19:36 9 partial counties. The county was either deemed to be in
15:19:40 10 or out.

15:19:42 11 Q. How did TxDOT go about deeming whether a county
15:19:46 12 was in or out of an area affected by increased oil and
15:19:49 13 gas production?

15:19:50 14 A. By applying the formula that was stipulated in
15:19:54 15 the statute.

15:19:55 16 Q. Do you agree with me that the formula stipulated
15:19:57 17 in the statute results in every county in the state that
15:20:01 18 applies, receiving funds?

15:20:05 19 A. Yes.

15:20:06 20 Q. Does the formula -- and I will say strike that at
15:20:13 21 this time.

15:20:15 22 Does the -- the -- if you look at exhibit --
15:20:21 23 there's a box of exhibits next to you, and they are on
15:20:23 24 the floor there. But I would like to direct your
15:20:26 25 attention to Exhibit No. 27.

15:20:52 1 That's correct. Can you tell me what Exhibit 27
15:20:53 2 is, please?

15:20:54 3 A. Exhibit 27 appears to be a blank application for
15:21:00 4 the County Transportation Infrastructure Grant Program.

15:21:06 5 Q. Is Exhibit 27 a form that each applicant county
15:21:10 6 was required to complete and submit to TxDOT in
15:21:14 7 connection with the program?

15:21:15 8 A. Yes.

15:21:16 9 Q. What's the very first eligibility requirement
15:21:19 10 stated on the application form?

15:21:22 11 A. Under eligibility requirements, the first box is,
15:21:28 12 "County is entirely or partially in an area affected by
15:21:32 13 increased oil and gas production."

15:21:35 14 Q. Did -- other than applying the formula you
15:21:41 15 described, did TxDOT take any steps to determine
15:21:45 16 compliance with that first eligibility requirement
15:21:48 17 stated on the application form?

15:21:51 18 A. No.

15:21:51 19 Q. Is TxDOT aware that grants were awarded to
15:22:05 20 counties with zero oil and gas production?

15:22:08 21 A. Yes.

15:22:11 22 Q. Is TxDOT aware that it awarded \$41 million in
15:22:17 23 grants to counties where oil and gas production is in
15:22:20 24 decline?

15:22:23 25 A. I would have to take your word for that. I don't

15:22:26 1 know that.

15:22:28 2 Q. Does TxDOT have the expertise to conduct an
15:22:38 3 evaluation of what areas of the state are presently
15:22:44 4 experiencing increased oil and gas production?

15:22:49 5 A. If we do it by the formula in the statute, we do.

15:22:52 6 Q. Is TxDOT capable of looking at that formula over
15:22:57 7 time, rather than simply on a static basis?

15:23:02 8 A. We did not.

15:23:04 9 Q. Were you capable of doing that?

15:23:10 10 A. I guess we could have, if we had drawn the data
15:23:14 11 from other agencies for multiple years.

15:23:19 12 Q. And that was my question. So I think we're on
15:23:22 13 the same page.

15:23:24 14 Let me direct your attention to exhibit -- I am
15:23:39 15 sorry. It's going to be in the same folder you have in
15:23:41 16 front of you there. And it's Exhibit 28.

15:24:04 17 MR. SILEO: Your Honor, may I move to the
15:24:06 18 podium to put something on the Elmo?

15:24:08 19 THE COURT: Sure.

15:24:11 20 Q. (BY MR. SILEO) Mr. Marek, have you seen Exhibit
15:24:13 21 28 before?

15:24:20 22 A. Yes.

15:24:21 23 Q. What is Exhibit 28?

15:24:25 24 A. Exhibit 28 was information distributed by the
15:24:35 25 Department with respect to Senate Bill 1747 and the

15:24:38 1 Transportation Infrastructure Fund.

15:24:42 2 Q. Look at the second page of Exhibit 28.

15:24:47 3 A. (Witness complies.) Senate Bill 1747 and House
15:24:54 4 Bill 1025.

15:24:55 5 Q. Is Senate Bill 1747 the bill that created the TIF
15:25:00 6 grant mechanism, if you will?

15:25:05 7 A. I don't understand.

15:25:06 8 Q. Yes, I am not -- maybe the question is not
15:25:09 9 important.

15:25:09 10 I was trying to understand that the Senate bill
15:25:11 11 created the program; the House Bill 1025 gave it the
15:25:15 12 funding. Is that accurate?

15:25:16 13 A. Yes.

15:25:17 14 Q. Okay. The Senate bill that created the program,
15:25:20 15 it says here that it, Created a grant program for county
15:25:24 16 roads in the energy development areas. Did I read that
15:25:28 17 correctly?

15:25:28 18 A. Yes.

15:25:29 19 Q. And that was TxDOT's view stated in this
15:25:33 20 presentation?

15:25:36 21 A. In accordance with the formula in the statute,
15:25:38 22 yes, sir.

15:25:39 23 Q. The -- do you know when this presentation was
15:25:42 24 prepared, approximately?

15:25:45 25 A. I do not.

15:25:47 1 Q. The last page of the presentation is a map, which
15:25:52 2 I have also put up on the board. You should see it on
15:25:55 3 your screen there. Can you tell me what that map is
15:25:59 4 depicting?

15:26:04 5 A. It appears to depict road condition decline in
15:26:14 6 the various oil and gas production areas.

15:26:27 7 Q. And is this a map that TxDOT put together?

15:26:32 8 A. Yes.

15:26:33 9 Q. And what was the purpose of TxDOT creating this
15:26:36 10 map?

15:26:40 11 A. To try to assist the counties in making their
15:26:44 12 application for this grant program.

15:26:47 13 Q. Does the map indicate oil and gas production area
15:26:55 14 by oil and gas production area to the extent to which
15:26:59 15 road degradation is present?

15:27:04 16 A. Would you repeat that please, sir?

15:27:05 17 Q. Yes. Are we able to look at this map, basin by
15:27:12 18 basin, or production area by production area, and see
15:27:15 19 visually which oil and gas producing areas have
15:27:21 20 experienced a negative decline in roadway condition over
15:27:26 21 time?

15:27:28 22 A. More so by county than by specific production
15:27:34 23 area.

15:27:36 24 Q. Okay. Are the red counties the worst?

15:27:41 25 A. The counties on this map that appear to be red

15:27:44 1 show the greatest decline.

15:27:46 2 Q. And you -- TxDOT is overlaying over the various
15:27:51 3 counties, wherever they may be, the oil and gas
15:27:54 4 production areas; is that right?

15:27:56 5 A. Yes.

15:27:57 6 Q. And so we're able to evaluate, based on this map,
15:28:00 7 that tells us something about how areas of decline are
15:28:03 8 connected geographically to oil and gas production
15:28:07 9 areas?

15:28:08 10 A. As an approximation, yes.

15:28:10 11 Q. Within the various production areas on the map
15:28:14 12 are there any production areas where the majority of the
15:28:16 13 counties are depicted as showing a greater than five
15:28:19 14 percent decline?

15:28:37 15 A. One appears to be about half of the counties by
15:28:46 16 number.

15:28:47 17 Q. Is that the Eagle Ford area?

15:28:49 18 A. Yes, sir, it appears to be.

15:28:50 19 Q. Is there another county up in the Panhandle that
15:28:53 20 actually looks like more than a majority would, in fact,
15:29:00 21 reflect such a decline?

15:29:09 22 A. No, sir, I guess not.

15:29:11 23 Q. Northeast corner of the Panhandle, are you with
15:29:14 24 me? The Anadarko Basin?

15:29:19 25 A. I'm sorry?

15:29:19 1 Q. The Anadarko Basin.

15:29:19 2 A. Well, I'm just trying to do a count there. It
15:29:22 3 looks like two, four, six, seven are red; and two, four,
15:29:27 4 six, eight are yellow. So I guess that's less than 50
15:29:34 5 percent red.

15:29:36 6 Q. Okay. You're still -- you're looking at the
15:29:38 7 Eagle Ford still; is that right?

15:29:40 8 A. I am looking at the area around Amarillo.

15:29:42 9 Q. I'm sorry. Okay. Yes, I am looking at the --
15:29:46 10 okay. It's not important. Let's keep moving so we can
15:29:55 11 do this as expeditiously as possible.

15:30:00 12 Is -- is TxDOT aware that certain types of oil
15:30:09 13 and gas production generate more heavy truck traffic?

15:30:19 14 A. We have some approximations on what traffic
15:30:25 15 different wells produce, but I don't think it's
15:30:31 16 necessarily exact for every individual location.

15:30:34 17 Q. Would you look at Exhibit 29, I think.

15:30:43 18 A. (Witness complies.)

15:30:45 19 Q. If you will flip back about ten pages, there are
15:30:49 20 some pictures. Then I am going to look at the first
15:30:52 21 page after the pictures, which is entitled Loaded Trucks
15:30:55 22 Per Gas Well.

15:30:56 23 A. You might need to redirect me. I am looking at
15:30:59 24 Exhibit 29 and it's got two pages.

15:31:02 25 Q. Better yet, I gave you an excerpted version. I

15:31:05 1 will look at the one page you've got. Loaded Trucks Per
15:31:09 2 Gas Well?

15:31:11 3 A. Yes, sir.

15:31:12 4 Q. And this is an excerpt from a presentation given
15:31:15 5 by Mr. John Barton; is that right?

15:31:18 6 A. Yes, sir.

15:31:19 7 Q. And you've probably seen it in its entirety. But
15:31:22 8 is this a presentation you have seen before?

15:31:25 9 A. Yes, sir.

15:31:25 10 Q. Is the information on the second page of Exhibit
15:31:30 11 29 as you have it, to the best of TxDOT's information,
15:31:34 12 accurate?

15:31:35 13 A. It would represent a typical or an average for a
15:31:40 14 particular well.

15:31:41 15 Q. And what would be a typical or average number of
15:31:47 16 car trips generated by the drilling of a well as
15:31:51 17 described in Exhibit 29?

15:31:53 18 A. According to this exhibit, 8 million.

15:31:57 19 Q. And an additional two million car trips per year
15:32:01 20 to maintain a well?

15:32:02 21 A. Yes.

15:32:02 22 Q. Can you tell me what -- I want to change gears on
15:32:08 23 you now.

15:32:09 24 Can you tell me what a County Energy
15:32:11 25 Transportation Reinvestment Zone is?

15:32:13 1 A. It's simply an area that a County can set up to
15:32:22 2 capture increases in tax base.

15:32:25 3 Q. In order to capture an increase in tax base, is
15:32:30 4 it necessary for a County to put taxable property into
15:32:33 5 the zone?

15:32:38 6 A. I would have to defer to someone with knowledge
15:32:42 7 in that -- in tax law, I guess.

15:32:45 8 Q. Okay. So you can't tell me whether you need to
15:32:48 9 have taxable property in a zone in order for there to be
15:32:51 10 an increase in taxable value in the zone?

15:32:53 11 A. That's not my area of expertise.

15:32:56 12 Q. Okay. In reviewing the TIF grant applications
15:32:59 13 that have received, among the eligibility requirements,
15:33:04 14 was that the County create an Energy Transportation
15:33:08 15 Reinvestment Zone; is that right?

15:33:09 16 A. Yes.

15:33:09 17 Q. I take it from your testimony, then, that TxDOT
15:33:13 18 did not review those zones in order to determine whether
15:33:16 19 they were valid zones under State law?

15:33:21 20 A. Simply reviewed to be sure that the County had
15:33:24 21 created them.

15:33:25 22 Q. And by created them, you mean you reviewed them
15:33:28 23 to ensure that there was a piece of paper submitted by
15:33:31 24 the County that indicated that they had created a zone?

15:33:34 25 A. Yes.

15:33:35 1 Q. There were a number of specific topics in the
15:33:52 2 subpoena that I am hoping you had an opportunity to
15:33:54 3 prepare for, because I'm going to tick through them now,
15:33:58 4 starting with topic number nine.

15:34:26 5 A. I am with you on number nine.

15:34:28 6 Q. Did the zone described in the application
15:34:31 7 submitted by Falls County include any property other
15:34:35 8 than the right-of-way for a road?

15:34:39 9 A. I don't know if I could say that by individual
15:34:44 10 county name, but there were counties in there that
15:34:47 11 appeared to take right-of-way of road within their
15:34:50 12 zones.

15:34:50 13 Q. Were there counties that submitted zones that
15:34:55 14 included only right-of-way for road, and no other
15:34:58 15 property?

15:35:00 16 A. There were some that appeared only taking roads,
15:35:04 17 yes.

15:35:05 18 Q. There were several on the list, then, that I gave
15:35:09 19 you, Falls, Ford, Gregg, Young. Are you able to tell me
15:35:12 20 specifically with respect to any of those counties,
15:35:14 21 whether their applications reflected the inclusion of
15:35:18 22 only the right-of-way for a road?

15:35:20 23 A. Not without going back through those individual
15:35:22 24 applications.

15:35:25 25 Q. The -- were there counties -- topic number --

15:35:57 1 topics number 12 and 13 on the subpoena asked you, in
15:36:03 2 effect, whether the counties had described the property
15:36:07 3 deemed to be included in a proposed zone, in their
15:36:11 4 applications. Did they submit an order, but didn't
15:36:14 5 describe any zone whatsoever. Are you with me?

15:36:17 6 A. They all described an area. If not initially,
15:36:21 7 then in their cure, they did.

15:36:23 8 Q. Okay. The -- if you would pull out Exhibit
15:36:31 9 No. 7.

15:36:35 10 A. (Witness complies.)

15:36:48 11 Q. Now, let's do Exhibit 8, because it's skinnier.

15:36:51 12 And my question to you is going to be, if you can
15:36:57 13 identify for me where on Exhibit No. 8, Grayson County
15:37:02 14 described their county energy transportation zone at
15:39:01 15 all?

15:39:03 16 (Pause.)

15:39:28 17 A. The order of the Commissioner's report refers to
15:39:32 18 an Exhibit A. Is this application complete? I don't
15:39:40 19 see Exhibit A.

15:39:48 20 Q. So at least -- there's nothing in Exhibit A that
15:39:52 21 describes the zone created by Grayson County?

15:39:57 22 A. I don't see an Exhibit A at all. Am I missing
15:40:02 23 it? Is there a page?

15:40:04 24 Q. Sir, I can only work off of what you-all gave us
15:40:08 25 in the application.

15:40:16 1 Nothing in Exhibit A reflects a description of a
15:40:18 2 zone. Is that accurate?

15:40:20 3 A. I don't see an Exhibit A.

15:40:22 4 Q. Was part of your review process, in terms of
15:40:29 5 looking at whether a county had created a zone, did that
15:40:33 6 include, in part, looking to see whether there was some
15:40:35 7 sort of description of the zone provided to TxDOT?

15:40:41 8 A. As I recall, in most of them, there was some kind
15:40:43 9 of description. The description varied in terms of
15:40:46 10 detail.

15:40:49 11 Q. And let me -- maybe -- my question may have been
15:40:53 12 imprecise.

15:40:54 13 Regardless of the level of detail, I was looking
15:40:56 14 to see whether there was some description, weak or
15:41:01 15 strong, part of the TIF grant review process?

15:41:06 16 A. Well, basically, what we were looking for was a
15:41:08 17 statement from the County that said they had created the
15:41:11 18 zone. That's what we were looking for.

15:41:16 19 Q. And not looking to see whether the zone the
15:41:19 20 County created was -- was -- was described in any way?

15:41:31 21 A. Beyond the creation, no.

15:41:33 22 Q. If the County submitted an order that said,
15:41:39 23 all -- looking at Exhibit 8. For 191 of them, there may
15:41:44 24 be some small variables, but they all look generally
15:41:46 25 like the first page of Exhibit 8, is that correct, the

15:41:48 1 zone orders?

15:41:50 2 A. The ones we received were. There was much
15:41:53 3 variability in how they presented it. This is probably
15:42:01 4 reasonable for several of them, yes, sir.

15:42:03 5 Q. Several of them used this form.

15:42:14 6 Let me change -- let me change gears again on you
15:42:17 7 and talk about road condition reports.

15:42:21 8 In reviewing county applications for TIF grants,
15:42:26 9 did TxDOT evaluate the substance of the road condition
15:42:32 10 reports submitted by the applicant counties?

15:42:36 11 A. No. We just wanted to make sure they had a
15:42:38 12 current one.

15:42:39 13 Q. What makes a road condition report current for
15:42:42 14 purposes of a TIF grant review?

15:42:44 15 A. That it was either 2013 or more recent than that.

15:42:50 16 Q. Was -- are you familiar with road condition
15:42:54 17 reports outside of the TIF grant process?

15:42:58 18 A. Prior to the grant program, I was not.

15:43:01 19 Q. Okay. Are you aware that road condition reports
15:43:04 20 are required to include a listing of all the roads in
15:43:08 21 each precinct of the county?

15:43:10 22 A. I am aware of that now, yes, sir.

15:43:12 23 Q. Was looking to see whether applicant counties
15:43:15 24 submitted a list of all the roads in there for
15:43:20 25 precincts, part of the review of the grant review

15:43:23 1 process?

15:43:24 2 A. No.

15:43:25 3 Q. At what point was -- was there any review of a
15:43:34 4 road condition of a -- what I will call a, quote, road
15:43:37 5 condition report submitted by a County, other than
15:43:40 6 seeing if it was dated in 2013 or 2014?

15:43:44 7 A. No.

15:43:45 8 Q. The transportation infrastructure fund -- and I
15:43:55 9 am changing gears again on you here -- originally had
15:43:58 10 \$225 million in it; is that correct?

15:44:00 11 A. Yes.

15:44:00 12 Q. My understanding is that only 43,000 of those
15:44:04 13 funds have been disbursed to date; is that correct?

15:44:07 14 A. No. As of July the 11th, no funds had been
15:44:13 15 disbursed. There had been invoices submitted by the
15:44:18 16 counties of somewhere in the 40- to 50-thousand-dollar
15:44:24 17 range that you described.

15:44:27 18 Q. Okay. The -- would you look at Exhibit 26, going
15:44:33 19 back to that last set of materials there.

15:44:59 20 A. 26?

15:45:00 21 Q. Yes, that's the one. Can you tell me what
15:45:03 22 Exhibit 26 is, please?

15:45:04 23 A. It is a copy of the County Transportation
15:45:08 24 Infrastructure Fund grant program implementation
15:45:14 25 procedures.

15:45:17 1 Q. And does Exhibit -- is Exhibit 26 the current and
15:45:23 2 applicable procedures for the TIF grant program?

15:45:28 3 A. Yes.

15:45:29 4 Q. Can you walk me briefly through -- how a bill
15:45:38 5 becomes a law. Can you walk me briefly through the
15:45:41 6 steps that a County must take after receiving a grant in
15:45:45 7 order to get to the point where it is allowed to proceed
15:45:48 8 with a construction project for which it will seek grant
15:45:54 9 funds from TxDOT?

15:45:57 10 A. Would you repeat that, please, sir?

15:46:00 11 Q. Yes. TxDOT notified, several months ago, 191
15:46:06 12 counties that they were eligible, had been determined
15:46:10 13 eligible to receive however many dollars they were
15:46:13 14 eligible to receive, right?

15:46:14 15 A. Yes.

15:46:15 16 Q. There is a process thereafter that counties must
15:46:19 17 follow, set forth in the implementation manual, that in
15:46:24 18 order to turn that award into actually starting on a
15:46:29 19 construction project. Is that accurate?

15:46:32 20 A. Yes.

