

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, a municipal corporation)

Plaintiff,)

vs.)

UNION PACIFIC RAILROAD COMPANY,)
ARKANSAS STATE HIGHWAY)
COMMISSION, as Governing Body of the)
ARKANSAS STATE HIGHWAY AND)
TRANSPORTATION DEPARTMENT,)

CIVIL ACTION NO: 2:14-cv-02196-TLB

Defendants.

AFFIDAVIT OF BILL HUSTON

Comes Bill Huston, upon oath, and after being duly sworn, states as follows:

1. I am currently employed by Union Pacific Railroad Company ("Union Pacific") as a Manager of Train Operations. I have been in the railroad transportation business since 1997, and with Union Pacific since 2004. My office is located in Van Buren, Arkansas. My responsibilities include train operations for Union Pacific's service in and through the City of Ozark.
2. My previous affidavit described the use of the Ozark siding for train meets. Most of the time, the train that is placed in the siding for a train meet is a local train, which means it services a local industry. Given its size, the Ozark siding is ideal for local trains to use for train meets. The local crews run six days a week. If a crossing was installed, the siding capacity would be reduced by 600 feet. In that event, it is unlikely that Union Pacific could continue to use the

Ozark siding for train meets, which would materially interfere with railroad operations by disrupting the flow of train movement.

3. My previous affidavit also described the use of the siding for storage. The siding provides storage capabilities in various ways. For example, the local crews often use it for setting out and staging cars (the loading and unloading process) for the local industries that Union Pacific serves. Another example is that the maintenance of way crews, which maintain the tracks and facilities, use the siding to store equipment, thereby reducing traffic on the main line and other sidings, which in turn allows the railroad to run more efficiently. In addition, Union Pacific stores work trains (smaller trains that carry rock, ties, rails and the like that are used for maintaining the tracks) in the siding, which again frees up the main line and other sidings, resulting in more efficient operations. Further, crew changes regularly occur in Ozark. This is because the power engine for the run through trains is often stored in Ozark, and the engine will travel from Poping, Arkansas to bring crew members to Ozark. This allows the Poping siding to accommodate interstate trains for train meets instead of using the Poping siding for equipment storage and local train meets. The current use of the Ozark siding results in more efficient operations, which were not possible when the crossing was open.

4. Installing a crossing at this location would limit the use of the siding and create train delays and inefficiencies in railroad operations because the main line would often be blocked by trains, equipment, and the like that are currently cleared by the Ozark siding. The delays, inefficiencies, and increased dangers of installing a crossing at this location are described in my previous affidavit.

5. There is a siding in Poping, Arkansas, within five miles from Ozark; however, it is not used in the same manner as the Ozark siding. The Poping siding cannot be used for storage or

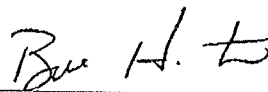
local train meets because it is already being used for train meets for longer trains that cannot fit in the Ozark siding. To take the current use of the Popping siding away would materially interfere with railroad operations.

6. Union Pacific does not have a "Denning" siding, as stated by Plaintiff's affiant Mr. Soliz. There is a siding in Alex, Arkansas, eight miles from Ozark. Like Poppin this siding is not used for storage because it can accommodate longer trains for train meets. Again, to shift the storage use and the local train meet use from Ozark to Alex would result in Alex not being available for the longer train meets and would materially interfere with railroad operations.

7. My previous affidavit noted Union Pacific's use of the house tracks at Ozark. Contrary to the statements made by Mr. Soliz, these house tracks are often used for staging industry cars and for staging ballast cars. Maintenance of way crews also often use them to clear equipment off the main line.

8. In my previous affidavit, I stated that "the proposed crossing would unreasonably interfere with railroad operations by requiring additional switching of railcars at the crossing and additional brake safety inspections." ¶5. The additional brake safety inspections are mandated by federal law. If a train sits unbroken for longer than four hours, federal law requires that additional air brake tests be conducted. The additional air brake testing can result in up to a 90-minute delay in the operation of the train.

Further, Affiant sayith not.



Bill Huston, Manager of Train Operations

Union Pacific Railroad Company

ACKNOWLEDGEMENT

STATE OF ARKANSAS)

)ss.

COUNTY OF Pulaski

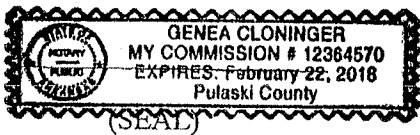
On this day personally appeared before me, the undersigned Notary Public within and for the County and State aforesaid, duly qualified, commissioned, and acting _____, to me well known as the AFFIANT, in the foregoing AFFIDAVIT and stated that he had executed the same for the purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I set my hand and official seal as such Notary Public on this

8th day of December 2014

Genea Cloninger
Notary Public

My Commission Expires:



Transcript of the Testimony of

William Ruck

Date: February 27, 2015

Case: City of Ozark v. Union Pacific Railroad Company

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EXAMINATION

EXHIBITS

501-372-5115

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1 EXHIBITS 2 (Continued) 3 Exhibit No. 221 (Photograph) 91 4 Exhibit No. 222 (Photograph) 91 5 Exhibit No. 223 (Photograph) 91 6 Exhibit No. 224 (Photograph) 91 7 Exhibit No. 225 (Photograph) 91 8 Exhibit No. 226 (Photograph) 91 9 Exhibit No. 227 (Photograph) 91 10 Exhibit No. 228 (Photograph) 91 11 Exhibit No. 229 (Photograph) 92 12 Exhibit No. 230 (Photograph) 92 13 14 Exhibit No. 231 (Photograph) 92 15 Exhibit No. 232 (Risk Assessment) 94 16 Exhibit No. 233 (Corps' Lease to Ozark) 94 17 18 19 20 21 22 23 24 25	1 THE VIDEOGRAPHER: We are on the audio 2 and video record. Today's date is February 3 the 27th, 2015. The approximate time is 4 9:08 a.m. 5 This is the video recorded deposition 6 of Mr. William E. Ruck. This deposition is 7 being taken at 2800 Cantrell Road, Suite 8 500, Little Rock, Arkansas. 9 Would the attorneys please make a 10 record of their appearance? 11 MR. BROCKETT: Christopher Brockett 12 for the Plaintiff, City of Ozark. 13 MS. JONES: Jamie Jones for the 14 Defendant, Union Pacific Railroad Company. 15 THE VIDEOGRAPHER: Will the reporter 16 please swear the witness? 17 WILLIAM E. RUCK, 18 the witness hereinbefore named, having first been 19 duly cautioned and sworn or affirmed to tell the 20 truth, the whole truth and nothing but the truth, 21 testified as follows: 22 MR. BROCKETT: And the same 23 stipulations, this is a deposition by 24 agreement of the parties. All objections 25 are reserved except to the form of the
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1 ANSWERS AND DEPOSITION OF WILLIAM E. RUCK. 2 a witness produced at the request of the Defendants. 3 was taken in the above-styled and numbered cause on 4 the 27th day of February, 2015, before Janess 5 Ferguson Smith, Certified Court Reporter and Notary 6 Public in and for Saline County, Arkansas, at 2800 7 Cantrell, Suite 500, Little Rock, Arkansas, at 9:08 8 a.m. 9 10 ***** 11 12 STIPULATIONS 13 It is stipulated and agreed by and between 14 the parties through their respective counsel that the 15 deposition of WILLIAM E. RUCK may be taken for any 16 and all purposes according to the Federal Rules of 17 Civil Procedure. 18 ***** 19 20 21 22 23 24 25	1 question and responsiveness of the answer. 2 MS. JONES: Fine. 3 EXAMINATION 4 BY MS. JONES: 5 Q. Mr. Ruck, my name is Jamie Jones. I'm an 6 attorney for Union Pacific Railroad that's been sued 7 by the City of Ozark in this case. 8 As I understand it, you have been named as 9 a 30(b)(6) witness for the following categories, the 10 design, location, specifications, current status, and 11 planned usage of the walking trail and/or floating 12 dock which is the subject matter of this lawsuit. Do 13 you have knowledge of that category of information? 14 A. Yes. 15 Q. Okay. I'm assuming, being with Garver, you 16 have given a deposition before, but that's a big 17 assumption on my part. 18 A. Yes, I have, and I can't even remember what it 19 was for. 20 Q. Okay. 21 A. But I was -- yes. The answer is "yes." 22 Q. Okay. Well, I'll just give you a little 23 rundown. Ms. Janess, of course, is taking down 24 everything we say, which means a couple of things for 25 you and I.

