

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

TRANSCRIPT OF INTERVIEW
ERIC GARDNER
July 7, 2009

Individuals present at the Interview:

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
Eric Gardner, Employee

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P R O C E E D I N G S

1
2 MR. HOVATTER: As I think we have been -- because
3 of the time line and the way this thing evolved, we never
4 did do an in-depth internal review. About the time that we
5 had some concerns that all may not have been as it seemed,
6 and this wasn't from sources from inside the Department --

7 THE WITNESS: Sure, I was there.

8 MR. HOVATTER: -- we quickly went into request for
9 formal investigation, and at that point we elected to not
10 dig into this in detail for -- out of concern that we might
11 somehow take that investigation down.

12 THE WITNESS: Yep.

13 MR. HOVATTER: Since then, of course, we've had
14 the Notice of Intent to Sue by the Center for Biological
15 Diversity and that clock runs out this Friday.

16 THE WITNESS: Right.

17 MR. HOVATTER: So -- in my conversations with Fish
18 and Wildlife Service and the talk with Larry we decided we
19 don't -- we cannot afford to get to the end of that 60-day
20 period without having a better understanding about what
21 really happened with the -- in the lead up to that original
22 capture.

23 THE WITNESS: Right.

24 MR. HOVATTER: So we have -- in digging into this
25 we have nothing that we have done on this thing indicates

1 that there's -- that there was any misconduct on the part
2 of any of our folks in this, and that is our start point on
3 this and that's how we're approaching it.

4 We are going to do Garrity warnings on this
5 because we do -- we do have to remain open to the fact --

6 THE WITNESS: Sure.

7 MR. HOVATTER: -- that we may, in fact, come
8 across something that we, quite honestly, don't expect.

9 THE WITNESS: Right.

10 MR. HOVATTER: But should it be that we find some
11 indication that there was misconduct, we have to take this
12 step to make sure that we've got your rights and the
13 Department's interests are all protected, and I think
14 you've been on the law enforcement side long enough to
15 understand the place that Garrity Warning plays in the
16 Department's process.

17 So what I'm going to do is I'm going to read this
18 to you because I'm -- in our conversation for the record
19 we're required to do that and then we're just going to get
20 on into some questions we wanted to ask you about this.

21 (Reading) Internal Investigation Employee Eric
22 Gardner. Date 7/7/09. Interviewer Gary Hovatter, Marty
23 Fabritz and Craig McMullen. We are conducting an internal
24 investigation involving matters that will be discussed
25 shortly. This is an administrative investigation. You do

1 not have the right to have legal counsel present during the
2 interview, nor will you be advised of Constitutional
3 rights. You are ordered to cooperate fully with this
4 investigation. You are ordered to respond completely and
5 truthfully to all questions posed to you during the
6 investigation. Failure to respond completely and
7 truthfully to all questions will be considered misconduct.

8 As set forth in Garrity vs. New Jersey, 385 U.S.
9 493 and the line of cases which follow, any responses given
10 during this -- given during this administrative
11 investigation cannot be used against you in a subsequent
12 criminal investigation. You are instructed not to discuss
13 your interview or this investigation with any Arizona Game
14 and Fish Department employees while the investigation is
15 pending.

16 And you're going to be asked to sign then and to
17 state that you're signing -- it says that (reading) I have
18 read the above statement and I understand the orders given
19 to me about this investigation. I understand my obligation
20 to cooperate fully with the investigation. I understand my
21 obligation to completely and truthfully answer every
22 question. I further understand that I have been ordered
23 not to discuss this investigation with any Arizona Game and
24 Fish Department employees while this investigation is
25 pending.

1 Do you have any questions on that?

2 THE WITNESS: I have one question.

3 MR. HOVATTER: Yeah.

4 THE WITNESS: I'm surprised to hear the
5 limitations on talking just to Arizona Game and Fish. Is
6 it not allowable for you to not allow the conversation to
7 extend outside? I'm just curious why it doesn't say with
8 any person except for who -- you know, whoever it may be?

9 MR. HOVATTER: You know, and I'll ask that
10 question. I don't -- I don't know because, clearly, you
11 know, this is not intended to preclude your having any
12 further discussions, for example, with the Feds. If the
13 Fish and Wildlife Service wanted to ask you any additional
14 questions about your knowledge about the events, this would
15 not -- we wouldn't intend this to preclude it.

16 THE WITNESS: You also didn't want me thinking we
17 just got the results to go to wherever.

18 MR. HOVATTER: No, that's a good question and we
19 had this looked at by a lot of folks and that question
20 didn't come up. So we'll ask that --

21 THE JUDGE: I'll follow up.

22 MR. HOVATTER: Yeah, let's follow up and we'll
23 find out because I -- you know, I mean, that's a very
24 germane and cogent question for us to have an answer to.

25

1 incident prior to it that we had coverage for most
2 activities. Certainly, subsequent to that there's been a
3 lot of review and questioning and concern and trying to
4 say, "Does it really mean that? Does it intend that? Is
5 that specifically authorized?"

6 But my understanding going in, we would have had
7 those two documents that acted as permits to, you know,
8 conduct wildlife management activities and by default in
9 the back of the 10 -- or the Section 6 permit there's that
10 non-lethal take statement about the use of all of these
11 other mechanisms that we -- that we use for management --

12 Q. Yeah.

13 A. -- that were allowed for trapping so...

14 Q. Now, there was a question -- at one point there
15 was discussion -- again, some of this reflects -- we
16 stopped digging formally into this when we went down the
17 route of going through a formal investigation.

18 There's some discussion, I think, of the idea that
19 when -- that the Bear and Lion Study -- that it was -- it
20 was the annual job statement on the Bear and Lion Study
21 that was being related to the permit.

22 Is that an appropriate way to think of that?

23 A. I don't think so, but it could be. Let me see
24 what I think you're getting at. The permit itself, is
25 there a 10(a)(1)(A) permit, it's issued for three years, it

1 references our Section 6 job statements beginning in a
2 particular year and any subsequent job statements that are
3 derived during that time.

4 That job statement has a job -- I think it's Job 6
5 for endangered cats -- that talks about a lot of
6 information, and in that it also talks about the Jaguar
7 Conservation Plan that -- I forget their exact title. I
8 could find it for you but --

9 Q. This is the one the Jaguar Conservation Team --

10 A. Yes, yeah.

11 Q. -- built?

12 A. That job does not reference the Bear and Lion or
13 Large Carnivore Study. It does reference activities about
14 habitat studies and connectivity, et cetera, related to
15 jaguar, which, certainly, looking at other large carnivores
16 provides information relevant to understanding habitat use
17 and stuff.

18 Q. When we do the -- because this is a triennial
19 event on this thing, clearly, we're going to have changes
20 in job statements each year on some of these things?

21 A. The 10(a)(1)(A) permit is triennial. The job
22 statement is usually annually because we get a new segment
23 every year. So every year the job statement pretty much as
24 written is sent out for input and comment from all of the
25 work units who typically work within the realm of the

1 Section 6 arena.

2 It's not just the wolf. They get the funding, but
3 anybody and then that's, you know, posted on the U-drive
4 essentially for input and then my program managers pull it
5 together and we finalize it, and we have to do that and
6 submit a new one every time there's a new segment of funds
7 available under Section 6.

8 So triennial under the 10(a)(1)(A). Since I've
9 been here it's been an annual event to update the Section 6
10 job statement.

11 Q. So when the Bear and Lion Study -- because the
12 Bear and Lion Study really -- this specific one came
13 into -- the one in the area that we're interested for this
14 purpose, as opposed to the hair snare stuff that was going
15 on to the east, for example, this really got started summer
16 and fall last year is our understanding on this -- or my
17 understanding?

18 A. It's under the research branch so I don't know
19 (inaudible).

20 Q. Okay, then that's fine if that's the answer on
21 that.

22 A. It seems to me there's a long history of multiple
23 efforts to jump start that. Different project proposals,
24 different meetings eventually coming to this one, you know,
25 with Commission direction, et cetera.

1 Q. So when -- you know, would it have been
2 appropriate to do and do you know -- or do we know is
3 probably a good way to say it, too -- whether there was
4 then the annual job statement done -- annual job statement
5 done or the Bear and Lion Study included in the annual job
6 statement that related it then back to the triennial
7 permit?

8 A. When you say "the annual job statement," you're
9 talking the Section 6 one?

10 Q. Uh-huh.

11 A. Okay. The last time that would have been
12 developed for Segment 20 would have been approximately May
13 or June of last year and it would have been out for input
14 during that time period, and I'd have to check dates, but
15 that would have been when it was available for input, and
16 then it would have been finalized in time for us to receive
17 our Segment 20 funds starting July 1.

18 So that would have been the window when that was
19 open for review for the last gallery of input and then
20 finalized in time -- you know, I don't know if it was
21 finalized right before July 1 or shortly after, but then we
22 would have received that grant to basically begin the
23 fiscal year.

24 Q. Well, and, Eric, understand part of this is you're
25 educating me and probably to no lesser extent Craig and

1 Marty about something that you've been dealing with for a
2 long time.

3 Let me put it in this context: If those programs
4 that you have direct oversight over, Eagle Program and
5 things like that, they are also the type of programs that
6 are affected by that -- by the permit?

7 A. Yes.

8 Q. So if you have -- if there was some change or
9 something emerged since that July annual job statement was
10 done that you felt needed to get -- needed to be done in
11 the interim, presumably we'd get to another annual job
12 statement this summer. How would we address the -- I mean,
13 I presume are we not in a position where we just have to
14 say, "Well, we have to wait."

15 Is there some way that we can, in fact, do that so
16 that we can make it clear that that has been bedded in the
17 necessary fashion against the permit?

18 A. Sure, yeah. You can always submit an amendment to
19 the job statement at any time, and Fish and Wildlife
20 Service has to approve it and we can move forward. We've
21 done that in the past, a year plus ago, the Commission and
22 others, I'm not sure the whole process behind it,
23 authorized the use of non-lethal rubber projectiles for the
24 wolf program. Terry Johnson subsequently submitted an
25 amendment to the job statement to make sure that that

1 particular activity was covered within our Section 6 job
2 statement so that it would be specifically documented as
3 such.

4 So you can do that at any time if you choose to if
5 a change warrants that. Certainly, if the activity doesn't
6 need to occur right away you can wait until the subsequent
7 new job statement or look at the existing to see if you
8 felt it was adequately covered by some type of description
9 already in the job statement so...

10 Q. Okay. And then, again, then the betting by Fish
11 and Wildlife Service becomes then their agreement that
12 that, in fact, passes muster with regard to the permit?

13 A. Yeah.

14 MR. McMULLEN: Eric, how long does that kind of
15 thing take when you send it to the Feds? I'm just
16 curious --

17 THE WITNESS: It's not one I'm familiar with, but
18 it doesn't -- shouldn't really take that long and I think
19 it would mainly be up to us to indicate if there was a need
20 for priority or whatever, you know, the right people would
21 essentially accept the amendments so...

22 I would ask Terry if he has a recollection on how
23 long it took to get the approved amendment for the rubber
24 bullet example. We've submitted others because we --
25 another one I'm familiar with was the Rana frogs, the

1 Northern leopard frog. We had somebody drum up some extra
2 Section 6 monies to do some work specific in Region 2 on a
3 tank and our Rana frog job statement didn't really talk
4 about habitat (inaudible). So Tom Jones under my staff, we
5 submitted that as an amendment, got it approved, got the
6 funds. Subsequently haven't done the work yet because the
7 rainfall, the tank continues to be full and so, you know,
8 we've never actually done the activities that that
9 amendment planned for so...

10 Q. Understanding in some respect -- I mean, you've
11 done no -- had no opportunity to dig into this anymore than
12 we have, but based on what you know now about what -- your
13 understanding of this thing, do you believe personally that
14 the capture was incidental or intentional?

15 A. Well, I guess if you ask what I believe
16 personally, based on the information that was alleged the
17 day we decided to call the Commissioners and seek possible
18 federal investigation, et cetera, I have no idea -- I can't
19 corroborate that so I'm 50/50 on it.

20 If, in fact, that allegation is true, that, in my
21 mind, puts it into an intentional attempt to capture a
22 jaguar. If that allegation is not true, then I would say
23 completely incidental, and I just don't know. I have no
24 knowledge on it. We haven't heard those results of that
25 investigation yet.

1 Q. In your read of the permit -- and, again,
2 understanding your somewhat peripheral relationship to some
3 of this -- would that permit cover the intentional or
4 unintentional -- both intentional and unintentional take?

5 A. I think that it would. I think it could much more
6 clearly define intentional, and so I have a slight
7 discomfort making that statement, but the job statement
8 talks about implementation of the plan, the Borderland
9 Jaguar Plan, which talks about this methodology. It was
10 discussed there. So was this Large Habitat Connectivity
11 Study and its ties to the jaguar information. I mean, they
12 were presenting that Carnivore Connectivity Study to the
13 Borderlands Jaguar Detection Group the day that the news
14 came out that the jaguar -- that Macho B had been captured.

15 So I think the job statement does, through
16 connections, indicate that we have authority to study
17 jaguar, do work on jaguars.

18 Q. You know, understanding the problems inherent to
19 hindsight on stuff --

20 A. Yes.

21 Q. -- you know, why do you think -- I mean, I kind of
22 had that same sense you did about that we could -- that
23 there could be more clarity in the language.

24 Why do you think there wasn't?

25 A. Hindsight. Once again, the likelihood of a

1 capture was probably -- again, not knowing if there was
2 intentional efforts being made to reduce capture --

3 Q. Yeah, understood.

4 A. -- not knowing if that -- you know, that being out
5 of the picture, the likelihood of capturing a jaguar in
6 country during a study where there's been hundreds, if not
7 thousands, of snares set over hundreds of years, decades
8 for all kinds of different predator control efforts and
9 sportsmen harvests, our own efforts, just the likelihood of
10 thinking that we would, you know, suck in a mature male
11 jaguar into a snare set, pretty remote, you know.

12 Q. Yeah, I go back -- you and Chasa called me on the
13 phone that next morning and you had clearly stated that we
14 had caught the jaguar and I remember the discussion. It
15 was very brief because that was the morning I was going to
16 catch a plane with the Senator.

17 A. Right, right.

18 Q. And it was clearly -- you and Chasa both
19 articulated that this was a -- you know, appeared to be a
20 -- I'm not sure if you used that term, but we got to the
21 point where this was an intentional take.

22 A. Right.

23 Q. This was an accidental act as a result of the Bear
24 and Lion Study. Can you walk me through that morning how
25 -- what happened on the way to you starting to make those

1 phone calls to let folks know?

2 A. Yeah, let me think about that. I'm trying to
3 remember how I first heard about it actually. I remember
4 Chasa telling me that that was the first she had heard
5 about it, that morning as well, and that was kind of -- I'm
6 trying to remember if she's the one that told me about it
7 or if I heard about it through Bill or Terry. I'll have to
8 reflect on that, but I remember Chasa saying that that
9 morning was, I believe, the first she had heard about it as
10 well and we were still seeking clarity of information on
11 the actual particulars of the event.

12 We were a little bit concerned about information
13 getting out before the right people needed to know and, in
14 fact, knowing that the Borderlands Conservation --

15 Q. The Jaguar Team -- the Jag Conservation Team
16 meeting was probably that day.

17 A. That was that day and we subsequently found out
18 that, you know, people like Terry and I think Bill -- in
19 fact, they were down there, that's right, so they must have
20 heard it from Chasa or some other mechanism but, you know,
21 they found about it on site at the meeting and were, you
22 know, a little uncomfortable about that.

