

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
JULY 7, 2009
CHASA O'BRIEN
VOLUME I

Individuals present at the Interview on 7-7-09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Chasa O'Brien

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1 MR. HOVATTER: As you know, because of the way
2 this whole thing evolved we never got -- we kind of got
3 started in doing an after-action look at this thing and
4 trying to put it all together, and, of course, our
5 perspective from the beginning was that this was exactly
6 as billed, you know, an incidental take to an otherwise
7 existing program. And to this point we still believe that
8 to be the case.

9 When we got -- you know, we got that outside
10 information, that Janay Brun thing. Information emerged
11 from outside, unproven, untested allegations, we then went
12 quickly into making a decision to say, well, let's -- we
13 need an independent investigation. We called for it. And
14 so at that point we clammed up on -- we didn't want to
15 inadvertently taint the investigation by digging into it
16 ourselves and having -- you know, because we would have
17 started out, we would have done the Garrity Warning stuff,
18 and then to have that same question asked later by an
19 investigator we potentially could have tainted the whole
20 thing that way.

21 So we never did really dig into this in
22 detail. It was always our intent to do so, but our intent
23 really would have been to dig into this after we saw the
24 results of the investigation. What changed some of that
25 or changed that rather substantially was that threat to

1 sue, that notice of intent to sue, and that 60-day clock
2 ends this Friday.

3 So in looking at it and looking at the
4 filing -- now we know we're not going to end up in court
5 the day after that, even if they do sue, but will be
6 required to do a filing and we already do have a filing
7 that Jim Odenkirk has worked on, but the thing that we
8 don't have is it is highly likely that if we -- by digging
9 into this and understanding more clearly what really
10 happened, how all this stuff juxtaposes, that it may, in
11 fact, enable us make a stronger filing and be able to talk
12 with a lot more confidence that there is not something
13 unexpected out there that's going to emerge.

14 Frankly, I think if there was a lot of new
15 information from outside the Department it would have been
16 flushed out by the start, but by the same token, we don't
17 know what they may have in their files waiting to use it
18 later on down the road. I wouldn't put that past them.

19 So we just -- you know, Larry decided that
20 we needed to dig into this ourselves and, conduct an
21 administrative investigation on this so that we could pin
22 down that what we believe to be true is true. And our
23 approach to this is that -- that there has been no
24 misconduct on the part of our folks. What we are looking
25 to do is just do the thing that we have been precluded

1 from doing because of the investigation by the Feds.

2 We are doing it under Garrity Warning
3 because we have to be open to the idea that it may be that
4 we do discover something that is going to require us to
5 come back and take a look as an administrative issue.
6 Because I think you know under Garrity, the things that
7 are discussed can't be used in any criminal fashion but it
8 does have an effect on our ability to get at the
9 administrative aspect of this. So I'm going to read you
10 the Garrity Warning on this. But that is how we've gotten
11 to where we're at and what we're trying to accomplish with
12 this.

13 Internal investigation, Employee, Chasa
14 O'Brien. Oh, we are recording all of this because Marty
15 can't write fast enough.

16 Chasa O'Brien; date, 7-7-09; Interviewers,
17 Gary Hovatter, Marty Fabritz and Craig McMullen.

18 We are conducting an internal investigation
19 involving matters that will be discussed shortly. This is
20 an administrative investigation. You do not have the
21 right to have legal counsel present during the interview,
22 nor will you be advised of constitutional rights. You are
23 ordered to cooperate fully with this investigation. You
24 are ordered to respond completely and truthfully to all
25 questions posed to you during the investigation. Failure

1 to respond completely and truthfully will be considered
2 misconduct.

3 As set forth in Garrity versus New Jersey,
4 285 US 493, and the line of cases which follow, any
5 responses given during this administrative investigation
6 cannot be used against you in subsequent criminal
7 investigation. You are instructed not to discuss your
8 interview with this or this investigation with any Arizona
9 Game and Fish Department employees while the investigation
10 is pending.

11 I have read -- and what -- the statement
12 you're required to sign says, "I have read the above
13 statements and I understand the orders given to me about
14 this investigation. I understand my obligation to
15 cooperate fully with the investigation. I understand my
16 obligation to completely and truthfully answer every
17 question. I further understand that I have been ordered
18 not to discuss this investigation with any Arizona Game
19 and Fish Department employees while this investigation is
20 pending."

21 Do you have any questions about the
22 Garrity?

23 MS. O'BRIEN: No. I do not.

24 MR. HOVATTER: All righty. Here you go.

25 MS. O'BRIEN: I would think you wouldn't want to

1 discuss with media either.

2 MR. HOVATTER: And that question did come up.
3 You know, despite all of the many people that looked at
4 this language, you know the first two folks we're talking
5 to asked one of the most logical questions. One of those
6 things you go. And it clearly is not meant to preclude
7 you from having any further discussions with the Fish and
8 Wildlife Service investigators. That investigation is on
9 going. So if they have other questions they want to ask
10 you then so be it. But, you know, we do -- frankly, it
11 ought to be with anybody outside the Department, you know,
12 inside or outside the Department other than, you know, an
13 authorized investigator.

14 And we will make a copy of this so you can
15 have a copy of this for your records too.

16 MS. O'BRIEN: Sounds good. Do I have to produce
17 it during a record's request?

18 MR. HOVATTER: This we shouldn't. No. This --
19 this -- this right now, and I asked Jim Odenkirk that
20 question. For the duration of the investigation what
21 we're doing here it would be prejudicial to the best
22 interest of the State of Arizona, the people of Arizona to
23 compromise this investigation by releasing information
24 about it. We very likely will be required to release our
25 ultimate results, our assessment of what we think we

1 discovered as a course of doing this. So we will probably
2 be required to release that. It should not, normally not
3 be expected to release all of the rest of this
4 information.

5 Okay. So, Marty, let me give you that
6 so -- and if you need to take a break or something --

7 MR. MCMULLEN: Yeah. We should during the course
8 of this break about once an hour.

9

10

CHASA O'BRIEN,

11 Pursuant to Garrity Warning, was examined and testified as
12 follows:

13

14

EXAMINATION

15 BY MR. HOVATTER:

16 Q. Chasa, one of the questions, and this is
17 something, because part of this is educational for me and
18 Marty and Craig, and we talked about some of this with
19 some other folks earlier, but I think this is the 10A
20 permit, I think, that is germane to what we're dealing
21 with. Is that -- does that -- do you -- would you
22 recognize that if you see it?

23 A. Only because I've seen it since the
24 investigation, well, since the capture.

25 Q. Now it refers in this to the -- now we also --

1 there is this project work plan that was done last summer,
2 was done in June of last summer, and it's my understanding
3 that -- now part of what's germane to what we were doing
4 is that in this endangered cats of the southwest
5 conservation job statement, but that the job statement for
6 the large carnivore habitat conductivity, that that study
7 was initiated after we had done this annual update. Is
8 that your -- because we've got --

9 A. 6-19-08 is the date on that?

10 Q. Yeah.

11 A. Well --

12 Q. What I'm trying to get so that I got the germane
13 documents to make sure that when we go through the
14 analysis I can go through and make sure that I've got all
15 of this in the place.

16 A. Right. The large carnivore habitat conductivity
17 and population persistence study was approved by the
18 Commission in May of 2008. So that -- that project was
19 already approved by the Commission before this final date
20 of 6-19-08 for the endangered species job statement.
21 However, there wouldn't have been anything incorporated in
22 the endangered species job statement because this wasn't
23 envisioned as being a project that had anything to do with
24 endangered species. It was a mountain lion bear project.
25 So --

1 Q. And, again, this is just trying to get at when we
2 talk -- now this is obviously a draft?

3 A. Yeah.

4 Q. So I don't know what the final looks like on
5 this. When we talk about the project it does refer to
6 jaguars.

7 A. Uh-huh.

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9
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18 Q. And it is clear from all of the stuff we've
19 looked at that everybody in this whole project for years
20 up to and including this project believed that we got the
21 adequate permits and that remains Larry's belief.

22 A. And even Fish and Wildlife Service following the
23 capture.

24 Q. And I specifically asked that question of
25 Dr. Tuggle and it's been our impression that we have

1 that. What I'm trying to make sure that I've got is, is
2 all that document -- and we got this. I understand about
3 not being that large or the conductivity for large
4 carnivore study not being in that.

5 A. It is in the Federal Aid CMS work plan for
6 2000 -- actually, no. It's not in the work plan because
7 the work plan we have revised it so it's very general. It
8 doesn't specify projects. It specifies activities and you
9 report on projects.

10 Q. Okay.

11 A. So the CMS only includes like capture animals for
12 research. So the general activities are covered under the
13 CMS because that's what the project was funded under, but
14 it's not specified as to the actual project. The place
15 where the project was specified was in the memo to the
16 Commission and then the subsequent approval by the
17 Commission in May.

18 Q. So that's the annual job statement. Okay. And
19 so --

20 A. So this doesn't specify. We used to do by
21 project and then a year or two years ago we switched to
22 activities, which was what was preferred by fund planning.

23 MR. MCMULLEN: Large species, right?

24 THE WITNESS: No. No. Because for us, for the
25 Wildlife Restoration it's all just birds and mammals. So

1 it's not broken out by species. It just indicates things
2 like --

3 Q. BY MR. HOVATTER: So in this -- so is there a job
4 statement for the large carnivore habitat conductivity?

5 A. No. You don't do them by project. It's just
6 covered by this job statement.

7 Q. So that's the annual job statement. And is there
8 language that is specific to this in this?

9 A. No. It's all activities. This just covers the
10 activities for all projects, and so it talks about things
11 like --

12 Q. Okay. So study -- so, for example, study wild
13 birds, mammals and their habitats would be the type of
14 activity?

15 A. Right. Well, that's the objective. The
16 activities are below.

17 Q. Okay. And there are the activities. Okay.

18 A. So like review scientific literature, capture
19 animals and affix telemetry devices and/or other markings.

20 Q. Okay. So now -- and part of what I'm trying
21 is -- do we still do -- now in that context is this
22 because, and, again, this is as much as anything it's
23 educational for me. These we clearly we do in some
24 detail. Are these -- did we used to do, for something
25 like this, would we have done a similar job statement in

1 the past?

2 A. I don't know about the same detail of that work
3 plan, but it used to be that under the comprehensive
4 management -- well, before even the comprehensive
5 management system was done by the Department, the job
6 statements, work plans, whatever you might call them, for
7 Federal Aid would have been done by project but all under
8 the umbrella of wildlife investigations. So it would have
9 been broken out by projects listing the major activities.

10 Funds planning indicated the desire to go
11 away from that type of specificity and into a more general
12 approach under the comprehensive management system.

13 Q. Do you know why they did that? Do you have any
14 insight into why they wanted to go that way?

15 A. As far as I can tell from Sherry it has more to
16 do with audit issues and stuff being justified.

17 MR. MCMULLEN: Justifying.

18 A. That was my understanding from Sherry.

19 Q. The other -- and see what I'm trying to do is I
20 wanted to, you know, if I wanted to get a complete picture
21 of our permit authority for incidental take, and we, of
22 course, believe that the permit also covers deliberate
23 take, but just for incidental take, which is what we have
24 said that has been from the beginning, what documents
25 would I need to be able to produce to say here's -- here's

1 the way you connect the dots between these documents to
2 indicate that, yes, in fact, this project was legally and
3 appropriately done under our 10A permit?

4 A. I don't know.

5 Q. Okay. Do you -- okay. That's good. That's
6 interesting. Let me -- do you -- is that something
7 that -- let me put it this way, are you comfortable not
8 knowing the answer to that?

9 A. No.

10 Q. A lot of these are hindsight questions too, by
11 the way.

12 A. Absolutely. No. I think that that's one of the
13 obvious issues that this whole thing has brought forward
14 is the break down between the permitting piece, the
15 project piece, and not just in research but I think across
16 the board for the Department, EA checklist component, and
17 then the various works plans and/or performance reports
18 following the work plans.

19 Q. If you were -- you know, how do you see -- as far
20 as -- where would in your perspective on the Department,
21 where would the -- where is the appropriate place for us
22 to have that visibility on -- because, I mean, I can see
23 that -- it's -- you could see why you have different parts
24 of the agency have different pieces of it. And at some
25 point it's clear that we have to have some way of knowing

1 that all of those individual pieces do, in fact, fit under
2 the right umbrella, and that that umbrella is open and
3 ready to do its job. Where would you see that, from your
4 perspective, that role residing, that responsibility
5 residing?

6 A. Across the whole Department you mean?

7 Q. Uh-huh.

8 A. That's a good question. Well, I think there is
9 probably multiple tiers of responsibility. I obviously
10 hold significant responsibility as branch chief for all of
11 the things that are going on in my branch. I would think
12 from a process standpoint, some type of checklist, not the
13 EA checklist necessarily --

14 Q. No. I understand.

15 A. But an actual project checklist that gives items
16 to people, you know, as they are beginning an activity or
17 a project that would make them think through those
18 things. Because I haven't even as a branch chief haven't
19 had any training on any of our permits and didn't even
20 think, wouldn't have necessarily have even thought of
21 endangered species permits entering into this project.
22 But obviously, in hindsight, it's a significant issue and
23 could be for any project that you enter into even if it's
24 a strictly game related project.

25 Q. That's why I ask because you, as you say for any

1 project, you know, you could be planning on putting in a
2 water catchments and you're inadvertently planting this on
3 top of a desert tortoise.

4 A. Mohave.

5 Q. Or, you know, you are out wanting to do small
6 mammal collecting and you're unaware you're doing this
7 immediately adjacent to where we've done a Black Hill
8 prairie dog introduction. So we got that, you know,
9 potential for incidental take, and of course, it can all
10 be fine. All of those things can be reconciled but we
11 have to know that they have been reconciled.

12 A. Right.

13 Q. And if you -- to say that, for example, each work
14 unit is independently responsible for that reconciliation
15 to some extent is almost the same thing as saying that
16 nobody is really responsible.

17 A. No. I wasn't suggesting that each work unit
18 necessarily independently respond. I was just indicating
19 that, I mean certainly there is a level of responsibility
20 that any leader takes with their work unit. It would be
21 nice to have someone who is centrally responsible. I'm
22 not sure -- because we don't have any project management
23 or -- I mean the planning group is the closest we get to
24 any kind of overall planning piece and they really are not
25 staffed or I think even have the expertise to be able to

1 combine all those pieces.

2 Q. You're talking the funds planning folks?

3 A. Yeah.

4 Q. Yeah. And no, and I didn't take it that way
5 either that that is what you were articulating. It's just
6 that clearly in hindsight or in retrospect on what we have
7 gone through on this that it is -- it seems very likely --
8 we still remain convinced that the permitting and all is
9 right but it is clearly in dispute and it's also clearly
10 not as unambiguous as it might otherwise have been helpful
11 for it to be.

12 A. Right.

13 Q. Okay. All right. This is kind of another way of
14 asking that same question but I'm going to try to be less
15 ambiguous because we kind of backed into this conversation
16 on it. But in your opinion then was it clear -- because I
17 understand what you're saying that this study was not
18 about -- was not about endangered species. It obviously
19 does include jaguars as an endangered species. It
20 addresses that is part of the study area or a part of the
21 area that's being looked at?

22 A. Some of the versions of the proposal discuss
23 jaguar.

24 Q. And I don't know what the final one looks like.

25 A. Well, the jaguar piece had gotten pulled out of

1 one -- each of those proposals was written for a specific
2 funding source. So depending upon what the funding source
3 kind of tended towards then they put in the wording that
4 was most likely to generate the funding source to provide
5 us a grant. I think that this one was like Doris Duke or
6 something, and so with that idea, Todd Atwood, who had
7 drafted that had put in jaguars indicating not that the
8 study was on jaguars but that it would -- that these would
9 serve as surrogate species to then be able to describe,
10 you know, potential connectivity for jaguars.

11 That was later pulled out of that by Terry,
12 I believe, when he had seen a copy of it because he had
13 got very upset that there was any mention of jaguars
14 because he was concerned that the funding that would
15 otherwise go to actual jaguar research or recovery or
16 monitoring would get diverted to a project that was for
17 something -- for a surrogate species, quote/unquote. So
18 my understanding is that he had then indicated that he did
19 not want that wording in there and they had taken it out
20 of subsequent proposals.

21 Q. Who has ownership for that, for the final version
22 of this, do you know?

23 A. Well, the most recent version which you probably
24 don't have Kirby just finished. Probably a couple --

25 Q. Okay. I think that may be from the report.

1 A. Well, that is a different version because this
2 was for a different funding source. The most recent one
3 is not in this because Kirby had taken all of the various
4 proposals, brought things together, and it hasn't been
5 provided because it wasn't part of any of the records
6 request because it was after.

7 Q. It was after the record requests.

8 A. So he had taken the various proposals,
9 identified -- because the proposals were just that, and
10 we're looking to obtain extra funding, many of them
11 contain pieces of this project that aren't implemented
12 because they don't have funding because it wouldn't have
13 been unless the funding was received that we would
14 implement -- there is a significant genetic component to
15 some of these.

16 MR. MCMULLEN: The viral part.

17 A. The viral genetics and things so that hasn't been
18 implemented because that funding -- we didn't receive any
19 of these grants other than wildlife conservation study has
20 been on the project since the beginning because Todd
21 Atwood had a good friend who worked -- I think this
22 Julie --

23 MR. MCMULLEN: Julie Young.

24 A. Julie Young is a good friend of Todd Atwood from
25 school or something, and so she was an early contact for

1 him when he started this project.

2 Q. Well, let me ask you then, what these are then,
3 these represent maybe drafts or several different -- these
4 are actually project descriptions for grant -- for grant
5 requests?

6 A. Yes.

7 Q. These don't reflect then our articulation of an
8 existing program that we are now executing?

9 A. No. They have pieces of it that are current but
10 the most recent draft from Kirby pulls together the pieces
11 that we're actually implementing and took out any of the
12 pieces that were kind of pie-in-sky looking for grant
13 money.

14 Q. Now from the standpoint of the bear and lion
15 trapping program we were doing, is there, in fact, an
16 actual project description, a coherent single document
17 that describes that program?

18 A. Only the one that he just recently completed
19 other than these various proposals, and then there is that
20 Commission memo that has just the single paragraph.

21 Q. All right. So when -- for example, to put this
22 into more concrete terms, in February when that initial
23 incidental take, incidental capture of Macho B occurred,
24 at that point the -- we had -- we had an authority from
25 the standpoint of Commission approval --

1 A. Uh-huh.

2 Q. -- to conduct this study. The documentation we
3 provided the Commission then probably -- did that
4 represent probably the most, at the time that we started
5 the execution of this, the most mature expression of what
6 we intended to accomplish with that?

7 A. We don't provide any documentation to the
8 Commission other than the memo. So all they received was
9 the memo and I think have you a copy of that too. No.
10 They don't -- we haven't been doing any study plans prior
11 to submitting to the Commission because the way that it
12 used to work under the Federal Aid statement because it
13 was specific to projects, you really couldn't be spending
14 Federal Aid money on a project that you didn't already
15 have approval to do.

16 Q. Was that Federal approval or our --

17 A. So in order for us to get approval from the
18 Commission if we were going to work on that project under
19 done -- like this is a lot more general and would allow us
20 to work on just about anything that is research related,
21 but as long as it's not reptiles, amphibians, or fish.
22 And so what -- the way it used to work under Federal Aid,
23 because you lined up each and every one of your projects,
24 the projects had to go in May into the Commission for
25 approval because your job statements are due in June or

1 late May.

2 Q. Those are the annual job statements to the Feds?

3 A. To the Feds, yeah. So you brought a new project
4 in May to the Commission, but in reality you didn't have
5 any approval to be spending any Federal Aid money to work
6 on that project because you didn't have that project
7 listed in your job statement as a potential project. And
8 so to spend significant time to write a study plan on a
9 project, because it is significant time.

10 Q. Yes. That you're not going to have -- that you
11 don't have approval.

12 A. Yeah. So it used to be that, I think when Devoss
13 was here he would write up like a three, four page, like a
14 study outline type thing or something, but it wasn't
15 really a study plan or anything.

16 When I became branch chief because of the
17 problems of identifying a project and trying to work on
18 it, what we agreed upon at that point was to bring just a
19 project concept that was kind of a single paragraph to the
20 Commission for approval.

21 Q. And that would be outlined in the Commission
22 memo?

23 A. Yes. And the Commission memo outlined three new
24 projects in May of 2008, OHV impact on wildlife, bighorn
25 sheep and the interactions, and the large carnivore

1 habitat conductivity and population persistence project.

2 Q. Okay. And so once that -- they did -- that's
3 probably -- that's probably --

4 A. No. This is different. This is from March of
5 2000 --

6 Q. No. That's March 2009.

7 A. Yeah. This is -- this is from this March.

8 Q. Never mind.

9 A. This is a Commission memo that gives the three
10 separate projects and it would have been from May 2008.

11 Q. Do we have that?

12 A. Yeah. It's been produced for --

13 Q. It's not a function of do we have it. I'm sure
14 we have it.

15 MR. MCMULLEN: If you want I can --

16 Q. No. I just want to make sure.

17 A. I can't print it.

18 Q. Well, no. It also should show up in our
19 Commission memos file in the J drive. So what I want to
20 do is I want to put all of this together so that we can
21 show how all these things interrelate in a more clear
22 fashion and we're not having to go dig through all of this
23 all the time.

24 A. We will have to go further back then.

25 Q. Okay.

1 A. Because the project really began with the hair
2 snag effort.

3 MR. FABRITZ: Right.

4 A. And this is going to take me a minute to remember
5 which year it is.

6 MR. FABRITZ: That was, what, '07?

7 A. Well, '07 is when we began the actual hair
8 snagging but it's '06 and I want to say like fall '06,
9 late summer or fall or something. I would have to look at
10 the notes, but Gerry Perry had come to me. He was acting
11 for Mike Senn and had indicated that they had had to
12 remove a lot of nuisance bears from Sierra Vista and that
13 Hermbrode (phonetic) had significant concerns about what
14 the impact on the population was due to the nuisance bear
15 removal. And so Gerry had come to me in his acting duties
16 and had asked me how much would it cost for them to do a
17 study to look at minimum population size currently in the
18 Sierra Vistas post removal of all of these nuisance bears
19 to determine whether or not -- you wouldn't really be able
20 to determine cause effect if you have an impact but you
21 could at least determine what your minimum population size
22 was post removal.

23 So in 2006, pretty positive it was like late
24 summer, early fall or something, he asked me to put
25 together and we put together really quickly, like, a

1 one-page summary of what a budget would look like to do a
2 project, a one-year hair snagging in the Huachucas, and
3 that has been provided as part of the records request too
4 on the whole lion bear project.

5 Q. Okay.

6 A. The funds were granted by executive staff. Of
7 course, we didn't implement because we were already into
8 fall. It was post any kind of bear season for you to be
9 able to put out hair snags. We held the funds through the
10 winter and stuff. Got a notice in the spring that we
11 hadn't spent the funds so they were being taken away and
12 then did a carry-forward request indicating that of course
13 we hadn't begun the project because we weren't in hair
14 snagging -- we had to wait until the bears emerged from
15 their dens. We actually thought they denned in the
16 Huachucas at that time. We then we were planning to begin
17 that summer. And Todd Atwood was in charge of the that
18 project at that time. Because he was -- he had begun with
19 the Department, I want to say that fall or something. And
20 he had worked previously on the lions. I don't remember
21 if he had --

22 MR. FABRITZ: Is he gone now?

23 A. Yeah. He's gone. He left May of 2008.

24 Q. So -- okay. Go ahead.

25 A. So we did the hair snagging in 2007, that whole

1 summer with, and it was all for genetic collection and
2 stuff, and then had extra funding because it wasn't as
3 expensive as we had expected, and so he made a request to
4 take that funding and put some radio collars on bears in
5 the Huachucas in order to be able to test against -- in
6 order for you to have your best estimate of a population,
7 not only do you kind of want to know how many minimum
8 individuals but how much time are they spending in the
9 area that you're sampling, because if they're spending
10 their whole time in the area that you're sampling it's
11 very different than if they are spending 10 percent of
12 their time in the area that you're sampling.

13 So he made the request to me I think in
14 February of 2008 to be able to take some of those leftover
15 funds and use them for radio collars. And I wrote a memo
16 seeking permission to allow for that.

17 Q. And was that for the Commission's approval?

18 A. No. That was for exec staff. Because exec staff
19 had given the approval for the funding before. This
20 wasn't -- I don't think the funding ever went to
21 Commission for approval. I think it was an unallocated
22 fund of urban -- no, not urban, WCF funding.

23 Q. Okay.

24 A. So then we had approval from exec staff to go
25 ahead and moved forward on radio collaring bears with the

1 remaining funding. At the same time division began to
2 grow because that February of 2008 he was seeing the end
3 of that project and the potential to begin a new Federal
4 Aid project looking at a broader spectrum of the whole
5 southeastern Arizona, the Sky Island. So he began talking
6 to me about, well, do you think we can look at kind of a
7 landscape conductivity project and look at this question
8 not just in the Huachucas but broaden it out into the
9 other Sky Islands and maybe at some point also broaden it
10 out to lions.

11 And I had said, well, that's a possibility.
12 We need to consider that in the context of our Federal Aid
13 projects and whether we could take that forward and also
14 looking at what projects were going to be ending, because
15 he was in charge of the Kaibab project and the Kaibab
16 Project was supposed to be ending that year.

17 MR. MCMULLEN: This is Todd?

18 THE WITNESS: Todd Atwood, yeah.

19 Q. BY MR. HOVATTER: Okay.

20 A. And so we went ahead and moved forward with that
21 for Federal Aid and that's when he had already been kind
22 of conceiving these proposals and had begun to be putting
23 in for some funding because he had been looking to do it
24 as a contract funding.

25 Q. Let me ask you, so when you say this thing

1 started to expand, was that as a result of kind of our
2 internal look or was that when the Commission started to
3 become interested in this proposal and started pushing for
4 it?

5 A. No. The Commission only -- they had been
6 interested in it, at least the Commission from the
7 Hernberg standpoint had been interested from 2000 -- I
8 think I'm thinking it was late 2006 calendar year.

9 Q. Okay.

10 A. So that's what it -- done the actually hair
11 snagging it was -- I don't think that there was any real
12 Commission push for to it to become a broader interest,
13 not that I'm aware of.

14 Q. So we're back in February then and go from there
15 again.

16 A. So February 2008 I sought approval to go ahead
17 and use some of the WCF funds for collaring. Got that
18 approval. So he made -- placed the radio collar order
19 because he was looking to begin snaring bears that
20 spring. And then he went ahead, and I don't remember how
21 many collars he ordered, but he got collars and began
22 snagging bears.

23 Q. Was this North Star collars we were using?

24 A. Yes. And those are collars subsequently failed.

25 Q. Yeah. But that relates to something that we were

1 getting the donated collar later on for the jaguar thing
2 and the relationship to all the failed bear collars.

3 A. Oh. Yeah. So ultimately those collars failed
4 because we they weren't waterproof but we didn't know that
5 until we put them on the bears.

6 Q. That seems a little odd to put a
7 non-waterproof collar on a wild animal.

8 A. Well, they didn't know they weren't waterproof
9 and so we have very little data from all of that effort.
10 And I think we ended up, I don't remember what the numbers
11 are right now. We have a lot of collars -- I think we
12 have several collars out there that we don't even know
13 where they are at because --

14 Q. Because they failed.

15 A. They failed completely. I'm sure we may have
16 them trickle in or maybe come in from the hunt or
17 something. And I think maybe we have one that is still
18 functioning. I don't know. Kirby has that, all the
19 current information.

20 So he began capturing that spring even
21 before we had permission to go to a larger project simply
22 because he was at least going to have radio collared bears
23 to test the population size to look percent time in the
24 Huachucas. So he was only capturing in the Huachucas and
25 the Canelo Hills area that's right in that same area that

1 he had been hair snagging. And most, I think of the
2 capture occurred on -- our best access has been Fort
3 Huachucas and it's easiest because people are prevented
4 from accessing our traps and stuff.

5 So he trapped, but then he tendered his
6 resignation and left at the end of May while they were
7 still trapping.

8 Q. Okay.

9 A. And in seeking somebody, and then by then, by end
10 of May we had already received approval from the
11 Commission to move forward and exec staff had also
12 approved the three new Federal Aid projects before they
13 went to Commission. I forgot to say that. So they went
14 to exec staff, got approval, and then went to the
15 Commission in May, received approval and --

16 Q. Was the Commissions approval required by -- was
17 that because of Department policy, I would presume,
18 because there is probably no requirement by the Feds.
19 They -- our Commission is kind of invisible.

20 A. In all honesty, that's one thing I haven't
21 understood and that's something that I'm looking to pursue
22 with Mike in understanding because I think this is of
23 those half existent processes that are left over from when
24 we had to submit the projects to Federal Aid for
25 approval. Because it used to be that every new research

1 project did have to go in study plan format and stuff to
2 Federal Aid to Albuquerque for approval.

3 Q. Now when you say study plan format, is that a
4 specified format the Feds, or was that a specified format,
5 or was that something we had come up with to meet the
6 requirements?

7 A. To my knowledge it was something that we had come
8 up with to meet the requirements. However, since -- in
9 the last probably month, I have come across in the Federal
10 Aid Tool Kit, they have direction regarding wildlife
11 research, which I had never even been aware of. And it's
12 old. I think it's written in the 1980s or something and
13 so it's a little bit dated. And I don't know that it
14 prescribes a particular format. But I have printed off
15 that whole report in order to better understand what their
16 expectations may be under Federal Aid. But that's only in
17 the last month or so that I came across that.

18 Q. So the large carnivore conductivity study, is
19 that Federal Aid funded?

20 A. Yes.

21 Q. How -- all right. So, and again this is
22 education for me Chasa because you -- (indiscernible)

23 A. I don't know about dream.

24 Q. For a few years. Well a nightmare is a dream.
25 In order for us to expend Federal funds there clearly is

1 some sort of mechanism that the Feds would expect to say,
2 yes, we agree that that is an appropriate project to spend
3 money on.

4 A. No. They don't do it by project anymore.
5 Because we're functioning -- my understanding of this, and
6 I have not had any formal training in Federal Aid, you
7 know, funding or otherwise, but my understanding per
8 Sherry is that we're functioning under the comprehensive
9 management system, and functioning under the CMS all we
10 need approval on is our job statements and that's why they
11 had wanted us to go to these really general job
12 statements. And as long as they approve these
13 activities --

14 Q. This would be -- we would send -- this is our
15 document but we would send this job statement?

16 A. Yes. This goes to Federal Aid.

17 Q. And the Federal Aid, if they approved it, then as
18 long as we -- as long as the activity that we were talking
19 about was covered in this then we were limited then
20 primarily by how much money we got.

21 A. Uh-huh, and what we elected to do.

22 Q. Okay.

23 A. Is my understanding.

24 Q. And, you know, you're not going to find anybody
25 in here who is going to disabuse your understanding?

1 A. I'm learning this on the fly though, so --

2 Q. Okay. So these represent, really these represent
3 our approach to pursuing grant opportunities?

4 A. Yes. And they represent, in part, some of what
5 was actually being done as far as radio collaring animals
6 is what was beginning to be done as of last -- yeah,
7 that's the Commission approval.

8 MR. MCMULLEN: That would be the commission memo.

9 A. Yup.

10 Q. You know the only reason why I can think that we
11 might have done it that way, and again that was just
12 before I came here to stay when I thought I was still
13 going to be living in --

14 A. The MOU is kind of separate.

15 MR. MCMULLEN: The MOU is between the Department
16 and Purdue for doing the --

17 A. Yeah. For doing the genetics, but it wasn't part
18 of that Commission memo. There was a separate Commission
19 memo to seek approval with Purdue and that was in August
20 of last year. August of 2008.

21 Q. This is that genetic study, the bear hair genetic
22 study, right?

23 A. Yeah. Because as Todd was leaving, I found out
24 that Todd, having been a semi-new biologist and one who
25 did not administrative procedures was busy trying to

1 essentially contract services without the appropriate
2 paperwork. And so I had put a stop on all of that,
3 requested yet again to carry forward funds because we were
4 at the end of our fiscal year, our '08 fiscal year at that
5 time. And then I initiated the appropriate agreement with
6 Purdue, got it approved at the August 2008 Commission
7 meeting. So they that we would --

8 Q. Now this was not done using Federal Section 6
9 funds?

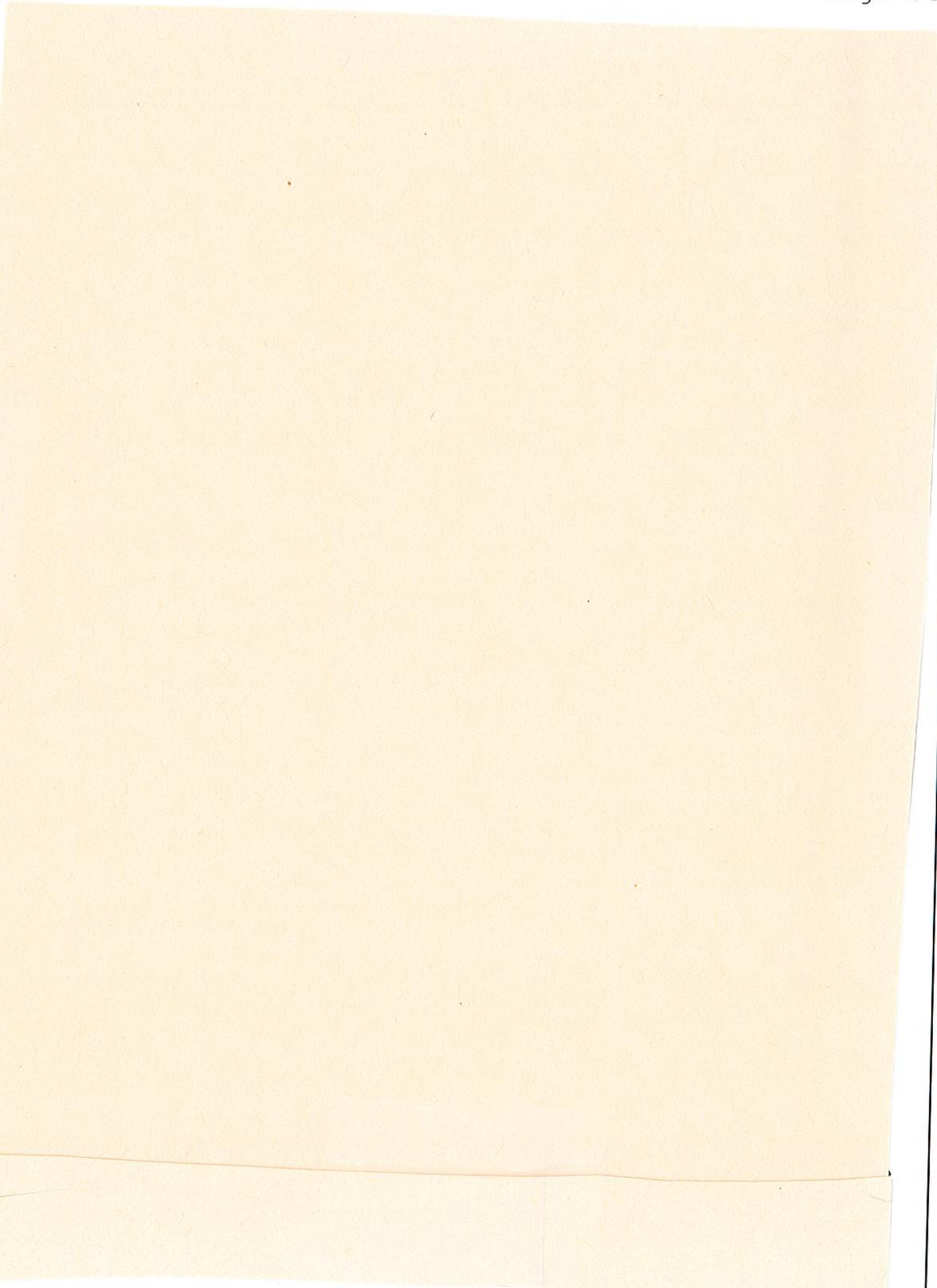
10 A. No.

11 Q. So -- okay. Okay. The actual the light starts
12 to emerge on this and part of this, you guys are
13 undoubtedly all ahead of me on all this, but I was trying
14 to think where -- I think where Jim's gotten is that prior
15 to us going this approach we would do a job statement that
16 was more detailed?

17 A. Yeah.

18 Q. Something more -- probably something akin,
19 because these things aren't excruciatingly detailed but
20 there is Job 73 and it's, you know, that format and there
21 a couple of pages and there is some detail. And I would
22 suspect that potentially we were doing something maybe
23 more akin, and most of these are one page, but there is
24 some detail.

25 A. Uh-huh. I can show you an example from several



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MR. MCMULLEN: Yeah. Except that to get Fish and

1 Wildlife Service in there telling them, Department had a
2 permit.

3 MR. HOVATTER: No. I'm just, and I apologize for
4 thinking out loud but just I need to do that so I can
5 logically drive on from here. And now this kind of snaps
6 into focus a lot better. Okay. Got it.

7 Now if you -- I would just like to see an
8 example on that, Chasa just so I can

9 A. Some of the old?

10 Q. Yeah. Some of the old, and it doesn't really
11 matter what it is. Just one that seems to you to be most
12 representative to you of what one of those would have
13 looked like then.

14 I still want to get probably from Eric,
15 i would like to get the MOU, the Fish and Wildlife Service
16 MOU on our Section 6 memorandum of understanding.

17 Okay. I think we've answered this but this
18 is going to get a more direct way of getting at the
19 question, so from your perspective as you look at this,
20 did the department have a current -- have the permits
21 required for an intentional or incidental take of a jaguar
22 under our landscape or large carnivore conductivity plan?

23 A. I don't know. I'm not a lawyer. As I understood
24 it after the capture, my understanding was that the permit
25 did cover it. But the whole --

1 Q. Prior to that, is that -- I guess maybe another
2 way -- because I think again we've addressed this, but I
3 think -- I think the answer -- I don't want to try to put
4 words into your mouth on the answer on this but it sounds
5 to me -- would it be accurate to say that research's
6 approach to what you were doing was that this was a bear
7 and lion study that we -- you know, the fact that we were
8 doing this in jaguar habitat was somewhat incidental or
9 peripheral to your approach.

10 A. Correct.

11 Q. We could have just as easily been doing this in
12 Pinetop or the Kaibab Plateau or any number of other
13 places and that it was -- it seems to me that it was
14 research branch's approach to this is this was a study of
15 resident wildlife in the state of Arizona, to wit, bear
16 and lions?

17 A. Yes. That was my understanding of the project
18 because it grew -- the fact that it was in southeastern
19 Arizona was because of it growing from the Huachuca
20 study. And then also the fact that the Sky Islands are
21 located in southeastern Arizona. However, the Commission
22 memo there specifies that this could broaden. It said it
23 would begin in southeastern Arizona but could be
24 implemented across the state.

25 Q. So it could be broadened into a study of large

1 carnivore conductivity across the state of Arizona to
2 include into adjacent states?

3 A. Correct. And, in fact, the way that they
4 currently fund, we had another project, the black bear
5 project that Kirby also runs out of the White Mountains
6 and the White Mountain WUI project, the Wildland Urban
7 Interface project, it was previously funded in our Federal
8 Aid under forest restoration but because the large
9 carnivore habitat conductivity and population persistence
10 study is Kirby's it's actually been easier for us so that
11 the last two years, last year and then this current year
12 that we began, it's funded under large carnivore habitat
13 conductivity and population persistence as well because it
14 fits within the context of looking at conductivity for
15 carnivores.

16 The other part of that study is to look
17 really at kind of before and after effects of wildland
18 urban interface treatments and (indiscernible) but from a
19 budget standpoint from budget management because we have
20 another project that is funded under forest restoration as
21 well, we've moved the funds that would otherwise be under
22 forest restoration for his White Mountain project and put
23 him under large carnivore.

24 Q. So the bear say this three times real fast, bear
25 hair snagging. The bear hair snagging started in the

1 Huachucas primarily as a result of bear interaction in
2 Sierra Vista?

3 A. Yes.

4 Q. So in that respect is it appropriate to say that
5 that was coincidental? I mean that --

6 A. Yeah. I would say that it was coincidental from
7 the point of we were not seeking to begin a project
8 anywhere in southeastern Arizona at the time in Gerry
9 Perry came to me and said we have an issue in Sierra Vista
10 and if I could get you some money would you do a study.
11 And so -- it was a really short turnaround time. I think
12 he gave us four hours to draft a budget or something.

13 Q. Let me ask you something on this because this
14 will get to some other issues down the road on this
15 thing. So you're -- you're understanding of the reason
16 why jaguars is in -- is in this as these grant
17 proposals --

18 A. Right.

19 Q. Is -- is what? The reason why jaguars get
20 included in this, was it to make --

21 A. Well, it specified at least in one of these
22 proposals, and I'm not sure if it's either of these three
23 that you have, that the bears and lions could serve as a
24 surrogate for identifying jaguar habitat conductivity as
25 well.

1 But my understanding of the reason that they
2 ended up, jaguars ended up in some of the proposals was
3 simply because the project, as it was being -- as he was
4 at that time envisioning it since it was in southeastern
5 Arizona, he was identifying jaguars, bears, and lions as
6 being the major large carnivores that can exist in
7 southeastern Arizona. And then was indicting because of
8 these specified border impact and things like that, my
9 understanding is that he put jaguars in there because it
10 kind of is a bigger key.

11 Q. He again in this case was?

12 A. Todd.

13 Q. Todd. Okay. And I can see that. Let me ask you
14 this on it too then is the documents then that Terry then
15 wanted the jaguar taken out of, was it these?

16 A. Yes. I think it was -- it was a version of
17 this. And I think -- and it wasn't that -- it wasn't like
18 this first statement that he had an issue with, the fact
19 that they inhabit the Sky Islands but there is a statement
20 in here that talks about surrogate.

21 Q. This may not be the right copy.

22 MR. MCMULLEN: You know, there is one copy that's
23 been --

24 THE WITNESS: I highlighted some copies.

25 MR. MCMULLEN: This copy has been track changed.

1 the request had been that there -- that I identify if
2 there was anything related to jaguar because they were
3 interested in knowing whether this would have any nexus
4 with jaguar and thus would be covered by the work plan or
5 the --

6 Q. What I'm hearing you say is that while this
7 includes jaguar because it's the only other large
8 carnivore in that area and this is a large carnivore --
9 being billed as a request for money for a study that that
10 would be included not because the intent of this study was
11 to involve jaguars but simply because they are a large
12 carnivore in that area?

13 A. Right. Well, and then in some cases, at least in
14 one of the proposals to identify the fact that the data
15 from the lions and bears could act as a surrogate for --
16 because in some cases grants would then pick up on that
17 and you might rank better because it has something to do
18 with a non-typical species rather than --

19 Q. Chasa, were you branch chief when these were
20 being done or was this still Jim was branch chief?

21 A. No. I was branch chief.

22 Q. When did you become branch chief again?

23 A. Little over three years ago, end of June, I think
24 June 26 or something of 2006.

25 Q. Let me ask you, and this is just for -- because

1 it makes -- it makes sense in the sense that, you know,
2 you would think lions, perhaps to a different extent bears
3 would have a tendency to use habitat in much the same way,
4 linkage, particularly linkages that any other large
5 carnivore would. And I can see that from the surrogate
6 standpoint.

7 Was that -- was that assumption just inherent to
8 our understanding of large carnivores or was that a result
9 of -- I guess what I'm saying is if I was looking at and
10 was peer reviewing our approach to that, had we done
11 literature searches and said, you know, that jaguars, we
12 had reason to believe that jaguars don't behave in some
13 exotic odd fashion in habitat relative to the way bears
14 and lions do it?

15 A. I don't know. I mean, to my knowledge I don't
16 know that he had an extensive literature search to compare
17 jaguar habitat use versus lions and bears. It would be
18 whatever he cited in the proposal.

19 Q. Just to be kind of -- the absurdity of what --
20 clearly if jaguars could fly, bears and lions aren't a
21 very good surrogate.

22 A. Right.

23 Q. Now they can't but I'm not -- you know, as we
24 know that's not always -- we wouldn't normally want to go
25 in, de facto, assumption that that means that a jaguar,

1 because it's a large cat, would use habitat the same that
2 a cougar would.

3 When Jack Childs and Emil McCain in this --
4 now do you know what role -- they were from the jaguar
5 group then. Was this from the borderlands jaguar -- were
6 they wearing their borderlands jaguar detection program
7 hat or was this as a part of -- because I think Jack
8 Childs, for example, was the study advisory group member
9 for the jag conservation team. Do you remember the
10 context in which they are involved in this?

11 A. No. I would have to look at what jag means in
12 his -- I mean he must have an identification.

13 MR. MCMULLEN: It's short for jaguar, jaguar
14 conservation team and jaguar protection project.

15 Q. BY MR. HOVATTER: Jaguar border protection
16 project.

17 A. But he must have identified it in here, no?

18 MR. FABRITZ: We were just wondering how familiar
19 you were with his role.

20 THE WITNESS: I'm not familiar. Oftentimes I
21 wouldn't necessarily see these proposals as they got
22 generated. Todd Atwood was supervised by Richard Okenfeld
23 up until February of 2008 as a program manager and he
24 was -- Todd tended to be a very independent worker. And
25 so he was kind of just generating all kinds of proposals

1 and sending them out for funding. I wouldn't necessarily
2 see every proposal as it was generated.

3 Q. And understand we have are -- I think we have a
4 very justifiable tendency to support our folks quest for
5 outside funding, in fact, we promote that pretty
6 strongly.

7 Did -- now Todd is not working for us any
8 longer. Is that still -- are you comfortable that that --
9 with that approach from the standpoint of is there any
10 concern that someone might pursue or might portray a
11 proposed Department activity in, for example, a way that
12 might be contrary to other existing agreements or --

13 A. Certainly at this point I am in retrospect. And
14 usually we have a process in the Department, the K-1-3
15 process to seek approval to submit a proposal. However, a
16 lot of the K-1-3s I'm not even sure that Todd -- I know
17 that he did some K-1-3s. I'm not sure that he did K-1-3s
18 for all of these. Again, he was a new biologist and he
19 was difficult to get in line with some of the
20 administrative processes.

21 But regularly, like our contracts work group
22 submits K-1-3s for all of their proposals but they don't
23 include the proposal as a part of that K-1-3. The K-1-3
24 is seeking permission to submit a proposal, and then they
25 receive that, it goes up to the deputy director for

1 approval. And then once it comes back they will generate
2 a proposal and often submit it and I never see those
3 proposals for the most part.

4 Q. So none of these were approved, none of these
5 grant requests is, going back to earlier, none of these
6 got funding?

7 A. None of them got funding from outside sources
8 other than the fact that the WCF, the Wildlife
9 Conservation study, as contributed in kind assistance in
10 the field with bear capture and they've bought collars on
11 their own that have then been used. And then they are
12 pursuing -- I think they may be doing some hair snagging
13 south of the border.

14 Q. And I mean I know -- okay. So -- clearly some of
15 these we -- I mean, Culvert and Haines and Childs and
16 McCain and those names, all those names are familiar to
17 me. Some of these others may be familiar to you.

18 So some of the approaches outlined in
19 this -- I guess what now if you were going to
20 describe -- if we going to do a Commission briefing say
21 last January on this large carnivore project, at that time
22 then we did not have any -- anything other than, in fact,
23 the memo from the standpoint of descriptive language?

24 A. Yes. And then the proposals where we would have
25 had some of the --

1 Q. This would have represented some more mature
2 about how we might approach it?

3 A. Right.

4 Q. But these were grant proposals?

5 A. But they didn't demonstrate necessarily exactly
6 what we were doing.

7 Q. So if we were going to do this hypothetical
8 presentation to the Commission last January, we would have
9 then probably used this and this to have then generated a
10 proposal specific to that?

11 A. Right.

12 Q. So from the standpoint -- from a guiding -- sort
13 of guiding approach to how he was going to do -- let me
14 ask you this -- when does -- how does Thorry -- how do we
15 transition from Todd to Thorry's involvement in this
16 thing?

17 A. Todd resigns and Thorry had finished -- he had
18 been doing Highway 68, which was a bighorn sheep project.
19 He had finished the final report to ADOT in the spring of
20 2008 and so he was one of the people that we were looking
21 to put on a new project. Originally he was scheduled to
22 probably likely to go over the Kaibab final report.

23 Instead, Todd tendered his resignation and Kirby
24 was the only person who was going to be free out of my
25 Federal Aid group who has bear capture experience.

1 Because he had worked on the Four Peaks project.

2 Q. And since he was funded that way, because not all
3 of your folks would be eligible to be used in that
4 project?

5 A. No. It's really a small -- I have 65 people in
6 the branch total and I think there is something like maybe
7 ten that are Federal Aid funding. And then several of
8 those are already on projects. So what we did was we
9 looked at we needed somebody to take over the large
10 carnivore habitat conductivity and population persistence
11 project, and Kirby was a logical choice because of his
12 bear experience. And I had called him in and talked to
13 him about, well, we have these projects that are going to
14 need people to either finish them or start them in some
15 cases. And his greatest interest was in the large
16 carnivore project because of -- because he didn't want the
17 Kaibab.