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1 The first is I understand the nonverbal 2 responses, the head nods, the uh-huhs, but she can't 3 get down that down for the record. So if you will 4 verbalize your responses for me, she will make a 5 clear record for us; okay? 6 A. Okay. 7 Q. And you will probably forget that because no 8 matter how many times you have testified you 9 generally do, and I will remind you. I don't do it 10 to be rude. I just do it for the record; okay? 11 A. Yes. 12 Q. The other thing is you may understand where I'm 13 going with a question and go ahead and start to 14 answer, but if you will allow me to finish my 15 question, I will allow you to finish your answer 16 before I start my next question. Okay? 17 A. Yes. 18 Q. It makes it really hard for her if she is 19 trying to get us speaking at the same time. 20 A. Yes. 21 Q. And I don't know how long we will be here 22 today, but if at any point you need a break, you need 23 water, or any reason, you just let me know, and we 24 will take a break. All right? 25 A. Okay.	1 then there's a CFM, which is a Certified Floodplain 2 Manager, which is more of a federal FEMA type 3 licensing -- 4 Q. Okay. 5 A. -- which is good in every state. And then I'm 6 an ENV SP, which is Envision Sustainability 7 Professional, which is under a group called ISI. 8 Q. Okay. 9 A. Kind of a national/international group for 10 sustainability. 11 Q. Okay. Give me a rundown of your educational 12 background. 13 A. I came out of high school, Little Rock Central, 14 in '68. I started out in architecture at the 15 University of Arkansas in Fayetteville. 16 I spent two and a half years in the School 17 of Architecture. Worked every summer for engineers 18 and surveyors and loved it, and so I wanted to be 19 more outdoors. So I switched over to civil 20 engineering, and in '74 I obtained a BS civil -- 21 BSCE, a BS in civil engineering. 22 And then I came -- since that, since then I 23 have done these minor certification-type studies, 24 but, you know, to be licensed and so forth, but 25 that's the end of my education.
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1 Q. And if I ask a question that you don't 2 understand, will you let me know so I can rephrase it 3 for you? 4 A. Yes. 5 Q. Okay. You are with Garver Engineering here in 6 North Little Rock; correct? 7 A. Yes. 8 Q. Okay. And you are a professional engineer? 9 A. Yeah. We're in Little Rock; correct. 10 Q. We are in Little Rock. 11 A. We're technically in North Little Rock -- 12 Q. Right, yeah. 13 A. -- but whatever. 14 Q. Yeah, okay. So we, we are here in Little Rock. 15 Garver is in North Little Rock? 16 A. Yes. 17 Q. You're a professional engineer? 18 A. Yes. 19 Q. Okay. What licenses do you hold? 20 A. There is -- on my card there, there is a PE -- 21 Q. Yes. 22 A. -- professional Engineer in the State of 23 Arkansas. There is a PS, Professional Surveyor -- 24 Q. Okay. 25 A. -- which is licensed under the same board, and	1 Q. Okay. Tell me your relevant work history. So 2 when you got out what was your sort of first 3 professionally relevant job? 4 A. I came out working for a small one-man 5 engineering firm who had really guided me through the 6 college days. 7 That's where I became acquainted with 8 engineering, a guy named Orson Jewell, has a brother 9 named, which I don't want you to confuse, Bill 10 Jewell -- 11 Q. Okay. 12 A. -- who has now passed away. But Orson is still 13 alive. And so I worked for Orson for a year and a 14 half, did a little bit of work for Bill Jewell and 15 some others, Jim Summerlin, for instance. We 16 occasionally partnered with them on jobs. 17 But then a year and a half after college I 18 moved over to Garver, and that was in '74. No, '76, 19 January of '76 I moved to Garver and have been there 20 ever since. I'm in my 40th year at Garver. 21 Q. And I've got your business card here, and it 22 says Senior Project Manager. What does the Senior 23 Project Manager at Garver have responsibility for? 24 Sounds like everything, but tell me more 25 specifically.

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1 A. We, we are the relationship -- we are the -- we 2 are the contact point for the client. We maintain 3 the relationship with the client as we put together 4 prospects and perspective jobs. 5 We help them organize jobs. Then we help 6 them, you know, get to the engineering contract 7 stage, and then we work through the engineering and 8 then help them through construction phase, if 9 necessary. So we, we guide all of the way through a 10 project. 11 Q. Okay. The other thing it says on your business 12 card is Port Rail and Development Leader. What does 13 that mean? 14 A. That stems primarily from a client that I have 15 had since beginning at Garver, and that is the Little 16 Rock Port Authority. They have a short line 17 railroad, so I have done railroading for them for all 18 of those 40 years. 19 They have ports. They have slackwater 20 harbor, and docks, and those kinds of things. They 21 have huge industrial development going on in a 22 1500-acre industrial park. 23 And they are expanding, you know, in the 24 coming years with voter approval to do so, and so 25 we're -- you know, I am continuing that client, so	1 Q. Uh-huh. 2 A. But FRA really doesn't involve themselves at 3 the design stage. We really don't see them, interact 4 with them. James Firestone does that, so... 5 Q. Okay. Have you ever dealt with an interstate 6 line, such as like Union Pacific does, where it has 7 mainline track that goes interstate? 8 A. We deal with, we deal with, with the large 9 railroad companies. Like BNSF -- 10 Q. Uh-huh. 11 A. -- serves the Port of Little Rock, and UP 12 serves the Port of Little Rock. So we deal with them 13 at the point of turnout from UP, but as far as 14 mainline design, no, we really don't. 15 Q. Okay. 16 A. But we -- you know, I have done sidings for, 17 you know, industrial parks, Monticello, Warren area, 18 where they have Arkansas Midland as the main primary 19 railroad. 20 So I interact with railroads wherever we 21 need industrial service. That's more my role. I 22 have never done mainline design for UP, for instance. 23 Q. Okay. Do you have any knowledge or expertise 24 with regards to the operations side of a railroad? 25 A. Only as it is reflected in the hardware that
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1 that has led me to other industrial park type 2 assignments and development assignments, land 3 development assignments. 4 Q. Okay. Tell me what you, what work you have 5 done for the short line railroad. 6 A. We really do all of their track work 7 improvements. 8 Q. Okay. 9 A. And, you know, that's primarily is we put them 10 in operation and keep them in operation. They have 11 fairly weak soil conditions out there, and so they 12 have to adjust track grades annually -- 13 Q. Uh-huh. 14 A. -- and so we kind of help them manage those 15 operations from a technical standpoint. 16 Q. Are you ensuring compliance with FRA 17 regulations; is that part of your responsibility? 18 A. No. 19 Q. Okay. 20 A. James Firestone is the operations manager, and 21 he's the guy who really deals with the FRA 22 inspections. 23 Q. Okay. 24 A. Now we -- for geometric considerations and so 25 forth, our designs have to meet FRA.	1 they need, you know, marshaling yards and switching 2 and turnout into industrial sites for private service 3 and that sort thing. 4 Q. Okay. But you don't have any knowledge on, for 5 example, how switching operations are done, not so 6 much the hardware needed for it, but what, for 7 example, the conductor has to do when he's doing a 8 switching operation? 9 A. No. 10 Q. Okay. 11 A. Really we don't participate in the, in the crew 12 of the railroad -- 13 Q. Okay. 14 A. -- and what they do. 15 Q. Right. 16 A. That's James Firestone. 17 Q. Right. 18 A. Yeah, Firestone. 19 Q. And you also wouldn't have knowledge of, for 20 example, FRA regulations regarding switching 21 operations? 22 A. No. 23 Q. How long a train can sit on a track, or what 24 inspections have to be done, those types of things? 25 A. No.