15:46:33 21 Q. Okay. And I'm just wanting you to walk me
15:46:36 22 through, in terms of the process, sort of the short --
15:46:39 23 the Cliff's Notes' version, if you will, on how a county
15:46:43 24 that's been notified that it's eligible to receive some
15:46:46 25 funds from TxDOT, actually accesses those funds. What

15:46:49 1 are the steps it has to take?

15:46:50 2 A. The County would complete and execute a grant
15:47:01 3 agreement with TxDOT, between the County and the State,
15:47:07 4 if you will.

15:47:07 5 Q. Is that the first post-award step?

15:47:11 6 A. Yes.

15:47:12 7 Q. How many counties have, as of today, executed
15:47:17 8 those post-grant award contracts?

15:47:20 9 A. I looked at the numbers on July 11th and there
15:47:26 10 were 157.

15:47:26 11 Q. To your knowledge, have any counties executed any
15:47:31 12 contracts in the past six days?

15:47:33 13 A. I have not checked in the last six days.

15:47:37 14 Q. Okay. Keep walking me through the process,
15:47:40 15 please.

15:47:41 16 A. Once the agreement is executed, they have already
15:47:46 17 submitted their list of projects, they can go to work on
15:47:51 18 those projects and begin to accumulate invoices that
15:47:56 19 they can then submit to the State for reimbursement.

15:48:00 20 Q. You say go to work on those projects. They can
15:48:03 21 do some preliminary activities on those projects, but
15:48:05 22 they may not begin construction in that form which you
15:48:10 23 describe; is that right?

15:48:13 24 A. I am not following you.

15:48:14 25 Q. Sure. The implementation manual after a County

15:48:19 1 executes a contract sets forth two different
15:48:22 2 certificates that a County must submit to TxDOT; is that
15:48:25 3 correct?

15:48:26 4 A. Okay. Yes.

15:48:28 5 Q. What is a Certificate 1?

15:48:35 6 A. I do not recall.

15:48:41 7 Q. It may be that the easiest thing to do here is if
15:48:47 8 you will turn to the -- one, two, three -- fourth page
15:48:52 9 of Exhibit 26, go to the section entitled Program
15:48:58 10 Procedures.

15:49:00 11 A. Okay.

15:49:01 12 Q. And underneath that, there's a subsection
15:49:03 13 entitled Certification Forms. Are you with me?

15:49:05 14 A. Yes, sir.

15:49:06 15 Q. Is Certification Form 1 the next step in the
15:49:15 16 process after executing a contract with TxDOT for TIF
15:49:21 17 grant funds?

15:49:22 18 A. That appears to be a valid detail, within 30
15:49:24 19 days, yes, sir.

15:49:25 20 Q. Is the next step in the process, the submission
15:49:27 21 by a County of Certification Form 2?

15:49:41 22 A. Yes, sir. That also appears to be a detail.

15:49:44 23 Q. Is part of Certification Form 2, the submission
15:49:48 24 by a county of a request to commence construction form?
15:50:10 25 It may help if you turn the page.

15:50:21 1 A. I guess those on the next page are the details
15:50:24 2 for the invoice.

15:50:28 3 Q. Let me -- at the bottom of the page is a little
15:50:31 4 subsection entitled Approval to Commence Construction.

15:50:36 5 A. The UGMS states, "No construction is allowed
15:50:41 6 without prior written approval of the awarding agency."

15:50:43 7 Q. Okay. And that approval is granted upon receipt
15:50:48 8 of a Certification Form 2; is that correct?

15:50:50 9 A. Yes.

15:50:54 10 Q. Okay. So a county has to get at least as far as
15:50:57 11 Certification Form 2 in the process outlined in the
15:51:01 12 implementation manual before TxDOT will approve them to
15:51:05 13 commence construction?

15:51:06 14 A. Yes.

15:51:07 15 Q. And no construction is allowed without that
15:51:09 16 approval from TxDOT?

15:51:11 17 A. Yes.

15:51:12 18 Q. How many counties have received approval from
15:51:16 19 TxDOT to proceed on one or more projects -- construction
15:51:22 20 on one or more projects?

15:51:24 21 A. I don't know.

15:51:30 22 Q. Have any?

15:51:36 23 A. You are asking me to speculate?

15:51:40 24 Q. I am asking you to give me the best answer you
15:51:43 25 can, as TxDOT's representative, who is noticed here

15:51:48 1 today, to talk about this very topic.

15:51:48 2 MR. HARRIGER: Objection, Your Honor. This
15:51:49 3 specific topic was not one of the 29 listed in the
15:51:51 4 subpoena.

15:51:52 5 THE COURT: What was the specific topic that
15:51:55 6 you think is appropriate?

15:52:02 7 MR. SILEO: I am searching for the subpoena,
15:52:04 8 Your Honor.

15:52:05 9 THE COURT: Does he have it? I think you
15:52:10 10 handed him a version of it.

15:52:12 11 MR. SILEO: Yes. The -- topic 27 inquires
15:52:20 12 regarding status of TIF funds, including specifically --
15:52:24 13 we've already walked through several of them -- the
15:52:27 14 number of projects for which a notice of commencement
15:52:30 15 has been submitted. And I suppose I am asking the
15:52:33 16 converse of that question. I mean, I think it's well
15:52:36 17 covered by the broad topic of the status of the funds.

15:52:42 18 THE COURT: You still have an objection?

15:53:06 19 MR. HARRIGER: Yes. But I think my witness
15:53:08 20 is able to find them.

15:53:10 21 THE COURT: Overruled.

15:53:12 22 A. I would believe that the number is probably a
15:53:17 23 little over 500 projects at this point in time, based on
15:53:22 24 those agreements.

15:53:25 25 Q. (BY MR. SILEO) Have received an approval from

15:53:27 1 TxDOT to proceed?

15:53:28 2 A. To commence, yes.

15:53:29 3 Q. To commence. With construction?

15:53:31 4 A. Yes.

15:53:32 5 Q. Do you know -- can you estimate for me the number
15:53:36 6 of dollars associated with the projects for which a
15:53:42 7 construction commencement has been approved?

15:53:55 8 MR. HARRIGER: Objection, Your Honor. I
15:53:57 9 don't think that one is listed in the topic 27 or
15:53:59 10 anywhere else.

15:54:00 11 THE COURT: Well, do you know the answer?

15:54:04 12 THE WITNESS: Not specifically, Your Honor.

15:54:05 13 THE COURT: Can you estimate?

15:54:09 14 THE WITNESS: An estimate based on, again,
15:54:11 15 those applications, and if my number of projects is
15:54:16 16 correct, I'd say probably 40 to 50 million.

15:54:25 17 THE COURT: Overruled.

15:54:32 18 Q. (BY MR. SILEO) Is it correct that each separate
15:54:34 19 project within a county requires a separate notice of
15:54:40 20 commencement?

15:54:48 21 A. I think we allow them to do them individually or
15:54:52 22 they can submit us a list of projects.

15:54:59 23 Q. Okay. So you can --

15:55:01 24 A. A county may work on more than one project at a
15:55:03 25 time.

15:55:04 1 Q. Understood. We're understanding -- I understand
15:55:08 2 your answer.

15:55:09 3 Has -- and I think the numbers -- your numbers
15:55:18 4 bear that out. There are 500 projects for which
15:55:21 5 commencement has been approved, and there are 191
15:55:24 6 applicant counties. Obviously, there are multiple --
15:55:27 7 multiple projects involved within the various counties.

15:55:30 8 A. Yes, sir.

15:55:30 9 Q. And when those counties apply, they might submit
15:55:33 10 one omnibus request to proceed for three or four or five
15:55:39 11 or however many projects, or they might submit serial
15:55:42 12 notices to proceed on a project-by-project basis?

15:55:44 13 A. Yes, sir.

15:55:45 14 Q. And TxDOT would be willing to consider that in
15:55:53 15 either form?

15:55:54 16 A. Yes, sir. I'm sorry, to do what?

15:55:55 17 Q. TxDOT would be willing to consider that
15:55:55 18 submission in either form?

15:55:57 19 A. Yes, sir.

15:55:57 20 MR. SILEO: Mr. Marek, thank for your time.
15:56:01 21 We'll pass the witness.

15:56:01 22 **CROSS-EXAMINATION**

15:56:01 23 BY MR. HARRIGER:

15:56:04 24 Q. Mr. Marek, a few questions. Let me go -- I'll
15:56:08 25 just go in order of the questions that were asked of you

15:56:11 1 a moment ago.

15:56:16 2 First, let me direct your attention to Exhibit
15:56:22 3 27, which is the form application.

15:56:28 4 A. Yes, sir.

15:56:29 5 Q. If you recall, you were asked a question about
15:56:33 6 the first of box under eligibility requirements
15:56:36 7 involving counties entirely or partially in the area
15:56:40 8 affected by increased oil and gas production. Do you
15:56:42 9 remember that question?

15:56:43 10 A. Yes, sir.

15:56:43 11 Q. And can you just remind me of what your answer
15:56:46 12 was about what TxDOT did to investigate counties
15:56:52 13 checking that box off on the application?

15:56:55 14 A. We used the formula in the statute to determine
15:57:00 15 whether they were in such an area.

15:57:02 16 Q. Let me ask you about the next one. The next box
15:57:04 17 under eligibility requirements says, Create an Energy
15:57:10 18 Transportation Reinvestment Zone under Transportation
15:57:11 19 Code. Can you describe what TxDOT did to determine
15:57:16 20 whether that box was validly checked off?

15:57:20 21 A. We were simply looking for an order resolution of
15:57:23 22 some type from the county that they had taken that
15:57:26 23 formal action.

15:57:28 24 Q. Did TxDOT take a more in-depth approach to
15:57:35 25 determining whether the -- all of the procedural

15:57:41 1 requirements for a county to adopt such an order were
15:57:46 2 conducted validly? Did you ever look to see if the
15:57:50 3 public notice requirements for the county commissioners
15:57:54 4 to adopt such a zone were issued timely or according to
15:57:58 5 the appropriate procedures?

15:57:58 6 A. No, sir.

15:57:59 7 Q. So is the only thing that you did, looking at
15:58:12 8 what the County represented to you on the application?

15:58:16 9 A. Yes.

15:58:16 10 Q. And was supporting material of the order?

15:58:19 11 A. Yes.

15:58:19 12 Q. What about the third box, creating advisory
15:58:27 13 board, what did you do to verify that an advisory board
15:58:30 14 was created by the County?

15:58:32 15 A. Again, it was simply a statement by the County
15:58:35 16 that the board had been created.

15:58:37 17 Q. So there wasn't anything -- any investigation as
15:58:40 18 to whether the advisory board was created in compliance
15:58:46 19 with all the applicable laws that govern creating an
15:58:50 20 advisory board?

15:58:51 21 A. No, sir.

15:58:53 22 Q. What about the fourth one, the road condition
15:58:59 23 report requirement? You testified earlier that you were
15:59:02 24 looking for whether there was a current one, at least
15:59:05 25 2013.

15:59:06 1 A. Yes, sir.

15:59:06 2 Q. Did you do any investigation beyond that to
15:59:14 3 determine whether it was -- complied with all the
15:59:19 4 applicable local, state, whatever regulations?

15:59:23 5 A. No, sir. We depended on the counties for that.

15:59:26 6 Q. Now, is it your understanding that -- that any of
15:59:38 7 the -- let me rephrase that.

15:59:39 8 Do you think that -- do you have any awareness of
15:59:46 9 any obligation on TxDOT to conduct such an investigation
15:59:51 10 about the adoption, the procedures used of advisory
15:59:55 11 boards, zones, or the timely or -- the timely submission
16:00:02 12 of the road condition reports?

16:00:03 13 A. No, sir.

16:00:04 14 Q. Is it fair to say you treated all these
16:00:06 15 requirements basically in the same way, you relied on
16:00:11 16 the counties to make -- to take those steps and then
16:00:16 17 provide some sort statement or documentation to show
16:00:19 18 that they did?

16:00:19 19 A. Yes, sir.

16:00:20 20 Q. Let me ask you about -- I think the next one you
16:00:32 21 were asked about was Exhibit 28. It appears to be a
16:00:36 22 PowerPoint presentation. You were asked a question
16:00:42 23 about a sentence on the second page, under the Senate
16:00:49 24 Bill 1747. Well, first of all, let me back up.

16:00:53 25 Did you write this PowerPoint?

16:00:56 1 A. No, sir.

16:00:57 2 Q. Do you know who did?

16:00:59 3 A. I believe it was put together by TxDOT's
16:01:04 4 communication division.

16:01:05 5 Q. You're the one -- I think you said earlier,
16:01:09 6 you're the one that oversees the grant program, right?

16:01:13 7 A. Yes, sir.

16:01:14 8 Q. In your opinion, is this -- is this meant to be a
16:01:19 9 formal statement of TxDOT's interpretation of Senate
16:01:24 10 Bill 147 -- 1747?

16:01:26 11 A. No, sir.

16:01:27 12 Q. It's a PowerPoint, right?

16:01:30 13 A. Yes.

16:01:31 14 Q. And does it convey basic information about the
16:01:35 15 Senate bill, the House Bill, and the program?

16:01:37 16 A. Yes, sir.

16:01:38 17 Q. Let me ask you about a different exhibit, 29.
16:01:47 18 This is the -- I think what you have is what I have, two
16:01:50 19 pages. Appears to be a simple -- yes, PowerPoint.

16:01:56 20 Did you write this PowerPoint or help Mr. Barton
16:01:59 21 write this PowerPoint?

16:02:01 22 A. No, sir. Again, I believe it was done by our
16:02:05 23 communication division at TxDOT.

16:02:08 24 Q. Do you know whether this PowerPoint predated the
16:02:13 25 Senate Bill 1747 or the grant program, in general?

16:02:18 1 A. I don't know.

16:02:19 2 Q. So you can't say one way or the other whether
16:02:22 3 this was written before the grant program was created,
16:02:25 4 during, or after?

16:02:26 5 A. I cannot say.

16:02:27 6 Q. Okay. You were asked a few questions about
16:02:54 7 whether TxDOT was aware about -- of the types of
16:02:58 8 properties, such as right-of-way, that were included in
16:03:02 9 the Transportation Reinvestment Zones. Let me ask you a
16:03:06 10 follow-up question about that.

16:03:07 11 Are you aware of any authority, whether it be in
16:03:10 12 a statute, rule, or policy, that would allow you to
16:03:16 13 reject a county application because its Transportation
16:03:23 14 Reinvestment Zone consisted only of right-of-way?

16:03:29 15 A. I am not aware of any statute that would give me
16:03:33 16 that authority, no, sir.

16:04:04 17 Q. Let's see. Let me -- let me ask you about -- let
16:04:18 18 me ask you to describe -- assume with me for a second, a
16:04:20 19 hypothetical. Let's say you were told we need to put
16:04:28 20 the grant program on hold. How would TxDOT go about
16:04:33 21 doing that? Is that something that you can describe?

16:04:42 22 A. If we were told to put it on hold, I guess we
16:04:46 23 would no longer process invoices requesting
16:04:51 24 reimbursement from the counties.

16:04:56 25 Q. And those were the numbers that you spoke of a

16:04:59 1 minute ago that would go towards, I think, the over 500
16:05:04 2 projects that are approved; is that correct?

16:05:08 3 A. Those that have been approved to commence
16:05:10 4 construction.

16:05:10 5 Q. Would those -- I think you said 157 counties that
16:05:15 6 have executed contracts?

16:05:16 7 A. Have executed agreements, yes, sir.

16:05:18 8 Q. Executed agreements?

16:05:19 9 A. With TxDOT, that then allows them to submit the
16:05:23 10 projects to commence construction.

16:05:25 11 Q. Now, if 157 have executed agreements, and 191
16:05:30 12 have been awarded grants, are there some counties that
16:05:36 13 are still in the process of executing those agreements?

16:05:40 14 A. Yes, sir.

16:05:41 15 Q. Are they allowed, during that time, to incur any
16:05:45 16 costs?

16:05:46 17 A. No, sir.

16:06:13 18 MR. HARRIGER: I'll pass the witness.

16:06:16 19 MR. SILEO: Nothing further, Your Honor.

16:06:17 20 THE COURT: You can step down. Thank you.

16:06:20 21 MR. RAMOS: We call Mr. Charles Graham, Your
16:06:22 22 Honor.

16:06:24 23 MR. SILEO: Judge, may I approach and turn
16:06:25 24 on the PowerPoint?

16:06:26 25 THE COURT: Sure.

16:06:26 1 **CHARLES EDWARD GRAHAM,**
16:06:26 2 having been first duly sworn, testified as follows:

16:06:26 3 **DIRECT EXAMINATION**

16:06:26 4 BY MR. RAMOS:

16:07:00 5 Q. Would you state your full name, please.

16:07:01 6 A. My full name, for the record, is Charles Edward
16:07:05 7 Graham --

16:07:05 8 Q. And how old a man are you?

16:07:06 9 A. -- III.

16:07:07 10 Q. I am sorry. How old a man are you?

16:07:08 11 A. 66.

16:07:09 12 Q. And where do you live?

16:07:10 13 A. I live in Lakeway, Texas.

16:07:12 14 Q. How long have you lived there?

16:07:13 15 A. About seven, eight years.

16:07:16 16 Q. Would you tell the Court a little bit about your
16:07:18 17 educational background. Where did you go high school?
16:07:20 18 College? Any professional degrees that you may have.

16:07:24 19 A. Yes, sir. I went to Jesuit High School in El
16:07:29 20 Paso. And then moved on to Austin and went to school
16:07:35 21 and graduated from the University of Texas in Austin in
16:07:38 22 December of 1971.

16:07:40 23 Q. And then what --

16:07:42 24 A. I have a bachelor of science in petroleum
16:07:44 25 engineering from the University of Texas.

16:07:45 1 Q. Are you currently a registered professional
16:07:47 2 engineer in the state of Texas?

16:07:49 3 A. Yes, sir, I am. And my firm is licensed to
16:07:52 4 practice engineering in the state of Texas also.

16:07:54 5 Q. And have you practiced the profession of
16:07:58 6 petroleum engineering since your graduation from
16:08:03 7 college?

16:08:04 8 A. I have. I graduated in '71 and worked about 15
16:08:08 9 years for a major oil company and an independent. And
16:08:13 10 then I have been in business for myself for over 30
16:08:17 11 years.

16:08:18 12 Q. And as such, can you tell the Court approximately
16:08:21 13 how many years of operator experience, oil and gas
16:08:24 14 operator experience you've had?

16:08:27 15 A. Well, I continued to stay involved in the
16:08:31 16 operation side of the oil and gas business, so, you
16:08:36 17 know, I've been at it, you know, a long time; about 40
16:08:40 18 years.

16:08:40 19 Q. Has your practice included, Mr. Graham, getting
16:08:44 20 involved in either consulting or doing evaluations or
16:08:50 21 other type of work in the -- what I am going to say the
16:08:54 22 South Texas area?

16:08:55 23 A. Yes, sir. I've worked in -- all over Texas. But
16:09:00 24 recently I've been focused and have most of my clients
16:09:04 25 in the Eagle Ford shale trend that's south of San

16:09:07 1 Antonio.

16:09:07 2 Q. Is the county of La Salle in the Eagle Ford shale
16:09:11 3 trend?

16:09:12 4 A. It is. It's a core county in the heart of the
16:09:15 5 Eagle Ford shale trend.

16:09:16 6 Q. When you say a core county, what do you mean by
16:09:18 7 that?

16:09:18 8 A. There's a half a dozen counties that -- of the
16:09:23 9 20-plus counties that are in the trend that contribute
16:09:27 10 the majority of the production.