18 Q. Just not a real Cliff Rose fan?

19 MR. MCMULLEN: Well, he lives in Tucson too.

20 THE WITNESS: He lives in Tucson but he didn't
21 like the political environment that surrounded --

22 Q. BY MR. HOVATTER: Boy, did he pick well. Well,
23 it looked good at the time, that's the best he could say.

24 A. And he had been out on the Kaibab several -- he
25 had regularly gotten tapped for the veg surveys and

1 stuff. The Kaibab was at a point where all field work was
2 done and it was all report writing.

3 Kirby has, through a variety of
4 circumstances, somewhat become our closer where he ends up
5 on a lot of projects at the end having to clean up after
6 people that have done the project. And so he had gotten
7 like the Rodeo-Chediski project from Cunningham when
8 Cunningham, and then he had to write the final report and
9 that was supposed to have been a deer project where elk
10 were collared. There was the WUI project that
11 Grenerichoso (phonetic) which Stan had begun and then
12 Kirby received, and that's been a slower project because
13 the WUI treatments haven't progressed as fast as
14 originally planned. He had the prong horn project that
15 was scattered kind of across the state and when Shelly
16 Dubai left he got that project. So he has been kind of a
17 closer on a lot of projects.

18 So let me ask you then -- so how did -- so Thorry
19 is picking up -- did he have any overlap with Todd?

20 A. Very briefly. They went out into the field I
21 think for a week or a week and a half in order for Todd to
22 start showing him some of his sites. And then Todd was
23 supposed to GPS all of his sites because Todd had been
24 running both the WUI project and then had begun the large
25 carnivore habitat conductivity, so they were both

1 transitioning over to Kirby.

2 Q. When did we actually start then -- make -- is
3 there a clear transition from the bear snag project --

4 A. No.

5 Q. -- to this -- to the more expansive conductivity
6 project?

7 A. I wouldn't say that there is a clear delineation
8 other than I mean you could indicate that maybe there is a
9 delineation that as soon as they move away from the
10 Huachucas for capturing that at that point you have
11 entered into the large carnivore project. But there is
12 nothing specifically delineated that would specify that
13 the project had begun, the large carnivore project.

14 Q. When now -- when -- so when -- when -- that brief
15 transaction between Thorry and Todd, what he was showing
16 was he showing him the hair snag sites, or did he
17 actually -- had he already started some trapping and
18 snaring?

19 A. He started -- not snaring. Well, bear snaring.

20 Q. Bear snaring.

21 A. But not lion snaring. He had started bear
22 snaring because he had already gotten approval under the
23 hair snag project to be collaring bears as part of that
24 project.

25 Q. So that part, so he was -- so he was showing

1 Thorry those snares sites?

2 A. The Huachucas.

3 MR. MCMULLEN: In the Huachucas?

4 A. To my knowledge it was all Huachucas, Canelo
5 Hills at this point. There hadn't been any
6 beginning -- because he hadn't -- this project hadn't
7 begun until July of 2008.

8 Q. Okay. So when -- now -- so now Todd's gone.
9 Thorry's taken over.

10 A. Kirby.

11 Q. Oh, Kirby.

12 A. Yeah. Not Thorry. Thorry is a technician, so he
13 doesn't run projects.

14 Q. So the transition was Kirby, Todd to Kirby?

15 A. Correct.

16 Q. So how does -- where does Thorry come into this
17 process?

18 A. Thorry was working for Ted McKinney on -- at the
19 time Ted McKinney was one of the other three projects that
20 had been approved was the big horn sheep lion interactions
21 project. And so Ted who is funded, was funded under WCF
22 funding, he was working on designing the lion bighorn
23 sheep interactions project. And the reason we sought
24 approval from the Commission for having a project under
25 Federal Aid is because Thorry is Federal Aid funded. He's

1 a Federal Aid position, but he worked for Ted and he's
2 worked for Ted since I began in the department, I don't
3 know how long.

4 MR. MCMULLEN: Since the 22 sheep thing in early
5 2000.

6 Q. BY MR. HOVATTER: So when we did the May
7 Commission briefing, we already had in mind that Thorry
8 was likely to be an individual that was going to be
9 conducting that part of it?

10 A. No. No. I'm saying that we had the bighorn
11 sheep lion interaction piece there because Thorry was
12 going to be working on that project. I don't know who
13 Todd had envisioned at the time to be doing the lion.

14 Q. So Kirby's done the transition because Kirby was
15 available at the end of the Kaibab, you know, he's done
16 with his Kaibab work. He's Federally funded so he's
17 taking that transition.

18 A. Well, he didn't work on the Kaibab. He
19 transitioned from Highway 68.

20 Q. That's right. Highway 68. But originally you
21 were looking to moving him into that?

22 A. Correct.

23 Q. But at the time when Todd leaves then we have --
24 you have to have somebody to put at this project.

25 A. Because we were in a hiring freeze, there was no

1 opportunity to hire into that position. And because of
2 the way that the underfill process works now, it used to
3 be that if you had Spec 3 leave, like Todd, you would fill
4 a Spec 3 position. Now because of the way the underfill
5 process works you can end up very top heavy with all Spec
6 3s and no Spec 1s or 2s and so now my approach has really
7 changed where if I have somebody at the Spec 3 level leave
8 and I don't absolutely need to fill a Spec 3 level and it
9 looks like I have got people that are going to be moving
10 up, I will look fill something like a Spec 1 underfill,
11 you know, in order to make an opportunity for another
12 person to essentially grow through their professional
13 growth.

14 Q. So between the Todd Kirby transition in the
15 summer or May, June time frame of '08 and Macho B's
16 capture, initial capture in February, can you walk me
17 through that process from the standpoint of how Thorry
18 ends up being where he is in this process?

19 A. Only in what I know. Often, like technicians get
20 traded between projects regularly without me being, you
21 know, approving each transition between project, and so I
22 think Thorry had assisted on the bear captures last summer
23 as well with Kirby. Because Kirby essentially had
24 himself, a technician who was contract funded, Michelle
25 Crabb, and then I think he had two interns last summer.

1 And so between that I think that he was picking up Thorry
2 from Ted and he would just talk with Ted and then Ted
3 would give his permission. Because Ted didn't have any
4 field work going on at the time. He was busy planning for
5 this bighorn sheep lion interaction study. His only field
6 work was to occasionally go out and field site visits and
7 trying to pick locations. And he had been busy trying to
8 get a study plan together.

9 And so Kirby -- Thorry often helps on, like
10 right now he works part time on the highways project for
11 Highway 93. He works part time on Kirby, and at least
12 until the end of June was supervised by Bill Persons who
13 took over the supervision after McKinney passed away.

14 Q. Well, and the thing, you know, and that explains
15 when you look at kind of the record that shows up in all
16 of this stuff on Thorry, I mean, he is all over the place
17 in all of these projects and that makes sense. I
18 understand how that dynamic then works in the branch on
19 that. It makes sense. It's not essential it makes sense
20 to me. It's just helpful when it does.

21 A. And then at some point they -- I think that last
22 summer because they started to realize, and I'm not
23 positive about all of the dates and times, but the collars
24 began to fail, those initial North Star collars, and so
25 then it became apparent -- and then North Star also sent

1 the letter indicating, oh, oops, all the collars we sent
2 were not -- are all likely to fail --

3 Q. Just go out and recapture all the animals.

4 A. And they have been really good from the
5 standpoint of providing a lot of extra collars and stuff,
6 but in the process it was decided because they were -- I
7 think it was decided as they were getting close to the end
8 of bear snaring time frame that we they would pick up lion
9 collars at the time because they then they would be
10 entering into the lion collaring time period. Because
11 usually we collars bears during the spring, maybe the
12 summer depending upon the level of heat where you're
13 working. And then you get you usually to a point where
14 you don't -- you know, where the bears just aren't coming
15 into any bait or anything.

16 Q. So let me get at -- let me ask you this -- now,
17 again, this could be hard to answer because we got all the
18 hindsight now on this. Looking at this, you know, a
19 question that seems to me to be not illogical would be to
20 say, if we're doing this and we recognize that jaguar are
21 a component, albeit an incredibly rare component but
22 potential component may be the best way to say it, of an
23 area we're looking to do a study in, is there -- was there
24 a connection made between that and, regardless of the fact
25 whether we intended to do anything to, you know,

1 specifically for jaguars as opposed to the surrogate
2 approach, was there any connection made between that and
3 our TNE requirement, our ESA requirements that you are
4 aware?

5 A. Not that I'm aware of. There was -- not from the
6 standpoint of thinking, oh, well, there is potential
7 jaguars, we could capture a jaguar, and now I need to
8 think about our -- I didn't even know what a 10A1A permit
9 was or even the Project EFA statement. So there was the
10 connection from the standpoint, Kirby at department school
11 in 2008 came up to me and said, hey, if we capture a
12 jaguar on this project can we put a collar on him?

13 And I said, whoa. Stop right there. There
14 isn't any jaguar capture on this project much less putting
15 a collar on an animal. And I had pulled Brochide
16 (phonetic) aside at that same point because this was
17 literally like you're walking down the sidewalk at NAU,
18 and I said, hey, Bob, come over here for a minute, as my,
19 at that time, assistant director. And I said, Kirby just
20 asked this, and I told him no. I just want to get your
21 input as the assistant director.

22 And he said, yeah, we don't want -- he said,
23 absolutely not. We don't want to capture a jaguar much
24 less put a collar on one if one ended up accidentally in our
25 traps. Because I had no idea -- I wasn't familiar at all

1 with the jaguar team, whatever the jaguar's team name is.
2 So I didn't even know that they had -- that they had
3 plans, protocols, desires to radio collar a jaguar. But
4 my response --

5 MR. MCMULLEN: You didn't know that the jaguar
6 team existed?

7 THE WITNESS: I think I had probably heard like
8 maybe that they existed but nothing crossed my mind to
9 think, oh, we should probably check to see if the jaguar
10 team has a desire or if we were to accidentally get one
11 whether we should put a collar on it.

12 Q. BY MR HOVATTER: So they weren't on your
13 forebrain enough to where those synapses fired to connect
14 those dots that way.

15 A. They weren't.

16 MR. MCMULLEN: Let me -- we may as well.

17 MR. HOVATTER: Quick break. Two minute.

18 THE WITNESS: Bathroom break.

19 MR. MCMULLEN: Yeah, bathroom break.

20 MR. HOVATTER: Run for it.

21 MR. MCMULLEN: Run, Forest, run.

22 THE WITNESS: Do you want me to grab a copy of
23 the old --

24 MR. HOVATTER: If you can. Go take care of
25 business and then if you have a chance I would like to see

1 that just as an example.

2 THE WITNESS: What was the second thing you asked
3 me for? I only wrote get copy. Oh, you wanted a copy --

4 MR. HOVATTER: Was that of the sample job
5 statement or is that what we already --

6 THE WITNESS: The sample job statement is the
7 first one but then I started writing something, a second
8 thing and I'm trying to remember what else you wanted.
9 Oh, did you want the current draft?

10 MR. HOVATTER: Yeah. Yeah. If you got that.

11 MR. MCMULLEN: She knows about all this shit
12 Thorry was --

13 MR. FABRITZ: We got to get down to the --

14 MR. MCMULLEN: I would pause that thing but I'm
15 not --

16 MR. HOVATTER: I would be afraid I would mess it
17 up. I would rewind it or something.

18 MR. MCMULLEN: Well, I could probably do it.

19 MR. HOVATTER: I don't mind this being on the
20 tape. This is starting to sound more and more like what I
21 thought we might -- we had all this Departmental
22 conservation, no cross talk, there is no situational
23 awareness. We're going to dig into that last piece a
24 little more. Yeah. Kirby clearly brought it up and
25 clearly we got some questions for Kirby out of this. He

1 had to have connected the dots that we were going to do
2 this. Now what his assessment of the potential for
3 catching a jaguar almost doesn't matter. But clearly
4 something had caused him to think about it. But in the
5 conversation then -- and, you know, clearly Chasa is
6 thinking about it at least enough to know that doesn't
7 sound like something we want to do, but then it doesn't
8 sound like anything happened other than don't do it, which
9 is not really sufficient to cover incidental take. Since
10 incidental is accidentally. Like telling your kids not to
11 have an accident is something you do all the time, but
12 when it occurs it's a little hard to say, I told you not
13 to do that. I told you not to miss that step and fall off
14 the ladder and so therefore you did, you know -- okay.

15 MR. FABRITZ: Better make that call.

16 MR. MCMULLEN: You know what, I'm just going to
17 stop this and start a third one.

18 MR. HOVATTER: Where is the speaker phone on
19 this?

20 (End of recording.)

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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 58 pages constitute a full, true, and accurate transcript of all recorded proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 10th day of August 2009.

KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

1 So you might see it in the deleted parts, I think. There
2 it is.

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24 A. Because then what I did is I had provided, and I
25 think maybe four different versions of this proposal, and

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
JULY 7, 2009
CHASA O'BRIEN
VOLUME I
(Pages 60 - 154)

Individuals present at the Interview on 7-7-09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Chasa O'Brien

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1 CHASA O'BRIEN,
2 pursuant to Garrity Warning, continued testifying as
3 follows:

4 EXAMINATION

5 BY MR. HOVATTER:

6 THE WITNESS: Was one of our projects.
7 Restoration treatments was a project or projects, wildlife
8 highways. So each of them --

9 Q. BY MR. HOVATTER: Okay.

10 A. Were broken out --

11 Q. Okay. Perfect. Thank you. That's what I
12 needed.

13 A. And then this current is the current draft study
14 plan which is just kind of a compilation between all of
15 the original proposals and stuff to represent what is
16 actually being done.

17 Q. Okay.

18 A. But it is also in draft.

19 Q. Perfect. Thank you. Okay. All right. We
20 were -- is it back on? Okay. That summer of '08 at
21 the --

22 A. Department school.

23 Q. -- Department school, do you have any sense of
24 why Kirby brought up that issue collaring a jaguar?

25 A. I assumed at the time that he was -- because the

1 way he presented it to me was, if we capture a jaguar
2 should we collar it kind of thing. And I was like, whoa.
3 Let's back up. No capture jaguar so that we don't get to
4 the question of whether we put a collar on it. I just
5 assumed it was something that he was thinking about or
6 where somebody had suggested, well, you might capture a
7 jaguar and if you did you should put a collar on it.

8 But Bob and I talked to him at the time and
9 made it very specific that it was -- we didn't want to
10 capture a jaguar, first and foremost, and second, there
11 was not going to be a collar put on any jaguar that was
12 captured.

13 Q. Now was that based -- let me ask you this,
14 because you we've talked about the jaguar conservation
15 team was very peripheral to the work you were doing and to
16 the way you and the branch and the way that you were
17 operating on that. Your thought about not collaring, what
18 drove that, you're thinking about not collaring the
19 jaguar?

20 A. Because -- I guess --

21 Q. I know it's kind of hard for you -- to ask you to
22 think back and put yourself back in the summer.

23 A. It's hard to ask that but I think that the way
24 that I looked at it was that, first of all, the study
25 wasn't specific to jaguars and so to be placing one of our

1 collars that was specific for a bear and lion study on a
2 jaguar was going to cross beyond what our actual study was
3 for, and that I knew as soon as you got into anything
4 jaguar related that it was going to be controversial. And
5 I also knew that Terry Johnson was lead for anything
6 jaguar related and that I didn't envision him -- I didn't
7 see it as being appropriate to put a collar on a jaguar
8 when you hadn't sought to actually go out and study
9 jaguar.

10 Q. Do you know if Kirby had talked to Terry at that
11 time?

12 A. I don't know if that's before that time.

13 Q. Did you ever talk to Terry as a result of that
14 conversation, have any discussion with him about it?

15 A. I didn't. Much later on, spurred on in part
16 because of that and in more part because of Ron Thompson
17 kind of coming to me and saying, hey, you might capture a
18 jaguar, we began to look into -- because I said wait a
19 minute. You know, if we were in a situation where we
20 could potentially capture a jaguar, an EA checklist is
21 something we would want in this project. And so it was
22 something that kind of peripherally came up regularly.

23 And I think December of '08 at one point I
24 had sent an e-mail and said, hey, we need to talk to Kirby
25 about getting an EA checklist on this project because of

1 the potential to capture a jaguar.

2 Q. Yeah. Because I had seen that. That was one of
3 the questions I was going to ask you about because that
4 kind of explains because I wasn't sure why that came up
5 then.

6 A. Ron was coming kind of semi regularly saying, you
7 know, you could capture a jaguar on this project. And I
8 thought it was really unlikely. I didn't even know that
9 we really had jaguars. I mean, I knew that there had been
10 a couple sightings in Arizona over the last ten years. I
11 didn't even know that we were regularly photographing a
12 jaguar or semi regularly photographing a jaguar down in
13 the area. So I thought it was incredibly unlikely that we
14 would end up with a jaguar. But Ron was pretty insistent,
15 and I thought, well, I think this is getting into an
16 endangered species, hence my thought process was, I think
17 there is an EA checklist process that you probably need to
18 initiate if you have an endangered species situation.
19 And so I had -- as part of a correspondence with Dean
20 Treadwell, my programs project specialist, I said, hey, we
21 also need to look into an EA checklist for this
22 situation.

23 There seems to have been some concurrent
24 things happening at the time too because I don't know if
25 Ron Thompson came to Ray Schweinsburg and brought up the

1 same issue or something, but Dean talked to Bill Van Pelt
2 about the issue. And Bill had said, oh, I think we're
3 covered if you were to incidentally kind of capture any
4 kind of animal, we're covered under the existing permits.
5 You don't need to worry about having an EA checklist or
6 something. According to -- and that's all like third hand
7 from me.

8 And Dean had said, you know, you're probably
9 going to want to talk Bill further maybe about this issue
10 but it sounds like we're covered. And I don't know if
11 Dean talked directly to Terry.

12 Ray had also apparently gone to -- to Bill
13 at one point and asked him about that as well. And Bill
14 had given him kind of the same answer. And I don't know
15 if Ray did that in the context that he was acting for me,
16 not Christmas week, he had been acting for me at one
17 point, and I don't know if Ron went in to him and said,
18 hey, you know, you could capture a jaguar on this
19 project. You need to be looking into it or what. But Ray
20 had also gone, I think, to Bill at some point and asked
21 him about it.

22 MR. MCMULLEN: Did you ever know of any inputs or
23 data inputs that would have caused people to start talking
24 about increased likelihoods or kind of the new realization
25 that we might catch a jaguar?

1 THE WITNESS: Not that I was aware of, no. It
2 was just kind of Ron coming in and saying, you know, you
3 could, you know. And I --

4 MR. FABRITZ: Do you know when that started, Ron
5 saying that?

6 THE WITNESS: I don't remember. Sometime I
7 thought last, you know -- obviously before late December
8 when I sent my e-mail. Because I had heard him -- at one
9 point I was out in the parking lot when Gary and Larry
10 were there and he was kind of bringing it up at one
11 point. So it had been brought up several times.

12 MR. MCMULLEN: Had the project been going on --
13 we had been actively snaring by December for bears and
14 lions?

15 THE WITNESS: Well, actually, I think Emil had
16 begun snaring -- I think he was under contract in
17 October. October or November Emil was under contract.

18 MR. MCMULLEN: He was catching lions in the
19 summer of '08.

20 THE WITNESS: Emil?

21 MR. HOVATTER: He was catching lions in Kofa.

22 MR. MCMULLEN: Oh, was it Kofa?

23 MR. HOVATTER: He got work in late -- because
24 that was -- because Ron, I think, came back on with the
25 Department in spring of '08.

1 MR. MCMULLEN: Okay.

2 MR. HOVATTER: And then -- because he had been
3 doing our lion work under contract. It was considered a
4 conflict of interest and so he then grabbed someone else
5 to take up -- you know, to take over that contract, and I
6 think --

7 MR. FABRITZ: So basically Emil was just doing
8 that --

9 MR. HOVATTER: Because that was that Clark's
10 Guide Service. There is one of those contracts we had is
11 for that Kofa work.

12 MR. MCMULLEN: Okay. I'm clear.

13 THE WITNESS: To my knowledge, Emil was
14 under -- at least the contract that we have, which is not
15 directly with Emil but with another party --

16 MR. HOVATTER: That's Clark's Guide Service.

17 THE WITNESS: Yeah. Clark's Guide Service, who
18 Emil was then subcontracted with, I think it goes, and I
19 would have to look at the contract again that was provided
20 as part of the public records request but I thought it was
21 October to December or something.

22 Q. BY MR. HOVATTER: Well, they had actually had a
23 contract to cover Arizona statewide for doing lion work,
24 Clark's Guide Service, and I think there was a mod to that
25 contract for these contract orders.

1 A. I think essentially a task order for this
2 particular work. And Kirby wanted to have him on as long
3 as possible. It was just a matter of having the funds. I
4 had said that we had only had, I don't even remember, six
5 weeks worth or something.

6 Q. So the thought about the EA checklist ended when,
7 your memory of it is that Treadwell had come back and said
8 he had a conversation with Bill or what?

9 A. Well, he had a conversation with Bill and he
10 said, you know, you probably want to follow up with him at
11 some point in time by e-mail, he had said to me, because I
12 wasn't in the office. And he said, but it sounds like
13 we're covered or something like that. So I still had it
14 on my task list of hey, we need to look in further to an
15 EA checklist on this project even when --

16 Q. So that was still on your to do list by the time
17 we actually caught the animal. Okay. So, you know,
18 the -- and what triggered your thinking about the EA
19 checklist is that endangered species aspect of this thing?

20 A. Yes.

21 Q. And what had changed between December when you
22 started -- when you articulated that in your e-mail and
23 the conversation you had with Kirby earlier in the summer
24 was just -- was it -- was it pretty much Ron kind of
25 continually bringing that up?

1 A. Yes.

2 Q. Okay. All right.

3 A. Because when Kirby asked me that that summer with
4 Bob there, we had both said, no. No. That would take
5 you -- you would have to get -- you know, that's going to
6 have to be a whole different level of the discussion,
7 approval, et cetera before you get into any kind of
8 situation where you're collaring a jaguar type thing. So
9 we were like, you know, back up a step. No capturing a
10 jaguar much less placing a collar on it.

11 Q. Let me ask you -- oh, go ahead. I'm sorry.

12 A. I was just going to say I didn't see -- you asked
13 me why would I say no collaring if we incidentally
14 captured a jaguar, and may take on it was that unless we
15 had some kind of an agreed upon decision in the Department
16 that that was the direction we want to go, my take is that
17 a jaguar, if it ended up in a trap, would be an incidental
18 capture and that you release that animal. It's not the
19 animal you're looking to mark.

20 MR. MCMULLEN: Was there ever any discussion with
21 the field people working on the project about that?

22 THE WITNESS: Kirby had said there was, yes. In
23 talking to Kirby he had said that he had made it very
24 clear regularly to his field personnel that there would
25 not to be any capturing of jaguars, but I don't know what

1 that entailed. I wasn't ever present for any of those.

2 Q. Let me ask you just mechanically, are you
3 familiar with the techniques for lion capturing? I
4 mean --

5 A. Only peripherally. I have never been -- I have
6 been on cubby sets for bears and I have seen I think maybe
7 one or two trail sets with Stan, because I worked on the
8 Four Peaks project with Stan and did a lot of cubby sets.
9 He didn't do very many trail sets at the time. But I've
10 never been on an actual lion capture other than WAFWA last
11 summer I went out on Brian Jansen's project and I saw a
12 lion that had been captured in a snare.

13 Q. So I think because part of what I'm wondering is
14 if part of the dynamic was -- was that not having some
15 real detailed familiarity with how that is done,
16 physically how it's done, whether a part of your thinking
17 on it was it -- was it based on somewhat imperfect
18 knowledge then of the details that would allow you to do
19 some of your own sort of mental triage of what the
20 likelihood of an incidental take of a jaguar might be?

21 A. I don't know. I don't think it was unfamiliarity
22 with the process. I mean I understand the general aspects
23 of snaring, and I realize that you don't specify, oh, this
24 snare is only open for a lion and nothing else can step in
25 your snares. You can capture anything, elk or dogs or

1 whatever else in your snares depending on your throw arm
2 and what kind of, you know, what kind of weight that it's
3 going to take. So I understand that aspect of it.

4 From my standpoint I just saw it as a
5 numbers game that I thought it was incredibly -- I had no
6 idea from a jaguar aspect -- I thought, really, a jaguar,
7 you know, hitting one of our snares out in the middle of
8 nowhere, I saw that as being a numbers game that was just
9 astronomical.

10 Q. And you're probably right actually. You know,
11 statistically, I think that was probably not an unfounded
12 supposition.

13 A. Well, I bet wrong.

14 Q. Well, but the question about it is I think -- do
15 you think that it's -- that that was part of it that we
16 got wrong or was it that -- because have you read or gone
17 through the jaguar conservation team, their protocol for
18 intentional take?

19 A. I've seen it since the capture, but I haven't
20 read all the way through it.

21 Q. Were you -- in thinking back, do you know if you
22 were aware that such a document existed when you were
23 having these conversations?

24 A. I don't remember -- I don't ever remember
25 thinking that there was a document that existed. I don't

1 know that I definitively thought, oh, there isn't any
2 document anywhere that exists, but I didn't -- I don't
3 remember ever knowing the jaguar team was considering,
4 that they would have drafted a full document for actual
5 capture. It's the kind of thing I would have gone to
6 Terry to ask if I thought to look for that kind of a
7 document. But I don't remember ever knowing.

8 Q. And I guess, because what I'm getting -- and
9 again this is a hindsight question, because it's really
10 to ask this question and to have it misconstrued that --
11 this presupposes that myself or anybody else in this room
12 put in the same situation would have come up with a
13 different outcome, but looking at the fact that jaguar
14 conservation did have considerable detail going back over
15 a decade on both -- addressing both intentional and
16 unintentional take, both deliberate and unintentional take
17 and getting into details about dosages and the types of
18 chemicals and all, the chemistry and all, and the fact
19 that, you know, a snare is not -- rarely can you make
20 something like that species specific.

21 A. Right.

22 Q. If a, you know, paw will fit into it it's
23 whatever sticks its paw into it it will get caught, that,
24 you know, we kind of had the pieces in place to have
25 looked at this and said, okay, we have the potential.

1 We're operating in an area where jaguars, however rare, is
2 still potentially, one, it could happen. It clearly is a
3 threatened and endangered species. We know -- we know
4 now, all of us know now that there is the detailed pieces
5 from the jaguar conservation team where they provided a
6 lot of, you know, useful tools for having conversations
7 with field crew. Should you catch a jaguar here's what
8 you need. You can't walk four or five hours away after
9 you had a jaguar in the snare for ten hours, grab your
10 darts, come back, and you know, that's an inefficient
11 approach to it. And relate all of this to where we could
12 have had a conversation with non-game branch, jaguar
13 conservation team, and research that would have put our
14 folks in the ground with the tools and the scenario,
15 having gone through the scenario in place. And I'm just
16 wondering if -- if there is any way to kind of push
17 ourselves back in time and understand why all of
18 those -- because this isn't just you. I mean, there were
19 a lot of players involved in this outside of research
20 branch that this all seems to kind of have brushed up
21 against and why didn't it result in a more comprehensive
22 outcome than it did. Do you have any thoughts on -- as
23 you connect those dots, is there any -- how do you connect
24 those dots as to why we never connected them, you know,
25 better in advance of this thing?

1 A. I don't know. I mean it's hard to speculate kind
2 of after the fact but my take it on is is that I knew --
3 you know, I had seen e-mails I think in January that
4 Thorry had been looking into drugs and dosages and stuff
5 like that. And I assumed, having myself gotten approached
6 by Ron Thompson several times of, hey, you could capture a
7 jaguar, that Thorry was looking into that same thing to be
8 appropriately informed. And so if I had been aware of
9 anything actually out there that could inform him I would
10 have certainly brought that piece together.

11 And I understood that he was in contact with
12 Ron Thompson, and I figured that Ron should be fairly
13 familiar with anything that might be out there. And then
14 there hadn't been anything brought by Van Pelt that I was
15 aware of when Dean had approached him on this issue either
16 because I would have thought -- you know, I mean, I would
17 expect that the kind of people that would know that would
18 be Terry and Bill in the agency because they are the ones
19 that --

20 Q. Well, they have been involved with it for so
21 long.

22 A. Yeah. Position. But I just assumed that in him
23 looking and stuff, he was getting the answers that he
24 needed from the appropriate people. And he
25 didn't -- there wasn't anyone coming to me to say, hey,

1 we're missing this piece. Is there somewhere where I
2 could find this or something like that?

3 I don't know what failed to bring all of
4 those pieces together other than the fact that it's
5 easy --

6 Q. Well, you don't control all of them so --

7 A. I don't control all of them, but it's easy, I
8 think, to look at a single project and say, oh, well,
9 couldn't we have done this better, or what about this
10 piece of information. There are 50 projects running in my
11 branch currently. So this is one of those 50. I think
12 there is probably a lot of information out there that
13 could be brought to bear to improve projects or, you know,
14 where you need to connect a piece of the Department.
15 We're trying to even work with just the regions in
16 improving communications much less documents that are out
17 there that are in somewhat obscurity for different
18 projects.

19 So I would say -- and then also that program
20 manager position was still empty that would oversee that
21 project. So Kirby answered directly to me during that
22 time period, but he was -- probably didn't get the kind of
23 attention he would get if he were under a program manager
24 who could focus on just the Federal Aid projects.

25 MR. FABRITZ: So there was another layer then

1 between Kirby's layer and you?

2 MR. MCMULLEN: Kirby must be a Spec 2.

3 THE WITNESS: He is.

4 MR. FABRITZ: So there would normally --

5 THE WITNESS: There is usually a program manager.

6 MR. FABRITZ: There is usually a Spec 3 or a
7 program manager?

8 THE WITNESS: Yeah. Not a Spec -- there isn't
9 usually a Spec 3 who would oversee but a program manager,
10 a statewide, you know, wildlife supervisor or whatever.

11 MR. FABRITZ: Okapel's position.

12 THE WITNESS: A 23.

13 Q. BY MR. HOVATTER: Let me ask you this because
14 this kind of gets to -- you know, ultimately what we're
15 looking to do is to, one, arm ourselves obviously should
16 this -- should there, in fact, be this decision to sue
17 with more knowledge than we currently have, but the bigger
18 part of this is, because that will be whatever it will be,
19 the suit will be whatever it's going to be. But the
20 bigger part beyond this is what do we do so we get
21 different outcomes in the future. With all of those
22 projects you have, clearly doing an EA checklist is not
23 something that's done on every one of those projects?

24 A. Very few of those projects currently.

25 Q. And the question becomes, if in light of what we

1 have gone through, have you had an opportunity to look at
2 those other projects to determine if potentially we have
3 some other similar situation out there that would deserve
4 us confirming, for example -- because a piece of this
5 that's I think concerning in retrospect, that while we
6 believe that the permitting is sufficient, you know, we
7 believe that it is technically sufficient, it may not be
8 as unambiguous as we like but it seemed to be technically
9 sufficient, we did not -- no, we did not act with
10 knowledge that that was the case --

11 A. Right.

12 Q. -- in this. And theoretically, if we had, in
13 fact, engaged in such a way that we did bring in our 10A
14 permit guy, Eric, bring in Terry and/or Bill that
15 potentially we would have, at a minimum we would have
16 confirmed, yes, if there is an intentional or
17 unintentional take then this is what -- then we're
18 covered.

19 A. Uh-huh.

20 Q. But then potentially other things might have
21 evolved from that.

22 A. Right. Although I think even the EA checklist
23 doesn't necessarily indicate -- I don't remember anything
24 on the EA checklist that specifies whether or not those
25 activities are currently covered under your 10A1A permit.

1 You identify whether there are going to be endangered
2 species impacted and you indicate yes or no and there are
3 all of those, are you going to disturb ground or
4 whatever. And then Eric has to sign off on it as non-game
5 branch chief. But I don't know that there is anything
6 specific in the EA checklist and just to one point out one
7 of the --

8 Q. That is one of the things (multiple speakers) we
9 are -- that is one of the things --

10 A. It's not necessarily an indication then that,
11 okay, well, yes, all of these are going to happen, and
12 yes, we're okay with it as long as these steps are taken,
13 and either, yes, this is covered under our 10A1A or
14 whatever other appropriate permit may be, you know, or
15 not, or hey, we need to seek a change before these
16 activities could be implemented.

17 Q. And I kind of intercepted you before you could
18 answer, you were trying to answer completely the first
19 question I asked. In light of all of the projects you
20 have, have you had an opportunity to take a look to
21 determine to your satisfaction whether or not we
22 potentially have another unintentional take situation for
23 a T and E species that it might be prudent for us to
24 determine whether, in fact, our permit -- we have a clear,
25 clean, unambiguous permit?

1 A. Not all the projects. I've asked for a couple of
2 things. I've asked for a meeting on EA checklist that
3 Josh I would envision would lead as head of that branch
4 because it's come to our awareness that maybe we should be
5 doing EA checklists on a whole bunch more projects than we
6 are. We have been working under kind of the
7 understanding -- there was department school training on
8 the EA checklist process two years ago. I think 2007.
9 And we came away from that training -- because I had asked
10 very specifically to Rebecca, who was giving that
11 training, I said, okay. So I've got all these research
12 projects, you know. Do I need EA checklists for all these
13 research projects?

14 And she had said, oh, no. Most research
15 projects don't require, and it was kind of if you're
16 moving significant dirt type thing, when you're going to
17 get into SHIPO situations, or if you are doing endangered
18 species moving animals or something like that. So my take
19 on it was a lot of our activities didn't require it. I
20 don't know that that is actually accurate in my
21 discussions, follow-up discussions with Ginger.

22 MR. MCMULLEN: Based on recent experience,
23 probably not.

24 Q. BY MR. HOVATTER: Well, the thing -- let me ask
25 you because this is a question -- no. Go ahead.

1 A. But what I have done also is give a direction
2 that all my program managers they were supposed to be
3 putting together a list of all projects indicating whether
4 or not they have EA checklists and then indicating whether
5 they have any potential endangered species involvement.

6 One project, one other project that we
7 stopped work on is the White Mountain bear project, not
8 because we're concerned about jaguars but because then the
9 question arose, well, wait a minute. You know, we're
10 snaring bears up in -- and culvert trapping and bucket
11 snaring bears up in Greer Nutrioso. Greer Nutrioso
12 happens to be another area that we have an endangered
13 large carnivore in. And we have never captured a wolf in
14 any of our traps but this sounds dangerous too. So we
15 stopped -- and that's another project that didn't have an
16 EA checklist. So we stopped -- we never began snaring
17 this year for any animals or culvert trapping or bucket
18 snaring, so there hasn't been any capture in the Greer
19 Nutrioso area.

20 Q. Now is it your intention to proceed with that or
21 do an EA checklist --

22 A. EA checklist is already drafted and Dan is
23 supposed to begin signature. I found it on my desk and
24 then suddenly it disappeared. I called Dan, frightened
25 that somebody had come in and whisked away my EA

1 checklist.

2 Because one of the problems -- one of the
3 additional problems I found with the EA checklist is that
4 there's a signature line for the person submitting for the
5 EA checklist and then there is a signature line for
6 project leader. And people who think, well, I'm the head
7 biologist on this project, I'm the project leader. They
8 will sign off on it and it will head on down the road
9 without me ever seeing the EA checklist. I just had a
10 recent one on another project that I had required, the OHV
11 wildlife, the OHV wildlife impacts project we did an EA
12 checklist on because my antennas went up after this whole
13 deal and I demanded that all new projects have an EA
14 checklist or have something in writing from habitat branch
15 that said we didn't need an EA checklist. And that EA
16 checklist went completely through without me ever seeing
17 it because no one is even looking at the signature line.

18 Q. It would seem to defeat the purpose of your
19 guidance to do all that.

20 A. But, you know, so that's another kind of
21 breakdown where if people are just passing these on if
22 it's got a signature on the line and not seeing whether
23 the signature meets the requirements of who you would be
24 expecting to sign, there is another problem. And that's a
25 communication problem in my branch that I've, I think,

1 hopefully fixed with my program managers.

2 Q. Go ahead.

3 A. But so I don't know for certain that we don't
4 have other projects out there right now working on species
5 that are endangered species or around them because we have
6 some projects that are specific to endangered species as
7 well that don't necessarily have EA checklists.

8 Q. Well, I mean, admittedly, I mean, it is probably
9 impossible to work in very much of Arizona where there is
10 not potentially.

11 A. Right.

12 Q. But, you know, the degree of potential. I mean,
13 I suppose theoretically we could catch a southwest willow
14 flycatcher in a bucket trap. But the likelihood seems
15 pretty, you know, pretty remote, so I think if that was
16 your only issue that you probably could have some
17 confidence that that is sort -- that that situation
18 wouldn't be particularly germane.

19 Let me ask you, from the standpoint of
20 training and education, do you feel that your people are
21 adequately trained on ESA?

22 A. No. I don't feel adequately trained on ESA. I
23 can guarantee my people aren't.

24 Q. Do you feel that they are adequately trained on
25 the EA checklist process?

1 A. No. Because I'm not either, obviously. Because
2 I came away from that training two years ago with an
3 understanding that we were proceeding forward and we
4 have -- they had given us kind of a flowchart to help
5 decide when you needed an EA checklist or something too.
6 And it would seem that that flowchart doesn't adequately
7 portray what really needs to be happening in the EA
8 checklist process. So I would say that both of those are
9 lacking.

10 Q. And because, you know, it's -- as you know, you
11 need to have training too that is one that kind of brings
12 everybody up to a baseline level of knowledge. You kind
13 of have to define what an acceptable baseline is, and then
14 have you to have training that keeps pace with the fact
15 that you have new people come on board, have you changes
16 in the policies or laws that we're operating under and
17 that sort of thing.

18 A. And I think tools are important too coming out of
19 that training. I mean something like a flowchart or a
20 checklist or something that you can regularly implement,
21 especially with the turnover that we have. I mean, me as
22 branch chief, I have been here three years as a branch
23 chief now but I'm still learning about, obviously, big
24 significant issues that doesn't -- just because somebody
25 has been here even for awhile doesn't mean that they

1 understand the process the way that they should be. So
2 some type of tool that people can then rely upon, can pull
3 up, can access on the Internet or something is very
4 helpful that can give them some guidance on how they
5 begin.

6 And we are working on that. In our regional
7 meeting, and we haven't had Region 6 yet. It's scheduled
8 for the 20th. But in our regional communication meetings
9 with non-game branch, research, and all of the regions
10 individually, we have drafted a potential tool that would
11 be a project activity communication form. And it serves
12 multiple purposes. It provides the kind of information on
13 each project or activity to the region that gives them
14 information where they can help to guide us on issues,
15 landowner relations issues or military installation act
16 issues or all kinds of things that they may be more aware
17 of.

18 But it also serves as kind of a checklist
19 tool for my personnel to be thinking through all of these
20 components. Everything from, do I need an EA checklist,
21 and it doesn't give guidance on whether they do or not but
22 it says you are going to go seek one and to indicate
23 whether they have determined that you don't need one or
24 whether it's in the process or whether it's completed.
25 And also, you know, makes them think about, are they going

1 to be relying upon regional resources, and if they are
2 wanting to rely on regional resources have they got --
3 come to some kind of agreement, whether it's taking ice
4 from the regional office or using the bunkhouse or needing
5 time from law enforcement to assist on a project or all of
6 that. Do they have funding in that project to be able to
7 fund or replace consumable items from the region that they
8 might be using and have they come to an agreement. Are
9 they going to be making a lot of copies at the regional
10 office and do they need to then going buy paper?

11 So I lot of things that a project biologist,
12 especially when they are just focused on doing their
13 project, that they can easily forget. You know, things
14 like the types of thing we would expect to get back from
15 the regions in some cases, oh, wait a minute. You're
16 going to be capturing during that time period, that's less
17 than 60 days from a hunt, and so, you know, depending upon
18 the drugs you are going to use you need to either not
19 capture during that time or we need to make sure we have a
20 do-not-consume take on the animal. So there are a bunch
21 of pieces to projects that need to be more -- where a tool
22 for biologist to give them direction and make them think
23 through all of these pieces that they may not be thinking
24 about in a broader context is helpful, but they don't like
25 process.

1 Q. No. And, I mean, and some of that's -- I'm not
2 even sure you can call it Department culture as much as
3 biologist culture. Everybody would like to be as free as
4 possible from bureaucracy but bureaucracy sometimes saves
5 you too.

6 A. But I mean, for instance, some of the things
7 we've thought about is okay, we've stopped our capturing
8 but I don't know that Region 1 has stopped capturing
9 nuisance bears by any means from using a culvert trap or
10 something. They could just as easily catch a Mexican wolf
11 as we can. A culvert trap shouldn't be a big deal. It
12 should be a matter of lift the door and you let the wolf
13 out. But culvert traps can malfunction. You could end up
14 with half a wolf. And then you have the same kind of
15 situation that, you know, similar type situation that
16 we've ended up with here.

17 So I don't -- and I don't know that the
18 region has thought about that and considered stopping, you
19 know, trapping or considered whether -- because I don't
20 think any of those standard management actions are done
21 with an EA checklist either. They are all just considered
22 to be standard management actions and because -- I think
23 that there has often been this kind of nexus, oh, unless
24 it's federally funded we don't need to pursue an EA
25 checklist either. There seems to be this funding

1 component that people connect and so all of that is
2 considered to just move forward.

3 Q. Let me -- you know, clearly we were aware that
4 Thorry was seeking some information. In your -- you know,
5 in this -- in retrospect looking at that, was it incumbent
6 on someone in research branch to have made sure that
7 Thorry, as kind of the lowest common denominator in this
8 thing, was, in fact -- did have, in fact, all of the
9 documentation, had all the conversations he needed in
10 order to have the right equipment, the right preparation
11 for the situation he ultimately confronted?

12 A. Well, I think, again, that responsibility lays at
13 my feet as the branch chief. I knew that he was in touch
14 with Ron, that he was regularly working with Ron. So I
15 assumed -- and I had seen e-mails come back in from
16 Roberto because Roberto --

17 Q. Yeah. Because you got cc'd on that.

18 A. So I assumed that then he had the information
19 that he needed. I didn't -- you know, and maybe that's my
20 fault, obviously, but I didn't think to go, okay. Well,
21 is there additional information? Is there something extra
22 out there that needs to be provided? I didn't think to go
23 any further steps. Obviously, if I could have seen half a
24 month beyond that then maybe I would have. But --

25 Q. Well, you know, kind of in light of how we

1 described our way through from kind of early 2008 to where
2 we got, it's not illogical to me how that came about that
3 way. I guess another part of that is, does it -- is it
4 concerning to you that -- there is a considerable amount
5 of traffic early on between Thorry and Roberto, Thorry and
6 Ron. And I can't remember, I don't think he cc's you on
7 much of any of that. I think he may cc's Kirby on some.
8 But I don't even think Kirby was on that. Do you find
9 that concerning in the sense that, you know, Ron's not in
10 his supervisory chain, you know, Roberto, obviously, is
11 not in anybody's supervisory chain in the department? I'm
12 trying to figure out if that's indicative of just he felt
13 he was in contact with the right people, or did he, in
14 fact, feel that he was unable to get what he wanted
15 through his supervisory chain?

16 A. I wouldn't imagine that. I mean I would have to
17 ask him about that. Ted had passed away, mid to late
18 October, and so at that point then Thorry was being -- he
19 remained under Bill Persons' supervision but Bill doesn't
20 really work on terrestrials or anything. And then Kirby
21 was serving as a de facto type supervisor for him.

22 I would have to ask Thorry if he felt that
23 he couldn't get what he needed, but he never approached
24 me. I don't know if he approached Kirby for the
25 information.

1 Thorry really had the expertise for lion
2 capturing in our branch. Kirby hasn't done any, to my
3 knowledge, lion trapping before this project, and then I'm
4 trying to think if I had anybody else in the branch.
5 Because Stan used to be our big lion trapper and then
6 left.

7 Q. Well, part of this is, and just -- I'm kind of
8 surprised that this is, in fact, the answer because it
9 does seem to me that Thorry demonstrates -- seems to
10 demonstrate quite a bit of personal initiative to get
11 things done, so that's an also logical explanation for how
12 that -- how that traffic looks.

13 A. Yeah. Well, and that's pretty standard for the
14 way Thorry has worked in the past. In working for Ted,
15 Ted was not big into process or Department stuff or
16 anything either. Ted certainly was an outstanding
17 scientist but, you know, he was one of those, I'll
18 purchase it myself and then maybe do a reimbursement if I
19 think I can get money back. Not, oh, let me figure out
20 the purchasing process so I can appropriately procure my
21 field maps, you know. So Thorry has been mentored for
22 many, many years by Ted who had a lot of initiative, got a
23 lot done, had excellent science and stuff but was not a
24 department process kind of person.

25 And Thorry is kind of one of those career

1 technicians right now. He has been a technician -- if
2 he's been with the Department since, you said from like
3 2000 or so, you know, he's a nine-year career technician,
4 not generally the way we expect technicians -- technician
5 is supposed to be an entry-level position and you move
6 up. But because of his time in his job, he's very capable
7 and works very independently. I wouldn't expect to be
8 cc'd on Thorry's e-mails as branch chief unless he has
9 something he needs to let me know or ask me about.

10 So I guess I'm not surprised in retrospect
11 to find out that he was having conversations or
12 something. I knew that Ron was pretty involved. I was
13 just assumed -- Ron had done a lot of training on Thorry
14 on the urban lion project, and so I just assumed that
15 there was kind of that bond there and that was well before
16 Ron began with the Department. And so I just assumed that
17 Thorry kind of goes to Ron for any questions related to
18 capturing of lions or otherwise.

19 MR. FABRITZ: Kind of a mentor-type relationship.

20 THE WITNESS: Yeah. I would certainly from a
21 lion capture standpoint absolutely a mentor relationship.

22 Q. BY MR. HOVATTER: You know, Roberto Aguillar, you
23 know, included you on e-mails when we were having those
24 conversations about what's the best -- what's the most
25 recent knowledge on drugs.

1 A. Yup.

2 Q. Do you have a -- since you haven't been a jaguar
3 person, what is your context -- in what context did you
4 and Roberto know each other?

5 A. Roberto had applied for the wildlife health
6 specialist position in September, October. We interviewed
7 I think in October for that position. And he had high
8 hopes that he would get that position. He had left the
9 zoo under -- he was unhappy working at the zoo, had major
10 differences of opinion with the people that had been
11 running the zoo and then his hopes, once he heard that
12 Lisa had left in early September, was that he would obtain
13 a position here as a wildlife health specialist.

14 I had been in contact with Roberto while he
15 was at the zoo as well. He would just -- because we had
16 the wildlife health component, he was in contact quite a
17 bit with Lisa Shender and he was involved in everything
18 from badger trapping, you know, incidental badger trapping
19 on the black-footed ferret project and how -- because they
20 had, I think, as I understand it, accidentally captured
21 badgers on that project and ended up having to kill them
22 because they didn't know how to appropriately remove them
23 from the traps.

24 Q. Badgers would not be something I would want to
25 handle --

1 MR. MCMULLEN: Undrugged.

2 THE WITNESS: And so he had, I think, somehow
3 gotten called in on that project to assist. And he has
4 been peripherally involved in a lot of projects because he
5 was the point of contact at the zoo for all of the
6 non-game related projects as head of their conservation
7 department or something like that is what they call it.
8 So I had known Roberto well before this point.

9 And then once he heard the position was
10 open, he started cc'ing me on all kinds of stuff. I have
11 e-mails from him on any time he got called down on Matt's
12 Bobwhite quail team meeting and stuff. It was kind of a
13 hey, look at what I'm doing, and even when he was in
14 Australia he was cc'ing me on, hey, look this is what I'm
15 working on. Look at the penguin we saved, you know. So
16 there was a lot of more shmoozing for the job then and
17 then almost kind of, you know, treating me as if I was
18 already his supervisor.

19 He interviewed for that position. We ended
20 up exhausting our list of what we felt to be qualified
21 applicants in that first interview session. We
22 re-announced the position in January. Roberto didn't know
23 that we had exhausted the list only that we had to
24 re-announce. And then he applied a second time for that
25 position and by then he was going to be returning from, I

1 guess it was New Zealand, not Australia. But he had
2 interviewed by phone the first time in October and done
3 terribly. It was a bad interview. You could hear him
4 typing in the background to look up answers on the
5 Internet and verbatim reading things off the Internet once
6 he had stumbled his way through not knowing information
7 and stuff. And then he came away from that interview
8 feeling really like he hadn't done well. And he hadn't.

9 So that had been his first interview in
10 October. He reapplied for the position again in January
11 and he knew he would be back in the States and was looking
12 forward to having a face-to-face interview at that point.

13 So he had made comments in e-mails like I
14 think one of the e-mails he sent me on the jaguar thing
15 was, hey, I want to meet with you if you get time, da, da,
16 da, da. And I had -- and it was all, as I read it, stuff
17 related to the job, on his desire of hopefully getting the
18 job. He often said, oh, I would like to come take a
19 tour. Come talk to you about your desires about this
20 position. There was a lot of that kind of shmoozing. And
21 he did interview the second time for the wildlife health
22 specialist position.

23 Q. Ultimately, would it be -- do you believe what we
24 have to learn down there on that southeastern is -- should
25 result in us restarting that study? Do you think that's a

1 good study?