23 Q. I can't imagine why.

24 A. But we had beginning that very morning, as soon as
25 we knew about it, realized that those contacts needed to be

1 made and left messages -- because they were in a remote
2 location. So we had left messages on phone service and at
3 the actual park or whatever trying to leave messages for
4 Terry and Bill to call in and we tracked you down in
5 transit --

6 Q. Larry was out of town that day because that's why
7 I was riding with the Senator.

8 A. So, you know, it was really for me word of mouth
9 multiple people removed from the source of information.
10 There was -- Leonard, I think, was transmitting some
11 e-mails or messages about the capture and that we were
12 trying to get the people out of the field, that there were,
13 you know, some pictures or things like that; but it was
14 pretty much all just to be believed to have been on the
15 Bear and Lion Carnivore Study unintentional snaring of this
16 jaguar.

17 Q. Yeah, and this kind of gives part of -- what did
18 you see -- understand, I'm kind of asking you to go back to
19 a point in time because we've kind of evolved since then,
20 but that morning how did you see your role and
21 responsibilities with regard to the jaguar? Understand
22 Terry's in this mix, Chasa's in this mix.

23 A. Yeah.

24 Q. You know, you've got these authorities and
25 responsibilities on this thing. How did you see your role

1 because part of this is that -- well, no, go ahead. Let's
2 deal with that.

3 A. Well, I think my role and I think one of the ones
4 I took on -- there was a few. One was communication as
5 much as I could to the right people. Two was I asked do
6 we -- "Are we sure we have the proper coverage for this to
7 have occurred?"

8 Q. Permits?

9 A. Permits and I inquired, you know, essentially. I
10 asked Jeff Sorenson the question I always ask him because
11 he's always taken the lead on our 10(a)(1)(A). I said, "I
12 think I have this right, but let's walk through this," you
13 know. "What are the different roles the permit and the
14 section the job statement plays so that I'm competent, you
15 know, in my understanding of those?" And I spoke with --
16 eventually spoke with Terry and others about that same --
17 about that same process and, you know, wanted to reaffirm
18 that the Department, you know, felt like we had the
19 appropriate coverage for that incident to have occurred and
20 that we weren't -- and, you know, at the time the response
21 was and the review of the documents and everything was,
22 "Yeah, yeah, looks good. Looks like we're, you know, we're
23 good on this. It could be cleaner, but we're good."

24 Q. Now, before this we clearly have -- you know,
25 jaguar's been a peripheral part of that border ecology for

1 -- since forever and, you know, increase in population, but
2 it hasn't been something that's been on our day-to-day list
3 of activities to be concerned about; but I guess what I'm
4 wondering is as I look at our response and how we kind of
5 had the different responsibilities?

6 A. Right.

7 Q. -- when this event occurred, prior to this how did
8 you see your role in this with respect to the possibility
9 of prior jaguar activity on board?

10 A. Let me say one thing about the previous question
11 before I answer that.

12 Q. Yeah.

13 A. Part of that communication role was with the Fish
14 and Wildlife Service and making sure that Steve Spangle's
15 office was well aware of it.

16 Q. And you saw that as your role as opposed to what,
17 Chasa's role or Terry's role on that?

18 A. I saw that as it had better be somebody's role and
19 it likely was mine and if not -- I wanted to make sure that
20 that loop was closed, and I knew I had the contact, the
21 phone number, the relationship with Steve and I could
22 easily set that to bed. Plus, we had the MOU which drives
23 my level of responsibility, coordination and communication
24 with Steve so I took that on.

25 Q. So in your sense of this was because of the MOU

1 that, one, you had a sense of responsibility to make sure
2 that somebody communicated, but we had -- you saw that you
3 had a formal responsibility or some formal responsibility
4 based on the MOU we had --

5 A. Uh-huh.

6 Q. -- with the Fish and Wildlife Service --

7 A. Right.

8 Q. -- and that evolved to you to have that
9 communication?

10 A. Right, and the permits themselves are under the
11 Director's name and that's why the communication up the
12 chain as well was also critically important to Larry and
13 others.

14 Now, the question you asked about my role with
15 this jaguar in general prior to that, it's a good question
16 because it's a unique scenario and all of the things that
17 we do in non-game, there are two things that when I took
18 the position over from Leonard, who was acting after Terry
19 Johnson left it, there were two things that were
20 specifically held on to in the non-game endangered world
21 recovery by Terry Johnson and that was Mexican World for
22 Introduction Program and the Jaguar Borderlands Recovery.

23 Q. How long has that been the case, do you know? I
24 mean, can you --

25 A. I've been doing this job for four years and he was

1 doing it prior when he had the position five years ago so
2 I'm not -- you know, and it went on for years prior to
3 that.

4 So the history had always been at that level and
5 Duane was very comfortable keeping Mexican wolf and jaguar
6 due to the long-term history and interaction with those
7 programs within Terry's job. So ultimately in the non-game
8 branch chief position I pretty much picked up the majority
9 of all other duties but those -- anything that was done in
10 those things filtered through Terry. So -- and, again, I'm
11 not -- I'm not trying to point any fingers. It's just
12 that's the way it was done.

13 Q. No, no, no, and I don't take it that way, but it
14 brings up another thought. That would be was there ever --
15 when you took on your current job, was there ever any sit
16 down either with the WMD Chief or with the Deputy or with
17 the Director to sort out, you know, here's almost all the
18 other -- T & E stuff largely falls within the non-game
19 branch for good reason. These two are -- are different --

20 A. Yeah.

21 Q. -- some discussion of how they were different and
22 how since, clearly, you've got some responsibilities -- you
23 know, the MOU responsibilities you have and, clearly,
24 there's going to be always overlap on that -- some way of
25 addressing how that overlap was supposed to occur and how

1 you were -- what your appropriate role --

2 A. Right.

3 Q. -- was with relationship to this special set-aside
4 of those two species?

5 A. There was some discussion. You know, to what
6 degree and specifics, say to get -- to boil it down to an
7 example like what we're talking about now, we were never at
8 that level of discussion but we were certainly at -- with
9 Bruce and even Duane, you know, just kind of -- you know,
10 just discussions about what Terry's roles would continue to
11 be and there was a third one, which was the political
12 interface of state wildlife grants and going to Washington,
13 DC on the flying days, which I picked up last year for the
14 first time.

15 So Terry gradually removed himself from that, but
16 certainly the discussions were there that Terry would
17 oversee those projects but, you know, that ultimately I was
18 a non-game branch chief responsible for the permit and that
19 we'd have to communicate; and so we've communicated over
20 the years and as an example when we do the permitting
21 updates and stuff Terry's always looped in that and, like I
22 said, he submitted the amendment for the rubber bullet
23 thing for wolf in coordination with me. You know, he
24 submitted it, but he discussed it with me and we got it
25 done.

1 So, really, my role was, you know, as needed. I
2 still have a part in that, there's no question about it,
3 but it was driven by what the needs were coming out of the
4 program that Terry oversaw.

5 Q. There's nothing that codifies that, as my
6 understanding, that relationship --

7 A. Yeah.

8 Q. -- and should there be -- or I guess I'd ask this
9 now again a great hindsight question. In hindsight do you
10 think that the level of coordination we had -- and factor
11 in the Chasa piece of this, too --

12 A. Uh-huh.

13 Q. -- which, you know, here's -- she's not conducting
14 a threatened and endangered species study. She's, you
15 know, conducting a Bear and Lion Study of species of
16 animals that are resident wildlife in the State of
17 Arizona.

18 A. Right.

19 Q. That -- but of course -- and I'll ask this
20 question later -- but given -- you know, factoring all of
21 that in, do you think that we have had adequately dissected
22 the roles and responsibilities in such a way as to make us
23 as prepared as we should have been for this incident to
24 have occurred?

25 A. That's a tough question, Gary. There was

1 certainly, I think, a very common understanding of certain
2 roles, you know, that the projects themselves were -- you
3 know, these two in particular led by Terry and that he
4 would need to interact with me on the roles that I
5 maintained, which was permitting and other things like
6 that.

7 Has that been codified in writing? I'd be hard
8 pressed to say "yes" to that. I couldn't swear to it if
9 there's an old memo or an e-mail. There is no document on
10 the shelf that I could quickly go reference.

11 Q. The proper question is should there be? I mean,
12 do we need that?

13 A. Hindsight's 20/20 and if we had it, it may answer
14 some of this question; but I don't know if it would have
15 changed much. You know, I don't know that there would have
16 been any other -- it's possible that there could have
17 been -- but I don't know if there would have been any other
18 recognition of a need for more or additional permitting
19 work or changes.

20 You know, again, the likelihood of a bear and lion
21 or a large carnivore study taking a jaguar, you know, was
22 that adequately covered, I don't know if it would have
23 resulted in a different change. Certainly, the more you
24 can describe process and the way things are supposed to be
25 done can be a good thing if it's not overwhelming and, you

1 know, in hindsight would it have been beneficial to do
2 this, it's possible in this situation.

3 It could have clarified some roles; but, again, I
4 don't -- you know, we have processes in place. Somebody
5 does a project, we generally do an EA checklist and you go
6 through and identify concerns, needs and issues and you
7 make sure there's adequate coverage and if it's going to
8 influence a project lead, like in this case Terry with
9 jaguar, you might go to him for expertise or you might come
10 to me to look at the permitting.

11 Being able to pick up the shelf and see who do I
12 go to to ask these questions might have facilitated that.

13 Q. Yeah.

14 A. There might have been a process that said, "If
15 we're going to do this, here's what we need to do to make
16 sure these certain things are covered." Does our EA
17 checklist have a question about if this is a Federally
18 listed species is there adequate language contained within
19 existing permits to allow the activity?

20 Those are the kinds of things that, I think, may
21 have facilitated this more so than just identification of
22 particular roles of Terry or I.

23 Q. And that's something we need to discuss with
24 Chasa, too, about that. Let me ask you, because you have
25 clarity. If we were doing this study, this Bear and Lion

1 Study had been done up around Pinetop, I think we would
2 have been fully forgiven for not having invested much
3 energy in thinking, "What if we catch a jaguar?"

4 A. Right.

5 Q. The simple fact of the matter is this was in a
6 place that was a very low level of activity. We know -- we
7 knew that there was activity there.

8 A. Right.

9 Q. Do you have -- that being the case, I guess what
10 I'm trying -- if someone were saying we're running a small
11 mammal track grid and it was, you know, over in the Kofa
12 Mountains in Yuma County, I doubt that there would be much
13 of an issue. It would raise no eyebrows.

14 Now, if someone was going to run a snap trap grid
15 over near the Blacktail prairie dog range production --

16 A. Right.

17 Q. -- I'm sure you would want to know --

18 A. Right.

19 Q. -- that that was going on and that would probably
20 engender some kind of conversation about how do we address
21 -- I mean, clearly you would want -- is it something you'd
22 even want to do at all?

23 A. Right.

24 Q. Is it something that if we do need to do, clearly
25 there's some potential for incidental take. I'm trying to

1 put it in the context of something that actually is a
2 program that falls directly under you. How -- and trying
3 to relate it then to the jaguar situation --

4 A. Right.

5 Q. -- how do you have confidence that all of the
6 Department activities that you don't control that might
7 potentially affect an endangered species --

8 A. Right.

9 Q. -- that you are adequately involved in it so that
10 we don't inadvertently have some disaster occur?

11 A. Probably less confidence now than several months
12 ago. My confidence prior to that would have been that
13 those activities should use that EA checklist process, and
14 I sign off on those all of the time so, you know, your trap
15 example or we could just do something completely
16 different. Somebody wants to build a water catchment, it
17 might knock out some desert tortoise, okay?

18 Q. Yeah.

19 A. Because of the process, it comes and talks about
20 the potential risk analysis, the assessment, what's
21 appropriate and we sign off on those; and I become aware of
22 that and that would be where if there was a red light to go
23 off I might say, "Gosh, I don't think that we're permitted
24 to possibly harm a desert tortoise and so we better delay
25 this project until we make sure we got those ducks in a

1 row."

2 Q. Yeah.

3 MR. FABRITZ: How does that happen from there?
4 You hit that point. Is there a determination made where
5 you got to do, like, a full EA? I'm just asking because I
6 don't completely understand it.

7 THE WITNESS: Yeah, and that's an excellent
8 question, but usually the determination is that there's not
9 a lot of risk assessment and we sign off on them because
10 we're going to take -- we will remove tortoises according
11 to the protocol we have set up or we won't do the work in
12 the area when the eagles are nesting because we don't want
13 to be responsible for take. So they basically mitigate to
14 the point of no -- you know, the risk assessment is nil so
15 you can sign off on doing the project.

16 Now, if the risk assessment, I guess, was not nil
17 you would want to turn to our permitting and say -- here's
18 an example. Research recently has a desire to collect a
19 photo list from the beaks of humpback chub, right. It's
20 going to result in the take. They're going to die, right?
21 So there's no risk assessment -- I mean, there is but the
22 end is --

23 MR. McMULLEN: It becomes a permitting question.

24 THE WITNESS: Yeah, and so once you realize that
25 take is going to occur, you then say, "Are we permitted for

1 that take?" and so then that leads that part of the
2 discussion and you decide if we need to amend our permits
3 or want to change our numbers or anything like that.

4 So a trapping question near Pinetop you could say,
5 "Well, you might catch a wolf."

6 MR. McMULLEN: Good point.

7 THE WITNESS: So do we have the ability to do
8 that, you know. So it just -- there's a lot of standard
9 Department practices that we could ask that question
10 about. An example I give, which I know is kind of a silly
11 one, but we fly helicopter surveys every fall to count deer
12 and elk. Well, what -- and I've seen lots of pictures of
13 this. What happens if we kill a bald eagle when we're
14 doing that? You know, I've seen pictures of bald eagles
15 through the windshields of cockpits --

16 MR. HOVATTER: Yep.

17 THE WITNESS: -- and munched in tail rotors. Do
18 we do an EA checklist for standard activities such as that
19 and have we thought about that potential for take?

20 MR. FABRITZ: What is yours -- I mean, it sounds
21 like the answer is probably "no."

22 THE WITNESS: I don't think we have.

23 MR. FABRITZ: Should we?

24 THE WITNESS: I think we should do a risk
25 assessment and figure out which ones of those activities we

1 should do -- we should do a NEPA compliance process on.
2 This is hindsight, but we should do that and we should
3 identify those things that are the greatest risk assessment
4 and some of those could turn into a full EA, not just an EA
5 checklist because they might warrant, "Well, there's
6 likelihood of potential take" --

7 MR. HOVATTER: Yeah.

8 THE WITNESS: -- and it might result in us needing
9 to consult with the Fish and Wildlife Service on those
10 activities.

11 Q. BY MR. HOVATTER: All right. Now, are -- you
12 should see all the EA checklists, shouldn't you?

13 A. I --

14 Q. Or are you supposed to, let's put it that way?

15 A. It's a good question. I think I do. I certainly
16 see all the ones that have the connection -- known
17 connection with any non-game.

18 Q. Well, let's see, I think you probably see the
19 defect in that is that --

20 A. Yeah.

21 Q. -- that presumes that someone -- if the only ones
22 you are supposed to see are the ones that the individual
23 filling it out knows there may be potential, and if they
24 don't know --

25 A. I don't know if that's true. I just don't know if

1 that's true because I just -- I get the ones I get and so
2 that's a good question.

3 Q. Yeah.

4 A. I think I get all of them, but it could be I only
5 get the ones that have that connection but I suspect -- I
6 suspect I get all of them.

7 Q. Well, let me ask you this: Do you think you
8 should get all of them?

9 A. In the perfect world where there's all kinds of
10 time and resources available I say "yeah" I should be able
11 to have oversight of those and determine if there's
12 potential harm or need to deal with our permitting or take,
13 and maybe that's what we need to do because the liability
14 being so high.

15 If, in fact, I don't and there's a hundred percent
16 more than I typically see, then in order for somebody to
17 adequately review them to determine if that concern exists,
18 it's probably going to be a resource issue and so -- you
19 know, in that case you probably need to rely on people to
20 be able to direct those that have the likelihood of that
21 review to the right people, but I think it would warrant
22 finding out if I see them all. I mean, it's a good
23 question. I honestly don't know.