16:09:28 11 Q. Do you know whether or not -- whether La Salle
16:09:32 12 County currently is the second highest oil and gas
16:09:35 13 producing county in the state of Texas?

16:09:37 14 A. I do. It's second to Karnes County, which is
16:09:41 15 also in the Eagle Ford trend.

16:09:43 16 Q. And would you agree with me, then, that the two
16:09:45 17 top oil and gas producing counties in the state of Texas
16:09:50 18 are La Salle County and Karnes County, which are both in
16:09:54 19 the Eagle Ford trend?

16:09:55 20 A. That's correct. In the top ten, there's six
16:09:58 21 counties, roughly, that are in the Eagle Ford. And the
16:10:01 22 remaining counties are located in the Permian basin.

16:10:05 23 Q. Now -- and I don't want to spend a lot of time on
16:10:07 24 this, but would you agree with me that the Eagle Ford
16:10:11 25 trend wells are what are described as horizontal wells,

16:10:16 1 as compared to a vertical well?

16:10:18 2 A. Yes, sir. The technology that's being applied
16:10:22 3 successfully within the Eagle Ford shale trend employs
16:10:27 4 horizontal drilling and fracture stimulation within
16:10:30 5 those horizontal laterals that are drilled in the Eagle
16:10:34 6 Ford formation.

16:10:34 7 Q. Has it been your experience, Mr. Graham, not only
16:10:37 8 by the work that you have done by physically going to La
16:10:41 9 Salle County, whether horizontal drilling has presented
16:10:46 10 some unique burdens on the county road systems?

16:10:52 11 A. Certainly. I mean, it's more equipment, more
16:10:56 12 capital intensive type of a development of oil and gas.
16:11:00 13 Requires lots and lots of equipment, which in turn
16:11:06 14 provides a unique stress on the county infrastructure.

16:11:12 15 Q. And would such increased production in the
16:11:17 16 horizontal wells result in an impact on the county roads
16:11:23 17 in La Salle County?

16:11:25 18 A. Yes, sir, it has.

16:11:27 19 Q. Okay. Now, you are currently familiar, and have
16:11:33 20 been for how many years, familiar with La Salle County
16:11:37 21 and the Eagle Ford trend shale drilling in that county?

16:11:42 22 A. I have. Discovery was in October of 2008 in the
16:11:49 23 adjoining county, on the South Texas Syndicate Trust
16:11:52 24 land, McMullen County. And that activity was fairly
16:11:59 25 stealth for a good year and a half, and then the major

16:12:03 1 development exploded in late 2010 and continues to this
16:12:07 2 date.

16:12:07 3 Q. Now, over the years, Mr. Graham, have you
16:12:10 4 testified as an expert witness in State court and
16:12:14 5 Federal court, before the Texas Railroad Commission, and
16:12:16 6 other administrative agencies in the state of Texas?

16:12:19 7 A. Yes, sir, I have.

16:12:21 8 Q. In addition to that, have you testified in other
16:12:24 9 states regarding oil and gas issues? And if so, tell
16:12:30 10 the Court what other states.

16:12:30 11 A. I have in New York, Kansas, Oklahoma, New Mexico,
16:12:35 12 as well as Texas.

16:12:36 13 Q. Are you pretty busy nowadays?

16:12:38 14 A. I have been. But anybody involved in the oil and
16:12:41 15 gas sector is very busy right now.

16:12:43 16 Q. Were you retained by the County of La Salle to
16:12:46 17 assist it in rendering opinions with regards to the
16:12:51 18 issues before this Court?

16:12:52 19 A. I was asked by Judge Rodriguez to do some work
16:13:00 20 related to the issue we're here about.

16:13:02 21 Q. And being more focused, were you asked to do an
16:13:04 22 analysis of the counties that were affected by increased
16:13:10 23 oil or gas production in the state of Texas?

16:13:13 24 A. I was, yes, sir.

16:13:13 25 Q. And just so that the Court will know, when you --

16:13:21 1 when you started your project, were you given a
16:13:25 2 definition of what is reflected as or known as the
16:13:29 3 Transportation Infrastructure Fund, and specifically the
16:13:34 4 Section 256.103(a)? Did you read that?

16:13:38 5 A. Yes, sir.

16:13:39 6 Q. Okay. Is part of a job that you do as a
16:13:42 7 petroleum engineer, to read oil and gas leases, to read
16:13:46 8 farm-out agreements and other similar agreements to
16:13:50 9 interpret and conclude what is reflected in the
16:13:53 10 document?

16:13:53 11 A. Well, sure. But I'm a petroleum engineer. From
16:13:57 12 a lay perspective -- it's not really the lawyers that
16:14:00 13 administer the oil and gas leases; it's professionals
16:14:04 14 like myself that do that. So from a layman's
16:14:07 15 perspective, yes, I do.

16:14:09 16 Q. In reading Section 256.103(a), did you reach any
16:14:16 17 conclusions with regards to how you should conduct your
16:14:20 18 analysis to give opinions in this Court?

16:14:22 19 A. Sure. I just -- you know, I have read it. And
16:14:26 20 just plain language to me indicates that I should
16:14:28 21 identify those counties with increased oil and gas
16:14:31 22 production. And then once I have assembled that list,
16:14:36 23 determine whether those counties have, in fact, been
16:14:40 24 affected by that increase.

16:14:41 25 Q. And would I be --

16:14:42 1 THE COURT: How is that helpful to me? He
16:14:45 2 is stating an opinion of how he interprets the statute.
16:14:49 3 And as he said, he's a layperson with respect to the
16:14:52 4 law.

16:14:54 5 MR. RAMOS: Yes, Your Honor. I will move
16:14:55 6 on.

16:14:55 7 THE COURT: All right. No offense.

16:14:58 8 THE WITNESS: No, no. I am proud to be a
16:15:00 9 layperson, too.

16:15:01 10 THE COURT: We don't even let lawyers
16:15:03 11 testify to law, except in rare circumstances.

16:15:05 12 THE WITNESS: Yeah. No, no, that's why I
16:15:09 13 wanted to qualify in --

16:15:09 14 Q. (BY MR. RAMOS) Let's go to the next slide, if
16:15:10 15 you don't mind.

16:15:12 16 Would you just describe for the Court what you
16:15:19 17 actually did, Mr. Graham -- first of all, let me
16:15:23 18 withdraw that.

16:15:24 19 The type of information that you relied upon to
16:15:26 20 render your opinions and do your analysis in this case,
16:15:31 21 was that the type of information that's available to any
16:15:34 22 layperson in the state of Texas?

16:15:36 23 A. Well, sure. I mean, the source of the
16:15:39 24 information was the Railroad Commission, and that's the
16:15:41 25 only, say, State agency where you can acquire any

16:15:45 1 production information on --

16:15:46 2 Q. Do you know whether the records of the Texas
16:15:49 3 Railroad Commission are available on the Internet to any
16:15:53 4 person in the state of Texas?

16:15:55 5 A. They are. Yes. I mean, they work real hard to
16:15:58 6 disseminate that information.

16:16:00 7 Q. Okay. During the work that you did in this case,
16:16:04 8 did you review any documents which indicated to you that
16:16:12 9 TxDOT collaborates with the Texas Railroad Commission
16:16:16 10 with regards to projects?

16:16:17 11 A. Yes, they have in this project. They certainly
16:16:21 12 have.

16:16:22 13 Q. The PowerPoint that we presented here to the
16:16:25 14 Court, is that something that you prepared?

16:16:27 15 A. I did.

16:16:27 16 Q. And is that a summary of the work that you have
16:16:31 17 done in this case?

16:16:32 18 A. It is. It just -- it's an easy way for me to get
16:16:37 19 through the various steps and conclusions that I have
16:16:41 20 arrived at.

16:16:41 21 Q. Can you see, Mr. Graham, what is reflected as "No
16:16:51 22 oil and gas production"? Can you explain --

16:16:53 23 A. Yes, I have my own screen.

16:16:55 24 Q. I know. I can't see from an angle. Can you just
16:16:59 25 basically explain to the Court what that reflects?

16:17:00 1 A. In a nutshell, 191 counties are involved in
16:17:07 2 the -- this fund, this grant that TxDOT is planning to
16:17:11 3 administer. 191 counties out of 254 counties. So I
16:17:18 4 identified those counties and determined whether there
16:17:23 5 was, one, any production in those counties; and, two,
16:17:27 6 whether there was an increase in oil production in those
16:17:30 7 counties, or a decrease in oil production. And I did
16:17:34 8 the same for gas.

16:17:36 9 Q. And why did you do that?

16:17:38 10 A. Well, first, I wanted to identify what counties
16:17:43 11 have an increase in production. And so I went to the
16:17:46 12 Railroad Commission's records and I identified 15
16:17:51 13 counties that are included in this grant program that
16:17:56 14 had no production.

16:17:56 15 Q. Okay. And are the 15 counties that you
16:18:00 16 identified with no oil and gas production counties that
16:18:04 17 TxDOT awarded grant funds for?

16:18:07 18 A. Yes, sir.

16:18:08 19 Q. Okay. Clearly, in those counties, there was,
16:18:10 20 quote, no increase in production because there was no
16:18:13 21 production?

16:18:13 22 A. Correct.

16:18:14 23 Q. Now, are the counties that had no oil and gas
16:18:17 24 production reflected on the screen at this time?

16:18:19 25 A. They are, yes, sir. There's 15 counties.

16:18:22 1 Q. Okay.

16:18:23 2 A. You want me to read them into the record?

16:18:25 3 THE COURT: Please don't.

16:18:28 4 MR. RAMOS: Your Honor, I will try to move
16:18:29 5 fast. I know --

16:18:31 6 THE COURT: If it needs to be part of the
16:18:32 7 record, we'll admit the document.

16:18:34 8 MR. RAMOS: No, no, Your Honor. Next one.

16:18:36 9 THE WITNESS: Thank you, Your Honor.

16:18:37 10 Q. (BY MR. RAMOS) Would you describe -- would you
16:18:40 11 describe the next exhibit. And, specifically,
16:18:44 12 Mr. Graham, there's two shaded areas, a dark green and a
16:18:48 13 light green. Would you tell the Court what the dark
16:18:51 14 green area represents?

16:18:52 15 THE COURT: It says right there. I know.

16:18:53 16 MR. RAMOS: Okay.

16:18:54 17 A. 104 counties had an increase in oil production
16:18:57 18 between the period of '11 to '12. I compared calendar
16:19:02 19 year's production in 2011 with calendar year's 2012. 87
16:19:06 20 had a decrease.

16:19:06 21 Q. (BY MR. RAMOS) And the source of the data for
16:19:09 22 this exhibit and all the other exhibits is what?

16:19:10 23 A. Railroad Commission.

16:19:12 24 Q. Matter of public record?

16:19:13 25 A. It is. I had to scroll through each of the

16:19:16 1 counties to determine whether production was increasing
16:19:18 2 or decreasing or whether there was production at all.

16:19:22 3 THE COURT: Excuse me a minute. Was this
16:19:24 4 information available three, four years ago, for that
16:19:28 5 period of time?

16:19:31 6 THE WITNESS: There's only about a
16:19:33 7 four-month lag right now. You could log on to the
16:19:37 8 Railroad Commission's website, you can see production
16:19:38 9 for April, possibly May of 2014.

16:19:42 10 THE COURT: But could you -- were we in
16:19:45 11 2008, for instance, would the similar information be
16:19:49 12 available for 2008 or '7?

16:19:52 13 THE WITNESS: It would, yes, sir.

16:19:53 14 THE COURT: Okay.

16:19:54 15 THE WITNESS: They have been tracking it on
16:19:56 16 the web since '93.

16:19:58 17 THE COURT: Were you asked to testify before
16:19:59 18 the Legislature about this statute?

16:20:01 19 THE WITNESS: No, sir.

16:20:02 20 THE COURT: Would you have been available to
16:20:04 21 do that?

16:20:05 22 THE WITNESS: I could have.

16:20:05 23 THE COURT: Thank you.

16:20:07 24 Q. (BY MR. RAMOS) Mr. Graham, looking at the
16:20:08 25 exhibit, you talk -- there's a time period there, 2011

16:20:11 1 and 2012. Can you tell the Court why you selected that
16:20:16 2 time period?

16:20:16 3 A. The effective date, I understood of the law, is
16:20:20 4 September 1st, 2013, so -- not a calendar year
16:20:26 5 production was available in 2013, so I backed up to the
16:20:28 6 full -- first full 12-month calendar year of production,
16:20:32 7 which is '12, compared that to '11.

16:20:35 8 Q. Okay. And so the record is clear, every oil and
16:20:39 9 gas operator in the state of Texas has an obligation to
16:20:42 10 report production on each well on a monthly basis,
16:20:46 11 correct?

16:20:46 12 A. They do. And that information is shared with the
16:20:49 13 public through the website of the Railroad Commission.

16:20:51 14 Q. The next slide is a slide, again. What does that
16:20:55 15 reflect?

16:20:56 16 A. I did the exact same thing for gas, and it
16:20:59 17 reflected 68 counties had an increase in gas production
16:21:03 18 over that period of time, while 123 had a decrease.

16:21:08 19 Q. Okay. Next. I think you've testified to this
16:21:12 20 but tell -- tell the Court what the source of
16:21:19 21 information were and why you relied on this information,
16:21:22 22 Mr. Graham.

16:21:23 23 A. I mean, I did the analysis of the counties that
16:21:31 24 had an increase or a decrease in oil and gas production.
16:21:34 25 And then from that point, I had to determine whether

16:21:41 1 that increase in production was going to affect the
16:21:45 2 county. And so I identified what specific play those
16:21:51 3 counties were in, and determined what activity was
16:21:55 4 transpiring to determine whether they would have an
16:21:57 5 effect or not on the county infrastructure.

16:22:02 6 Q. And, Mr. Graham, you -- in the previous slide,
16:22:06 7 there were four different sources of information that
16:22:08 8 you relied upon in rendering your opinions. Can you
16:22:12 9 tell the Court why you relied on other sources besides
16:22:16 10 only the Texas Department of Transportation information?

16:22:19 11 A. I didn't. I did to determine whether there was
16:22:25 12 an effect on the county as a result of the increase in
16:22:29 13 production, I looked at four additional sources: TxDOT;
16:22:34 14 DPS; Baker Hughes, which does the recount; and, again,
16:22:38 15 the Railroad Commission.

16:22:39 16 Q. Okay. Let's -- and what's the significance of
16:22:42 17 relying on Baker Hughes' records?

16:22:44 18 A. Well, those are the drilling rig counts. I
16:22:47 19 needed to know where the drilling rigs were located in
16:22:49 20 those counties that were exhibiting an increase in
16:22:53 21 production.

16:22:53 22 Q. And why did you need to do that?

16:22:55 23 A. To determine whether there would be an effect on
16:22:58 24 the county as a result of that increase. In other
16:23:01 25 words, whether there was a lot of equipment involved in

16:23:04 1 that county developing additional oil and gas reserves.

16:23:08 2 THE COURT: Excuse me. Excuse me a minute.

16:23:10 3 So you made a determination as to whether there was a
16:23:14 4 lot of equipment used?

16:23:15 5 THE WITNESS: Yes, sir.

16:23:16 6 THE COURT: Okay. And what's a lot of
16:23:19 7 equipment?

16:23:20 8 THE WITNESS: It would be the -- a lot of
16:23:22 9 equipment would be similar to the report that Mr. Barton
16:23:26 10 put together, where he determined it's equivalent of
16:23:28 11 about 10,000 automobiles. This would be a horizontal
16:23:33 12 well that would require roughly a thousand to 1200 loads
16:23:37 13 of equipment in and out to a specific location, about
16:23:42 14 three or four hundred trucks a year to maintain it, and
16:23:44 15 then periodically fracking, which is another thousand
16:23:46 16 trucks.

16:23:47 17 THE COURT: Is that the only number you
16:23:49 18 could use for a lot of equipment?

16:23:52 19 THE WITNESS: Well, you know, I just
16:23:54 20 understood from the layman's perspective, the focus was
16:23:57 21 on county roads and the potential damage or the safety
16:24:02 22 hazards that result from the damage to those county
16:24:04 23 roads. So I was more concerned about the movement of
16:24:07 24 the equipment in the county from one well to the next to
16:24:11 25 the next to the next, and that's why it was important.

16:24:13 1 THE COURT: And that sounds reasonable, but
16:24:15 2 there are other reasonable ways of figuring out how
16:24:19 3 counties are affected by oil and gas production, aren't
16:24:23 4 there?

16:24:23 5 THE WITNESS: That's true. That's true.
16:24:24 6 And that's why I relied on TxDOT.

16:24:26 7 THE COURT: Okay.

16:24:27 8 THE WITNESS: And relied on the DPS because
16:24:29 9 they have done similar studies.

16:24:31 10 THE COURT: But the number you got for a lot
16:24:32 11 didn't come from TxDOT, did it?

16:24:34 12 THE WITNESS: For --

16:24:35 13 THE COURT: For your determination of what a
16:24:37 14 lot of equipment was.

16:24:39 15 THE WITNESS: I did get that from TxDOT,
16:24:41 16 yes.

16:24:41 17 THE COURT: Oh, you got that. The
16:24:41 18 definition of a lot?

16:24:44 19 THE WITNESS: Well, it's significant. And
16:24:46 20 that's the volume of equipment that has caused damage.
16:24:48 21 I mean, they have documented the damage to the county
16:24:51 22 roads. There are photographs and reports and even
16:24:55 23 hearings before the Legislature.

16:24:57 24 THE COURT: Well, what I am getting at is,
16:24:59 25 does TxDOT identify a particular point at which

16:25:06 1 equipment becomes enough or a lot to where it's
16:25:11 2 significant?

16:25:11 3 THE WITNESS: Yes, sir. Yes, that's exactly
16:25:15 4 right. You know, there's been a lot of controversy over
16:25:17 5 converting paved roads to gravel roads because of the
16:25:21 6 volume of equipment that tears up the paved roads. And
16:25:24 7 all of this is transpiring within either the Permian
16:25:28 8 basin or the Eagle Ford.

16:25:29 9 THE COURT: All right. Thank you.

16:25:30 10 MR. RAMOS: May I approach the witness, Your
16:25:31 11 Honor?

16:25:31 12 THE COURT: Yes. I'm sorry to interrupt
16:25:33 13 you.

16:25:34 14 MR. RAMOS: That's all right.

16:25:35 15 Q. (BY MR. RAMOS) Mr. Graham, I will show you
16:25:36 16 Exhibits 36, 37, 38, and 39, and ask you to please
16:25:45 17 identify each and tell me what they are.

16:25:49 18 A. Exhibit 36 is a map that I prepared that's also
16:25:56 19 on the easel. That depicts those counties that have an
16:26:03 20 increase in both oil and gas production. And I've
16:26:06 21 displayed those counties in blue. It also depicts those
16:26:10 22 counties that have only an increase in oil production
16:26:14 23 and only gas, and those are colored either green or red.

16:26:19 24 MR. RAMOS: I would offer Exhibit 32 [sic]
16:26:21 25 into evidence, Your Honor.

16:26:25 1 THE COURT: Any objection?

16:26:27 2 MR. HARRIGER: No objection.

16:26:28 3 THE COURT: Other than your running
16:26:29 4 objection?

16:26:29 5 MR. HARRIGER: Right.

16:26:30 6 THE COURT: Okay. It's admitted.
16:26:30 7 (Plaintiffs' Exhibit No. 32 admitted.)