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1 Q. Okay. 2 A. No. 3 Q. All right. At some point you became involved 4 with a project in Ozark, Arkansas; correct? 5 A. Yes. 6 Q. Tell me when you, you or Garver, whichever came 7 first, became involved with the project in Ozark. 8 A. I, I reminded myself of some of this history in 9 looking through my file, and I had pulled a newspaper 10 article out in '08 -- 11 Q. Okay. 12 A. -- where it showed Ozark wishing to develop 13 their Riverfront. I thought well, there's an 14 opportunity for a project that we could do. 15 Then in '09 I have a -- I had a employee 16 named Jess Griffin (phonetic), and Jess was a great 17 marketing person. He loved to sell engineering work. 18 And I said, you know, Jess, there is an opportunity 19 there. Why don't you look into that? 20 So he contacted the city and talked with 21 them a little bit. And I said, Jess, what does that 22 look like? What are we talking about, the waterfront 23 of Ozark? 24 And so I have an exhibit here, which it has 25 Jess Griffin's initials on it, and I was reminded of	1 school back in 1968 when I began in the university. 2 And so Terry and I have been good friends 3 since that time, and so, you know, he and I have just 4 seen each other and interacted occasionally over the 5 years. 6 And Terry called me, and that's what really 7 brought us into, into the picture. He said, I need 8 some engineering help. They are developing a master 9 plan for a waterfront development, and we're going to 10 do some engineering, need some engineering on the 11 riverfront. 12 So me being the parts, parks and rail and 13 ports guy, you know, I'm the guy to kind of -- it's a 14 good fit for me to help him, and he can do the 15 architecture parts of it. 16 And Terry had already developed some plans 17 for the City of Ozark, and so he started showing me 18 the plans, and it looked like a really interesting 19 opportunity. 20 So that's when we ultimately signed a 21 contract. But Terry and I discussed it precontract, 22 and here, here are the drawings that -- 23 Q. I will go through it with you. 24 A. -- I have drawings that show where Terry was at 25 the time that I came on board.
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1 that as I looked through the file. 2 This is '09, June of '09, and Jess began to 3 draw pictures of the river, you know, graphics of the 4 river and do research. 5 And he did a couple of sheets that show the 6 large state park across the river from Ozark, and it 7 shows, you know, the waterfront from a, from a USGS 8 mapping standpoint and so forth. 9 So Jess did some initial investigation and 10 discussion with the city. And so we had decided at 11 that point that if we ever get the opportunity to, to 12 assist them that we would. 13 Q. Okay. 14 A. But that was '09, '08-'09 period. 15 Q. All right. So let's talk about -- I'm assuming 16 you have kind of a project team at Garver that's 17 working on this together; is that right? And that's 18 why we are going to have Terry Burruss -- I mean, I 19 know he is not with Garver, but you're working with 20 him on it? 21 A. Right. Now -- 22 Q. Okay. So kind of give me the players. 23 A. Okay. I mentioned Terry -- I mentioned my 24 architecture experience. Terry and I were in the 25 freshman class at the University in architecture	1 Q. Okay. So what about what year did you come on 2 board? 3 A. Eleven. 4 Q. 2011? 5 A. 2011. 6 Q. All right. And what is your sort of role? 7 A. Terry and I have, have really held hands every 8 step of the way as we investigated the various 9 opportunities that the city has. 10 And, you know, it's been, it's been proceed 11 down the road together hand in hand. When it's 12 architectural and waterfront development, on the land 13 side it mostly him. When it's development on the 14 water it's more my responsibility. 15 Q. Okay. 16 A. But I contribute engineering, and he 17 contributes architectural, so. 18 Q. Okay. And do you have anyone else on your team 19 at Garver that's working on this? 20 A. Walter Spaul is a guy that worked with me for 21 38 years at Garver, and he retired in December. 22 Q. Okay. 23 A. So up until December of last year he was right 24 beside me, and he did the lion's share of these 25 drawings. I mean, he did almost every drawing.

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1 Jess Griffin went into the landscape 2 business, and so Jess is out of the picture. The guy 3 who did the first sketches is out of the business, 4 but Walter has been with me for those 38 years and 5 has just departed. So my team kind of got pulled 6 apart, and I'm, I'm the last guy, you know, carrying 7 the ball -- 8 Q. Okay. 9 A. -- so... 10 Q. All right. Well, you have got a number of 11 things with you, so let's mark all of those and see 12 where we are. 13 A. Okay. 14 Q. Okay. Let's see. 15 A. What I did was I arranged these drawings, this 16 pile of drawings which is some half inch thick, I 17 arranged this pile of drawings that I simply had in 18 my accordion file in my office -- 19 Q. Okay. 20 A. -- in my file. And then Walter Spaul had 21 departed, so I, I went through his file similar to 22 this, his file folder, and pulled all of that 23 together, and then I organized them, just for 24 convenience for all of us, organized these 25 chronologically, more or less.	1 make it easier for our record, if you will just -- if 2 you are talking about this one, just refer to it as 3 153; okay? 4 A. Okay. 5 Q. So tell me what that 153 is. 6 A. This is simply a photo image of the park 7 facility across the river from Ozark, and they have 8 camp facilities, and fishermen, I understand, come 9 there frequently and fish and camp, and, you know, 10 it's a family type park. 11 And so there are opportunities, you know, 12 per, in the city's view to bring these people to 13 Ozark -- 14 Q. Okay. 15 A. -- so... 16 Q. And this is the south side of the shore? 17 A. Yes, yes. 18 Q. Okay. And this is where there is potentially a 19 marina planned; is that correct? 20 A. I'm not really aware of that. 21 Q. Okay. So -- 22 A. I haven't been involved in that at all. 23 Q. Okay. So you are not involved with any plans 24 for a marina? 25 A. Not on the south, no.
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1 Q. Okay. 2 A. Okay. 3 Q. And what I'm going to do is I am going to mark 4 these as exhibits. To make it easy, I will mark on 5 the back; is that okay? 6 A. Sure. 7 Q. Okay. 8 A. Now, the little yellow stickies are what I made 9 just to keep us organized and to help your 10 understanding. 11 Q. Okay. 12 A. Of what each little group with little -- I put 13 paperclips on them. 14 Q. Okay. 15 A. And so that each little group has a paperclip 16 and a yellow tag to kind of help us understand what 17 the steps were as we went through. 18 Q. Okay. Well, the first kind of group right here 19 I'm going to mark as Exhibit 153, and then Exhibit 20 154. 21 (Exhibit Nos. 153 and 154 were marked.) 22 BY MS. JONES: 23 Q. And it looks like you have a Precontract 24 Investigation sticky on these, so tell me what 153 25 and 154 are. And when you're talking about them, to	1 Q. Okay. And this is where -- 2 A. This is '09. This is before we really began 3 forming a contract or relationship with the city. We 4 just contacted them and kind of visited to get 5 generalities about where they were. 6 And we had seen it in the newspaper, and, 7 you know, we were interested in helping them if that 8 ever came to pass. 9 Q. Okay. Now, as I understand it, there is no 10 north shore marina that's being planned currently. 11 There has been discussions about that, but it's all 12 been moved to the south side. Is that your 13 understanding as well, or do you -- you have no 14 knowledge? 15 A. I have no knowledge, no. 16 Q. Okay. 17 A. No. 18 Q. I just want to make sure that you aren't saying 19 you are not trying to plan a north marina? 20 A. No, we are not -- 21 Q. You are not involved in -- 22 A. At this point, no. 23 Q. Okay. 24 A. Terry Burruss had drawings from his past, and 25 he can counsel you about that, but he had drawings