2 A. I think it's a solid study. The Sky Islands are
3 such a -- I see the Sky Island as being really important
4 habitat pieces and they can, I think at least certain
5 ones, sustain populations of large carnivores, which may
6 be different than say some of our mountain ranges when you
7 look to the southwest portions of the desert where maybe
8 there is -- maybe you could sustain a small population of
9 large carnivores for a period of time but there seems to
10 be a point in time when you --

11 Q. Rough one.

12 (Multiple speakers.)

13 MR. MCMULLEN: Point of diminishing return.

14 Q. BY MR. HOVATTER: The (indiscernible) are a
15 little rough on large carnivores in the Kofa.

16 A. I see that as being a really interesting place
17 where so often we're behind the curve on development and
18 stuff and it's not to stay that we're way ahead of the
19 curve on the Sky Islands but we are somewhat ahead of the
20 curve and we're lucky from this economic downturn
21 standpoint --

22 Q. Yes. Because it slowed down that curve some --

23 A. Development is going to slow down. But if we
24 are, as a Department, desirous of maintaining those kinds
25 of conductivity and looking at some of those border issues

1 as well, because that was a second piece that isn't
2 written into the Commission memo because of the political
3 aspects of talking about border fence impacts and stuff,
4 but that's another piece that presents itself in this
5 project, then I would continue the study. But if it's at
6 a point where we can't because of -- you know, because of
7 endangered species concerns then I think that we will
8 reevaluate. I think that there are ways that we can
9 continue.

10 Q. Well, I think we will. I think we will want to
11 seek to restart that. I think that's really the intent
12 right now. And you just -- because you are kind of
13 segueing to where I want to go next. Given that, how do
14 we want to -- clearly, unintentional take of jaguar is
15 something that has to get factored into that.

16 A. Right.

17 Q. Have you been able to find time to put any
18 thought into how would we want to come up with that
19 component of that study? How would we want to lay that
20 out? How would we bring in the expertise we have in the
21 Department?

22 A. I haven't considered it from the standpoint of
23 capturing lions. We have drafted protocols for -- let me
24 take a step back. My approach to this on this project and
25 all others would be to have a lot better documentation for

1 your project and your approaches, which is to have
2 protocols drafted for your standard capture techniques or
3 data gathering techniques and otherwise. And we have
4 drafted protocols now for culvert trapping, for bucket
5 snaring, for Alridge snares, which would include the type
6 that the jaguar was captured on, would include trail sets
7 as well, would include cubby sets for bears. We've
8 drafted hair snag protocols that had already essentially
9 been in place.

10 So my approach would be to have set
11 protocols. As far as capturing lions and how to deal with
12 an incidental jaguar, I think we need to draft the
13 protocol and whether we rely on the jaguar team's or
14 otherwise. One of the dangers I see is that there is a
15 lot of talk about, well, we need to monitor snares. You
16 need to have a telemetry device on the snare to let you
17 know as soon as it's gone off. You need to have a
18 veterinarian on site. If we were to go that direction I
19 think that this project becomes unmanageable from the
20 standpoint of capturing lions. Because if you're
21 monitoring with a telemetry device you're going to be
22 paying people for that entire night. That's an on-call
23 situation because it's not a matter of them sleeping and
24 then just waking up when the alarm goes off necessarily.
25 And even if it was, I would think that under human

1 resources law that it would be an on-call situation.

2 Q. Yeah. I would think so too.

3 A. The other piece is that this is on the border.

4 There are places you don't want to be at night and
5 certainly not kind of running in in the middle of night if
6 your telemetry device goes off. We have had a lot of
7 snares down there stolen, and I don't think necessarily by
8 anti-snaring people, and/or set off most likely by people
9 that are crossing the border. So if your telemetry device
10 goes off to indicate that your snare has been set off and
11 you go running into the middle of a situation of coyotes
12 that have set your snare off, you're going to be putting
13 yourself into a pretty bad situation.

14 Some of the other approaches that people
15 have talked about, like using hounds, pose their own
16 problems for us down there. One is that hounds don't seem
17 to respect the border very well and you can find yourself
18 or at least your hounds suddenly down in Mexico unless the
19 fence has been belt in which case you're pretty safe.

20 Q. Let me ask you this, now Thorry had been working
21 on -- had actually been involved in the trapping for that,
22 in that area for that part of the project since -- for how
23 long about?

24 A. I'm not positive. I'm not sure when he joined --
25 because I think he had been on the bear -- I think he had

1 been on the bear trapping for that project the previous
2 summer on and off potentially. And most of what we they
3 were relaying on for the bear stuff was a culvert traps
4 and bucket snares because that's what they found was most
5 successful down there.

6 I don't know when exactly it transferred
7 into lion capturing. I think that he was involved
8 sometime last fall.

9 Q. Is that -- would Kirby be the one who would more
10 likely know?

11 A. Yeah. As the project biologist, he was the one
12 that worked with Ted and/or with Thorry to get him in the
13 field or otherwise.

14 Q. Part -- and see, part of this too then is one of
15 the things that is kind of, you know, as you go through
16 this is that we know that Emil McCain had been on contract
17 in the fall doing -- setting snares. And we have Thorry
18 had been involved at least from January, some part of
19 January on. Whether he was involved earlier or not
20 doesn't seem clear. But there is this tremendous flurry
21 of preparation for potentially -- for taking a jaguar, for
22 potentially taking one, and you know, starting in early
23 February. And the question is is that, the study -- there
24 had been trapping going on in that area at least since
25 November, early November, maybe as early as October, and

1 yet we don't have anything similar to that kind of a
2 string. And I'm just wondering why -- why then was
3 something that, you know -- it would make more sense if at
4 the very beginning when we started snaring you had seen
5 that kind of flurry, well, this might happen, let's get
6 ready in case it does, but to have it happen then, do you
7 have any -- I don't know that you have even seen a lot of
8 that traffic, but do you have any sense of that?

9 A. No. My only reference point was with Ron kind of
10 incessantly and that's what had driven me up, you know, at
11 the end of December, early January into the whole EA
12 checklist pieces. So I kind of assumed when I saw
13 Roberto's e-mail come through, I thought, oh, okay.
14 Well, Ron has been communicating the same thing to Thorry
15 and he's making sure that he has preparation on if that
16 were to happen as well. So that was kind of my thought
17 process in seeing that come through.

18 Q. Well, you know, when we restart that project,
19 have you got any thoughts at this point in your thinking
20 on it about -- well, I'll preface it. You know, in the
21 e-mail traffic related to this project for some several
22 months worth of stuff terms like recent jaguar activity,
23 or nearby jaguar activity creep in quite a bit. And, of
24 course, those are wholly subjective terms, and without
25 some, you know, is nearby one mile, 100 yards, 10 miles?

1 Is recent one month, a week, four months, you know, in the
2 context of the habitat and jaguar behavior and all? Do
3 you have some sense of do we need to or do you think that
4 when we restart this project that a part of what we
5 address is when proximity in time and space may result us
6 in deciding not to put a snare in operation?

7 A. Absolutely. And I have already drafted a
8 protocol for the southeastern -- following our jaguar
9 debrief meeting, one of the things that we identified was
10 the need of some kind of communication protocol with Terry
11 or whoever may be the endangered species coordinator who
12 would have the most current information on jaguar, you
13 know, sightings or otherwise. And so I drafted a protocol
14 that would specify any activities of capturing large
15 mammals that occurred south of I-10, I think, and east of
16 I want to say like the Tohono O'odham Reservation.

17 And it's a full protocol that specifies --
18 that specifies a whole bunch of things that, if you are
19 looking to capture that you would submit your study plan
20 or design, that you would have to submit monthly, I think
21 it was, your schedule to Terry so that he would know when
22 and where you were capturing so that as the information
23 came in to him then he could make -- rather than him, say,
24 transmitting the information to us, oh, here are where all
25 the jaguar sights were at. It would be more a matter of

1 him saying, okay, you now need to shut down without any
2 specific information being transferred to us necessarily
3 on, oh, a jaguar has been sighted exactly here, but just
4 that it would trigger an actual shut down. And it's
5 specified in that protocol, which Terry has reviewed, a
6 distance component and a time component, which he had
7 provided those. And I would have to look back at the
8 draft protocol because it's been a month and a half or two
9 months since we were dealing with that. But I think it's
10 something within the last month and within ten miles, or
11 something like that.

12 Q. Let me ask you this -- I'm sorry. I didn't mean
13 to interrupt.

14 A. No. Not a problem.

15 Q. Once that jaguar was captured, and of course we
16 had the meeting to say, okay, now we captured this
17 jaguar. Who's in charge? And so it was determined then
18 that Terry and Bill was his understudy because he was
19 jaguar.

20 A. Right.

21 Q. At that point what did you -- this almost seems
22 like this -- that the jaguar became Thorry's project or
23 working that jaguar was kind of a totality of what he was
24 being invested in at that point because we were getting
25 daily reports. Now if we had gone on for three, four,

1 five, six months we probably would have gotten into a more
2 normal --

3 A. I don't think the daily reports came from
4 Thorry. The daily reports came from Emil.

5 Q. Yeah. On locations and things like that. What
6 was -- what was your sense of what was research branch's
7 role with -- because I mean Thorry is essentially a
8 research branch person.

9 A. Right.

10 Q. But now we got this project and this jaguar being
11 monitored, and we knew we were going to watch him very
12 carefully for the first couple of weeks, and once we felt
13 he was kind of out of that capture myopathy another window
14 then we could go to more normal operations. But what was
15 your sense of what your role and what research branch's
16 role was at that time?

17 A. My sense of the role was this animal is not a
18 research animal, that it belongs to the endangered species
19 coordinator and the non-game branch. So my take it on,
20 and what I had told many people is this is not a research
21 animal. This is not a research jaguar. We never went to
22 look for a jaguar. We didn't want to collar a jaguar.
23 And in fact, I was still operating under the standpoint of
24 you don't want a collar on a jaguar. And when Kirby
25 called me on Thursday to say, oh, by the way, have you

1 heard yet we captured a jaguar yesterday and we collared
2 it. I was like, what? We talked about this. We
3 discussed this. And so I was surprised to find out that
4 we even had a collar on the animal because the last
5 conversation I had had with Kirby was, you know, in June
6 or May whenever we had Department school in 2008 was no
7 collar on any jaguar. So I wasn't even aware of kind of
8 this discussion that had gone on in the background of that
9 stuff.

10 Q. Everybody should have carried a can of mountain
11 lion brown spray paint. Should have just sprayed that
12 cat.

13 A. So my take was that research branch was out of it
14 other than the request that came into me for various
15 things of, oh, can you help coordinate these samples, or
16 can you coordinate this with, you know, from a wildlife
17 health perspective. But it was not considered a research
18 animal on my standpoint.

19 Now I knew that Bill was in regular contact
20 with Thorry on this. And I knew that Bill had talked to
21 Thorry. Bill Van Pelt I'm talking about.

22 Q. Yeah.

23 A. I knew that Bill had talked to Thorry the week
24 before the jaguar ended up getting captured because I
25 hadn't even -- I wasn't included in the daily updates on

1 the jaguar stuff. It was really kind of, I think, central
2 to you guys and things. So I didn't know that there was
3 concern that the jaguar had been declining or not moving
4 as would be expected until Bill at one point had said,
5 well, we're thinking about going in and checking on this
6 jaguar. And that was the week before the actual capture.
7 And he, I knew, was in contact with Thorry fairly
8 regularly and stuff.

9 So I kind of had really -- I was like, well,
10 whatever they need of Thorry they can take of Thorry, you
11 know. Obviously, he has knowledge of lion capture and of
12 this particular animal and where it was captured and et
13 cetera.

14 Q. So your -- you were not -- or were you involved
15 in beyond being informed that there was a consideration?

16 A. No.

17 Q. To a point in the decision to go back and do the
18 recapturing?

19 A. No. The first I got was the e-mail from Terry on
20 Sunday that was kind of the panicked e-mail of, oh, we
21 have, you know, a capture attempt on the ground for this
22 animal, da, da, da, da. We need to get a helicopter
23 immediately and how do we do this? And I had been on
24 e-mail that Sunday morning, saw that coming in from Terry
25 and responded back and said, Papion is our contract

1 helicopter. I would talk to Bill Davis. He can give you
2 all the information.

3 And then Terry responded back and said, oh,
4 actually Gary has the reins on this now. I'll forward the
5 information on to him but he's got it. Please correspond
6 with him.

7 And I think I responded back to that and
8 said, any help you need, just let me know.

9 And so that was the first I knew of any
10 actual capture attempt that was going on.

11 Q. Were you ever -- did you ever hear directly or
12 peripherally any discussion about the use jaguar scat as
13 an attractant or a lure?

14 A. Not until whenever it was, March 31st whenever we
15 were --

16 Q. Had you ever heard of Janay Brun in this thing?

17 A. No.

18 Q. In the course of this thing?

19 A. I had heard at one point -- I'm trying to think
20 at what point this would have been. I had heard at one
21 point of somebody indicating that Emil referred to, oh, I
22 have an assistant and she can, you know, check on this.
23 And it had to do with cameras or something that was going
24 on, or I don't even remember what exactly what. So I had
25 heard of a "she" kind of thing in the picture.

1 MR. MCMULLEN: This was an e-mail or a
2 conversation?

3 THE WITNESS: Yeah. And I don't remember which
4 it was. It was just kind of, oh, well, she can check on
5 it, my assistant, and it was without any kind of name
6 associated with it. But then when I got called into the
7 director's office on, I think it was March 31st or
8 whenever the information came in from Tony Davis and
9 stuff, then I thought, well, maybe that's the she
10 assistant that -- that was being discussed.

11 I think Thorry had mentioned that Emil had
12 indicated something about his assistant, a female,
13 checking cameras or something up in the mountain.

14 Q. Did -- are you -- do you know if it's in research
15 branch's activities dealing with lions and bears and all
16 that, how common or is it at all common that we use lures
17 or attractants to help improve the success of our traps or
18 our snares?

19 A. I haven't heard of any -- like on the urban lions
20 project I wasn't aware of any lures and, I don't think
21 lures were used on that project, to my knowledge at
22 least. I have heard, I know Brian Jansen on his project,
23 the project that I visited up in South Dakota was using
24 carcasses, deer carcasses or otherwise around snares. But
25 I wasn't -- I don't think that we have ever used

1 carcasses, at least to my knowledge, on our snares.

2 Q. I think we have snared around kills.

3 A. Like Kofa or --

4 Q. I think that's fairly common practice to do that.

5 A. And then I'm trying to think of the Unit 22
6 study. I don't even think we necessarily snared on the
7 Unit 22 study.

8 MR. MCMULLEN: Not very successfully.

9 A. Not very successfully. I think, and that was way
10 before my time, that was even before my time --

11 MR. MCMULLEN: That was before you were at the
12 branch, I mean, chief.

13 THE WITNESS: Yeah.

14 Q. BY MR. HOVATTER: Did you have at your level any
15 visibility in particular on Michelle's involvement in
16 this?

17 A. She's a technician as well, so all of her
18 involvement is -- you know, she reports to Kirby as her
19 supervisor, and so he directs her daily activities. I was
20 certainly aware that she was working on this project as
21 Kirby's technician but her day-to-day activities I wasn't
22 involved in.

23 Q. Well, she was kind of in the same boat as Thorry
24 was as far as the way that field techs were used and
25 involved in these projects.

1 A. Yeah. She like flies to the Chino prong horn and
2 she sometimes goes and helps on other projects like Kaibab
3 vegetation sampling. A lot of that gets coordinated
4 between the various project biologists.

5 As far as lures, the one other place that
6 I know we've used lures was not for capture so much as Ted
7 had done a, I'm trying to remember what the name of that
8 project was, like a predator survey project to look at
9 bobcats and foxes and stuff, and in that they had used
10 scent tabs.

11 MR. MCMULLEN: Using track beds.

12 THE WITNESS: Yeah. To bring them into track
13 beds. And then I think maybe -- he had talked at one
14 point about how difficult it was to bring in bobcats
15 because they didn't seem to come into lures, and so I
16 don't know if he ever implemented it but he read something
17 about like sparkly, shiny.

18 MR. FABRITZ: Site exposed --

19 THE WITNESS: Yeah. Kind of like if you were to
20 use tinsel or something that the animal could see the
21 movement of and things that he had heard that that might
22 work better because he was having trouble getting any kind
23 of reasonable number estimate on bobcats. So that's the
24 one project that I know that we've used kind of scent tabs
25 to bring in.

1 And then the hair snags we always use a
2 fish concoction because with the hair snag you don't want
3 a bait that they can take away. Like you don't want a
4 fish that they can consume.

5 Q. Yeah. Because then you have to re-bait it every
6 time.

7 A. And then the cubby sets for bears we absolutely
8 used.

9 Q. Yeah.

10 A. And that's usually carp but we've used sometimes
11 some other stuff. We use a fish oil concoction on the
12 hair snags so there is something there that smells but
13 nothing that an animal can take and carry away with them
14 so that smell remains for all the animals that potentially
15 come by.

16 MR. FABRITZ: Gary, can I ask a question?

17 MR. HOVATTER: Yeah. Sure.

18 MR. FABRITZ: It's a follow up for Chasa. You
19 said the day after the capture and collaring of the jaguar
20 that Kirby -- I think you said he called you and told you
21 what happened. Did you have any follow-up questions to
22 him, like, how did that all come about, because I think
23 that was the direction earlier was --

24 THE WITNESS: Well, I knew they were capturing
25 lions, and he said, oh, well, we captured, you know, a

1 jaguar yesterday in one of our snares. And my first
2 thought was, whoa. You know, oh, my goodness. I thought
3 we talked about this, Kirby. And a kind of, this happened
4 yesterday, why didn't I receive a call yesterday?

5 Q. BY MR. HOVATTER: What was his answer to that?

6 A. Well, I didn't ask him that question. I was more
7 like, okay. I have people I need to tell about this.

8 Q. I got it.

9 A. Because -- and he gave me only -- I didn't have a
10 lot of the specifics. I knew that we had captured a
11 jaguar. I think he gave me a kind of general location and
12 stuff and then -- and I'm trying to remember what else I
13 wrote down.

14 MR. FABRITZ: So your main concern was, oh, this
15 is a big deal I better --

16 THE WITNESS: This is a big deal. I need to tell
17 somebody. And I knew that this was an empty day at the
18 director's office because this was the day that McCain was
19 flying and Gary was down at the hanger and Larry was gone
20 and even Mike was gone. So I grabbed Eric, who was the
21 acting AD and non-game branch chief, so should know about
22 this from two perspectives. I told him immediately. We
23 went running down to the director's office, grabbed you,
24 and then got Gary on the phone right before, I think, you
25 headed off on a plane.

1 Q. Before jumping on a plane.

2 A. And we informed all of that and then we also
3 eventually later that day -- and of course, I and E, we
4 told them somewhere in this process. And then Bob Miles
5 was on me for a lot of more information and wanting photos
6 and needing to talk to Thorry. And we had an I and E or
7 an information meeting where we were trying --

8 Oh, Eric and I had immediately also tried to
9 call Terry after we had gone through informing Gary and
10 everybody. And so Eric and I got on the phone and only
11 got Terry's cell phone and left a message to him saying,
12 hey, we need to talk to you, you know, there has been
13 this. And we knew or Eric knew that he was on his way to
14 a jaguar meeting down --

15 Q. Yeah. For the jaguar conservation team.

16 A. And then we had the information meeting with Bob
17 and Linda, me, Eric, I think, and I don't remember who
18 else. And then -- and Bob was on me for, we need more
19 information. We need -- you know, we need pictures. We
20 need to track him down right now. And I was like, I don't
21 even know that I can even reach Thorry. He's in the
22 field. We need -- I can certainly try but I've already
23 tried and I've left messages. And so there was a lot of
24 scrambling just to get, try and track down Thorry, try and
25 get more information. And then also we finally reached

1 Terry in that information meeting and he was a little
2 upset because he hadn't gotten our message on his cell
3 phone and felt that he had been left out of the loop. And
4 he had been pulled aside I think by Jack Childs.

5 Q. Jack Childs.

6 MR. FABRITZ: So did you ever -- did you ever
7 follow up with Thorry after that or with Kirby after that
8 at any point with questions like how did the whole collar
9 thing come together or, because I think the direction was
10 we don't want to mess with it or anything and then I think
11 you guys were aware of the coordination on the --

12 THE WITNESS: On the drugs.

13 MR. FABRITZ: On the drugs and the dosages. But
14 did the thought ever occur to you of what might have been
15 occurring behind the scenes as far as --

16 THE WITNESS: I didn't worry too much about it
17 because I had thought that that would be a huge issue.
18 And then as soon as it came out, Terry was like, well, of
19 course, because we had already identified in the jaguar
20 team that if one was incidentally captured it should be
21 collared. And I was like, oh, that's news to me. I
22 didn't realize that. Then if you're okay with this I'm
23 okay with it then and not going to freak out about -- you
24 know, I had figured that it would be a situation where we
25 were in deep trouble that, A, you know, that we had

1 captured the animal, but, B, more importantly we put a
2 collar on an animal that we never should have collared.

3 Q. BY MR. HOVATTER: Were you aware that we had
4 obtained a collar, that Thorry had gotten a collar
5 specific for the jaguar?

6 A. I didn't know that he had it, no. I didn't know
7 that he had a collar with him that was specific to jaguar.

8 MR. MCMULLEN: When did you find that out?

9 THE WITNESS: When I talked -- at some point when
10 we talked to -- I don't know if Kirby said it in his
11 follow-up discussions or Thorry --

12 MR. MCMULLEN: Post action, post capture, you
13 mean?

14 THE WITNESS: Yeah. Post capture I found out.
15 Because they said, oh, well, no, this one doesn't
16 have -- because we were concerned about a VHS signal
17 because we've had a lot of lions removed by hunters. And
18 they said, oh, no, this one was actually configured
19 specifically, and I was like, really, how are we ending up
20 with a jaguar-configured collar. And it kind of went,
21 like, oh, well, when we were concerned about potential
22 incidental capture they already had a collar that had been
23 donated for jaguars and we've had it around in case of
24 incidental capture.

25 MR. MCMULLEN: Do you know when they got that

1 collar?

2 THE WITNESS: I don't know.

3 Q. BY MR. HOVATTER: I think we know the answer to
4 this but I just want to for completeness sake, to your
5 knowledge were Thorry and Michelle ever briefed
6 specifically about what to do if there was an incidental
7 capture?

8 A. No. Not briefed by me and not briefed, I don't
9 think, by Kirby. Other than what Thorry had learned on
10 his own from the e-mails like from Roberto and stuff, I
11 don't know of any briefing they would have received on
12 what to do with an incidental capture.

13 Q. When you talked to Thorry that morning on the
14 19th when he called to tell you, did you get to in your
15 questioning who besides himself was at that scene of the
16 capture?

17 A. Yeah. And he said Michelle.

18 Q. Anybody else? Do you know what Emil's -- was
19 Emil on our payroll at this time or was he still a
20 contract -- one of the subcontractors on this?

21 A. He wasn't being paid, no, for any kind of
22 services on this project. As I understand it he had the
23 photo, what is it, the Heritage funding for the photo
24 stuff or whatever.

25 Q. Now he had been contract or been subcontractor

1 earlier in the previous year?

2 A. Yes.

3 Q. Do you know what -- how that -- do you have any
4 knowledge about how -- did that just end at the end of the
5 calendar year, or how did he -- why was he no longer
6 involved in that project?

7 A. Because of funding. Because Kirby kept -- Kirby
8 was like, oh, I want a contract for lion capture. Kirby's
9 expertise isn't in lion capture and I think Ron had
10 suggested Emil.

11 MR. MCMULLEN: Good call.

12 THE WITNESS: For October, November, December,
13 somewhere in that time frame.

14 (Indiscernible.)

15 THE WITNESS: Well, my understanding is that he
16 went out in January with Kirby or Thorry, I think Thorry,
17 to show him the sites that he had been --

18 Q. BY MR. HOVATTER: That he had put into
19 operation.

20 A. Snaring in October, November, and December, and
21 so --

22 MR. MCMULLEN: Do you know if that was in the
23 study area, the predetermined study area?

24 THE WITNESS: I don't know if it was one of the
25 boxes, per se. I mean as far as the actual study area, we

1 never had a specific study area outlined other than a map
2 like this in one of the proposals, and I don't know, and
3 I'm not familiar with the area where the animal was
4 captured.

5 Q. BY MR. HOVATTER: Do we know, is that from one of
6 the proposals?

7 A. Yes.

8 MR. MCMULLEN: Yeah.

9 THE WITNESS: That is a page out of --

10 MR. MCMULLEN: That's where I pulled it out of.

11 THE WITNESS: One of the landscape conductivity
12 proposals.

13 MR. MCMULLEN: It's not a study plan. It's just
14 a proposal.

15 THE WITNESS: Yes. But it was the closest we had
16 to a study plan.

17 MR. MCMULLEN: Right.

18 THE WITNESS: He had had a lion collared in the
19 same area before and then it had been harvested, legally.
20 And so my understanding was that they were returning to
21 that same area to then attempt to collar another lion in
22 that area. It had been a lion who had actually done some,
23 I think, crossing even of the border and stuff so it was a
24 real good data set.

25 MR. MCMULLEN: It was a really good lion.

1 MR. FABRITZ: Was that 36 B --

2 Q. BY MR. HOVATTER: One you don't want to loose.

3 A. We like lions that move.

4 MR. FABRITZ: That was in 36 B?

5 THE WITNESS: I don't know the game management
6 units.

7 MR. FABRITZ: I think it was 36 B.

8 THE WITNESS: Thorry or Kirby could give you more
9 information on that, or the capture data sheet has that.

10 Q. BY MR. HOVATTER: You know, I think we have
11 answered this but you did not know then that we
12 had -- that there was, in fact, a jaguar-specific collar
13 until after the fact of the capture?

14 A. Right.

15 Q. Our field techs, do they get formal training by
16 us on administration of drugs?

17 A. Yes. They are required to under the Department
18 operating manual. And Thorry had that and well beyond.
19 He had -- we had called it the chemical and immobilization
20 training for wildlife capture training, and that's
21 changed, I think, over the years as I understand it. I
22 think it used to be only a day long and then we have
23 expanded it to be more of a day and a half to two days of
24 training, in part because we have also expanded it to
25 really deal with captures that's both chemical and

1 non-chemical capture.

2 And so he had that training already. He had
3 had the safe capture training. And he had had another
4 company's training. I think it may even been -- I don't
5 know if it was Ole's company, the company he works for,
6 but he had certificates from two other separate chemical
7 immobilization trainings besides our Department training
8 which he had also completed.

9 And Michelle had completed the chemical
10 immobilization training as well.

11 Q. Let me ask you something, do you know -- did you
12 know that Emil McCain was the source then or who we were
13 getting the location information from for those daily
14 reports on the jaguar? Did you know at the time that that
15 was occurring that Emil was where that was coming from?

16 A. After the capture when we had the collar?

17 Q. Uh-huh.

18 A. Yeah. I knew that Emil was -- I thought that
19 Emil was the one only because there were a couple of times
20 when they got forwarded to me from somebody who would make
21 a comment or something like that. I wasn't in the main
22 distribution list, but I think there were some e-mails
23 that came out later as people were discussing pieces and
24 so they would get forwarded on and I would see --

25 Q. It was clearly when we did the recapture really

1 got -- because a lot more of us got included at that point
2 in this networking.

3 A. Because Bill would say, Emil was talking about
4 this. And Emil, that's the other thing, Emil was in Spain
5 during that whole initial thing and Bill would say, oh, I
6 think Emil stayed up all night. I was getting -- he was
7 almost getting like regular updates or something.

8 Q. Let me ask you this, because he didn't have --
9 Emil didn't have -- wasn't getting a paycheck or getting
10 funds from us for participating or assisting in the
11 snaring and in that study. Do you know how or why he was
12 in that middle man role for that information on the
13 collar?

14 A. No. I don't know. Because once we collared the
15 animal and I had been informed and stuff, again, I saw
16 that as Terry and Bill's animal at that point, not a
17 research animal. And so at that point Bill had engaged
18 and Terry had engaged with Emil or whatever, and then all
19 of those kind of decisions and coordination, as I saw it,
20 was occurring between them.

21 Q. On the lions that we had and the bears that we
22 had that were collared in that area, were those GPS
23 collars?

24 A. Yes.

25 Q. And were we going through a middle man to get

1 access to the website for the data on that or were we
2 getting that directly?

3 A. No. Kirby directly accesses it.

4 Q. Do you have any sense why Emil was in that role
5 in that?

6 A. No. I have no idea. I mean, I don't know why
7 Bill or Terry didn't take it over unless it had to do with
8 who the collar was given to or otherwise.

9 Q. Yeah. I had that same question we're going to
10 ask down the road when we get closer to those folks on our
11 question list.

12 MR. MCMULLEN: Was it the same website? If you
13 wanted to monitor a lion collar, would you go to the same
14 website that you would need to go to in order to
15 monitor --

16 THE WITNESS: The same general website for North
17 Star but you have a pass code that gives you access to
18 that particular frequency. And so you can only -- like he
19 can't access our lions unless he has our pass code for the
20 lions. And we wouldn't be able to access the jaguar
21 unless we had that pass code. We can go see our lion data
22 and we won't see anybody else's data that is there.

23 MR. MCMULLEN: All right.

24 MR. FABRITZ: Where is that located at,
25 administered out of that Blake --

1 THE WITNESS: I don't know where North Star is
2 based out of.

3 MR. HOVATTER: I think it's California.

4 MR. FABRITZ: Is it California?

5 MR. HOVATTER: Yeah. I was on his website the
6 other --

7 MR. FABRITZ: Okay.

8 Q. BY MR. HOVATTER: I would have to go back and
9 look. You know there was -- there is an e-mail, and it is
10 not clear that it ever happened, there is an e-mail that
11 involved Steve Spangle and Terry Johnson and about a
12 borderlands carnivore meeting that we were sponsoring in
13 December. It was supposed to happen on December 9th. Was
14 there, in fact, such a meeting? Was that something we
15 sponsored?

16 A. Between Terry and --

17 Q. Here's the way it comes in. Terry sends a note
18 to Steve Spangle on the 4th of December saying, hey,
19 Steve, a USDA friend of mine in Colorado says that there
20 is a borderland carnivore meeting in Arizona on -- this
21 month in December. Is this something you're sponsoring?
22 I haven't heard anything about it.

23 Steve comes back to him and says, well,
24 yeah. Actually Game and Fish is sponsoring it and it's on
25 the 9th of December.

1 And I know Eric didn't sponsor it. It
2 wasn't his meeting and clearly Terry didn't.

3 A. Right.

4 Q. And so the only other logical people that might
5 have done that would have been your branch. Are you aware
6 that such a meeting everything occurred?

7 A. I'm trying to remember. I know that Kirby has
8 been in attendance at several borderland carnivore
9 meetings. And I think that there was one that he attended
10 at the beginning of December, usually with like Erin
11 Fernandez with Fish and Wildlife Service.

12 (Indiscernible.)

13 A. Usually Erin Fernandez and there has been a
14 variety of meetings to talk about, like, border fence
15 impacts and things like that.

16 Q. Because there is some funding that we're looking
17 at too out of that borderlands --

18 A. Yeah. And then later on with the stimulus
19 package money and all kinds of things.

20 Q. Okay.

21 A. I'm not aware of Kirby having sponsored anything
22 and in all honesty --

23 Q. May have been hosting may have been the right
24 term.

25 A. Maybe we were discussing it and stuff. I would

1 think that -- I know Ron has been very involved in stuff
2 down there that's even broader than our project because he
3 has strong community -- you know, connections with Melanie
4 Culver, and she's doing a lot of genetics work with lions
5 within the State. He has been in contact with Gary Romer
6 out of New Mexico. He's doing a lot genetics work out of
7 New Mexico and has used some samples out of Arizona.

8 So I would expect that if there was
9 something -- Kirby doesn't tend to be proactive kind of
10 starter type person to create meetings, projects. I would
11 imagine if there was a coordination piece that was talking
12 broader borderlands carnivore stuff that it would be more
13 directed out of game branch with Ron.

14 Q. Yeah. Let me ask you this, do we have other
15 folks working, research branch folks working down in that
16 border area on other projects right now?

17 A. We do.

18 Q. Were you -- were you, and then the segue of
19 course then would be by extension, do they, were you aware
20 or are you aware of the jaguar conservation team protocols
21 establishing the network for reporting jaguar sightings
22 and jaguar information up to the jaguar conservation
23 team?

24 A. No. I wasn't aware of any of those until well
25 after the whole capture thing and when Terry started

1 bringing up the fact that, hey, we have a communication
2 protocol in place. It should have been implemented in the
3 case of the capture of a jaguar. And I was like, well,
4 sorry. We didn't know that and I went straight to the
5 director's office when I heard.

6 Q. Have we -- have we revisited that with folks who
7 are operating on the border to let them know about that
8 network?

9 A. We haven't, no. I haven't thought about -- I
10 mean, none of them are doing large carnivore work but
11 certainly from the standpoint of even sightings that would
12 make sense.

13 Q. Because I haven't read it, Chasa, until we got
14 into all of this, obviously.

15 A. One would think that would almost go into the
16 border safety training. I mean the onus should be on
17 borders operation training so that it's broadened out from
18 just safety to being more of here are all of the items
19 that you need to think about when you're working in a
20 border area.

21 Q. And I was thinking that, you know, I'm wondering
22 if it wouldn't be worth our while to have an annual sort
23 of borderlands coordination meeting where we have got --
24 I mean even when you extend over into western Arizona, I
25 mean, Sonoran prong horn and other things, from the

1 standpoint of the safety aspects of it but also from the
2 standpoint of coordination, T and E species, game species,
3 non-game species and all those other things to be a able
4 to review existing protocols and probably not make
5 everybody an expert but get to this level of since --
6 everybody at a level of awareness that such a thing exists
7 so that at least -- not expecting them to know off the top
8 of their head but just to know that there is, in fact, a
9 protocol or there is an issue about that species with that
10 area where they can get on the phone to someone who is the
11 expert on that and say, okay, is there an issue here I
12 should be aware of. And I'm increasingly of the mind that
13 that probably would be a day well spent for the department
14 if we did that.

15 A. I could see that being really valuable. I also
16 see this as being, and I'm sure this is way down the road
17 but we keep talking about geospatial planning tools and
18 the benefits and stuff.

19 Q. Yeah.

20 A. I could see real benefit from having a kind of
21 borderlands operation map or something where you click on
22 the point where you're going to be working from or
23 something and it brings up kind of all the issues, all the
24 protocols that you should be aware of, the permitting
25 considerations.

1 Q. Wouldn't that be -- you would think we would be
2 able to tag the pixels or tab --

3 A. You should be able to do a polygon I would
4 expect.

5 Q. Tab the polygon for that.

6 A. Yeah. That specifies that oh, you have a
7 protocol that applies to this polygon in a map or
8 otherwise, and so that when you click on it it brings it
9 up and it says, you know, here's all the pieces that you
10 should be aware of in here. We have -- if we were to
11 implement something like that protocol that I was saying
12 that I drafted about working south of the I-10 and east of
13 the Tohono O'odham capturing any large carnivores, because
14 I foresaw the implementation of that not just in research
15 but across the board, that if a wildlife manager is
16 looking to capture a nuisance bear that they are aware of
17 the protocol for letting, you know, Terry know and that
18 then Terry would be aware that they were going to open a
19 culvert trap or a snare or something in an area and then
20 Terry could say, oh, yeah, you're way outside of anything
21 that I'm worried about at all.

22 Q. There is some e-mail traffic, and I think it
23 actually kind of goes through Aguillar and some others
24 talking about, the term they use is range-wide jaguar
25 meeting for 2009. Is that anything that is on your

1 screens because it's not clear that it wasn't something
2 that somebody was looking to do in the spring and it may
3 have never happened. Was that anywhere -- do you have any
4 awareness of anything like that.

5 A. That wasn't the meeting that Terry was at then?

6 Q. No.

7 A. No. Jaguar border --

8 Q. Conservation team.

9 A. No. I'm not -- that wasn't anything that was on
10 my radar screen at all. I thought Terry at one point had
11 talked about the fact that they were going to be looking
12 at protocols, and that he had -- that they had some duties
13 that were going to be coming out of that jaguar team.

14 Q. Well, I'm thinking it may have been also, I think
15 they were looking to the idea of the cross border
16 component and the idea of if you want jaguars in Arizona
17 you got to have jaguars in northern Sonora or you just
18 don't have them.

19 A. Correct. And there is considerable activity with
20 jaguars south of the border that involves people from
21 Arizona because Ole and DeVoss are involved in jaguar work
22 south of the border.

23 Q. Ron's gone south of the border. Emil has gone
24 south of the border. I mean, some of -- Carol Lynn has
25 gone south of the border to do some freelance photo work

1 or video work.

2 A. What they are trying to work on as I understand
3 it at least from DeVoss and Ole and stuff is that they are
4 looking to take an animal, a jaguar, that's in captivity
5 that has also broken teeth --

6 Q. Yeah. This broken canine thing?

7 A. They seem to have really fragile teeth. And then
8 do the prosthetic teeth like the Lucero situation and then
9 release this animal back in the wild. And they have been
10 having problems finding a feline --

11 MR. MCMULLEN: Jaguar dentist.

12 A. -- dentist that was willing then to guarantee
13 their work for -- they feel more comfortable with an
14 animal that's going to remain in captivity and eat kitty
15 food than they do with an animal that's going to get
16 released and then have to depend upon those teeth for
17 capturing prey, whether it be peccaries or whatever you're
18 going to capture down there. So they had been having
19 trouble finding a dentist who would then guarantee their
20 work for an animal to return to the wild. But my
21 understanding is Ron had mentioned something recently
22 about maybe that's where Lucero was going. So --

23 Q. Well, it sounds like they have got kind of back
24 log because of the way these animals fight --

25 A. In cages.

1 Q. That they have a back log of these animals that
2 have been captured and had these broken teeth and right
3 now there is just no world for them, everybody who that
4 needs a jaguar has got one.

5 One of the things -- you know, it seems, and
6 this is kind of a sense, this isn't a data driven
7 observation, but it seems like, you know, in looking at
8 lot of the trafficking with Thorry and his coordination
9 and all for several months around this process, Kirby
10 seems to kind of pop up rather infrequently in that. Is
11 that reflective of anything or is that -- is that -- am I,
12 perhaps, just misperceiving?

13 A. I don't know that it's reflective of anything
14 specific. I mean Kirby is a pretty -- Kirby is the type
15 of person who does what you ask him to do. Like I said
16 with regards to setting up any kind of meeting or
17 something, he's not a big proactive, step outside and do a
18 bunch of extra type stuff. So I think it's probably just
19 indicative of the fact that Kirby was really allocating a
20 lot of the lion capture component to Thorry, deferring to
21 his expertise more than anything.

22 But I would expect that there would have
23 been coordination between Kirby and Thorry on capture and
24 if not then that would be a surprise to me because Kirby
25 is supposed to be running that project and as a Spec 2 is

1 certainly over somebody like Thorry who is a technician.

2 Q. Were you aware that there has been photos of
3 Macho B from January near that area where we were working
4 on this large carnivore?

5 A. I don't think I was aware of that before the
6 capture. I mean I heard shortly after the capture and
7 stuff but unless there was something buried in an e-mail
8 from somebody else, Roberto or something, I didn't have a
9 strong sense. I wasn't getting regular updates on jaguar
10 locations.

11 Q. You know, this is -- this is one of those perfect
12 hindsight questions. In hindsight, knowing everything
13 that we now know that we didn't have any idea of at the
14 time, what should we have done differently from your
15 perspective.

16 A. Well, starting when?

17 Q. Kind of a higher order from your perspective.

18 A. A study plan in place, like a set study plan not
19 proposal format.

20 Ideally I would have had a program manager
21 in place. I don't know that I would have been able to
22 move any faster than I have, but it would have been nice
23 to have a program manager in place because a lot of these
24 detail things are where you expect a program manager to be
25 more involved. And that position went vacant for a year

1 and a half almost.

2 I would have stopped all work and made sure
3 that there was an EA checklist in place before we
4 continued on. And I mean hindsight being everything I
5 obviously would have also done a whole lot more
6 investigation into to why the jaguar stuff was coming up
7 or why Ron was insistent on, oh, you might capture one.
8 Why Thorry was more actively pursuing that stuff and been
9 more direct in my communications of expectations, et
10 cetera and also probably connected a lot better with Terry
11 on the issue and with Eric on the issue and that type of
12 thing.

13 Again, hindsight, but I would like, and one
14 of the ways were working towards on all projects now is to
15 have protocols in place for all of those field activities,
16 capture activities, et cetera. And it's not just this
17 situation. We've had some safety situations recently that
18 have been brought up regarding abandoned mine entry for
19 bats and that kind of thing.

20 I think it's a lot better if you have some
21 real standard protocols in place that are embedded with
22 all the people in the Department. For instance, we have
23 been drafting a safety protocol for abandoned mine work
24 for bat surveys. So we have been involving Tim Snow. We
25 have been involving Bill Berger. He have been involving

1 Angie McIntyre. So all the bat type people that we would
2 consider to be involved in the Department.

3 Q. Let me ask you -- oh, go ahead.

4 A. I think it would be a benefit to the Department
5 across the board to have some standard protocols because
6 it makes a lot of sense if non-game is going to go out and
7 frog surveys and research gets a contract to do frog
8 surveys that we do the same kind of frog survey techniques
9 or justify why we're diverting from that as non-game has
10 established. I think standard protocols for all things
11 are real beneficial. Ditto for snaring or culvert
12 trapping or any of that stuff. How any one wildlife
13 manager implements a culvert trap is going to be based
14 either on how they were taught by the person who showed
15 them how to use a culvert trap or maybe based upon some
16 knowledge they gained from their capture course three
17 years ago.

18 So I think that standard protocols for all
19 of that type stuff can be really of benefit.

20 Q. Well, you know, clearly we could make decisions
21 that bog us down in so much paper --

22 A. Right.

23 Q. We could say, we'll do an EA checklist for
24 everything we do, that we never get any field work done.
25 Question, how do we practice due diligence and avoid

1 overreacting to all this?

2 A. And I'm not sure. I think right now I'm probably
3 tending towards over reaction only because --

4 Q. Which may be prudent.

5 A. Get an EA checklist for everything that we do.
6 My desk is going to be full of EA checklists. I'm going
7 to employ the entire habitat branch for a year getting my
8 projects up to speed. And I am afraid that this is --
9 because, you know that's the situation I face right now.
10 I have projects on the ground for research that don't have
11 EA checklists and the question becomes, do I stop work on
12 everything in order to implement an EA checklist and I had
13 taken that question to Mike of, you know, hey, heads up.
14 Just so that you know, I would -- this point having had
15 this situation occur, I feel deficient on the EA checklist
16 component because my understanding was that we didn't need
17 them from most of our projects and now I feel like I need
18 one for every project.

19 And he said, well, let's not stop work.
20 Let's evaluate what projects do or don't have EA
21 checklists. Let's evaluate which ones may have a higher
22 potential and then also as you're starting new projects
23 certainly take them through that process or at least check
24 them with habitat branch in order to identify whether the
25 activity would even require an EA checklist.

1 But even now there is no documentation that
2 would indicate, other than the way I have been doing it
3 which is e-mail follow up of it is my understanding after
4 our discussion regarding hair snaring and the protocol as
5 attached, that this type of work does not require an EA
6 checklist. Is that correct? And then receiving an e-mail
7 back that says, yes, at this time we don't feel that needs
8 an EA checklist. Other than that, there is no process in
9 place that we have in the Department to indicate when
10 people have indicated that an EA checklist isn't
11 required. There is nothing that documents that you have
12 considered that unless you document it yourself and that
13 then it's been decided that it is not required.

14 I'm not sure how not to overreact. I think
15 once probably bitten twice shy for me right now in this
16 situation. So --

17 Q. You're not going to get bitten by anything much
18 bigger.

19 MR. MCMULLEN: Nope. Great white. I have a
20 question on -- with regard to the EA checklist, because it
21 seems as though there has been pretty much universal
22 agreement from the Fish and Wildlife Service and those who
23 have looked at the situation since that the existing
24 agreement, permit, the 10A permit, covered us. And so
25 that in practice and in theory we probably didn't need an

1 EA checklist for an incidental of the jaguar, and probably
2 would apply the same way for regular activities when it
3 comes to a wolf, regular operations and those sorts of
4 things. I'm just curious how that's -- those things are
5 playing into this evaluation type TCB evaluation on
6 whether or not we should be doing an EA checklist.
7 Because it seems like we were covered.

8 THE WITNESS: And that was understanding even
9 after the capture because I e-mailed -- I didn't e-mail
10 Steve with regards but I think Eric or somebody had and
11 they had come back and said, oh, yeah. You're already
12 covered. And we had pulled the permit and we knew that we
13 needed to generate a report I think within --

14 MR. MCMULLEN: Five days.

15 THE WITNESS: Within five days and stuff, which
16 we haven't generated yet because the agreement that we
17 came to them with at the time was that we would generate
18 that report once -- I'm trying to remember how that worked
19 but then we ended up having to do the recapture and stuff
20 like that and then it was, well, once the E crafty
21 (phonetic) report is done we will generate a report. And
22 that as the agreement. And then the investigation began
23 and that's all been on hold.

24 I'm not sure -- the EA checklist is meant to
25 look at a lot more things other than just whether your

1 10A1A permit covers you because technically you're also
2 supposed to document have you appropriately coordinated
3 with the landowners or with the permittees or otherwise.
4 So you don't have any other way to document that type of
5 thing unless you have an EA checklist or you, hopefully,
6 have done your due diligence as a good biologist and have
7 already been out there coordinating. It also deals with
8 SHIPO and any kind of ground disturbance, that kind of
9 thing.

10 So it's not a question -- for me it's not a
11 question of, oh, we weren't covered on the permit so I
12 think we need an EA checklist. It's more of, oh, wait a
13 minute. This process does exist. It exists for a reason,
14 and I think it exists for a reason other than just the
15 10A1A permit coverage, and that question has come up
16 several times during the course of post capture.

17 MR. MCMULLEN: That explains it.

18 THE WITNESS: So that's why it's kind of a wait a
19 minute, what about an EA checklist. It came up beforehand
20 for me only because.

21 MR. MCMULLEN: And I was just curious. You know
22 it's just always the benefit of hindsight that we look at
23 and we're like, man, why didn't that burn into my brain a
24 long time ago.

25 THE WITNESS: Yeah. Although then in talking to

1 them -- like after this all happened I talked to Laura and
2 said, okay, I obviously need a whole lot better direction
3 on when we need an EA checklist because I'm worried. I
4 think maybe we should have had an EA checklist on this,
5 obviously in hindsight, how do I know? And they were
6 like, well, you know, there is not real formal -- it's
7 kind of like maybe, you know, if you're moving dirt.

8 And I was like, oh, not really unless you
9 count the holes that we dig the snare in we're not doing
10 serious dirt removal.

11 Q. BY MR. HOVATTER: It sounds like, you know, you
12 go to that EA checklist, while habitat generates it, it
13 generates a review against, you know, non-game branch work
14 against things like when you have these kind of parallel
15 processes like Terry's running and you have -- you know,
16 there is a lot of other bits and pieces in that that get
17 wrapped up in it.

18 A. There are, although it still misses things. One
19 of the points that Terry and I were realizing recently was
20 that it doesn't involve the region at all. There is
21 nothing on an EA checklist, if it's out in Region 6, there
22 is nothing that sends that on to Rod or even -- there is a
23 little thing that talks about communication. And most
24 people say, and we have coordinated with the region or
25 something, but it doesn't even specify. Here you're

1 required to provide letters and everything to the
2 permittees, to the landowners, everything like that. And
3 there is no requirement for documentation on what level
4 coordination you've done with the region or anything.

5 Q. Is your sense that it would be worthwhile also
6 for us to review the sufficiency of our current EA
7 checklist, that it could be usefully more specific in some
8 respect, that it could be less ambiguous, maybe direct,
9 more specified coordination within certain parts of the
10 Department and that sort of thing?

11 A. Certainly. Well, I mean, I think there are a lot
12 (indiscernible) that could be made and I wouldn't want to
13 see it to become overly burdensome. I mean, I'm right
14 there with you, Craig. I mean one of the things that I
15 asked about is there a way for us as a department rather
16 than thinking about this project by project to more like
17 we are in the CMS consider this by activity at a statewide
18 level. What if we were doing an EA checklist on snaring
19 statewide, and then that brings up any particular
20 locational issues, geographical piece, et cetera.

21 MR. MCMULLEN: Statewide risk analysis instead of
22 a local risk analysis.

23 THE WITNESS: Exactly. Because then -- once you
24 have completed, it would be a larger task and it would
25 take -- probably you would need to convene a meeting of

1 like game branch and --

2 Q. BY MR. HOVATTER: It would be an umbrella. It
3 would be a much larger umbrella. It would be probably
4 more likely to bring in peripheral issues that you
5 wouldn't otherwise be aware of.