16:26:34 8 Q. (BY MR. RAMOS) Let's go to the next exhibit,
16:26:35 9 Mr. Graham, Exhibit -- what is it 33?

16:26:36 10 A. Exhibit 37.

16:26:37 11 Q. 37. I am sorry.

16:26:38 12 A. Yes. Well, I started with 36. Is that all
16:26:41 13 right?

16:26:41 14 Q. That's fine.

16:26:42 15 A. 37 is a summary of the counties and how much
16:26:49 16 grant money has been awarded to those counties that had
16:26:54 17 either no production or had no increase in both oil and
16:26:58 18 gas production.

16:26:59 19 Q. Okay. And the source of the data that is
16:27:03 20 reflected of the grant monies awarded to those counties
16:27:08 21 is reflected on that Exhibit?

16:27:09 22 A. It is. It's \$41 million and these are -- the
16:27:13 23 source of the data is TxDOT.

16:27:15 24 Q. Okay. Again, so the record is clear, that
16:27:18 25 exhibit shows counties where there was no increase in

16:27:22 1 oil or gas production or no oil or gas production?

16:27:26 2 A. That's correct.

16:27:26 3 MR. RAMOS: We would offer that exhibit into
16:27:28 4 evidence, Your Honor.

16:27:30 5 THE COURT: Is that -- what's the number on
16:27:30 6 that?

16:27:32 7 THE WITNESS: That was 37, Your Honor.

16:27:33 8 THE COURT: All right. Any objection to 37?

16:27:53 9 MR. HARRIGER: No objection, Your Honor.

16:27:54 10 THE COURT: All right. 37 is admitted.

16:27:57 11 (Plaintiffs' Exhibit No. 37 admitted.)

16:27:57 12 Q. (BY MR. RAMOS) Mr. Graham, what's the last
16:27:59 13 exhibit that you have there?

16:28:00 14 A. Next one is Exhibit 38, and that's the TxDOT
16:28:06 15 document that supports Exhibit 37.

16:28:08 16 MR. RAMOS: We would offer that into
16:28:10 17 evidence. That's your information -- 38.

16:28:31 18 MR. HARRIGER: No objection.

16:28:32 19 THE COURT: 38 is admitted.

16:28:32 20 (Plaintiffs' Exhibit No. 38 admitted.)

16:28:35 21 Q. (BY MR. RAMOS) Let me show you Exhibits 32, 33,
16:28:38 22 34, and 35. We have already talked about these maps,
16:28:42 23 but I just want you to identify them for the record so I
16:28:45 24 can offer them into evidence.

16:28:46 25 A. Okay. Exhibit 32 is a map I prepared that

16:28:50 1 depicts either the increase or the decrease in oil
16:28:53 2 production within the 191 counties that are part of the
16:28:58 3 grant program.

16:28:59 4 Q. Okay.

16:28:59 5 A. Dark green is increases; light green are
16:29:04 6 decreases. Graham Exhibit 33 -- oh, should I stop?

16:29:09 7 Q. Go to the next one. I would like to offer all of
16:29:13 8 those but I want you to identify them first.

16:29:15 9 A. Okay. 33 is -- depicts the same information on
16:29:18 10 32, but it has omitted those counties that had a
16:29:25 11 decrease in oil production.

16:29:28 12 Exhibit 34 is a similar map, but for either the
16:29:33 13 increase or decrease in gas production. Dark red would
16:29:37 14 represent counties with an increase, light red would be
16:29:41 15 a decrease.

16:29:43 16 And finally, Exhibit 35 would be the same data
16:29:48 17 that's exhibited on Exhibit 34, except it omits the
16:29:53 18 counties with a decline in gas production.

16:29:56 19 Q. Okay.

16:29:56 20 MR. RAMOS: We would offer those exhibits,
16:29:58 21 Your Honor, 32 through 35, into evidence.

16:30:01 22 MR. HARRIGER: Are you admitting the back of
16:30:04 23 these, too?

16:30:17 24 Q. (BY MR. RAMOS) Mr. Graham, is the information
16:30:20 25 that is reflected on Exhibits 32 through 35 information

16:30:24 1 that you assimilated as part of your work in order to
16:30:28 2 determine whether or not there was an increase or a
16:30:32 3 decrease in oil or gas production in the counties
16:30:35 4 reflected on those exhibits?

16:30:37 5 A. It was.

16:30:39 6 Q. Okay. And your conclusions are reflected in
16:30:43 7 those exhibits?

16:30:44 8 A. They are.

16:30:45 9 Q. Okay.

16:30:46 10 MR. HARRIGER: No objection, as long as that
16:30:48 11 data is made available. This is a summary and I think I
16:30:51 12 am entitled to the data that supports that.

16:30:54 13 MR. RAMOS: The data, Your Honor, is a
16:30:55 14 matter of public record. I can have Mr. Graham
16:30:58 15 supplement the record, furnish it to him. He --

16:31:01 16 THE COURT: Well, do you want the actual
16:31:04 17 data or do you want him to testify that this is an
16:31:05 18 accurate summary of that?

16:31:06 19 MR. HARRIGER: Well, I think he's already
16:31:08 20 testified it's an accurate summary of that, basically.
16:31:10 21 But --

16:31:10 22 THE COURT: You want the data.

16:31:12 23 MR. HARRIGER: I want his data, not just
16:31:13 24 some reference to -- his work file, basically.

16:31:16 25 THE COURT: Okay. Is that available?

16:31:18 1 THE WITNESS: It's in my briefcase.

16:31:20 2 MR. RAMOS: We can furnish that to him, Your
16:31:21 3 Honor.

16:31:21 4 MR. HARRIGER: No objection then.

16:31:23 5 THE COURT: All right.

16:31:25 6 MR. RAMOS: One final question --

16:31:29 7 THE COURT: 32 through 35 are admitted.

16:31:29 8 (Plaintiffs' Exhibit Nos. 32-35 admitted.)

16:31:33 9 Q. (BY MR. RAMOS) Mr. Graham, how difficult would
16:31:35 10 it be for a layperson to go to the Railroad Commission,
16:31:39 11 either on the computer or in person, and obtain
16:31:43 12 county-wide well production information on a monthly
16:31:47 13 basis?

16:31:48 14 A. Well, I'm not trying to work myself out of a job,
16:31:50 15 but it was very, very easy. I mean, you just -- you
16:31:53 16 just scan a few numbers, and then you just look at the
16:31:58 17 change, it went up or went down.

16:32:00 18 THE COURT: Over what period of time?

16:32:01 19 THE WITNESS: Well, I did calendar year 2011
16:32:04 20 to '12, but you can do any period of time you want.

16:32:06 21 THE COURT: So you could pick two years, one
16:32:09 22 year, a couple of months?

16:32:10 23 THE WITNESS: Well, you could. I just -- I
16:32:14 24 mean, in my opinion, I picked two years.

16:32:16 25 THE COURT: All right.

16:32:17 1 THE WITNESS: But you could, yes.

16:32:18 2 THE COURT: Thank you.

16:32:19 3 Q. (BY MR. RAMOS) And one final line of questions.
16:32:23 4 Mr. Graham, have you personally driven and been on the
16:32:27 5 roads in La Salle County, accessing well sites or where
16:32:32 6 they're drilling a well for any purpose during the last
16:32:35 7 two or three years?

16:32:36 8 A. Yes, sir. I have a number of clients that have
16:32:39 9 either minerals or drilling in La Salle County.

16:32:44 10 Q. And what type of traffic do you encounter on
16:32:48 11 those county roads?

16:32:50 12 A. It's incredible. I mean, it's essentially the
16:32:54 13 way the newspapers have reported. There's tons and tons
16:32:59 14 of traffic. There's lots of deaths. It's -- the roads
16:33:03 15 are torn up. I mean, it's quite an impact, you know.

16:33:07 16 Q. Did any part of the study that you did to render
16:33:10 17 your opinions in this case, include reviewing Texas
16:33:15 18 Department of Public Safety records, advising the
16:33:19 19 general state about the unique safety risks by driving
16:33:24 20 in La Salle County and other Eagle Ford shale-type
16:33:27 21 counties?

16:33:28 22 A. Yes. A real good report was written by the Texas
16:33:32 23 Department of Public Safety in February of 2013.

16:33:36 24 Q. Now, based on what you observed and what you have
16:33:38 25 read that you customarily rely upon as an expert, do you

16:33:41 1 have an opinion for this Court as to whether or not the
16:33:44 2 current conditions in La Salle County and the increased
16:33:47 3 oil production impact and affect the roads in La Salle
16:33:56 4 County, Texas?

16:33:57 5 MR. HARRIGER: Objection. I think that it's
16:33:58 6 beyond what he's been offered as an expert for.

16:34:02 7 THE COURT: Sustained.

16:34:03 8 Q. (BY MR. RAMOS) Okay. Do you have any safety
16:34:08 9 concerns, based on your driving in La Salle County, for
16:34:11 10 the general public?

16:34:12 11 A. I do.

16:34:13 12 Q. Okay.

16:34:13 13 MR. RAMOS: Pass the witness, Your Honor.

16:34:14 14 THE COURT: Well, I have safety concerns
16:34:16 15 about the public driving in Travis County, so -- but I
16:34:20 16 am not an expert. And I guess you are not a roads
16:34:24 17 expert either.

16:34:24 18 THE WITNESS: No, no.

16:34:25 19 THE COURT: Okay.

16:34:25 20 **CROSS-EXAMINATION**

16:34:25 21 BY MR. HARRIGER:

16:34:27 22 Q. Mr. Graham, you testified earlier you're a
16:34:31 23 professional engineer?

16:34:32 24 A. Yes, sir.

16:34:32 25 Q. And I think the gist of your testimony is that

16:34:36 1 you're qualified to do analysis of which counties have
16:34:41 2 experienced increased oil and gas productions. Is that
16:34:44 3 fair?

16:34:45 4 A. I am qualified to do that, yes.

16:34:47 5 Q. Okay. You don't hold yourself out as an expert
16:34:52 6 on roads, right?

16:34:54 7 A. No, sir.

16:34:54 8 Q. You are not a transportation engineer?

16:34:56 9 A. No. I am a fact witness about the roads. I've
16:34:59 10 been there.

16:34:59 11 Q. Okay. So are you saying that you're here
16:35:13 12 today -- are you being paid in both -- to be an expert
16:35:18 13 and a fact witness?

16:35:19 14 A. I'm here working on behalf of the County as an
16:35:23 15 expert witness, and to communicate the results of my
16:35:27 16 study of the Railroad Commission documents and related
16:35:31 17 documents.

16:35:32 18 Q. Can I infer from your answer that you are not
16:35:34 19 being paid here today to be a fact witness?

16:35:36 20 A. No, I am not a traffic expert. No, sir.

16:35:40 21 Q. How much do you get paid for your work on this
16:35:43 22 assignment, by the way?

16:35:43 23 A. \$385 an hour.

16:35:45 24 Q. How many hours have you billed on this project?

16:35:51 25 A. I've worked on the project about five days.

16:35:56 1 Q. Does that mean eight hours a day? Twelve hours a
16:35:59 2 day?

16:35:59 3 A. Probably around eight hours a day, yes, sir. I
16:36:03 4 have not submitted an invoice to the County yet.

16:36:06 5 Q. Okay. Now, you also testified earlier that you
16:36:11 6 are not a lawyer.

16:36:11 7 A. No, sir.

16:36:11 8 Q. So you don't have an opinion on whether the
16:36:15 9 transportation code or administrative code requires
16:36:20 10 TxDOT to determine which counties are eligible for
16:36:23 11 grants, do you?

16:36:24 12 A. No.

16:36:25 13 Q. You don't have an opinion in this case about
16:36:31 14 whether TxDOT has complied with the law?

16:36:34 15 A. No, sir.

16:36:35 16 Q. You're here to testify about increased oil and
16:36:40 17 gas production?

16:36:42 18 A. That's correct.

16:36:43 19 Q. Okay. In a nutshell. Now, you picked two years,
16:36:49 20 2011, 2012, to do -- to frame your analysis; is that
16:36:51 21 correct?

16:36:51 22 A. That is correct.

16:36:52 23 Q. And so you looked at oil and gas production 2011,
16:36:55 24 and you compared that to the oil and gas production
16:36:59 25 2012; is that correct?

16:36:59 1 A. It is.

16:37:00 2 Q. Would you agree with me that if you expanded the
16:37:14 3 number of years included in your analysis that your
16:37:20 4 conclusions might change about which counties experience
16:37:23 5 increased oil and gas production?

16:37:25 6 A. It would depend on, hypothetically, how big an
16:37:31 7 extension you're suggesting. May not materially change
16:37:35 8 at all.

16:37:35 9 Q. When was Eagle Ford discovered?

16:37:37 10 A. October '08.

16:37:40 11 Q. Okay. Let's say you go back to 2000 -- let's say
16:37:44 12 you go back ten years, 2002 to 2012, would your
16:37:51 13 conclusions have changed if your analysis included those
16:37:55 14 years of oil and gas production?

16:37:56 15 A. No. And it's obvious there had been a giant
16:38:02 16 increase if the Eagle Ford wasn't even around until '08
16:38:04 17 and I started my comparison in '10 or whatever.

16:38:07 18 Q. You said no. Let me make sure we're on the same
16:38:12 19 page.

16:38:14 20 My question is whether your conclusions would
16:38:16 21 change if your analysis included 2002 to 2012?

16:38:23 22 A. And I am saying no.

16:38:24 23 Q. It would not.

16:38:24 24 A. No. In 2002, there's zero production in the
16:38:29 25 Eagle Ford. In 2012, you know, there's about five or

16:38:39 1 six hundred thousand barrels of production.

16:38:40 2 Q. Is it possible, however, that there were wells in
16:38:44 3 production -- there was oil and gas production in
16:38:47 4 counties -- well, I guess we need to really define
16:38:52 5 increase.

16:38:55 6 How do you define increase?

16:38:57 7 A. I defined increase as the difference between the
16:39:01 8 production in calendar year 2011 and production in
16:39:04 9 calendar year 2012, the aggregate of those two annual
16:39:08 10 periods.

16:39:09 11 Q. So if a county -- let's say La Salle County, just
16:39:12 12 as an example, produced ten barrels of oil in 2011 and
16:39:21 13 11 barrels of oil in 2012, that's an increase?

16:39:23 14 A. That would be an increase.

16:39:25 15 Q. Okay. Does your report account for the magnitude
16:39:29 16 of increase among the different counties that you have
16:39:32 17 identified as experiencing an increase in oil and gas
16:39:35 18 production?

16:39:36 19 A. Yes. If I was asked whether that one barrel of
16:39:43 20 additional incremental production affected the county,
16:39:45 21 hypothetically I would probably say no. But in the
16:39:49 22 facts we have here, I would say that the increase in oil
16:39:52 23 production that La Salle County has experienced has
16:39:55 24 affected the county.

16:39:56 25 Q. In -- well, but you are not here to testify about

16:40:03 1 the effect on the roads, right?

16:40:06 2 A. I am. I mean, that's exactly what I am here for.
16:40:10 3 The first exercise I was asked to do by the County was
16:40:14 4 to determine if there was production, and then if there
16:40:19 5 was an increase in oil and gas production; and then
16:40:23 6 determine whether there had been an effect on a
16:40:26 7 particular county if it had experienced an increase.
16:40:30 8 And I did that.

16:40:32 9 Q. And my question is whether the effect that you
16:40:34 10 determined includes effects on a road, on a road in that
16:40:38 11 county?

16:40:38 12 A. That's exactly what we're talking about here. In
16:40:43 13 my opinion, the increase in production in the Eagle Ford
16:40:47 14 trend area has affected the roads because of the amount
16:40:55 15 of equipment necessary to conduct that development.

16:40:59 16 Q. But I think we've established you are not an
16:41:01 17 expert on roads.

16:41:02 18 A. I am not an expert on roads. But I am an expert
16:41:05 19 on the oil and gas business, and I concur with TxDOT's
16:41:10 20 analysis that it takes a number of trucks to service a
16:41:15 21 particular well.

16:41:15 22 Q. But the leap between the number of trucks that it
16:41:19 23 takes to service a particular well and the corresponding
16:41:23 24 effect, if any, on the road is without side -- is
16:41:26 25 outside your expertise?

16:41:27 1 A. I don't think it would be, no. I mean, I can
16:41:31 2 read reports about the Eagle Ford shale, written by
16:41:35 3 TxDOT, testimony by TxDOT, written by the Department of
16:41:39 4 Public Safety, and they talk about the impact on these
16:41:42 5 counties and what has happened to the infrastructure.
16:41:46 6 And they have made the connection that the damage that
16:41:49 7 has resulted from increased activity in a specific
16:41:53 8 energy sector. I'm qualified to read those reports and
16:41:58 9 make conclusions about that.

16:41:59 10 Q. Okay. Well, so to the extent that you have an
16:42:03 11 opinion on the degradation of roads, it's based entirely
16:42:06 12 on TxDOT's reports, statements and data?

16:42:09 13 A. Well, and DPS and my personal experience and my
16:42:13 14 expertise as a petroleum engineer, all those things.

16:42:17 15 Q. How is -- how are DPS reports related to the
16:42:24 16 degradation of road qualities in a county that you
16:42:27 17 determined has increased oil and gas production?

16:42:29 18 A. They have identified the activity and the damage
16:42:38 19 to the infrastructure that activity has conducted and
16:42:42 20 the safety aspects of that.

16:42:46 21 Q. Let me ask you --

16:42:47 22 A. I mean, I am looking at the report right here.

16:42:49 23 Q. Which --

16:42:50 24 A. It's on the screen. And I can just read.

16:42:59 25 Q. Okay. But to the extent that you have an opinion

16:43:03 1 on the matter, it's based on DPS's or TxDOT's reports?

16:43:10 2 A. Yes. I mean, that's the kind of things that
16:43:13 3 petroleum engineers rely on, yes. I mean, certainly.

16:43:44 4 MR. HARRIGER: I'll pass the witness.

16:43:45 5 THE COURT: Excuse me one minute. You can
16:44:06 6 step down.

16:44:15 7 (Recess taken.)

17:01:14 8 THE COURT: Your next witness.

17:01:16 9 MR. SILEO: Plaintiff calls Michael Riojas.

17:01:20 10 THE COURT: Okay. Mr. Riojas.

17:01:25 11 (Witness sworn.)

17:01:25 12 **MICHAEL CARRILLO RIOJAS,**

17:01:25 13 having been first duly sworn, testified as follows:

17:01:25 14 **DIRECT EXAMINATION**

17:01:30 15 BY MR. SILEO:

17:01:46 16 Q. Could you state your name, please, sir.

17:01:47 17 A. Michael Carrillo Riojas.

17:01:49 18 Q. Were you subpoenaed to be here today, sir?

17:01:51 19 A. Yes, I was.

17:01:51 20 Q. Tell me what you do for a living, Mr. Riojas.

17:01:53 21 A. I'm a transportation engineer.

17:01:55 22 Q. What's your professional background?

17:01:57 23 A. Got a bachelor of civil engineering, University
17:02:00 24 of Texas at Austin. Worked for TxDOT for 11 and a half
17:02:05 25 years. Worked with San Antonio plant organization, and

17:02:10 1 worked as an infrastructure -- MP infrastructure -- SNB
17:02:16 2 infrastructure. And I have been there for 17 years.

17:02:21 3 Q. In your professional work, have you been
17:02:26 4 responsible for reviewing applications by governmental
17:02:30 5 entities to receive transportation funding?

17:02:32 6 A. Yes, I have.

17:02:32 7 Q. Can you describe that experience for me, in
17:02:35 8 general?