24 Q. Well, and I think the problem comes down to where
25 we're getting at with part of that is that if someone --

1 you know, it's kind of a geigo system. If someone's
2 unaware --

3 A. Right.

4 Q. -- that they're operating in an area -- for
5 example, they're operating in an area where we've done
6 Blacktail prairie dog reintroduction --

7 A. Right.

8 Q. -- because they're not part of your shop, they're
9 peripheral to that, we don't -- we don't, you know, have
10 a -- kind of a hot line that notifies everybody in the
11 Department --

12 A. But there's HDMS.

13 Q. Yeah, okay.

14 A. So, I mean, the process isn't as -- and, again, I
15 probably suspect I see all of them, but there isn't just
16 does the person -- are they aware? A very functional part
17 of that process is the HDMS checklist --

18 Q. (Inaudible.)

19 A. -- and that determines if there's any species
20 records in the location of the project that warrant -- that
21 raise a flag. Now, I know when I get them -- and I see
22 some that have -- I really strongly suspect I see them all,
23 Gary, but, generally speaking, there's either, you know,
24 one or two species of greatest conversation need, possibly
25 a listed species. I'm just trying to recollect if I ever

1 see any that don't so that's why I'm not sure --

2 MR. McMULLEN: There's something near everything.

3 THE WITNESS: There's usually something near it,
4 you know, will a fly catch your nest that's three miles
5 away or -- so but, anyway, there is a part of the system
6 that would trigger any indication that there might be a
7 need for that non-game.

8 Q. BY MR. HOVATTER: Well, and this all presumes that
9 people are using the systems that you developed and all and
10 we can't really overcome someone who does not do that, you
11 know, in all cases. We sometimes can, sometimes can't.

12 A. Right.

13 Q. Was there any -- do you recall whether there was
14 an EA checklist for the Bear and Lion Study?

15 A. I don't recall one, and I believe through
16 conversations since that there's not, but I don't know for
17 sure.

18 Q. Would that in your -- and, again -- and I'm not
19 taking this -- I'm realizing in some sense this may come
20 across as I'm asking you to criticize another part of the
21 Department and that's not the intent.

22 Should there, in your mind, should there have been
23 an EA checklist for a project of that kind in that
24 location?

25 A. I would think, yes. You know, I mean, it's a

1 significant activity likely using Federal dollars.
2 Sometimes it's the funding source that triggers it as well
3 and that's probably another area to look at is sometimes if
4 there's no Federal nexus you get away from the need to do
5 any EA checklist unless you believe that there's a
6 connection to a T & E species.

7 So you could get into a -- I don't know about a
8 gray area. You could find yourself in a situation where
9 you haven't recognized the harm.

10 Q. Do we have a checklist for determining whether you
11 need to do an EA checklist?

12 A. I don't think so.

13 MR. McMULLEN: Probably. I mean, come on, we
14 probably do.

15 MR. HOVATTER: You know, you can see the
16 (inaudible) reach at a certain point.

17 MR. McMULLEN: Oh, yeah.

18 THE WITNESS: But, you know, in answer to your
19 question I would think -- and some of this is driven by
20 hindsight, Gary --

21 MR. McMULLEN: Yeah.

22 MR. HOVATTER: Yeah, a lot of this is.

23 THE WITNESS: When we're looking at such a big
24 thing like snaring and trapping in areas where there are
25 large T & E-type species we probably ought to be thinking

1 about the potential impacts to those; but, you know, again
2 is it a whole lot different than asking do we do an EA
3 checklist on somebody riding horseback to do deer surveys
4 in the Hualapais and they might kill a bull?

5 MR. HOVATTER: Yeah.

6 THE WITNESS: I mean, the likelihood is pretty
7 extreme in both scenarios. No history of either. You
8 know, one might sound really ridiculous now because there
9 is no hindsight. Nobody's chasing us after a dead bull or,
10 you know, an eagle in a tail rotor. (Inaudible) happened.

11 MR. HOVATTER: And after it happens then you'll
12 probably --

13 THE WITNESS: So, again, this is just me talking,
14 but I think the solution is a risk assessment of all our
15 actions and a determination of which ones go through and
16 initial an EA checklist those that have some recognition.

17 It's kind of like our sport fish consultation.
18 We're doing it for how we stock fish. You got pretty much
19 -- I mean, it's interesting. We do it for how we stock
20 fish and that's been the way we do business forever --

21 MR. HOVATTER: Yep.

22 THE WITNESS: -- but do we do it for how we do
23 standard management practices for other wildlife?

24 MR. HOVATTER: Good question.

25 THE WITNESS: And where do you draw the line?

1 MR. McMULLEN: Yeah, it becomes a measure of
2 absurdity at some point --

3 THE WITNESS: Right.

4 MR. McMULLEN: -- because there's -- there's a
5 chance that something special could get wiped out in almost
6 everything that we do.

7 UNIDENTIFIED SPEAKER: Uh-huh.

8 THE WITNESS: And I believe --

9 MR. McMULLEN: It goes back to risk analysis
10 probably.

11 THE WITNESS: It goes back to risk analysis and
12 beyond that. It also goes to what I think people believed
13 was the common purpose for our existing permitting and our
14 MOU, which was to ensure that Arizona was a key player in
15 threatened and endangered species conservation and that we
16 were really, you know, leading the way with other states in
17 our ability to do that conservation, but also lead agency
18 as wildlife managers; and I think that the common
19 understanding would have been that even though we never in
20 a million years dreamed we might accidentally take a
21 jaguar, our permitting system would have allowed for it.

22 MR. HOVATTER: Yeah.

23 THE WITNESS: And so how much work do you go on
24 the front end before you go embark on a project like
25 snaring and spend resources -- valuable resources and time

1 in this one in a million likelihood or do you default to,
2 "Well, we've got permitting in place that's mutually agreed
3 to with Fish and Wildlife Service," and, certainly, their
4 understanding on day one was we were adequately permitted
5 to do all this stuff.

6 MR. McMULLEN: From the day that you called them.

7 MR. HOVATTER: Yeah, we asked very specifically --
8 you know, in fact, I'm the one that asked the question of
9 Dr. Tuggle was, you know, "it's been our impression from
10 the beginning of this that we had a permit that would cover
11 both incidental or deliberate take. Is that your sensing,
12 too?" and it clearly was.

13 He was very unambiguous and very quickly answered
14 that question and I could see the -- we've all kind of --
15 finding the right mix between enough oversight and
16 oversight that is so burdensome that you spend two thirds
17 of your time dealing with paperwork and one third of your
18 time on the ground actually getting the job done, you
19 know. We all understand the rationale on this that we're
20 trying to deal with on that.

21 The -- let me ask you the --

22 MR. McMULLEN: Gary, I've got to take a potty
23 break.

24 MR. HOVATTER: Yeah, sure.

25 MR. McMULLEN: I'll be back in like -- sorry, it's

1 the coffee.

2 MR. HOVATTER: I'm going to keep it on. Well,
3 Craig doesn't have to be here for all the questions
4 anyway.

5 UNIDENTIFIED SPEAKER: We can keep -- we can keep
6 going.

7 THE WITNESS: Let me -- can I follow through on
8 that?

9 MR. HOVATTER: Yeah, go ahead, please.

10 THE WITNESS: So it's a TCV. It's a risk
11 assessment and it all depends on where you believe our
12 adequate coverage already exists, you know, and if you look
13 at the job for cats right now -- and I realize this isn't
14 very specific, but it very clearly talks about
15 implementation of the borderlands document, you know, the
16 strategy, which part of that -- my understanding, I wasn't
17 involved in that -- talks about use of surrogate species to
18 understand habitat, et cetera.

19 When you look at the specific current year
20 procedures under our permit in our Section 6 job statement,
21 it says identify survey and evaluate potential habitat
22 focusing initially on areas from which most ocelot and
23 jaguar sightings have been reported.

24 Well, how you identify survey and evaluate
25 potential habitat that jaguars use can certainly be done by

1 studying the jaguars themselves --

2 MR. HOVATTER: Yeah.

3 THE WITNESS: -- and it can certainly be done by
4 looking at other species and when you look at some of the
5 earlier renditions of the large carnivores -- I even call
6 the Bear and Lion Study -- we use that terminology. It's
7 the Large Carnivore Habitat Connectivity Study, I guess --
8 and, again, I haven't seen this but some of the earlier
9 renditions even talked about surrogate species for jaguar
10 and other large carnivores looking at bear and lion.

11 So, you know, ultimately you've got a
12 Commission-driven project looking at large carnivores,
13 worried about connectivity along the border. One of the
14 biggest issues about connectivity along the border is
15 jaguar, and so to not think there's a connection between
16 the output of that product and how we study and manage
17 jaguars would be ludicrous.

18 They're obviously tied together, so much so that
19 they were even on the agenda that day, you know, and so you
20 look at our job statement that talks about identifying,
21 surveying and evaluating potential habitat focusing
22 initially on areas in which jaguar sightings have been
23 reported and you got the connection to the Borderlands
24 Detection Project document, there's a lot to indicate that
25 our job statement, even had we done an EA checklist on the

1 Bear and Lion Study, we could have very well come to the
2 conclusion that, "Well, it could be cleaner," or maybe we
3 could have come to the conclusion, "You know, it looks like
4 we're pretty covered. We might have made a phone call."

5 Q. BY MR. HOVATTER: Let me ask you this: On the EA
6 checklist process, how do we train and educate our staff on
7 that? What triggers that? Who determines who gets trained
8 and educated? Who, in fact, does it?

9 A. It's an excellent question. It would be out of
10 the Habitat Branch. My training, my recollection is
11 several years old now, but it comes in your new employee
12 orientation when you're brought on as a wildlife manager or
13 as a new employee and then -- and that's been changed over
14 the years so I don't know to what extent the Habitat Branch
15 comes in and really educates somebody on the checklist.

16 When I came through, it was a couple of days. I
17 mean, we had all kinds of training on it and then it's
18 reinforced at -- in the case of the field office, it's
19 reinforced at the regional office. In the case of Phoenix
20 branch personnel, I don't know where the reinforcement
21 would come from. It would be a good thing to determine a
22 process where you have those maybe annual updates working
23 at levels on that process. I don't think that exists.

24 Q. That's not training we record, is it, that
25 specific?

1 A. Probably not. If it was at a branch meeting, if
2 it was just on an agenda. Now, lately we've gotten more
3 and more because of that Stars System, whatever. Just
4 about anything -- yeah, everything gets documented but
5 that's real recent, you know.

6 Q. Well, let me ask you: Are you comfortable with
7 the level of training and education -- and I'm asking you
8 -- I'm asking this from your perspective on two levels, one
9 as branch chief for non-game --

10 A. Right.

11 Q. -- and two as an employee that's got quite a few
12 years in the Department as a senior management level
13 individual in the Department.

14 Are you confident -- or comfortable with the level
15 of training and education we do on that process?

16 A. I have a mixed response because I'm still waiting
17 to hear the results of the investigation. If the
18 investigation comes out and says that our permits were
19 adequate and what we had in place was sufficient, I feel
20 like the processes we have in place have not failed us if
21 that's the case.

22 I'm not as comfortable with that as I was just
23 having to worry about the results of the investigation.

24 Q. Uh-huh.

25 A. If the results of the investigation say that we're

1 not, then I'm not at all comfortable with where we're at
2 and I think we need significantly more training to
3 differentiate between the two -- or the roles as a
4 permitting and EA checklist and how they interact.

5 Now, with that said, my staff is fully aware of
6 the EA checklist. We do them all the time. We don't
7 embark on projects without making sure they're covered
8 somewhere, but there are still things that make me have to
9 ask questions because I don't know the answer well enough
10 so training is always beneficial.

11 Q. Uh-huh.

12 A. An example would be I recently received an EA
13 checklist for Section 6 -- Federal Section 6 funds for the
14 wolf program. I never see those. It's like why don't I
15 ever see these? Well, because the majority of the work is
16 covered by the EIS that allowed for the initial (inaudible)
17 to occur in the first place. So there's absolutely no need
18 to do EA checklist because we're covered by a grander NEPA
19 document, okay?

20 Q. Yeah.

21 A. But, fortunately, Chris and others in the region
22 had identified, "This is a little bit outside of that. We
23 want to build a pen over here using Section 6 funds," and
24 it has potentially different impacts than were ever
25 evaluated in the EIS in the first place. So we want to do

1 an EA checklist," and they submitted it, and we had to ask
2 several people, "Is this right? Should we do it? Do we
3 submit it to Federal aid or do we just do it internally?"
4 So there were unanswered questions even in a project as
5 long term as as the wolf program.

6 Q. Of course, what you just described, would you not
7 look at that as something of a success from the standpoint
8 of folks were looking at the document, recognizing that
9 this looks like something that may not have been --
10 because, I mean, normally you'd say EIS covers this --

11 A. Right.

12 Q. -- you know, what are you going to get as a higher
13 order document that the EIS?

14 A. Oh, it was a great success, but the true great
15 success was that somebody prepared the document that I got
16 to look at.

17 Q. Yeah.

18 A. And so what if they hadn't recognized that need?

19 MR. FABRITZ: That was an alert employee.

20 THE WITNESS: Yeah, yeah, right. So, you know,
21 generically we can always do more training and more
22 understanding of when to use those processes and the
23 liabilities for not doing it. I think there's a lot that
24 we can do there.

25 Historically has it bitten us before and really

1 been problematic, I don't think it has, you know, and so
2 again it's that TCV; but, obviously, we've potentially been
3 made aware of a really big liability here. You know, again
4 it depends on the outcome of the investigation, I guess,
5 but even if the outcome is positive, the liability's been
6 big just in the public eye, you know.

7 Q. BY MR. HOVATTER: Well, you've -- now, just kind
8 of switching gears a little, you've sort of brushed up
9 against the fact that we do fairly routinely when it comes
10 to T & E species. Adjust some of our activities to
11 recognize particular sensitivities or vulnerabilities of
12 that species.

13 A. You bet.

14 Q. In the context of the Large Carnivore Study --

15 A. Yeah.

16 Q. -- and obviously having to look in light of the
17 fact that we did, in fact, catch this jaguar, is there --
18 is -- do you think that when we -- 'cause we obviously want
19 to restart that work along the border. That's an important
20 milestone. Should the re -- our reinstallation or
21 resurrection of that program, is there in your mind the
22 likelihood that we ought -- or we need to take a look at
23 whether we need to put some sort of constraints on
24 ourselves with respect to proximity and time or space --

25 A. Uh-huh.

1 Q. -- to those activities and known jaguar activity?

2 A. I'm going to have to again give you two answers
3 and, again, it's because I don't know the facts of the
4 capture.

5 Q. Understood, understood.

6 A. If, in fact, there were jaguar scent enticements
7 placed at a snare and we caught a line -- caught a jaguar,
8 that totally changes the risk assessment of placing snares
9 in jaguar habitat.

10 If there was no scent placed, we have years and
11 years and years and years of people working snares in
12 jaguar habitat and one example of a capture. Risk
13 assessment is a little bit known. Snares, jaguar once, you
14 might want to think about this. You might want to think
15 about limiting use of things that would attract jaguar to
16 the site. You might want to think about limiting snares in
17 the vicinity of recent jaguar sightings or even historic
18 for a known living jaguar, you know. You might want to
19 offer those restraints.

20 If, in fact, scent was used, however, it totally
21 changes the likelihood of capturing a jaguar in a
22 non-baited -- you know, we have no documents of capturing a
23 jaguar in a non-baited snare if bait or scent was used in
24 this case; and so then the risk assessment still goes on.
25 Is there a possibility? Well, yeah, you could always catch

1 a big cat in a snare, but has it ever happened? No.

2 Well, your constraints may be less. You may say,
3 "Okay, but let's use reason." If there's a recent sighting
4 of a jaguar in that mountain range you might not want to
5 have a snare active at a sight.