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1 which showed a rather large, you know, series of boat 2 houses and boat docks and those kinds of things that 3 extended pretty far out in the river. 4 Q. Uh-huh. 5 A. But those plans have been off the table since I 6 came on board. 7 Q. Okay. All right. So tell me what 154 is. 8 A. This is simply a U.S. -- this is a cut from a 9 USGS quad that shows the park area and the park 10 access road. And then it shows the waterfront of the 11 City of Ozark, or a part of the City of Ozark as far 12 upstream as the, what is that, Highway 23 bridge. 13 Q. Okay. All right. 14 A. Those are very preliminary. Jess Griffin 15 plotted those as a precontract activity. 16 Q. Okay. 17 (Exhibit No. 155 was marked.) 18 BY MS. JONES: 19 Q. So tell me what 155 is. 20 A. This is a concept drawing that Terry Burruss 21 had planned, and you see it has none of the Garver 22 logo on it. 23 Q. Uh-huh. 24 A. He just gave this to me, and he said, Here's 25 what we've been thinking about, in the early going as	1 Q. Okay. Who is your contact? 2 A. Main Street Ozark is Sandy -- 3 Q. Key? 4 A. Keith [sic], I believe, yeah. 5 Q. Key, K-e-y? 6 A. Key, Key, Sandy Key, yes. 7 Q. Okay. 8 A. I was having trouble recalling her name. Here 9 is my contract, by the way. 10 Q. Okay. 11 A. I made a copy of it, just from the record. 12 It's October 14th of 2011. That is when we did some 13 preliminary discussions, and we gained enough 14 information to realize what the tasks were likely to 15 be. 16 But it was a very, very hard to define the 17 scope of the services, so -- but that is a general 18 contract that we are working under. 19 Q. Okay. So this was -- I am going to mark the 20 contract as Exhibit 161. 21 (Exhibit No. 161 was marked.) 22 BY MS. JONES: 23 Q. It looks like Glynn Fulmer signed the contract. 24 Who is Mr. Fulmer? 25 A. He is, he is the head of our transportation
Page 26	Page 28
1 we exchanged information. This is dated November of 2 2010. 3 Q. Okay. 4 A. So this is precontract. This is before I came 5 on board to assist him. He had already been doing 6 concepts of, of what he had discussed with the city. 7 Q. Okay. 8 A. And, and, by the way, there is a number of 9 these. All of these fall in that same category. 10 (Exhibit Nos. 156 through 160 were marked) 11 BY MS. JONES: 12 Q. Okay. So this -- I have 156 through 160. Are 13 all of these what you're talking about? 14 A. Yes, yes. These are the vision, I guess, 15 vision statements of what Terry envisioned for the 16 future of the City of Ozark on the waterfront. 17 Q. Okay. Tell me this, who is your client? 18 A. My client is Terry Burruss. 19 Q. Okay. And do you know, it says Main Street 20 Ozark here. Who is -- is Main Street Ozark Terry's 21 clients, or do you know? 22 A. I am not sure. 23 Q. Okay. Do you have any contact with anyone from 24 Main Street Ozark or the City of Ozark? 25 A. Oh yes.	1 design center in Little Rock under, under, under 2 which I work. 3 Q. Okay. 4 A. He's my boss. 5 Q. It looks -- the first paragraph states. With 6 this letter contract, we, Garver, LLC, Garver, are 7 pleased to propose our services to you, Terry Burruss 8 Architect, related to assisting the City of Ozark, 9 Arkansas to obtain a permit for a crossing of the 10 Union Pacific railroad track along the Arkansas River 11 bank in accordance with our meetings with the city 12 and subsequent discussion at the Garver office 13 yesterday. 14 What have you done in order to obtain a 15 permit for a crossing of the railroad tracks? 16 A. We developed concepts of the facility that we 17 needed to serve. In other words, we had to decide 18 what is it we are trying to get to from the, from the 19 city side of the railroad to the water side of the 20 railroad. And we had to say what is the destination? 21 What are we going to have on the river? 22 And so Terry and I considered several 23 options for, you know, what type of facility we 24 wanted to install to serve on the river side. 25 Q. Okay.

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1 A. And then from there we were then to go back 2 through the railroad and clarify the permit 3 conditions for that facility. 4 Q. Okay. Well, I am going to get into all of that 5 in a minute, but let's go ahead and finish marking. 6 That way we've got all of that marked. 7 A. Okay. 8 Q. So -- okay. So is there anything else about 9 Exhibits 155 and 156, which should be, through 160? 10 A. No. 11 Q. Is there anything else that was important about 12 these drawings? 13 A. No. 14 Q. Okay. So these were just initial things that 15 Mr. Burruss had done? 16 A. Yes. 17 Q. This does not reflect the current plan; 18 correct? 19 A. Correct. 20 Q. Okay. 21 A. May or may not. There may be some 22 similarities. 23 Q. Right. 24 A. But that's not what Terry and I worked out 25 together. That is independent of my activity.	1 Q. Okay. Let's talk a little bit about the 2 McClellan-Kerr navigation way, because we are <u>going</u> 3 to have a jury in this matter, and I want them to 4 understand what that means. 5 A. Uh-huh. 6 Q. So what is a navigation way? Do you have an 7 understanding of what it is? 8 A. No. 9 Q. Okay. 10 A. I don't, I don't use that term. 11 Q. Okay. Do you have an understanding of what the 12 channel is? I mean, do you, do you have an 13 understanding of what is the importance of the 14 navigation way and the channel for your engineering 15 perspective? 16 A. Oh yes. 17 Q. Okay. 18 A. Oh yes. 19 Q. Can you explain that? 20 A. Yes. The navigation channel is a guaranteed 21 250 wide channel, guaranteed by the Corps to be nine 22 feet deep or, for barge traffic and, you know, for 23 just use by the general public. 24 The state owns the bed of the stream, but 25 the Corps largely manages the McClellan-Kerr system.
Page 30	Page 32
1 (Exhibit Nos. 162 through 166 were marked) 2 BY MS. JONES: 3 Q. Okay. It looks like we have got 162 through 4 166, and you have them paper clipped together with a 5 sticky that says Navigation Maps. 6 A. Uh-huh. 7 Q. So tell me about 162 through 166. 8 A. Yes. The Arkansas River is organized under the 9 McClellan-Kerr navigation system, and the Corps 10 publishes navigation charts to assist users to know 11 where things are and what are, facilities are there 12 and to guide boaters and campers and those kind of 13 folks, river users of all types. I guess, you know, 14 industrial people and barge operators even use the 15 river maps. 16 So that was our first point of 17 investigation was to pull the river maps, see what 18 the crossing constraints were. I wanted to look at 19 the Highway 23 bridge and what kind of constraints it 20 had and presented. 21 Q. Okay. 22 A. And just in the way of discovery, it's, it's a 23 very good general source of information as you relate 24 to the Corps. So that was, that was just research 25 that we did.	1 So when the McClellan-Kerr system with all of its 2 locks and dams were constructed, that guarantees the 3 nine foot depth that you can load the barges to. 4 That's critical, you know, to the 5 navigation system is to keep people out of the 6 shallow water. 7 And so, the U.S. Coast Guard actually puts 8 the buoys out in the river to mark where that twelve 9 foot channel is, and it's guaranteed nine, but they 10 dug it to twelve. 11 Q. Okay. 12 A. So your largely have -- you largely have 13 three feet of extra depth in the navigation channel. 14 Now, once you get outside the channel, you're on your 15 own, so. 16 Q. And you said, you know, you want to keep people 17 out of shallow water. There is, there is -- the 18 Corps also has restrictions, is it your belief, on 19 what can be put in the channel? 20 A. Yes, yes. 21 Q. So there are engineering restrictions that they 22 would place upon you as to what could be put into the 23 channel; correct? 24 A. Yes. You need approval before you construct 25 along the edge of the channel, yes.