17:02:35 9 A. Well, I was a Bexar County -- Central Bexar
17:02:40 10 County MPO as a transportation engineer. One of the
17:02:43 11 jobs, I was in charge of transportation improvement
17:02:45 12 program, and what we did is allocate -- review
17:02:49 13 applicants on a yearly basis for dollars for federal
17:02:53 14 funding.

17:02:54 15 Q. And is the San Antonio-Bexar Metropolitan
17:02:58 16 Planning Organization, is that the same type of
17:03:00 17 organization as CAMPO that we know here in Austin?

17:03:03 18 A. Yes.

17:03:04 19 Q. Was -- did La Salle County engage SNB
17:03:09 20 infrastructure to review the TIF grant application
17:03:12 21 submitted by 191 applicant counties?

17:03:14 22 A. Yes.

17:03:14 23 Q. And were you a part of the team that conducted
17:03:17 24 that review?

17:03:18 25 A. Yes.

17:03:18 1 Q. Can you describe for me just at a -- sort of a
17:03:21 2 summary level, what you and your team did to approach
17:03:24 3 that review process?

17:03:25 4 A. First of all, we reviewed the statutory
17:03:28 5 regulations with submittals, we created checklists, and
17:03:41 6 from the checklist we divide the projects up by -- into
17:03:46 7 team members, and we proceeded to do our evaluation of
17:03:49 8 the submittals from information we received from TxDOT.

17:03:52 9 Q. Was one of the aspects of your review, looking at
17:03:57 10 whether the applications submitted by the counties
17:04:00 11 included a road condition report?

17:04:02 12 A. Yes.

17:04:03 13 Q. And I have put a road condition report up on the
17:04:08 14 screen as one illustrative report. Is this a portion of
17:04:14 15 the Jack County road condition reported in Precinct
17:04:17 16 No. 1?

17:04:17 17 A. Yes.

17:04:18 18 Q. Is this a road condition report that you
17:04:22 19 concluded there were problems with?

17:04:24 20 A. Yes. This one -- basically, one of the
17:04:27 21 requirements of road condition report have the condition
17:04:32 22 of each of the roads, the precinct and this precinct.
17:04:35 23 They just stated as far as condition fair to good, but
17:04:38 24 you don't know which roads are fair which are good.

17:04:41 25 Q. Were there a number of applications submitted by

17:04:45 1 various counties that did not include a complete list of
17:04:49 2 the roads within that county?

17:04:51 3 A. Yes.

17:04:51 4 Q. Were there a number of applications submitted by
17:04:55 5 applicant counties that indicated -- that indicated --
17:05:02 6 referred to attachments that were not existent?

17:05:04 7 A. Yes, it was.

17:05:06 8 Q. Were there a number of applications that
17:05:08 9 addressed only the condition of the road that was to be
17:05:13 10 the subject of the TIF grant improvement, but did not
17:05:16 11 discuss the other roads in the county?

17:05:19 12 A. Yes.

17:05:20 13 Q. Was Deaf Smith County an example of these types
17:05:27 14 of problems?

17:05:29 15 A. Yes, they were.

17:05:30 16 Q. Was Zavala County an example of these types of
17:05:33 17 problems?

17:05:33 18 A. Yes.

17:05:33 19 Q. Was Maverick County an example of these types of
17:05:36 20 problems?

17:05:36 21 A. Yes.

17:05:37 22 Q. If the Court were interested in looking at a good
17:05:42 23 road condition report to get an understanding of the
17:05:45 24 type of -- and volume of information you would expect to
17:05:48 25 see in contrast with something like the one-page report

17:05:51 1 from Jack County here, what would be an example of a
17:05:55 2 good road report in the county applications?

17:05:57 3 A. DeWitt County would be.

17:05:58 4 Q. Okay. Was part of your road condition report
17:06:04 5 review also aimed at looking at whether the document
17:06:10 6 that was styled as a road condition report was the road
17:06:14 7 condition report for the previous year for the county?

17:06:17 8 A. Can you repeat that?

17:06:19 9 Q. Yeah. Was part of what you were looking at,
17:06:22 10 whether the document that said road condition report was
17:06:25 11 the road condition report for the previous year?

17:06:28 12 A. Yes. We looked at whether there was any that was
17:06:32 13 for the previous year.

17:06:33 14 Q. And why were you looking at whether the road
17:06:35 15 condition report was the report for the previous year?

17:06:38 16 A. Cause the statute stated that the road reports
17:06:41 17 were supposed to be for the previous year -- preceding
17:06:44 18 year.

17:06:46 19 Q. Were -- you heard Mr. Marek testify earlier that
17:06:59 20 TxDOT founded it adequate if a road condition report was
17:07:02 21 dated in 2014, for the purpose of its currency, if you
17:07:06 22 will. Did you hear that testimony?

17:07:07 23 A. Uh-huh.

17:07:08 24 Q. Did you hear that?

17:07:09 25 A. Yes, I heard that.

17:07:10 1 Q. Based on your review, were there a large number
17:07:13 2 of road condition reports submitted by the counties that
17:07:17 3 were dated in 2014?

17:07:19 4 A. There were quite a few.

17:07:20 5 Q. Were some of them even dated after the counties
17:07:23 6 filed their grant applications with TxDOT?

17:07:26 7 A. Yes, there were.

17:07:26 8 Q. What is it that's problematic from your
17:07:29 9 perspective as a transportation engineer, with a road
17:07:31 10 condition report that's dated in 2014?

17:07:34 11 A. Well, first of all, it doesn't --

17:07:37 12 MS. BONNEN: Objection. I think the
17:07:38 13 question is calling for a legal conclusion. It's
17:07:40 14 requiring him to apply the statute and draw some
17:07:43 15 conclusions about how the report didn't measure up to
17:07:47 16 the statute, which he's not qualified to do.

17:07:48 17 THE COURT: Is that what you are asking?

17:07:50 18 MR. SILEO: Your Honor, there's both a
17:07:52 19 statutory element to this. The statute defines that the
17:07:55 20 road condition reports are supposed to be completed
17:07:57 21 typically by the ninth month of the fiscal year for a
17:08:01 22 county. So, for example, a 2013 report would be
17:08:04 23 completed in either June or September. I mean, that may
17:08:08 24 sound technical, and so we could all look at and
17:08:11 25 conclude as a matter of law whether that matters. But

17:08:13 1 as an engineer, I think it's important to explain why
17:08:17 2 that's important from the perspective of managing a
17:08:20 3 grant program.

17:08:21 4 THE COURT: He can answer from that
17:08:22 5 perspective.

17:08:25 6 Q. (BY MR. SILEO) Do you need me to re-ask that
17:08:26 7 question?

17:08:26 8 A. Yes, please.

17:08:27 9 Q. Why did it matter to you, from the perspective of
17:08:32 10 transportation engineer, whether the road condition
17:08:34 11 report was dated -- if the road condition report was
17:08:36 12 dated at some time in 2014?

17:08:38 13 A. Well, the statute stated that the road condition
17:08:44 14 report be for the preceding year, so they have to be --
17:08:48 15 start -- try to look for that as far as it was dated for
17:08:51 16 the preceding year.

17:08:53 17 And secondly, as -- when you start looking at
17:08:56 18 conditions of the roadways, there's -- we're looking at
17:09:00 19 a three- and six-month lag, and conditions can change in
17:09:04 20 that time period, as far as roadways.

17:09:05 21 Q. Is your concern, from an engineering perspective,
17:09:08 22 that we're not comparing apples to apples?

17:09:10 23 A. Yes.

17:09:16 24 MR. SILEO: We pass the witness, Your Honor.

17:09:16 25 **CROSS-EXAMINATION**

17:09:20 1 BY MS. BONNEN:

17:09:20 2 Q. I'm sorry, sir. How exactly do you pronounce
17:09:22 3 your last name?

17:09:23 4 A. Riojas.

17:09:24 5 Q. Riojas. Okay. Mr. Riojas, are you being paid to
17:09:29 6 testify here today?

17:09:30 7 A. Not today.

17:09:31 8 Q. Not today. Have you been -- you or your company
17:09:35 9 been paid for your work in this case?

17:09:37 10 A. Yes, we did a review.

17:09:40 11 Q. How much have you been paid?

17:09:41 12 A. I don't know the dollar amount offhand, to tell
17:09:45 13 you the truth.

17:09:46 14 Q. Can you give us a ballpark?

17:09:49 15 A. I can't. I don't deal with the invoices, so I
17:09:53 16 don't know what our invoicing was last month.

17:09:57 17 Q. How many people have worked on this project?

17:09:59 18 A. Which part of the project?

17:10:02 19 Q. Any part of the project that you were asked to do
17:10:05 20 for La Salle County for this litigation.

17:10:08 21 A. We had eight people.

17:10:14 22 Q. And how many man hours -- or how many days would
17:10:17 23 those eight people have each put into this?

17:10:19 24 A. They varied as far as their task. But the
17:10:23 25 primary reviewer spent four days.

17:10:27 1 Q. Okay. You said you were asked to testify by
17:10:33 2 County Judge Rodriguez?

17:10:35 3 A. No. I was subpoenaed.

17:10:37 4 Q. You were subpoenaed to testify. Who asked you to
17:10:42 5 take on the work for the County?

17:10:46 6 A. The Judge asked us to do that.

17:10:49 7 Q. The Judge asked you to do that. Okay. And you,
17:10:52 8 sir, you're not a lawyer?

17:10:53 9 A. No.

17:10:54 10 Q. The application that you talked about for -- I
17:11:09 11 think for Jack County, it didn't consist only of that
17:11:14 12 one page, did it?

17:11:16 13 A. No, not that one page. Application is several
17:11:20 14 pages.

17:11:20 15 Q. So that is just the first page of the
17:11:23 16 application, correct?

17:11:24 17 A. I don't know if it's the first page but it's one
17:11:26 18 of the pages of the application.

17:11:27 19 Q. So there was additional documents attached or
17:11:32 20 combined with that particular page, correct?

17:11:35 21 A. I would think so.

17:11:36 22 Q. All right. Are you familiar with the road report
17:11:46 23 that was prepared by -- or road reports that were
17:11:49 24 prepared for 2013 by La Salle County?

17:11:53 25 A. Yes, I am.

17:11:54 1 Q. Do you know how much money they spent on
17:11:57 2 preparing their road reports?

17:11:59 3 A. I don't have that -- I don't have that
17:12:02 4 information with me.

17:12:03 5 Q. And you're aware that La Salle County amended
17:12:09 6 their reports after September 30 of 2013, correct?

17:12:12 7 A. That's correct.

17:12:13 8 Q. And their amended reports were prepared
17:12:17 9 sometime -- to be completed -- or completed sometime in
17:12:21 10 December of 2013, correct?

17:12:22 11 A. That's correct.

17:12:24 12 Q. And so that wouldn't meet any sort of county
17:12:28 13 requirements for a road report, in terms of deadlines,
17:12:32 14 correct?

17:12:32 15 A. No. They met the deadline as far as initial road
17:12:36 16 report. We amended it for was verification, which that
17:12:41 17 statute came in effect September 1st, so it wasn't done
17:12:44 18 by that time.

17:12:45 19 Q. And you're talking about the statute that was a
17:12:47 20 part of Senate Bill 1747 legislation?

17:12:54 21 A. Yes.

17:12:54 22 Q. Are you aware of any laws that talk about how a
17:13:12 23 County goes about amending a road report?

17:13:16 24 A. Could you be more specific?

17:13:18 25 Q. Well, I'm just asking, are you aware of any laws

17:13:23 1 or statutes that talk about amending road reports?

17:13:28 2 A. Not that I'm aware of.

17:13:48 3 MS. BONNEN: Pass the witness.

17:13:50 4 MR. SILEO: Nothing further.

17:13:53 5 THE COURT: All right. Any other witnesses?

17:13:57 6 MR. SILEO: Yes. We call Mr. Duane Gordy.

17:14:01 7 THE COURT: All right.

17:14:01 8 (Witness sworn.)

17:14:01 9 **DUANE GORDY,**

17:14:01 10 having been first duly sworn, testified as follows:

17:14:01 11 **DIRECT EXAMINATION**

17:14:01 12 BY MR. SILEO:

17:14:14 13 Q. Could you please introduce yourself?

17:14:15 14 A. Yes. My name is Duane Gordy.

17:14:17 15 Q. Can you describe for me your professional
17:14:19 16 background?

17:14:19 17 A. Yes. I began road construction in 1975, built
17:14:22 18 roads for the Department of Transportation until 2011.
17:14:31 19 In 2001 I went into -- and converse to that was doing
17:14:33 20 commercial/residential development. It was based on
17:14:37 21 that combination -- whenever I quit doing road
17:14:41 22 construction, I was invited out in 2008 to review the
17:14:44 23 first Transportation Reinvestment Zones that were
17:14:47 24 established in El Paso County.

17:14:48 25 I was asked to do that because of that

17:14:50 1 combination of backgrounds. I understood the need for
17:14:54 2 it based on transportation funding to meet the
17:14:56 3 construction side. I also understood the impact of the
17:14:59 4 road development that was taking place, or the
17:15:01 5 commercial development and land development taking place
17:15:04 6 outside the roadway. And it's the integration of those
17:15:06 7 two pieces that make that specific tool function. And
17:15:09 8 so that was the reason I was brought into this equation.

17:15:12 9 Q. Who do you currently work for, Mr. Gordy?

17:15:15 10 A. I am currently the chairman of a nonprofit that
17:15:18 11 is called the Community Development Education
17:15:20 12 Foundation. Also, I am the CEO of Creative Development
17:15:24 13 Services.

17:15:24 14 Both those entities are designed to first educate
17:15:28 15 local communities on tools and applications for
17:15:30 16 transportation funding, and then help them implement
17:15:33 17 those tools.

17:15:34 18 Q. Okay. I know we're all trying to move through
17:15:37 19 this here --

17:15:37 20 A. I'll slow down. I'm sorry.

17:15:38 21 Q. Slow down a little bit for our court reporter, if
17:15:40 22 you would, please.

17:15:41 23 A. I'm sorry.

17:15:41 24 Q. Were you asked by La Salle County to review the
17:15:47 25 TIF grant applications submitted by the applicant

17:15:50 1 counties?

17:15:50 2 A. Yes.

17:15:51 3 Q. Describe what you were tasked with doing.

17:15:53 4 A. I was tasked to go through and look and identify
17:15:57 5 whether all the components were included in the
17:16:00 6 application that would be required to validate whether
17:16:04 7 or not the zone created would be considered valid.

17:16:08 8 Q. Okay.

17:16:09 9 A. Real.

17:16:09 10 Q. And what were those -- what were the major
17:16:15 11 considerations you were looking for?

17:16:16 12 A. I would look for the legal description, whether
17:16:20 13 or not there was a mapping to go with it. Looked for
17:16:24 14 value that was created by the zone. Looked to see if
17:16:30 15 contiguency [sic] was engaged. Looked to validate
17:16:33 16 whether or not projects that were attached to the
17:16:35 17 program were included in any of the zones that were
17:16:38 18 being laid out. Would then review to see if, you know,
17:16:44 19 the advisory board was even applied to the resolution,
17:16:48 20 if the resolution was executed.

17:16:49 21 Q. Okay. Let me focus on a couple of those, and I
17:16:52 22 am just going to check, all the applications are in the
17:16:55 23 record and those can be reviewed, and you have looked at
17:16:59 24 them.

17:17:00 25 Is it correct, based on your review, that the

17:17:03 1 application for Goliad County did not include any sort
17:17:06 2 of description of the zone or a map of the zone?

17:17:09 3 A. No. It literally had a resolution, with no
17:17:12 4 description and/or mapping of the zone itself.

17:17:13 5 Q. Is the same true for Grayson County?

17:17:15 6 A. Yes.

17:17:18 7 Q. Is the same true for Harrison County?

17:17:21 8 A. Yes.

17:17:22 9 Q. Were there also zones that you reviewed where the
17:17:26 10 zone included no taxable real property?

17:17:28 11 A. In several places, that was also the case.

17:17:31 12 Q. Was -- was Ford County an example of that?

17:17:48 13 A. Yes. Ford County literally had no attachments
17:17:52 14 describing the zone. It was just the resolution itself
17:17:55 15 that was executed.

17:17:56 16 Q. Was Gregg -- did the Gregg County application
17:18:02 17 describe the real property, but described only the
17:18:04 18 right-of-way for a road?

17:18:05 19 A. Yes. In Gregg County, it was literally
17:18:07 20 physically described in the description as the roadway
17:18:10 21 and the right-of-way.

17:18:11 22 Q. Was Young County the same, in that it described
17:18:14 23 the property, but described no property other than the
17:18:16 24 right-of-way for a road?

17:18:18 25 A. That is correct.

17:18:18 1 Q. Were there also some counties that included road
17:18:22 2 right-of-ways, plus some additional property, but the
17:18:26 3 additional property was non-taxable land, like a school
17:18:30 4 or a university?

17:18:30 5 A. That's correct. They were actually even in the
17:18:33 6 description. It actually described it is public
17:18:36 7 property and, therefore, exempt.

17:18:38 8 Q. Do you recall what one or more of those counties
17:18:40 9 were?

17:18:40 10 A. You would have Rains.

17:18:55 11 Q. Was Andrews one of those counties?

17:18:57 12 A. Actually, Andrews was one of those counties.
17:18:59 13 They described exclusively public school property.

17:19:03 14 Q. Was Crockett another such county?

17:19:06 15 A. Crockett described university land. Publicly
17:19:09 16 owned, State-owned university land.

17:19:12 17 Q. From the perspective of a planner, what is the
17:19:17 18 concern if a zone doesn't include any taxable real
17:19:20 19 property?

17:19:20 20 A. It's really more a matter of the reasoning behind
17:19:26 21 the zone being created in the first place. A zone is
17:19:29 22 created -- especially in this statute, it was created to
17:19:32 23 capture the value that was generated by oil and gas
17:19:35 24 industry under a county Energy Transportation
17:19:39 25 Reinvestment Zone, which is a hybrid of the original

17:19:40 1 Transportation Reinvestment Zone.

17:19:44 2 That was designed to meet a need that was
17:19:46 3 impacting counties significantly, which is the
17:19:49 4 adverse -- adverse impact of the escalated ad valorem
17:19:54 5 base and what it was doing to their effective rate.

17:19:56 6 The reason that the statute specifically pointed
17:19:58 7 out Section 2603 of the tax code was to allow them to
17:20:01 8 take those dollars --

17:20:04 9 MR. HARRIGER: Objection, Your Honor. He's
17:20:05 10 speaking to the intent of the statute.

17:20:07 11 THE COURT: Sustained.

17:20:10 12 Q. (BY MR. SILEO) Mr. Gordy, let me try to -- try
17:20:12 13 to focus yourself on sort of the practical side of
17:20:15 14 things.

17:20:15 15 A. Okay.

17:20:16 16 Q. The Judge will handle the legal side.

17:20:18 17 A. Got you.

17:20:19 18 Q. Let me re-ask you the question.

17:20:21 19 From a practical perspective as a planner, what's
17:20:24 20 the concern if you don't include taxable real property?

17:20:26 21 A. You lose the ability to catch revenue that could
17:20:30 22 be used in planning the development of future
17:20:32 23 transportation projects.

17:20:34 24 Q. Exhibit 25, which we looked at before we came
17:20:37 25 over here today, is a TxDOT document describing county

17:20:41 1 Energy Transportation Reinvestment Zones. Are you
17:20:44 2 familiar with this document?

17:20:45 3 A. Yes, I am.