6 A. Because you do it at the management team, if you
7 wanted to. You could every month at management team
8 tackle a new activity. Okay. Let's talk about snaring.
9 What are all the issues? What are the species that we
10 could impact? What are all the issues we could face from
11 snaring statewide? You know, well, we have got wolfs up
12 here. We got potential jaguars down here. And what else
13 do we have, you know? Well, what about cattle when we're
14 on allotments? What if you injure a cow? There are all
15 of those components.

16 But if you did it as a statewide checklist
17 our thought was then it wouldn't matter if it's a WM
18 heading out to do a culvert trap for a nuisance bear or if
19 it's research project heading out to do culvert trapping.
20 If the EA checklist has been done statewide and it has
21 identified those hot spots, those kinds of things like,
22 you know what, when you get east of Tohono O'odham and
23 south of I-10 then you need to implement further with the
24 non or the endangered species coordinator with regards to
25 jaguars and fill out, adhere to that protocol or something

1 like that.

2 Something that would give you, and you could
3 even then represent those kinds of things eventually into
4 a geospatial where it's like, click, okay. No issues here
5 for culvert trapping.

6 Q. What -- Craig, Marty, what do you got? What else
7 do you want?

8 MR. FABRITZ: The last question I got, I think
9 you answered it before but I'm just making sure. You
10 talked about, going back to when Emil was helping Thorry
11 out this year, January, February time frame, that was him
12 showing Thorry the sets you ran last fall?

13 THE WITNESS: That's what I was told after the
14 capture.

15 MR. FABRITZ: After the capture.

16 THE WITNESS: Yeah. I didn't know that Emil was
17 even in the field with Thorry in January. But after the
18 capture in February I was told that Emil was out in
19 January because they had -- you know, I don't keep tabs on
20 all the research animals and what's going on individually
21 on the projects. Kirby said they had lost that lion that
22 had been harvested. I think it was harvested like late
23 December, early January somewhere in that time frame and
24 so they were looking to then recapture, capture
25 essentially, or recapture in that area another

1 representative lion.

2 MR. FABRITZ: So you think that was in January,
3 that's what you heard?

4 THE WITNESS: That Emil went out? I thought it
5 was like late January, early February. Because Emil was
6 in Spain, I thought, as of sometime in early February was
7 my understanding.

8 Q. BY MR. HOVATTER: Were you aware pre-capture that
9 there was this borderlands jaguar protection project
10 camera network down in this area?

11 A. Not in the level that I was afterwards. I had
12 heard the stories of like Jack Childs having, I don't even
13 know if it was Macho A or Macho B he had originally
14 cornered, but Jack Childs 12 years ago or whatever
15 cornering the jaguar. And I certainly had heard the name
16 Emil McCain and Jack Childs used together. In fact, I
17 thought they were father and son or something for a while
18 they were so paired. But I wasn't aware that there was
19 this entire network of cameras and stuff across the
20 southern area. I was aware that they had at times done
21 some work, but I didn't even know that we were regularly
22 funding a Heritage Project.

23 Q. BY MR. HOVATTER: Craig, you got any? Chasa,
24 what have we forgotten to ask you about that you think is
25 germane to this?

1 A. I think that you know all about the post capture
2 stuff. I mean that's been a lot of the questions as well
3 during the course of discussions is all of the
4 coordination of sampling and all of those pieces. So I
5 think that you're aware of all of those. And I did bring
6 a copy -- one of the things that I had provided the
7 investigators was a copy of a log that I began as soon as
8 the investigation began just to document activities post
9 start of the investigation. So I brought a copy of that
10 for you if you want it.

11 Q. Appreciate it. I would love to have it.

12 A. Hasn't been a part of the records request because
13 we haven't received any records request by this.

14 MR. MCMULLEN: Knock on wood.

15 Q. BY MR. HOVATTER: You didn't notice or see our
16 dear friend Miss Guile from the Diagnostic Lab came after
17 us.

18 A. Yes. Yes. That's good.

19 Q. I'm redefining professional ethics in this from
20 the standpoint of debts.

21 A. The other thing was that at one point, and I'm
22 not sure -- I was informing Dean. Dean, I had let him
23 know that he hadn't gotten a job that he had applied for,
24 a program manager position in my -- and it was after the
25 investigation began. And we were talking about the job

1 and he was a little bitter about not receiving, not
2 getting the program manager position and stuff and
3 we -- we were talking through that. Because he is our
4 programs and projects specialist in the branch.

5 And then at one point he said, well -- he
6 said something about I'm -- I'm convinced that the jaguar
7 capture, you know, that there is no question of whether
8 that was intentional or not.

9 And I thought, really? You know, maybe you
10 know something that I don't. And I didn't ask him
11 anything because the investigation was underway and
12 stuff. I left it at that. I told the investigators when
13 they asked me whether there was something that they should
14 know and stuff. But that's the one piece that I would say
15 that, you know, that has come to light for me that brought
16 my antennas up that I didn't follow up. The investigation
17 was already underway but that I brought --

18 Q. From the sense of your conversation with him, was
19 it your sense that he -- that he believed it was
20 incidental or that he believed it was deliberate?

21 A. Deliberate was the sense that I got.

22 MR. FABRITZ: When was that? How long ago was
23 that?

24 THE WITNESS: Let me look at my log.

25 Q. BY MR. HOVATTER: Handy things, journals and

1 logs.

2 MR. FABRITZ: Is there any relation to that to --
3 what I'm getting at is could it have been because he was
4 maybe bitter over who might have gotten the job or
5 maybe --

6 Q. BY MR. HOVATTER: Who did get the job?

7 MR. FABRITZ: Something, that's what I'm trying
8 to ask.

9 THE WITNESS: Ester Ruben got the job. She
10 wasn't affiliated at all with the Department or anything.

11 Dean has -- Dean and Ron Thompson went to
12 school together or something and so there is kind of a
13 strong connection there. And Ron always seems to go to
14 Dean in my branch for things. And there is this kind of
15 relationship there where Dean does things, like he will do
16 out-of-state travel which really should be done in game
17 branch. There is that kind of stuff going on. So there
18 is lot of communication between Ron and Dean that isn't
19 necessarily going through any kind of chain of command.
20 And so my sense was maybe there is something here that I
21 don't know about, you know, maybe there is something that
22 there has been some communications that I'm not aware of.

23 Q. And he may be -- part of the challenge in some of
24 this, Chasa, is that there, not really our people, but
25 communications that some of our people came privy to,

1 there is this kind of celebratory tone to some of the
2 e-mail traffic.

3 A. Right.

4 Q. That clearly can be interpreted a number of ways
5 and one of those is, whoopie, we were successful.

6 A. Yup.

7 Q. It's not exactly in that terminology. And that
8 is one of those things that remains unclear as to what
9 that -- what the real import of that is, if any.

10 A. Right.

11 Q. But do you have on that when you talked to --

12 A. I'm looking. Okay. Here we go. I can just --
13 do you want me to read you the whole entry?

14 Q. No. You can just tell us the date on that and if
15 you leave that behind I can look at it.

16 A. 4-8. April 8th.

17 Q. Okay.

18 A. And then I had -- and then I had followed up with
19 Diana Schaffer on that and asked whether I should take
20 that issue to you. She had said that that would be good.
21 And then I had come in and tried to talk to you and you
22 were behind closed doors most of that day.

23 Q. I have spent a lot of time behind closed doors.

24 A. Then it was, I think, the next day that I ended
25 up having my investigation meeting. I told them.

1 Q. You told Frank and those guys.

2 A. And then I just left it at that. But it's all in
3 here, although for some reason it looks like it may be
4 cutting pieces off. I might need to make sure that this
5 isn't --

6 Q. If you could check to make sure.

7 A. But I can give you this version and then get you
8 one that actually puts --

9 MR. MCMULLEN: I have one follow-up question that
10 just occurred to me. And you said earlier that you had
11 given direction to, and I want to get -- what I want to do
12 is clarify for my own mind on what you felt like you did,
13 that the direction was. You said you had felt like giving
14 directions -- that you had given direction that we're not
15 catching a jaguar. Not part of this project.

16 THE WITNESS: Uh-huh. Period.

17 MR. MCMULLEN: Do you feel like if your
18 direction, and you don't know if that direction was
19 related down to the --

20 THE WITNESS: Kirby said he had. Kirby said that
21 in meetings with his field personnel several times that he
22 had relayed that clearly.

23 MR. MCMULLEN: I'm just trying to get a feel
24 for --

25 THE WITNESS: He said that after the capture.

1 This isn't something that I was following up with Kirby
2 between June of '08 or whatever and --

3 MR. MCMULLEN: And I recognize we've asked quite
4 a number of hindsight-type questions but knowing what you
5 know now and if you knew that there had been pictures of
6 Macho B somewhere in the Tumacacoris or something around
7 mid January, early January, would that -- based on the
8 direction you had given your field people would that
9 have -- do you feel like that direction should have
10 resulted in discontinuing of snaring operations in that
11 part of the study area? I'm just --

12 THE WITNESS: It's hard to say. Certainly in
13 hindsight I would say absolutely. From the standpoint
14 of --

15 MR. MCMULLEN: Yeah. And we recognize it's
16 hindsight.

17 THE WITNESS: -- conducting research and stuff I
18 know -- I mean, I have trouble getting people to remember
19 to call the local wildlife manager, you know, when they
20 are in an area.

21 MR. HOVATTER: Really? I had not heard that. I
22 had not heard that. Really?

23 THE WITNESS: But I mean it's that kind of
24 thing. It's kind of, you know, at what level of
25 thinking -- there is the level you hope people are

1 thinking at and then there is the level that people seem
2 to think at.

3 MR. MCMULLEN: And operate at, yeah.

4 THE WITNESS: And there seems to be these
5 blinders of oh, wow. I'm doing my job, and I'm doing a
6 good job of capturing bears. And as long as I'm doing a
7 good job of capturing bears I'm in good shape, you know,
8 without thinking, oh, you know what, I'm on Forest Service
9 land, maybe I need to talk to Forest Service. Oh, I
10 should talk maybe to Craig, because, you know, this is
11 Craig's area. And it happens across the board.

12 We had that issue last year where --
13 where -- I think it was -- who was it? I think it was
14 John Hannah who had cleared the bear with the
15 do-not-consume tag, or not the bear --

16 MR. HOVATTER: Elk.

17 THE WITNESS: Elk with the do-not-consume tag on
18 it. And he said, oh, yeah. Don't even worry about that.
19 I mean, you would think that some of this stuff would
20 trigger an oh, you know, wait a minute. That says Game
21 and Fish, maybe I should look into that before I tell
22 somebody they can eat the animal.

23 MR. HOVATTER: We should turn the tag over and it
24 says, we really mean this.

25 MR. MCMULLEN: Yeah. Not just kidding.

1 THE WITNESS: Thankfully, I mean I am amazed that
2 that didn't turn out worse than it turned out. Because
3 usually I think of hunters going, oh, okay. Let me take
4 this home and fry up those back straps tonight because,
5 you know, this is a pretty tasty animal and I've got this
6 fresh piece of meat. And so it's that kind of stuff of
7 just not thinking bigger picture.

8 MR. MCMULLEN: Yeah. I'm just trying to get a
9 feel for what you felt like the strength of the direction
10 that you gave was.

11 THE WITNESS: My direction was pretty clear I
12 felt, but there wasn't any specificity to distance or time
13 or anything like that.

14 MR. MCMULLEN: I see what you're saying.

15 THE WITNESS: So I would, certainly would have
16 hoped that that would trigger somebody -- like if it was
17 Kirby directing locations and Kirby receiving information,
18 of oh, wow, by the way, we just got a picture of a jaguar
19 over here.

20 MR. MCMULLEN: And there is no saying that he
21 even knew or whatever.

22 THE WITNESS: That we would think, wait a
23 minute. I better call Chasa and talk to her about this or
24 oh, you know, and I think all he would think was maybe I
25 better call Chasa, I think. Chasa would think, oh, Terry,

1 where is Terry? I need Terry. And it would be let's get
2 Terry on the phone because he's never in the office kind
3 of thing. And so it's that kind of progression of thought
4 that you would hope somebody would be more broad. But in
5 all reality I find that you are lucky if they know what's
6 going on half a mile down the road much less --

7 MR. MCMULLEN: There is the ideal world and what
8 you -- what really happens, the real world. That makes
9 sense.

10 Q. BY MR HOVATTER: Well, Chasa, is there anything
11 else you want talk about on this or that you think we
12 ought to discuss?

13 A. Not that I can think of. I did cc you on an
14 e-mail today because Scott Tremore had contacted me a week
15 ago Monday and left a message on my phone saying, hey, I
16 want to talk to you about things. And I left him a
17 message today saying, if you're calling me with regards to
18 anything related to the jaguar, the investigation is still
19 ongoing and I can't talk to you about anything related to
20 that. If you want to speak to me about anything else,
21 you're welcome to reach me on my cell phone.

22 Q. Other spotted animals we are willing to discuss,
23 bobcats.

24 A. Not really anything.

25 Q. You know, round-tail ground squirrels when they

1 are young and they have those cute spots on them.

2 A. The agreement at the beginning of the
3 investigation was that if I received any contact from any
4 of those people that we had a variety of samples was to
5 contact Frank and Doug and cc you, Bob, and Mike. So you
6 do have an e-mail in your inbox indicating that I did
7 receive a call from Scott, that I followed up with Scott
8 and left a message, haven't spoken with him but had
9 indicated that an investigation is still ongoing.

10 Q. All righty. Well, guys, anything else?

11 MR. FABRITZ: Nope. Thank you for your time.

12 THE WITNESS: No. Thank you for your time. You
13 guys are the ones doing the work.

14 Q. BY MR HOVATTER: We got other folks we're talking
15 to, and I kind of think we're probably done with this
16 conversation with you, but we may end up needing to come
17 back and just talk to get some additional clarity on
18 something.

19 A. Not a problem. I'm in the office --

20 Q. This has been pretty complete.

21 A. -- I think pretty much all week and then I'm off
22 on vacation next week.

23 Q. Okay.

24 A. So -- and then certainly back the week after
25 that. But just let me know if there is anything that I

1 can help with, and I'm available by cell phone through the
2 weekend, so I don't leave for vacation until Monday
3 afternoon.

4 MR. MCMULLEN: May you and your departure date
5 arrive at the same place.

6 THE WITNESS: Yes.

7 MR. MCMULLEN: You know something about that,
8 don't you?

9 THE WITNESS: Really?

10 MR. MCMULLEN: I'm just kidding you.

11 MR. HOVATTER: This is not where Craig McMullen
12 was supposed to be.

13 THE WITNESS: I know it's not where Marty is
14 supposed to be.

15 MR. FABRITZ: That's okay. We're here.

16 MR. MCMULLEN: Marty is supposed to be listening
17 to a steel drum on a beach with a drink and an umbrella in
18 it.

19 THE WITNESS: But he still has that to look
20 forward to. And where were you supposed to be, Craig?

21 MR. MCMULLEN: Right here.

22 MR. HOVATTER: I could still arrange the
23 umbrellas, you know.

24 THE WITNESS: And the steel drums.

25 MR. HOVATTER: And the steel drums.

1 MR. MCMULLEN: It's just a matter of where the
2 umbrella is stuck.

3 MR. HOVATTER: That's exactly right. You notice
4 that I didn't put any specific location so --

5 (Recording ended.)

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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 94 pages constitute a full, true, and accurate transcript of all recorded proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 12 day of August 2009.

KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
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TRANSCRIPT OF INTERVIEW
JULY 10, 2009
CHASA O'BRIEN
VOLUME ~~II~~

III

Individuals present at the Interview on 7-10-09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Chasa O'Brien

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1 CHASA O'BRIEN,
2 pursuant to Garrity Warning, was reexamined and testified
3 as follows:

4

5 EXAMINATION

6 BY MR. HOVATTER:

7 Q. This is still, you know, under the Garrity
8 advisory we gave you and all and it's just -- the meeting
9 we had on the 20th of February right after the jaguar was
10 captured and we were parsing out how the information was
11 supposed to flow.

12 A. Was that the debrief meeting, the 20th?

13 Q. No. This was the one we held, it was the next
14 day after. It was after we had been -- you had called me
15 on the 19th. We had John McCain and all on the 19th. The
16 20th, that was the next day and so I convened a meeting to
17 say, okay, who's in charge of the jaguar, you know, making
18 sure information flows and all that sort of thing. And
19 that's when I told Terry, you know, Terry is in charge.
20 Bill's his back up.

21 A. Right.

22 Q. And a bunch of folks -- a bunch of us were
23 there. I think you volunteered Dean to take notes and all
24 for us, or Mike may have, I don't know. But somebody
25 volunteered Dean to take --

1 A. I thought Dean did the notes for the debrief.

2 Q. Well, he did notes for that --

3 A. For the 20th?

4 Q. For the 20th thing. But the question is, did --
5 you know, we parsed at -- we made decisions about how we
6 were going flow the information and about how we were
7 going to make it -- and how we were going to make
8 decisions.

9 A. Uh-huh.

10 Q. Now none of us were expecting us to have to make
11 decisions as fast we did.

12 A. Right.

13 Q. But did that -- did that -- those decisions about
14 information and all that was supposed to flow, did that
15 get transmitted -- do you know if that got transmitted to
16 Thorry on the ground?

17 A. You know, I don't think that I transmitted that
18 to Thorry at all, no. And that's probably my bad. I
19 guess I didn't expect him to be making decisions.

20 Q. No. That's a -- I mean, because part of this is,
21 remember, the supervisory chain that you had established.
22 I understand that. But go ahead. I didn't mean to --

23 A. Yeah. No. I don't think that I had communicated
24 that down at any of the lower levels just because I kind
25 of considered that more of an information movement that

1 was at a higher management level. I didn't expect
2 anything to be happening at lower levels. That's a good
3 point. I should have --

4 Q. Because it brought -- because it's one of those
5 thing if it had been that obvious we would have talked
6 about it when were sitting originally talking.

7 A. Right.

8 Q. That leads to another question I have, which is,
9 and I presume the same is true for Kirby?

10 A. Right. No. I don't think I communicated it to
11 either of them.

12 Q. So -- and what you said triggers something that
13 reminds me of something I was probably thinking, I think I
14 was thinking at the same time. You had said you didn't
15 expect Thorry to be making decisions but -- when the
16 decision was being -- from your standpoint, did the
17 supervisory chain to Thorry, because remember we
18 already -- this is supposed to be about bears and lions.
19 Spotted cats were not invited. Bastards. But did -- when
20 it became about that jaguar, what was your sense of who
21 was responsible for where -- for what that had now become,
22 about this jaguar? Because I guess what I'm -- research
23 branch, bears and lions. Jaguar was not a --

24 A. Not a research animal.

25 Q. The extent this was a surrogate study for

1 potential but -- how did -- in your mind, did you make any
2 transition, because Thorry, of course, was still the guy
3 on the ground for this thing.

4 A. Right.

5 Q. About did we -- did we switch gears? Did we need
6 to switch gears?

7 A. Did we need to tell Thorry, basically, to back
8 down or something --

9 Q. Or make the decision about if he's going to be --
10 because clearly he is still the guy on the ground on point
11 getting involved in that when we made the decision to do
12 the recapture, but did we make any transition in
13 supervisory responsibility or migrating, for example, from
14 research branch to non-game or research branch to some
15 other supervisory chain?

16 A. Not formally, no. I guess my perception of it
17 was that Bill and Terry had taken over the day-to-day
18 workings on Macho B and the daily updates that were coming
19 from Emil and otherwise. And I knew that Thorry was in
20 regular contact with Bill Van Pelt and my -- so my
21 perception there was that Bill was kind of using Thorry or
22 directing it or otherwise -- and I knew that the week
23 before we captured, we recaptured Macho B, I had dropped
24 in and talked to Bill, and I said, you know, hey, how's it
25 going?

1 And he was like, oh, well we're a little
2 concerned.

3 I was like, concerned? About what?

4 And he talked about, oh, well, we have some
5 potential issues with the cat.

6 And I was like, really. Because I wasn't getting
7 the daily updates unless somebody forwarded it to me with
8 some kind of comment or something.

9 He was like, yeah. We're deciding whether we're
10 going to go back in and look at this, and I'm working with
11 Thorry on it, is kind of what he talked about, or I might
12 go down and join Thorry and go in.

13 So there was kind of an informal -- I guess my
14 perception was that Bill was using Thorry. I was
15 certainly happy to provide Thorry for whatever needed to
16 be used. I didn't think Thorry was directing anything,
17 but I also hadn't made any formal thing of, hey, Thorry,
18 right now, or Bill, do you need to have Thorry work with
19 you, and if so, okay, Thorry you are helping Bill on this
20 and as such you're off of the research project now and on,
21 you, know monitoring. There wasn't a formal crossover on
22 that.

23 Q. Do you know if he was still -- because we still
24 had those snares all active, didn't we?

25 A. No. We shut them all off.

1 Q. Or no. We had shut them all off. We didn't want
2 to recapture him again.

3 A. We had them all shut off.

4 Q. How much times are we going to catch that same
5 jaguar.

6 A. We were trying to figure out, either they were
7 all shut off that same day that Macho B was captured or
8 there may have been one in Ruby that got shut off the next
9 day, and Thorry couldn't remember, and it's in his
10 notebook which is currently in the possession of the
11 investigators. But they were all shut off by the day
12 after the capture.

13 And we haven't had any snares since then.
14 Not all of the throw arms were necessarily pulled. They
15 had gone through and tripped all of them and things like
16 that. It's not that everything was pulled out or
17 something, but nothing had been set since at least, at the
18 very latest the day after the capture.

19 We have had an on again, off again startup
20 on bucket snaring for bears where we had a couple days or
21 a week that we were allowed to have them open and then
22 they got shut back down. But those were all bucket
23 snares.

24 Q. Kind of similarly did we take -- what do you
25 see -- and this is kind of a hindsight question. Where

1 was -- where did we leave Kirby in the middle of all of
2 that after when essentially we kind of migrated now. The
3 jaguar was Terry's and Bill's. And we had Thorry was in
4 fact obviously was involved with Bill. Was -- where was
5 Kirby? And we kind of shut things down.

6 A. Yeah. He was in shut down mode. I pretty much
7 just told him to stand down, that we were not going to be
8 capturing anything right now and to wait until we heard
9 further.

10 And then at one point we were kind of told, okay,
11 it looks like we can probably move forward with bucket
12 snares for bears. And he was getting ready and prebaiting
13 with my approval any kind of sites for bucket snaring.

14 And then there had been some indication that we
15 could go ahead and move forward, that the bucket snare was
16 a non-issue. He opened them up one day and then I called
17 him and said, wait a minute. We still need director
18 approval. And then he stood down and called me regularly
19 and said, can I trap yet? No.

20 Q. Well --

21 A. And he kept kind of working on other angles of
22 what he could get done.

23 Q. Did we still have the bear hair thing going on at
24 that time?

25 A. We got approval -- well, yeah. Because we shut

1 everything down. And then it was like, okay. Do we have
2 EA checklists? And we were going back through all the
3 files to try to find all of that. And then it was a no.
4 We don't have EA checklist on this one and we don't have
5 one for the White Mountains.

6 And so then I said, well, we are going to have to
7 begin EA checklists on both of these, and even if we can
8 get approval to snare, you're going to have to have an EA
9 checklist in place. So he began those.

10 And then I got approval from habitat branch that
11 the hair snags were not going to require an EA checklist
12 as a thing.

13 Q. That's pretty unobtrusive, I mean nonobtrusive on
14 that.

15 A. Then we obtained permission from Larry to go
16 ahead and move forward on hair snags so he has been. He
17 had started up the hair snags and I don't remember when
18 but --

19 Q. And, I mean, I think you've answered this
20 question too, not directly but I think -- when the
21 decision was made to go back in and recapture that animal,
22 did you have any awareness of that decision being made?

23 A. Not at all. The last thing I had heard was from
24 Bill that week before, well, we might go in Thursday or
25 Friday and take a look at this.

1 Q. His concern about --

2 A. And then Sunday morning I got the e-mail on my
3 phone of help. Helicopter. How do we get ahold of a
4 helicopter. And I was like, helicopter, what the heck
5 happened. And even when I got that, I assumed Bill had
6 gone in, that there had been a decision made that Bill Van
7 Pelt, because that's the last I had heard was that Van
8 Pelt was going to be going down there Thursday or Friday
9 or whatever. And then it was after the fact that things
10 kind of unfolded where it was like, oh, no. We didn't
11 make this decision. We didn't make this -- I was like,
12 whoa. What?

13 And I had heard that Ole had gotten called out.
14 I assumed you or Bill or others had decided to call Ole in
15 and only after the fact found out that Thorry had made
16 that call from what I understand now.

17 Q. And I think the only other question I have is
18 among -- now you had gotten -- started asking some
19 questions back in December about should we do an EA
20 checklist. And apparently -- and Dean got involved. It
21 was -- apparently so was Ray?

22 A. Yes.

23 Q. Do you know why Ray was?

24 A. I'm not sure why. And I can't remember -- Ray
25 may have been my acting at one point and/or Ron Thompson

1 may have come over and talked to Ray and prompted him
2 where he was talking to Bill. I'm not sure what ended
3 up -- how Ray kind of ended -- whether this was kind of a
4 cross wires thing of Ray, as my acting, was trying to act
5 on something while Dean, as my programs and project
6 specialist, was at the same time trying to act on
7 something or if Ray was giving --

8 Q. It wouldn't be the first time we've had multiple
9 people get launched on the same target.

10 A. It wouldn't be. So I'm not sure what got Ray.

11 Q. That's all I wanted. You guys got anything? I'm
12 good. Chasa, thanks.

13 A. You're welcome.

14 Q. Have a good weekend.

15 A. Let me know if you need anything else.

16 (Recording ended.)

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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 11 pages constitute a full, true, and accurate transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 10th day of August 2009.

Karen M. Niemtschk
KAREN M. NIEMTSCHK, No. 50447
Certified Court Reporter

ARIZONA GAME AND FISH DEPARTMENT
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PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
CHASA O'BRIEN
AUGUST 19, 2009

Individuals present at the Interview on 8/19/09:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department, Ombudsman,
Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Chasa O'Brien, Employee

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PROCEEDINGS

MR. HOVATTER: Okay. What is today?

MR. MCMULLEN: The 19th.

MR. FABRITZ: Today is the 18th, 19th.

CHASA O'BRIEN,

pursuant to Garrity warning, was examined and testified as follows:

EXAMINATION

BY MR. HOVATTER:

Q. It is the 19th of August, Arizona Game and Fish Department, in the Dove Room, and it is Gary Hovatter. It is Craig McMullen, Marty Fabritz, and we have got Chasa O'Brien. And, Chasa, we are still doing this conversation under Garrity. Do you need me to reread the Garrity?

A. No, I recall it.

Q. Okay. Good enough. And, geez, we are a great bunch. It sounds like we have got the plague, which given our line of work is within the realm of possibility.

These are in no particular order. And, again, I am thinking, you know, some of this hindsight, and some of this is to ask you to dip way back into your memory. When we were getting ready in May of 2008 is when the Commission was briefed on there were the three proposals we needed to get their approval of. At about that same time -- do you remember when Todd Atwood left the Department?

1 A. May.

2 Q. It was May?

3 A. Late May.

4 Q. Late May, okay. As part of, you know, when we
5 look at all of those various grant proposals and study
6 proposals, clearly, Todd Atwood is very active in working
7 that. You can see some evolution over time as situations on
8 the border change, and the border fence becomes more
9 realized, and some of other things. We go from -- and there
10 is also the shaping, it seems clear, of the type of the
11 organizations to which it is being submitted, what are the
12 types of things they were interested in funding.

13 So when Todd left, the impression I have is that
14 Kirby took over, and Kirby and been a part of, you see his
15 name listed with Todd's on some of those grant applications
16 and some of those proposals.

17 A. After. Yeah, he didn't get back until after Todd
18 left and Kirby took over the project. He had not been
19 involved in the project up until that point.

20 Q. Well, there are a couple documents, it has got
21 Todd first, and then it says -- one, there is one proposal
22 that says Kirby?

23 A. Yes. He was added to that proposal after May
24 2008.

25 Q. Okay. That explains, yeah, because there is a

1 former -- former Arizona -- okay. That got out of sequence
2 the way I was working on it. Okay. When Kirby -- how was a
3 decision made -- let me -- what I was going to ask you, my
4 impression has been that that project they have got became
5 Kirby's project?

6 A. Correct.

7 Q. Is that correct? All right. How was the decision
8 made to throw that? Was it a natural -- for Kirby to take
9 ownership of it?

10 A. I had to two biologists who free, who were coming
11 off of projects, and so I looked at the experience and
12 abilities of those two biologists, one was a Spec I, Jamie
13 Warren, and one was a Spec II, Kirby Bristow. Kirby has
14 captured bears before extensively. He worked with Stan
15 Cunningham. And a lot of what was getting on the ground in
16 May was bear capture that needed to move forward.

17 The other project that needed covering was the
18 Kaibab Mule Deer Project, because we were at the end of data
19 collection on that project. We really needed to be on top
20 of our game in completing a final report for that project
21 because of the high visibility with the ADA and heavy
22 pressure from the ADA on that project. And so -- and Kirby
23 had very little interest in the Kaibab Mule Deer Project.

24 I also felt that it might be better served by
25 someone different than Kirby, and with his strong experience

1 in bear capturing, his real interest in the project, and
2 proximity to the project in Southeastern Arizona, we placed
3 him on the project there.

4 Q. Got it. Were the research projects that we
5 presented to the Commission, that May Commission meeting,
6 did we -- did those get -- some of this harkens back to some
7 conversations we have already had, but did those get vetted
8 against our 10(a)1(a) permit? I guess what I am wondering
9 is, I guess maybe the bigger question is when were -- maybe
10 make this a little more generic. You got, I think you told
11 us once before that there's maybe as many as 90 projects
12 ongoing?

13 A. 50.

14 Q. 50, okay.

15 A. About 65 people and usually somewhere around 50
16 different projects, at least 50 different index codes.
17 Sometimes those overlap on projects.

18 Q. Is there a way -- now, theoretically, any one of
19 those could have NEPA implications, ESA implications, any
20 number of other issues. Is there a way, because I know you
21 have already started making some changes to process, so
22 thinking back to that time frame, was there in place a
23 process when you came onboard, because when did you actually
24 take over?

25 A. I became Branch Chief in late June of 2006.

1 Q. Okay. So you were approaching coming up on about
2 your two year anniversary?

3 A. Three.

4 Q. Three, okay. But I am talking about back in May?

5 A. Oh, in 2008, yes, correct.

6 Q. Was there in place a process for looking at those
7 projects and having some confidence that they had been
8 appropriately reviewed from the context of NEPA and ESA and
9 potentially other legal implications?

10 A. No, I didn't have a good feel for that at all.
11 And I had very little experience with that as a biologist in
12 research coming up. We had at one point done like an EA
13 checklist on the Kaibab project, because Jim seemed to pick
14 a project and then elect to have it -- do an EA checklist,
15 but it wasn't a common -- common thing to have projects do
16 an EA checklist in Research.

17 And then there had been that training in the
18 Department school in 2006 or 7, and I had attended that, and
19 had our project, all my PI's, primary investigators, attend
20 that as well. And our take-home message from that had been
21 that very few, if any, of our research projects were
22 required to go through the EA checklist process as well. I
23 saw that checklist process as being the process where you
24 would go NEPA checks, et cetera.

25 MR. MCMULLEN: Was there some kind of standard for

1 making a decision on what --

2 THE WITNESS: They did. They had a flow chart
3 type thing.

4 MR. MCMULLEN: Oh, okay.

5 THE WITNESS: I don't have it readily at my
6 fingertips, but I know somebody in the branch who does that
7 I can get it from. It was really kind of -- my recollection
8 coming out of that and several of my biologists'
9 recollections as far as what they understood they needed an
10 EA checklist for was if you were moving serious dirt, if you
11 were working directly -- if you were going to be moving
12 animals, not just capturing animals but actually
13 translocating animals or something like that, and working
14 with endangered species in some direct way.

15 And since very few of our projects deal with
16 those, depends upon what you consider moving dirt, very few
17 of our projects deal with that, they were then excluded from
18 the EA checklist process as I understood it. Other than
19 that, I don't know of any other -- I wouldn't have as Branch
20 Chief have referred any of my projects to any other
21 evaluation or process because I didn't understand the permit
22 pieces of it either.

23 Q. BY MR. HOVATTER: Well, let me ask you this, then.
24 From what you described in your memory of that flow chart,
25 if we had followed that flow chart with that, and I am going

1 to use the shorthand Bear and Lion Study. That Large
2 Carnivore Habitat Connectivity, it doesn't roll off the
3 tongue, but if we had followed that flow chart, would we
4 have, in fact, gotten to an EA checklist?

5 A. Not in my recollection at all. I would have to
6 look at the actual physical flow chart, and I haven't
7 seen -- I haven't had a physical -- well, I probably have it
8 somewhere deep in my files, but I haven't had a readily
9 accessible flow chart.

10 Q. Well, that's not what I am saying. There is some
11 forbearing.

12 A. Right, but I do know at least one of our groups
13 does have it because they have been working off of it, and
14 in working off of it had not been executing the EA checklist
15 on many of their projects. So I can find that, but my
16 understanding would be that no, because I didn't envision us
17 with working with an endangered species. That wasn't our
18 targeted species at all on that project.

19 We weren't really moving dirt. The question comes
20 in as to whether setting snares really becomes moving dirt
21 where you would need to implement archeological surveys in
22 order to set a snare.

23 Q. I would be inclined to not, yeah.

24 A. Then we weren't translocating animals. So from
25 that standpoint, it wouldn't have been.

1 MR. MCMULLEN: Within your Branch, who would be a
2 person who would be tasked with or that you would expect, if
3 any, to at least compare a planned project proposal,
4 research project proposal, with that flow chart.

5 THE WITNESS: Program Manager is usually who would
6 be tasked with that. Although I had required at the time of
7 that training all PI's because I wanted them to be -- I
8 didn't want it to be set at a higher level where I only had
9 a single person. I wanted every one of my head biologists,
10 so to speak, to be trained in this so that they understood
11 the process.

12 Q. BY MR. HOVATTER: It makes sense. You are much
13 more likely to have better project design at the lower you
14 push that level of knowledge. Here is the question,
15 because, I mean, the obvious question is that if our
16 training probably would not have saved us, clearly, despite
17 the intent, we obvious had the outcome we had.

18 Is it your thinking that as you look at that
19 training, that that training, if we redid that training,
20 would it be adequate to inform us in such a way that this
21 wouldn't happen again? Or I guess it is another way of
22 saying do we need to change the training that we do.

23 A. I think we need to change the process and the
24 training. I wouldn't just change the training because I
25 think that the underlying process has major flaws in it as

1 well. We already found one that we are working on in that
2 process as it is executed currently in Habitat Branch
3 doesn't include 10(j) species in their evaluation at all.
4 They won't even show up on the EA checklist.

5 Q. Eric mentioned that.

6 A. Because I was, you know, we stopped everything.
7 We had been running the EA checklist for that White Mountain
8 Bear Project specifically because of our concerns about
9 wolves. When it came to me, wolves weren't listed at all.
10 I have got Willow Flycatchers and I have got some others,
11 but I don't have wolves, which was my primary animal of
12 interest on this project.

13 I sent a note back to Dan Nelson in Habitat, and
14 said, wait a minute. I think wolves need to show up on this
15 list unless I am really off on where I understand wolves to
16 be, but Greer Nutrioso should fall right within that area, I
17 think. And they responded back to us and said we don't put
18 10(j) species at all on the EA checklist because they
19 shouldn't influence management. I said, I don't think
20 that's the right choice, but I think we have got to -- we
21 have got to at least consider them, although I am certainly
22 by no means very knowledgeable about ESA or anything like
23 that.

24 It is an area that I think I will be learning more
25 about, but I couldn't see from a Department perspective as

1 far as headline tests and stuff, how you could go through
2 that evaluation process, and, for instance, you know, I
3 don't know what project you considered, maybe, you know,
4 throwing lead around in Condor territory or something, but
5 you could go through an entire process without that coming
6 up, without Condors coming up, without wolves coming up.

7 And so even if we had gone through an EA checklist
8 on the Greer Nutrioso Project, wolves would have never come
9 up. It would have never shown as an issue for us in
10 trapping to be aware and to have our personnel trained in
11 those trapping techniques or way to appropriately release a
12 wolf or to evaluate our own trapping techniques and
13 eliminate some if they had a higher probability of capturing
14 a wolf in the process of trying to capture a bear.

15 Q. Have you discussed that with Mike?

16 A. Yes, we have discussed it with Mike and Josh, and
17 we have a meeting schedule in early September, I think it is
18 early to mid September, with Habitat Branch that is going to
19 include Marianne, since she just went through the ESA
20 training, and she had a very different take on the fact that
21 10(j) species absolutely need to be considered in an EA
22 checklist process. It is just that they wouldn't
23 necessarily influence management from the standpoint --

24 Q. But they need to be factored into the project
25 design, because if you were to catch a wolf in a bear snare,

1 the fact that it doesn't have necessarily the negative
2 implications, you still end up with a wolf in that snare.
3 That is still a significant event. It is still of note, and
4 it is probably required -- some type of report is probably
5 required as some part of a Federal process if that happens,
6 and you don't want people learning on the fly --

7 A. Exactly.

8 Q. -- or you get a wolf, you know, wolves,
9 apparently, we have a real issue with them losing legs in
10 traps. We have got a lot of three-legged wolves. That
11 would not be the time to have our folks get out there, and
12 say, oh my, God, you know, we can't salvage his leg, I guess
13 we will just shoot him. It would probably be a bad thing.

14 A. Right. That has come up as a major issue that
15 Josh brought up the fact that his understanding is that
16 prior administration didn't want them considered an EA
17 checklist because they don't want 10(j)'s being treated --
18 didn't want 10(j)'s being treated in the same way that a
19 true endangered species, because then you start running --
20 if you were to start running those lines and giving kind of
21 the benefit of the doubt to a 10(j) species, then they might
22 as well just be endangered. If you set that kind of
23 precedent, then you risk certain management actions in the
24 future that you might decide to take.

25 Q. Of course, another alternative is that you have,

1 for want of a better term, an above the fold and below the
2 fold approach to the EA checklist. Those things that you do
3 not want to have inadvertently lead into processes where
4 they get in our way or above the fold things. They become a
5 part of -- that is sort of the pre-list or pre-vetting of
6 your project, you know, as to these questions, and if the
7 answer is no, no, no, no, no, you don't have an EA
8 checklist.

9 If any of the answers are yes, then you would --
10 is it a 10(j)? Yes. If so, go to this part of the flow
11 chart which doesn't take you into the EA checklist. I am
12 considering seriously that we add something as an above the
13 fold item right at the very top, an initial assessment for
14 every project that says I have looked at this, and I say we
15 don't need an EA checklist, and here is why. Here is the
16 rationale, and I have signed it and dated it. And it is not
17 to go after somebody when there is a screw up.

18 What it is, is to require people to confront the
19 idea of the EA checklist and to demonstrate, to have that
20 opportunity, it doesn't mean that even that could preclude
21 this, but at least what you have is the opportunity for
22 folks who don't all have the training we would like them to
23 have to be able to take a look at something, and, you know,
24 normally, if you are going to sign your name to something,
25 you do take the time to read it a bit more thoroughly.

1 And I would suspect it would ramp up -- it would
2 ramp up the interest in getting more need for training. It
3 would ramp, I would think, a higher likelihood that we are
4 going to not have some disastrous outcome like this.
5 Granted there aren't many of our projects that have the
6 potential to affect a species like this. We would not be
7 going through this if this had been a Chiricahua leopard
8 frog.

9 A. Right, not even so much as the point of affecting
10 us. Well, I guess you are talking about just generally
11 because --

12 Q. Yeah. I mean, once it's endangered, it is
13 endangered. But in the other sense, there is a lot of heat
14 behind this project simply by the virtue of the particular
15 species that is involved.

16 A. Right.

17 Q. So --

18 A. Yeah, I am an advocate for having some kind of --
19 because some type of process that people can go through is
20 helpful because we have people turn over, and they don't
21 necessarily understand all of our processes. If there is
22 some kind of checklist some type thing where they check
23 through, and I hopefully some day would like to see this be
24 an on-line process where you pull up the EA checklist page,
25 you log in your project name, and, you know, whatever the

1 species that you are working with or however you are going
2 to document it, and then you start clicking through the
3 things, and it would take you to those different screens.

4 Q. You know, I don't think that would be that hard.
5 Functionally, I don't think it is that hard to do.

6 A. I don't know. I am certainly not a tech wizard.

7 MR. MCMULLEN: I think it is kind of largely
8 built.

9 THE WITNESS: But it would be great to have that,
10 because then, people wherever they are at, could bring it
11 up, check through it, and if something is like, oh, well,
12 this will require an additional, you know, EA checklist
13 completion, please talk to so and so somewhere that would
14 help direct people.

15 MR. MCMULLEN: If I remember right in terms of the
16 EA checklist who would normally review that flow chart would
17 be your Program Managers, but I think at least when Macho B
18 was going on and maybe still now, both your Program Managers
19 positions are empty, aren't they?

20 THE WITNESS: The Program Manager for this, yes,
21 was empty.

22 MR. MCMULLEN: Yeah.

23 THE WITNESS: Was empty even in May 2008 because
24 Richard left in February of 2008, and I only just filled it
25 in June 2009.

1 MR. MCMULLEN: Right.

2 Q. BY MR. HOVATTER: Chasa on this, you know, part of
3 what we had when you look at this is we have the EA
4 checklist and Habitat checklist, 10(a)1(a) permit, and the
5 original MOU in Nongame Branch, a branch of one, and Terry
6 for wolves and jaguars. Game Branch, and of course, bears
7 and lions are game animals, and theoretically, some the
8 knowledge we have gained might have some potential
9 implications for hunt guidelines and hunt recommendations,
10 so they have got that.

11 A. Uh-huh.

12 Q. And then you have the Research Branch piece, the
13 Bear and Lion Study. So you have all of those stove
14 pipes --

15 A. Uh-huh.

16 Q. -- all of which come into play in the outcome. As
17 you look at it, again, I know you have already put some
18 energy into it, doing some modifications and some process
19 changes, as you look across that, what is the tool you use
20 to, you know, absent wholesale reorganizations, nobody has
21 an interest in --

22 A. Right.

23 Q. -- how do we make all of those parts, all of them
24 have a legitimate part and a role in what the outcome of
25 this is, what do we do so that we have those dots get

1 connected between those different stove pipes?

2 A. I would even suggest that you also have Region 5
3 in that mix.

4 Q. Yes, true, Region 5 is another stove pipe, yeah.

5 A. You get into a different division.

6 Q. Yeah.

7 A. I am not sure how to bring that all together. I
8 usually have found that the best way to kind of marry things
9 is in some type of meeting, whether there was a process by
10 which new projects got vetted at management team for input
11 and at least knowledge so that people could be like, oh,
12 wait a minute, you know, if that is going to be in that
13 area, I would be a little worried about this.

14 Or, you know, considering this, I would want us to
15 discuss these pieces, or there is some type of stakeholders'
16 meeting internally created for those projects in order for
17 people to be able to vet them. The concern I have that
18 about that is with 50 different projects running in my
19 Branch, some of them are very small, very short, contract
20 work, very limited in scope, but may still have something
21 related to this.

22 We work on the flat tail horned lizards down in
23 Yuma. They certainly would figure into some of the
24 permitting issues and stuff. I would hate to burden the
25 kind of level of engagement that I would expect for this

1 meeting in order to really get the right people at the table
2 is pretty high. In order to require that for every budget,
3 50 projects, once you have gotten 50 out of the way, you
4 would only be having maybe a couple a quarter or something,
5 but that's a lot of time commitment for people at a high
6 level.

7 Q. I will tell you, too, having spent almost all of
8 five weeks out of the last seven doing this --

9 A. Yes, that's a big commitment.

10 Q. -- I certainly could probably, if I didn't have
11 this, I could have probably vetted 50 projects in five
12 weeks?

13 A. Right. Even like the EA checklist, going back to
14 that, we had recognized that one of the issues on the EA
15 checklist is there is no -- if I had done an EA checklist
16 for this project, even though it is located in Region 5, the
17 Region 5 supervisor would have never seen it under the
18 current EA checklist process. It would have stayed
19 completely internal to Phoenix, and Don signed off, and that
20 RS, hopefully, would be well aware of the project if we are
21 doing our communication that we are supposed to be doing
22 around these projects, but wouldn't have seen any kind of
23 analysis.

24 And they might have their own knowledge or
25 concerns or issues that would come up as well, whether they

1 be land owner relations' concerns or Forest Service
2 coordination concerns recognizing where we were going to be
3 or other things, and that's another piece of that EA
4 checklist that we have to do.

5 Q. The problem we have is that the inherent conflict
6 is what we want is fast and thorough.

7 A. Right. Yeah, that is always going to be
8 difficult. That is where the on-line piece, I think, would
9 help, because then you are not inner office memo, you know,
10 to Region 5, the entire EA package. It would hopefully be a
11 click, click, click. You would be able to go through each
12 DMS. It would identify all the species that occur within
13 the area that you have identified for your study area, and
14 all of that would be there in that electronic package.

15 Anything that was truly just paper could be
16 scanned in and attached, and then it could bounce between
17 the different e-mails that as soon as, say, Leonard had
18 officially signed off and checked his box when it had come
19 into his computer and stuff, it would move on to whoever the
20 next person in that signature chain is.

21 So I think you can get efficient and still hit the
22 right people as long as those people each understand what
23 their responsibilities are, too, and that is kind of one of
24 those learning curves or areas where maybe training is
25 needed as you do get turnover. Because when I first started

1 June of 2006, I would get a yellow folder. I was like, what
2 is this? What am I supposed to do with it?

3 And it is like, oh, yeah, you sign on this line
4 here. I was like, I sign on the project leader line? And
5 they are like, yeah. I was like, well, what am I signing
6 for? Well, you are signing that you are okay with the
7 project. I was like, well --

8 Q. Am I?

9 A. Yeah. I mean, it is coming out of my Branch. I
10 okay with the project. That doesn't mean I have any real
11 knowledge that would contribute to knowing that we might
12 have an ESA problem, knowing that we might have some kind of
13 conflict.

14 Q. Let me ask you. To what extent is there a
15 training and education component of our unfortunate outcome
16 of this? I mean, to what extent do we even have -- we can't
17 assume that the folks that we hire are totally absent, come
18 with the training and the education background?

19 A. Especially at the technician level.

20 Q. We are good, I think, hiring people who are good
21 at the technical aspects of their job, but I don't think we
22 consider familiarity with this type of law to be a
23 necessarily technical issue?

24 A. Right.

25 Q. We taught a class that seemed to resonate with the

1 people who took it some two years ago. It is not the same
2 thing as a Department training program. That was a
3 Department training event.

4 A. Right. It wasn't even required. It was one that
5 I had placed a requirement on for my people, but --

6 Q. You know, like the example, when we talk about the
7 black tail prairie dog project, when we made a commitment to
8 the Commission, and as the Director told the management, we
9 are going to have to go to the Commission and tell them, we
10 lied to you. And that is not exactly how to say it, but we
11 didn't know we were doing it when we did, but we have, but
12 it not going to happen.

13 But we had made it happen, but that was, because,
14 frankly, Larry had been around the block so many times, he
15 knew ways to work that. What it came down to, just the guy
16 at the pointy end of this thing who is trying to make it
17 happen, had been sold a bill of goods on NEPA time line. He
18 had no background in NEPA to be able to have vetted it.

19 He is being given it by the Feds, who it is their
20 law, he had every reason for him to believe he was given
21 something that was accurate. So it was, you know, it was an
22 outcome that was with some training probably we would either
23 have said, it has to be another six months, or he may have
24 been able to come to Larry's conclusion on a different way
25 to get to it on his own.

1 A. Right.

2 Q. It is not in your Branch, but I think it is
3 illustrative.

4 A. Uh-huh.

5 Q. Are your folks -- let me ask you this. Do you
6 know if all your folks are even aware that there is such a
7 thing as a 10(a)1(a) permit and what it means?

8 A. No. I think most of them have no idea.

9 Q. How is the Bear and Lion Study funded?

10 A. Federal aid.

11 MR. HOVATTER: Boy, we are really good. Your
12 turn.

13 MR. MCMULLEN: I am out.

14 MR. FABRITZ: That was funny.

15 Q. BY MR. HOVATTER: The term surrogate study was
16 used, it came up in the context of a Bear and Lion Study,
17 bear and lions as a surrogate potentially for a jaguar?

18 A. Right.

19 Q. And the term umbrella species, Todd Atwood used
20 that a lot?

21 A. Uh-huh.

22 Q. Which I think in my reading in the context of
23 where he put it, it was very much in that same sense. The
24 question is: You know, digging into this and having to dig
25 into some of the papers and all on jags and everything, it

1 is not clear that lions or bears would make a very good
2 surrogate for them in the way they use the habitat?

3 A. No.

4 Q. So it brings up the question, is there some sort
5 of, for want of a better term, internal peer review process
6 that proposed projects go through to see if the hypothesis
7 stated in the test or the question they intend to ask, in
8 fact, does pass muster with the literature, does pass muster
9 with the sciences as we know?

10 A. There isn't any formal process internally and even
11 an informal process, other than right now, usually the study
12 plans get written by a biologist. Assuming there is a
13 Program Manager in place, the Program Manager would read
14 over that, provide different guidance, and otherwise,
15 occasionally, we have gone to external State driven groups.