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1 Q. Okay. And have you been the one dealing with 2 the communications with the Corps of Engineers? 3 A. Yes. 4 Q. Okay. All right. And we'll get into that in a 5 bit, too. And do you have any knowledge of the 6 history of the navigation way there at Ozark? Do you 7 understand like when it was constructed and how it, 8 how it changed the river? 9 A. No, no. 10 Q. Okay. All right. 11 A. The McClellan-Kerr was built when I was in 12 college, so. 13 Q. Well, it's interesting. I think we have kind 14 of well established, and I don't think it's disputed 15 that the, the river used to be in a different place 16 in Ozark. And when the McClellan-Kerr was created 17 the river changed the course. 18 A. Uh-huh. 19 Q. And so, there used to be a dump where the river 20 is, in fact, and there used to be neighborhoods, and 21 they are no longer there. 22 Okay. So the next grouping I am going to 23 start with 167 and mark these. 24 (Exhibit Nos. 167 through 171 were marked.) 25	1 A. But they provided this map, which was very 2 large, and so we -- you know, I trimmed out the title 3 block and stuck it on here and then made a copy of 4 that so it would be more convenient to keep up with. 5 And then I enlarged the area that we were going to be 6 working in just for clarity. 7 Q. Okay. 8 A. And this is largely a generalized street layout 9 of the entire city. It doesn't define subdivisions, 10 or lot dimensions, or streets rights-of-way widths, 11 or those, that kind of detail information. It simply 12 shows where the streets are. 13 Q. Okay. 14 A. Historically. 15 Q. And did you do any historical work to 16 determine, for example, if a particular street on 17 there was a dedicated city street or anything like 18 that? 19 A. No. 20 Q. Okay. 21 A. We didn't do title work at all. 22 Q. Okay. You just sort of accepted what she gave 23 you? 24 A. Yes. 25 Q. Okay.
Page 34	Page 36
1 BY MS. JONES: 2 Q. Okay. Mr. Ruck, I'm going to hand you the next 3 grouping, which is 167 through 171. If you can tell 4 me what these exhibits reflect. 5 A. Yes. This is a, this is a copy of a map that 6 Sandy Key provided to me. 7 Q. And "this" being one -- 8 A. Oh. 9 Q. -- 167. 10 A. 167, yes. And I have several copies, you know, 11 as I enlarged it -- 12 Q. Okay. 13 A. -- to study it. 14 Q. So, 168 and 169 are all copies of that map? 15 A. Yes, yes. And so we enlarged it in order to 16 examine it more carefully in the area that we were 17 interested in, which is around the depot. 18 Q. Okay. 19 A. What I will refer to as the depot. 20 Q. The current existing depot; correct? 21 A. Yes. 22 Q. Okay. 23 A. Which now, I believe, is a museum. It's not an 24 active depot. 25 Q. All right. Tell me --	1 A. Yes. 2 Q. All right. What's the next -- 3 A. This, this -- by the way, this map here, the 4 blue map, Exhibit 167 is dated May of '75. 5 Q. Okay. 6 A. So it's -- it has quite a bit of history in it, 7 so we, we took it at face value. They provided us 8 the -- now, these are documents the city provided to 9 us. 10 This one says, City of Ozark Riverfront 11 Dock. I don't know exactly the history behind that, 12 but that's a document that they provided. It has in 13 the title block U.S. Army Corps of Engineers. 14 Q. Okay. And that's 170? 15 A. Yes. Yes, pardon me. And then 171 is simply a 16 very generalized image of the river showing the 17 miles, you know, the river miles. 18 And it was prepared by the Corps, and it 19 says June 2005 Arkansas River Navigation Study 20 apparently produced by the Corps, so we used it as 21 background information. 22 Q. Okay. So all of this you just used as 23 background information. This does not reflect any 24 current plans or anything like that? 25 A. Correct.

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Page 37	Page 39
1 Q. Okay. 2 A. Correct. This is more in the order of 3 research. 4 Q. Okay. 5 A. You know, just documents that we assembled so 6 that we would know where we were and what was 7 proposed and so forth. 8 (Exhibit Nos. 172 through 174 were marked) 9 BY MS. JONES: 10 Q. Okay. I will hand you Exhibits 172, 173, and 11 174 and have you tell me what these represent. 12 A. Okay. We, we realized immediately that the 13 navigation channel was very key to anything that we 14 did, and the bridge openings would be key to anything 15 that we did, because the bridge openings relate to 16 the navigation channel. 17 And so we used the bridge opening and the 18 general map of the navigation channel, which is not a 19 precisely mathematically-defined line on the river. 20 Q. Uh-huh. 21 A. It is defined physically by a series of buoys, 22 but if you know a little bit about the river, you 23 learn that the U.S. Coast Guard places the buoys 24 approximately where this navigation center line is 25 drawn --	1 the physical constraint line. 2 And I said, Walter, you need to record that 3 for now and forevermore because that is critical to 4 what we do for the City of Ozark. 5 So Walter made this drawing, and I said, I 6 want to see where that is, because I was curious. 7 And he drew that electronically defined line on the 8 river, on top of an aerial photograph of the river, 9 and that is this Exhibit 172. 10 Q. Okay. 11 A. And so I was amazed. The physical constraint 12 line runs right up against the edge of the river 13 bridge opening. 14 Q. Okay. 15 A. So I, I guess it makes some sense in that 16 regard, that the constraint line is defined by the 17 edge of the protective structure there that protects 18 the bridge. 19 So I guess it sort of makes sense when you 20 look at it in that respect. It does not conform to 21 the 250 foot navigation channel, however. 22 Q. Okay. So it's another engineering constraint 23 you have on what can be built? 24 A. Yes, yes. 25 Q. Okay.
Page 38	Page 40
1 Q. Okay. 2 A. -- from -- you know, the Corps draws the center 3 line and publishes the maps, but then the Coast Guard 4 actually sets the buoys. 5 So the boat operators and barge operators 6 and those folks use the buoys as the physical 7 constraints. 8 And then the -- we started talking to the 9 Corps, and the Corps said, We have another line which 10 is not the navigation channel. We have a term that I 11 had never even heard of until I got under this 12 contract, and they said, when we met with their 13 staff, and we said -- they said, We have a physical 14 constraint line. 15 I had never heard of that term before in my 16 whole life. I said, What is that? They said, Well, 17 that's a line that we draw, and that defines how 18 close you can be to the navigation channel and where 19 you need to be in relation to the river. 20 So I was just -- I said, Where do I -- how 21 do I know that? Where do I, where do I get that 22 information? I have never seen that on any of your 23 navigation charts. 24 And so they sent to Walter Spaul in my 25 office an electronic drawing, which actually gave us	1 A. And the Corps went even further, and they told 2 us verbally that this constraint line that they sent 3 to us electronically -- and by the way, when I say 4 "electronically," I mean defined by state plane 5 coordinates. 6 Q. Uh-huh. 7 A. So this aerial photograph is defined in state 8 plane coordinate basis. 9 Q. Okay. 10 A. So it was an easy insert. This is not a guess, 11 I want to say Walter had one chance to insert this 12 and one way only to insert that, and I, I have 13 visited with Walter recently, and he confirmed that, 14 my memory in that. 15 He said, There was only one way to put it 16 in by the state plane coordinates. You know, you 17 have got the origin of the coordinate system, and you 18 insert it, and it goes in, and that's where it is. 19 So that is not a method of, a matter of any 20 debate. That's just where it is, and so you have to 21 live with that line. 22 Q. Uh-huh. 23 A. And whatever that does to your project, you 24 just have to live with that; okay? So, anyway, I 25 asked him to document where the line is.