6 Q. Well, let me put this even more hypothetically
7 because here's -- because you've used some terms that
8 are -- you know, just go through the entirety of this --
9 all the map of the documentation on this project and that's
10 the term "near" and the term "in the vicinity" --

11 A. Right.

12 Q. -- and the term "recent."

13 A. Right.

14 Q. And the question, of course, is those -- you know,
15 what would be too near --

16 A. Right.

17 Q. -- in time and space probably varies by species
18 and even within the species by habitat. If you were -- and
19 this is the hypothetical because, you know, we see this in
20 dissecting. You say, well, recent --

21 A. Yep.

22 Q. -- photo of a jaguar in early January, is that how
23 -- is that too recent with respect to something that
24 happens in mid February --

25 A. Well --

1 Q. -- or near five miles away --

2 A. Sure.

3 Q. -- ten miles away --

4 A. Right.

5 Q. -- two miles away? If you were trying to look at
6 establishing an approach that would enable us to do
7 management -- T & E species management and conduct other
8 normal activities, is there an established approach you're
9 aware of or an approach that you would be comfortable with
10 using to determine what for that species and that habitat
11 type would be the appropriate way to approach establishing
12 constraints on space and time?

13 A. There's a multitude of approaches and they all
14 basically -- they all basically come down to professional
15 input and judgment and peer -- maybe peer review of
16 protocol and examples would be, again, bald eagle nesting.

17 We don't just make up distances. We don't just do
18 it in a vacuum. Those limitations are established with
19 Fish and Wildlife Service being at the table. We base it
20 off of known national data and information. In the case of
21 the eagle it's vetted through the Bald Eagle Management
22 Group and you get buy-in to protocol. That's basically our
23 risk assessment. Are we all going to be comfortable with
24 these types of limitations?

25 Q. And that seems inherent through the protocol

1 development process.

2 A. Yeah, and so in the case of jaguar you certainly
3 have this Borderlands Detection Group, you've got a whole
4 bunch of vested people at the table, you even have the Fish
5 and Wildlife Service. So I would not want to prescribe the
6 conditions for the restrictions personally. I would want
7 to see them developed through a process that involved those
8 key players.

9 Q. But your experience and all tells you that we have
10 every reason to feel comfortable that that process -- there
11 is process sufficient to arrive at probably a pretty well
12 vetted professional approach to doing something like this?

13 A. Yeah.

14 Q. This isn't something that's beyond the realm of
15 positive?

16 A. No, no. I mean, you would ask for expertise and
17 partnership buy-in and come to protocol that people
18 supported. It may not in the end be accurate, but then you
19 would at least be able to indicate that it was
20 unintentional -- or it was not even -- it certainly wasn't
21 intentional because you applied the protocols to indicate
22 that there was -- you were doing everything you can to not
23 intend to take the jaguar, and ultimately that's the
24 difference.

25 There's intentional and unintentional, and if you

1 prescribe protocols that are mutually acceptable, it's
2 going to avoid the conflict. You can argue that you had no
3 intent to take. If you ignore those protocols and do it
4 anyway and something happens, you can't argue that you were
5 doing what you could to avoid take.

6 Q. Yeah, it's our due diligence case.

7 A. So that's -- I mean, you're never going to be
8 perfect, but you're going to have that ability to remove
9 yourself from, say, intentional to non-intentional.

10 Q. Now, were you involved in any -- in the
11 pre-planning efforts with other Department staff on the ESA
12 implications of the jaguar -- of that jaguar capture?

13 A. No, no.

14 Q. That Bear and Lion Study?

15 A. No, no. Yeah, I don't know that there were on
16 any -- the jaguar from a long time ago and I was not, and I
17 wasn't in the position I'm in now.

18 Q. Let me ask you should you have been? Again, it's
19 a hindsight question.

20 A. From the Bear and Lion Study, the carnivore
21 study?

22 Q. Well, both. We'll talk -- let's talk the jaguar
23 project or the jaguar -- well, jaguar project if we call it
24 that.

25 A. I would have been, you know, I guaran -- I'm sure

1 of it, because as we again make changes in the wolf
2 program, that Section 6 job statement is out to Terry and
3 others. The results requested changes. I review them and
4 submit it to the Fish and Wildlife Service. Had the
5 Department actively decided to go out and capture a jaguar,
6 I would have been involved and should have been involved in
7 such an effort.

8 Q. Yeah, that's very -- that's a very thorough, very
9 detailed protocol for making a decision for intentional --

10 A. Now, was I involved in a research branch project
11 to implement a large carnivore study, kind of Commission
12 driven and other things, I was not. In hindsight should I
13 have been, I think it would have been helpful; and, again,
14 it's a matter of where you draw the line.

15 If you're looking at charismatic megaphona that
16 are going to be headlines for months, we probably better
17 start recognizing those as fully vetted projects, you know.

18 Q. If there had been an EA checklist done on that
19 Bear and Lion Study do you think -- again, this is wholly
20 hypothetical, but do you think that that would likely have
21 been adequate involvement on your part, your review of that
22 project through an EA checklist? And this presumes that we
23 got the right EA checklist and we've done that part right.

24 A. I would hope so, but I have to admit post Macho B
25 my recognition of how significant my review of those EA

1 checklists has changed, you know. So there's a different
2 attitude that I bring to the table now than I would have
3 had prior to any of this. I don't know that it would have
4 resulted in much of a change and ultimately we still had
5 our critics looking at our permits and saying, "Are you or
6 are you not adequately permitted?"

7 They would have also then possibly received the EA
8 checklist, and the good news there is we would have been
9 able to say we complied with our own internal processes
10 through NEPA and documented that we didn't see a risk
11 assessment.

12 Q. Yeah.

13 A. And we also would have included in there if we
14 were authorizing the use of scent or not. So it would have
15 been a solid, solid thing for the Department to have that
16 in place. I don't ultimately know if my review pre Macho B
17 would have resulted much in the way of recommended changes
18 to the signature line, you know, on the checklist itself.

19 I just honestly don't know if I would have read
20 this and said, "I have huge concerns, we got to go back."
21 I would have to have read how it was presented. You know,
22 it's speculation, right?

23 Q. Let me ask you this, too, you know, just in the
24 generic: If you thought and in the course of review of an
25 EA checklist find that you do have a concern --

1 A. Uh-huh.

2 Q. -- you address that concern with the author of the
3 EA checklist, someone that's not -- that doesn't work for
4 you in your branch?

5 A. Not quite. If I see species of concern and
6 there's a statement made like, "We're going to do this so
7 it's not going to have an impact," I give it to my program
8 managers --

9 Q. Okay.

10 A. -- basically who control the species leads then
11 and I say, "Do you concur? Provide input" -- or in many
12 cases the EA checklist what it -- in my world it's the
13 C & D sections, if HDMS has indicated a T & E species may
14 be affected, which is positive or negative, okay, or an
15 SGCN or HDMS species has been affected, those are checked
16 as "yes," and those are Sections C & D of the EA checklist,
17 and then you go into the document and in the C & D sections
18 there should be a write-up that says desert tortoise was
19 recognized as being here but the project is going to be a
20 positive benefit or it would be negative but we're going to
21 take the following stances -- actions so that it won't be.

22 And if what I read in there is comforting enough
23 to me to feel like it's going to be fine, I sign it. If
24 it's blank or I question what I've read or I just feel like
25 the project is a big enough interest I need my program

1 manager of species, I kick it to them for review and I get
2 their input back and they usually add something to that
3 file or they even do the C & D writeup because in many
4 cases it's blank when we get it. So then my professional
5 staff has provided their insight on it and if they're
6 comfortable, we sign it.

7 Q. In the case given Terry's, you know, sort of
8 parallel responsibility in jaguar and wolf, if you got an
9 EA checklist how would you address -- would that be
10 something you'd slide over to Terry --

11 A. Well --

12 Q. -- or would it be something that you would see at
13 all?

14 A. Well, yeah, normally I suspect I would see it but
15 we have a little bit of a -- I wouldn't call it a glitch
16 because there hasn't been anything -- there hasn't been one
17 that hasn't come through that's -- because of it, but
18 typically Bill Van Pelt is my birds and mammals program
19 manager and he was also on the jaguar --

20 Q. Yeah, he's one of the early members of that.

21 A. Yeah, and so anything that came through that
22 affected jaguar when he was my program manager, he would
23 have been the one I went to in the circumstance I just
24 described.

25 Since he's gone to the WAPA position, I still

1 include him on anything that I get that involves jaguar or
2 wolf just to keep him in the loop because he's coming back
3 into his position in about a year --

4 Q. Yeah.

5 A. -- you know. So even though he's officially in a
6 different position now and I have an acting, what I would
7 now do is that would get routed through my acting with a cc
8 to Bill anyway and if there was issues, comments or concern
9 I would deal with it either between Terry and I or Bill and
10 I or all three of us. So I don't think that we would miss
11 anything just because Terry is the ultimate lead. It would
12 still route through me and I would know if I had questions
13 or concerns that I would go to either Bill or Terry.

14 Now, I would likely in most cases defer to both of
15 their judgments. They've been in the program longer than I
16 have and are driving the process so...

17 Q. If you -- have you ever had, you know, to -- an EA
18 checklist situation where you and -- where your assessment
19 or your staff's assessment on a T & E species impact is at
20 variance with the project leader's assessment, who
21 presumably many times would be the author of the EA
22 checklist or originator of the EA checklist, and if so how
23 do you resolve those?

24 A. I can't -- I can't recollect any. They're
25 resolved through how you decide to design a project, and so

1 you come to an understanding or agreement on project design
2 and those are the ones I sign off on.

3 Now, a similar example that's not in the EA
4 checklist but bigger is the sport fish consultation when
5 you're already at the level of consultation, and what that
6 has led to is we've had discussions if we stock this year
7 will it result in take and what are the implications and do
8 we need to consult on that and do we need to have those
9 covered, et cetera, and those have generated substantial
10 staff time and discussions and interaction between staff
11 and sport fish and Fish and Wildlife Service to come to
12 resolution and ultimately you might get a -- you might get
13 a call of a farm for take and so, therefore, you either
14 have to mitigate forward or get it covered in your permit.

15 So ultimately the scenario you described, I think,
16 would lead to that if you couldn't come to resolution, but
17 I'm not aware of --

18 Q. In the course of your EA checklist work, even when
19 everything matches up, where permits seem appropriate, the
20 design, you have addressed any concerns we have so you
21 believe the design of this program adequately fits within
22 the appropriate framework, is there any of that that -- any
23 part of this that triggers a need to inform the Director or
24 inform someone at that level about -- even where a project
25 seems to line up well, is there anything that includes an

1 assessment of -- even this is a well-designed project, but
2 it has some potential that rises to the level of -- the
3 Director's level of need to know?

4 That's not a well -- that's not a very clear
5 question.

6 A. No, I understand what you're saying. I'm just
7 trying to think if there's anything. There is not a
8 specific check box that says this must be -- "The Director
9 must be briefed prior to moving forward on this project,"
10 but the EA checklists are signed off not only at my level,
11 but then again at the AD level. I don't think they are at
12 the Deputy level.

13 Q. I don't see them.

14 A. But Bob Curtis, he oversees WMD. I'd have to take
15 a closer look at the other signature line --

16 Q. Probably by now with Bob's traveling I don't see
17 anything that needs signature right away for Deputy level.
18 Although I've never seen it, I doubt that they do.

19 A. I believe it's at the AD level. So -- and, you
20 know, prior to you coming on there was only one Deputy and
21 basically the AD levels would communicate and still do I
22 know with the Director as necessary.

23 So is there a specific step that says this project
24 shouldn't go forward without a decision document or a
25 briefing --

1 Q. Or even one that simply says this is
2 well-designed but this is a species or an area of the state
3 that we know that there is some particular sensitivity to
4 and, therefore, the Director ought to at least know that
5 this is happening?

6 A. I don't believe so. I think ultimately, though,
7 Josh is certainly on top of the bigger projects coming
8 through his shop and brings those as he sees fit; but is
9 there a process for that, I don't think so, and I would
10 just to the AD, you know.

11 Q. Well, to some extent, though, if you look at the
12 Habitat Commission reports, they're pretty thorough. I
13 mean, almost any project of any significance is addressed,
14 which automatically means the e-staff's going to get a look
15 at it. The Director will get a look at it. The Deputy's
16 going to get a look at it and that may be all the process
17 we need for something like this.

18 A. Certainly, certainly.

19 Q. They're certainly not looking for a way to bring
20 another thirty policies on board.

21 A. Certainly most of the work that's being done is
22 being communicated somehow. I guess the question is should
23 some of it be communicated prior and it's -- you know, I
24 don't know, you know, there's --

25 Q. Yeah, the jaguar -- some of the jaguar protocols

1 were updated in 2007. Were you involved in any of that? I
2 mean, they originated long before you had the job. Were
3 you involved in that somehow?

4 A. Not at all. In fact, I've never even been to one
5 of the meetings.

6 Q. Have the employees with a need to know or with a
7 need for it been provided -- in your opinion, in your
8 opinion -- been provided the training they need to have as
9 far as the endangered species go? Have we done enough ESA
10 training?

11 A. Oh, no, it's so complicated you can't do enough, I
12 mean, to be blunt about it. It's a difficult thing to
13 people even in the Fish and Wildlife Service who are
14 experts at it have a difficult time getting their arms
15 around the concepts at certain times.

16 When I came into the branch recognizing my lack of
17 knowledge in the area from FOD and not an expert in
18 non-game and wanting to make good on some good medication
19 or donation money I had, I found a way to bring NTC
20 folks -- NCTC folks from the East Coast as well as local
21 staff into a big meeting and we had about thirty people --
22 cost about ten grand to go through Section 6 -- or to go
23 through ESA training -- and we sought out the people who we
24 felt were in the most need to know. Certainly wasn't
25 everybody.

1 We had, like, thirty seats and so we requested,
2 you know, from the regions who their priority personnel
3 would be and some couldn't attend who would have otherwise
4 likely been priority and others couldn't attend just
5 because we didn't have seats and couldn't go that low into
6 the prioritization. So we did that, you know, four years
7 ago when I came on into the branch and it was very
8 expensive.

9 Other than that, employees have the opportunity to
10 sign up for other types of ESA training, either requesting
11 to go to NCTC or doing things that occur around the state
12 or other places.

13 MR. FABRITZ: What's NCTC?

14 THE WITNESS: National Conservation Training
15 Center. It's in Virginia.

16 UNIDENTIFIED SPEAKER: Neat place.

17 THE WITNESS: Oh, yeah. So, I mean, the short
18 answer to your question is "no," we can always do more ESA
19 training and recognizing the potential liabilities
20 associated with the subject matter I think that we not only
21 could but should.

22 Q. BY MR. HOVATTER: Let me ask you, did you ever --
23 what was your level of awareness of that Bear and Lion
24 Study?

25 A. Very peripheral. I mean, I don't even know how



1 true it is. It's my understanding that the Commission had
2 a big interest in doing that project and there was a lot of
3 interest in knowing about the numbers of bears and the
4 harvest rates that were occurring down south, and so
5 peripheral to my being at Commission meetings and hearing a
6 little bit of those discussions and just knowing that it
7 was ongoing, that was it.

8 Q. Did you ever have any discussions with Thorry or
9 Chasa about that study?

10 A. No.

11 Q. There's reference in some of the e-mail to a large
12 -- a border carnivore meeting that was apparently or
13 theoretically going to be hosted by the Department on 9
14 December.

15 Does that ring any bells with you? With
16 everything that was going on in early December it doesn't
17 ring any bells with me.

18 A. The only thing I can think of is -- it doesn't
19 ring any bells. It's possibly there was a jaguar meeting
20 that was scheduled to occur subsequent to this capture that
21 was, I think, cancelled, you know. So there may have been
22 some e-mails about the next upcoming meeting.

23 Q. No, this is kind of -- because among the folks you
24 thought would have been aware of weren't is Terry on this
25 thing and so -- and I'm kind of thinking this may have been

1 something that Chasa -- it may have been a research thing
2 that maybe Chasa and her folks were involved in, but I
3 wanted to ask you to see if you had any memory of that?