17:20:45 4 Q. And does it provide a good overview of how these
17:20:48 5 zones are supposed to work and the requirements
17:20:50 6 associated with the zones?

17:20:51 7 A. It lays out the requirement of establishing the
17:20:54 8 zones, not exactly how they're supposed to work.

17:20:56 9 Q. Does it describe this concept of increasing value
17:21:04 10 generated by the sort of economic development project?

17:21:07 11 A. Yes. They did create a chart that showed the
17:21:10 12 fact that growth could be used and set aside.

17:21:13 13 MR. SILEO: No further questions.

17:21:13 14 **CROSS-EXAMINATION**

17:21:13 15 BY MR. HARRIGER:

17:21:17 16 Q. Good afternoon, Mr. Gordy.

17:21:17 17 A. Hello.

17:21:18 18 Q. I just have a few questions.

17:21:23 19 You said a minute ago you were hired by La Salle
17:21:26 20 County specifically to review the applications for all
17:21:31 21 191 counties that applied, right?

17:21:32 22 A. I was -- I was contracted to do that. I've also
17:21:34 23 done other contract work for La Salle County.

17:21:36 24 Q. Okay. What did that involve?

17:21:37 25 A. Developing their Transportation Reinvestment

17:21:40 1 Zones, and their County Energy Transportation
17:21:42 2 Reinvestment Zones.

17:21:43 3 Q. Okay. Do you work for any other counties?

17:21:47 4 A. Yes.

17:21:48 5 Q. Which ones?

17:21:48 6 A. Reeves, Dimmit, and I have done work for
17:21:53 7 Jefferson.

17:21:54 8 Q. Was it in connection with anything to do with the
17:22:01 9 grant program?

17:22:01 10 A. Yes.

17:22:02 11 Q. What did you do for them?

17:22:03 12 A. Develop County Energy Reinvestment Zones for
17:22:08 13 Jefferson County. Developed County Energy Reinvestment
17:22:11 14 Zones and Transportation Reinvestment Zones for Reeves
17:22:14 15 and Dimmit.

17:22:16 16 Those were also associated with creating revenue
17:22:19 17 plans on how to capture and use those revenues to meet
17:22:21 18 transportation funding needs.

17:22:22 19 Q. My guess is that you don't do any work for Goliad
17:22:27 20 County?

17:22:27 21 A. No.

17:22:28 22 Q. Or Grayson County?

17:22:29 23 A. Only work for people that contract me.

17:22:31 24 Q. You don't work for Harrison County?

17:22:33 25 A. No.

17:22:33 1 Q. And so you don't work for any of the counties
17:22:35 2 that you just criticized their applications, right?

17:22:37 3 A. No.

17:22:39 4 Q. Have you done any work at the State Capitol, by
17:22:44 5 chance?

17:22:44 6 A. As what?

17:22:46 7 Q. I don't know. Have you worked at the State
17:22:48 8 Capitol?

17:22:48 9 A. As a paid employee, no.

17:22:49 10 Q. Okay. Is it fair to call you a lobbyist?

17:22:53 11 A. No.

17:22:53 12 Q. You are not a registered lobbyist?

17:22:55 13 A. Actually, I actually have excluded myself from
17:22:57 14 being a lobbyist, and make sure when I work with
17:22:59 15 legislators, I work as a consultant based on the
17:23:00 16 mechanics of what they are trying to accomplish, and
17:23:03 17 never going advocating specific to functions of
17:23:06 18 legislation.

17:23:06 19 Q. Okay. I won't call you a lobbyist. That has a
17:23:08 20 negative connotation.

17:23:09 21 But you have done work with legislators?

17:23:11 22 A. Yes, I worked with legislators.

17:23:13 23 Q. Okay. Are you a lawyer?

17:23:17 24 A. No.

17:23:17 25 Q. So you don't have any opinion today about whether

17:23:25 1 the law requires TxDOT to identify counties that have
17:23:30 2 been -- that are in an area affected by increased oil
17:23:32 3 and gas production, do you?

17:23:33 4 THE COURT: He may have an opinion and
17:23:34 5 probably does, but it's irrelevant.

17:23:36 6 Q. (BY MR. HARRIGER) Okay. You are not aware of
17:24:05 7 any specific provision in Senate Bill 1747, the
17:24:10 8 Transportation Code, or the Administrative Code that
17:24:14 9 requires TxDOT to do basically what you have done in
17:24:22 10 examining the -- what you call validity of the
17:24:25 11 Transportation Reinvestment Zones?

17:24:27 12 A. What I believe exists in statute is the ability
17:24:31 13 to desktop review whether a zone qualifies as a zone.

17:24:36 14 Q. So it sounds like you are inferring that from the
17:24:39 15 statute, but you can't point to a particular provision
17:24:41 16 that requires them to do what you have done?

17:24:44 17 A. Yes. Actually, a Transportation Code for a
17:24:48 18 transportation reinvestment code, it actually
17:24:50 19 specifically gives you guidelines of what must
17:24:53 20 constitute the content of land inside that
17:24:56 21 Transportation Reinvestment Zone. And converse on the
17:24:58 22 county energy version, it specifically talks about the
17:25:02 23 land that's supposed to be captured and the value that's
17:25:04 24 supposed to be captured inside the development zone.
17:25:07 25 Most of those are currently in statute.

17:25:09 1 THE COURT: But not this statute?

17:25:10 2 THE WITNESS: Yes.

17:25:10 3 THE COURT: This statute?

17:25:12 4 THE WITNESS: Yes. In 1747, the specific
17:25:14 5 language says, a CETRZ should capture the value increase
17:25:18 6 of oil and gas production. It's specifically in the
17:25:20 7 language.

17:25:20 8 THE COURT: Right. So you're criticizing
17:25:23 9 whether or not they have complied with that?

17:25:26 10 THE WITNESS: That's correct.

17:25:26 11 THE COURT: Okay. But that doesn't go to
17:25:29 12 question that I have to answer. Go ahead.

17:25:32 13 THE WITNESS: Okay.

17:25:35 14 MR. HARRIGER: I think that's all my
17:25:36 15 questions.

17:25:36 16 THE WITNESS: Thank you.

17:25:37 17 MR. SILEO: Nothing further. Thank you.

17:25:39 18 MR. RAMOS: Our next witness, Your Honor, is
17:25:40 19 Judge Rodriguez. He has not been sworn.

17:25:45 20 THE COURT: Okay. Thank you.

17:25:48 21 (Witness sworn.)

17:25:48 22 **JOEL RODRIGUEZ, JR.,**

17:25:48 23 having been first duly sworn, testified as follows:

17:25:48 24 **DIRECT EXAMINATION**

17:25:48 25 BY MR. RAMOS:

17:25:50 1 Q. Would you state your full name, please.

17:26:09 2 A. My name is Joel Rodriguez, Jr.

17:26:12 3 Q. How old a man are you, sir?

17:26:13 4 A. I am 49 years of age.

17:26:15 5 Q. What is your current employment?

17:26:17 6 A. I am the County Judge of La Salle County.

17:26:19 7 Q. And how long have you been the County Judge of La
17:26:23 8 Salle County?

17:26:23 9 A. This is my 12th year.

17:26:24 10 Q. Prior to that, Judge, did you have another
17:26:27 11 political office in La Salle?

17:26:29 12 A. I was county treasurer for nine years.

17:26:32 13 Q. And so for the last 21 years, you've been --
17:26:36 14 you've had political office in La Salle County?

17:26:38 15 A. That is correct.

17:26:38 16 Q. Tell the Judge a little bit about your
17:26:41 17 educational background and work history, Judge.

17:26:42 18 A. I grew up in Cotulla, went to high school there.
17:26:47 19 Worked, ranched, oil field work, hard work. And then
17:26:52 20 for college I went to Texas A&I University. 1987, I
17:26:56 21 graduated from Texas A&I with a bachelor's in
17:27:01 22 accounting, and I worked for Mr. Bullock and Mr. Sharp
17:27:05 23 until 1994, in tax administration. I was an auditor and
17:27:11 24 also in the sales tax policy, tax policy division. So
17:27:16 25 we managed to do quite a bit of tax analysis throughout

17:27:20 1 the years -- or statute analysis.

17:27:25 2 Q. I am going to focus right into what we need to.

17:27:28 3 We appreciate the Judge staying after five o'clock.

17:27:31 4 So first of all, Judge, when did you first
17:27:33 5 become -- were you the County Judge when the Eagle Ford
17:27:36 6 shale play hit Cotulla and La Salle County, Texas?

17:27:40 7 A. Yes, sir, I was.

17:27:41 8 Q. Okay. Can you tell the Judge briefly how it's
17:27:44 9 developed from 2010 to the present?

17:27:47 10 A. From 2010 the -- you have your road aspects,
17:27:53 11 safety aspects, the need to deal with different types of
17:28:00 12 infrastructure. So we have seen the community boom and
17:28:05 13 accidents rise, tremendously, versus other areas of the
17:28:10 14 state. So we have focused on issues related to
17:28:13 15 transportation because of the amount of traffic volume.

17:28:17 16 Q. Did these issues that you're describing to the
17:28:20 17 Court, exist even prior to the enactment of this TIF
17:28:25 18 grant program?

17:28:25 19 A. Yes.

17:28:26 20 Q. Okay. At the time that you learned of the TIF
17:28:30 21 grant program, was that of significance to you and the
17:28:33 22 commissioners court in La Salle County, to look into it
17:28:36 23 and pursue it?

17:28:37 24 A. It was of significance because we followed the
17:28:40 25 bill all the way from introduction through adoption,

17:28:44 1 final passage.

17:28:45 2 Q. When you first heard of the TIF program, was the
17:28:52 3 commissioners court and yourself, Judge, struggling with
17:28:55 4 issues relating to the upkeep and maintenance and damage
17:28:58 5 to county roads?

17:28:59 6 A. Yes, sir, we were.

17:29:00 7 Q. When you heard of the program, what steps did you
17:29:04 8 take -- you and the Court, to ensure that La Salle
17:29:10 9 County would take the steps necessary in order to
17:29:13 10 properly apply and become an applicant on the TIF
17:29:18 11 program? What did you do?

17:29:20 12 A. Well, the commissioners have been very
17:29:22 13 supportive, and so has the community, in reference to
17:29:25 14 addressing infrastructure issues. So before we heard of
17:29:29 15 the program, we followed the bill all the way through
17:29:31 16 the passage and final adoption. But we -- we have to go
17:29:38 17 back to 2006 when we actually had a zone, which was a
17:29:42 18 tier zone, so we already had experience related to the
17:29:45 19 development of zones, so we knew how difficult it was
17:29:49 20 and some of the problems in addressing, you know, that
17:29:53 21 this grant program would have in addressing all these
17:30:00 22 counties creating zones.

17:30:01 23 Q. Did you, Judge, and commissioners court take
17:30:04 24 steps in hiring consultants, experts, engineers,
17:30:08 25 attorneys, and other people to assist you in complying

17:30:11 1 with the requirements of the TIF grant program?

17:30:14 2 A. Yes, sir.

17:30:15 3 Q. And how long ago did you start that -- hiring
17:30:19 4 those type of people?

17:30:21 5 A. Well, we started the assessment back in 2010,
17:30:25 6 2011 of the whole county because damage they were doing.
17:30:27 7 So we were already doing an assessment and a directive
17:30:30 8 road construction program before the statute was
17:30:35 9 adopted.

17:30:35 10 Q. Okay.

17:30:36 11 A. So what we ended up doing was providing a change
17:30:41 12 order to increase the services of S&B to include
17:30:48 13 preparation for the TIF program through 1747.

17:30:51 14 Q. Did you personally, Judge, take it upon yourself
17:30:55 15 to take the initiative within the county, and as a
17:30:58 16 County Judge, to learn about the program and to do
17:31:02 17 research in that regard?

17:31:04 18 A. Yes, sir, I did.

17:31:05 19 Q. Explain a little bit to the Judge what you did.

17:31:07 20 A. One of the things -- I have been around for a
17:31:12 21 while, analyzing what happened. And introduction of the
17:31:16 22 bill when I first testified, my concern was that
17:31:18 23 counties were not ready for this program. Specifically
17:31:21 24 a letter to Uresti that I sent him, was the zones,
17:31:27 25 matching money, and road reports, the counties did not

17:31:30 1 comply, based on the experience and based on the
17:31:33 2 meetings and transcript from hearings that we've had.

17:31:40 3 I thought it would be better to stick the money
17:31:42 4 into the farm-to-market system because counties were not
17:31:44 5 ready. And as it's evolved, I kept asking questions
17:31:50 6 about parts of the statute that were being addressed, to
17:31:55 7 seek guidance. Because it's my interpretation that
17:32:00 8 there's language in there that may be competitive.
17:32:03 9 There's a good samaritan portion that we have done as a
17:32:05 10 county, saying we represent the State of Texas, and
17:32:07 11 we're going to be very, very vocal in trying to get
17:32:09 12 funding for everything.

17:32:10 13 But once the law passed, then there's
17:32:14 14 competitive -- well, parts of the bill said, okay, we're
17:32:16 15 going to be competitive. Now everybody is competing
17:32:18 16 against us. So we changed.

17:32:19 17 But the good samaritan part of it, advising the
17:32:23 18 Legislature -- and TxDOT was there many times of -- what
17:32:26 19 we see and perceive, you know, we did our part.

17:32:31 20 So we're not trying to take advantage of anybody.
17:32:33 21 We're trying to educate everybody at the same time. But
17:32:36 22 at some point you have got to start thinking about the
17:32:38 23 people in La Salle County that are being affected by the
17:32:41 24 road damage.

17:32:41 25 Q. Judge, did you, as early as April of 2013, which

17:32:45 1 I believe was prior to the enactment of the statute, did
17:32:49 2 you appear before the Senate committee on this bill?

17:32:52 3 A. Yes, I did.

17:32:53 4 Q. Was there anyone else, any other county judges
17:32:56 5 that were there trying to learn about and give input to
17:33:01 6 the Senate regarding this bill?

17:33:02 7 A. I remember at that bill, Judge Fowler made a --
17:33:08 8 testified, and I believe the Glasscock County Judge
17:33:10 9 testified. I don't remember anybody else at that
17:33:14 10 hearing.

17:33:15 11 Q. And just so the record is clear, Judge Fowler is
17:33:18 12 the county judge --

17:33:19 13 A. -- for DeWitt County.

17:33:20 14 Q. Now, the bill was passed in June of 2013. Do you
17:33:24 15 recall appearing --

17:33:24 16 A. Yes, sir.

17:33:24 17 Q. -- at a Senate committee meeting on
17:33:26 18 transportation in September of 2013?

17:33:28 19 A. Yes, I do.

17:33:30 20 Q. Okay. And did you furnish testimony at that
17:33:32 21 hearing?

17:33:33 22 A. Yes. Yes, sir, I did.

17:33:34 23 Q. Did you express your concerns regarding the bill
17:33:38 24 and how it was to be implemented?

17:33:40 25 A. Yes, I did.

17:33:41 1 Q. Explain a little bit to the Court, what the
17:33:43 2 nature of your testimony was.

17:33:45 3 A. Public safety has been one of the issues that we
17:33:49 4 covered, because La Salle County in 2012 had over 400
17:33:53 5 accidents, 52 percent commercial related, versus other
17:33:57 6 cities like San Antonio, Houston, and Dallas that may
17:34:02 7 have a five to seven percent commercial-related accident
17:34:05 8 ratio. And this is from DMV actual statistics. We
17:34:09 9 actually look at a lot of statistics to see what's
17:34:12 10 happening, kind of measure. So --

17:34:13 11 THE COURT: One of the measures is
17:34:15 12 accidents?

17:34:16 13 THE WITNESS: Accidents.

17:34:16 14 THE COURT: Okay. Is that in here?

17:34:19 15 THE WITNESS: Is it in the --

17:34:20 16 THE COURT: Statute.

17:34:21 17 THE WITNESS: It's not in the statute, but
17:34:22 18 it's in my testimony and in the transcripts of my
17:34:25 19 testimony that I covered.

17:34:26 20 The other question was -- was -- whether
17:34:30 21 251.018 superceded the statutory requirement of the road
17:34:34 22 report that had to be filed. And we wrote that also in
17:34:38 23 that letter that was submitted by -- submitted to TxDOT
17:34:42 24 in the rules, so they actually commented that it was
17:34:44 25 only additional information to the report that actually

17:34:46 1 had to be filed.

17:34:48 2 Q. (BY MR. RAMOS) Okay. In addition, Judge, to
17:34:50 3 your testimony, did you appear at meetings with TxDOT
17:34:56 4 personnel to inquire as to how this program and how
17:35:00 5 applications should be prepared?

17:35:01 6 A. Yes, I did.

17:35:02 7 Q. How many of those meetings did you have with
17:35:04 8 TxDOT, that you recall?

17:35:06 9 A. I had two public meetings in reference to the
17:35:11 10 rules, which was the initial adoption. And then when
17:35:15 11 they did the -- they changed the extension date, and we
17:35:19 12 had several meetings in reference to other issues with
17:35:25 13 TIF grant and the graveling issues.

17:35:26 14 Q. Can you tell the Court who from TxDOT would have
17:35:29 15 been present at those meetings?

17:35:30 16 A. I know we had one meeting in October of 2013
17:35:33 17 where we had Mr. Barton, Mr. John Barton, Phil Wilson,
17:35:37 18 Melissa Montemayor, Danny Rios, Jesse Hereford, Andrea
17:35:45 19 McWilliams, Rachel McClure from Senator Zaffirini's
17:35:48 20 office. And we had Michelle Joseph. Those are the
17:35:51 21 names that I remember that were there.

17:35:52 22 Q. Mr. Barton ever indicate to you as to the extent
17:35:56 23 of the application of -- for La Salle County?

17:35:59 24 A. In that meeting it was disclosed to me that they
17:36:02 25 only thought three counties would qualify. One would be

17:36:05 1 DeWitt, and somebody in West Texas, but they wouldn't
17:36:07 2 tell us who, which in West Texas.

17:36:09 3 Q. And what was the date of that meeting?

17:36:10 4 A. That was in October. I don't remember the exact
17:36:13 5 same date.

17:36:13 6 Q. What year?

17:36:13 7 A. 2013.

17:36:14 8 Q. That's after the statute was passed.

17:36:16 9 A. Yes.

17:36:17 10 Q. Okay. And who told you from TxDOT that he
17:36:20 11 believed that only three counties qualified for this
17:36:22 12 program?

17:36:22 13 A. Mr. John Barton did.

17:36:23 14 Q. And what was his position with TxDOT?

17:36:25 15 A. He was vice executive, was it --

17:36:30 16 Q. Interim director?

17:36:31 17 A. No, no. He was second in command. He was right
17:36:33 18 under Mr. --

17:36:35 19 Q. Were there other personnel from TxDOT at that
17:36:37 20 meeting?

17:36:37 21 A. I just remember those three. There may have been
17:36:40 22 one or two other people.

17:36:40 23 Q. Judge, your inquiry and your meetings with TxDOT,
17:36:45 24 what concerns did you have with regards to your county,
17:36:50 25 La Salle County, and its application for these funds?

17:36:54 1 A. One of the concerns is that during the
17:36:57 2 legislative cycle, or after it, the Legislature met.
17:37:01 3 They brought up the issue that they were going to gravel
17:37:04 4 roads because they weren't funded properly. And we had
17:37:06 5 addressed that issue two years before and stopped that
17:37:08 6 issue in La Salle County.