16 The Kaibab project did that because of the high
17 visibility, and so there was Forest Service and ASU and ADA,
18 and a study plan went to that stakeholder group for input
19 and edits as well. And that is probably as close as we have
20 gotten to some type of real true peer edit. There has been
21 a lot of push, I had a meeting with Duane and Steve and
22 Bruce Taubert and Stephanie Nichols-Young and Sandy Barr,
23 because they had a lot of questions following the Unit 22
24 study because they hadn't liked the study anyway because of
25 the removal of lions.

1 They had some questions about the results of that
2 study and the management implications of that study. They
3 had -- they had wanted to see the Department embrace some
4 kind of regular stakeholder process and external review of
5 proposals. Now, not necessarily scientific review.
6 Probably I would suggest when you are talking about Sandy
7 Barr and Stephanie Nichols-Young, you are talking about a
8 social --

9 Q. Social palatability?

10 A. Yes. We had talked about doing something like
11 that. It is really -- first of all, I don't think that this
12 Department has real knowledge of how to engage our
13 stakeholders very well. Our public processes are generally
14 real not stakeholder engagement processes, with the
15 exception of some. I think your involvement with the
16 Mogollon Sportsmen Association is really -- is a true
17 stakeholder process. There is real give and take and
18 exchange there.

19 A lot of our public meetings aren't that way, and
20 I think there is a lot better -- I hear there is a lot
21 better proceeds out there. I don't know, necessarily know
22 how to implement them, but having been through some of the
23 human dimensions training and the real push to try and
24 involve the public early on in setting what their
25 expectations or goals would be from a management standpoint,

1 there seems to be some better ways to engage stakeholders.

2 I am not sure I want to go to a social review of
3 project proposals, though, because there are some that we
4 enter into, like Unit 22, that we wouldn't socially get a
5 real positive response to, but it is important.

6 Q. Yeah.

7 A. Kofa lion, another one that we wouldn't probably
8 get a positive --

9 Q. Let me ask you. This is a really unfair question.
10 Knowing what you know now. Now, factor in all of the
11 changes and modifications we made in the last year, since
12 that proposal was initially propounded, and let's say we
13 have made all those changes, but Macho B never happened. So
14 now we have -- we are going to propose that study to deploy
15 to do this trapping along this border area in the fall of
16 this year. Do you have any sense as to whether we would be
17 likely to get a better outcome or the same outcome under the
18 way that we are doing things today?

19 A. Not a better outcome yet, I think. And even with
20 some of the changes that we are trying to implement, I don't
21 think -- I think they are all pieces of the puzzle. I don't
22 think that the whole -- that the flow of a process that
23 would get a study from some kind of thought to study design,
24 proposal, and into implementation is there yet to fix all of
25 the issues that we have seen.

1 Q. Is it doable?

2 A. I think with a fair amount of -- I mean, I think
3 it is going to take real time from somebody or multiple
4 people to sit down and really rework that. I think it is
5 absolutely doable. It is just going to take real resources,
6 and I am not saying money resources, just time.

7 Q. Time.

8 A. Yeah, that is not money at all.

9 Q. No, but I mean, we don't need to repeat the law of
10 physics to get this done?

11 A. No, I think we can get there. I'd like to see us
12 get there. We have toyed with the idea of some type of
13 scientific review, whether it be internally where at
14 Research Branch meetings, we have a certain number of study
15 plans that, you know, you read, and then you get the input
16 at least, then, of 40 biologists, some with really good
17 experience --

18 Q. Yeah.

19 A. -- rather than just having someone who is pretty
20 young, new, and maybe not real familiar.

21 Q. Well, you know, too, the factor in some of the
22 value in my mind of having us vet the projects at E-staff,
23 particularly, if we have got a good sort of pre-checklist
24 process. We kind of very quickly and usefully gets us to
25 yes or no on doing a full EA checklist. E-staff ought to

1 have visibility on the fact that we have people doing that
2 work --

3 A. Uh-huh.

4 Q. -- in the sense of having the opportunity to
5 factor in the value that, you know, placing value on that
6 effort. And right now, I think -- so, I mean, as much as
7 anything, my intent for that process would be to educate
8 E-staff about what the Department is doing because nobody in
9 this Department has full visibility?

10 A. Right. And Exec staff has always seen them before
11 they go to the Commission. Exec staff saw them before May
12 2008. I think they saw them in April 2008 or something like
13 that. But, again, it was just a paragraph of we are going
14 to do a study on this down in approximately this area, or
15 beginning, I think it said, in this area. It didn't even
16 commit to the project only being in Southeastern Arizona.

17 But I can certainly see a process that would take
18 it to Exec staff once the whole study design is complete and
19 the study plan comes to Executive staff.

20 Q. Why wasn't there a study plan, a full-up study
21 plan for the Bear and Lion Study before we executed that
22 fall of '08?

23 A. I think that there was some type of study plan,
24 but it was all in proposal format. There hasn't been a real
25 standard for study plans in Research Branch.

1 Q. Should there be.

2 A. I think there absolutely should be for Federal aid
3 funded projects. On the contract side of things, they have
4 a study plan that goes, you know, it is kind of -- they are
5 not usually real in depth study plans, but something goes to
6 the contractor in order to approve it. It is a budget and
7 it is a plan of what the work will be, you know, we will be
8 trapping X number of things over X number of days in order
9 for that budget and the plan to be approved.

10 Q. Well, you know, one approach to that, too, would
11 be, there is -- you can make something almost as easy to do
12 as not do, you know, you could, I think what may seem to shy
13 people away from the idea of study plans is that it almost
14 carries with it immediate connotation of some heavy
15 voluminous process and all the time it takes to do it as
16 opposed to, again, stripping down to what essentially, to
17 what problem is a study plan a potential solution?

18 A. Right.

19 Q. And then stripping it down to almost as much as
20 you can fill in the blank, and where you almost flow chart
21 your way through in the sense, okay, if the answer is this,
22 then you need at least a couple sentences of explanation,
23 but where something becomes formatted, it would have all the
24 benefits and all of the deficiencies of that approach. The
25 deficiencies would be if you wanted a lot more detail, it

1 probably isn't there.

2 On the plus side, if there was one done for
3 everything, and they, in fact, truly address the key
4 critical points on a study, then you would have the ability
5 to very quickly vet that, in fact, this plan is complete.
6 You don't have to read through the whole thing in
7 excruciating detail necessarily to know that this, in fact,
8 has checked all those blocks, and it becomes something that
9 done right, also, you can do it in such a way that you don't
10 necessarily walk yourself into a corner with being qualified
11 for the dollars. You find that you somehow know how to
12 change the study in such a way that you no longer qualify
13 for the funding that you have.

14 A. Yes. Even our Federal aid study plans that we
15 have right now, and usually our Federal aid projects do have
16 study plans. The Kaibab had a study plan. The one that we
17 are currently finishing the study plan or we have been
18 revising the study plan is the OHB project. So usually they
19 do.

20 In the case of Todd's, I think what happened is
21 Todd was a pretty new biologist in the Department and one
22 who kind of didn't like process much, and the Program
23 Manager position which would usually oversee and help to
24 ensure that that got completed was empty before this project
25 got approved by the Commission. And then my understanding

1 was that Todd, you know, had a real good idea, already had
2 something drafted, when he was implementing it.

3 So it is not typical of our Federal aid projects
4 to not have study plans. Now, one case would be Steve's
5 project, which is, you know, that is a Federal aid project
6 that has been going for ten plus years now, Wildlife Water
7 Study. As you all know, it has kind of gone through
8 different pieces of those studies. I think Steve has study
9 plans for each of those pieces. Steve is an excellent
10 biologist.

11 Q. He is about that anal, too, about that sort of
12 thing.

13 A. Yes. But I am not absolutely positive that, say,
14 the most recent direction of the work has a fully executed
15 plan.

16 Q. You know, the thing about this, I think you are
17 right in the sense that there were a lot of documents one
18 can point to as having implications for how this study went,
19 but in all those various proposals --

20 A. Right.

21 Q. -- there is tremendous variety between them?

22 A. Yes.

23 Q. You know, everything from very non-invasive
24 approaches to very high end telemetry studies with a capture
25 and collar program. So this came up -- I don't think this

1 came up from you, but it came up from a couple of the folks
2 we talked to in Research Branch. It was, quote, the J word?

3 A. Uh-huh.

4 Q. Don't use -- stay away from the J word. Are you
5 familiar with that at all?

6 A. Only post Macho B. That came up post Macho B. As
7 far as jaguar, you know, people got sick and tired of public
8 records requests or otherwise. And so people would be like,
9 oh, I don't even want -- don't even say it. Don't say the J
10 word at all. I don't want to hear it. Not pre Macho B, I
11 am not familiar with that.

12 MR. MCMULLEN: Would it surprise you to hear that
13 it was floating around amongst the troops before Macho.

14 THE WITNESS: It would surprise me, yeah. I mean,
15 I guess it would surprise me in the sense that Kirby didn't
16 seem to have any issues coming to me that previous summer
17 and asking about it and getting a response. Yeah, I guess I
18 would wonder where the concern would come from because I
19 don't tend to be a person who is difficult to approach. I
20 don't tend to be a person who is not going to, you know --

21 MR. HOVATTER: I don't think that was the issue.

22 MR. MCMULLEN: No, I don't either.

23 Q. BY MR. HOVATTER: In the context in which it came
24 up, it was things like, if this becomes about jaguars, we
25 are going to lose -- I am going to lose the money?

1 A. Huh.

2 Q. I could lose money from what I am doing to that.
3 It could, you know, it was -- you know, there was --

4 A. Yeah, I guess the only place I would expect it to
5 have come up is I know that prior to the whole Macho B
6 incident that one of the proposals that Todd had written did
7 talk about jaguars and the use of bears and lions as an
8 umbrella species or as a surrogate species. When that came
9 forward, and I hadn't even seen that proposal, when that
10 came forward in some kind of funding context, I think
11 relative to border funding and the big amount of money that
12 was coming in, Terry saw that proposal and got very upset
13 from what I heard.

14 This was all second or third-hand from other
15 people because he didn't want to see funding that was to go
16 to jaguars to go to this project, you know, with Fish and
17 Wildlife Service going, oh, well, it's a whole lot easier to
18 fund a project on bears and lions and say it is using, you
19 know, doing a surrogate work on jaguars than for us to
20 actually engage in any actual jaguar funding.

21 So Terry had, as I understand it, either contacted
22 Kirby or Todd or somebody in that mix and had said none of
23 this, you know, you are not to be using this as a surrogate
24 for jaguars. We have projects we want funded for jaguars.

25 Q. So in that sense, that wouldn't surprise you. You

1 already had some sense of that -- --

2 A. From that standpoint.

3 Q. -- potentially having competitive research going
4 on?

5 A. Yes, from that standpoint.

6 Q. Let me ask you this then.

7 A. When that happened, I saw it as -- Todd threw the
8 J word in there because he saw that as a way to kind of up
9 his way of getting funding. You know, people look at bears
10 and lions, they are a dime a dozen sometimes. But, boy, if
11 you think about a jaguar, then maybe the funding will stream
12 from Fish and Wildlife Service or from Doris Duke.

13 Q. You might have a little bit more trouble with it
14 if you said we want to use a surrogate for leopard frogs or
15 something?

16 MR. MCMULLEN: Bull frog population in
17 Southeastern Arizona.

18 Q. BY MR. HOVATTER: I want to go, because we talked
19 about this, and your memory of that conversation that summer
20 when Kirby approached you about what if jaguars, again, I am
21 paraphrasing this, so rephrase it if you would like, about
22 possibly jaguars might become a part of that Bear and Lion
23 Study. What was your understanding when he asked that
24 question, what context -- what was driving him to ask that
25 question?

1 A. The way that I took it, when Kirby approached me,
2 because he was kind of -- it kind of didn't come from a
3 standpoint so much of can we capture a jaguar, as much as,
4 if we were to capture a jaguar, can we put a collar on it?
5 I kind of backed it up, and said, I don't want to be
6 capturing a jaguar, much less putting a collar on it.

7 My kind of understanding was that in some way he
8 thought, well, we are down there, maybe we can capture a
9 jaguar. And if we did, wouldn't it be nice to put a collar
10 on it. I don't know if that is coming from -- I know he was
11 interacting a lot with Ron Thompson, who I know has a lot of
12 experience down there. I don't know that I knew he was
13 interacting with Emil, but my assumption was just that in
14 his interactions with people, he was beginning to think,
15 well, okay, well, we could capture a jaguar, and if we did,
16 we would put a collar on it. And my take had been no
17 collar, no jaguar.

18 Q. Let me ask you then. Did you know that we had a
19 collar sitting in Region 5 headquarters to capture a
20 jaguar -- or to put on a jaguar if it was captured?

21 A. No, I didn't, because if I did, I would have
22 referred him elsewhere to say, well, you know, I know that
23 at times we talked about this, you should probably talk to
24 Terry. My take on it was, I don't know to touch jaguars
25 period. It is not within our scope of work that we are

1 working on anyway, and I know that this is a contentious
2 political issue, not necessarily from the standpoint of
3 capturing, but I have been aware from Terry that the overall
4 jaguar management and agreements out of the working group or
5 whatever they are called, Conservation Team, was really hot
6 politically. I also knew it was something that Terry almost
7 owned internally. I don't ever like to step on Terry's
8 toes.

9 Q. Let me ask you this. This is a project that works
10 both ways. There had, in fact, been a decision, a
11 Department decision, in the early 2000's that if we captured
12 a jaguar inadvertently that we would put a collar on it. So
13 that is why we bought a collar and stuck it down there.
14 Now, in a sense, the fact that Research Branch, and for all
15 we know Nongame and others, did not know that decision was
16 made is a stovepipe issue?

17 A. Uh-huh.

18 Q. Not a stovepipe of -- your stovepipe is me.

19 But Bob didn't know that either, because what I
20 did is when I gave my response based upon the knowledge that
21 I had, and then I immediately grabbed Bob, you know, my ID
22 at the time, and said, hey, here is what Kirby is saying.
23 Here is what I responded. Is there something I am missing
24 kind of thing. He had been like --

25 Q. Yeah. Chasa, sometimes the answer is just because

1 it seemed like the right idea at the time. Why didn't you
2 send it into Terry to talk to him about it or ask Terry
3 about it? Well, I will expand on that. Why didn't you?

4 A. I don't know. I guess it just didn't even cross
5 my mind. I guess, I don't know, I didn't even think of
6 there being an implementation of capturing jaguars. When I
7 took it to Bob and he kind of reiterated the same response,
8 then I assumed that there wasn't either direction to go.

9 Nowadays, I would send it to Terry, but my
10 knowledge of Terry and stuff, even a year ago, was a lot
11 less than -- and what work he does.

12 Q. I had already seen some documentation, that
13 proposal you put out in March, late March about restarting
14 bear snaring, and you clearly had put -- it was clearly a
15 document informed by what we had just gone through. Of
16 course, at that time, we didn't have -- we had not tumbled
17 to the fact that we might have a problem --

18 A. Uh-huh.

19 Q. -- beyond that. That was simply being driven by a
20 process review?

21 A. Right.

22 Q. So I was impressed by that document. Now, I guess
23 the question comes up, too, in that same context is it's one
24 thing to say that we really don't want this to be about
25 jaguars because it is not -- the design is not what we were

1 pursuing. By the same token, it does sound as if Kirby had
2 a sense that the potential of this, you know, snares are
3 snares, and potentially, whatever sticks its foot in that
4 snare is going to be a part of the study whether we want it
5 to be or not.

6 And if, in fact, we had taken that approach to it
7 on an early stage, do you get a sense that that might have
8 then generated a conversation which would have resulted in
9 us having gone into that study with a more informed sense of
10 how jaguars might become a part of it?

11 A. Yeah. Certainly, it is hard to look back and
12 remember exactly how I felt that summer. My take on it had
13 been, and I wasn't well informed about jaguars in the United
14 States or otherwise, was that I thought it was an incredibly
15 low probability and that Kirby was just kind of running his
16 options. Also, at the time, Kirby wasn't trapping lions.
17 Kirby was trapping bears.

18 Q. Much less likelihood, especially if you are using
19 those bucket traps?

20 A. Right, because we hadn't even gotten into lion
21 captures. So I just didn't even -- now, it would be a very
22 different response. And, hopefully, I wouldn't be in a
23 situation where I was having to make that response when a
24 project was already underway trapping animals. It would be
25 more at the front end when you are talking about the EA

1 checklist and the review and otherwise.

2 Q. The Research Branch Annual Job Statement, is that
3 vetted against, and I think I know the answer, but I got to
4 ask it anyway, with the 10(a)1(a) permit?

5 A. No.

6 Q. Do you think in hindsight -- good, God, what a
7 plague driven brunch we are. Do you believe in hindsight --
8 by the way, we need to have the folks who do the
9 transcriptions, they have got to identify the coughs. So
10 we will all have to cough.

11 MR. MCMULLEN: Just so you know, I didn't cough.

12 Q. BY MR. HOVATTER: Do you have -- I guess the
13 question is should they be?

14 A. Yes, but I don't know that that would have fixed
15 this problem because you would be reviewing the Bear and
16 Lion Study. Like when I was dealing with it a year ago and
17 I am looking at a Bear and Lion Study, I wouldn't have even
18 necessarily -- I would have been like, nope, there is no
19 Nongame or endangered species that I am dealing with, you
20 know, I am dealing with bears and lions.

21 So that review wouldn't necessarily hit upon then
22 saying, oh, I need to look at my 10(a)1(a) permit for, you
23 know, for jaguar and whether we have a permit to
24 incidentally capture one. Did '04 like -- you could take a
25 look at this, and if you really started looking at all the

1 possibilities, any kind of snare, like let's say a bucket
2 snare, you could end up getting something that is smaller,
3 Willow Flycatcher or something that jumps in there, lands on
4 your throw arm and gets smashed against the bucket. Then I
5 have people show up and be like -- they would probably be
6 like a bird, but if they are smart, oh, I think that is a
7 little Flycatcher.

8 Now, are they going to remember that they need to
9 report the take of a Willow Flycatcher as part of our
10 reporting that might happen eight months out, probably not.
11 But if they are well trained and informed, they would then
12 say, oops, I have got a Willow Flycatcher that I took on
13 this project. It doesn't mean that I would have evaluated
14 the potential to kill a Willow Flycatcher using my bucket
15 snares, you know. So I think that there has got to be some
16 way to make that process in a linear process where there is
17 a review, at least by project, the overall annual job
18 statement.

19 You should have already had some kind of review.
20 If you implement the EA checklist or even a larger project
21 checklist, there should be more of a review by each of those
22 projects. And then it would be redundant to look at the
23 annual job statement at that point. And so I would kind of
24 recommend it more at those project levels with some review
25 by, you know, whomever.

1 As I understand it right now, an EA checklist, it
2 goes to Eric, and Eric is the one who identifies does this
3 have potential, you know, are there potential for Nongame
4 species to be affected or otherwise.

5 Q. Of course, Eric is pretty smart about that, but
6 his knowledge is not all encompassing.

7 A. No.

8 Q. Is your Annual Job Statement essentially the
9 equivalent of this is one of the Nongame Work Plans or
10 Annual Work Plans?

11 A. Yes.

12 Q. Is there -- I just have a quick -- this is just
13 institutional knowledge. Is there a reason why one is
14 called a work plan and the other is a job statement? Is
15 there any -- I mean, this is a minutia thing?

16 A. Yeah, I think they are the same thing. It is
17 whatever -- it is whatever Sherri tells us to put on the
18 top. So I don't know if Nongame Work Plan --

19 Q. It is not a particularly important issue.

20 A. -- may have been more broad or it may be because
21 they used to have to meet Section 6 report or otherwise
22 requirements. I know Eric has made a real effort in his
23 reporting to bring it all together into a single format and
24 streamline it.

25 Q. It is a pretty streamlined process.

1 A. That kind of format, I think, is more Section 6,
2 and not necessarily under CMS. Under CMS, as I understand
3 it, it is a job statement, but it is whatever Sherri tells
4 us. I mean, even our numbering processes aren't meaningful
5 anymore. We have a tendency to call this W78. W78 doesn't
6 even exist anymore. That is just a carryover internally.

7 Q. But this is essentially the equivalent? You do
8 not have a separate document that performs it? This
9 performs that duty for Research Branch?

10 A. It does, yeah. It used to be a lot more, if you
11 look back a couple years, it used to be a lot more specific.
12 You used to have a lot more specificity by project, broken
13 out -- much like Eric's is broken out by species or by
14 species guild, it was broken out by the individual research
15 projects, then it had a lot more verbiage. Under direction
16 from Sherri, we changed that a little over a year ago --
17 well, no, it must have been two years ago because Richard
18 was still around when we changed to that, I am thinking --
19 to go with a more streamlined approach to be more broad so
20 that it would allow greater types of activity so that we
21 wouldn't pigeonhole ourselves in because --

22 MR. MCMULLEN: Easier to collect Federal aid.

23 THE WITNESS: Yeah, easier to collect the Federal
24 aid. Because it used to be that sometimes people thought we
25 really wanted a lot of specificity, and they would say we

1 are going to capture eight bears. If you say that you are
2 going to capture eight bears, then you better capture eight
3 bears or you better be returning some money. If you capture
4 nine bears, then you better be paying for that ninth bear
5 out of some other fund source.

6 Q. BY MR. HOVATTER: Could you have gotten away with
7 saying we are going to capture bears. Would have that been
8 adequate?

9 A. Yes, you can say that. She had advocated, Sherri,
10 as the person who was doing our CMS stuff, advocated for
11 doing more kind of from an activity standpoint, like we are
12 going to capture animals, you know, for the purposes of
13 research and monitoring. And, then, in our reporting, we
14 would list out what we captured.

15 Q. And from your standpoint, what is the highest and
16 best use of that document from the standpoint of Research
17 Branch?

18 A. Right now?

19 Q. Yes.

20 A. It is to meet our Federal aid requirement. It is
21 not our planning document at all for me. There is more
22 specificity on projects in our operational plan, and even
23 there, it is only a couple sentences per project, but it
24 lists each of the individual projects than there is in the
25 CMS. And the CMS only encompasses a small number of the

1 projects I have in my branch.

2 MR. MCMULLEN: Because you have contract funding
3 from other sources other than the Feds?

4 THE WITNESS: Uh-huh, yeah, more than half of my
5 funding. Probably I want to say at least two-thirds of my
6 funding is coming out of contract sources and not out of
7 CMS. I would get about a million dollars a year in the
8 trust for Federal aid and about 500,000 in aquatic Federal
9 aid. Whereas on contracts, I usually am probably processing
10 somewhere around three and a half million a year.

11 Q. BY MR. HOVATTER: Now, is contracts essentially an
12 entrepreneurial effort?

13 A. Yes --

14 Q. Have you had the chance to look at your project,
15 current project list, and determine whether we have any
16 other -- or what the likelihood of a similar situation is?

17 A. -- we looked at our projects. It depends upon,
18 again, what, you know, you talk about the difference between
19 leopard frog and jaguar. If you are talking about any
20 potential impact on an endangered species, we have some
21 projects. There's also some long term projects where there
22 comes up a question then of an EA checklist may have been
23 done years ago, and a good example of this is the Grand
24 Canyon projects, which, of course, we would do it with
25 Federal partners on -- in fact, we are contracted by Federal

1 partners to do the work.

2 The question then would become is an EA checklist,
3 you know, is that something then that fulfills by the person
4 contracting, by the group contracting us, or that we fulfill
5 internally? And in talking to Bill Persons on the Grand
6 Canyon stuff, he's like, I know we did kind of a broad EA
7 checklist years ago. I don't have a feel for whether that
8 covers their current existing work as it has kind of changed
9 over time and things like that. So they are -- each of the
10 program managers are in the process of reviewing all of
11 their projects.

12 Q. You know it is --

13 A. And, then, we still have the problem in that the
14 EA checklist process and some of the understanding of the
15 people that are running that process in Habitat Branch is
16 still they are not as sensitive to this issue as some of us
17 that have been in this room. And so the take on it is no,
18 no, I don't think you need an EA checklist, and I am like,
19 here is the project, I want you to review this.

20 Q. Who is in charge of the EA checklist? Would it be
21 Josh or would it be --

22 MR. MCMULLEN: Laura Canaca.

23 Q. BY MR. HOVATTER: Would it be Laura?

24 A. Yeah, Josh ultimately is the project lead I am
25 sure.

1 Q. We ought to put Laura and Josh on the interview
2 list. No, really. I don't know why I didn't think about
3 that before. It is, you know, the stovepiping, I don't want
4 to perpetuate that in the way that we have approached this
5 because this was not a problem of any one branch.

6 MR. MCMULLEN: Oh, no, no.

7 Q. BY MR. HOVATTER: It is many. And I think, you
8 know, because part of the interview process we are going
9 through now is getting at not whether the facts as much as
10 it is what is the process?

11 A. Uh-huh.

12 MR. MCMULLEN: Yeah.

13 Q. BY MR. HOVATTER: And, you know, looking at
14 regardless of, you know, we wish it would have been a
15 different species. It was an animal, but we have learned
16 some things about ourselves it is important that we learn.
17 And we have got to do some things about it. So that would
18 probably be something that would be worth considering. We
19 will think about it.

20 MR. FABRITZ: We will talk about it after this.

21 THE WITNESS: So, yes, we are still reviewing all
22 of those.

23 Q. BY MR. HOVATTER: Do you know if --

24 A. And, actually, I have a question about that.

25 Q. Yeah.

1 A. The question comes up, then, do we stop work
2 completely on a project if it is identified that we have a
3 potential, you know, species involvement that we may have
4 concern because the other issue is, is that to implement an
5 EA checklist after a project has already started, we either
6 have an option, Josh will not sign off, of course, on any
7 checklists that are backdated, and we are not looking for
8 some kind of approval that backdates. I am just trying to
9 get projects covered that had begun earlier that we now
10 recognize like the Greer Nutrioso Bear Project, we stopped
11 all field work on that because of the real concern of
12 capturing wolves. We initiated the EA checklist. It was
13 refused for signature because the project began at an
14 earlier date. Then our only option is to either say, okay,
15 well, we are going to begin the date now in the future and
16 say we are in --

17 Q. Or you appeal that?

18 A. -- Phase 2 of the bear project.

19 Q. Why don't you pull that up to Bob Broscheid or
20 something to have him broker a sensible decision between you
21 and Habitat?

22 A. Because I don't want it to seem -- I don't want it
23 to seem like the Department is hiding anything. That is not
24 the intention at all, but at the same time, if we have come
25 to the realization that we have projects out there that do

1 need an EA checklist, it doesn't seem appropriate at all to
2 continue work on those projects.

3 Q. It is a good question. I guess here is an answer
4 on this. Actually, it is probably a take-away that might
5 help you get some things done. I would tell you that I am
6 spending a lot of time with lawyers these days, and there is
7 some thought that because of the way we migrate our CMS to
8 be so generic or CMS Job Statement, that we made it so
9 generic that the potential link that would give us that
10 would make it clearly an incidental take that might occur
11 during one of those projects would be covered under our
12 10(a)1(a) permit, that by the approach we have taken, we may
13 have set ourselves up to where we have kept it so successful
14 and divorced it from any possibility in our minds in the way
15 we have articulated an incidental take that for us to show
16 the link that, yes, in fact, we had recognized an incidental
17 take.

18 So it is, in fact, legitimately considered a
19 10(a)1(a) issue, you know, covered by our permit that the
20 Bear and Lion Study, for example, may be subject to an
21 interpretation as well. It had nothing to do with jaguar.
22 We anticipated nothing about taking a jaguar. Therefore,
23 that take is due to -- is not due to a study -- is not a
24 part of the study design, which the 10(a)1(a) is in large
25 part intended to, where you have contemplated an act

1 occurring, that the 10(a)1(a) is your authority to then
2 continue with your project regardless of that act.

3 A. Huh.

4 Q. Now, if that's the case, and right now, the
5 lawyers are still kind of beating on that to see what they
6 think on that. We may have by the way we have approached
7 this set ourselves up to make it much more difficult for us
8 to, in fact, take on 10(a)1(a) legitimacy when we have it
9 right there. It is there in the permit to be ours. It is
10 ours to be had, but by the way we approach our study design
11 and the language that we use, if we wall it off from, there
12 is no -- and, you know, we essentially have said, you know,
13 that is all on us. This was not, you know, this was not a
14 part of an inherent study design where we recognize this
15 might happen. This shouldn't have happened. Therefore,
16 when it did -- now, it is not clear that that really is
17 going to be the legal opinion on this.

18 A. Uh-huh. So, then, you have got to consult on the
19 project. Is that what -- is that the direction you would
20 have to do?

21 Q. So if that's the case, then you could build the
22 case then for us to adequately vet a project and address the
23 fact that, you know, and do some risk assessment type
24 language, you know, while remote, this is being done in
25 Habitat that we share with this endangered species. It is

1 possible that there could be -- yeah, you wouldn't expect
2 with a bucket snare to have a problem with illegal take of a
3 Desert Puff Fish. So, I mean, we are not going to have that
4 sort of thing, you know, that I think we can safely take off
5 the --

6 A. Unless the bucket is misused.

7 Q. You know, when you capture a Desert Puff Fish on
8 your way to putting a bucket snare in, you know, I mean, but
9 we get to some theory on this, too, but I think we have
10 to -- --

11 A. And the EA checklist does that. The EA checklist
12 right now for 10(j) species, the EA checklist does list all
13 those species so that then you identify, well, these all
14 occur in the area and stuff. So I am assuming that is the
15 way that a lot of things --

16 Q. See, I think you need to take that away, because I
17 think the answer to the question is this, if we have, in
18 fact, vetted that appropriately against, you know, our
19 databases and all and what they tell us about what is in
20 them and understand enough can articulate enough about the
21 methodology we are going to use to clearly recognize what
22 its real potential for take is then, I think, the answer
23 would be that we probably could restart trapping along the
24 border.

25 I don't know if we -- because I think we talked

1 about the idea of potentially do we build a protocol that
2 says, okay, if you have a jaguar indication within five
3 miles and two days, you stop.

4 A. Uh-huh.

5 Q. And we backed away from that because we had --
6 there is an infinite number of places almost literally that
7 jaguar could be in relation to your project?

8 A. Well, we have draft protocols like that.

9 Q. So that would be strictly based on sheer dumb luck
10 that you would find a track or that the animal actually
11 approaches that snare from the angle that you may have some
12 monitoring mechanism like a camera on?

13 A. We don't have a detection project going on right
14 now, which could then be interpreted by the public as they
15 terminated a detection project because they don't even want
16 to know so that then all of their activities are allowed to
17 occur.

18 Q. The point of fact, the detection camera project, I
19 think we need to -- I think we need to push that back up the
20 chain, probably talk with, you know, talk with Mike, talk
21 with Bob, because I would say we need to push that?

22 A. You want me to do that, because I think the Jaguar
23 Detection Project was driven out of Heritage Grants.

24 Q. Yeah, it was.

25 MR. MCMULLEN: Yes.

1 Q. BY MR. HOVATTER: It was. The thing is we had the
2 money, but you know who we awarded the money to?

3 A. Yes.

4 Q. So that is really why there is no -- if that had
5 been someone else, but the question became should we, in
6 fact, then look at moving that money, finding someone else
7 who is willing to take on the project?

8 We don't own those cameras. We are going to have
9 to buy a boat load of cameras, but well, I guess, I am not
10 sure. Maybe that ought to be Terry's to do. Was that
11 something -- you guys weren't going to oversee that project.

12 A. No, that has never been us. That was all, I
13 think, as I understand it, like Terry, and then Robin
14 administers the Heritage.

15 Q. I think from the standpoint of bear and lion
16 trapping even in the Atascosas, we could build that project
17 and build a project that would pass muster and would be
18 clearly covered by a permit. The permits are being relooked
19 at now in that regard, and that is probably as much as
20 anything a social and political decision by the Fish and
21 Wildlife Service as anything else.

22 A. Uh-huh.

23 Q. For us, the actual execution of it is probably
24 going to be somewhat political and social driven?

25 A. Uh-huh.

1 Q. But I think from the standpoint of building a
2 project that technically legally would pass muster, I think
3 we could do that right now.

4 MR. MCMULLEN: I have got a question. You asked
5 earlier if you thought after Gary made a suggestion on a
6 possible process to do to make a clearer connection between
7 a project study plan and a 10(a)1(a) permit. You asked a
8 question would we have to consult with the Fish and Wildlife
9 Service? We know the consultation process is a long one.
10 But if we did it kind of along the lines that Gary is
11 suggesting where, you know, if it was some sort of form
12 whether it is an EA checklist or not, we identify, well, it
13 could happen, but very unlikely. If we had that kind of
14 analysis in-house would it require consultation do you think
15 on each project, because consultation is a tremendously
16 laborious process.

17 THE WITNESS: Right. My understanding, and I am
18 piecing these processes together, because I am still really
19 on the --

20 MR. MCMULLEN: Learning curve.

21 THE WITNESS: -- learning curve for this area, but
22 my understanding is that at least as it is interpreted
23 internally that Federal aid projects, their EA checklists
24 are required then to go to Albuquerque for review. And then
25 it is in that process that Albuquerque either agrees if we

1 found that there is you -- I don't remember all of the legal
2 terminology they use in the EA checklist --

3 MR. MCMULLEN: But it is not likely to do that.

4 THE WITNESS: Yeah, exactly. If they determined
5 from the internal EA checklist that, you know, it is not
6 likely to affect any of these species significantly, and we
7 have signed off on that, it goes to Albuquerque, then I
8 believe or is supposed to maybe, and then they would review
9 that and sometimes they disagree. They are like, no, not
10 true at all. You have a high potential to do this. Then
11 they will tell us if we have to consult or not.

12 I suppose it depends upon the climate at Fish and
13 Wildlife Service, and in some cases, that climate has not
14 been real positive from a consultation standpoint. I mean,
15 look at the Section 7 consultation, it seems like it is a
16 nightmare.

17 Q. BY MR. HOVATTER: Well, except I kind of remind
18 myself, we have been out of compliance on that for ten
19 years.

20 A. Okay. Well --

21 Q. So in point of fact, you know, there's the people
22 we should talk to ten years ago and ask them why the heck we
23 did that because we have been out of compliance for at least
24 ten years.

25 A. Wow, that is extreme.

1 Q. So we had some opportunities to do this. Of
2 course, the way that I found out about that was when our
3 folks walked in and told Larry that if we didn't figure out
4 how to get past this within two weeks, we were going to have
5 to shut down sport fishing in Arizona. We would have liked
6 to have more than a little more than two weeks in that ten
7 years to deal with that problem.

8 A. Right.

9 Q. I think the thing about this is, is that I think
10 if we had done an EA checklist on this project, on the Bear
11 and Lion Study, and we would have had jaguars on the list --

12 A. Assuming that they would show up and that depends
13 upon HGMS data. I don't know what they have got for --

14 Q. But, you know, if HGMS doesn't show jaguars in
15 that areas, then that's a deficiency in the HGMS approach.
16 So assuming for the moment for the sake of discussion that
17 it does, that it accurately portrays that history, then I
18 suspect that if that had gone to Albuquerque that the
19 likelihood of them requiring consultation would be
20 relatively low in the sense that when you look at the
21 history of all the activity we have had.

22 We not only haven't put a trap on a jaguar, we
23 haven't had, I don't think we have had a single Game and
24 Fish person physically see a jaguar in the last 15 years.
25 You know, we had, you know, Thorry and Michelle were

1 allegedly the first Game and Fish employees to actually see
2 a jaguar track in the field.

3 A. Really?

4 Q. Yeah. So that being the case, you know, I think
5 in foresight back then, I think very likely the assessment
6 would have been --

7 A. Yes.

8 Q. -- very low, very unlikely. As it was in the
9 capture, you know, I asked twice, you know, before the
10 recapture, once before the recapture, once maybe after, said
11 it is our belief that our permit covers both and incidental
12 and deliberate take. The answer from Albuquerque was yes,
13 it does. It doesn't mean they wouldn't require
14 consultation. It does mean that from their perspective the
15 likelihood of a capture if we discussed this was
16 infinitesimal. Now, it would be very interesting if we do
17 this now to see what we get and whether or not we do --

18 A. A full consultation?

19 Q. -- a consultation, yeah.

20 A. Especially with the potential to be releasing
21 wolves south of the border.

22 Q. Oh, yeah. There are obvious in hindsight, now,
23 and there were clearly Information Branch implications for
24 what happened in this, but is there any part of our process
25 in vetting and building proposals that requires our folks to

1 consider the information implications, the Information
2 Branch implications? The idea is for either leveraging for
3 the Department ends from the standpoint of promoting the
4 work we do or be prepared for a bad outcome?

5 A. No, there's no process at all right now on that
6 side with the exception of if you are just talking about all
7 things in Research, things like the CWD Response Plan takes
8 into account the information pieces and stuff, but for our
9 standard research there isn't.

10 Right now the way that the process has worked with
11 Information Branch is they will come and ask us for things
12 or sometimes they would kind of regularly pop me for, hey,
13 well, you know, Gary would say, I am looking for some ideas
14 for the program or Linda might come and give a presentation
15 at the Research Branch, and say, hey, we are always looking
16 for story ideas. She would get a whole, you know, laundry
17 list then of people saying, well, I am doing this down here.
18 I am doing this over here. We have got really cool outcomes
19 here, but there is no formal process.

20 You know, there is a saying that it is not enough
21 to be doing good, you have to be seen. You know that doing
22 good is not its own reward if you are a government agency
23 and you want to have folks believe in our work. And,
24 particularly, I think, Chasa one of the take-aways you
25 should take out of this today is you and your folks ought to

1 put some time in to connecting the dots between Larry's
2 vision from the standpoint of where we need to grow this
3 Department's clout is in the non-consumptive side of our
4 constituency.

5 We have 77 percent of the State of Arizona say
6 they support hunting and fishing, and only about 17 percent
7 of those folks will ever actually hunt and fish.

8 A. Right.

9 Q. But on the plus side, you have got 60 percent of
10 those folks that are pro us. They don't know what pro us
11 means. They are not pro us necessarily in the sense of
12 wanting to participate in those activities that they say
13 they support, but they clearly are. But many of them are
14 pro us because they may be pro nature, they may pro the
15 outdoors and they associate us with that.

16 Clearly, a lot of work that you guys do, and some
17 of it is on game species, but a lot of the work you do is
18 also on species and on work where there will be no benefit
19 other than our belief in the importance of the natural
20 diversity, and the potential that one of those animals might
21 interact with one of those people who is never going to hunt
22 or fish and help us translate that sort of latent support
23 into actual active support for the Department, you know,
24 being willing to check off an extra two or three bucks on
25 their income tax.

1 Being announced what is nongame, it has clearly
2 got implications in mind to the extent we can make that
3 start paying more than three and four for research
4 implications and getting at some of those species and some
5 of those issues, but we need to, you know, I am not -- I
6 wouldn't want this effort to be focused on what if we have
7 another train wreck?

8 A. Right.

9 Q. It should be focused on how do we proactively seek
10 to make visible the really good work that our folks did.
11 How do we be seen to be doing good, because absent us doing
12 something overtly to make that happen, it is going to be
13 interesting.

14 A. Correct. Yeah, there are some projects where we
15 have done better on that, more on the education side than
16 the information side, because of our ability to involve like
17 the home-schooled kids that have been out.

18 Q. And that may be wholly spirited for that, because
19 not every project has to perform every duty, and some
20 projects may perform none of those duties. But I think from
21 the standpoint of the work we do, it is going to become
22 increasingly important that every member of the Department
23 recognize that in some part of the Department, they have a
24 responsibility for telling Department story.

25 A. Uh-huh.

1 Q. And it may be through education. It may be
2 through more traditional means. It may be, you know,
3 doing -- running a couple of Twitters, you know, to get some
4 viral marketing of the idea. In our respect Twittering --

5 A. I am busy capturing.

6 Q. -- is a way to get people to our Web site.

7 A. Right.

8 Q. Yeah, I want to promote more Twittering. Oh,
9 yeah, I swear to God, this is about the Chiricahua leopard
10 frogs. Yeah, prove it. Unless we can get Britney Spears to
11 come and do some of this research with us, it ain't going to
12 sell itself naturally.

13 A. No. Even Britney wouldn't necessarily be a
14 positive thing.

15 Q. Oh, I don't know. For her, it is almost if there
16 is no news -- no such thing as bad news.

17 MR. MCMULLEN: It is all news.

18 Q. BY MR. HOVATTER: Hey, there were some photos. We
19 are in the middle of October, beginning October of 2008 --

20 A. Uh-huh.

21 Q. -- Thorry Smith sends a note to Emil McCain says,
22 hi, I am Thorry Smith, and they got introduced. Then we get
23 a little bit deeper into October, and I wanted to ask you,
24 some of this stuff, I know you passed to us, but I suspect
25 you didn't get a chance to read all this?

1 A. No, I definitely did not read the stack that the
2 Department had.

3 Q. No.

4 MR. FABRITZ: Why would she do that?

5 Q. BY MR. HOVATTER: I have. I have. So look at the
6 subject line, start at the back of this and work your way
7 forward, think about this from the standpoint of an
8 incidental take, from the standpoint of leadership, from the
9 standpoint of management.

10 A. What is CBP?

11 Q. Border Patrol.

12 A. Oh, okay.

13 Q. Customs and Border Patrol. I had that same
14 question this morning. I looked it up, I cheated. I knew
15 it. I just didn't know that I knew it.

16 A. I guess they get to it up here. Yeah, I hadn't
17 seen this one before.

18 Q. No. Again, you maybe were one of the major
19 contributors of the stack, but most of it was not of your
20 production?

21 A. Yes.

22 Q. That was just when you were doing the pursuit for
23 gathering up the information --

24 A. Yeah.

25 Q. -- for the open records request we had. Is there

1 anything, just having not seen that and seen that cold, what
2 are some of your impressions you take away from that
3 communication?

4 A. I guess one of my impressions would be that Emil
5 certainly in that e-mail string comes across as more of a
6 project lead than anybody else, I mean, kind of the driver
7 of the project. Although, Erin seemed to recognize, and I
8 know Erin, that that might not be the case, you know, that
9 Kirby was the lead at Game and Fish she thought and stuff.

10 Where it talks about where Julie comes in and
11 says, oh, great day, you know, hear this and stuff, and she
12 is one of the cooperators on the project.

13 Q. Uh-huh.

14 A. When she says, or is he just working on jaguars, I
15 could see how maybe an initial blush would be, oh, well, is
16 he capturing jaguars or something, especially if you were
17 looking at it from the context of what happened afterwards.
18 I am assuming that that comes more from the knowledge that
19 Emil was working on border detection component of jaguars.
20 It is on the front page.

21 Q. Oh, yeah. No, no, no, I was just looking.

22 A. The context I would tend to put this e-mail in is
23 that the funding was coming -- that the rumors of funding
24 surrounding border fence installation and/or the potential
25 for large sums of money coming from some kind of recovery

1 efforts or otherwise was beginning and that that would --
2 because that is a large part of what drove that change in
3 the proposal by Todd and Julie and others to be that one
4 that looked at the border fence component.

5 And that's when the jaguars had crept into the
6 proposal as this whole surrogate thing, and then got pulled
7 out of the proposal. So looking at that, I am assuming that
8 that is where kind of these are the early musings of that
9 whole piece of, well, is there funding out there, and if so,
10 where is the border fence going in? So where would he most
11 likely be able to seek that funding from Border Patrol.

12 There had also been some meetings with Border
13 Patrol, and maybe that hadn't happened yet. It sounds like
14 at least one of them had, according to Erin, that had
15 looked, in my understanding, Border Patrol was potentially
16 having to mitigate some of the fence installation or not.
17 And, if so, then they were going to have to put some money
18 towards it. There was some jostling going on of whether
19 there might be an ability to gain that money.

20 Q. You know, because you hit on some of the same
21 things we hit on, and clearly, Julie hit on some of the same
22 things, a certain amount of confusion as to what Emil's role
23 on this is, not just from the standpoint is he jaguar or
24 not, but from the standpoint of is he in charge?

25 A. Right. I am sure from Julie's standpoint, it

1 would be very -- they have a lot of collaborators on this
2 project. How is Emil suddenly getting brought in for a
3 collaborator role as well because Julie has a lot at stake
4 in this project having sat on a conference call where she
5 was unhappy with me the week before last because I had sent
6 the letter indicating that the NIFWIF proposal that we could
7 not commit to capturing animals, because I think you have
8 probably seen that, where the NIFWIF proposal had come
9 through, and there was that question of how does this, with
10 our current moratorium on any capture, the problem is that
11 that proposal commits us to some kind of capture.

12 I sent a letter to NIFWIF indicating that, indeed,
13 we cannot meet any capture right now, and I sent a letter to
14 the collaborators. Well, they got really upset with me. We
15 ended up on a teleconference later that week where she was
16 very upset and feeling that Game and Fish wasn't
17 appreciating any of their roles. But if you look at that
18 NIFWIF proposal, it is to fund a significant portion of her
19 salary as well as several other people's with very little --
20 I mean, it contributes to the project from the standpoint of
21 buying collars, and yeah, they continue to collaborate or
22 otherwise, but there's no funding for Game and Fish at all
23 other than the collar effort.

24 Q. You know, I think you probably were able to take
25 this line more delicately than I would have. I would have

1 just pointed out, okay, so how much of the Department's
2 reputation do I owe you if I come out and have it revealed
3 after our Director's announced to the world that we are not
4 doing this, well, in fact, we are.

5 A. Well, and I just said, this isn't something
6 that -- they were arguing that we should rewrite the letter.
7 That is was too harsh. I said, it is not harsh at all. It
8 is very specific. We can't do this right now. However, we
9 are able to move forward on these pieces of the proposal,
10 and we feel we are supportive of this type of work going on.
11 We feel this is an important area, but at this time --

12 Q. Well, what have they done to get out there in the
13 public eye and fight for this Department's reputation with
14 regarding to Macho B?

15 A. Not at all.

16 Q. They want to be part of that? Do they want to
17 help us with that?

18 A. Well, there were a lot of questions that have come
19 up on this from the collaborator role. Right now, what I
20 don't understand and one of the things the new Program
21 Manager, Esther, has been working on is what role these
22 collaborators have. What are they supposed to be writing
23 up? What part of the study is ours? Because, really, this
24 is a study to be done by Game and Fish to analyze versus
25 something that the Wildlife Research Institute is doing,

1 which is where Julie is now, or the Wildlife Conservation
2 Society, which we still have collaborators at, or Todd's
3 involvement from the National Wildlife Research Center. So
4 there's a lot of pieces we are trying to figure out.

5 Q. Take a look at this one from the bottom, and note
6 the dates and note the addressees. While she's reading, I
7 will note for the record, this is a November 13th, 2008,
8 e-mail from Emil McCain notifying the Jaguar Conservation
9 Team of new photos of Macho B, more recent than the last
10 photos that have been obtained of the animal back in 2007.

11 And of note, as a part of this, as we went through
12 our analysis of these documents is that Emil McCain, who is
13 at that point, fairly, you know, he had 22 days of trapping
14 duties we paid for in October and November. So he was
15 probably still on our payroll from the standpoint he was a
16 subcontractor drawing funds for lion work and sent this
17 e-mail notifying folks of jaguar activity in the last couple
18 months within fairly close range of where he was doing this
19 trapping, but nowhere on there is anybody who was involved
20 in his chain of command for the trapping for the Bear and
21 Lion Study.

22 Now, just do you have any memory of ever seeing
23 those photos or ever knowing that those photos have been
24 discovered?

25 A. No, not until after the capture occurred.

1 Q. Of course, what is also of interest is that there
2 is no indication we have found that Emil who was working
3 for, again, was working for us or had just -- was just
4 finishing working for us, ever let anybody on that side, on
5 Research Branch side of chain of command ever know about
6 these photos, never told Thorry, never told -- so, you know,
7 at least not at this point in this?

8 A. Well, I didn't receive a call from Region 5. I
9 know I didn't receive a call from Region 5 in November or an
10 e-mail following up on this.

11 Q. If you had -- if you had been -- if you had known
12 that there were photos of Macho B considerably more recent
13 August, September, October, so within three months of our --
14 would that have -- do you have any sense as to whether that
15 would have potentially generated some other thoughts or some
16 additional thoughts about whether you needed to consider the
17 possibility that a jaguar might become a part of that study?

18 A. Certainly, because, I mean, in December, that
19 started becoming a question for me. And like if I had been
20 forwarded this e-mail where Terry specifically mentions the
21 research personnel and stuff, it would have given me -- I
22 would have thought, oops, wait a minute. We have got a
23 potential issue here. I would have at least gone to talk to
24 Terry directly on this matter and get some input from him on
25 what he thought our best course of action was.

1 Q. See, at this point as we go through the record and
2 all, it doesn't seem -- it does not appear that Terry or
3 Bill had any knowledge in any specificity at all that this
4 trapping was going on?

5 A. Well, he specifies there, Bear and Lion Project
6 including trapping, and he has the funding source now,
7 Homeland Security, who has never paid a dime for our work.
8 They are welcome to, but --

9 Q. And, allegedly, they were going to, yeah.

10 A. But I am sure that what he's thinking about there
11 is having seen the proposal to Homeland Security for some of
12 those funds, he is thinking, oh, well, there is this project
13 that is seeking funding, and it is somewhat underway or
14 otherwise. But, yeah, if I had seen something or even if
15 Terry had called me or something, it would give me pause.