4 A. I don't have any memory of it. There's nothing I
5 -- certainly nothing I was trying to set up or participate
6 in.

7 Q. Well, there's no particular reason why you would
8 have been a host for something like that?

9 A. No, no.

10 Q. Not that I could see.

11 A. Well, I mean, the only type of large carnivore
12 meeting that we might consider hosting in non-game would be
13 jaguar related and that would specifically be through
14 Terry. Bill is his assistant there so...

15 Q. Eric, look, you know, we touched on some of this
16 already in some of your thoughts and, granted, this all had
17 to be hypothetical because you had no opportunity to dig
18 into this in any detail so there's no particular reason why
19 you should have any, you know, grand or glorious insight
20 into any of this, you know, any better than anybody else
21 does right now.

22 As you look at this, are there lessons that you
23 feel that we should have learned from this and, if so, what
24 lessons should we learn from this?

25 A. Well, sir, there are lessons and, you know, I

1 wouldn't even know where to start; but as an example, one
2 of the things we did for years was a risk assessment that
3 was generated -- the topics were generated, say, at e-staff
4 and then we had to vote on them and we had to basically go
5 through and we determined what we were going to audit as a
6 potential risk assessment.

7 I don't think anything like this was ever on our
8 radar screen for that type of a risk assessment. So we
9 might -- so a lesson learned might be that -- I mean, and
10 maybe it's even an outside person so we're not blinded by
11 our history to come in and look at our operations and find
12 out which ones have what kind of liabilities and not just
13 focus on financial, but there's the potential for legal and
14 there's the potential, say, for employee safety. You know,
15 we do the employee safety and the financial one. We've
16 done those for years, but have we done maybe this legal
17 one? We do in reference to, say, OSHA requirements, you
18 know.

19 Q. Yeah.

20 A. So, you know, a lesson learned is, you know, right
21 out of the chute would be just -- we probably need to do an
22 analysis of the work that we're doing and a real analysis
23 of the potential risks those could bring to our employees
24 or to our agency and TCV and approach those, and that's a
25 big one.

1 I think another one is the training issue and
2 that's the gambit from management and down, you know. It's
3 the top level all the way down and making sure employees
4 not only understand what their obligations are and the
5 processes that they need to follow, but the potential
6 liabilities, their risks and failures to comply.

7 I would say that we have employees who wouldn't
8 think that they could get in harm's way criminally out
9 doing wildlife conservation work because they work for Game
10 and Fish. That may or may not be true. We need to resolve
11 that and provide that level of training.

12 I guess the other thing would be we need -- when I
13 say "we," it's state agencies as a whole. We need to
14 reinitiate efforts to engage the Fish and Wildlife Service
15 on providing specifics on what Section 6 and ESA is all
16 about and what protocol to follow and what's sufficient and
17 what it means. It doesn't exist. Every other section at
18 ESA has guidance that you can take a whole shelf up for.
19 How do you do a CCA, a candidate conservation agreement,
20 how do you do a 10(j). There's just guidance document
21 after guidance document. There's training section after
22 training section.

23 Section 6, it's like this big -- well, it's bigger
24 than that, you know, but it's not a big section. It
25 doesn't provide guidance. There's never been any given.

1 It's my understanding that the State's requested it through
2 AFWA and there just hasn't been much direction there, and
3 so as a result Arizona under Terry's leadership developed
4 what was recognized nationally as a leading program working
5 cooperatively with the Fish and Wildlife Service to develop
6 what Section 6 really means, and it led to our MOA, which
7 is now our MOU, and led to how we handle our permits. I
8 mean, we led the nation in some of those efforts to define
9 what Section 6 is and, yet, it's not clearly defined
10 obviously and there are people who are questioning it.

11 MR. McMULLEN: It's a changing environment, too,
12 all the time.

13 THE WITNESS: So we need clear direction from Fish
14 and Wildlife Service on what Section 6 is all about and
15 what it means to successfully and legally engage in that
16 arena.

17 We want to be there. It's to everybody's benefit
18 that the State's involved in management of a listed
19 species. We have taken every opportunity. We've opened
20 every door we can to be aggressive in the world of T & E
21 conservation and the benefits to our being there are
22 magnificent, but we've run into a potential pitfall.

23 So a lesson learned is we've got to find a way to
24 close that loop and have something very distinct come from
25 them as to what it means to be engaged in ESA and what it

1 means to be engaged in fish and wildlife management tied to
2 it.

3 Q. BY MR. HOVATTER: And I think relatively we've hit
4 the answer to this question a couple of different ways, but
5 I'm going to ask it more clearly: Were you aware of or did
6 you have any knowledge of either in fact or in rumor use of
7 jaguar scent by Department staff?

8 A. Not at all up until Terry told me he had received
9 that phone call initiated after discussions on whatever day
10 in March. What day that was I forget the day; but, no,
11 none whatsoever. Not even aware of it for the photo camera
12 traps.

13 Q. Yeah. Well, that's all -- that's kind of an issue
14 all to itself, you know, when you read about those photo
15 camera sets, you know, just researching jaguar research
16 around the world in the western hemisphere, reading the
17 Childs' book they did last year on their camera project.

18 There's always a sense that something's been left
19 out about their technique, but I've never come across it
20 where folks discuss in detail the use of lures in the
21 traps --

22 A. Right.

23 Q. -- for jaguar, which is odd to me, because I know
24 that we've used things like that routinely for lions.
25 We've used it for bobcats. I mean, it's always a great

1 place to trap for bobcats is around bobcat scat and it just
2 seems odd to me that that there's -- that that just -- it's
3 the absence of any discussion of the use of attractants.

4 Now, there's the discussion about finding scent
5 stations and establishing cameras near that, makes perfect
6 sense.

7 A. Well, there's a big question is your data -- I
8 mean, do you have jaguars in Arizona if you're not
9 attracting them into the state with scent? I mean, would
10 we even have the potential for take if you hadn't -- now,
11 obviously we have some records of "yes" we have some
12 houndsmen who have captured jaguars and we have other
13 sightings. So, you know, you kind of get into that area
14 of, "Okay, so now that we do know they can occur here, is
15 it acceptable to try to attract them to a camera so that
16 you get your photo?"

17 Q. If you were designing the study, would you
18 consider it an appropriate technique to use a female scent
19 for a jaguar -- for jaguars in this border region?

20 A. I don't design research studies, but my major
21 response would be -- to that would be if you know jaguars
22 are in the area, then the use of the scent would be
23 appropriate to help you get the data that you need.

24 If you're trying to document the presence or
25 absence and you're within a mile of the border, if you know

1 there's jaguars south of the border and your scent could,
2 therefore, attract them into the state, I think you're
3 pushing the realm of acceptable research practices there
4 so, you know -- but, again, if you find a scent station or
5 a jaguar track or there's been a sighting and you want to
6 document the spots of that cat so you can identify it, you
7 know, and you're not altering the fact do jaguars exist
8 here, you know the answer is "yes," so it depends on the
9 research question.

10 Q. So part of it -- because it's one thing to
11 document in such a way that you determine "yes" jaguars
12 exist here as opposed to jaguars exist here because the way
13 that I did this --

14 A. Right.

15 Q. -- made them be here.

16 A. And, obviously, it's a little convoluted because
17 we have knowledge that jaguars exist here without -- of
18 course, you know, I don't --

19 MR. McMULLEN: Presumably.

20 THE WITNESS: Presumably. There may have been a
21 scent station over here that somebody set which is why the
22 houndsman found them, so you don't really know.

23 Q. BY MR. HOVATTER: Eric, is there anything about
24 the whole situation relating to the jaguar, to Macho B,
25 that -- any thoughts or concerns that you have that we

1 haven't addressed in the course of the questions?

2 What have I not asked you about that you think is
3 (inaudible)?

4 A. I'm not thinking of anything, but give me a minute
5 just to make sure I don't blow the question off without
6 giving it due thought.

7 We've covered some of the main topics, you know,
8 and I think that underlying all of it is just Department
9 culture and known practices and years and years of accepted
10 practices and years and years of understanding between us
11 and Fish and Wildlife Service and how we operate and what
12 we're permitted to do; and if all of that can be in such
13 great question due to this type of incident, we need to
14 take a serious look at what we can do to ratchet things
15 down and to tighten up our processes in the future and not
16 -- even if we're vindicated, the damage that's been done is
17 horrible and it would have been so much better to cleanly
18 address the issues and move on to another day with
19 everything in front of us.

20 And so where we're at is not, you know, an
21 acceptable place to be and we need to fix it, and it could
22 be something completely different on another level next
23 month. So I think we need that overarching just real true
24 assessment of what the agency's doing and why and where our
25 liabilities are and where our protections are; but other

1 than that I'd say knowing the outcome of the investigation
2 is just critical because it changes so much. Again, the
3 permitting could very well be supported as being there for
4 intentional take anyway, but it certainly wasn't -- it
5 certainly wasn't a program that I had said, "Yeah, let's go
6 do," or Terry had said, "Let's go do."

7 Q. Well, certainly if it was -- if it turns out that
8 there was an intentional take, it wasn't done in accordance
9 with the protocols that the Department has established for
10 intentional take.

11 A. Right, and that changes so much, though, the end
12 risk assessment because you just don't really know -- it's
13 all hindsight. I mean, we've trapped, we've used snares
14 for decades in places where there's wolf, in places where
15 there's jaguar, you know, and we've never done -- I don't
16 think in most cases have we done the EA checklist on those
17 types of standard management practices that triggered
18 anything unusual. So it's just -- you know, it's a tough
19 one. Hindsight tells me we should be doing that but...

20 Q. Have you ever dealt with Emil McCain? Have you
21 ever known of him before this?

22 A. Well, I mean, he's certainly been mentioned over
23 the few years I've been in the position I'm in, you know,
24 by Bill and others as being a component of the jaguar
25 program, but I don't know him.

1 MR. HOVATTER: Marty, Craig, do you guys got any
2 questions you want to --

3 MR. McMULLEN: No, no, just something you had said
4 there at the end. Based on what I heard and read after the
5 jaguar was caught, it was everybody's understanding that we
6 had a permit that covered that activity?

7 THE WITNESS: Yes.

8 MR. McMULLEN: Did -- my understanding is the
9 permit covered -- or at least the understanding at the time
10 was that the permit would have covered an intentional
11 effort --

12 THE WITNESS: Right.

13 MR. McMULLEN: -- as well and the jaguar walking
14 down the trail, "Boom, I'm caught" --

15 THE WITNESS: Right.

16 MR. McMULLEN: -- and a jaguar going, "I smell a
17 lady" --

18 THE WITNESS: Right.

19 MR. McMULLEN: -- "Boom, I'm caught"?

20 THE WITNESS: And you're right and here's my --
21 and it's likely apparent. My hesitation on that is because
22 in hindsight in questioning our permits and what they
23 authorized people have shed some doubt on --

24 MR. McMULLEN: Right.

25 THE WITNESS: -- the latter and so -- and I -- and

1 I understand where that doubt comes from --

2 MR. McMULLEN: Legally mumbly jumbly.

3 THE WITNESS: Right, but to walk you through, you
4 know, the post capture why we would have thought we were
5 adequately covered would be that our 10(a)(1)(A) permit
6 talks about specific known take that's likely to occur.
7 "We're going to kill X number of Gila chub," or "We're
8 going to do all this with pot minnow," et cetera."

9 It also says we're authorized to do the work
10 that's found within the job statement starting with
11 Segment 18 and any that come after it because that's that
12 window of time. Okay, now, the job statement does not say
13 we're going to kill a jaguar, okay, but it says we're doing
14 to do all these potential efforts. Okay, now, if you take
15 a jaguar during that time it's incidental and we have an
16 allowance for incidental take, okay. This is in the job
17 for jaguar --

18 MR. McMULLEN: Uh-huh.

19 THE WITNESS: -- but if you were to do that, you'd
20 immediately report it because you would have exceeded your
21 permitted number, which in that case would be zero so you
22 have that obligation to immediately permit.

23 Now, where you get into the permit authorizing
24 lawful take is at the very back of the document. There's a
25 -- I shouldn't say lawful take but, you know, it's called

1 -- the section is non-lethal but, essentially, it says that
2 we have the right to use standard capture techniques,
3 traps. I think it say snares. I'd have to look at the
4 wording. It may not say snares, it may say traps.

5 MR. McMULLEN: Or techniques.

6 THE WITNESS: Techniques, standard survey
7 techniques, et cetera, and it basically acknowledges the
8 fact that the Department is authorized to use those
9 standard techniques, okay. So in use of those standard
10 techniques you may unintentionally take something and
11 that's referenced in the Section 6 job statement as just in
12 general we have that right to do that, okay.

13 So then if that -- if those techniques result
14 in the actual take, the lethal take of a jaguar, you would
15 then once again be beyond your authorized number and you'd
16 have to report it, and that's exactly what we did.

17 MR. McMULLEN: Right.

18 THE WITNESS: So the hindsight questions have been
19 does that only authorize work when it's being done because
20 of a threatened and endangered species or a particular
21 job?

22 MR. McMULLEN: Yeah, and, of course, I don't ask
23 that question from the perspective of hindsight. I just
24 ask it from the perspective of what was the likely mind-set
25 at the time --

1 THE WITNESS: Right.

2 MR. McMULLEN: -- we were moving forward? What
3 was the environment at the time we were moving forward with
4 our operations?

5 THE WITNESS: Right.

6 MR. McMULLEN: And it sounds like at that point --

7 THE WITNESS: Here's what it says: In take, under
8 take, section in the back of the work plans called "Take,"
9 and then you get into the subsection of non-lethal take
10 activities and the subsection on mammals, pursuant to this
11 work plan use live traps, pitfalls, gill nets, handheld
12 implements, radio telemetry, other standard accepted
13 scientific techniques to conduct population surveys,
14 monitor population, capture wave measures.

15 So, anyway, it's very, very generic but it's for
16 mammals pursuant to the work plan --

17 MR. McMULLEN: Uh-huh.

18 THE WITNESS: -- and so the real question -- and
19 this is -- again, it could be a lot cleaner and where my
20 comfort diminishes is the work plan doesn't say we're going
21 to do Bear and Lion Study as surrogates for jaguar, but it
22 does say we could implement the jaguar protocols, which
23 talks about capture, and so that -- it says we can
24 implement that (inaudible) --

25 MR. McMULLEN: That's with the intentional

1 capture.

2 THE WITNESS: So it's -- it's clearly described
3 that in the job statement it says we could do that plan and
4 that we have the authority to do it, and it's less clearly
5 described as we can identify and survey potential habitat
6 just within the job itself for jaguar, and there's nothing
7 that says will use a surrogate species but there's nothing
8 that says you can't.

9 Q. BY MR. HOVATTER: It kind of gets to where I think
10 the issues come down to is that for someone very familiar
11 with what -- with our history with this you can connect the
12 dots pretty clearly to why that would be appropriate under
13 the permit, but it doesn't -- it's not -- it doesn't
14 specifically say, "We're going to do this and as a result
15 of that," you know -- and the courts confirm with me -- "we
16 anticipate that this species could be a part of that" -- or
17 there could be a take of this species as a part of this and
18 so it's a little bit -- this says this -- this says this.

19 Logically you can derive from that that this means
20 this and then this means this as opposed to this says this.
21 This work plan specifically addresses how it connects up
22 with the permit. This work plan specifically addresses
23 that one. It connects to the permit. I think part of this
24 as I come across this is the Bear and Lion Study wasn't
25 being done as a jaguar study. We clearly have a jaguar

1 plan component to this work plan.

2 MR. FABRITZ: Or a jaguar work plan.

3 MR. HOVATTER: It's not -- you know, the Bear and
4 Lion Study doesn't specifically address doing that Bear and
5 Lion Study in known jaguar habitat and what a potential
6 outcome could be, however unlikely.