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1 Q. You were saying that verbally the Corps had 2 told you, and then you kind of -- you went on to a 3 different subject, so what -- 4 A. Oh, verbally they told me about the constraint 5 line, and then they sent us -- 6 Q. Okay. 7 A. -- the electronic definition of where that line 8 is with relation to state plane coordinates. 9 Q. Okay. 10 A. They defined it for us. And then this is a, 11 this is a drawing with the channel only shown, the 12 250 feet guaranteed nine foot channel, and this is 13 one with the constraint line added. 14 Q. Okay. 15 A. And I refer to those two as 173 and 172. 16 Q. Okay. What is 174? 17 A. 174 is simply a copy of 73. 18 Q. Okay. 19 A. I just found these in the file. 20 Q. I understand. 21 (Exhibit Nos. 175 through 178 were marked.) 22 BY MS. JONES: 23 Q. All right. I'm handing you the next grouping, 24 which is 175 through 178. Tell us what these are. 25 A. Okay. Terry and I began to consider what types	1 would come from the south side of the river. 2 But people who wanted, who lived here and 3 wanted to go down there and fish and view the river 4 and whatever, enjoy the river, would do that from the 5 land side. 6 Q. From the north side? 7 A. Yes. 8 Q. Okay. 9 A. Yes. 10 Q. All right. So tell, tell me about what these 11 drawings represent in these exhibits. 12 A. So, Terry and I began to think what would we 13 want to have there in terms of docking facilities and 14 use facilities, and which would be the best option. 15 And I told Terry, We ought to have a system of 16 rating. You know, if we have a floating dock that is 17 hinged -- 18 Q. Uh-huh. 19 A. -- that's one kind of a facility. You could 20 have a floating dock which is fixed and allowed to go 21 straight up and down vertically, fixed by piles. 22 Q. Uh-huh. 23 A. Or you could have a, you know, a fixed 24 platform, and that's not the usual. You know, 25 usually you don't have a fixed platform unless you
Page 42	Page 44
1 of dock facilities would we want to have. 2 Q. Okay. And this is on the north shore; correct? 3 A. Yes, yes. 4 Q. And this is -- 5 A. For the city, yeah. 6 Q. Okay. So this is the idea that someone coming 7 from the south side marina would have somewhere to 8 dock to go over into the city on the north shore; 9 correct? 10 A. Yes. And also we considered local fishermen, 11 local residents, who would want to come down and, you 12 know, meet their family down there with a ski boat, 13 or meet their family down there and simply fish, take 14 their kids down there with a cane pole and fish, you 15 know, those kinds of activities. 16 We thought of that more as family type 17 usage rather than professional fishermen who would 18 likely camp on the other side of the river, you know, 19 and not use -- there's no way to have a boat launch 20 here, and there's no boat launch here, so we didn't 21 see people putting their boats in at this point. 22 They would do that on the other side of the 23 river. So we thought the traffic that goes and uses 24 the City of Ozark, which is what they were interested 25 in, to bring people into their downtown area, that	1 have a lake, you know, a static water level, but the 2 river fluctuates -- 3 Q. Uh-huh. 4 A. -- so we were considering hinged and, and, 5 straight up and down or fixed. Those were the three 6 options. 7 And I said what are the pros and cons of 8 each one of those? So we started -- we kind of did a 9 straw pole, and we figured out a way to look at the 10 pros and cons of each one of those. 11 Q. Okay. 12 A. And we, we really realized that the single 13 floating type dock configuration had some real 14 advantages, but that the fixed platform was even 15 better than that. 16 You know, after we looked at it further, I 17 think we, we overrode this rating system, and we 18 actually didn't follow what it shows to be the 19 best -- 20 Q. Okay. 21 A. -- so anyway -- 22 Q. So Exhibit 175 through 178 are just sort of 23 your work product as you were trying to figure out 24 what type of dock to recommend to the city? 25 A. And, and thinking like engineers, you know, I