16 Now, I will say that in my day-to-day workload in
17 a variety of work, sometimes this kind of thing could come
18 in, and it would be like, well, wait a minute. I need to
19 handle this. Oh, I called Terry. I leave a message and I
20 move on. Then if it doesn't resurface, it could easily get
21 buried in the geological layers of work. Shouldn't
22 necessarily, but reality is that it does.

23 MR. MCMULLEN: We are all familiar with that.

24 Q. BY MR. HOVATTER: I should ask this. Where are we
25 at on our issue with the vet diagnostic lab?

1 A. Right now, Purchasing as a stop gap measure and
2 has been sending me any requisitions that come in for the
3 vet diagnostic lab. I sit down and talk or call and talk
4 with whoever is putting them in to find out if that's really
5 a needed service from vet diagnostic lab, explain to them
6 that we are in the process of changing over into other vet
7 diagnostic labs.

8 Q. Are you comfortable with that right now?

9 A. Right now, I am. We are working towards -- the
10 problem is, is the Wildlife Health Program, which is just
11 Ann and Clint, Clint is responsible for all the CWD sampling
12 which is underway now. My understanding from Larry was that
13 the CWD Response Plan was a very high priority, a higher
14 priority potentially right now than the vet diagnostic lab,
15 because he wanted that implemented as soon as possible. So
16 I have Ann working on the CWD, but if you would prefer that
17 I switch that and put her on the vet diagnostic lab piece,
18 then --

19 Q. Well, here is the deal, if we can't -- we are
20 really going to be subject to additional criticisms if we
21 have another -- because, of course, we send them our
22 Pronghorn stuff or Black Footed Ferret and things like that,
23 it is going to be hard for us to build a case should we be
24 unhappy with the result. And as we work towards the
25 completion of Macho B jaguar investigation, we intend to go

1 back pretty hard at what we consider unprofessional conduct
2 on the part of the vet diagnostic lab.

3 A. I would argue a violation of their privacy
4 standards.

5 Q. Correct. Harder for us to build that case and
6 speak with power if, in fact, we still have an ongoing
7 relationship. Now, I can talk with Larry to make sure that
8 we --

9 A. Because I don't think it will take long. I have
10 that fully drafted memo. What it is going to take is
11 creating the Internet pages to give people the tools that
12 they need in order to use those other diagnostic labs. I am
13 more than happy to place Ann on that.

14 Q. How long do you think that would divert her from
15 the CWD? Any idea?

16 A. I would hope it wouldn't be more than a week. I
17 am not sure what her schedule is next week.

18 Q. I tell you what, let's go ahead and plan on doing
19 that starting next week. That would help a lot.

20 A. Okay.

21 Q. And if you would --

22 A. Do a point paper on it?

23 Q. Yeah, if you would. I would appreciate it. And
24 then I will take that up with Larry. I will be talking to
25 him on the phone because he is going to be on the road

1 forever. By the way, he needs me to go to the Wildlife for
2 Tomorrow Banquet on Friday because he won't be back from
3 Mexico.

4 MR. FABRITZ: If he is not back from Mexico in
5 time, I have already got two spots reserved for you and Don.

6 MR. HOVATTER: I need to be there for OMART and
7 all.

8 THE WITNESS: Is there any more spots because I
9 still haven't registered either.

10 MR. FABRITZ: They had a few left the other day.
11 You can have mine.

12 Q. BY MR. HOVATTER: Chasa, I think we need to do
13 that. We really do. That really set us off on a path,
14 their unprofessionalism really sent us on a path. That is
15 where the Arizona Daily Star really switched violently from
16 essentially just the news into becoming advocates for the
17 Center and Dan Patterson?

18 A. I am still looking forward some day of seeing what
19 the results out of USGS and stuff are.

20

21

22

23 A. I don't even know that it ever went to UC
24 because --

25 Q. It did.

1 A. It did go to UC Davis.

2 Q. It did go. In fact, Tony Davis and the Arizona
3 Daily Star have had those results for --

4 A. Oh, really?

5 Q. -- almost two months.

6 A. But we haven't.

7 Q. Well, they requested them on the California Open
8 Records Act.

9 A. Uh-huh.

10 Q. What is interesting is they rush to judgment with
11 every single piece of documentation they have gotten, but
12 not that.

13 A. Yeah, but we haven't seen any retraction from them
14 based on that.

15 Q. If you would do this for me, because it is related
16 to the diagnostic lab, but if you would talk to Terry --

17 A. Uh-huh.

18 Q. -- and between you decide, I need to get
19 confirmation, and I think Bill Van Pelt or Terry already got
20 confirmation that, in fact, this was sent to the Arizona
21 Daily Star, I'd like to get a request to the doctor at UC
22 Davis for a copy of the report.

23 A. You want us to do it also under the California
24 Open Records?

25 Q. If she needs us to do it that way, yes, because I

1 want to protect her on this.

2 A. I suspect she will because we are not
3 technically -- I mean, if she is acting professionally --

4 Q. We are not her customer.

5 A. Right.

6 Q. The other way to do it would be to go to, because
7 how I found out about it was talking to the President of the
8 Arizona Zoological Society, the Phoenix Zoo, the new one.

9 A. Okay.

10 Q. And it was not about that. It was about something
11 else. He mentioned that in passing, but we could also ask
12 him, if he has no objections, to let her know as the
13 customer that he has no objections. Now, he may have been
14 told by the Feds that they are taking ownership of that
15 document of the report, and it may be his desire to not or
16 he may have been instructed to not pursue that until the
17 investigation is over.

18 A. Right.

19 Q. If that is the case, then we can do this under the
20 California Open Records Act. But I want it to be all above
21 of the table --

22 A. Uh-huh.

23 Q. -- with the zoo and with them. And our
24 justification is simply, we want to not be unarmed. We
25 don't want the newspaper that is clearly taking an advocacy

1 position against us to know more than we do.

2 A. Right.

3 Q. The other thing I want to do quite frankly is if,
4 in fact, those results confirm what Dr. Rice and Alcumbrac
5 determined, then I want to go back publicly and ask the Star
6 why they were so quick in the face of an incomplete result
7 and the unprofessional behavior of the vet diagnostic lab,
8 they were so quick to immediately pull the trigger on that
9 within a day of getting the information, and they are
10 withholding from the public something that goes counter to
11 this editorial news position that they took. If I don't ask
12 you and Terry to talk that out, it is never going to happen
13 because I am not going to get to it.

14 A. Yeah.

15 Q. It would very valuable for us.

16 A. I will request it first through the zoo, and if
17 they indicate that they are unable, then I will request --

18 Q. Just be sensitive to their concerns and their
19 situation on that.

20 A. Should I ask Odenkirk what the appropriate way is
21 to do that under the California Open Records?

22 Q. Well, Jim and I talked about that. All he said
23 was it should not be a problem for the Feds. It would not
24 be a problem legally for us to ask for it under the Open
25 Records Act.

1 A. Okay.

2 Q. It may be just a function of finding what their --
3 California, I can't imagine --

4 MR. FABRITZ: I can look it up and find it. It is
5 probably similar to ours.

6 MR. HOVATTER: They are California. I mean, I am
7 surprised --

8 THE WITNESS: They are probably even more liberal.

9 MR. HOVATTER: Yeah. We have to like burn incense
10 when we ask them or something.

11 Q. BY MR. HOVATTER: Bears and lions are a game
12 species. Was Game Branch ever involved in the Bear and Lion
13 Study?

14 A. Ron Thompson was involved, not necessarily
15 formally. I am trying to think of whether they would have
16 been involved formally much at all. I can't think of any
17 formal process other than the early process of us seeking
18 ideas for studies and stuff, but not involved to my
19 knowledge on the actual study plan or anything.

20 Q. I understand Ron's involvement makes sense to me,
21 because, of course, his expertise, his lion expertise in the
22 Department made that a really good, you know, he's kind of a
23 mentor to a whole lot of folks that are in the lion
24 business. The question is of the 50 studies you have going
25 on right now, how many of those are dealing with game

1 species, estimate?

2 A. I would say maybe 20, well --

3 Q. That is good enough.

4 A. -- 30 percent maybe.

5 Q. That is good enough for me. I mean, that is what
6 I kind of anticipated. I guess the question comes down,
7 then, is, with the potential that a lot of questions, maybe
8 all of the questions that your folks are answering through
9 the research on game species may potentially or should
10 become a part of our hunt guidelines and hunt
11 recommendations process. And taking kind of an interim
12 approach to all of this, would -- is Game Branch adequately
13 involved in the -- involved enough to potentially take
14 advantage of what the research or what Research Branch is
15 finding, especially projects that are multi-year, where they
16 are learning enough or know enough because of by design, to,
17 in fact, maybe factor those things into hunt guidelines and
18 hunt recommendations?

19 A. I would say generally, yes. This one is a little
20 different in that it was a connectivity project, and
21 connectivity usually falls more kind of in Habitat Branch
22 piece than the Game Branch piece, and it really falls onto
23 the regions because the regions are going to be the ones at
24 the table arguing to preserve a particular area or change
25 the way the building occurs or otherwise.

1 But Game Branch, at least as much, you know, there
2 is no formal process for involving them, but they have -- I
3 have been driving very hard that from the Federal aid
4 standpoint, contracts is a little bit of a different
5 situation, but the Federal aid standpoint that we better be
6 answering some kind of -- there better be management
7 implications coming out of this, otherwise why are we doing
8 the project.

9 I argue in some cases like when DeVos brought
10 forward the project on the Three Bar from the predation
11 aspect of fawns, you know, and he was pushing hard for that
12 funding. That was before. It was when Duane and Steve were
13 here, and he kind of came around in the back door pushing
14 for tag funding for that project. And I had said I wouldn't
15 fund the stuff, because if it were me, it did get funded.
16 There was a lot of politics involved, but what is the
17 management implications if you find out that a lot of your
18 deer funds are getting eaten by lions or coyotes.

19 We don't limit lion or coyote hunting
20 significantly in the state anyway. What is going to be your
21 management implication if you do find that you have got a
22 lot of lions and coyotes eating your fawns. We are not, as
23 an Agency, I don't think, going to suddenly implement
24 targeted coyote shooting in Unit 22 in order to raise the
25 survival of fawns on Unit 22 because we find out there is a

1 lot of coyote, you know, predation.

2 Q. I am sorry. I am laughing because I am thinking
3 the Dr. Evil approach is fawns with fricking lasers on their
4 heads.

5 A. So my question was what is -- how would we ever
6 possibly manage it even if we were to get that kind of
7 funding. Unless we find something that our fawns are dying
8 from some mysterious disease that we had no idea about or
9 something, then maybe then that's at least a prop for some
10 kind of issue. But if you find that they are being eaten,
11 which is really kind of a predisposed version of where this
12 project is going, then how does that change your management.

13 And so we have been pushing very -- I have been
14 pushing very hard that the Federal aid projects better have
15 some kind of nexus to management implications. The OHB
16 project that we just started had Ron Day read through the
17 proposal, he's made comments. He's made changes. Esther
18 met with him after she started and has implemented changes
19 on that because of his concerns.

20 She has also been working with the regional
21 personnel that are particularly interested in stuff. So a
22 lot of our projects do have that kind of nexus. Steve's
23 Wildlife Water Project is pretty well dialed into that. The
24 Kaibab was absolutely --

25 Q. Yeah?

1 A. -- heavily involved with Game Branch.

2 Q. Yeah.

3 A. Brian is at my side if I am going to be at the ADA
4 meeting. So there is a lot of them that do. This one
5 didn't necessarily because it was really connectivity,
6 other than from Ron's standpoint because of his experience,
7 and that was really more Thorry or Kirby seeking out his
8 involvement than my direction.

9 Q. Do you have memory -- Erin Fernandez called for a
10 Large Carnivore Border Meeting on the 9th of December. She
11 called for that meeting in November and sent Kirby, and
12 Kirby then established a meeting, a pre-meeting for the
13 Department on the 8th. Did you have knowledge of that
14 event?

15 A. I don't remember if I did or didn't. Nowadays, I
16 am aware. I don't recall if I had some passing knowledge.
17 There wasn't real engagement at all in it if I did.

18 Q. I was kind of going with that, and it is kind of
19 interesting that Fernandez knew about the jaguar
20 conservation process, pretty thoroughly knew about that.
21 She was involved with the Northern Jaguar Project, too, on
22 the other side of the border, and she didn't include either
23 Bill or Terry on the invite list. Now, we kind of
24 propagated that, we didn't include them either.

25 But she included, you know, it wasn't supposed to

1 be about jaguars, but she invited Jack Childs and Emil
2 McCain. I am just trying -- I find it difficult to know how
3 to translate calling for a study, which Erin purports to be
4 bears and lions when bear and lions were not the purview of
5 the Fish and Wildlife Service, the resident wildlife
6 species. They are not their purview. Jaguars are. Wolves
7 are.

8 And it is about large carnivores on the border,
9 and yet nothing about wolves, nothing about jaguars. And I
10 thought if you had any memory, pre-memory of that, whether
11 you had any thoughts about why -- looking at it after the
12 fact and knowing Erin somewhat, do you have any -- do you
13 have any thoughts about why that got structured that way by
14 her? I mean, she is not one of our folks. She doesn't work
15 for us, but --

16 A. No, the only thing I would think is if that
17 Homeland Security money was coming through Fish and Wildlife
18 Service for prioritization, and I know at some point it did.
19 Now, whether it was structured that way in December, I am
20 not sure. But come last spring sometime when we had all of
21 those crazy matrices that had been sent out for
22 prioritization and things.

23 Q. You know what is weird about that, too, I just
24 realized, the Fish and Wildlife Service guys that are
25 working on that study or on dropping those wolves 30 miles

1 south of the border, they have been working on that for a
2 year and a half. When Erin sent that note, they were
3 working that wolf project. They were already working with
4 Mexico to do a release, an October release, at that
5 location, and we just weren't invited into the process.

6 MR. MCMULLEN: She didn't mention it at that
7 meeting apparently?

8 MR. HOVATTER: Well, it just, again, even Fish and
9 Wildlife, even her own service was planning on putting
10 wolves in an area that would have affected the area for
11 which she purported the purpose of this meeting. I am just
12 having real difficulty understanding that meeting.

13 MR. MCMULLEN: Yeah.

14 Q. BY MR. HOVATTER: By virtue of Jack and Emil's
15 only reason for being there was jaguars, yet this isn't a
16 jaguar meeting. Terry and Bill aren't invited. And Terry
17 is wolves and jaguars, both of which -- and her own service
18 is already at the point and the time when she sent this note
19 out is already actively working with the Mexican government,
20 which is Erin's purview.

21 I think she is the across-the-border person, which
22 I find a little hard to believe she is not aware that they
23 are doing that. If so, then she has got a different
24 problem. She has got a problem internal through her own
25 organization, which is not unbelievable, but this just

1 doesn't make -- I don't understand that meeting.

2 You know, this is large carnivores. I do not
3 understand how you don't invite the wolf and lion -- the
4 wolf and jag guy. Okay. Never mind. Well, not never mind.
5 Hey, who actually says yes or no, you need an EA checklist?

6 A. Right now, Laura does when I go to her. And
7 Laura, and she often goes to --

8 Q. She, of course, has to go weigh down the
9 disability on it. In late December, Dean puts out -- he
10 talks about you have -- you have wondered if we shouldn't
11 have an EA checklist?

12 A. Uh-huh.

13 Q. And I think we may have talked about this already,
14 but I am just blanking on this. What caused you to have --
15 to be interested in that or to get -- to start thinking
16 about that?

17 A. Because Ron had been stopping me in the hall or
18 stopping me in the parking lot as we would walk, you know, I
19 would be headed out the door, at 5:00, 6:00, 7:00, and he
20 would also be, and he would say, you know, we have potential
21 of capturing a jaguar on that project. And I was like,
22 really, you know, I was like, well -- and he's like, yeah,
23 really. I was like, well, okay, you know, what do I do kind
24 of thing? And my thought was, well, wait a minute, there is
25 one thing, I think, we need to do in that case, and that's

1 an EA checklist.

2 And so I think the reason that Dean ended up
3 sending that out, and I don't remember exactly the date, but
4 I think I was working from home or I was technically off.
5 And in the process of kind of going through all my "to do"
6 lists and consolidating and kind of all of the notes that
7 I will jot down through the day, I had thought, wait a
8 minute, we have this outstanding issue.

9 It wasn't, however, with Ron a formal kind of,
10 hey, we need to sit down and talk about you really could
11 capture a jaguar on this project. It was just more kind of
12 tossed out as you were passing type thing. And so that had
13 triggered my thought of you know what, the one thing that I
14 think we would need to do in that case is to have an EA
15 checklist to really evaluate that potential, not even fully
16 understanding the overall purpose of the EA checklist, but
17 at least figuring that that was the one process that I knew.

18 Q. Well, and Ron taking into account ESA and NEPA
19 issue, yeah.

20 A. And so I don't know if I was off or I was working.

21 Q. It is the 23rd of December, that note, so it is
22 right before Christmas?

23 A. Right. And I think I had been trying to let Dean
24 know and my acting, and I wasn't sure how available my
25 acting was, and so I had indicated that Dean at times was

1 filling the communication role of a Program Manager, because
2 there was no Program Manager on that terrestrial program
3 yet. And so he often would fill some of that communication
4 role with the biologists and stuff.

5 I think that what triggered that was to let him
6 know or him and the acting or otherwise, and then he was
7 passing it on to Kirby, and he also, I think, went and
8 talked to Van Pelt, as I understand it. And then he had
9 come back, and he had been like, yeah, well, I think we are
10 covered but you need to talk to Bill.

11 And I think that we also talked on the phone
12 briefly. I don't remember whether it was that day or later,
13 but he had been like, yeah, I did talk to Bill. It is kind
14 of a complicated issue, but I think we are completely
15 covered already. It is really not an issue, but you might
16 still want to follow up with them.

17 And, then, around that same time, I think Ray also
18 went to Bill to talk about it, and I am not sure if Ray went
19 because he was my acting and I had mentioned it to him or if
20 he had somehow had Ron come by his office, and it prompted
21 him. But for whatever reason, Ray also went, I think, to
22 Bill and asked him about it, because then at one point, I
23 followed up with Bill in January, dropped by his office and
24 said, hey, I know that -- I know Dean came by and talked to
25 you about this, and he is like, yeah, what is going on,

1 because, you know, Ray came by as well.

2 Q. Ray was your acting?

3 A. I don't know if Ray was. I don't know what.

4 Q. Yeah, it doesn't -- he didn't really have any
5 other role other than that brief moment he shows up in this
6 process?

7 A. Yeah. And so -- and then Bill, I don't even
8 really completely remember my exchange with Bill in January
9 because it was real informal, just kind of drop in the door
10 and be like, hey, I know we probably still need to touch
11 base on this issue. He had been like, yeah, well, you know,
12 let's talk kind of thing or something, but that was --

13 Q. Do you have any memory at all, because, I mean,
14 clearly, you know, Ron sort of resonated with you thinking
15 through, kind of rethinking, you know, something that had
16 been off and on your screen with all the projects you had
17 going on, and then you, you know, ultimately, we didn't do
18 it?

19 A. Well --

20 Q. Did that conversation with Bill, was that the
21 thing that was --

22 A. Well, it was the comment from Dean saying, you
23 know, it looks like we are pretty much covered, but you are
24 going to probably want to talk to Bill then put it farther
25 back on the burner for me as being like, okay, well, if that

1 is not a real issue and if Bill indicates it is not a real
2 issue, then back of the burner. I have got other geological
3 time wires to deal with.

4 Q. Did you have any understanding as to what covered
5 meant in that context?

6 A. No.

7 Q. I mean, covered being, yeah, we have got a permit
8 that covers incidental take or --

9 A. No, I didn't have any -- there was not specificity
10 to it. I guess I just, and that's assumption and a poor
11 assumption, apparently, that, oh, okay, well, if, you know,
12 if Bill, who I consider to be one of the two people who
13 probably should know in the Department has kind of said,
14 well, things should be okay, then I can follow up on this,
15 but it is not as a high priority for me.

16 Because I also considered capturing a jaguar, I
17 thought was an incredibly unlikely event to begin with, and
18 so other fires seemed to be burning brighter at the time
19 than that of an EA checklist for the potential capture of a
20 jaguar.

21 MR. MCMULLEN: When you stuck your head in the
22 door, this is one thing that we have got to nail down and be
23 prepared to answer if we do experience a lawsuit that has
24 been threatened, so we need to be able to answer, but when
25 you stuck your head in the door with Bill, and said, hey,

1 Bill, we have got to touch base on this. He said, we need
2 to talk. You just guys just never managed to make it back
3 together on that?

4 THE WITNESS: No. It wasn't even a, hey, we need
5 to talk, and we need to get through this. I don't really
6 remember the conversation well at all other than I do
7 remember seeing Bill and kind of touching base on that piece
8 afterwards, not -- I don't remember anything being real
9 specific as far as, hey, you have got a real problem here,
10 we have got to address this or something. Because it didn't
11 show up -- it didn't come up on my "to do" list as a real
12 high priority piece after that.

13 So I don't remember the specifics of any
14 conversation at all, but for whatever reason, it didn't come
15 up as a high priority.

16 Q. BY MR. HOVATTER: You know, you do kind of get a
17 sense through this process that there was a sense of having
18 the likelihood of being so low.

19 A. Right.

20 Q. You know, big earth, little snare, you know,
21 that -- by the way, I stole that, because it is the Marine
22 Corps Close Air Support Squadrons, when we had the Air Force
23 come in for close air support and we are shooting artillery,
24 they make us either stop the artillery, which we didn't like
25 to do, or we had build this box through which all of the

1 shells fly, which we can. We know that our trajectory,
2 there is math we can do to do that. It is little harder to
3 do in the mid '70s with most of the Marines with only a
4 fourth grade reading level, but it can be done.

5 The Marines, on the other hand, said big sky,
6 little bullet, we are coming, segue into a little military
7 history, which is a requirement.

8 A. It did remain on my task list. There was a
9 constant kind of just standing task of need to follow up
10 regarding EA checklist. And so it wasn't enough that I
11 thought, oh, it was completely out of the realm of need, but
12 it was a low enough priority that it had fallen --

13 Q. Well, it does. It almost seems like part of what
14 happened on that was just the idea that the likelihood is so
15 low, and we have 10(a)1(a) permit that would cover
16 intentional or deliberate take, which is unfortunately it is
17 just not the same as connecting the dots so that there would
18 have been conversation up front with the key players on
19 this, so that we can kind of war game it out, what if?

20 Because I am not sure if we really pushed at this
21 that we could have come up with a protocol that would have
22 addressed this. I mean, would we have had a protocol?
23 Would our protocol if it came up, say, okay, well, we found
24 this. We found a picture at that pink arrow, see the yellow
25 arrow up there, that is where -- that red arrow, that is

1 where Macho B got caught. That is about four miles, I
2 think, as the crow flies?

3 MR. MCMULLEN: Yeah, a little less.

4 Q. BY MR. HOVATTER: So Thorry sees a photo at that
5 thing right there on the 4th of February, and he has got
6 snares up here, and that photo is from about two weeks, two
7 and a half, maybe three weeks before they find it. And, of
8 course, this makes it like -- and then there is photos
9 further up north that are more recent, that are late
10 January, that are two mountain ranges away, if we had known
11 that at your level would a protocol, would it establish
12 that, well, that is too close?

13 A. I wouldn't have established that distance. The
14 protocol that I would write would involve Terry to establish
15 that distance, you know, but the protocol that we drafted, I
16 think, I don't remember the distance in that draft protocol,
17 but it seems like that would have triggered because I think
18 it was 10 or 12 miles or something.

19 Q. Of course, the other part is close as in space and
20 time?

21 A. Right.

22 Q. Its last photo is four miles away from where you
23 want to put your trap, and it is six months old. Do we put
24 the trap in or not?

25 A. Uh-huh.

1 Q. It is four miles away and it is six days old, do
2 we put the trap in? I think that is kind of the conundrum
3 we run into.

4 A. We have both the time and space component in that
5 draft protocol.

6 Q. I need to get a copy of that.

7 A. You haven't gotten a copy of that?

8 Q. You know, I have over 9,000 unread e-mails right
9 now, Chasa.

10 A. I won't e-mail it to you.

11 Q. I read all my e-mail before I read mine, and there
12 is a never-ending stream, so --

13 A. It is still a draft, but it is --

14 Q. I had it down to 4,000 a couple months ago. I
15 spent like -- we he had a four-day weekend. I spent all
16 weekend until about 1:00 o'clock in the morning every night,
17 and I knocked it from a little over 10,000 down to 4,000,
18 and then it never recovered, never got back in.

19 MR. FABRITZ: Select all, delete.

20 Q. BY MR. HOVATTER: That brings up the conundrum,
21 you know, if we look at all these things, look at these
22 situations and consider -- that is why I want to look at the
23 protocols to be established and look at them, and say --
24 because the protocols, I suspect, probably made sense given
25 the people we had working on those. The question I have is

1 would it have changed the outcome? Did you ever know that
2 Emil McCain had a jaguar collar he was carrying with him?

3 A. I don't think so.

4 Q. Did you know Emil McCain at all?

5 A. I never met Emil, no, however you pronounce his
6 name. I haven't met Emil. I had heard his name in passing
7 from Terry. I knew that he was somehow associated with the
8 jaguar project. Somehow I had gotten really mixed up and
9 thought he was Jack's son and thought it was kind of a
10 family effort down there or something. But that was the
11 only real knowledge I had of Emil, and then knowing that he
12 was a contractor for us in November on the bear capture or
13 subcontractor, I should say, bear and lion captures.

14 Q. Then you didn't know he had, as far as a collar,
15 on him that kind of thing?

16 A. No, the collar, I don't think I had any knowledge
17 of that beforehand. The only possibility is I may have
18 heard at one point -- I don't know. It is hard to remember
19 if I heard before, like quite a while back, a year plus ago
20 that North Star was going to be denoting one or something
21 because we began working with North Star quite a bit.

22 Q. Yeah.

23 A. Not because of any collars being donated there,
24 but I may have been told at one point there was one being
25 donated, but there wasn't -- I never connected any dots on

1 that piece.

2 Q. Did your knowledge of the project extend to
3 knowing whether or not Emil had access to our North Star
4 Bear and Lion Collar Web site?

5 A. Yeah, I think I did know that because I know that
6 Kirby -- I don't know that I knew specifically Emil, but I
7 know Kirby, one of the things he was wrestling with early on
8 on that project is he was like, boy, there is more
9 corroborators on this project than I have ever had before,
10 and it makes it really hard to kind of control.

11 And he was -- he had said at one point, you know,
12 everybody seems to have access to our data on-line because
13 it had been given out, I think, by Todd to Julie and all the
14 corroborators had access. He asked me at one point if I was
15 okay with him changing the passwords, limiting access to
16 people, and then only providing access to, you know, a
17 select few. And I had said, absolutely, that that made a
18 lot of sense to me and that he should pursue that with -- is
19 it Blaine or Blaire, whoever at North Star is in charge of
20 that stuff.

21 I don't know if he ever did that or not, but I had
22 been fully supportive of that because he had real concerns.
23 He said people are telling me when our animals cross the
24 border before I even know the animals have crossed the
25 border, and that was something of concern for him.

1 Q. Yeah. Did you -- were you aware -- well, let me
2 ask you. I will go back a little further. Were you told in
3 advance that we were going to start, restart trapping in the
4 Atascosas?

5 A. I am not sure. I am not sure if Kirby had told me
6 that or not. He really worked pretty independently and was
7 running all of the field schedules. He certainly could have
8 mentioned it in passing or something to me.

9 Q. But your expectations on these types of projects,
10 my impression is it wouldn't normally extend to requiring
11 that level of knowledge in order for project leaders to do
12 their job?

13 A. No. However, I would hope, and this is where
14 things get a little fuzzy, I would hope usually that Program
15 Managers would be somewhat aware of that, and I was
16 functioning somewhat as an acting Program Manager for that
17 group in absence of another Program Manager. But I had not
18 been interacting with any of the biologists in that program
19 on that level on that kind of specificity.

20 Q. Because the next question, the answer would be,
21 no, is that then you would not have any particular reason to
22 know why we decided to restart there?

23 A. No, the only reason that I do know is that we had
24 lost a lion.

25 Q. We lost a lion?

1 A. Yeah, but I think that is something that all came
2 into play after the fact from my knowledge standpoint.

3 Q. This is just -- it is not a question particularly
4 germane to this. Did you know that we had reason to believe
5 that that lion was harvested by a guide using a transmitter
6 to hone in on lion collars?

7 A. I didn't know that about that lion. We have had a
8 lot of similar concerns in the Prescott area with lions,
9 because we were having problems with lions.

10 Q. It is not illegal.

11 A. Really?

12 Q. It is unethical.

13 A. Change to Article 3.

14 Q. That is our intention. Right now, it is not
15 illegal. Everybody I have told that to has been surprised
16 to hear that except for the folks who are really experienced
17 in the field.

18 A. We actually, during the Urban Lion Project,
19 towards the end of it, pulled -- we used to have our data,
20 some of our data out on the U drive because it was easier
21 for some of the people to access, particularly the local
22 manager that we were working with and stuff, but we came to
23 believe that there may be internal people that were sharing
24 our frequencies with the local lion hunters, and we pulled
25 it all off of the U drive because of that.

1 Q. Did you ever talk to Kirby about the notification
2 process he used to let you and then let the chain of command
3 know that a jaguar had been captured? Of course, you and
4 Eric called me the next morning.

5 A. Right.

6 Q. Did you ever talk with Kirby about how that -- how
7 he was notified and what went on?

8 A. I asked him -- I am trying to remember if I asked
9 him. A lot of those real issues, I don't remember if I
10 asked him or not, because a lot of those real issues came up
11 after all of the investigations began. I haven't really
12 felt comfortable approaching any of these specific subjects
13 regarding Macho B, or, say, discussing it during a pace
14 discussion or anything like that specific to the capture of
15 this animal because of all the investigation efforts.

16 I had asked him at one point, I thought, when he
17 received notification, because my question was on that
18 morning is that when he had heard from Thorry or had he
19 heard the night before and decided, well, it is after 5:00,
20 I don't think I will call anybody until the morning.

21 Q. Well, I have to ask you. What did he say?

22 A. He said, I think that he said that he had been
23 notified the night before from Thorry, and then he was just
24 calling at the beginning kind of business hours that day.
25 And I said, you know, you can call me at any time on things

1 like this.

2 Q. That was not real popular with Larry on that.

3 A. No.

4 Q. Particularly because there had been some e-mail
5 traffic that night where we did have people knew about it
6 before?

7 A. Right. As I understand it, Thorry called Ron
8 first, so Ron knew. And, then, Ron said take it up the
9 chain of command. Then Thorry called Kirby, then Kirby
10 slept on it, and called me the next day.

11 MR. MCMULLEN: Or not?

12 THE WITNESS: Or not.

13 MR. MCMULLEN: Or didn't sleep.

14 Q. BY MR. HOVATTER: There's in that same e-mail you
15 sent out, you sent out an e-mail you refer to the protocol,
16 and this was the late March thing to refer to. Steve
17 Spangle had sent an e-mail saying, yes, in fact, we were
18 covered for an incidental take. This was in that proposal
19 for research trapping. Could you go back and look? I don't
20 have the e-mail that is referred to from Spangle.

21 A. From Spangle?

22 Q. Yeah.

23 A. Okay. Yeah, I have that e-mail.

24 Q. 23rd, 24th of March, you refer to an e-mail
25 attached, Spangle e-mail attached, and it probably, you

1 know, the way that we got this stuff was all loose pages, so
2 it was probably somewhere, but I would like to see that
3 again.

4 A. Yeah, because I had e-mailed Spangle, as I recall,
5 and had said I have several things I want to be able to run
6 past you. We are looking at the potential for restarting a
7 capture, and I am seeking your approval that we would be
8 allowed to move forward on kind of a bear and lion capture.
9 I also sought his approval for, I think, some of where the
10 samples were being sent. The tooth I think I sought his
11 approval on.

12 And his response with regards to the Bear and Lion
13 Project was that's out of our authority. You are working on
14 bears and lions. It's something you get to decide on and it
15 has nothing to do with us, despite the fact that we already
16 crossed those boundaries once, but he really said that
17 doesn't involve me at all. That is you guys.

18 Q. I see, there is this bear and lion meeting.

19 A. What was the date on that?

20 Q. It was 23 or 24 March.

21 A. Okay.

22 Q. Once that jaguar was captured, what was Kirby's
23 role in your perspective?

24 A. Well, in perspective, as the primary investigator,
25 the PI, and I am avoiding saying project leader just because

1 that brings so many connotations under CMS and things I am
2 trying to avoid. As PI, I would expect him to be informed
3 immediately by his field crews and inform me. And if you
4 can't get a hold of me, then inform somebody in the chain of
5 command, kind of making sure that people were aware, and
6 then providing any communication that I give to him to his
7 personnel as well or direction.

8 Outside of that, I wouldn't necessarily have any
9 specific role that I would expect in him, especially since
10 once the animal is collared and released, I had considered
11 that a Nongame, more Terry and Bill.

12 Q. I mean, we had our meeting that next day --

13 A. Right.

14 Q. -- to make sure. Remember I asked, who in here is
15 in charge of jaguar? Nobody raised their hands. So we kind
16 of decided who that was going to be, you know, and I said it
17 was pretty clear who it was going to be. And I did that
18 just as an interesting exercise in a room full of people.
19 But do you recall whether that was translated to Kirby, that
20 leadership responsibility chain?

21 A. I don't remember specifically. I thought I had
22 talked to Kirby about that, but I don't know that I -- I
23 don't know that I had. I am trying to think.

24 Q. It is really -- it is not -- this is not a trick
25 question, so I mean --

1 A. Yeah, I know. I am just trying to remember
2 because I know that my real feeling was at this point
3 Research was out of it other than some of the requests for
4 some of the processes or otherwise.

5 Q. I mean, you were still obviously providing -- you
6 had Research people involved?

7 A. Uh-huh.

8 Q. Because they were the point of this spear on this
9 thing so to speak, but --

10 A. Yeah. I think that I had talked to Kirby
11 afterwards and let him know that we had a meeting and that
12 these people would be taking over. And, certainly, in those
13 days afterwards, it was Terry and Bill who were running the
14 show from the standpoint of checking the Web site and
15 everything like that. And I thought -- I thought that I had
16 told Kirby that, but it is not impossible that I would have
17 somehow missed it either. It seems strange that I would
18 have.

19 Q. Let's see, okay. Were you aware, and, again, you
20 were kind of transferring ownership. Specifically, that was
21 what I directed --

22 A. Uh-huh.

23 Q. -- that next day. But did you become aware that
24 we did not have Department staff, Thorry, have access to the
25 jaguar's collar Web site? We did not have access to that

1 data directly.

2 A. I didn't know one way or the other on that. I
3 knew Bill was receiving it. I knew he was receiving it from
4 Emil, but I didn't necessarily -- and I guess maybe I would
5 have deduced at that point that Department personnel weren't
6 having access, but I wasn't directly aware that we didn't
7 have anybody in the firm that had access.

8 MR. HOVATTER: I think I am out of questions.

9 MR. MCMULLEN: There's a couple more follow-ups
10 that we had talked about just for in terms of preparedness
11 for responding to a lawsuit, and whether it comes or not, I
12 don't know, but --

13 THE WITNESS: Is there a deadline we need to hear
14 by on that?

15 MR. MCMULLEN: Six years.

16 MR. HOVATTER: Six years.

17 MR. MCMULLEN: There was one, I think, you missed.
18 You probably missed it on purpose, but I am just going to go
19 back in case it was not.

20 MR. HOVATTER: Please do.

21 MR. MCMULLEN: And that was, was Funds Planning
22 aware of the link between our CMS planning documents and
23 ESA, Endangered Species Act?

24 THE WITNESS: I have idea. You would have to ask
25 Funds Planning.

1 Q. BY MR. HOVATTER: If they are advising you -- you
2 are right, I forgot that. If they are advising to go to
3 that really kind of bare bones approach, which I can see the
4 sensibility of it, but aren't informed about the fact that
5 that potentially --

6 A. Puts us at risk.

7 Q. -- puts us at some risk of having there be some
8 ambiguity about whether or not we -- the permit would be
9 relevant to us. Then it makes perfect sense from one
10 standpoint, but then you have to then factor -- you have to
11 ask, well, then who kind of watches the watcher on this
12 thing to say, yes, but.

13 MR. MCMULLEN: It adds a sixth level of complexity
14 that we hadn't really resolved.

15 THE WITNESS: Yeah, that combination of the EA
16 checklist, the CMS, the 10(a)1(a) permit or other ESA
17 coverage, somehow all of that needs to come together. And
18 that is another area of training that myself, and I imagine
19 a lot of other project leaders under our CMS statement are
20 lacking. I haven't had the official Federal Aid Funding
21 Training, and it is often been kind of a function of hitting
22 the wall, and the Chair will tell me, no, you can't do that
23 under your Federal aid. I will be like, oh, oops, back it
24 up.

25 Now, define for me exactly what is eligible under

1 this funding source? When I first began as Branch Chief,
2 Melba, who is the Funds Planning, had said, oh, you know,
3 you should go through this training which is offered once a
4 year at NCTC, and seemed to fall on the week that something
5 serious was going to occur, whether it was, you know, I
6 think it was like in January, and it tends to fill up six
7 months ahead of schedule.

8 Q. BY MR. HOVATTER: I am just imagining the odds of
9 you running into a week that doesn't have something critical
10 going on is pretty low?

11 A. Right, yeah. And it was like -- so I tried that
12 first year, it was already full. I think I even asked like
13 almost six months in advance. It was already full, so it
14 was like, okay, well, you are going to have to --

15 Q. I tell you what, I really think we need to bite
16 the bullet, and you need to go.

17 A. Oh, yeah, I definitely need to go at some point.
18 I think probably everybody, it should be required training
19 for anybody who is administering any of, you know, who is a
20 project lead for any of the CMS.

21 MR. FABRITZ: Where is the National Conservation
22 Training Center.

23 MR. HOVATTER: Back in Maryland.

24 THE WITNESS: Virginia or Maryland.

25 MR. FABRITZ: It wouldn't be bad.

1 MR. HOVATTER: Oh, it is beautiful.

2 THE WITNESS: It's an amazing facility from what I
3 hear.

4 MR. HOVATTER: It's in the Shenandoah Valley area,
5 I think, is my memory of it. It's in easy striking range of
6 about a dozen different really cool civil war battlefields,
7 half a million family members back there in the West
8 Virginia area.

9 MR. MCMULLEN: Sorry to get us off on a
10 seven-minute detour.

11 THE WITNESS: No, that was good.

12 MR. MCMULLEN: Then, okay, I was really heartened
13 to hear you talk earlier about the fact you asked the
14 question inside your Branch about if we are going to be
15 conducting a study, what question are we answering? And I
16 am going to be frank with you and tell you that in more than
17 one interview, we were left with the impression that at
18 least the person being interviewed believed that to some
19 extent, a decision on whether to do a research project or
20 not was just dependent on whether or not the researcher
21 could procure funding.

22 And it goes with that, the impression that we are
23 selecting research projects based on whether we can
24 procuring funding, not necessarily on are we going to answer
25 a question that will help us with regards to our management,

1 wildlife management responsibilities in Arizona. So I just
2 wanted to relay that impression that we got, at least one or
3 two instances, and kind of see what your thoughts were on
4 that.

5 THE WITNESS: Yeah, I would say that's true of the
6 contract side of the Branch. Absolutely it is a question of
7 whether we can procure funding on that question. We don't
8 come to the contracts. We don't develop a list of all these
9 potential management questions, and then try to seek funding
10 at extra sources. What Ingraldi and Schweinsburg do is they
11 kind of are always working and building these relationships
12 and then start to get a feel that there might be money
13 somewhere and try to form a question that will meet the
14 needs of DOD or National Guard or otherwise on whatever
15 their needs are and try to put it towards some type of
16 management standpoint.

17 Some of them are better than others, but a good
18 example is the National Guard at one point wanted to spend
19 money on -- they had to spend money on Sonoran Pronghorn.
20 So they wanted -- what their vision was, and it had to be,
21 I think, relative to coyotes or something, but they elected,
22 and it had to be on the east tactical range, which is east
23 of 85. 85?

24 MR. HOVATTER: 85.

25 THE WITNESS: No Sonoran Pronghorn on the east

1 tactical range.

2 MR. HOVATTER: They tried to make it.

3 THE WITNESS: But their approach to that project
4 when they first approached Ingraldi was, we will pay you to
5 shoot coyotes on East Tactical Range for the benefit of
6 Sonoran Pronghorn, and Ingraldi say, not real interested in
7 doing a bunch of shooting of coyotes for an animal that is
8 not even present on the east tactical range. Could we maybe
9 formulate this into more of a study to look at evaluating
10 densities of coyotes relative to call counts or something
11 that could then translate to implementation in Sonoran
12 Pronghorn habitat.

13 MR. MCMULLEN: Or even on a broader context,
14 statewide.

15 THE WITNESS: Exactly. So he changed that, and he
16 did get that contract. He changed that contract to be that
17 and not just some random shooting coyotes in order for them
18 to be spending money appropriately for the benefit of
19 Pronghorns. So on the Federal aid side, it is very
20 different. The way that we have done it since I arrived in
21 the Branch is that we went out to all the regions and the
22 major program branches. We sought their input on what are
23 the major questions that you have? What are the -- and
24 Richard Ockenfels is the one who led that effort on my
25 request. He did it during the course of an entire year. It

1 wasn't even written into our CMS Work Plan as one of our
2 intended plans that year, and he built an entire -- I hate
3 to call it a day-to-day spread sheet of potential projects,
4 and it had like which region.

5 And then also we had taken the full list from each
6 of the regions that they gave us, and then sent it back to
7 the region once we had written that whole list up and asked
8 them to prioritize. Could you give us No. 1, No. 2, No. 3.
9 It doesn't have to be all the way down the board. Just give
10 us your top three or so out of your list that you would
11 consider the most important.

12 We took that entire list of 110 projects or
13 whatever, had the whole Federal Aid Research Group meet up
14 at Mount Trumbull that August or September, and we went
15 through every one of those, and we developed kind of a
16 scoring criteria for them that would look at everything from
17 does this have applicability across multiple regions or is
18 it just within a single region or even a smaller
19 geographical area? Is this, I think one of the questions
20 may have been management, could this impact management or
21 otherwise, whether it was legal to do.

22 We got some projects that were illegal to even do
23 from the regions. One wanted to look at translocation of
24 deer from one area to the other. Currently, illegal under
25 our surveyors. So we had jettisoned that one as not being

1 real big. I think maybe we identified whether it had a
2 major social potential issue like even if it is -- if it is
3 a Unit 22 project, it would rate high on the -- oh, this
4 might have a social risk, kind of like our risk assessments
5 that we were going to bring the management team into it.

6 We looked also at pairing of those biologists that
7 were going to become available, Kirby and Jamie, and their
8 expertise with the potential projects. And we looked at --
9 I am trying to remember what else, but there was a whole
10 kind of --

11 MR. MCMULLEN: Federal analysis.

12 THE WITNESS: We went through all that, scored
13 them all as a group, discussing, arguing, or otherwise, and
14 then it came out to the top of kind of our top projects.
15 One of those was OHB Impacts Project. So we chose that
16 project as our next Federal aid project that we would
17 implement. The Large Carnivore Habitat Connectivity and
18 Population Persistence thing, the Bear and Lion Project,
19 wasn't necessarily on that list.

20 It had grown, because it had grown from the
21 project that Todd was starting with the hair snares and
22 stuff, and it was growing into this larger connectivity
23 project, and it was in an area that has a lot of interest
24 from a connectivity standpoint, it had automatically made
25 the list.

1 MR. MCMULLEN: And to a Commissioner as well?

2 THE WITNESS: Yes. And, then, the third project
3 also had been socially motivated and politically motivated,
4 and that was the Big Horn Sheep Project that Ted was going
5 to take on. And so they come on to the -- they come on our
6 "to do" list from different places, but we are not just
7 looking at where we can get funding by any means.

8 I know Todd had that feeling and often projected
9 that, because one of the things we face on these Federal aid
10 projects is that our Federal aid funding the way it comes in
11 really heavy on PSERE, and really light on AOL. By the time
12 you pay for the trucks and computers, and then each project,
13 unless there is some special allocation for a reason gets
14 \$5,000 in AOL, and that is not going to run a research
15 project unless it is a pretty low technology project.

16 And so there does have to be a way, somehow, to
17 get funding to either get collars or to get cameras or to
18 get --

19 MR. MCMULLEN: Cost sharing grants and things like
20 that.

21 THE WITNESS: Yeah. So, definitely, there is -- I
22 know that when Todd first came on in his position, Richard,
23 who was the hiring supervisor, had heavily emphasized that
24 at this level when you come in as a Spec 3, we really expect
25 you to be seeking external funding in order to augment your

1 projects. He grumbled a lot about, you know, how can you
2 possibly expect to do a real research project if you are not
3 going to fully fund it. This Department is not supportive
4 of things, blah, blah, blah, blah.

5 MR. MCMULLEN: Todd Atwood?

6 THE WITNESS: Todd Atwood, yeah. He had very much
7 an ivory tower perspective when he came into the Department.

8 MR. HOVATTER: Good place for a government guy.

9 THE WITNESS: Well, he didn't stay long.

10 Q. Do BY MR. HOVATTER: Do you still have that
11 project that you did where you vetted all the projects?

12 A. Oh, yeah.

13 Q. I would like a copy of that.

14 A. Sure.

15 Q. That, quite frankly, sounds like a remarkable
16 effort.

17 MR. MCMULLEN: Yeah, I remember that, and it is
18 nice to hear. Is it still in the radar screen in terms of
19 prioritizing Federal aid projects?

20 THE WITNESS: Oh, absolutely. We didn't start any
21 new Federal aid projects this year. So there weren't any
22 others that came on to the play. I don't know, in fact, one
23 of them fell off from that list because that Big Horn Sheep
24 Project, although we had sought approval to submit it under
25 the CMS, a majority of that project was not being paid for

1 by Federal aid, it was being paid for by the WCF money that
2 was covering Ted's full-time position.

3 And when Ted passed away in October and that
4 funding went away, that project went away, because I don't
5 have a biologist to implement that project. Honestly, I
6 never felt that project had good management implications.
7 It has been politically motivated and not management
8 motivated I felt.

9 And the only option would have been to assign
10 somebody like Thorry, and he is in a technician position.
11 It would be totally outside of his job duties to have him
12 begin running a project, and honestly, I think probably a
13 little bit outside of his scope of abilities right now. He
14 needs a little bit more stronger mentorship than what he had
15 had as a technician taking on that project.

16 MR. MCMULLEN: Thanks for articulating that. You
17 really did a nice job of clarifying that, at least in my
18 mind.

19 Q. BY MR. HOVATTER: Let me just ask one question on
20 that, too. Is there any reason why someone on the contract
21 side couldn't choose to pursue funding that would answer one
22 of those questions on that Federal aid issue?

23 A. No. In fact, we had allowed projects that
24 couldn't be funded under Federal aid to be brought up like
25 Nongame. Federal aid can only be spent on birds and

1 mammals. That is one of the lessons I have learned in the
2 Department. And so for Nongame, they have a lot of
3 questions that are on things other than birds and mammals.
4 And so they added project ideas and stuff on that list that
5 are not eligible for Federal aid funding, but they went on
6 the list because the overall list was to also help form the
7 Contracts Group as kind of what was of high interest, and
8 then also informed --

9 Q. Now, does the process also allow -- what you
10 describe, I think that, in fact, does go a long way towards
11 answering my question about how we do that approach and
12 maintain that entrepreneurial spirit that has been so
13 valuable and is absolutely essential. If they are not
14 entrepreneurial, they don't find the money, they don't have
15 a job?

16 A. Right.

17 Q. I think the question or the concern has been that
18 somehow that we would pursue answering questions for which
19 we could find funding versus pursuing funding for questions
20 that we want to get answers to. Having said that, it would
21 seem to me that there's a third potential component of that
22 on the entrepreneurial side, which is if we do the
23 cost/benefit ratio and say, you know, this project is
24 nowhere on our list, it does have management implications,
25 because I think that we need some sideboards, but we would

1 get a return of \$9.00 for every dollar we invest, that the
2 cost/benefit ratio might cause us to say, you know, if we
3 are successful, we bring on, you know, that's another
4 individual, but we would bring him on to deal with that, and
5 with the understanding that if that is a three-year project,
6 and there's that individual that would come on with that
7 doesn't find the money after that, we are not going to
8 migrate that over to spending Department funds to
9 continue --

10 A. Right.

11 Q. -- that that ought to be a part of that process
12 says, where, you know, if we can find a really good deal, as
13 long as it fits, it is probably fairly broadsided, that we
14 want to do it. We want to take advantage of that. Despite
15 the fact it might not be, you know, really in our normal
16 zone of interest?