17:37:10 7 So at some point, TxDOT didn't tell the
17:37:14 8 Legislature, hey, we're going to gravel roads if you
17:37:17 9 don't give us the funding. So I was concerned that if
17:37:20 10 TxDOT did not give the information to the legislators,
17:37:24 11 that they were going to gravel roads if they didn't get
17:37:26 12 what they wanted, then how are we going to be covered on
17:37:29 13 our application and how are they going to be
17:37:31 14 straightforward with us.

17:37:32 15 Q. If a road condition report were not timely filed,
17:37:36 16 what significance would that be with regards to funds
17:37:39 17 that would be appropriated under the grant?

17:37:42 18 A. Well, you have statutory dates based on the type
17:37:49 19 of road system that you have when the road condition
17:37:52 20 reports are due. And there's very little statutes on
17:37:59 21 what the punishment is.

17:38:02 22 But House Bill 1747 tied itself to it. And those
17:38:07 23 were the questions that I had, because, you know, how do
17:38:10 24 you clarify that? And those were -- that was the basis
17:38:13 25 of the letters that I sent to TxDOT.

17:38:17 1 MR. RAMOS: Your Honor, at this time I would
17:38:18 2 like to offer Exhibits 40 through 48. I have gone over
17:38:22 3 these with counsel. They don't have any objections.
17:38:25 4 These are the ones you had no objection to. I pulled
17:38:25 5 out the other --

17:38:31 6 MS. BONNEN: Okay.

17:38:31 7 THE COURT: 40 through 48 are admitted.

17:38:35 8 (Plaintiffs' Exhibit Nos. 40-48 admitted.)

17:38:35 9 MS. BONNEN: Can we number ours?

17:38:39 10 MR. RAMOS: Sure. 40 through 48.

17:41:13 11 Q. (BY MR. RAMOS) Judge, let me show you what's
17:41:16 12 been marked Exhibits 40 through 48, with the
17:41:20 13 exception -- there's 47 --

17:41:23 14 Just tell the Court what these letters represent,
17:41:26 15 just generally. I don't want to get into each letter.
17:41:28 16 Just what were the purpose of these letters and why were
17:41:31 17 you communicating with TxDOT during the grant -- the
17:41:38 18 time period process?

17:41:39 19 A. The letters to TxDOT are to seek guidance for the
17:41:44 20 County to make a decision on how to invest and put a
17:41:49 21 grant application together to apply for these funds that
17:41:52 22 we see were competitive funds.

17:41:55 23 Q. In your opinion, Judge, did TxDOT ever furnish
17:41:57 24 you with adequate answers in response to your inquiries?

17:42:01 25 A. In my opinion, they responded to one letter,

17:42:04 1 which they responded and commented, but thereafter, they
17:42:07 2 did not respond to anything else.

17:42:09 3 Q. Did you take the initiative to travel to Tyler,
17:42:12 4 Texas, for a meeting regarding the program?

17:42:16 5 A. Yes.

17:42:17 6 Q. What was the purpose -- first of all, when was
17:42:20 7 that? Do you recall?

17:42:20 8 A. I believe that meeting was November 21st, and
17:42:25 9 that's the meeting where the commission adopted the
17:42:30 10 rules that were approved.

17:42:33 11 Q. Did you testify at that hearing?

17:42:35 12 A. Yes.

17:42:36 13 Q. Were there any other county judges that took the
17:42:39 14 initiative to go and inquire about the program?

17:42:41 15 A. I was the only county judge or elected official
17:42:44 16 that spoke on behalf of this program at that meeting.

17:42:46 17 Q. As we go into January of 2014, Judge, we're
17:42:53 18 getting closer to the application deadline, can you
17:42:56 19 describe for the Court what efforts you were taking,
17:42:59 20 together with your experts and consultants, to make sure
17:43:02 21 that La Salle County complied with the requirements of
17:43:05 22 the application?

17:43:06 23 A. One of the concerns is that you're hearing
17:43:10 24 different versions of -- or different interpretations of
17:43:15 25 the bill, and what counties are doing. And one of my

17:43:19 1 concerns was, when Senator Uresti requested the
17:43:22 2 extension of -- of the program was that I wrote TxDOT a
17:43:28 3 letter, how can you extend the statutory date of a
17:43:30 4 report that's mandatory? And I could understand the
17:43:36 5 creation of more time to create zones and more time to
17:43:38 6 get match money, and that was my testimony; but my issue
17:43:42 7 was, how could you amend a report that never existed.

17:43:46 8 That was one of the dilemmas that I was having,
17:43:48 9 is that if a report was never filed and a benchmark was
17:43:50 10 never made, how could you file a county file report
17:43:54 11 outside of the reporting period, and say, hey, we're in
17:43:57 12 compliance?

17:43:58 13 Q. After the application deadline passed, did you
17:44:03 14 make a request of TxDOT, an Open Records request for the
17:44:07 15 applications?

17:44:07 16 A. I made a request for Open Records, yes.

17:44:10 17 Q. Tell the Judge why you did that.

17:44:11 18 A. Well, one is, I was never answered in reference
17:44:16 19 to the report issues. But, also, I had concerns in
17:44:20 20 reference to the creation of the zones. And the
17:44:23 21 creation of the zones is -- my understanding is that you
17:44:26 22 have to commit incremental taxable value to the zones.

17:44:32 23 But one of the things that's not being brought up
17:44:34 24 in the zones -- and it's a beautiful part of Uresti's
17:44:37 25 bill, is that it stabilizes your effective tax rate.

17:44:40 1 And for those counties that are having tremendous oil
17:44:45 2 field damage, your values are going up so high that your
17:44:49 3 tax rate just bottoms out.

17:44:50 4 MS. BONNEN: Your Honor, I object. I am not
17:44:51 5 sure that he's qualified to testify about all counties.

17:44:56 6 MR. RAMOS: That's fine. I will move on,
17:44:56 7 Your Honor.

17:44:56 8 THE WITNESS: Well, but La Salle County?

17:44:59 9 THE COURT: Well, let me ask you this.
17:45:01 10 What -- and so as a result of that, you think the
17:45:04 11 statute should have been written differently, or what?

17:45:06 12 THE WITNESS: Well, this is what -- our
17:45:08 13 concern is La Salle County now.

17:45:10 14 THE COURT: I am not asking you that. I am
17:45:12 15 asking you, as a result of how you feel about this, what
17:45:14 16 should be different? The statute? How TxDOT operates?
17:45:18 17 What?

17:45:19 18 THE WITNESS: It's not the statute; it's the
17:45:20 19 fact that counties are not prepared and have not
17:45:22 20 followed the requirements and have not understood the
17:45:25 21 beauty of the bill.

17:45:26 22 THE COURT: Okay. So they haven't filed the
17:45:28 23 requirements that are --

17:45:30 24 THE WITNESS: Necessary to make it work.

17:45:30 25 THE COURT: For the funds to come in and all

17:45:33 1 that?

17:45:33 2 THE WITNESS: Yes.

17:45:33 3 THE COURT: Okay. All right. Well, that's
17:45:35 4 all irrelevant.

17:45:37 5 Q. (BY MR. RAMOS) Did you and commissioners court,
17:45:38 6 Judge, at some point retain my law firm to assist you in
17:45:43 7 getting information from TxDOT?

17:45:45 8 A. Yes, sir.

17:45:45 9 Q. Do you recall approximately when that would have
17:45:48 10 occurred?

17:45:48 11 A. Right around March.

17:45:53 12 Q. March or April?

17:45:55 13 A. Middle of March, early April.

17:45:59 14 Q. And did you do that, and did you take those steps
17:46:03 15 to retain us in an effort to obtain the information that
17:46:06 16 you had been requesting from TxDOT for some months?

17:46:09 17 A. Yes.

17:46:11 18 MR. RAMOS: May I approach, Your Honor?

17:46:11 19 THE COURT: Yes.

17:46:13 20 Q. (BY MR. RAMOS) Judge, let me show what's been
17:46:14 21 marked as Exhibit 46. And just identify that for the
17:46:19 22 record.

17:46:19 23 A. This is the letter that Mr. Ramos wrote to TxDOT
17:46:26 24 because -- or Texas Department of Transportation,
17:46:28 25 because TxDOT was not responding to any of my requests.

17:46:31 1 Q. Are you familiar with the --

17:46:33 2 MR. RAMOS: Well, I will offer that in
17:46:35 3 evidence, Your Honor.

17:46:35 4 MS. BONNEN: Objection; hearsay. It's
17:46:36 5 written by Mr. Ramos, not by the County Judge.

17:46:40 6 THE COURT: Well, it's just -- it's not
17:46:42 7 offered for the truth. I imagine it's offered to show
17:46:45 8 that they were trying to get something from TxDOT.
17:46:48 9 Relevance would be a better objection, but that's not a
17:46:50 10 good one.

17:46:50 11 Overruled.

17:46:53 12 MS. BONNEN: Okay. Well, then I object to
17:46:53 13 the relevance of the letter written by his attorney.

17:46:56 14 MR. RAMOS: Your Honor, the significance of
17:46:57 15 that letter is in the second-to-last paragraph, I
17:47:02 16 specifically tell TxDOT, we don't know, you won't
17:47:05 17 answer. Please let us know where we're wrong. And they
17:47:07 18 never responded. I think it's significant to the fact
17:47:10 19 that they're ignoring everyone with regards to how you
17:47:14 20 do this.

17:47:15 21 THE COURT: Right. Well, that's a complaint
17:47:18 22 other than how the statute is interpreted.

17:47:21 23 MR. RAMOS: So anyway, but --

17:47:23 24 THE COURT: Okay. I am not saying it's an
17:47:26 25 illegitimate complaint. I'm just saying it's about

17:47:26 1 something other than the statute.

17:47:28 2 MR. RAMOS: Right. So I'm assuming you are
17:47:30 3 sustaining the objection, Your Honor?

17:47:32 4 THE COURT: Well, the only one I heard was
17:47:33 5 hearsay. And then I suggested the other one, so I am
17:47:35 6 not going to let her use that. So it's overruled.

17:47:40 7 MR. RAMOS: Thank you.

17:47:57 8 Q. (BY MR. RAMOS) Judge, before I submitted the
17:48:01 9 letter to TxDOT, did you, on your own, conduct your own
17:48:06 10 investigation and analysis from all of the counties to
17:48:10 11 determine whether or not certain counties did or did not
17:48:13 12 qualify?

17:48:13 13 A. Yes, I did.

17:48:14 14 Q. Okay. And the results of that analysis are
17:48:18 15 attached as an exhibit to my letter --

17:48:21 16 A. That is correct.

17:48:21 17 Q. -- to TxDOT.

17:48:22 18 Now, can you tell the Court approximately how
17:48:25 19 many hours -- man hours you spent in coming up with this
17:48:29 20 research and analysis?

17:48:30 21 A. Roughly 500 hours.

17:48:32 22 Q. And did that include your obtaining records from
17:48:38 23 the different counties regarding the filing of road
17:48:41 24 condition reports and the type of systems that they
17:48:45 25 have?

17:48:45 1 A. Yes.

17:48:45 2 Q. And in my letter, was it your goal that they
17:48:50 3 would criticize or prove or disprove of your analysis
17:48:55 4 for purposes of just knowing if you were right or not?

17:49:00 5 A. Yes, sir.

17:49:01 6 Q. Okay. Now, do you know whether we ever received
17:49:07 7 a response to that letter?

17:49:09 8 A. No, sir.

17:49:10 9 THE COURT: Don't know or you didn't?

17:49:11 10 A. Did not receive a response.

17:49:13 11 Q. (BY MR. RAMOS) Okay. Did you ever receive the
17:49:20 12 Open Records request from TxDOT?

17:49:25 13 A. I received the response from the Attorney General
17:49:28 14 that I believe I provided to you.

17:49:32 15 Q. You were copied on a letter.

17:49:34 16 MR. RAMOS: May I approach?

17:49:36 17 THE COURT: Well, they're not objecting on
17:49:38 18 relevance, but I am at this point. What does this go
17:49:41 19 to?

17:49:42 20 MR. RAMOS: Well, what happened, Your Honor,
17:49:43 21 is --

17:49:43 22 THE COURT: Now, I did ask you what
17:49:44 23 happened. I asked you, what does it go to? What
17:49:47 24 points --

17:49:47 25 MR. RAMOS: It goes to the point that we

17:49:49 1 have to file a lawsuit to obtain the information.

17:49:51 2 THE COURT: Okay. And that's --

17:49:55 3 MR. RAMOS: And notice for the injunction.

17:49:55 4 THE COURT: Okay. Is that for a Public
17:49:56 5 Information Act lawsuit or --

17:49:58 6 MR. RAMOS: No. It seems -- our position,
17:50:00 7 Your Honor, is at the point in time that TxDOT -- which
17:50:04 8 was in April, on April the 10th, TxDOT is telling the
17:50:09 9 Judge, I think you are going to sue us. It seems to me
17:50:11 10 that for purposes of the status quo and injunctive
17:50:16 11 relief, you look at that date, the April 10th date.
17:50:18 12 Because that's when -- from that date forward, TxDOT
17:50:22 13 engaged in all kinds of activity to get the counties to
17:50:27 14 sign the contracts.

17:50:29 15 So the April 10th, 2014, letter, my Exhibit
17:50:32 16 47, goes to the issue of status quo as to when. At that
17:50:38 17 point, they had already received our detailed analysis
17:50:41 18 of what was wrong, and then here they are saying, we
17:50:45 19 anticipate litigation, so we're not going to respond.
17:50:48 20 Then we're forced --

17:50:49 21 THE COURT: Is that point in dispute? I
17:50:52 22 mean, does it matter?

17:50:53 23 MS. BONNEN: Does it matter? I don't think
17:50:54 24 it really matters.

17:50:55 25 THE COURT: I mean, if they're not going

17:50:57 1 to -- you are not going to win or lose based on when the
17:51:00 2 status quo was, I don't think. You are not making that
17:51:03 3 argument, are you? I mean, if they're entitled to a
17:51:06 4 temporary injunction, you are not going to argue, oh,
17:51:09 5 but the status quo is something different than that?

17:51:12 6 MS. BONNEN: Well, we think the status quo
17:51:15 7 would be as of today.

17:51:16 8 THE COURT: Okay. She is going to argue
17:51:18 9 something different. But I think that's a question of
17:51:20 10 law, don't you, which is --

17:51:22 11 MR. RAMOS: Well, that's why -- I want to --
17:51:23 12 for Your Honor to consider, I'd like to offer Exhibits
17:51:26 13 47 and 48, because I think the status quo is going to be
17:51:32 14 April 10th, which is when they say, you're getting ready
17:51:33 15 to sue us.

17:51:33 16 THE COURT: All right. And then where are
17:51:34 17 you going from there?

17:51:36 18 MR. RAMOS: I am just wrapping it up.

17:51:37 19 THE COURT: Okay.

17:51:39 20 MR. RAMOS: I will offer --

17:51:39 21 Q. (BY MR. RAMOS) Judge, let me show you Exhibits
17:51:40 22 47 and 49. Can you just tell the Court what those are,
17:51:43 23 please.

17:51:44 24 A. The October -- I mean the April 10th, 2013,
17:51:52 25 letter is the letter of the Texas Department of

17:51:54 1 Transportation, that they received a clarification
17:51:58 2 request. They're sending it to the Attorney General.

17:52:00 3 And the April 28th letter is another letter
17:52:07 4 stating that -- it goes to the Attorney General's
17:52:11 5 office, requesting for them to review our Open Record
17:52:16 6 request, since there's litigation filed.

17:52:18 7 Q. But those two letters, Judge, in essence, say
17:52:21 8 that you are not getting -- they are not complying with
17:52:23 9 your request because of anticipated litigation?

17:52:25 10 A. That is correct.

17:52:26 11 MS. BONNEN: For the record, Your Honor, I
17:52:27 12 object to relevance and hearsay.

17:52:30 13 THE COURT: Well, relevance, sustained.

17:52:37 14 MR. RAMOS: Your Honor, on the issue of
17:52:38 15 status quo, are they admitted for that limited purpose?

17:52:42 16 THE COURT: Do you object to that?

17:52:44 17 MS. BONNEN: Yes, Your Honor.

17:52:45 18 THE COURT: Okay. Well, I will overrule
17:52:47 19 that.

17:52:48 20 MR. RAMOS: Okay. Thank you. And lastly --

17:52:49 21 THE COURT: Did I admit it? What exhibit is
17:52:53 22 it?

17:52:53 23 MR. RAMOS: It's 47 and 49.

17:52:55 24 THE COURT: Well, if I hadn't already
17:52:56 25 admitted those, then 47 and 49 are admitted over

17:52:59 1 objection.

17:53:00 2 (Plaintiffs' Exhibit No. 49 admitted.)

17:53:00 3 MR. HARRIGER: Can you just clarify. I
17:53:01 4 think you mean April 29th letter, Exhibit 49?

17:53:06 5 THE WITNESS: I don't have my reading
17:53:07 6 glasses, so --

17:53:10 7 THE COURT: Here, give it to me. I have
17:53:13 8 mine. April 29.

17:53:15 9 THE WITNESS: All right. Thank you.

17:53:16 10 Q. (BY MR. RAMOS) And lastly, Judge, I am going to
17:53:19 11 ask you -- can you tell the Court approximately how many
17:53:23 12 dollars the County of La Salle has spent in experts and
17:53:28 13 other expenses in order to -- in their effort to comply
17:53:32 14 with the requirements of TxDOT under this program?

17:53:35 15 A. Are you asking for a lump sum or individual?

17:53:37 16 Q. Well, first, I am asking for a lump sum, and then
17:53:40 17 just a brief detail of what went into it.

17:53:41 18 A. Roughly about \$750,000.

17:53:44 19 Q. Okay. On the \$750,000 that the County has spent,
17:53:50 20 can you tell the Court how much was spent in
17:53:55 21 underwriting expenses?

17:53:57 22 A. \$290,000.

17:53:59 23 Q. Okay. And just briefly, tell the Judge why you
17:54:02 24 had -- the County had to incur underwriting expenses?

17:54:05 25 A. Going back to the October meeting with

17:54:08 1 Mr. Barton, Phil Wilson -- the meeting we had when we
17:54:14 2 spoke to them, we said -- they were concerned that
17:54:17 3 there's many counties that couldn't raise the cash match
17:54:20 4 money. And at that meeting, they said, well, if you can
17:54:23 5 raise that kind of money to match the whole program then
17:54:26 6 go for it all. Because you can ask for -- you can't ask
17:54:31 7 for more if your request is real low. The statute is
17:54:35 8 clear that -- that if there's a round two, you can only
17:54:39 9 ask for the amount of your original application.

17:54:41 10 Q. Now, what was the amount of the certificate of
17:54:45 11 obligations that La Salle County had to incur with
17:54:50 12 regards to this program?

17:54:51 13 A. That was 290,000.

17:54:54 14 Q. Yes. But to secure \$35 million in certificates
17:54:54 15 of obligation?

17:55:00 16 A. Right, for the match.

17:55:01 17 Q. And that is because the County had to match 20
17:55:05 18 percent of the amount that it was requesting under the
17:55:09 19 grant?

17:55:09 20 A. Because they told us specifically you had to have
17:55:12 21 cash as a fund.

17:55:13 22 Q. Okay. In addition to that, you had expenses for
17:55:18 23 engineers --

17:55:18 24 A. Yes, sir.

17:55:19 25 Q. -- for attorneys. So the difference between the

17:55:22 1 750-somewhat thousand and the 290,000 would go to
17:55:30 2 engineering fees, attorney fees, and other?