7 THE WITNESS: But, again, and I would caution
8 everybody, especially because we're going to end up someday
9 saying it erroneously in front of the media is we need to
10 learn -- and I do the same thing -- but we need to call the
11 study what it is, which is a Large Carnivore Habitat
12 Connectivity Study and that description can include --

13 MR. HOVATTER: Good point.

14 THE WITNESS: -- jaguars and even though we were
15 focused on capturing bears and lions to study habitat and
16 connectivity, the purpose was large carnivore habitat
17 connectivity.

18 MR. McMULLEN: I hadn't heard it referred to the
19 way you did and that's a good way to say it and that's
20 surrogate.

21 THE WITNESS: Yeah.

22 MR. McMULLEN: The bears and lions were a
23 surrogate study for --

24 THE WITNESS: Again, I wouldn't get yourself in
25 trouble by saying we intentionally set about to do a study

1 for jaguars and chose bear and lion for a surrogate. What
2 we decided to do was study large carnivores and their
3 habitat connectivity in the border areas because we're
4 concerned about it. The results of that study is certainly
5 applicable to how we would know or manage jaguar, but we
6 had no intentions to going out and actively capturing a
7 jaguar to do that kind of study. We were going to focus on
8 bears and lions to do it for their own purposes and for the
9 purposes of habitat connectivity, but it's very applicable.
10 The knowledge you would gain there is transferable to
11 understanding and management of the jaguars.

12 MR. McMULLEN: Definitely.

13 THE WITNESS: I wouldn't say we're doing this
14 because of.

15 Q. BY MR. HOVATTER: So we do have a work plan for
16 that large carnivore study?

17 A. Yeah.

18 Q. And the question then -- I think what it comes
19 down to is it's just that -- I think the language, as I've
20 understood it in that is not -- doesn't make the clear
21 reference to what the jaguar relationship in that study
22 is.

23 A. And it probably -- I haven't read it. It may
24 not. It may not because it really wasn't do this because
25 of this, but they're connected.

1 Q. Yeah.

2 A. And, actually, in the five-year goals and
3 objectives this is nitpicky because we're in the -- we're
4 in the job statement that is called rehabilitate -- no, I'm
5 sorry. Where can I find the name of it? Oh, "Endangered
6 Cats of the Southwest." So it's all about endangered cats,
7 but in the five-year goal and objectives it says use
8 standard scientific techniques to monitor movements of any
9 cats occurring in Arizona.

10 Now, obviously you could read that to mean any of
11 the endangered cats that the job's all about, but you could
12 also say --

13 Q. Mountain lions, bobcats.

14 A. -- any cats in Arizona because it's relevant to --
15 MR. FABRITZ: That's how I read it.

16 THE WITNESS: So the permitting, in my mind, is
17 there. It's just -- it could obviously have been much
18 stronger and we obviously wouldn't be in this situation,
19 the wording.

20 MR. HOVATTER: Yeah, and it's clear when you look
21 through all of the stuff you see that this is not just in
22 the last year. I mean, there's clearly articulation all
23 the way back to the mid '90s about that we have permit for
24 unintentional take and we have permitting that covers
25 that. We've had several triennial permits since then and

1 there's -- so, I mean, the record clearly demonstrates that
2 we certainly were operating with the presumption that we
3 were doing this appropriately.

4 MR. McMULLEN: Yeah.

5 MR. HOVATTER: The problem we have now since under
6 this kind of heat-like pressure, you're gonna parse out
7 word by word every sentence in things like this it's not as
8 abundantly clear.

9 THE WITNESS: Right.

10 MR. HOVATTER: Anything else you guys want to ask
11 about? Eric, I really think we're done, you know, with you
12 for this part of this thing; but, I mean, there's always
13 the potential that we may want to ask for some
14 clarification on something later on down the road --

15 THE WITNESS: Sure.

16 MR. HOVATTER: -- but I think we're done. We --
17 clearly, one of the things, one of the outcomes we're
18 looking for with this is beyond just understanding exactly
19 what happened to the extent we can. It's looking for the
20 lessons learned and then how we're going to translate that
21 into new process, new procedures or adjusting our process
22 and procedures.

23 We prefer not to have some new, you know, large
24 body of new policy emerge from this thing and where we can,
25 clearly, you're going to be a significant part of when we

1 decide to sit down and put pen to paper as to how we're
2 going to adjust training, education, process,
3 communications process and all the other things that are
4 involved in this.

5 THE WITNESS: I guess one thing I would add is
6 when we bring people into such important positions as
7 management team with all of this potential liability and
8 certainly the responsibility I don't think we have a
9 training -- we do not have a training mode that describes
10 the management team, their responsibilities and what it is
11 their expectations are. We just kind of congratulate them
12 and pat them on the back and it's trial by fire.

13 MR. HOVATTER: That's a damn good point.

14 THE WITNESS: I had a draft of the position
15 resource file -- you know, it's been written a couple times
16 that I passed on and I could pass on to the people that
17 need to be, but when I took the job I didn't have even
18 that, you know. One of the things we frequently do is
19 promote and say, "All right, go ahead and succeed. I'm
20 here to help you if you need questions," but we might want
21 to take a little more familiar approach with acknowledging
22 the level of responsibility management has.

23 MR. HOVATTER: Yeah, I think you're quite right.
24 I think you promote into the management team and there's
25 some -- at least in the way we do it you have to build a

1 case that you're presuming all the experience you had and
2 all you've done getting there is sufficient to carry you
3 through successfully. That's certainly not -- that's kind
4 of leaving a lot to chance.

5 THE WITNESS: You may have been the best apple of
6 the bunch, but it doesn't mean you were ripe.

7 MR. McMULLEN: All right.

8 MR. HOVATTER: All righty, sir.

9 THE WITNESS: You know where to find me.

10 MR. HOVATTER: Yep, sure do. Thank you, Eric. We
11 really appreciate it.

12 (End of transcription.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing 80 pages constitute a full, true and accurate transcript of all the taped proceedings had in the above matter, all done to the best of my skill and ability.

DATED at Phoenix, Arizona this 17th day of August, 2009.

Jeri Keres
Certified Court Reporter

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2 5000 WEST CAREFREE HIGHWAY
3 PHOENIX, ARIZONA 85086

4 TRANSCRIPT OF INTERVIEW
5 ERIC GARDNER
6 AUGUST 10, 2009

7
8 Individuals present at the Interview on 8/10/09:

9 Gary R. Hovatter, Arizona Game and Fish Department, Deputy
10 Director, Interviewer
11 Marty Fabritz, Arizona Game and Fish Department, Ombudsman,
12 Interviewer
13 Craig McMullen, Arizona Game and Fish Department, Wildlife
14 Manager, Interviewer
15 Eric Gardner, Employee

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EXAMINATION

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BY MR. HOVATTER:

Q. Eric, we are still under the Garrity conditions we started with on this. Do you need me to reread those?

A. No, I understand those.

Q. All right. You know what, hopefully, we got a picture over the weekend of a female and two cubs running in the Kofas.

A. Oh, yeah.

Q. Yeah. So if we thought Camo 4, counting him one every ten days was a treat.

A. Momma, is going to have a lot to take care of.

Q. Where she had been running -- where she is, where these photos came from was where Macho -- where Camo 4 has been running for the last five weeks. We wondered if he hadn't linked up with her.

Eric, these are all process questions, and we have a very short list. We haven't been able to successfully translate that in a long time anyway.

A. That is all right.

Q. Research Branch, their annual job statement, is that vetted against a 10(a)1(1) permit?

A. No. If they have an annual job statement themselves, it is not sent to me for a review to compare against or what has been permitted if that's the question.

1 Q. Yeah. Yeah, it is.

2 A. They are sent our Section 6 job statements
3 annually for input to insure that the work -- that it meets
4 the needs of the work they are doing. So it is kind of the
5 180 has been the process.

6 MR. MCMULLEN: You send it to them.

7 THE WITNESS: Yeah, they don't say, here is our
8 job statement. Does our permit cover this? We are saying
9 we are developing our new job statement. Do you guys have
10 any input? Make sure it covers your managerial guys.

11 Q. BY MR. HOVATTER: See, there is your job statement
12 for Non-Game?

13 A. Yeah.

14 Q. Which still has quite a bit of latitude within
15 each --

16 A. Oh, yeah.

17 Q. -- job statement. There is your work plan?

18 A. Yeah.

19 Q. This is Research Branch's version of what you do?

20 A. Yeah, a lot different. That is just one of ours.
21 Our Non-Game Subprogram Operational Plans has that
22 statement, too, but it is not a permit.

23 Q. So the question -- I guess the question is and
24 part of what we are looking at process wise, given the
25 outcome we had, does that make sense that we don't have

1 something that requires them, you know, to come to you --

2 A. Uh-huh.

3 Q. -- as our, for want of a better term, manager of
4 that permit to make sure that it matches up?

5 A. Yeah, it makes sense to look at that again. My
6 simple recommendation would be that every project evaluates
7 any potential take for a T and E, and if they think it
8 exists, they should identify where in an existing permit it
9 is authorized. It should be standard.

10 Q. Eric, I know that some of this sounds like you are
11 talking out of school, but I mean, you are one of the senior
12 leaders in the Department, so, I mean, we have got to -- if
13 it sounds like I am asking you to beat up on Research
14 Branch, that is not the intent, but I don't really care
15 because I have got to drive this into the ground.

16 If I brought you this and I said, hey, is this
17 okay from the standpoint of the 10(a)1(a), could you, in
18 fact, make anything of that?

19 A. Not on a take basis for a T and E. When you look
20 at these, the manager-conducted internal study, I mean, the
21 history as we write these -- I am not sure about Research's
22 history, but a lot of these things are written very
23 generically so we can do absolutely everything and anything
24 we can with the money we get. And that comes from a culture
25 that wanted that, you know, it is how they were driven.

1 But to be able to say does the study of wild
2 birds, mammals, and their habitats possibly result in a take
3 issue for Sections -- for our ESA permits, there's no way I
4 could pull that out of there. I'd have to just say, well,
5 for birds, any chance you are going -- well, even if you are
6 doing a mammal study, you have a chance of taking out a
7 Condor.

8 Q. Well, they are doing 90 research projects under
9 this job statement?

10 A. Yeah. Yeah. That is pretty large.

11 Q. Am I right in assessing that this is a safeguard,
12 that this performs the function of your -- I mean, this
13 thing -- this thing seems to me to still have quite a bit of
14 flexibility in it while still having a useful amount of
15 detail?

16 A. Oh, yeah, yeah. I will tell you why I hesitated
17 is because I am trying to figure out when you say does it
18 perform the same?

19 Q. Well, because Research Branch isn't your branch.

20 A. Yeah. Well, you are asking if it performs the
21 same function. There is a long history of documents that
22 perform different functions. There used to be these things
23 called five-year narratives, which I never wrote. They
24 existed during my time, but not as Branch Chief. Those have
25 kind have been cast aside because we went to the CMS,

1 Conference and Live Management System that we use for our
2 funding, right.

3 Okay. So those are now annual job statements, and
4 I believe that is what this is. Okay. And my understanding
5 of this, since it is the same with that, is we have to
6 commit to the Feds, and in some cases, like with Heritage,
7 we play the same game, even though we are not sending it to
8 the Feds, we have to tell them what it is we are going to do
9 with that money so that they have an opportunity to tell us
10 if it is legitimate or not. And then we can report back on
11 there for our progress or lack thereof.

12 We do that in several ways in Non-Game because I
13 have multiple fund sources. I do it with Section 6
14 primarily for how we are going to spend the money, but the
15 caveat is we do it for everything because we tie it to our
16 10(a)1(a) permit, but I do it for SWG. I have a State
17 Wildlife Grant job statement, sometimes two, because there
18 is carry-over. I have a W-95 statement. And some of those
19 are, like a W-95 is like five bullets, it is pretty broad.
20 It is Federal money. We are going to spend it to study
21 non-native or native birds and mammals, collect photos, you
22 know, it is really basic stuff this one is much more
23 detailed because it is tied to our permit.

24 Q. Well, the question, of course, is that clearly we
25 have it tied to the permit through some of their work. And

1 this, like I said, covers -- granted this is only three out
2 of 17 pages, but if I had all 17, it is still not going to
3 be --

4 A. It would depend on -- how many projects? 90?

5 Q. 90.

6 A. If 90 made the connection to that, I wouldn't care
7 that this can or does or doesn't, but if they don't, then
8 this --

9 Q. Well, some of those 90 projects don't have a
10 research plan associated with them or --

11 A. Chasing money.

12 Q. Yeah. Yeah. That is it exactly. You can see
13 there is a certain evolutionary kind of line that those
14 things get on where you kind of wake up and realize that you
15 are in a different place than maybe where you started.

16 A. You wake up and realize you have got a project
17 because you have been finding a way to fund it for two
18 years. Now, it is real. Somebody is wanting the data.

19 Q. My sensing as I look at this is that, and again,
20 that an approach like this is very unlikely to have the kind
21 of outcome we had with Macho B. I mean, you could always be
22 defeated by things that you don't expect to have happen, but
23 it seems to me that this rather clearly drives you into the
24 10(a)1(a) permit in such a way that you have got a much
25 higher likelihood of recognizing the potential and then

1 doing something in your project plan --

2 A. Right.

3 Q. -- to avoid the bad outcome? Well, I was going to
4 ask you this, but really there is no way for you to answer
5 this question because you don't have enough insight, I don't
6 think, in the Research Branch's projects on a day-to-day
7 basis to know if there's another jaguar situation out there
8 in one of those. And no one can tell me that there isn't?

9 A. I can give you feedback. I know one, and you are
10 probably aware of this, and certainly Chasa is, too, and
11 others have been working on it, and they called me to fix
12 it, but the EA checklist is going through right now to do a
13 Bear and Lion Study in the White Mountains in wolf country.
14 And Chasa --

15 Q. Wouldn't that be a treat?

16 A. Yeah. Chasa was right on top of it, you know, she
17 signed off on it, but said, how come Wolf doesn't show up in
18 the HTMS assessment for an EA checklist? And then she
19 kicked it to me, and I went and asked the same question, you
20 know, what is the deal? There is an answer, but it is a
21 flawed answer, just to be up front and honest with you.
22 They don't track them in HTMS because they are 10(j)'s, so
23 they are experimental, non-essential.

24 And everybody is conceptual, and that was my
25 point, I said, it doesn't matter. We can have a legal out.

1 Is it a headline out, if one of the biologists are
2 evaluating a potential loss of a wolf because we didn't even
3 ask the question? I said, that is the headline failure
4 right there, but even that is not why it is flawed. It is
5 flawed, because in my opinion, people view 10(a)1(a) -- or
6 10(j)'s as experimental or non-essential, therefore, they
7 are not supposed to impact other management activities.

8 That is the standard language in ESA under 10(j),
9 but when you go through a two-year EIS development or
10 whatever, process to develop a project, that is the law, and
11 the wolf one very specifically says that it will not be
12 considered a non-intentional or unintentional take if traps
13 are used and it was unavoidable. And there is some
14 terminology in there.

15 So here we are on a project we are about -- yet,
16 again, Chasa is the first one who daylighted it. We are
17 about to embark on a project under our belief system that we
18 don't have to worry about wolf because it is 10(j), and it
19 is 100 percent wrong. So we are pulling together, me --

20 Q. And there is a project that we have had that much
21 visibility on for this many years, and we still have that
22 kind of a -- which leads you, of course, to wonder -- now,
23 granted, I am not sure we have a disaster with the
24 Chiricahua leopard frog, but it is part of this magnitude,
25 it does lead you to ask the question. And now with that

1 release south of -- on the border --

2 A. Totally changes things.

3 Q. -- we were talking that we really need to put some
4 money together, talking with Milsap, we need to put some
5 money together to make sure every wolf that they release has
6 a collar on.

7 A. Yeah.

8 Q. Because otherwise they get north of the border
9 without a collar on them, and the concern is that they are
10 fully ESA protected. Any of our uncollared wolves -- we
11 have to consider any uncollared wolf in the 10(j) area, and
12 then an immigrant from Mexico --

13 A. Well, every other project that we are doing, to
14 date really hasn't had to worry too much about wolf,
15 although I think we should even more so, but it hasn't
16 because of that 10(j) status. It has a whole new level of
17 concern. I mean, we weren't worried about activities we did
18 down near Nogales because of the wolf program. Even if
19 something did happen, we likely had some blush of cover
20 because the 10(j) wolf.