17 A. Yeah, it has been tough nut to crack on the
18 contract side. There's long been, and I know Larry feels
19 very strongly that he wants some kind of sideboards and for
20 us to be pursuing specific questions for funding, or at
21 least, you know, within a certain area. As long as it fell
22 under our very broad mission, then we were allowing, unless
23 we run into a couple situations where the person trying to
24 hire us is not somebody the Department wants to enter into
25 an agreement with, or, you know, that type of a thing.

1 At one point, the consultant who was dealing with
2 the clearance of the land for the same developer that had,
3 at least the goats that infected the sheep at Silver Bells,
4 was trying to contract with the Contracts Work Unit to do
5 pygmy owl surveys on that land to release it for
6 development. That we didn't accept because that posed a
7 real issue for the Department to have entered into that kind
8 of a contract, even if it is with the consultant for that
9 developer.

10 And even if ultimately it has some benefit in
11 that, the Department certainly wants to know if there is
12 pygmy owls there and wants to -- would like to see that
13 honestly addressed and maybe not addressed by a consultant
14 who is not looking for pygmy owls, but, you know, it posed
15 too much of an issue, so we didn't accept the contract.

16 Q. Yeah.

17 A. The hardest thing has been I have -- you know, the
18 Contracts Work Unit has steadily grown. And there is a core
19 group of people that have been there for years, but they
20 have always been soft funded. And Ingraldi and Schweinsburg
21 struggle because they want to find funding to make sure
22 everybody is going to be able to stay on and to bridge those
23 gaps. Sometimes you have some very large contracts, but one
24 ends in September and this one doesn't start until March,
25 and you are trying to find a way then to not release

1 somebody and have them be on the streets for the next six
2 months, but to have work that will still be available.

3 Q. That is why. I mean, I think that's leadership,
4 and that is having sensitivity to your folks.

5 A. Right. But still that leaves us with a very tough
6 nut to crack for me, because to try and get it in a way that
7 is real directed at just specific questions jeopardizes our
8 sometimes ability to get funding. Also, we sometimes take
9 on very small projects, little bits of funding, \$10,000 or
10 whatever, and, ultimately, by the time you figure in the
11 cost of processing those agreements and all of that, it
12 may not be worth taking on \$10,000.

13 Q. Yeah.

14 A. But sometimes that is what our stepping stone is
15 into larger contracts. It is, you know, it might be that
16 the new commander at YBG or something is willing to kind of
17 throw us a bone, and then at some point, if we have
18 performed really well on that and they like it, that makes
19 more projects develop.

20 Q. That makes sense.

21 A. So those have been balancing.

22 Q. I think Larry and I spent quite a bit of time
23 talking about this yesterday, and I think part of it is he
24 does not want -- he wants to make sure it does not get
25 killed because of the goose lays the golden egg. Is it

1 entrepreneurial spirit driven? I think he does have some
2 concern that we may have -- we may on occasion have the
3 opportunity where we aren't -- we may have some
4 self-fulfilling problems in the sense that, you know, I am
5 not good at getting money from this question we would like
6 to get answered because I am better at getting money for
7 that question.

8 A. Right.

9 Q. And you will never get better if you don't start
10 trying to do that.

11 A. Right.

12 Q. Having said that, he doesn't want folks going out
13 the door that add value to the Department. He also wants to
14 make sure that what we do does pass that cost/benefit ratio
15 check, and I think that makes sense if that has already been
16 assigned as a part of the process.

17 A. I don't know it is part of the process. It is
18 something that is on my mind.

19 Q. You are clearly synced with Larry's level of
20 concern on that, because he does not -- he would rather --
21 he just does not want us to keep spending, not really seeing
22 a return on the investment if the potential is, is that
23 there is a better deal out there to be made for some other
24 project.

25 A. Right.

1 Q. I think the other part is, is just the
2 understanding that when a project is done, if it is on the
3 entrepreneurial side of the Department, they can't make that
4 money happen -- those costs cannot then migrate to other
5 parts of the Department budget?

6 A. Yeah. And that's, I would say that that is the
7 way that it has functioned. I can't think of any cases
8 where contracts migrated on to other parts of the budget.
9 More often, it is situations where the Department has made a
10 commitment like Peregrine surveys, having to complete those,
11 and yet they have either not gotten programmed into the
12 Department budget for those every three years, or do, and
13 like what happened last year, got pulled in the whole
14 budget, you know, scramble. And so, then, you are
15 scrambling to try to find that money somewhere else in the
16 Department, and that's not a cut. It is being executed by
17 the Contracts crew.

18 Q. That's an aberration. That is a fly, that sort of
19 thing.

20 A. Yeah.

21 MR. HOVATTER: Guys, what other questions? Target
22 of opportunity for questions?

23 MR. MCMULLEN: Yeah, absolutely. One question we
24 had was were you aware, I guess at the time of the Macho B
25 incident, of the Department MOU with the Fish and Wildlife

1 Service, and it is implications to the LCHC Project and --

2 THE WITNESS: What is the LCHC?

3 MR. MCMULLEN: Large Carnivore Habitat
4 Connectivity.

5 MR. FABRITZ: Bear and Lion.

6 MR. MCMULLEN: Did I capture that right?

7 MR. FABRITZ: Yeah.

8 THE WITNESS: LCC.

9 MR. MCMULLEN: Yeah. Were you aware of the MOU we
10 have with the Fish and Wildlife Service?

11 THE WITNESS: I knew that there was an MOU with
12 the Fish and Wildlife Service. Eric had indicated he was
13 going to be putting together a training session that he
14 wanted the, you know, Research people involved. I hadn't
15 read the MOU with the Fish and Wildlife Service, and at one
16 point, I don't remember if it is before or after --

17 MR. HOVATTER: I need to take this.

18 THE WITNESS: -- the Macho B. But at one point,
19 Gary even sent out a doodle trying to schedule -- I mean,
20 Spangle was to be involved in this training. It was going
21 to be kind of this cross training on MOU with both Fish and
22 Wildlife Service and Game and Fish. It never happened.

23 EXAMINATION

24 BY MR. MCMULLEN:

25 Q. Okay.

1 A. So I am not familiar with the specifics in the MOU
2 at all.

3 Q. All right. We will just keep cranking along here.
4 We had a question and I don't think we remembered it or we
5 didn't ask it right. At any rate, I don't think we ever
6 even got to it, but can you refresh our memory, I think you
7 were on the CC list with a series of e-mails, or, no, you
8 got an e-mail from Roberto Aguilar that said, hey, I want to
9 you let you know, Thorry is researching drugs for dosages on
10 jaguars. I don't remember if we asked you about that or
11 what your response was. Can you refresh our memory on that?
12 It is just our own lack of recordkeeping, I think, that is
13 causing us to have to ask that?

14 A. I don't know. I don't remember if I responded to
15 Roberto or not. I think it was an e-mail that contained a
16 couple different things. I think it was like, hey, FYI, I
17 just wanted to let you know about this, and I would like to
18 meet with you at some point. He sent several e-mails. I
19 had gotten that e-mail and looked at it, and I just assumed
20 that much like my pursuit of the EA checklist, this was
21 another kind of cautionary, let's make sure that we, you
22 know, have it covered.

23 When I got it from Roberto, because Roberto was
24 busy applying for our Wildlife Health Specialist position,
25 he had applied last fall for the Wildlife Health Specialist

1 position, and then we elected to reannounce after
2 interviewing because our top candidates were not available
3 or declined the job because the economy really started
4 tanking and people either didn't think they could sell their
5 house or didn't want to leave their existing job that had
6 gotten promises from their bosses that things were going to
7 get better, you know, that type of thing.

8 Roberto had interviewed and really wanted that
9 position. He didn't get it in the first round. We
10 reannounced it, and he applied a second time, and it was
11 during that course of January and into February where we had
12 reannounced the job. So I was getting a lot of e-mails from
13 Roberto, a lot that were not even related to anything
14 jaguar.

15 He seemed to be treating me like I was already his
16 supervisor and kind of kissing up, trying to make sure that
17 I knew everything he was doing, and he was doing things
18 like -- he even sent me things from New Zealand because he
19 was busy working in New Zealand up until February 14th. He
20 sent me, oh, here, I just wanted to let you know what I am
21 busy doing over here, you know rescuing penguins or
22 something like that.

23 Q. Politicking for a job?

24 A. He was very much politicking for a job. And that
25 second piece of it, as I understood it, was let's meet and

1 talk about the job, because he had also been pushing hard,
2 oh, I really want to come see the facility. I want a tour.
3 I want to talk to you. I want to have an opportunity to
4 really get a feel for this job position because I so want
5 it. And he had been pushing very hard for really wanting
6 this job. He left the zoo, I think, in not good standing.
7 I think there was a lot of conflict there, and that left him
8 with few options to remain in Arizona or Phoenix because he
9 has family here, and to have a kind of wildlife type
10 veterinarian position.

11 Q. So it didn't really pop on your radar screen as an
12 alarm bell that something is going on?

13 A. No. I saw it more of just kind of, you know, I
14 guess Ron had said the same thing to Thorry, hey, you know,
15 you could capture a jaguar, and then Thorry is pursuing some
16 kind of knowledge on that respect.

17 Q. So it was kind of -- from what I get from that, it
18 was kind of like due diligence preparation, not planning to
19 catch a jaguar?

20 A. Exactly. Yeah, it seems to me that in that e-mail
21 string, it talked about incidental capture. We are not
22 trying to capture jaguars. I thought it was pretty
23 specific. So in reading through that, I think, was Sharon
24 also on that particular e-mail string? I think between
25 Sharon and Roberto, who had been kind of talking about drug

1 dosages or otherwise, that it had been -- I read through it
2 and it didn't seem to trigger any alarms for me.

3 Q. Okay. Good. Thank you. And then the one thing
4 that I think we need to be prepared to address in any case
5 is the rationale, I think, at least from my perspective, and
6 from the outside looking in, or at least trying to figure
7 what it would look like to me from the outside looking in,
8 the lack of a study plan for the Bear and Lion Study coupled
9 with five different project proposals that vary somewhat in
10 content and language depending on the funding source they
11 are competing for, and I guess what we were looking for here
12 is sort of a -- sort of a Department sort of response or
13 something for how we can address that and in terms of
14 implementation of this project, because it seems like it may
15 have been a little outside of what maybe your normal plan of
16 operations would be for a project in the Research Branch?

17 A. Right. Yeah, I would say that it is from the
18 Federal aid standpoint. I had thought there was some type
19 of study plan on this project. That it is not to say that I
20 ever necessarily requested one or something, but I had
21 thought that Todd had written a study plan before he left,
22 and there had been a lot of kind of, you know, Todd and
23 Kirby went out into the field and did a lot of exchange and
24 stuff.

25 It is not like I ever sat down and facilitated any

1 kind of, okay, now, you are moving this project from this
2 area to another. And as far as I know, Kirby also was
3 confused by what had been left behind by Todd, whether there
4 was a specific study plan or not, and there may very well
5 have been some kind of study plan that was considered by
6 Todd to be the study plan without real knowledge by Kirby.

7 Q. Okay. That helps.

8 A. That really was where I was at. And with the lack
9 of a Program Manager, it is just one of those things that
10 fell through the cracks. Now, when Kirby took on the
11 project, it was deep into bear capturing season and it was a
12 lot of field work and stuff. So a lot of those details, I
13 would expect maybe not to get ironed out until fall, once
14 you have finished up with bear capture and stuff. But being
15 Kirby's supervisor at the time, in lieu of not having a
16 Program Manager, I wasn't overwhelmingly diligent on
17 tracking on those particular instances.

18 Q. That is all for me, you know, because, I mean, it
19 probably happens in other instances, not ideally, but it
20 does, and we just needed to be prepared for that.

21 A. I think the overall vision for that project was
22 really one of connectivity and understanding the linkages
23 between mountain ranges and stuff. And that certainly is
24 the vision that I had as it was written -- as I had written
25 it up for the Commission and otherwise. And so the

1 activities of radio collaring the bears, getting them out on
2 the ground in order to start gathering those data and
3 potentially moving into lion capturing in the fall or
4 otherwise certainly fit well within that kind of vision, and
5 then you can hammer out some of the little details later in
6 the game when maybe you are not -- capturing efforts aren't
7 going to be as fruitful.

8 MR. HOVATTER: What else have you got?

9 MR. MCMULLEN: That is it. You really did a nice
10 job of articulating the thought processes that you go
11 through in terms of planning projects and I appreciate that.

12 THE WITNESS: Obviously, I haven't articulated it
13 well enough to my branch if the vision internally is that it
14 is --

15 MR. MCMULLEN: You know what, and that is part of
16 this process, I think, is a learning process for all of us.
17 We don't know what we don't know until it hits us in the
18 face frequently. And so the other last thing I would say is
19 this, just so you are not caught off guard, it occurred to
20 us that really with resoundingly that at least in the case
21 of this study, the Bear and Lion Study, that the chain of
22 command really, really broke down.

23 And let me tell how you that happened. It is not
24 being critical of anybody. Again, it is one of these
25 factors that we are learning as we go along. The field team

1 was in the process of making decisions and searching out
2 information regarding jaguars and procuring equipment and
3 making decisions on who had the collar and what to do with
4 the collar and what equipment to get and what information to
5 gather, what to do, but, you know, largely, the field team,
6 the technicians were doing it completely outside the chain
7 of command, and had -- and this may be something you didn't
8 know, so this isn't a point of being critical, it is just so
9 we all have full visibility on how this thing played out.

10 And it is our belief that had there been a more
11 rigorous adherence to the chain of command for this study,
12 this is the only one we know of, probably we would have had
13 a completely different outcome.

14 THE WITNESS: Uh-huh.

15 MR. MCMULLEN: So I guess I am not really asking
16 for a comment on that more than just to kind of let you know
17 what our observation was and our belief that probably a
18 strict adherence to the chain of command or stricter than
19 what occurred in this one would have had a much better
20 outcome.

21 THE WITNESS: In what way would you see more
22 involvement in the chain of command in some of those
23 decisions?

24 MR. MCMULLEN: First line supervision.

25 THE WITNESS: Are you saying that Kirby wasn't --

1 MR. MCMULLEN: First line supervision.

2 MR. HOVATTER: Chasa, I will just tell you that if
3 look at it and you look at some the e-mail traffic and the
4 interviews and all that Kirby just -- I think he interpreted
5 this isn't about jaguars to I now see nothing that is
6 jaguar, and ergo, when we asked him, and all this is doing
7 is kind of speeding up something that we are going to do
8 anyway. When we get done with this, we will trot this out
9 to the key people involved in this. We have the E staff
10 version. We will have a management level version,
11 management team level version, which is kind of broad, less
12 concerned about process, and then folks like you, and you
13 may be the main person that we have a conversation with
14 about this.

15 THE WITNESS: Uh-huh.

16 MR. HOVATTER: You, maybe Eric, maybe a couple of
17 others, but you have got some of your folks involved in this
18 thing. When we asked Thorry, or we asked Kirby, who was
19 Thorry's supervisor --

20 THE WITNESS: Uh-huh.

21 MR. HOVATTER: -- his answer was, well, so and so
22 does his time sheet that I would give him. It was clearly
23 one of those answers that we would get, and it is, I want to
24 put some distance between me and this. And that was the
25 first -- that was in our first approach in talking to him

1 about chain of command and making that filter through, and
2 clearly influenced, when looking at this e-mail traffic and
3 the interviews, it clearly influenced his approach to all of
4 this. You know, who did Thorry work for when the jaguar was
5 captured. Kirby wasn't entirely sure how that worked, but
6 he knew it wasn't him anymore, and he was happy it wasn't
7 him.

8 THE WITNESS: Uh-huh.

9 MR. HOVATTER: Also, I think he got the flu about
10 that time, you know, and yet -- so I would say that when you
11 look at the totality of what we learned about this, that it
12 is -- it is someone with a somewhat different perspective on
13 what it meant to have leadership responsibility for folks
14 that are being deployed in the field and who is sensitized
15 to the fact that nothing -- you know, there's an old saying,
16 no plan survives contact with the enemy. I think no study
17 survives intact contact with the actual implementation of it
18 in the field.

19 THE WITNESS: Uh-huh.

20 MR. HOVATTER: There seemed to be multiple
21 opportunities where someone who understood their supervisor
22 role to include not having their Branch be caught by
23 surprise on things.

24 THE WITNESS: Right, or having a Branch Chief
25 called the same day the animal is captured.

1 MR. HOVATTER: There were multiple opportunities
2 where you, if you had been informed from what I know about
3 you, it seems very unlikely to me that you would have not
4 intervened, and there were opportunities missed in this as a
5 result of some of it.

6 THE WITNESS: Got you.

7 MR. HOVATTER: To be more specific, but right now,
8 you know, when we get all these things sorted out, because
9 we still have some more interview work to do, that is
10 really, I think, our general sense on that, and that is from
11 the leadership standpoint, that is probably our biggest
12 disappointment --

13 THE WITNESS: Right.

14 MR. HOVATTER: -- about missed opportunities kind
15 of thing.

16 THE WITNESS: Yeah.

17 MR. HOVATTER: Was that sufficiently euphemistic?

18 MR. MCMULLEN: No, it was fine. I just wanted to
19 make sure that you were aware that we had that observation,
20 and there is nothing to do about it at this point, but --

21 THE WITNESS: Well, I think other than -- I know
22 that that is an issue that Larry has at higher levels as
23 well because I have talked to him about he has expressed
24 concern that people who are in a leadership or manager role
25 don't always recognize the level of responsibility that they

1 have in those same roles. And so I certainly appreciate
2 that issue.

3 MR. MCMULLEN: In a nutshell. All right. Thank
4 you.

5 THE WITNESS: No problem. Is there any
6 recommendation you would make to change that with -- do you
7 think -- do you see Kirby as being trainable in that area?

8 MR. HOVATTER: You know, I think this is -- I
9 think he may be -- I noticed that -- one observation was
10 made by a friend of his that he communicated with said, I
11 know you. I know the reason you love your job so much is
12 because it keeps you, for want of a better term, it keeps
13 you out of the line of fire, but this jaguar thing may bring
14 you into the spotlight. How do you feel about that?

15 And he had some discussion about that, but then he
16 notes that -- that's when he makes an observation, you know,
17 well, I just hope this doesn't result -- this jaguar doesn't
18 result in us losing funding or me losing funding from my
19 project. That is okay, too. It is a very real and
20 appropriate concern to have, you know, when you are
21 committed to your job and you love what you do.

22 THE WITNESS: Right, when you are not seeing the
23 larger --

24 MR. HOVATTER: My sense on this is that he was
25 very adamant about not wanting to have to deal with jaguars,

1 that jaguars were -- I forget what the one term he used at
2 one point. I don't know. I think this was --

3 MR. MCMULLEN: I knew it was going to be trouble.

4 MR. HOVATTER: I knew it was going to be trouble.

5 MR. MCMULLEN: Yeah.

6 MR. HOVATTER: And he was right, but you don't
7 have -- the sense of that wasn't I knew it was going to be
8 trouble in looking at it in hindsight. It was just if you
9 are dealing with cats, it is going to be trouble.

10 Now, is that trainable? I think for most people
11 it is, but I think that he has -- I think his personality is
12 such, my sensing of it, and you guys can correct me if you
13 have got it different, but my sensing is his personality is
14 well suited to -- he does not do well outside his comfort
15 zone. I think he is very competent, but I think outside his
16 comfort zone, that absent some significant energy, you
17 should not expect a lot proactivity on his part?

18 THE WITNESS: Right.

19 MR. HOVATTER: I think that he will have a
20 tendency to do that part -- left to his own devices, to do
21 that part of the project that he likes the most.

22 THE WITNESS: Right.

23 MR. HOVATTER: And, again, that is a natural
24 affinity. The thing I used to tell folks when I would take
25 over a new job was, I have never gotten a job of all the

1 many, many jobs I have had in my previous life, never once
2 did my boss say, Gary, the only part of this job you have to
3 do is the part you like or the part you are good at?

4 THE WITNESS: Right.

5 MR. HOVATTER: You have to do the part -- you have
6 to do the job. If you are not good at it, you have to learn
7 to be good or at least be adequate. You have to bring on
8 more of the skill sets you need in order to be successful
9 for the organization. I am not sure that left to his own
10 devices he will --

11 THE WITNESS: Engage.

12 MR. HOVATTER: -- step up to the plate that way.

13 THE WITNESS: Right.

14 MR. MCMULLEN: Can I add something based on my
15 experience in supervising and even having been at a remote
16 station before is that our WM's are similar somewhat to your
17 research technicians in that they tend to work remotely and
18 without daily supervision. And one thing that occurred in
19 my own personal experience with my own growth as an employee
20 with this Department and also in supervising remote station
21 employees is that it takes a lot of conversation and
22 mentoring with those employees to keep it on the radar
23 screen what exactly the big picture is and that we have to
24 be looking out for it.

25 I think a lot of the things that Kirby kind of

1 gave to us were indicative of, you know, that being a remote
2 station employee, and I know Rob is probably one of the best
3 people in the world in terms of keeping the big picture in
4 front of you and making sure that you are supposed to take
5 into account the big picture. So maybe with him, it is just
6 that. It is having it in front of him.

7 MR. HOVATTER: I would tell you, too, that I think
8 Kirby is more of a manager than a leader. I don't think
9 that he sees -- has any sense of responsibility for coaching
10 or mentoring the technicians. I think, you know, my sense
11 is your technician part of your force is a really -- is a
12 strong point for the Department, and I think the challenge
13 is that you are such gypsies.

14 THE WITNESS: Right.

15 MR. HOVATTER: You know, today, they are doing
16 bears. The day after tomorrow, they are at, you know,
17 taking the day to go to grad -- to do a grad school thing,
18 and the day after that, they are up in an airplane doing
19 this, and two days after that, they are up in another, you
20 know, extreme part corner of the state walking a transect or
21 something.

22 You know, their chain of command, it is almost
23 like motor pools in the Army, you would have sometimes these
24 vehicles that nobody, it was like we would scrape out,
25 everybody needs a vehicle sometime, and your vehicle may be

1 in maintenance use or something like that, so they had a
2 floater vehicle. Anybody who needs it, if it is there, you
3 grab it, the keys are in it, you go.

4 THE WITNESS: Right.

5 MR. HOVATTER: You sign the logbook and go. They
6 were the most poorly maintained vehicles in the fleet
7 because since everybody owned them --

8 THE WITNESS: Right, tragedy of the company.

9 MR. HOVATTER: -- nobody owned them. So I think
10 there is somewhat of a sense that I get that some of -- some
11 of our technicians, it is almost like they are raised by
12 wolves. You know, I mean, so they develop their own
13 survival strategies or skill sets for dealing with things.
14 I think their commitment, their dedication and willingness
15 to bounce to place to place to place is incredible.

16 THE WITNESS: Uh-huh.

17 MR. HOVATTER: I think that they need to have some
18 designed ownership for them.

19 THE WITNESS: Yeah.

20 MR. HOVATTER: That, you know, they are like loner
21 vehicles, you know, you need to have somebody who really
22 does their care and feeding of this individual. You know,
23 when I would have guys, in military parlance, you would chop
24 units. If I had a battalion over here of infantry, they
25 need some tanks, I would chop a tank company to them. Well,

1 they are working there. They under that commander. That
2 Commander is going to utilize them and get them killed or
3 make them, you know, but he is going to use them.

4 I still would be picking up the radio. I would
5 be -- if they were close enough, I would be driving over. I
6 would say, guys, how are you doing? Are you getting what
7 you need? Did you get the fuel you need? Are you being
8 fed? Is the unit taking care of you? I had still that
9 sense of commitment and ownership to them. I don't really
10 know how to wrap my arms around it, but I think that is an
11 area where we might be missing some opportunities to grow
12 some of these people.

13 THE WITNESS: I think in some cases. Thorry is a
14 good example of that because of a couple things with Ted
15 having passed away, and Ted as a mentor was a strong mentor
16 in some areas, not so strong in areas of seeing the big
17 picture or identifying with the needs of following
18 Department processes or other pieces like that.

19 And Thorry spent a long time under Ted. So I
20 think he gained a little bit of that more fly by night
21 attitude from Ted sometimes. And then when Ted passed, he
22 fell under Bill automatically and stayed there, but then was
23 working for Kirby and working for Jeff on things and stuff.
24 So, especially, Thorry, I think has really been in that
25 piece.

1 MR. HOVATTER: I would say, I think, that, you
2 know, an alternative, there is any number of alternative
3 strategies in that, but if folks recognize, if their
4 supervisor, one of these people working for them, if they
5 are working for them for an hour or for a week, that they do
6 have a responsibility for that individual.

7 THE WITNESS: Uh-huh.

8 MR. HOVATTER: They really do. They have to take
9 that onboard.

10 THE WITNESS: Right.

11 MR. HOVATTER: And if you are not a leader, that
12 is tough. For a manager, that is pretty easy. For a
13 manager, you get a widget. At the end of the day, you still
14 have your widget, and you have to give the widget to
15 somebody else, that's a successful day.

16 THE WITNESS: Right.

17 MR. HOVATTER: Now, whether the widget has been
18 polished, whether it's been sharpened on the end that is
19 supposed to be sharp, that's the next guy's problem. And so
20 I just -- I don't know exactly how to wrap my arms around
21 it, and I think that Kirby for those things that he has a
22 natural affinity for that can be taken care of through basic
23 management, he's a good tool for that.

24 THE WITNESS: Uh-huh.

25 MR. HOVATTER: I think for something where you are

1 going to have to wrap your arms around a group for something
2 that is a critically important task that has to get done
3 that you are going to get stuck into it, the group is going
4 to exist for the length of that project and it is going to
5 evaporate, I am not sure he has got the skill set to do
6 that, and even with the skill set, I don't know if he has
7 the affinity for that.

8 So it is like a lot of things. When I want to
9 drive a nail, I don't reach into the screwdriver drawer.
10 And we are not going to be an organization that has the
11 luxury of saying, if you are not usually an infielder, we
12 can't -- we don't have a use for you. So, you know, but it
13 is limiting because you don't have the agility and
14 flexibility you would have at that level if you had someone
15 who had the full spectrum of skills, gifts that you would
16 like them to have. Wasn't that helpful?

17 THE WITNESS: Well, it was. It is good to discuss
18 it. It is helpful now that we have the Program Manager
19 position filled because I think some of that work by Esther,
20 it doesn't fix the lack of that --

21 MR. HOVATTER: Let me ask you this. Has he
22 really -- do you get the sense that he's got real ambition
23 to promote? And that would be, again, my bet. He strikes
24 me as someone that is quite content.

25 THE WITNESS: He was quite content at a Spec 1

1 level for years. It is only in the last, I want to say
2 three years that he promoted into a Spec 2 level. You know,
3 Kirby was born on Department property literally.

4 MR. HOVATTER: Yeah.

5 THE WITNESS: I think he has always wanted to be a
6 biologist, but he is not looking -- he is looking for an
7 8:00 to 5:00 biologist job, and he is okay working on
8 weekends and holidays and stuff, but he wants to be able to
9 take a lot of quail season off and hunt with his dogs. He
10 truly enjoys wildlife.

11 MR. HOVATTER: You can do that.

12 THE WITNESS: But he is not looking for any of the
13 politics, any of the social pieces.

14 MR. HOVATTER: You know, to expect a lot out of
15 that, it is just, you know, it is counterintuitive to expect
16 that.

17 THE WITNESS: Right.

18 MR. HOVATTER: But by the same token, especially
19 when you are short staffed, if I had to drive a nail and the
20 only tool in my tool box is a screwdriver, I will drive that
21 nail with the screwdriver.

22 THE WITNESS: Right, it doesn't always work
23 though.

24 MR. HOVATTER: No, sometimes you break the
25 screwdriver.

1 THE WITNESS: You might just stab a jaguar in the
2 process.

3 MR. HOVATTER: You want to be careful on the
4 backside.

5 THE WITNESS: Yeah.

6 MR. MCMULLEN: I am done.

7 MR. HOVATTER: Chasa, first, I am sorry for
8 keeping you this late. More importantly, thank you for your
9 perseverance in this.

10 THE WITNESS: That is okay.

11 (An off-the-record discussion ensued.)

12 MR. HOVATTER: It is still the 19th of August. It
13 is still Gary, Marty, Craig, and Chasa, and just a couple
14 other things we wanted to ask about. One was after we had
15 given Michelle, Thorry, and those guys, here, don't talk
16 about this, did Thorry -- did Thorry indicate that he once
17 had something he wanted to tell you or Mike during the
18 course of your conversations with those guys to let them
19 know?

20 THE WITNESS: Which?

21 MR. HOVATTER: This would have been probably on
22 the 31st of March. That is when we put out that first
23 letter in the morning. We had put out a subsequent letter a
24 couple days later. We put it out, and I think you guys had
25 called around to talk to the folks because the letter was

1 starting to being interpreted as don't talk to anybody and
2 we had --

3 THE WITNESS: Right, yes, because there was
4 concerns that as the Federal investigators were calling
5 them, they were saying, I can't talk about that. And so
6 there was a follow-up memo, I thought, from Mike Senn --

7 MR. HOVATTER: Yeah, there was.

8 THE WITNESS: -- saying, yes, the direction that
9 you should be talking to the Federal investigators, but not
10 to anybody else. I don't remember Thorry indicating at all
11 that there is anything he wanted to talk to us about. If he
12 had, I would have told him we couldn't talk then. I would
13 have come to you or Diana or whomever was most accessible
14 relative to that chain to say something. Thorry has
15 something he wants to discuss. However, I recognize that we
16 are currently under Federal investigation.

17 MR. HOVATTER: That would have given us an
18 opportunity to maybe talk to him without coming --

19 THE WITNESS: Yeah, the only thing I had gotten
20 from Thorry was right before that when Janay Brun said -- is
21 that her name, the woman with -- Tony Davis had been talking
22 to her and had called Bob Miles and given him a heads up.
23 At the same time, Emil must have heard from Janay and had
24 called Thorry or something, and Thorry had called and left a
25 message for me saying, hey, somebody, you know, the woman

1 who works for Emil is making these accusations, and they are
2 wholly untrue and blah, blah, blah, and that was right
3 immediately preceding the investigation beginning of this
4 stuff because that was when we had the kind of war room
5 discussion in Larry's office and things like that.

6 I didn't respond to Thorry on that phone call. It
7 was a message left on my machine. I saved the message. It
8 is still there because Mike had said save it, because as we
9 headed into the investigation that next day or the day
10 after, it was then considered to be evidence.

11 MR. HOVATTER: Will you be in tomorrow?

12 THE WITNESS: Yes.

13 MR. HOVATTER: You might want to come down to
14 listen to that.

15 THE WITNESS: Yes, absolutely.

16 MR. HOVATTER: It would be great. Do you guys
17 have anything else?

18 MR. MCMULLEN: No, that was the question.

19 MR. HOVATTER: Run away. Run away. Monty Python
20 and the Holy Grail.

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CERTIFICATE

I, Tammy Gillett, do hereby certify that the foregoing 138 pages were transcribed by me; that I was then and there a Certified Reporter in and for the County of Maricopa, State of Arizona, and that the foregoing pages contain a full, true, and accurate transcript of all the digitally recorded and/or taped proceedings, all to the best of my skill and ability.

I FURTHER CERTIFY that I am not related to nor employed by any of the parties hereto, and have no interest in the outcome.

DATED at Phoenix, Arizona, this 2nd day of October, 2009.

TAMMY GILLETT
Certified Reporter
No. 50430

ARIZONA GAME AND FISH DEPARTMENT
5000 WEST CAREFREE HIGHWAY
PHOENIX, ARIZONA 85086

TRANSCRIPT OF INTERVIEW
JANUARY 6, 2010
CHASA O'BRIEN

Individuals present at the Interview on 1-6-10:

Gary R. Hovatter, Arizona Game and Fish Department, Deputy
Director, Interviewer
Marty Fabritz, Arizona Game and Fish Department,
Ombudsman, Interviewer
Craig McMullen, Arizona Game and Fish Department, Wildlife
Manager, Interviewer
Chasa O'Brien

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1 CHASA O'BRIEN
 2 pursuant to Garrity Warning, was examined and testified as
 3 follows:
 4
 5 EXAMINATION
 6 BY MR. HOVATTER:
 7 Q. Chasa, I'm going to re-interviews as we move
 8 towards trying to do a report, a closeout report on this
 9 phase of our investigation. We still, of course, as you
 10 know, have -- the federal investigation remains out there
 11 and we don't feel that our investigation will ever
 12 be -- will be truly complete until we see the results of
 13 that. But in the interim I wanted to revisit some
 14 issues.
 15 I want to do this -- continue this under the
 16 Garrity Rights advisement we gave at the beginning. Would
 17 you like me to read that again?
 18 A. No.
 19 Q. Are you good with that?
 20 A. I'm good.
 21 Q. Chasa, most of these questions we've asked
 22 before. I've of kind whittled this down to some things
 23 that seem to be especially germane as we try to develop a
 24 draft of our interim final report. Is that enough caveats
 25 to the report?

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1 MR. MCMULLEN: Yeah.
 2 Q. So let me just jump right in on this. Several
 3 years before the large carnivore habit connectivity study,
 4 the Department had developed through the jaguar
 5 conservation team process a protocol for the deliberate
 6 capture of a jaguar. Were you aware of that protocol at
 7 the time?
 8 A. No, I wasn't.
 9 Q. As you know, you know, one of the challenges that
 10 we've had in this is that it became clear to us as we were
 11 dig through this that when you look at the totality of
 12 responsibility for all the pieces that became a part of
 13 this, we have our sort of jaguar and wolf branch, for want
 14 of a better term, army of one wolf branch where the jaguar
 15 conservation team expertise and all resides; we have
 16 research branch, which was doing the bear and lion study
 17 and large carnivore habitat study; we have the ESA permit
 18 and fish and wildlife services you administered by
 19 non-game branch; the EA checklist in habitat branch; lions
 20 and bears are game species under game branch; and then, of
 21 course, then we have the region in which this physically
 22 occurred in a different division entirely. So when you
 23 add all of that together, you know, those -- you know, we
 24 clearly have on this, and other issues, we have a lot of
 25 stove piping.

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1 The question I have is this, as you look at
 2 the jag conservation team effort, and clearly as we now
 3 understand it it obviously had implications to this study,
 4 do you have any -- do you have any idea why we had not
 5 done a better job of providing information about the
 6 jaguar conservation team efforts and plans for jag
 7 conservation across all of the other branches in the
 8 Department that might have been effected? I mean, you're
 9 not -- that's not your responsibility but do you have any
 10 insight or thoughts about why that stovepipe, why we
 11 weren't able to have a more natural part of that process
 12 to be making sure at least at the branch chief's level
 13 that everybody was aware of some of the key tenants of
 14 what we were trying to accomplish with jag conservation?
 15 A. I don't know. I work well with Terry and stuff.
 16 There is not any issue there. I think we all just have a
 17 lot of do. Dissemination of information isn't necessarily
 18 good communication. You know, I could have received an
 19 e-mail right when the jag conservation team developed
 20 their protocol, I might have even hit the save, you know,
 21 right click, save to, and then headed on my way.
 22 One of the things we're trying to do,
 23 though, that we're working on with the EAC process with
 24 Josh is to, and this didn't go through EAC so it wouldn't
 25 have been caught there, but in the future --

Page 5

1 Q. As we know there is no guaranty that if we had
 2 taken it through the EAC as it then existed that that
 3 would have necessarily got us to where we would have
 4 preferred to be when we ended up in February of '09.
 5 A. Right. And Terry doesn't even, at the time
 6 didn't review those anyway. They go to Eric to be
 7 reviewed. And whether or not Eric would have thought this
 8 raised to the level of really being a significant issue or
 9 not would have been up to him.
 10 Q. Yeah.
 11 A. So what we're trying to do and what we talked
 12 about during a meeting on Monday in our review of the EAC
 13 process and ways to potentially improve it, is to try and
 14 somehow integrate set protocols for types of handling and
 15 capture and otherwise as it relates to particular
 16 endangered species or species that would come up on HDMS
 17 review.
 18 So let's say your EAC checklist brings up
 19 that this potentially is within the range of jaguar, that
 20 if you have got a set protocol like the protocols from the
 21 jag conservation team, that it would then be linked in so
 22 it would get kind of spit out at the same time to go back
 23 to the person who is submitting the project for the EAC.
 24 You know, try and combine -- and I don't see us getting
 25 there overnight. It's going to have to take a process to

1 get this kind of reconnected and also to develop some of
 2 the protocols that may not be in existence for certain
 3 species.
 4 But the idea would be that that would then
 5 connect you to those, okay, wait a minute. You have this
 6 issue. The program can't tell whether your study actually
 7 has an issue. I did the Kaibab study and I had the
 8 endangered river fish showing up on my potential EAC as
 9 being impacted just because the box of the study area
 10 touched the Colorado River. But then it would be in that
 11 subsequent review with Eric or otherwise, and we're
 12 considering adding Terry into that process any time that
 13 those two species that he particularly is involved in
 14 would get touched then, that it would then be -- they
 15 would be able to say, okay, yeah, this methodology is
 16 potentially an issue and the protocol has already been
 17 spit out, you need to review this protocol, amend your
 18 study plan, and incorporate changes per these requirements
 19 recognizing that you're in the area.
 20 But why the stove piping existed I can on
 21 attribute that to people, their work, and their tendency
 22 sometimes to not necessarily realize that their work
 23 touches others.
 24 Q. Did you -- did your folks as part of getting
 25 ready for that study did they review the HDMS database?

1 A. Not to my knowledge.
 2 Q. Would they have -- normally what would have
 3 driven us to check EDHDMS database? The EA checklist,
 4 right?
 5 A. EAC.
 6 Q. Were you aware that the department had a jaguar
 7 collar stored in the Region 5 headquarters in Tucson for
 8 use should a jaguar ever accidentally ever be captured at
 9 the time that this was occurring?
 10 A. Yeah. I'm trying to remember. I knew that there
 11 was a collar at one point. Van Pelt had at times
 12 mentioned a collar because it kept coming up as a -- I'm
 13 trying to remember what type of collar it was, but it was
 14 one of the collars that had an annual cost associated with
 15 it even when it's sitting unused. It had an annual cost.
 16 And those bills at one point had come to us and we had
 17 transferred -- because I think it was not a Spread
 18 Spectrum. It's a -- it was a satellite system that
 19 essentially has, even when you're on a delay kind of
 20 thing, it has that. And I heard at one point when the
 21 jaguar was captured south of the border, there was a
 22 jaguar captured in a trap by a rancher or something, I had
 23 gotten a call from Van Pelt when that occurred because
 24 they were looking for a collar from us because they didn't
 25 have a collar or they didn't have access to their collar.

1 So I was aware of attempts at times to
 2 potentially radio collar a jaguar. I don't know that I
 3 would have specifically put my finger on a jaguar collar
 4 in Region 5 at the time.
 5 Q. But you had an awareness then because of billing
 6 and all that we had a collar for jaguar somewhere in the
 7 Department?
 8 A. I was aware of the interest and the desire, yes,
 9 and that there had been a collar around that was --
 10 Q. That we were paying for?
 11 A. -- available for something.
 12 Q. But you were not aware of where it was and other
 13 than the fact that -- and that was just incidental to what
 14 you were --
 15 A. Yeah. I mean, I could have certainly guessed
 16 Region 5 from the standpoint of --
 17 Q. When was that jaguar captured south of the
 18 border, do you recall? Because there has been a couple
 19 that I'm aware of back from --
 20 MR. FABRITZ: Is that one with the busted tooth?
 21 A. Yeah.
 22 Q. Lucero?
 23 A. Was that Lucero?
 24 Q. Lucero is the one that the rancher caught, had in
 25 cage and everything. He had broken his tooth and the

1 decision was made -- because he wasn't in a zoo, he had
 2 been captured, a rancher capture.
 3 MR. FABRITZ: So we don't know how long ago it
 4 was?
 5 Q. Were you aware at the time of the approval, and
 6 let's just, we will call it May of '08 when the Commission
 7 approved the financial aid study.
 8 A. Right.
 9 Q. Were you aware at that time that the large
 10 carnivore habitat connectivity study area included areas
 11 where jaguars had been documented in Arizona?
 12 A. Probably tangentially, yes. I mean I was aware
 13 that there had been a sighting of a jaguar many years ago,
 14 and it was more of a kind of, gee wheez, wow, there had
 15 been a jaguar than knowing that there was an active --
 16 active use of an area by a jaguar.
 17 Q. Well, I think that may be the answer to the next
 18 question. So if you had that tangential knowledge, and
 19 maybe this is the answer to this question, but why was
 20 that not factored into the large habitat connectivity
 21 study, specifically factored into the development?
 22 A. I hadn't considered it to be any kind of an
 23 actual, real threat or --
 24 Q. Well, you know, it comes back to almost everybody
 25 we've talked to at some point in the process you get this,

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1 what were the odds? You know, it keeps coming back to
 2 that.

3 MR. MCMULLEN: Can I ask one follow up on that?
 4 The research branch was never part of -- I'm stating this
 5 as a statement but it's really a question -- was never
 6 part of the notification process whenever jaguar sightings
 7 was detected?

8 A. I wasn't a part of the notification process and I
 9 wasn't aware of anybody in the branch that was.

10 Q. Here's -- in the May 2008 Commission brief, and
 11 we went back there, a part of what we're doing is digging
 12 through all of our documentation. One of the
 13 Commissioners asked, how do we develop a study plan? And
 14 you articulated a fairly detailed description of how one
 15 would approach that.

16 A. Uh-huh.

17 Q. Now I guess my question is, was that a study plan
 18 process in being, or was that a study plan process, just a
 19 logical study plan process in answer to a Commissioner
 20 question?

21 A. I don't remember what I said to the Commission.

22 Q. Let me grab that.

23 MR. FABRITZ: I've got a copy of it here
 24 somewhere.

25 Q. I got it right on top. I should have known. Let

Page 11

1 me tell you, and I guess what I'm wondering is what you
 2 described here is this something that was established as a
 3 study plan process?

4 A. There was is no established study plan process
 5 for the Department at the time that I was answering those
 6 questions.

7 Q. I know we're working to change that.

8 A. This is the process that I had used on the Kaibab
 9 study for the study that I had implemented before and that
 10 included the scoping with the -- with the ADA, the Forest
 11 Service, et cetera, and then had moved on to a project.

12 Q. See, the reason I'm smiling is because a
 13 lot -- most of us who have had to brief the Commission
 14 fairly routinely, it is not uncommon for us in answering a
 15 question to come up with a logical answer to the question
 16 that in some cases may reflect established policies and
 17 other cases it just seems like this is a logical
 18 approach.

19 I think the question that was being asked
 20 was how would you develop a study plan. And I think then
 21 so what you were doing is tapping into the process you had
 22 personally used on the Kaibab?

23 A. Correct.

24 Q. To answer the question about a way to do that?

25 A. Uh-huh.

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1 Q. Got it. That makes sense to me. Not that it
 2 matters that it makes sense to me but it's always helpful
 3 when it does.

4 Now, having said that, what's your
 5 explanation for why we never fleshed out the study design
 6 for that large carnivore -- for that bear and lion study?
 7 I mean, you clearly had, not a policy, but you had
 8 yourself a pretty good vision of what would be a pretty
 9 decent approach it looks like to me. We briefed the
 10 Commission and then we started moving in the direction
 11 after that of implementation on the ground. We never had
 12 the -- we never caught up to that implementation with a
 13 detailed, fleshed-out study plan. Why didn't we? And
 14 this is one where I think looking back on it, it's not --
 15 but looking back on it, ultimately, we kind of had all of
 16 the pieces in our heads. We had expertise and
 17 experience. Why didn't that serve us better and result in
 18 us doing a good, thorough study plan for that project
 19 before we went to implementation?

20 A. I think that I certainly expected the study plan
 21 was being written. And when I was seeing the proposals
 22 generated, usually a proposal is a form of a study plan
 23 but with kind of additional desires of how a project will
 24 expand into another area based upon the funding you would
 25 hope to receive from the granting proposal. Having seen

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1 the proposals being developed, I had the expectation that
 2 there was a base study plan that Atwood was working
 3 under. And at the time, Richard Okckenfels was my program
 4 manager who was overseeing that. And so I would usually
 5 expect that that was being overseen by a program manager.
 6 I didn't personally look into it and specifically check
 7 that there was a study plan or any of that.

8 Q. Were you surprised to find that we hadn't done
 9 one?

10 A. I was surprised to find. I mean to have so many
 11 different proposals and not have some type of base study
 12 plan that was -- that had been kind of your original study
 13 plan that you were working off to then create these
 14 proposals was a surprise to me.

15 MR. MCMULLEN: Can I ask one question, and that
 16 is, we know there wasn't an established process, and we
 17 need to be prepared to answer questions to the public as
 18 to why we didn't have a study plan, and we know that in
 19 research branch there is no formal process to having a
 20 study plan. What caused to you expect that there should
 21 have been a study plan associated with the LCHC when there
 22 was no formal process in research branch for creating
 23 study plans? What was it specific about the LCHC that
 24 caused you to think or expect that there should have been
 25 a study plan?

1 that, I guess ultimately at the end, why did we not pause
2 and consider what happens -- you know, is there, in fact,
3 the potential to catch a jaguar, and if so, is there
4 something we should do to be better prepared?

5 A. Well, when he brought it forward to me at
6 department school and I think it was June of '08, I did
7 immediately grab my supervisor at the time, Brochide
8 (phonetic), because I had indicated to Kirby, no, we don't
9 want to be capturing jaguars period. You need to go
10 through a whole process before we ever end up in a
11 situation, because I think the question he was bringing to
12 me was should we put a collar on a jaguar if we captured
13 it.

14 Q. Yeah.

15 A. I said, no. And let's step back, no capturing
16 jaguars. And we weren't, to my knowledge, trying to
17 capture lions at that time either. In the summer we're
18 not usually snaring for lions.

19 Q. At that point that's true. At that point we did
20 not have lion snaring going on at that time.

21 A. So I grabbed Brochide at the time and said, hey,
22 come into this conversation. I think it's important. And
23 Brochide reiterated essentially what I had said,
24 definitely don't collar it and don't be capturing
25 jaguars. And he had left it at that and it moved

1 forward.

2 And so for me it was a risk assessment as
3 you had indicated kind of before, okay, what is our
4 potential to end up with a jaguar? And I considered it at
5 the time to be very, very, very low. And then having
6 brought Bob into it and having got his input and no
7 further direction to change any way that we were moving
8 forward, I didn't think of anything else that would be of
9 concern at the time.

10 Now come December of 2008, Ron had come in a
11 couple of times and caught me in the hallway or otherwise
12 and said, hey, you know, we could capture a jaguar. And I
13 think there was even one instance out in the parking lot
14 when you and Larry were leaving or something and it was
15 brought up. And at that time I began thinking, well, wait
16 a minute. Is there anything that we have that we would
17 need to do in that potential event? And my only thought
18 was there is the EAC process, is that -- you know, that
19 seems like that should be where this comes in.

20 Q. Okay. So Ron, your conversations with Ron, was
21 that about that December 2008 time frame?

22 A. That's definitely what prompted the December
23 2008.

24 Q. I guess the question is, because I can
25 understand. It is interesting that, you know, we made the

1 decision, but I can understand it in that subset in
2 research branch, okay, we're not going to, in coordination
3 with your supervisor, we're not going to put a collar on
4 it. Now, of course, in the jaguar conservation team
5 process they had years ago before this had said if, in
6 fact -- and that's why the collar existed in Tucson.

7 A. Right. And I didn't learn about that until after
8 this whole --

9 Q. And you were not aware of that so that didn't get
10 factored into that discussion. Was there a reason why we
11 didn't include Terry at that point in the conversation in
12 June?

13 A. No. It wasn't an intentional exclusion at all on
14 my part.

15 Q. And I've never gotten the impression that it
16 was.

17 A. No. I think, I just had grabbed Bob, got an
18 input, and then moved on to the next of many things in
19 someway. Sometimes this is just more of a workload
20 management and trying to figure out what's going to be a
21 high priority. Obviously in the future if somebody
22 inquires about the potential of a T and E species and
23 potential impact, it will rise much higher in my level of
24 concern.

25 Q. Well, you know -- yeah. And you know, really

1 putting that in the context at the time, we weren't
2 actively snaring for lions, although that was a part of
3 the plan, but we didn't start that for some time to come
4 after that.

5 In December, now you were aware in December
6 that we were snaring for lions. We had captured some
7 lions.

8 A. I had been aware that we had the contract with
9 Emil, yes.

10 Q. At that time I think the challenge becomes for
11 all of it is that understanding it's one thing to say we're
12 not going to catch a jaguar, that's not our purpose, when
13 there is no snaring. Once we got snaring, I mean, to --
14 and I don't mean to be facetious. I think I've said this
15 before in some of these interviews is you can't put a
16 no-jaguar-step-here sign. The snare will fit whatever paw
17 fits in it. Were you aware that jaguars were an
18 endangered species?

19 A. I would have expected they would have been an
20 endangered species.

21 Q. Were you aware that -- did you know under the
22 Endangered Species Act that the Department in this case,
23 that you are required to have a permit to, in fact, work
24 with endangered species in such a way that if there is any
25 likelihood that it might result in a take of that animal?

1 A. I was aware of -- I was aware tangentially of our
 2 permits that we had from the standpoint of I would get
 3 e-mails annually regarding the permit. I wasn't aware
 4 specifically that there would be something necessary for
 5 jaguars.