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Page 45 1 said, Why don't we have a rating system. 2 Q. Any way to try to -- 3 A. In other words, let's put some numbers on this 4 thing. So, anyway, that's probably more detail than 5 you wanted to know about the configuration of the 6 thing, but, we, we didn't want to, you know, build 7 the wrong thing and be sorry. 8 Q. Okay. 9 A. Now, we also went down to the City of Little 10 Rock. They have a similar sized dock in downtown 11 Little Rock. 12 Q. Behind the Marriott? 13 A. Yes, yes. And it floats up and down, and I 14 have, in fact, boarded boats there, boarded very 15 large boats there just for, you know, a ride up and 16 down the river. And it, it is configured as a hinged 17 type facility. 18 But the character of the river in downtown 19 Little Rock is different than it is at Ozark, and 20 that's another part of the story that I can get to as 21 we, as we proceed on. 22 Q. Okay. So looking at -- one thing that sticks 23 out to me looking at 176, 177, and 178 is 176 and 177 24 propose an at-grade crossing to the west of the old 25 train depot; correct?	Page 47 1 A. This came before the survey, and so we were 2 still in the brainstorming stage of this whole design 3 process. 4 Q. And you have a survey now. Do you have that 5 with you? 6 A. Yes. 7 Q. Okay. 8 A. Sure. 9 Q. All right. 10 A. That came later in the story. 11 Q. Okay. All right. 12 A. Because we didn't know how deep the water was, 13 you know, east or west of the depot. We were, we 14 were still investigating, and we were still 15 assembling information. 16 Q. Okay. So let's look at the next one, which is 17 179, 180, and 181. 18 (Exhibit Nos. 179, 180, 181 were marked.) 19 BY MS. JONES: 20 Q. Tell us what those exhibits represent. 21 A. Okay. These represent what we assumed and were 22 directed were the ideal places for the facility to 23 rest. 24 Q. Okay. Again, the facility being the floating 25 dock?
Page 46 1 A. That's east. 2 Q. East, okay. And then it's on the other side on 3 178? 4 A. No. It looks like the same side. Oh, I'm 5 sorry. I'm sorry. 6 Q. No. 7 A. I'm sorry. You're right. You're right. 8 Q. This is west. 9 A. That is west. I'm sorry. 10 Q. Okay. You were, you were giving me a down the 11 rabbit hole flipping of the world there for a minute. 12 A. I'm sorry, yeah. 13 Q. Okay. So 176 and 177 so show an at-grade 14 crossing to the west of the depot? 15 A. Yes. 16 Q. And then on 178 it shows it to the east of the 17 train depot? 18 A. Yes. 19 Q. Okay. Why was it -- why was it to the west 20 here, and why did it switch to the east here? 21 A. Because we didn't know where it was best suited 22 to be, and we, we did some versions east and some 23 versions west. Now, at this point -- let me say 24 this, at this point we did not have a survey. 25 Q. Okay.	Page 48 1 A. So the city told us this is, this is sort of 2 our desire is to put it either immediately east or 3 west of the depot because there is already pedestrian 4 traffic in that area. 5 And then what I recommended, and this 6 progressed to Exhibit 181, this is where I said, 7 Well, Mayor Sneath, we need to go do a survey of 8 this, a physical survey so that we understand water 9 depths and, and street configurations, and so forth, 10 so we need to serve, do a topographic survey of this 11 area. 12 And I quickly sketched up so that we would 13 have a scope of services document. We'll survey 14 basically what's basically inside the green. 15 Q. Okay. I mean, at any point is Mayor Sneath 16 telling you at this stage in March of 2012. Look, it 17 has to be the east of the train depot because that's 18 where the crossing was? 19 A. I don't recall that, no. 20 Q. Okay. 21 A. No, we were still -- we were -- these were 22 viable options at the time. 23 Q. Okay. 24 A. Yeah, and so we surveyed enough to cover the 25 entire area. And, by the way, we went out to the

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Page 49 1 buoy line so that we would take in the navigation 2 channel, you know, go out as far as the navigation 3 channel, and then we would know where it was marked 4 and being used. 5 Q. Okay. 6 A. Okay. 7 Q. So, again, this is just sort of historical 8 showing us what work you did? 9 A. Yes. 10 Q. Okay. 11 A. Yes. 12 (Exhibit No. 182 was marked.) 13 Q. All right. Tell me what 182 is. 14 A. 182 is where we were considering -- this is 15 after the survey. 16 Q. Okay. 17 A. This is survey data. And what this drawing is 18 is a very closeup view of points that we actually 19 recorded for elevation. 20 Q. Okay. 21 A. And we wanted to record the height of the track 22 because that would be critical to a walkway across 23 it. 24 We wanted to make it handicap accessible, 25 and we wanted to see if there were any grade	Page 51 1 A. Here. 2 Q. And then here is one of the sidings, the 3 long -- 4 A. Yes. 5 Q. -- storage siding track; correct? 6 A. Yes. 7 Q. And there is actually a shorter siding track as 8 well; correct? I don't see it on here, but there -- 9 I guess maybe here? 10 A. I don't recall it. 11 Q. Okay. Tell me the -- the current plan, as I 12 understand it, at least that's what's being sought 13 here, is to reestablish a crossing to the east of the 14 train depot; correct? 15 A. East or west. I think the city would still 16 consider it an advantage to have either one -- 17 Q. Okay. 18 A. -- now. 19 Q. Have you seen this lawsuit? Do you know what's 20 being asked in this lawsuit? 21 A. No. 22 Q. Okay. The depot as I -- or the understanding I 23 have is that the crossing sought is to the east of 24 the train depot, so let's focus on that for a moment. 25 A. Okay.
Page 50 1 characteristics that would be prohibitive or that 2 would need improvement or whatever. 3 Q. Okay. Where is the survey? Do you have that 4 with you? Let's go ahead and mark that as this stage 5 we're talking about it. 6 A. Yes. 7 Q. That's what I was afraid it was. Okay. I am 8 going to mark the back of this as 183, is the survey. 9 (Exhibit No. 183 was marked.) 10 BY MS. JONES: 11 Q. Who -- did Garver Engineering do the survey? 12 A. Yes. 13 Q. Okay. I didn't know if you hired anyone local 14 to do it, is what I was asking. 15 A. No. I had to think about that. But, yes, 16 that's right. We did this. 17 MS. JONES: Okay. So let me see if I 18 can get in here, and, Christopher, if you 19 need to you can, too. 20 BY MS. JONES: 21 Q. Okay. So here is our train depot, so show me 22 where the main line track is. 23 A. The main line track is, is east and west across 24 the sheet. 25 Q. Okay.	Page 52 1 Q. Okay. 2 A. Okay. 3 Q. Do you know where the location of the crossing 4 would be east of the depot? 5 A. Yes, but let me take you back. This is the 6 survey. 7 Q. Okay. 8 A. This is not the design, so you're jumping 9 chronologically ahead of where we are -- 10 Q. I understand. 11 A. -- where we are when this was made. 12 Q. I know, and I understand. 13 A. So you're asking me to call on my memory when 14 it would be better to refer you to the graphic which 15 is to come. 16 Q. Okay. The graphic to come, will it have the 17 survey on it as well, so that we can tell distances 18 of things? 19 A. Yeah, and -- 20 Q. Because that's what I'm going to get to. What 21 I want to know is when we start talking about the 22 biking trail and the crossing, I want to know exactly 23 distances from the tracks and distances from the 24 water; okay? 25 A. Uh-huh.

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1 Q. And so when we get there you will be able to
2 tell me that?

3 A. Yes.

4 Q. Okay. All right. So I will let you continue
5 in your, in your historical.

6 A. This -- yeah. This was just, gave us a
7 tremendous tool to use to verify design. Before we
8 had just been, you know, walking in the dark, so to
9 speak, but this gives us real data about the land as
10 it slopes off into the river.

11 And that's what you need to know. To place
12 a floating dock or a fixed dock, you need to have
13 some basis in cost and construction and so forth. So
14 that's what this gives us.

15 Q. Okay.

16 A. And the survey extends -- the bottom contours
17 extend out to the buoy line that's marked as the
18 navigation channel, because we knew the Corps was --
19 that was the first thing they were going to ask is,
20 Where are you in relation to the channel and the
21 constraint line?

22 And so this also shows you where the edge
23 of the water is, so that if you walk out there to
24 view the thing you can say -- you can relate to this
25 map being physically on the ground.

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1 Q. Okay. When was the survey conducted?

2 A. I don't know that it is dated. I don't know
3 that it is dated. It's sometime before this drawing,
4 this next drawing, which is...

5 Q. April of 2012?

6 A. Yeah. So it was sometime before April of 2012.

7 Q. Okay. All right. So anything else of
8 significance of this, or can we go onto the next
9 historical document?

10 A. Go to the next one, yeah. And that will help
11 you get to the next question you were asking about,
12 where do we recommend that it is.

13 Q. Okay.

14 A. And, by the way, this data is simply a repeat
15 of this, so we might pull this off the table, if you
16 -- if it would be more convenient for you.

17 (Exhibit No. 184 was marked.)

18 BY MS. JONES:

19 Q. Okay. So 184 is a smaller version of 183?

20 A. Uh-huh.

21 Q. Well, you might want to sit it over there,
22 because she is going to have to take -- Ms. Janess is
23 going to have to take that at some point.