21 Q. I am sorry. We didn't mean to catch that wolf.
22 We were trapping for jaguars.

23 A. But, certainly, on this new issue, we do have a
24 meeting pulled together with Habitat Branch to talk about
25 this very issue. Basically, what it is going to result in

1 is somebody needs to do an assessment of all of our 10(j)'s
2 and what is allowed for and what is not legally. But, then,
3 we also have to ask ourselves headline tests. It doesn't
4 matter if we captured a wolf and killed it unintentionally
5 and we were permitted for it, would that -- with everything
6 else that is going on.

7 Q. And, unfortunately, the problem is that would it
8 be the same answer if we caught a wolf and did that and we
9 never caught Macho B?

10 A. Yeah.

11 Q. You could just see kind of the drum beat that gets
12 started. The drum that gets beat on, Arizona Game and Fish
13 just they are out of control.

14 A. We aren't likely to kill a wolf anyway. They can
15 use just snares. They put snare stops on them. They can
16 use bucket snares. There is all kinds of options that would
17 result in a legal take. But, anyway, your question, other
18 than that, I have very little insight on the 90 projects,
19 but that one in particular begs addressing before we move
20 forward.

21 Q. This is something and this is -- and I am asking
22 this of you and a couple of the other Branch Chiefs that I
23 am talking to. Is there any coordination during the course
24 of the development of this or in the aftermath, any sort of
25 back brief or involvement of the Information Branch -- I

1 think you know this -- for them to be looking at this for
2 opportunities to mine or looking to mine opportunities for
3 telling some of our story for beating our own drum and also
4 looking for the potential for bad outcomes --

5 A. Right.

6 Q. -- where outcomes where they ought to have --
7 because with this level of planning, if there is a bad
8 outcome that we foresaw was not a wholly unlikely outcome,
9 then we can't really build a case that we were wholly caught
10 by surprise, and we should have had some information on
11 this?

12 A. Right. The short answer is no. We don't take
13 that document and say, okay, now, let's look at it through
14 an I and E lens. We do some other stuff, which I think fits
15 the bill, but maybe not as cleanly as that, and that is, in
16 fact, I just asked just today at the Sun Buck
17 Tatic(phonetic), we are pulling together a calendar of
18 events for the year to share with I and E that they can use
19 as media outreach, but they are the ones that we think might
20 be good media outreach. It is not a thorough review of
21 everything we might be doing, so they are not looking at it
22 through a colored lens, too, to see if there is problems.

23 Q. I think I like that approach to it, you know. I
24 was using the Bald Eagle Program today as an example of what
25 we are kind of missing the boat on. It was another story on

1 the front page of the Arizona Republic on the Bald Eagle,
2 and that is not by accident.

3 A. Right.

4 Q. You know, we did a really superb job on heading
5 off the Center from where they clearly wanted to go back, we
6 were talking about the delisting. It doesn't mean we are
7 out of the woods on anything yet, but it does mean that we
8 really did kind of knock that -- knock them off their game
9 on what I think they would have preferred to do, which is to
10 build up their own sort of drum beat about that.

11 A. Right.

12 Q. Then we haven't just said, okay, we won. There
13 has been at least once every month or two months at a
14 minimum, something else pops up. It may be in this part of
15 the paper. It may be in this news organization. But there
16 is always something that pops up about this talking about
17 the Eagle Program, and it kind of keeps the Eagle Program in
18 the public eye as a success story. It kind of never really
19 gives the window of opportunity for the Center or some other
20 entity to kind of jump into the middle of that and try to
21 take it over.

22 MR. FABRITZ: Yeah, keep that in the forefront.

23 THE WITNESS: The other thing we are doing is our
24 operational plan, which is really more -- again, that is
25 written more for if you want to spend the money or make sure

1 we are permitted, but we have our two-year op plan. That is
2 also shared with all the work units. And you know as well
3 as anybody, that the few benefits and the multiple families
4 of our cross programs efforts, and certainly, I and E has
5 the opportunity to provide input, review, and we make those
6 cross linkages in our operational plan, but to say that that
7 functionally does what you asked about, it would be a
8 stretch.

9 Q. BY MR. HOVATTER: Well, the thing about it is, is
10 there is -- I am just kind of intrigued. I am just thinking
11 about it. I am just kind of interested in it, because, you
12 know, in thinking about this from my old line of work, you
13 know, if I just had this and dug through it, I could take a
14 few pages of notes, and it is just in the back of my mind, I
15 would have that.

16 A. Yeah.

17 Q. Yeah, just keep that in the back of my mind, and
18 maybe go and get a couple of Q and A's done, a couple of
19 questions in case you ever got asked about the program, just
20 to have that reloaded. But this is really not specific to
21 your branch and all, but I was just thinking about this from
22 your experience in the Department, there was no visibility
23 on this Bear and Lion Study at the Executive Staff level.
24 When you go through it, nobody from ESA ever shows up. I
25 mean, not even the WMD Chief doesn't show up. I mean,

1 nobody ever shows up?

2 A. On the Bear and Lion Study.

3 Q. On the Large Carnivore Habitat and Connectivity
4 Study.

5 A. Right. Right. Good. Good use of the --

6 Q. Try saying Emil e-mailed about 25 times in a row.
7 Is that from your experience, again, it is not your project,
8 it is not your branch, but from your experience, is that --
9 unreasonable is not the right word. Is it unrealistic to
10 expect that something like that would have E staff level of
11 visibility? We have got a lot of projects. We got a lot of
12 things going on every day.

13 A. It surprises me that it doesn't. And that is why
14 I am, again, pondering versus rushing into an answer,
15 because it is my understanding, and it is a limited
16 understanding of this project, is it is one that grew out of
17 commissioner desire and interest and involvement, you know.
18 So somewhere along the line to think that the WMD, ADE, you
19 know, wouldn't have been plugged in at some level would
20 surprise me. So when you say visibility, you mean their
21 name is not on a document or not in the --

22 Q. Well, we are not in the e-mail flow. I mean, when
23 you look at -- when the thing got briefed for approval,
24 essentially, of their work plan --

25 A. Uh-huh.

1 Q. -- it was one blurb among many in a memo,
2 commission memo, for the main bush meeting.

3 A. Yeah. And that is really my limited understanding
4 of it. So I hesitate to say, but I guess it seems to me the
5 broader perspective is that Executive Staff should darn well
6 be plugged into the visibility of determining what our
7 priorities are and where we are headed with research and why
8 we are doing it, what we are trying to accomplish, and we
9 need that. And the Department has always needed that.

10 You know, I know it is probably dirty terminology,
11 but chasing the money, for lack of a better way to say it,
12 and we have got a crew of people, and I say we, meaning the
13 Department, who are worried about keeping employed, and
14 there's people tasked with finding the cash and making it
15 happen.

16 Q. Yeah.

17 A. And Chasa has tried to work a little closer by
18 going work unit to work unit, Richard did it, to try to
19 generate a list, because some of the funds, they have some
20 ability to decide where they go, but many others are truly
21 contract. But the question is why did we seek the contract?

22 Q. That comes in, you know, if we have a contract
23 that is not focused on answering a question that the
24 Department thinks is important to get the answer to, to
25 build the question, why are we doing it, other than to do it

1 so we can, in fact, do it?

2 A. Keep our people on or whatever it may be.

3 Q. Which is not unimportant. You know, you also
4 build a case is that, you know, if we say we are not
5 successful in getting money for answering that question, is
6 it because there is lower-hanging fruit that we know we can
7 get that is not related to any particular question that is
8 of importance to us, and if those were -- if we kind of
9 walled those off and said, no, not until you try harder on
10 that. Would we be more successful in doing that?

11 A. Right.

12 Q. And I don't know. I mean, the problem is there's
13 a downside to finding out for sure.

14 A. Sure. Yeah, exactly. Well, so I don't know if I
15 could answer your question any better. It seems to me --

16 Q. That's about it. And, again, this is not your --
17 I am asking this from your perspective as a pretty senior
18 guy in the Department. You are a very experienced guy in
19 the Department. But, you know, there's some parts as we
20 look at this project, one of the terms that comes up all the
21 time is from a number of -- is cats is cats. And as we dig
22 into it, there is this issue about surrogate study for
23 jaguars, and it creeps in and out.

24 And then we start digging into some of the
25 literature, and it kind of looks like a mountain lion

1 may not be a very good surrogate for a jaguar. When you got
2 these two, you know, top lion predators that overlap almost
3 all their home ranges, their ranges in the western
4 hemisphere overlap, you build a case that if they were, in
5 fact, there was a close surrogacy opportunity here, then
6 probably jaguars would be killing a hell of a lot of
7 mountain lions if they were in that kind of a
8 competitiveness.

9 The surrogacy would almost seem to grant
10 competition. You really don't see -- you get the sense that
11 jaguars are a lot more cross-compartmentalized in the way
12 they use to range. They tend to go to more rugged terrain
13 it seems what they favor, and they are very successful.
14 They are not so much a natural line, kind of following sort
15 of a perimeter. But yet through the course of what we did
16 on some of this, there's a part of this is just, well, cats
17 is cats, and this would make sense, the issue about the use
18 of jaguars scat.

19 A. Right.

20 Q. The ultimate irony seems to be the research they
21 have been doing on jaguar scat DNA. So far none of the scat
22 turned in has actually been jaguar scat. It appears from
23 some of the research the jaguars don't have scat stations
24 the way lions do. So at the end of the day, the ultimate
25 irony of this would be that some of the work that was --

1 some of what had happened, if it happened as alleged was
2 meaningless from the standpoint of being of any value --

3 A. Right.

4 Q. -- other than to create the perception of this,
5 you know, evil, unethical act has occurred?

6 A. Yeah.

7 Q. But this is the long way of getting that. Do we
8 have -- is there any value for us having any kind of a
9 vetting sort of peer review process for some level of our
10 grants or research projects to take a look to determine,
11 does, in fact, the hypothesis of it being possible, or does,
12 in fact, the question that we seek to answer through this
13 grant approach, in fact, matches up with the best science
14 available, matches up with the current state of the
15 literature, matches up with -- pick something?

16 A. Right. Right. It is a good question. Without
17 building too much of bureaucracy, I would like to say yes.

18 Q. That's the problem.

19 A. I'd also like to say you are never going to get --
20 we send our qualified stuff out for peer review, and it is
21 split two to three with Hoffmeister making it three to three
22 from the original data, and that is pure -- so, you know,
23 you may not ever get a clean answer. Then the other
24 component is a lot of money that Research Branch spends is
25 because SRP or CAP or whatever has a specific objective.

1 They have got to do -- they have got to monitor something or
2 they have got to do whatever. And if we were to peer review
3 those projects --

4 Q. You might come down and say, yeah, we can do it,
5 but it absolutely has no value answering the question, you
6 know.

7 A. But I would say it has its place, you know, I
8 think if we are doing it, if we are truly doing pure
9 research, and we are saying the Department is taking a lead
10 on this activity, we want to conduct this type of research,
11 then we better be getting good research, and that should
12 involve some level of --

13 MR. MCMULLEN: Define study plan. Part of a study
14 plan is the literature search.

15 THE WITNESS: Yes.

16 MR. MCMULLEN: To kind of get what you are talking
17 about, a literature search is a bit of a peer review.

18 Q. BY MR. HOVATTER: Well, the fact there was no
19 study plan for this project is part of the challenge.

20 A. Yes. Yes.

21 Q. And, again, not your branch, this is just your
22 insight. I should probably just kind of say all of this is
23 not your branch, but looking for your insight because it
24 brushes up against some of the things you do. Do you have
25 any thoughts on why there isn't a requirement for Research

1 Branch to vet their projects against a 10(a)1(a) permit?

2 A. Yeah, I do. And I say it is probably because the
3 culture, the understanding within the agency has been that
4 we have a very thorough, well-vetted process with the Fish
5 and Wildlife Service to have our extensive 10(a)1(a) Section
6 6 permits that basically allows the Department to take care
7 of business.

8 And, you know, for the most part, I think
9 everybody has felt comfortable that we had coverage to, you
10 know, a pretty high degree, and the process owner of that
11 permit has contacted them annually to ask them for their
12 review and make sure their activities are covered.

13 So I think on the big scale, they are thinking, we
14 have a permit. Every year that comes out. Tony looks at
15 it. Bill looks at it. And they tell me if they said we
16 need to collect a list or do something different that is not
17 in that permit, they are going to suggest that as an edit.
18 And the history would be that it has been embedded
19 at that point and gets incorporated. So for those two
20 reasons, I would say, you know, that people would have been,
21 maybe ignorantly so, but comfortable that their needs are
22 being met.

23 Q. Should there be -- should E staff have any kind of
24 a role on what is in the annual work statements for the
25 Research Branch CMS's? That is what they call theirs are

1 CMS, or that is what they call this.

2 A. Yeah. Comprehensive Management System is when all
3 the Federal, you know, I am sure I am preaching to the
4 choir, but all the Federal funds generally, but SWG's not,
5 went under that CMS became very generic and broad. That is
6 what brought us to our three-tier plan, because of that, we
7 have to step down, and that's an important component. Any
8 suggestion of what level you find in this document, is if
9 this document is authorized to be broad and general, that is
10 okay if it is under CMS because there's an understanding
11 that there is the next tier down that is going to provide
12 the details that are at this level. So with that said,
13 should Executive Staff be involved in it? It would take up
14 all your time.

15 Q. Yeah.

16 A. So at some point, you know, I guess,
17 unfortunately, there needs to be a trusted personnel, not
18 unfortunately, but there just needs to be because of
19 workload. However, should E Staff provide some type of
20 direction annually or some type of guidance to the
21 development of these might be very valuable.

22 I mean, I know I came into my position with
23 absolutely no class on how to do your job statement, what it
24 meant. I basically crouched at the table of Annie and Sonia
25 and others to learn what I needed to do and re-upped on what

1 had been done in the past, and you learn from seeking out
2 information, and some people are better than others and some
3 are better at providing it to you than others.

4 So Executive Staff's role, I think, in elevating
5 the significance of these, the side boards of these, when
6 you might want it to come to E Staff, if there's any type of
7 change --

8 Q. Well, I mean, as I read this, I mean, I read some
9 of these questions a couple weeks ago, and, you know,
10 looking through this since then and thinking about it, I
11 don't see how you could -- I don't see how usefully E Staff
12 would dig into that and without having to become almost a
13 full-time job.

14 A. Yeah.

15 Q. Then you have got everybody trying to brief E
16 Staff on something that E Staff is probably not going to
17 have the directest level of knowledge to really --

18 A. It would be like development of the annual
19 budgets, but it would be right in the mix of that and before
20 and after, and then it would shortly be followed, okay, if
21 you do that, you need to be involved in the second half of
22 this performance reporting that comes out at the end, you
23 know, there's a whole other can of worms here. Everything
24 we write in that document right now to send in at the end of
25 the year as a performance report is potentially a headline

1 finding or a non-issue or a headline test. I mean, these
2 don't just sit. Sorry to do this to you, but they are not
3 just done there. Then you report on them annually. Then
4 they get submitted. That's public record and everything you
5 write in there has potential to be overlooked or reviewed
6 or it would be a full-time job.

7 Q. Yeah. Okay. No EA checklist was done on this
8 project. From your perspective, and you don't have perfect
9 knowledge of this by any stretch of the imagination, but
10 from what you have seen at the outcome, do you think that an
11 EA checklist might have headed off where we got on this?