6 In January when, or maybe it was late
 7 December, I'm not sure, when the EAC question had come up
 8 and I had forwarded it I think to Dean at the time and
 9 potentially Ray or somebody, but there had been some -- a
 10 couple of inquiries, and Dean at one point had come back
 11 to me and indicated, I think by e-mail, hey, I talked to
 12 Bill Van Pelt. It sounds like we're okay but you're going
 13 to potentially want to follow up with him. So at that
 14 point the concern level that had kind of raised up a
 15 little bit in December from Ron Thompson and the oh, do we
 16 need to move forward on an EAC and how do we deal with the
 17 potential, though I considered very low, risk of capturing
 18 a jaguar at that point fell down a couple notches when I
 19 had received information of, it sounds like things are
 20 okay. You might just want to follow up.

21 So it's just -- for me it was a risk
 22 assessment and prioritization that in this case obviously
 23 I failed on.

24 Q. Just generically, so I guess what I'm hearing on
 25 that is that -- that -- that you're -- to the extent that

1 you did think about that it was not, it was in your mind
 2 likely that jaguars were an endangered species?

3 A. Yeah.

4 Q. Have you ever had any actual formal training on
 5 the Endangered Species Act?

6 A. No.

7 Q. And that's another part of where we as a
 8 Department have kind of failed ourselves on this is that,
 9 you know, clearly you can't have a training program on
 10 endangered species that says, well, if you're ever going
 11 to work with an endangered species get the training when
 12 you can't really be certain how your work in the field
 13 may, in fact, come into contact with an endangered species
 14 issue.

15 So what was your -- not having had any ESA
 16 training, what was your understanding of how, if any, of
 17 how an ESA permit, Endangered Species Act permit worked?

18 A. I didn't have any understanding of the permitting
 19 process at the time.

20 Q. Did you know at the time what a 10A1A permit was?

21 A. No.

22 Q. Do you have any familiarity with that term?

23 A. I didn't at the time. I do now.

24 Q. Oh, yeah. Well, we're all a hell of a lot more
 25 educated now. I think that's the answer to the question.

1 That being the case, did you ever ask about a permit
 2 status of jaguars in relation to the study?

3 A. Other than asking, having Dean --

4 Q. And that's the next question.

5 A. Inquire with Bill and it wasn't with regards to
 6 permit status, and I don't even know how Dean framed the
 7 question with Bill, but whatever inquiry my e-mail
 8 prompted having received the information back.

9 Q. And again, I just want to revisit that again. So
 10 when you had this spike of concern or whatever the right
 11 term, spike of awareness and interest, your -- what you
 12 asked Dean to do was what?

13 A. I think I sent an e-mail, I'm pretty sure it was
 14 an e-mail, that had indicated that, hey, I think we need
 15 to look into an EAC on this project --

16 Q. You did.

17 A. -- having to do with the potential of a jaguar.
 18 And then that had, as I understand it at least, had
 19 prompted him to go to Van Pelt. And then that -- he had
 20 come back and he had just indicated, I think we're fine
 21 but, you know, follow up with Bill.

22 Q. So essentially what your --

23 A. I was out of the office at the time. It was not
 24 like I was sitting in my office typing.

25 Q. But essentially what you really then were asking,

1 you were asking Dean to contact -- did you ask him to
 2 contact Bill or did you just ask him to look into the
 3 issue?

4 A. I asked him to look -- I indicated that we needed
 5 to consider and look into this issue. I don't think I
 6 even directed him specifically.

7 Q. I can go check.

8 A. He was regularly in contact with Kirby, lacking a
 9 program manager for the Fitmen Robertson component, Dean
 10 at times was stepping into portions of the role as the
 11 program manager. He was not special detail and he was not
 12 an official supervisor for Kirby or otherwise, but I think
 13 at the time I was off on vacation or something and getting
 14 a few e-mails out. So I had sent an e-mail off to Dean,
 15 hey, we need to consider this process and how we implement
 16 it. As we are kind of ending this year, there is a down
 17 time in the holidays and let's tackle this issue.

18 Q. Let me ask you then based on what you've
 19 described with the background or not having any formal
 20 training in ESA, was it -- you know, this is really kind
 21 of -- how would you have even known to frame the question
 22 about endangered species permit?

23 A. I didn't frame any question about permitting. It
 24 was just, hey, there is this concern about the potential
 25 capture. We need to look into the EAC. How do we deal

1 with this? And then I think Dean took it upon himself,
 2 having received that e-mail, to go to Bill because he
 3 thought of Bill as the previous program manager for birds
 4 and mammals and non-game to be the most knowledgeable on
 5 that subject.
 6 Q. At the time of this, did the terms incidental
 7 take and deliberate take, did those have any resonance
 8 with you?
 9 A. No.
 10 Q. The December 2008 meeting that occurred in
 11 Tucson --
 12 A. Yes.
 13 Q. Now Erin Fernandez started that out. She had
 14 sent out old an Todd Atwood, probably a new Todd Atwood
 15 but it was a Todd Atwood proposal out in an e-mail and
 16 said, I would like have a gathering, a get together talk
 17 about large carnivores, bears and lions on the border.
 18 And then Kirby kind of orchestrated I think a meeting the
 19 day before for our folks to get together. And then a
 20 number of our people, Kirby, I think, Thorry, Ron
 21 Thompson, some others participated. I don't think you
 22 went to that meeting.
 23 A. No.
 24 Q. Did you get -- let me ask you, did you know about
 25 that meeting in advance, that we were going to have that?

1 A. I don't remember if I knew about that meeting or
 2 not. I could have received an e-mail.
 3 Q. Did you get a back brief on that meeting
 4 afterwards?
 5 A. No.
 6 Q. Would you normally if you had the full staff,
 7 because you were down a couple of supervisors, key
 8 supervisors at this time, I think even then you were down
 9 a couple of supervisors?
 10 A. I was.
 11 Q. Would you have normally expected to get a back
 12 brief from a meeting like that?
 13 A. Only if -- I would have expected potentially a
 14 briefing from Kirby to his program manager, had there been
 15 one, and then if there was an issue that raised its level
 16 to a branch chief, I would have potentially expected the
 17 program manager certainly to bring that to my attention or
 18 otherwise. If it was a standard meeting of hey, we're
 19 going to be discussing border issues as it relates to
 20 animals and they were discussing the project, I wouldn't
 21 necessary receive a back briefing.
 22 Q. How did Kirby keep you up to date on the progress
 23 of that study?
 24 A. He didn't particularly, certainly not formally.
 25 Occasionally he would be in the office and we would

1 discuss the study. But it was very informal and he rarely
 2 sent me e-mails to give me any information. I think he
 3 was in more correspondence with Dean in many ways than he
 4 was with me.
 5 Q. In November of 2008, Emil McCain was working for
 6 us. Let me ask you, were you aware -- when is the first
 7 time you ever knew about Emil McCain?
 8 A. I don't have any pinpoint specific -- I had
 9 heard, I think, at one point or more than one point, but I
 10 think I had heard his name through the fall. At one point
 11 I think Ron may have talked about him as being some person
 12 who to could assist with the capture down in southeastern
 13 Arizona. I was aware -- there is kind of a group of lion
 14 people.
 15 Q. There is somewhat of a fraternity.
 16 A. It is, and I know Brian Janson who does a lot of
 17 or did a lot of lion trapping up in South Dakota.
 18 Q. There are a lot of lions up in South and North
 19 Dakota.
 20 A. Because he had been at the University of Arizona
 21 when he was doing his Master's and stuff. I knew -- I've
 22 heard names as they have circulated because of the urban
 23 lion project. So some of the standard lion hunters that
 24 people were becoming familiar with, I would hear names
 25 like Floyd Green or otherwise, and in the process of all

1 of that I heard Emil McCain's name.
 2 Q. Were you aware that he was -- that he was a
 3 sub -- first, were you aware that we had a statewide lion
 4 capture contract?
 5 A. Yes.
 6 Q. Were you aware that he was a subcontractor to the
 7 contractor for that? I know it's kind of difficult
 8 dissecting out what you knew at the time versus what we
 9 know now.
 10 A. Yeah. I don't remember if at that time -- I knew
 11 that we had contracted him. I didn't know if he was on
 12 the list for the contractors or if he had been
 13 subcontracted.
 14 Q. Were you aware that he was working for Kirby as a
 15 part of that field team effort?
 16 A. I was during that November because they had
 17 approached me. He worked for a period of time and I told
 18 them that they had a money limit for extending on the
 19 contractor, and they had hit that limit, and they were
 20 requesting more. And Dean had come to me at one point
 21 indicating that he felt the budget did allow for ten more
 22 days, or something like that, and had asked my approval to
 23 move forward with continuing to capture. And they had
 24 indicated that they still had collars to put out and a
 25 need to capture. So I had approved that, and I think we

1 extended that now subcontract 10 days if I remember
2 correctly or 12 or something. And it was during that
3 November, December time frame.

4 Q. In November of 2008 while he was a subcontractor
5 on that, doing lion work for us, Emil McCain announced to
6 the jag conservation, which was his normal routine, that
7 new photos of Macho B had been taken, that he had found
8 them in November. Were you informed that those photos had
9 been out there?

10 A. No.

11 Q. Were you aware that large carnivore habitat
12 connectivity team, Kirby, Thorry, others, was routinely
13 carrying Emil McCain's jaguar collar into the field with
14 them during that October, November trapping period?

15 A. No.

16 Q. Emil, in 9 February Emil announced photos, new
17 photos of Macho B from the Tumacacoris and the Atascosas
18 to the jag conservation team. Were you made aware of --
19 he announced them from Spain, as a matter of fact, through
20 the miracles of modern technology. Were you made aware of
21 those photos at that time?

22 A. No.

23 Q. On 4 February Thorry was in the field to
24 re-establish snares, the snare sets in the Atascosas. Let
25 me ask you, now the lion that they had previously captured

1 in the Atascosas had been taken by a hunter. Had you been
2 made aware of that? Had Kirby let you know about that?

3 A. I don't remember if Kirby had let me know about
4 that or not. He may have indicated that they had lost --
5 I don't regularly hear about every study.

6 Q. No, and I understand. I know -- I know that the
7 volume of studies and the amount of supervisors you have.
8 I'm not trying to give you a free pass on anything but I'm
9 also trying to be rationale about what the situation was.

10 A. Right. I don't remember whether I heard whether
11 we had lost an animal or not.

12 Q. Well, the thing is that as we restarted the study
13 it seems clear that Kirby made the decision that the
14 logical place to start was where we now had a gap in that
15 kind of band of lions we were trying to create. So on the
16 4th of February Thorry is back out there. And Emil McCain
17 is out there also. And so he is establishing snares.
18 Emil is the one who brings in an establishes that snare
19 set, and he's trying to show, and it makes sense that he
20 would show him where those were. They were also checking
21 the cameras, the photolized jaguar detection project
22 cameras. And they found a photo of Macho B at that pink
23 point there. And if you go up to the yellow spot up
24 there, that's where Macho B was captured a couple of weeks
25 later.

1 Were you made aware by Kirby or anyone else
2 that that photo had been found?

3 A. No. I wasn't even aware that they were in the
4 field that week.

5 Q. You had not been going to talk to the jag
6 conservation team because it seems clear because your
7 sense of awareness never got heightened to a sense of
8 urgency during the course of this. Similarly, they are
9 getting information about photos and other information
10 that's a part of the jaguar conservation team process, and
11 you're not part of that process. Did you -- do you know
12 if you ever had a conversation with Terry or Bill to make
13 sure that they or to tell them that we were doing this
14 study down in the border area?

15 A. I don't remember if I followed up with Bill as
16 Dean indicated in that e-mail. I don't remember if I
17 dropped in on Bill and had followed up at all or not. I
18 seem to have some memory of having potentially come into
19 his office and said, hey, I hear I'm supposed to follow up
20 on this, and he had kind of talked, not specific as to any
21 kind of sightings or photos or anything but more at a
22 higher level of --

23 Q. And at that time he wouldn't have known either
24 because at the time you would have had that conversation
25 it would have been before these were found.

1 A. True. Yes.

2 Q. So on the 5th of February, the day after that,
3 Thorry, Michelle found a, Emil McCain pointed out a track,
4 a jaguar track, again, almost where -- right about in
5 there. Were you ever made aware by Kirby or Thorry or
6 Michelle of the fact that they had a found a jag track?

7 A. No.

8 Q. Near the snare set? This is a hypothetical
9 question. I don't even know if I should ask it, but if
10 you had been told about that -- again, this is very much a
11 hindsight. There is no way I could really to ask you to
12 put yourself back in where your mind was in late February
13 of '09.

14 A. Right.

15 Q. And it's hard to divorce that from what we know
16 now. There are certainly things we would do different
17 now.

18 A. Uh-huh.

19 Q. To the extent you can try and put yourself back
20 in that time, if you had gotten a call from Kirby and he
21 said, hey, you know, we found -- there has been some new
22 photos a couple of weeks old and a track a couple of weeks
23 old out where we are getting ready to restart snaring for
24 lions, do you have any -- can you get any sense of what
25 you think you might have done with that information at

1 that time?

2 A. I think I definitely -- the kind of constant risk
3 meter that you're evaluating with everything, it would
4 have heightened significantly, and I tend to be more risk
5 adverse than a risk taker naturally. And it would have
6 definitely brought back to the top of the list -- I would
7 have indicated -- if Kirby had called me and said, hey,
8 we're busy capturing in this area. There has been
9 photographs of a jaguar in this area and we found tracks
10 in this area, I would have said close the snares. You
11 know, we need to evaluate -- we've talked all along about
12 how we deal with this and jaguar and EAC, we need to get
13 this finalized before you're moving forward on anything
14 that has this higher risk as I assess of the potential of
15 capturing a jaguar.

16 Q. Now here's the thing, and to me that, you know,
17 that -- again, we can't prove it because we can't go back
18 in time, but that rings true to me. The thing is is that
19 you had no ESA training. You had some understanding but
20 not any detailed knowledge. You had already been given
21 some confidence to believe in the earlier indication when
22 you brought up jaguar that -- that there was nothing
23 additional required for that, but it rings to true to me
24 that, you know, if you had been given the opportunity to
25 have that information with that immediacy that you would

1 have insisted on a pause while we sorted this out.

2 A. Yes.

3 Q. Okay.

4 A. Just because the risk. Even if -- I just would
5 have wanted to be certain in moving forward because
6 suddenly it would have gone from some completely
7 hypothetical potential of a jaguar capture, an animal that
8 I have never seen, that I was really only aware of one
9 certain photograph from many, many years before and then
10 to something that was much more real as a potential. And
11 it just -- it's not something that I tend to -- those
12 types of things catch my attention.

13 Q. Did you ever have a conversation with Kirby about
14 why he waited to contact us and tell us about that capture
15 until the next day?

16 A. I didn't have a direct conversation with him
17 about that. In the early time period when we were busy
18 trying, during those first couple of days right during the
19 capture, I guess the day after the capture and those
20 ensuing couple of days, it was more constant information
21 transferred and particularly trying to get ahold of Thorry
22 to get some actual information. And then there was kind
23 of a lull. And then the recapture occurred and fairly
24 quickly thereafter we weren't -- Janay Brun had come out
25 and then we weren't talking.

1 Q. Then we were essentially locked up.

2 A. Yeah. So I didn't get a chance to -- it was a
3 conversation I wanted to have with him more in person than
4 it was over the phone type conversation, and I just didn't
5 get a chance to sit down direct with him.

6 Q. Chasa, this is going to really -- this question
7 is really going to feel like it's coming out of nowhere.
8 What's your policy on time and travel sheet input and
9 entries? What's your policy?

10 A. I don't have a specific research branch policy,
11 just to follow --

12 Q. Have you provided guidance to research branch
13 about your expectations about accurately filling out time
14 and travel sheets?

15 A. Yes. We have -- we brought in, like for instance
16 when the changes occurred with the --

17 MR. MCMULLEN: 40-hour week?

18 A. Well, the 40-hour week and also when they started
19 addressing same day travel differently than overnight
20 travel, we brought in finance and accounting to our branch
21 meeting at the time in order to have them provide all the
22 information to the branch. And there was a lot -- they
23 also were reiterating and reaffirming the need to say this
24 is not per diem, that this is reimbursement for meals and
25 stuff. And my branch regularly expresses displeasure at

1 that type of information. And so they had discussed it
2 with the finance and accounting personnel. I remember it
3 was like Lon and I'm blanking on the name of the second
4 person. But they had come in and discussed it, and I
5 said, you are going to adhere to the policies that we have
6 in the Department. And I have at times kicked back travel
7 claims that I get and said, or if I keep seeing traveling
8 times that are all maxed out, I talk to the supervisor or
9 the person if I'm directly supervising them and say you
10 need to talk to this person and make sure that they are
11 not --

12 Q. Do you recall when, about when you had brought
13 folks in to talk to your branch about that?

14 A. To my branch?

15 MR. FABRITZ: Didn't that all come down in '07?

16 A. Yeah. It has to be. Because it's been some
17 years since we had a branch meeting. It's been two years
18 since we had a branch meeting, so I think it would have
19 potentially been two years ago.

20 Q. Have you ever disciplined anyone over inaccurate
21 time and travel?

22 A. I have not, no. I tend to find it's the kind of
23 thing that's really difficult for me, particularly as a
24 branch chief, to catch. I like to be able to trust my
25 people, and you're always balancing trusting them,

1 empowering them, and then also making sure that they are
2 towing the line from the standpoint of policy. And unless
3 I have strong evidence that they have committed a
4 violation, I won't come down on them for something.
5 Because that's incredibly -- I mean the demoralization and
6 stuff you can create by doing that is huge.

7 Q. And this is actually the last question I need,
8 and it's one I have to ask, were you aware or are you
9 aware that at least one member of that large carnivore
10 habitat connectivity team has stated that they falsified a
11 time and travel sheet?

12 A. I am aware of that, yes.

13 Q. You are aware. How did you become aware of that?

14 A. I had been informed by Diana Schaffer as part of
15 a -- with regards to informing me that I could likely
16 expect personnel action.

17 Q. When was this? Was this recently?

18 A. Yeah.

19 Q. Were you aware at that time?

20 A. No.

21 Q. Okay. Your first knowledge then of that was as a
22 part of the fact that you are going to be a part of that,
23 the personnel process that that includes?

24 A. Yes.

25 Q. So then that's another way of saying, I presume,

1 that -- were you surprised -- I shouldn't presume. Were
2 you surprised when Diana made you aware of that?

3 A. Surprised and saddened, yes.

4 Q. Last question, this is actually the last
5 question. I should be -- I'll be asking this of at least
6 supervisory folks. As you look back on all of this, what
7 are the most important things you think we've learned as a
8 result of this unfortunate thing we've gone through?

9 A. I think we've had a lot of lessons. It's hard to
10 pick any --

11 Q. Just the ones that, and I want this from your
12 perspective not what you -- you know as a senior member of
13 management of the Department, you know a lot of the things
14 we think are important about what we've learned, but from
15 your perspective what do you consider the most important
16 of those things that resonant the most with you about what
17 we've learned?

18 A. The things that resonate with me, and this is
19 kind of a general level so let me know if you want me to
20 take it more specifically, but something that I've always
21 been learning in the process of having been branch chief
22 for the last three and a half years and continue to learn,
23 is how to prioritize work, make decisions on priorities as
24 far as what I address, and then also balance the personnel
25 component as far as working with my program managers or

1 biologists if I'm in a direct supervisory role with all of
2 the management level work requirements. And that's been a
3 constant balancing act for me in trying to -- in trying
4 to -- I've never failed to have enough work in my job.
5 And so I'm always left with trying to set priorities on
6 how -- what I'm working on, when I'm working on it, and
7 what I prioritize.

8 In these cases I made judgment calls and
9 decisions that have ultimately resulted in things
10 happening that I would have rather not have happened. I
11 can't say for certain put back in those same situations
12 without all this knowledge that I wouldn't have made those
13 same decisions at that time again. And so for me it's a
14 lesson in -- I understand my level of responsibility in my
15 position and I take responsibility in this case or any
16 others that occur in my branch. It is a large branch.
17 There are a lot of things happening. It's hard for me. I
18 can't know everything. So the question becomes what
19 should I know, how do I get to that information, and how
20 do I factor it into the process. And those are all things
21 that I'm still working on trying to understand how to do
22 well in a 24-hour period, a day, 7 days a week.

23 And so for me this brings that issue to the
24 forefront. It doesn't bring me exact answers on how to do
25 that. It certainly rises -- it brings permits to a higher

1 level for me in understanding the importance of them,
2 recognizing that they are not just paperwork or need to
3 complete something but the real need to connect the dots
4 on all the work that we have going on or potentially will
5 have going on as it relates to our existing permits, as it
6 relates to the EAC process in ensuring that all of our
7 projects go through that. And then also the need to set
8 more formal processes and protocols, which in some cases
9 we're working on and in other cases we have yet to still
10 work on, so that we can have a better continuation whether
11 you have biologists switching projects like we had in this
12 case, whether you have a lack of a program manager, which
13 was also in this case, or otherwise so that we have better
14 guidance for our personnel which is setting better
15 expectations of them.

16 Another area that I have been growing in
17 over the last three years is as a supervisor and knowing
18 the appropriate level of supervision, requiring a certain
19 level of checking in fine line personnel, and just how to
20 manage well. And I don't think I managed well in this
21 case. And Kirby suffered from neglect on my part as a
22 supervisor without a program manager in place. And I
23 wasn't asking a lot of him. He wasn't delivering a lot to
24 me, but there hadn't been set expectations for him to
25 deliver a lot more. So I think that's another lesson for

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1 me in this is improvement as a supervisor and setting more
2 concrete expectations, checking in with personnel, you
3 know, a better way especially if I have got more room on
4 personnel.

5 Q. Well I think that's a pretty -- the issue of how
6 do you manage very complex organizations where having a
7 detailed level of knowledge about every project is
8 probably physically not possible.

9 A. Right.

10 Q. There are not the hours in the day. How do you
11 then, though, work to ensure that you get the essential
12 elements you need in order to make management level
13 decisions, and that is -- there is probably some science
14 to that. There are some probably tricks to the trade and
15 we deal with a lot of that, but there is a hell of a lot
16 of it is probably going to stay in the realm of art.

17 A. Right. And experience, which I'm gaining it
18 along the way. But I still have a lot more improvement to
19 be made.

20 Q. Have we done any additional or done any ESA
21 training for your staff since this, since we got into
22 this?

23 A. ESA training, no.

24 Q. Do we intend to?

25 A. My understanding is that that is what Bobbie and

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1 Eric are working on now is to get a formal, my
2 understanding is a two-tiered approach, one that is in
3 depth, approximately 40 hours.

4 Q. Sort of actual execute -- implementation of
5 actual work under ESA conditions.

6 A. Correct. And they had asked me what level of
7 personnel I would expect to attend that. And then there
8 is a lesser level, kind of just a very general overview
9 course that they are considering that would be provided to
10 others that would be --

11 Q. I think ESA for managers or ESA for dummies is
12 it.

13 A. And so I am expecting that training to come
14 forward, and then the federal grants training I understand
15 is in early February, and I have my program managers all
16 signed up for that.

17 Q. Okay. Well, and I don't know that I have ever
18 asked you this or -- is there anything about this that
19 I've failed to ask you about or discuss that you think we
20 ought to talk about on this? Is there anything that -- is
21 there any part of this that I haven't --

22 A. Not that I can think of.

23 Q. -- that I've left uncovered that you would like
24 to make sure we're dealing with?

25 A. No. I think we've covered a considerable

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1 amount. I really can't think of anything. If something
2 comes up, I will certainly bring it to you. But I think
3 we're -- I think this has highlighted several areas for
4 improvement and we're working on those. I think that
5 there is likely additional improvements that need to be
6 made that are at finer scales or that are in the
7 connection and stuff that's going to take time or that
8 we're going to need to then after we've got these bigger
9 pieces in, work on improvements on the small parts.

10 MR. MCMULLEN: Can we take a minute and just
11 bullet those out? Some of them may be conceptual right
12 now but I think at some point we're going to need to be
13 prepared to tell people, this is what we've learned and
14 these are some things we're doing. So Gary asked you the
15 question earlier and you talked a lot about what you've
16 personally taken as a manager. Can you just bullet list a
17 few process improvements you're thinking of taking or that
18 you are taking?

19 A. Yeah. One of the other things that's come up
20 is -- the EA checklist would have taken care of
21 potentially the permitting component and hopefully then
22 also connecting dots with regards to Terry and getting
23 input from him and other pieces. It really deals with
24 kind of land impact or just whether you are within an area
25 where there is a T and E species. It doesn't deal with,

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1 never in the EAC process would your methodology from the
2 standpoint of handling or otherwise of animals come into
3 question, play. You're never going to get any kind of
4 question of, well, is that the appropriate drug to use,
5 should you be using a blindfold, do you need to have
6 antibiotic presents, any of those in an EAC process. It's
7 not built for that.

8 What is built for that that we don't have in
9 this Department right now is an institutional animal care
10 and use plan. And I have done some initial checking into
11 institutional animal care and use committee because it's
12 come up under the blacktail prairie dog question. And as
13 I read the Animal Welfare Act we need to have -- to review
14 any research projects that are going to be done before
15 they can be put in place.

16 MR. MCMULLEN: Is that a federal act?

17 A. Yes.

18 Q. So is that something we, in your mind, are
19 required to do, or is it something that it is highly
20 desirable for us to do?

21 A. In my mind, at least when I read the act, and
22 this was several months ago when I started looking into
23 this for Eric's question on blacktail prairie dogs, in my
24 mind it's something we are required to do by the act. Now
25 having already begun discussions with other states and

1 understanding how this has generally been or not been
2 implemented, very few states actually have one. It seems
3 to be an area where state agencies, other than
4 universities, had not been specifically required and
5 forced to have an institutional animal care and use in
6 place. Alaska and Colorado have very formal ones and
7 we're looking into those now to see what we can --

8 Q. Who's riding herd on our -- is that something you
9 have process ownership of right now?

10 A. Ann Jessica Salin is the one who's doing it under
11 my request. I had initially begun looking at the Animal
12 Welfare Act for Eric's thing when this came into an
13 identification of the need. Then over the last several
14 weeks, and I think this may have even -- Ann mentioned it
15 briefly at our director's briefing in December. So I
16 think that that may be something we need to implement and
17 that will take care of the animal handling component of
18 this.

19 Q. How would you see that -- how would we mesh that,
20 which it seems like a very logical thing, although it does
21 sound as if an implementation of the act that the states
22 are not statutorily bound to do it, or at least that is
23 how most states are behaving.

24 A. It's not being enforced.

25 Q. So how would we -- because you can see that a

1 study plan, a good study plan process will get at
2 methodology, but by the same token wouldn't necessarily
3 have -- you know, it could very well be, this is what
4 we've always used, ergo, we will still use that as opposed
5 to what is -- so it sounds like the decision between
6 Themazol, Ketamine, whatever you do.

7 A. Right.

8 Q. But this process would be more of something that
9 keeps -- that would seem to wiretap into the flow of the
10 newest and best information about care and handling of
11 animals and become a resource then for a good study plan
12 process and for an EA Checklist process. Because I'm
13 looking at how we would mesh those three without excessive
14 duplication but in a way that allowed -- and I can see
15 that if -- because we are already working towards a more,
16 not more, a formalized study plan process. We are working
17 toward -- we have already made some and continue to work
18 towards EA Checklist improvements. We add this component
19 from the standpoint of resource and it does seem like
20 that's -- that's the way we ought to consider that as a
21 resource, a way to ensure that we have the best
22 information available, and because it's done internal by
23 the Department staff personnel it makes us inherently
24 wired into the actual actions on the ground, the actual
25 research work that's going on, the actual care and

1 handle.

2 The challenge is, Chasa, and I just know
3 from looking at the Sonoran Pronghorn that we have tried
4 some drug regimes that based on the literature and some
5 hands-on or on-site advice by people who have been using
6 these drugs that have shown great promise but that for
7 Sonoran Pronghorn seem to just not work well. This
8 problem -- I suppose that we're not expecting this to be
9 the end all, be all of this but it would certainly seem to
10 me to give us a real leg up from where we are now.

11 A. I would certainly hope so, and it may involve
12 people external to the Department. In some case these
13 institutional animal care and use committees, for
14 instance, you could have the Phoenix zoo veterinarian on
15 that particular committee if they were willing to serve on
16 it, or you might have other external vets that are a part
17 of the review. It's -- and it's unclear to me whether
18 this -- because I don't remember. I read the act quite a
19 while back. I think it's specific to research. I don't
20 think this would be something, for instance, that would be
21 required every time we handle an animal.

22 MR. MCMULLEN: A nuisance animal.

23 A. Right. But it would help to potentially inform
24 and provide better guidance on standard handling
25 procedures or euthanization procedures or otherwise.

1 Q. Well, if there was some new drug, some new wonder
2 drug that said, you know, if you want to the right drug
3 for nuisance coyotes or nuisance javelina, this is the
4 drug and certainly with this entity that could be wired in
5 continuously as opposed to --

6 MR. MCMULLEN: Better chance you might identify
7 it.

8 Q. Because of how intense the workload is, and I
9 mean there is never a day that we don't end the day with
10 just as many things left to do as we started the day
11 doing. The challenge is we kind of -- we poke into the
12 literature and renew contacts with people we know and
13 experts and expertise when something causes us to, either
14 a new study or the idea that it's been awhile since we did
15 that, and we kind of tap into and then step back out and
16 we go alone and then we execute and implement.

17 It sounds to me like what this would do is
18 allow us to have sort of a continuance presence in the
19 flow of literature, research, information, and expertise
20 so that we could then again provide that resource in-house
21 to the Department where folks could, with some confidence,
22 go there, either, one, tap into our expertise and say, I'm
23 working this study, I need to vet my study, either vet my
24 study against the Department's institutional animal care
25 and use committee protocols or whatever we've established

1 for that or I go to that entity to the extent it's a
2 standing and it would have to be a known group of people
3 and say, hey, I need you to look at this study. Here's
4 what I'm doing right now. Give us the opportunity to wire
5 into that. And I see a lot of merit in that.

6 A. I think other than potentially needing to meet a
7 federal requirement, there is a lot of merit, and I'm
8 looking -- Ann has a lot of visions in the wildlife health
9 program in order to try and centralize, not, you know,
10 authority or power or trying to control everything but to
11 centralize an information data bank and stuff on things
12 like disease, on things like drug use, and that type of a
13 thing and also too to make sure we're serving our
14 personnel in the best format too that they have the right
15 animal care and handling experience so that when they get
16 into the field they can be comfortable with the work that
17 they are doing and not feel that they are flying by the
18 seat of the their pants.

19 Now that wasn't the situation here. Thorry
20 and Michelle were both well trained, and Thorry, in
21 particular, had had several capture courses. I don't
22 consider that in this case there was a situation of not
23 having enough training from the care and handling
24 standpoint but maybe not necessary having had the best
25 protocols, animal handling protocol for consideration with

1 regards to the potential to carry injectable antibiotics
2 rather than strictly topical or any of those types of
3 components. And what this could do is it would review
4 whatever your capture and handling protocols are going to
5 be for this particular study against what is considered to
6 be acceptable under the Animal Welfare Act. Also there
7 are specific protocols set for certain species by the USGS
8 that are required by the act to be followed. And then so
9 to make sure that you are at least in line with those two
10 and then take it a step further and be able to be sure
11 that you're in line with whatever the best available
12 science at the time is.

13 Q. Similarly, there is an ethical and best practices
14 component of just research, not related, you know, not
15 inherently, or not restricted to just the idea of chemical
16 immobilization and capture and handling protocols but from
17 the standpoint of shaping an appropriate hypothesis,
18 shaping a study that truly reflects scientific method.

19 Is it your expectation that when we finish
20 our development of our formalized study plan process that
21 we will -- that it will be inclusive enough of enough eyes
22 and expertise that we will adequately vet that study plan
23 for good science and for good, well-structured hypotheses
24 for a methodology that seems suitable to arrive at the
25 questions that we want to answer with the work that we're

1 doing with this study, or do we need to look -- you know
2 there is now sort of a body of scientific ethicists.
3 There is one at ASU. There are some in other places.
4 It's not -- I don't think every university science system
5 has one on staff, maybe all do. But that seems to be a
6 growing body of those folks. Do we need to take some look
7 at establishing some sort of a bioethics, for want of a
8 better term, look?

9 And I think you've been -- we haven't
10 articulated it this way but I think you struggle with some
11 of the same things that I'm -- that we're trying to reach
12 with our approach to this, which is we can come up with
13 the perfect process that is unusable to us because there
14 is no way for it to stand up to the volume of effort.
15 We've also had clearly an example of our decentralized
16 system failing us in important ways. How do we find the
17 middle ground on this? And I mean like bringing a
18 bioethicist in some respects would seem perfect. By the
19 same token if that would be a -- could we add a one-week
20 review process for bioethics to your 90 research projects,
21 all the research projects in non-game, all the research
22 projects in game branch, all the research projects in
23 fisheries, all the research projects being conducted by
24 the regions on their own initiatives, could we do that?

25 A. Probably unlikely. I mean I just can't imagine

1 just from my knowledge of being research branch chief and
2 not having the time to read through every study plan or
3 every proposal for every project, it would be hard to
4 imagine having somebody who can not just read through them
5 but then from a bioethics standpoint review them. But --

6 Q. How do we get enough bioethics?

7 A. Right. And that's the question and I would hope,
8 and we're still working on the process for the study
9 plan. We have an all-day meeting on Friday. But we're
10 looking at the approval process, we're looking at the
11 study plan template format and we're looking at the review
12 process, with the review process not necessarily being the
13 same as the approval process in these cases. And I would
14 say that that review process needs to include the right
15 people, and who those right people are right now I'm not
16 positive, to ensure sufficient scientific rigor and
17 bioethics as you said.

18 I don't tend to be overly concerned in my
19 branch -- I think some of the bioethics you may bring up,
20 and I'm not positive, but at least in this case in some of
21 the failings of what's occurred in this case has been more
22 personal decisions occurring at times rather than anything
23 you would have ever caught in a study plan. And so
24 regardless of how good our processes are, how good our
25 plans, our protocols, et cetera, you still have people

1 involved, and ultimately people are all making decisions.
2 And you hope that your people and in some cases expect
3 that when you're hiring a scientist who has good
4 understanding of research and its applications and how
5 it's implemented also has a standard set of ethics. And
6 you look for that in the hiring process and otherwise.
7 But it ultimately comes down to decisions when they are
8 out in the field or in a room or otherwise.

9 And I think that you would get that more
10 from a training component with people to make sure, and
11 they did some of that in new employee training, not from a
12 scientific ethics but just from a standard ethics because
13 there is the --

14 MR. FABRITZ: Core values.

15 A. Well, there is core values but maybe it's in the
16 supervisor training. No, I think it is new employee
17 orientation that has the ethics and they go through all of
18 the components with regard to State employment and what is
19 considered a gift and what you can and can't accept, and
20 there is all of the ethical components of being a State
21 employee. Same for being a researcher, but there is also
22 the addition of how do you ensure that you're going to be
23 unbiased and you're approaching this from a scientific
24 standpoint and not from some personal bias or desire to
25 find a particular answer. And we could implement a

1 bioethics class. I was unaware that ASU had a science
2 ethics class.

3 Q. I was too until I saw a column by the guy about
4 three weeks ago, clipped it and stuck it aside to revisit.

5 A. Yeah. So there might be an opportunity to have
6 them come in and give a quarter day or half day course
7 during a research branch meeting or maybe in a larger
8 venue with non-game and others that may be in the field.

9 Q. And just -- I'm just thinking of -- were you
10 aware that there was such a thing as the borderlands
11 jaguar detection project?

12 A. I knew that Terry worked on committees with
13 regard to jaguars. I don't know that I would have been
14 able to list off the borderlands jaguar detection
15 project. I guess I did know there were cameras out
16 there. I knew that there has been cameras out at various
17 times. I didn't know how formal it was. I had had the
18 impression in the past that there was kind of this pet
19 project of somebody who wanted to do work and see if there
20 were jaguars and they put cameras out and that there were
21 volunteers working and that type of thing. I didn't know
22 that there was a formal borderlands jaguar detection
23 project as it was.

24 Q. Were you ever made aware other, than the October,
25 November phase or the February phase that there were

1 cameras in the study area or in the trapping area?

2 A. No. Because I didn't know where the trapping
3 area was in February. And I didn't know that there were
4 actually cameras in that same location.

5 Q. Okay. Has anything else?

6 MR. MCMULLEN: Yeah. I know we're way backed up
7 but we want to do a completely thorough job --

8 Q. Yeah, because I don't want to have to --

9 MR. MCMULLEN: And these last three are kind of
10 related in some respects. We skipped one, I think. Were
11 you surprised when the jaguar -- given the direction you
12 had given to your field people about we're not collaring
13 jaguars, were you surprised when you discovered that the
14 jaguar walked out of the snare with a collar?

15 A. I was incredibly surprised and dismayed, if
16 that's the right word. I was -- the conversation I think
17 that morning when Kirby called me was, well, something to
18 the effect of, well, had you heard what happened, and I
19 said, no.

20 MR. MCMULLEN: Those conversation are never fun.

21 A. And he's like, well, they captured a jaguar
22 yesterday.

23 I was like, what?

24 And he is like, and they radio collared it.

25 And I was like, what? I thought we talk

1 about this.

2 Q. What was his explanation? Because he was
3 carrying that collar around in October, November also.

4 A. Yeah. I don't know that we got to the point of
5 me beginning to question and say --

6 MR. MCMULLEN: What the hell happened?

7 A. Yeah. A, my initial thought was that they had
8 put one of our lion collars on the animal, that they had
9 made a decision in the field to just, oh, well, this is a
10 cat, it's in the our snare, we have cat collars we're
11 trying to deploy, we will put a cat collar on it.

12 MR. MCMULLEN: So it wasn't even on your radar
13 screen that it would have been a jaguar collar?

14 A. No. I had no -- because my first thought was,
15 oh, you've got to be kidding me, you know. I mean,
16 that's -- at least we said no collar and why would you put
17 one of the lion collars on? Then, I don't know if it was
18 with Kirby or in a later conversation with Thorry, because
19 things started moving very fast at that point. And so I
20 don't even -- I think I was like, huh?

21 And he is like, and they collared it.

22 Okay. You know, they collared it?

23 Yes, they collared it.

24 Okay. I'm going to have to talk to some

25 people about what you've just called me about. And then I

1 started moving it up the chain, grabbed Eric and moved it
2 up the chain. I kind of waited, back burned some of
3 those questions of we're going to sit down and talk about
4 why in the world this would have happened.

5 And then it was later in that day I think
6 when we were reaching Thorry finally coming out of the
7 field, Bob Miles, who was trying very desperately to get
8 any information from Thorry, that we found out that it was
9 an actual jaguar collar because it came up that it didn't
10 have a VHF signal, that it had been specifically created
11 without a VHF signal.

12 And then my thought was, how in the world
13 did we end up with a jaguar collar with us out in the
14 field?

15 MR. MCMULLEN: So this gets right directly to
16 some of the other questions. I'm asking one question and
17 then a process question. Were you aware, and obviously
18 you weren't, that there is a standing jaguar conservation
19 team position that it was of highest priority to collar a
20 jaguar if one was incidentally captured and that the
21 guidance that our field team had been given through his
22 chain of command was contrary to that? Not that -- not
23 that jag CT priority should have guided our direction.

24 A. Yeah. I wasn't aware that there had been that
25 decision made by the jaguar conservation team. I found

1 that out that same day because I thought for certain that
2 Terry was going to be livid that this animal had been
3 released with a radio collar on it. And in the process,
4 and Van Pelt was brought into the process. Terry was on
5 the road to the jaguar conservation team and Van Pelt said
6 that's not a big deal because there is this direction to
7 radio collar, and I was like, good. That's one thing
8 apparently that's okay.

9 MR. MCMULLEN: And then that segues perfectly
10 into my last one, one of the things that we've discovered,
11 Gary talked about it earlier, and it's been coined as the
12 stove piping of information that we've learned that caused
13 many people to brush up hard against this idea that the
14 capture of a jaguar was becoming more likely but yet
15 nobody was able to put all the pieces together because
16 nobody had all the pieces. No one person had all the
17 pieces of information. And so as we go forward and get
18 prepared to talk to external people about our findings and
19 what we've done, is there anything that you have thought
20 about or any process that you have thought about or
21 anything that the other branch chiefs, non-game, game,
22 those sorts of things have talked about together in terms
23 of a process to break down that stove piping that we can
24 take to say that this is something that we've learned and
25 something that we're doing to break this down?

1 A. I would suggest there is at least one process
2 that comes immediately to mind and it's not necessarily
3 one that directly is effected by this event but it's one
4 of the places where the stove piping has come into play
5 and that is that one of the major stove pipings especially
6 that occur is between the regions and other units that act
7 in Phoenix because distance apart physically can also lead
8 to distance apart from a knowledge transfer component. It
9 shouldn't in this technologically advanced age but
10 sometimes it does.

11 And so we can often move forward on projects
12 and think, okay, we have all our pieces in a row and we've
13 done this and plan to head out to the field to do it
14 without having even brought the region into the mix to
15 make them aware, and trying to understand who in the
16 region needs to know or wants to know that information as
17 well. We might bring in one person out of the region, the
18 appropriate wildlife specialist or something, game
19 specialist, but then that information may still not make
20 it out to the local wildlife manager or something.

21 So in trying it break down some of that
22 stove piping as it relates to projects and studies that
23 are coming out of Phoenix we have developed the project
24 activity communication form with the regions, and we've
25 visited five of the six regions or teleconferenced or

1 video conferenced with them in order to discuss
2 communication issues between particularly non-game and
3 research in the regions but this has the potential to
4 apply across the board.

5 MR. MCMULLEN: This occurred before this whole
6 thing, Macho B?

7 A. No. Post Macho B. We began meeting with the
8 regions in June of '09.

9 MR. MCMULLEN: Okay. Got you.

10 A. And we have drafted a communication form that's
11 been revamped as we meet with each of the regions. And it
12 serves kind of -- our hope and it hasn't been implemented
13 yet. It needs a final review and a decision as to what
14 level it's going to be implemented at. Our hope is that
15 this kind of helps to bridge the gap for the biologists
16 that are beginning a project that would take them through
17 the mind set not just of, oh, there is an EAC process and
18 I need to have made sure I've gone through that, there are
19 permits I need to consider, there is communication, there
20 is things like military land permits as far as access or
21 private landowner access. All of the components, because
22 there are a lot of components that aren't always --

23 MR. MCMULLEN: I remember seeing an early draft
24 of it. It's pretty comprehensive.

25 A. And so the idea is that this, and it's a single

1 page. We tried to make it -- we're trying to streamline
2 but also get the right information. And so it gives who's
3 going to be doing the project. It gives who their main
4 point of contact in the region is going to be for this,
5 and it has check boxes for -- and it also talks about
6 whether any regional resources are needed, whether it's
7 bunk houses or personnel time or any of that.

8 And so the idea is that when you're
9 beginning a project or activity that's going to occur out
10 in a region that you would fill this form out, it prompts
11 the need for an EAC, for permit, whether this has a tie to
12 an endangered species permit or otherwise. It has a study
13 plan or methodology component to it. And then you would
14 communicate with the region and deliver this to the
15 appropriate person who has been determined in the region,
16 and we are still determining who that appropriate level --
17 we're trying to set -- for this to work our biologists
18 need to have kind of a single point of contact that they
19 know that we can go to and then know that that information
20 is going to be disseminated from there or that they are
21 going to be given consistent direction from that person on
22 how to appropriately disseminate information.

23 So we've talked about it being program
24 manager level, we've talked about it being field
25 supervisor level or the specialist level, and there is

1 some disagreement among the regions as to what they would
2 prefer. It would go to them, they would have a chance to
3 review it, make any comments back on concerns that they
4 have, issues, et cetera.

5 MR. MCMULLEN: Seems like it would have value
6 within the work -- between work units here too.

7 A. Yeah. And it has potential to be implemented
8 between works units. Also there was the hope, because
9 there are things that occur occasionally from a project
10 standpoint in the regions that don't always get
11 communicated to Phoenix. The hope was that this would
12 also be implemented that direction. So that when a region
13 decides that they are prioritizing a particular random
14 frog survey, that one didn't come out of a program
15 level --

16 Q. When it's a region initiative.

17 A. Yes. That they would fill this out and then that
18 would give Eric a heads up or it would come to whomever
19 the appropriate person is there and they would say, wait a
20 minute, that doesn't jive with what we have for our ESA
21 permit. So it was trying to begin to increase
22 communication in a more formal way. Realistically the
23 best way is going to be that informal network and getting
24 people together so that they know who the right people to
25 contact are and that they are comfortable in regularly

1 contacting them.

2 Q. The value of a lot of those forms and checklists
3 is not -- is not that they then make a foolproof but what
4 it does is it generates conversation. You know, it
5 generates an internal conversation. As you're filling it
6 out you go, am I sure I know the answer to that. It
7 generates cross talk, because if it's the right kind of
8 checklist it requires you to tap into other expertise so
9 that you don't run the risk of tunnel visioning yourself
10 into a bad situation. So I love -- I like the --
11 conceptually I love it.

12 A. Yeah. So we're hoping to be able to move that
13 forward. I know that process, the EAC process, the
14 potential process of an institutional animal care and use
15 committee as well as --

16 Q. The study plan process?

17 A. The study plan process, yes. We are trying to
18 find a way so that we streamline that altogether and we're
19 not requiring people to do a whole bunch of extra
20 paperwork in order for this to be able to work. For
21 instance, what the EAC requires can be in the same
22 structure potentially as far as the study plan or
23 otherwise as the institutional animal care and use
24 committee would require.

25 Q. That's the challenge because, you know, we need

1 something that provides enough structure to give us
2 confidence that we will get adequate outcomes, that is
3 doable enough, understandable, trainable, so that it
4 actually is used and executed.

5 A. Right. Without being such a bureaucratic
6 workload that we end up only doing the processes and not
7 the actual --

8 MR. MCMULLEN: That's a tightrope made of dental
9 floss.

10 Q. I have no doubt we can make the perfect process
11 that will absolutely bulletproof and it will take so long
12 to do --

13 MR. MCMULLEN: Stymie progress.

14 Q. That, one, that's all we'll do. There will be no
15 work on the ground for wildlife, or it simply will fall
16 into disuse and people will risk assess and say, well,
17 I'll roll the dice. And of course every time we find that
18 they do that we would say that's the process you're
19 supposed to be using. What really is going to be the
20 tough part of this thing and is the absolute most critical
21 part of it is we need to find a process that is, I say
22 it's reliably adequate outcomes every time if used
23 appropriately and it's streamlined enough to where
24 everybody recognizes it is, in fact, inherently doable and
25 it is, in fact, a reasonable overhead for our program.

1 MR. MCMULLEN: Somebody has a pretty good start.
 2 Q. It sounds like it.
 3 MR. MCMULLEN: Yeah, it does. I don't have
 4 anything.
 5 Q. Marty, do you have anything else? Sorry.
 6 MR. MCMULLEN: There was one I wrote a bunch on.
 7 On the -- I wanted to make sure on the March 11th
 8 interview that you guys had, phone interview that you had
 9 with Thorry.
 10 A. Yes, from Hawaii.
 11 MR. MCMULLEN: From Hawaii. Who kept notes on
 12 that interview? Was it recorded? How accurate are the
 13 notes? We want to be sure because there are some things
 14 that require follow up between that -- from us between
 15 that interview, how it was characterize that we have and
 16 our transcripts.
 17 A. It was held in Mike Senn's office on his phone so
 18 to my knowledge it wasn't recorded.
 19 MR. MCMULLEN: Okay. And who wrote up the
 20 interview? Who wrote up the notes from the interview? We
 21 have got a two pager.
 22 A. I think that was Mike.
 23 MR. MCMULLEN: Do you want to see it?
 24 A. Yeah. Let me see it.
 25 MR. MCMULLEN: You know what, it's in the other

1 folder.
 2 Q. Let me ask. Did we re-interview Thorry when he
 3 got back from Hawaii? Obviously when he was in Hawaii he
 4 was away from his field notes and things.
 5 A. Right. Honestly, I don't know. It all jumbles
 6 together as far as what happened.
 7 MR. MCMULLEN: And it's probably a non priority
 8 question. So that's all right. It doesn't matter. I
 9 just was curious. I didn't know --
 10 Q. Anything else? That's a good question, but it's
 11 been my understanding and I think we asked earlier maybe
 12 when (indiscernible) memories and some others were a bit
 13 fresher than they are right now and that it was a
 14 (indiscernible)
 15 A. I think Mike is the one that typed them up.
 16 MR. MCMULLEN: It was a silly question. Really.
 17 Q. No. It wasn't a silly question. If nothing
 18 else, run away. Fly, be free.
 19 A. Is there anyone you want me to --
 20 MR. FABRITZ: Would you send Michelle down.
 21 (Tape ended.)
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CERTIFICATE

I, Karen M. Niemtschk, do hereby certify that the foregoing 67 pages constitute a full, true, and accurate transcript of all taped proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 3rd day of March 2010.

KAREN M. NIEMTSCHK, No. 50447
 Certified Court Reporter

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