17:55:31 3 A. That is correct.

17:55:32 4 Q. Yep.

17:55:34 5 A. They're not all in yet.

17:55:37 6 Q. Did you, throughout the process, Judge, try to
17:55:43 7 rely on what TxDOT was telling you and their
17:55:48 8 representations to you?

17:55:49 9 A. Yes.

17:55:50 10 Q. And why was that?

17:55:54 11 A. TxDOT has more resources than we do, and experts
17:56:00 12 and attorneys and transportation. So to reach out to
17:56:05 13 them for guidance to be able to guide us to be able to
17:56:07 14 submit a good grant application, but to be able to make
17:56:10 15 decisions concerning public safety.

17:56:12 16 Q. Was this grant program of significance to the
17:56:16 17 citizens of La Salle County and the Court from a -- not
17:56:21 18 only an impact on the roads, but also on safety issues?

17:56:25 19 A. It's of significance because throughout the whole
17:56:30 20 Eagle Ford area, which is your increased energy
17:56:31 21 production on your affected counties, the amount of
17:56:35 22 accidents continues to rise and escalate, and mortality
17:56:39 23 rate is really high.

17:56:40 24 Q. Thank you very much.

17:56:41 25 MR. RAMOS: Your Honor, pass the witness.

17:56:43 1 THE COURT: Do you have cross?

17:56:43 2 MS. BONNEN: Yes, Your Honor.

17:56:45 3 THE COURT: Brief.

17:56:45 4 **CROSS-EXAMINATION**

17:56:45 5 BY MS. BONNEN:

17:56:49 6 Q. Judge Rodriguez, your name appears on the grant
17:56:52 7 application for La Salle County, correct?

17:56:54 8 A. Yes.

17:56:54 9 Q. And the County sought a grant of 158 million
17:56:59 10 plus?

17:56:59 11 A. That is correct.

17:57:00 12 Q. And the amount of the award was about six and a
17:57:02 13 half million, correct?

17:57:03 14 A. That is correct.

17:57:03 15 Q. And you're aware that that was the sixth highest
17:57:07 16 among all counties?

17:57:08 17 A. Yes, I am.

17:57:09 18 Q. All right. There were other counties that
17:57:14 19 requested more money than they were awarded, weren't
17:57:17 20 they?

17:57:17 21 A. Yes.

17:57:17 22 Q. They haven't sued the State, though, have they?

17:57:19 23 A. No, ma'am.

17:57:20 24 Q. All right. Are you aware of any other county
17:57:25 25 that spent \$750,000 in preparing for the TIF program?

17:57:31 1 A. No, ma'am.

17:57:32 2 Q. Now, you said you had a meeting with Mr. Barton
17:57:39 3 in October of 2013.

17:57:41 4 A. Yes.

17:57:41 5 Q. And after October of 2013, you wrote a number of
17:57:46 6 letters to TxDOT, correct?

17:57:47 7 A. That is correct.

17:57:47 8 Q. And some of those have been admitted into
17:57:50 9 evidence, correct?

17:57:50 10 A. That is correct.

17:57:51 11 Q. None of those letters contain anything about a
17:57:56 12 statement by Mr. Barton that only three counties would
17:57:59 13 be eligible, do they?

17:58:00 14 A. No, ma'am.

17:58:01 15 Q. You spent a lot of money on preparing your road
17:58:15 16 condition reports for 2013, correct?

17:58:18 17 A. Yes.

17:58:19 18 Q. And that was more money than you spent in prior
17:58:24 19 years on road condition reports, correct?

17:58:26 20 A. That is correct.

17:58:26 21 Q. And your road condition report was initially
17:58:31 22 filed as of September 30 of 2013?

17:58:33 23 A. That is correct.

17:58:34 24 Q. But all of your -- you later filed amended road
17:58:38 25 condition reports, correct?

17:58:39 1 A. That is correct.

17:58:40 2 Q. And they were dated December 16, 2013?

17:58:42 3 A. That is correct.

17:59:31 4 MS. BONNEN: At this time, the -- TxDOT
17:59:33 5 would offer State's Exhibits 2, 3, 4, and 6.

17:59:41 6 THE COURT: Are you going to be offering any
17:59:43 7 more than that, or are those all of them?

17:59:47 8 MS. BONNEN: I might have one or two more.
17:59:48 9 But --

17:59:49 10 THE COURT: I'm just trying to get them
17:59:50 11 altogether.

17:59:51 12 MS. BONNEN: Right. Right. This is all I
17:59:54 13 am 100 percent sure of.

17:59:57 14 MR. RAMOS: No objection.

17:59:58 15 THE COURT: All right. TxDOT or Defendants'
18:00:01 16 2 through 6 are admitted.

18:00:09 17 THE REPORTER: Judge, 5 was not included.

18:00:09 18 THE COURT: Okay.

18:00:09 19 THE REPORTER: She didn't include 5.

18:00:10 20 MS. BONNEN: Yes. 2, 3, 4, and 6.

18:00:13 21 THE COURT: Okay. I'm sorry. 2, 3, 4, and
18:00:16 22 6 are admitted. Not 5.

18:00:16 23 (Defendants' Exhibit Nos. 2-4, 6 admitted.)

18:00:39 24 Q. (BY MS. BONNEN) All right, Judge Rodriguez, you
18:00:42 25 testified that you were aware -- very well aware of the

18:00:46 1 TIF program, correct?

18:00:47 2 A. Yes.

18:00:48 3 Q. And so --

18:00:48 4 A. Excuse me. Could you repeat your question?

18:00:51 5 THE COURT: Were you very well aware of the
18:00:54 6 TIF program.

18:00:54 7 A. Yes.

18:00:54 8 Q. (BY MS. BONNEN) All right. And you received a
18:01:01 9 letter on November 26 from TxDOT telling the County
18:01:06 10 about the TIF program, correct?

18:01:08 11 A. That is correct.

18:01:09 12 Q. And in that letter there, it states that TxDOT is
18:01:15 13 assuming that all 254 counties will be eligible,
18:01:15 14 correct?

18:01:19 15 A. That is correct.

18:01:19 16 Q. So you knew that as far back as November 26,
18:01:22 17 2013, correct?

18:01:23 18 A. That is correct.

18:01:24 19 Q. Then at some point TxDOT made a decision that it
18:01:34 20 was going to change the application deadline date,
18:01:41 21 correct?

18:01:42 22 A. That is correct.

18:01:42 23 Q. And that was at the request of a number of
18:01:46 24 legislators, correct?

18:01:47 25 A. Yes.

18:01:48 1 Q. A number of those legislators are legislators
18:01:51 2 from the Eagle Ford shale area, correct?

18:01:53 3 A. I don't know. I know that a couple are, but I
18:01:57 4 can't tell you the number.

18:01:58 5 Q. Okay. At least some of them were, correct?

18:01:59 6 A. Yes.

18:01:59 7 Q. All right. And so you received a letter from
18:02:06 8 TxDOT, dated January 30th of 2014 also?

18:02:10 9 A. January 30th --

18:02:11 10 Q. I believe State's Exhibit No. 2?

18:02:14 11 A. Yes.

18:02:15 12 Q. All right. And this letter informed you of the
18:02:19 13 new application period, correct?

18:02:20 14 A. That is correct.

18:02:21 15 Q. And, again, this letter stated that it was
18:02:24 16 TxDOT's assumption that all counties would be eligible,
18:02:28 17 correct?

18:02:28 18 A. Yes, that's TxDOT's assumption.

18:02:31 19 Q. All right. Can you look at State's Exhibit No.
18:02:37 20 4.

18:02:38 21 A. All right.

18:02:39 22 Q. This is a letter written directly to you by
18:02:43 23 TxDOT, correct?

18:02:43 24 A. This is a letter that I didn't receive till about
18:02:46 25 a month ago, because I didn't know it existed.

18:02:49 1 Q. All right. So you are saying that you didn't --
18:02:51 2 even though the date on it is January 15, 2014, you
18:02:55 3 don't recall receiving this letter?

18:02:57 4 A. I saw it for first time about a month ago, after
18:03:00 5 I asked Senator [sic] Ryan Guillen's office that I
18:03:04 6 wanted to see the response, because I never received it.

18:03:06 7 Q. So you were aware that there was a response?

18:03:10 8 A. I wasn't aware until I asked Representative
18:03:15 9 Guillen to follow up on it. And then he told me that
18:03:17 10 there was.

18:03:17 11 Q. All right. So the representative had received a
18:03:24 12 copy of the letter, correct?

18:03:26 13 A. The representative chased that down and said that
18:03:29 14 this is the letter that was sent.

18:03:31 15 Q. Okay. And the letter actually shows that it's
18:03:36 16 cc'd to about 10, 15 different parties, correct?

18:03:39 17 A. That is correct.

18:03:40 18 MR. RAMOS: Your Honor, in fairness to us,
18:03:41 19 they never furnished us with a copy of those exhibits.
18:03:45 20 I did give them a copy of ours. So do you have a copy
18:03:48 21 for us?

18:03:50 22 MS. BONNEN: Just a second. I apologize.
18:03:54 23 Here you go.

18:03:56 24 MR. RAMOS: But there's more than one
18:03:58 25 letter. I think there's -- how many, Judge? I think

18:04:00 1 there's three or four exhibits.

18:04:04 2 MS. BONNEN: Oh, I understood you to say
18:04:06 3 that you had copies of the other --

18:04:07 4 MR. RAMOS: No. I said I have no objection,
18:04:08 5 but -- okay.

18:04:11 6 MS. BONNEN: Okay. All right.

18:04:13 7 THE WITNESS: The response doesn't state
18:04:15 8 much.

18:04:31 9 THE COURT: How much more time do you need?

18:04:33 10 MS. BONNEN: Just a few more minutes, Your
18:04:39 11 Honor.

18:05:08 12 Q. (BY MS. BONNEN) Judge Rodriguez, you did receive
18:05:10 13 the April 4th letter notifying you of the County's
18:05:15 14 award, correct?

18:05:15 15 A. Yes.

18:05:21 16 Q. Now, you testified that you attended some
18:05:25 17 legislative hearings on the bill, correct?

18:05:26 18 A. That is correct.

18:05:27 19 Q. And you attended the hearing of the House
18:05:29 20 committee on energy resources on May 8 of 2013, correct?

18:05:33 21 A. Yes.

18:05:33 22 Q. And you spoke before the committee?

18:05:35 23 A. That is correct.

18:05:35 24 Q. And one of the things that you said to the
18:05:38 25 committee is that you were concerned about the timeline

18:05:40 1 for the program because there were 254 counties that
18:05:44 2 would have to comply, correct?

18:05:45 3 A. I didn't say 254, but I was concerned with the
18:05:45 4 timeline.

18:05:49 5 Q. You said that there were 254 counties that would
18:05:51 6 have to comply.

18:05:53 7 A. I remember -- concerning the timeline, I don't
18:05:57 8 know whether I said 254 counties or not, but I remember
18:06:00 9 I was concerned about the timeline, everybody having to
18:06:03 10 apply.

18:06:03 11 Q. Okay. But you are aware that those hearings are
18:06:06 12 recorded, correct?

18:06:06 13 A. Yes.

18:06:07 14 Q. And are available to the public?

18:06:08 15 A. Yes. I have copies of the transcripts.

18:06:10 16 Q. Okay. So you're just saying you don't remember,
18:06:15 17 or not, whether or not --

18:06:17 18 A. I remember testifying relating to the issues. If
18:06:20 19 you ask me to give you specific, exact information, I am
18:06:23 20 not going to be able to quote you by word. But I did
18:06:26 21 testify that I was concerned about the timeline with the
18:06:29 22 counties.

18:06:29 23 Q. And you are not disagreeing that you may have
18:06:32 24 said --

18:06:32 25 THE COURT: Do you want to impeach him with

18:06:34 1 it? Do you want to ask him? Do you have it?

18:06:38 2 MS. BONNEN: No, I don't think I have a
18:06:39 3 written copy of it. It's a recording.

18:06:41 4 THE COURT: Okay.

18:06:43 5 MS. BONNEN: We referred to it in our
18:06:47 6 pleadings before.

18:06:49 7 THE COURT: All right.

18:06:53 8 Q. (BY MS. BONNEN) You also attended several of the
18:06:55 9 Texas Transportation Commission meetings, correct?

18:06:57 10 A. That is correct.

18:06:58 11 Q. And one of those was back on January 30 of 2014?

18:07:04 12 A. January 7th?

18:07:07 13 Q. January 30th?

18:07:08 14 A. 30th, yes.

18:07:09 15 Q. 2014. And every time you attended these
18:07:14 16 commission meetings, you would testify, correct?

18:07:17 17 A. That is correct.

18:07:17 18 Q. And you would generally speak to TxDOT
18:07:21 19 representatives, either before or after you testified,
18:07:25 20 correct?

18:07:26 21 A. That meeting, I spoke to some TxDOT
18:07:31 22 representatives before the meeting.

18:07:31 23 Q. Okay. At these meetings, did TxDOT
18:07:34 24 representatives ever refuse to speak to you?

18:07:36 25 A. At these meetings, no.

18:07:41 1 Q. All right. You -- when TxDOT was preparing the
18:07:49 2 rules concerning this program, they asked for formal
18:07:55 3 comments, correct?

18:07:55 4 A. Yes.

18:07:56 5 Q. And you sent in a written comment, correct?

18:07:58 6 A. That is correct.

18:07:59 7 Q. And your written comment was addressed by TxDOT
18:08:05 8 in the Texas Register, correct?

18:08:06 9 A. That is correct.

18:08:30 10 MS. BONNEN: Pass the witness, Your Honor.

18:08:32 11 THE COURT: Okay. We're going to end with
18:08:33 12 testimony there. We're at 6:10. This was supposed to
18:08:37 13 be three hours from 2:00 o'clock and I have given you
18:08:40 14 more than enough time to establish a record. So we're
18:08:44 15 closing the evidence there. You can step down.

18:08:48 16 THE WITNESS: Thank you, sir.

18:09:00 17 THE COURT: Okay. First the obvious, this
18:09:07 18 is the Court, not the legislature. And with statutory
18:09:10 19 construction some of the things that are irrelevant that
18:09:13 20 I am required to consider irrelevant are my sympathy,
18:09:18 21 wherever that may lie. What individual legislators
18:09:22 22 might have said post-enactment, what TxDOT did well or
18:09:27 23 did poorly with the grant applications because that
18:09:30 24 doesn't pertain to the statute, and what representations
18:09:35 25 TxDOT personnel might have made about what the statute

18:09:38 1 means, they can be wrong, they can be right, but,
18:09:44 2 whatever, it doesn't have any effect on the
18:09:47 3 determination by a court as to what the statute means.

18:09:50 4 Going off of the pleadings and statutory
18:09:55 5 interpretation alone, the question that is determinative
18:10:00 6 for the ultra virus claim, and therefore for the
18:10:05 7 sovereign immunity claim, I would phrase as, does or is
18:10:09 8 section 256.103(a) a directive to TxDOT to identify the
18:10:14 9 counties that are eligible to apply for TIF funds based
18:10:19 10 on TxDOT's determination of areas of the State affected
18:10:23 11 by increased oil and gas production. I concluded it was
18:10:28 12 not or is not a directive. My reasons aren't limited to
18:10:32 13 what I will say further, but I will note, first of all,
18:10:36 14 it sounds preparatory, especially when you compare it to
18:10:40 15 Paragraph B.

18:10:42 16 Secondly, for it to be a directive it would
18:10:48 17 have to be the case that the legislature gave a very
18:10:52 18 detailed formula in Part B, which includes such metrics
18:10:59 19 as percentage weight tolerance permits, taxes collected
18:11:03 20 in preceding fiscal years, and so on. All of which
18:11:09 21 relate to effect and increased production, yet at the
18:11:17 22 same time in Paragraph they gave carte blanche to TxDOT
18:11:22 23 to make an initial cut based on what TxDOT thought area
18:11:30 24 would be and what effect would be and what increase
18:11:33 25 would be. That does not make sense to me. So, I can't

18:11:39 1 find that to be a reasonable interpretation.

18:11:44 2 I don't -- I don't think at this time
18:11:46 3 that -- and all those things, there's quantity, there's
18:11:51 4 time frames, there's source of authoritative information
18:11:53 5 that TxDOT is to use when information is expected to
18:11:57 6 change, all that's in B. And to read A to be the same
18:12:03 7 type of directive would be to say that TxDOT can open or
18:12:09 8 close the door based on some unspecified conditions but
18:12:12 9 once people get through the door there are very specific
18:12:16 10 provisions for allocating those funds.

18:12:20 11 I don't think it -- I think partially what
18:12:25 12 people are reacting to is that maybe members of the
18:12:29 13 legislature are surprised but maybe they're surprised
18:12:32 14 because they thought that the formula that they wrote
18:12:37 15 would exclude some counties, that not everybody would
18:12:40 16 qualify. Perhaps other legislators are not surprised.
18:12:47 17 But if collectively they thought that there needed to be
18:12:52 18 a first cut, they didn't say that. And so I can't
18:12:57 19 interpret the statute as the plaintiffs would.

18:13:01 20 Based on that I am going to grant the Plea
18:13:06 21 to the Jurisdiction. I don't reach the temporary
18:13:09 22 injunction. And if you have an order we can review it
18:13:15 23 as to form or you can submit it later after both parties
18:13:18 24 have had a chance to review this.

18:13:30 25 MR. CRUSE: Because Your Honor hasn't

18:13:31 1 addressed it in these comments, do you have reasons for
18:13:34 2 also granting the plea as to our rules challenge? This
18:13:37 3 order is broad enough to cover --

18:13:37 4 THE COURT: As to do what, I'm sorry?

18:13:39 5 MS. CRUSE: As to our rules challenge, our
18:13:41 6 idea challenge?

18:13:41 7 THE COURT: Well, I will grant the plea to
18:13:43 8 the rules challenge for the reasons that I suggested I
18:13:46 9 was inclined to do in my letter. And, again, the
18:13:50 10 reasons I give here aren't limiting reasons with respect
18:13:54 11 to the order. And, in any event, they are all about
18:13:58 12 legal issues de novo so they wouldn't matter for the
18:14:01 13 Court of Appeals.

18:14:02 14 One thing I did mean to mention that I
18:14:04 15 didn't is that had the legislature intended A to be a
18:14:11 16 directive, despite its broadness and vagueness, it would
18:14:18 17 be unclear to me exactly what TxDOT is supposed to do
18:14:22 18 and I am sure it's unclear to them, and I am not
18:14:27 19 empowered to write a statute. And I don't think that
18:14:32 20 the legislature could empower TxDOT to or could delegate
18:14:37 21 to TxDOT to do this, but -- under A -- but I am not -- I
18:14:42 22 don't have to reach the question -- I am not reaching
18:14:44 23 the question of whether it would be an unconstitutional
18:14:46 24 delegation. I just mention it because we talked about
18:14:59 25 it.

18:14:59 1 MR. CRUSE: I don't think we have any
18:15:00 2 objection to the form.

18:15:01 3 THE COURT: Okay.

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1 THE STATE OF TEXAS)
)
2 COUNTY OF TRAVIS)

3

4 I, Albert V. Alvarez, RMR, Official Court Reporter in
5 and for the 345th District Court of Travis County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ _____ and
18 was paid by Andy Brown.

19 WITNESS MY OFFICIAL HAND this the 25th day of July,
20 2014.

21

22 /s/Albert V. Alvarez, RMR
23 Albert V. Alvarez, RMR, Texas CSR 968
24 Expiration Date: 12/31/2014
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