12 A. Yeah. Could I qualify that?

13 Q. Yeah.

14 A. I am just remembering what I said in the previous
15 conversation, which still holds true today. It is easy to
16 have all of the facts in front of you afterwards and just to
17 come to a clear assessment. It might have, but up until the
18 fact that the day that we captured Macho B, we had never
19 snared a jaguar. And I don't know that the EA checklist
20 would have identified it as a very likely risk, and we may
21 have very well said, yeah, it could happen, but my gosh, it
22 has never happened before. So it still may have been signed
23 off on a project based on that.

24 MR. MCMULLEN: I think you are probably right
25 given even the approach you mentioned on the pending White

1 Mountain study, the 10(j) study, where they didn't even show
2 up.

3 THE WITNESS: Jaguar would because it is not a
4 10(j), but it is minimal, you know. It hadn't been there in
5 two years.

6 Q. BY MR. HOVATTER: Of course, the other part of it
7 is, we have a very, very detailed protocol for a deliberate
8 take of jaguar --

9 A. Yeah.

10 Q. -- excruciatingly detailed. We have no protocol
11 for operating in a large mammal, large endangered mammal
12 area.

13 A. Yeah.

14 Q. How do you vet what you plan to do, do a risk
15 analysis of what your potential risk for having -- catching
16 a wolf, catching a jaguar in this project? And how do you
17 then -- what is, for example, too close in space or time --

18 A. Right.

19 Q. -- for you to continue to operate the way you
20 operate? Now, because the thing we haven't done is factor
21 in, okay, the likelihood is low historically. Now, a photo
22 shows up that is two weeks old four miles from your trap
23 set -- no, actually, two miles from your trap set. Has the
24 circumstances just changed? What tells you? Now, the EA
25 checklist probably doesn't get you there.

1 A. It makes you look at it.

2 Q. But, certainly, that has you factor in, and the
3 thing about this is if we are going to have these type of
4 larger endangered species that are going to be a part of our
5 normal, you know, potentially part of our day-to-day,
6 finding a track 200 yards away from your snare set of this
7 endangered species, that should cause something to happen.
8 Right now what it caused to happen is an individual person
9 on the ground's judgment kicked in, and they had no tool.
10 They had no nothing, but their personal experience with an
11 animal that no one in the United States has ever captured
12 before, not captured and released anyway.

13 And that doesn't stand us in real good stead
14 sometimes as opposed to having somebody who says, well,
15 look, if it is closer than five miles, if it is based on
16 literature search and other things we know about, the life
17 history of the animal, so if it is closer than ten miles and
18 it is within fresher than ten days, we shut down the snare
19 line. You take the snares out of service.

20 A. Well, the other part of this, too, and I don't
21 know -- I honestly don't know in the Federal world how our
22 EA checklist sits. Certainly, like a FONZI(phonetic) or
23 even an EA or an EIS where they make a decision, they don't
24 have to make the right decision. They just have to show
25 they evaluated a potential. I don't know how our EA

1 checklist sits in that arena, really in the Federal world, I
2 don't really know. But even if we had moved forward with
3 this project, at least we could have said we recognized that
4 as a potential, and we said the protocol would be
5 implemented.

6 Q. At the same time, if we would have checked and we
7 would have -- part of this, I think, undoubtedly, we would
8 have come out of this and said, let's make sure our permit
9 is square. Now, of course, having said that, you know,
10 twice I asked the Director of Region 2, you know, our belief
11 is, is that our permit is good for both intentional or
12 unintentional take. And his answer is, yes, it is.

13 A. Yes.

14 Q. And, now, we are getting into maybe not so fast,
15 you know, so I am not sure that would have saved us either.
16 We would have asked the question. It would have sure been a
17 nice little due diligence thing to have had. I hate to call
18 it a cover your ass thing, but I think from the standpoint
19 of asking the right questions, you know, I haven't thought
20 about that, how close is too close in space and time? The
21 problem with that is, everywhere you don't have a camera is
22 another place a jaguar could come into your trap set. I
23 mean, how the hell do you know?

24 A. You have to have a camera set for a month before
25 you trap it. You can establish guidelines. We do it for

1 tortoise. We do for whatever it may be, asking -- an EA
2 checklist of this program should have at least identified
3 the potential to take jaguar. It would have identified the
4 protocol. It would have at least have had a caveat that the
5 protocol would have been followed, may have generated
6 further insight and review.

7 Q. You know, the Jag Conservation Team guys for the
8 Department never got brought into this loop.

9 A. Yeah, right.

10 Q. You know, it is just -- but you are right, too, I
11 think part of what I take from that, too, is it doesn't --
12 the likelihood of us getting the perfect protocols for how
13 to operate when there is a potential for an unintentional
14 take, we would unlikely be -- it would be unlikely to be
15 perfect, but they would have been reflective of some thought
16 in the process so that at least our folks aren't wholly
17 unarmed when they are down on the range, and they run into
18 there is a jaguar trapped. Now, what?

19 A. Yes. I mean, in planning, there is no possible
20 way to address every iteration.

21 Q. It is like I you used to tell my vets, I said,
22 okay, you know, we can have perfect equipment, perfect
23 training, perfect planning, perfect execution, and still
24 die, because the other side of this equation have their own
25 game plan.

1 A. I came to that realization, that was the day I
2 quit fanaticizing about being a soldier when I was a kid,
3 you know. I used to think, oh, it would be really good do
4 it all and survive, and then I started watching the better
5 movies that depicted war. And it just really didn't matter.
6 It was a numbers game. There is 200 running across the
7 field, and 75 of them fall to the ground dead. It had
8 nothing to do with skill, talent, planning.

9 Q. That's the kind of thing, you know, what throws
10 you as you look, and Richard Kipling wrote it, talks about
11 ten thousand pounds of military education falls to, you
12 know, to a penny piece of Afghanistan lead. He was writing
13 that 175 years ago. And, you know, when you see guys --
14 that's the thing, when you see guys -- when you are seeing
15 somebody that is so alive one minute, and then 105 grains of
16 lead, you know, and it doesn't matter.

17 A. No. No.

18 Q. In your experience, how do we arrive at the
19 decision whether to do an EA checklist or not?

20 A. We talked about this one the last time, and I
21 think we would be hard pressed to say, here is what we did
22 to arrive at a decision to do an EA checklist or not. That
23 doesn't exist. We do an EA checklist because project
24 proponents generally are aware of the need. They decide to
25 go do something or thinking about what it is going to mean

1 with their partners. They realize they need to when they
2 kick it off, but I don't know that we have a process that
3 tells us how we arrive at the need to do an EA checklist.

4 Q. Are you describing what you know to be the way you
5 run Non-Game or are you describing Research or do you have
6 any insight on how Research works?

7 A. I think it is everywhere, you know I remember it
8 from field office as well. I mean, we did stuff in the
9 regions, we didn't have a clue.

10 MR. FABRITZ: Just sending somebody out in the
11 field.

12 THE WITNESS: Nobody talked about do we need to do
13 an EA checklist or not, but, you know, if it was a project
14 being generated by a Fish person or Habitat, they may have,
15 because they had been to that NEFA training or they
16 interacted. The same with us, I have project leads, though,
17 and they know that's their role. They are going to be fish
18 stocking. They are going to do something. They know there
19 is an EA. They just know it, so they do it.

20 Q. BY MR. HOVATTER: Now, see, you described that in
21 way that makes sense to me, and it is not -- let's just say
22 it is not the way the whole Department runs. The part of
23 what I wonder about is whether or not there wouldn't be
24 merit in having set kind of an EA cover sheet checklist that
25 just, you know, that just requires kind of some very

1 basic -- kind of when I talked to Kirby, he kind of helped
2 me flush it out, where it essentially just says, okay, here
3 is the name of the project, and, you know, there's the
4 three-sentence project outline for want of a better term,
5 and then you have -- it just says, talk with Non-Game, talk
6 with, you know, discuss the project with, you know, it is
7 done this date, you know, discussed. And at the bottom you
8 say, I am the project lead, I have decided that I do need an
9 EA checklist or I have decided I don't, and here is my
10 rationale for not needing one. I mean, something at least.

11 We got into a discussion, it doesn't become a
12 blame line thing. The intent is not to seek the perfection
13 of this thing, but it becomes the opportunity to at least
14 say I contemplated the EA process. I looked at it. I
15 looked it in the eye, and I either decided I didn't or I
16 decided I did as opposed to the process as it works now,
17 which is I am not required to do one, ergo --

18 A. Yeah. We might be able to help you with that.
19 Coincidentally, actually, I think coincidentally, it wasn't
20 done to fix any of this issue, but Research and Non-Game
21 have been actively meeting with all six regions for talking
22 about coordination issues, communication issues, and one of
23 the things we are developing, and I don't know how -- to
24 varying degrees of acceptance, it was a Region 2 suggestion,
25 and some of the other regions really hate it, and Non-Game

1 is in a position for defending it, even though it wasn't our
2 idea, it was basically a cover sheet.

3 It is a checklist, in some cases, for an EA
4 checklist, but it basically says, we want to do a project.
5 Here is what it looks like. Here is where it would be. Who
6 should we be talking to? What are the possible issues?
7 What kind of permits might be required? Are there military
8 access issues? It is a two-way document. So I have even
9 brought up, if the region is going to go do something and
10 they ask themselves, is that legitimate under a 10(a)1(a)?
11 Now, that's a block now on this one form.

12 Basically, what we are talking about is a
13 communication document that goes Department wide. I want to
14 go do this. Who should I be talking to? Let them give me
15 feedback before I go do it to make sure that I am right.
16 What permits are in place? What job standards? What
17 funding is available? What kind of resource needs? And if
18 you do that and if you ask in there, should there be an EA
19 checklist? Are the permits in place? Have you looked in
20 the 10(a)1(a) to see if you consider it a take? All that
21 stuff is an outcome, is vetting that discussion if a person
22 identifies what they are thinking about doing as a project.

23 MR. MCMULLEN: You know, and that to me just
24 really sounds like good practice. Having been a field
25 supervisor yourself, you know that your WMs are in

1 possession of knowledge.

2 THE WITNESS: Yeah.

3 MR. MCMULLEN: That in many cases, if not most,
4 might impact decision-making on study planning.

5 THE WITNESS: You bet you.

6 MR. MCMULLEN: And even Regional Program Managers
7 and Program Specialists are in possession of that level of
8 knowledge that in many cases, if not most, might affect
9 study planning.

10 THE WITNESS: And our problem, everybody's
11 problem, not just Non-Game or Research, since everybody may
12 have something to say, you can't really expect to design a
13 process that before I do everything, I have to communicate
14 with everybody and expect feedback from everybody. So we
15 are trying to negotiate with the regions, okay, who are your
16 go-to people? I mean, from a planning perspective, it is
17 your program manager. But from an implementation, it is
18 your field supervisor.

19 And some regions are saying, no, all the WMs, but
20 there's got to be some coalescent point to coalesce the
21 information, you know, but that is all part of the
22 discussions right now, because what you want is a system
23 that takes care of that as best as you can but without being
24 so over-bureaucratic you can't get anything done. You know,
25 I heard back from 28 of my 44 contacts on this possible

1 project, you know.

2 MR. MCMULLEN: Can I go? Is that enough?

3 THE WITNESS: So, yeah the question for me is, you
4 know, one is have people recognize if they are embarking on
5 something that should, in fact, be considered a project, and
6 then, two, there really should be, as you describe, some
7 type of a cover sheet. It is basically a project analysis
8 that asks all of these questions. Like I said, we are a
9 long ways from one through a similar form for this regional
10 issue, but --

11 Q. BY MR. HOVATTER: Well, you know, I mean, whenever
12 I find myself struggling with this, the question I ask is,
13 okay, to what problem would this be a solution, because
14 there's no other way of getting at it. At the end, this has
15 got to solve that problem. It wasn't worth doing it. So, I
16 mean, if there was an approach that made it so one,
17 simultaneously, if you make it easy enough to do, but within
18 that easy enough to do is enough quality to get, say, the 80
19 percent solution 99 percent of the time, then you have
20 probably achieved about as close to perfection as you are
21 going to get because it is so easy. It is easy enough to do
22 where you could require it to be done and not have the fear
23 that you put so damn much institutional friction into it,
24 nothing ever actually gets done because everybody is
25 spending so much time chasing the paper to make sure that we

1 don't screw up something and having our heads hanging that
2 nothing ever gets accomplished. But the perfect checklist
3 that avoids all the risks will never get completed.

4 A. Here is another thought. This one just came to
5 me. The answer to all of this, a long time ago, I developed
6 an access database that was, you would go in and you enter a
7 project, and then what it did in the background was it
8 linked to every reporting mechanism. And the concept was if
9 you updated the information on your project, you could run
10 your reports, and it would be in the right place.

11 It was really complicated and wasn't too useful
12 because of that level of complication, but that has been
13 re-upped through Executive Staff to Harry, and Mark Andrews
14 has it to basically look at. Could you have a project
15 database that once you document the project, you could
16 search for it, you could find it at any updates that people
17 wanted to put in there they could because then if somebody
18 had a question about what was going on with the Condor
19 thing, you could go right there to the access database,
20 Condors, and you could find the most recent update.

21 But if you had your cover page, the entry data
22 page, do all these things we just talked about, what is the
23 project, where does it exist, who is the lead contact in the
24 region, does it require an EA, are there 10(a)1(a)
25 permitting issues? If you made that data entry form for

1 every real project to answer all of these questions, you
2 would go in there where anybody could get to it on the main
3 frame, and any time Kirby or Craig or anybody who wanted to
4 throw in an update, they could as well. You would have your
5 hands at a moment's notice on any relevant project
6 information on any project we are doing.

7 Q. You know, the way you describe it, it almost
8 sounds like that would be something relatively simple to do.

9 A. It is actually already built. I washed out most
10 of the background stuff. We just fix that front-end page to
11 ask all the right questions, you provide an update field,
12 and you can do that with dates. So you can sort by any
13 updates in the last six months or whatever so you don't get
14 20 years of history down the road, but you might be able to
15 take care of all this, regional communication, project
16 planning, the ability to find current information, where you
17 put your updates so anybody can access it. If I am not
18 around and you absolutely got to know what is going on with
19 the Chiricahua leopard frog, that should have some pretty
20 current information in the database like that at your
21 fingertips.

22 Q. Well, you know, we are going to have to -- we
23 can't afford to pick very many things like this out of our
24 teeth too often.

25 A. No.

1 Q. And granted, when is the last time we had
2 something like this happen to us? Now, having said that,
3 the fact that this did happen, and it was good people,
4 experienced people, intelligent people, who were not wanting
5 anything but good things to happen, and we had this outcome.
6 So, you know, the trick is going to be to come up with
7 mining something that is useful and not end up mining for
8 something that --

9 A. Right.

10 Q. -- becomes so Draconian. And, certainly, that is
11 not where Larry is going to let it go. So I am not planning
12 on taking him anything like this, but what we may do is be
13 delivering some of this to parts of the Department to work
14 out details. That is where we could have, you know, the
15 quest for the perfect system. --

16 A. Uh-huh.

17 Q. -- end up eating us alive.

18 A. Of course, all those things represent a record,
19 you know, so you have to -- that then -- any such database,
20 I think, would be so worth it. It wouldn't even be worth
21 second guessing, but you have to evaluate, okay, that would
22 be a matter of public record. It would even be on-line. We
23 could give it away. It would be a substantial database that
24 people would like to have, so pro and cons, but --

25 Q. Well, you know, by and large, I mean, Marty looks

1 at the open records, I think, more than anybody. I will
2 tell, the hundreds of thousands of pages of documents we
3 release in a given year, they are remarkably uneventful.
4 You know, because most of what documents is people doing,
5 trying to do the right thing.

6 A. Yeah.

7 Q. Okay, sir. Anybody got anything?

8 MR. MCMULLEN: It's always a pleasure to talk to
9 you.

10 MR. FABRITZ: Thanks, Eric.

11 MR. HOVATTER: Eric, we appreciate it.

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CERTIFICATE

I, Tammy Gillett, do hereby certify that the foregoing 38 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 9th day of September, 2009.

TAMMY GILLETT
Certified Reporter
No. 50430