24 A. Is this one tagged?

25 Q. It is.

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1 A. Good.

2 (Exhibit No. 185 was marked.)

3 BY MS. JONES:

4 Q. All right. What is 185?

5 A. 185 is further research that we did. As you
6 approach design, you are certainly -- you certainly
7 need to know for any waterfront facility what does
8 the flood condition do to you?

9 Q. Okay.

10 A. So this is the FEMA map.

11 Q. What is the flood rating?

12 A. Well, most of it is white, which is simply
13 above the 100 year flood.

14 Q. Uh-huh.

15 A. But the channel does have a 100 year limit.

16 Q. Okay.

17 A. So that's shown on the drawing and shaded in
18 gray. It also shows the slope of the river. Up here
19 at the Highway 23 bridge, I see 374.

20 I see 373 is the 100 year flood below the
21 city, so you're -- our 100 year flood level is going
22 to be 373 to 374, because the river is truly on a
23 slope.

24 Q. Okay.

25 A. And that's a great tool, by the way. Those

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1 are, those numbers are really important when you...

2 Q. And they're important because?

3 A. Because we're thinking in terms of a fixed
4 facility, so we want to know how high would that have
5 to be to be entirely above the flood, and what, how
6 would we design if it were below the 100 year flood.

7 Q. Okay.

8 (Exhibit No. 186 was marked.)

9 BY MS. JONES:

10 Q. All right. So tell us about 186.

11 A. Okay. 186 is where we added the Corps'
12 physical constraint line to our survey.

13 Q. Okay.

14 A. And then they said they not only want us to be
15 outside the physical constraint line but 150 feet
16 beyond that.

17 Q. Okay.

18 A. And I was rather surprised at that because
19 the -- you know, you are on the outside of the bend
20 of the curve, and I thought 150 was -- that's, that's
21 the outside limit. That's the greatest limit
22 anywhere on the river is 150.

23 Sometimes that's 100 in some conditions,
24 but they requested 150. And then Terry and I
25 configured a solid platform type facility in the size

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1 that we had thought we would want -- and it's 62 by 2 30, a rectangle -- and with a walkway out to it. 3 And to get it into deep enough water we 4 need to be some distance away from the bank, 5 obviously. 6 Q. Uh-huh. 7 A. And so we are still beyond that 150-foot 8 clearance, and we were quite relieved to see that. 9 And so we took this drawing to the Corps and asked 10 them if that would be permissible under, you know, 11 verbal conditions could they, could they say yes, we 12 think that will be approved, and that's what they 13 said, Yes, we think that will be approved. You're 14 certainly beyond 150, and you're certainly not 15 impeding any of the navigation channel, so we think 16 you're, you have a good concept. 17 Q. Who told you that? 18 A. The staff of the regulatory group in the Corps. 19 Q. Okay. Do you know the name of the person who 20 told you that? 21 A. No. 22 Q. Was it a male? 23 A. There was one fellow there who had discussed it 24 with us, and he is no longer there, and I, I just 25 can't recall his name.	1 A. No. This is, this is what we decided was the 2 most desirable. 3 Q. Okay. So -- 4 A. The city -- from the city's standpoint this was 5 the most popular concept. 6 Q. Okay. So 186 reflects the current design of 7 the mooring facility? 8 A. Yes. 9 Q. Okay. So it is a fixed platform? 10 A. Yes. 11 Q. Okay. 12 A. Yes. 13 Q. How far out from the bank? 14 A. I don't know. 15 Q. Okay. 16 A. I can make an attempt to scale it. It'll be 17 within the, it'll be within the limits of the 18 scaling. This, by the way, is a very small version. 19 That's the reason I'm struggling with how far it is. 20 Q. We can -- if there's a better version we are 21 going to get to, we can wait and do that. Do you 22 want to just wait until we get through all of these, 23 and we can start talking details. 24 A. I don't know -- I don't know that there is, you 25 know. (Witness reviews documents.) Let me see if I
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1 Q. Okay. 2 A. But we met with him and several of his staff 3 members. I think there were four -- 4 Q. Uh-huh. 5 A. -- approximately four that met with us, and we 6 just had an informal discussion of this concept. 7 Q. And when was that? 8 A. It was sometime after this drawing was 9 produced, in the, in the month or two following that. 10 Q. What was -- I don't -- I can't see the date, 11 so. 12 A. This is 186. Where is -- let's see, what was 13 that date that was on Terry's first drawing that had 14 this design on it? 15 Q. It's April of 2012, I believe. April 27, 2012? 16 A. Yeah. It was sometime after Terry published 17 that drawing -- 18 Q. Okay. 19 A. -- that we met with the Corps about it. 20 Q. Okay. All right. 21 A. And then, by the way, we added this as an 22 engineering function, you know, to demonstrate that 23 to the Corps. 24 Q. Okay. Are we still at a design that shows the 25 current design, or are we still historical?	1 can -- these, these -- this is going to be impossible 2 to scale. 3 Q. Okay. That's fine. 4 A. It's just -- I'm sorry. It's just been 5 reproduced such that -- CAD, CAD draftsmen can 6 reproduce things and just send it to the plotter -- 7 Q. Right. 8 A. -- and not in an exact scale, so that's what, 9 apparently, I'm looking at, or it's been photocopied 10 several times. It is not -- it doesn't fit any of 11 the scales that I can use. 12 Q. No problem. 13 A. Okay. 14 Q. Okay. Does one -- 15 A. But I can guess, you know, 16 Q. -- does 186 show where the, it says something 17 on new crossing right here. 18 A. Uh-huh. 19 Q. Is this where the current plan reflects where 20 the crossing should be? 21 A. This was our preference from a user standpoint, 22 in that it, it related well to the, to the existing 23 building there. 24 And it was related to parking, you know, 25 off street parking that's in front of the museum.

15 (Pages 57 to 60)

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1 And so it just seemed like a good fit, and it related 2 to the depth of the water that was required and would 3 minimize dredging that would be required around the 4 dock here, so it seemed like a good fit for us. 5 Q. Okay. So is that a yes, that's where the 6 current plan is for the new crossing? 7 A. As far as I know, yes. 8 Q. Okay. 9 A. This is, this is our latest version. 10 Q. Okay. So this has it to the east of the depot; 11 correct? 12 A. Yes. 13 Q. Do you know if that's the location where the 14 previous crossing was? 15 A. When you say "previous crossing," I'm a little 16 confused by -- 17 Q. Do you have any, do you have any knowledge of 18 whether or not there is a previous crossing at any 19 point east of the depot? 20 A. We looked at some evidence of usage in that 21 area, but I can't say precisely where, you know, what 22 was done before. I don't, I don't have a fixed -- I 23 don't have a fixed location for a previous crossing. 24 Q. Okay. So, no, you can't tell me? 25 A. Correct.	1 there -- 2 Q. Okay. 3 A. -- to know, to know that kind of history. 4 Q. And you have used the term "Oliver Street," but 5 can you, can we agree that you don't have any 6 knowledge whether or not there was ever a public city 7 street named Oliver Street? 8 A. Only that it was recorded on their street map 9 in 1975. 10 Q. And that's what Sandy Key gave you; correct? 11 A. Yes. 12 Q. Okay. 13 A. Yes. 14 Q. And that actually wasn't a city map; correct? 15 It was from Western Arkansas Planning and Development 16 District? 17 A. Yes. 18 Q. So to say it was a city map isn't exactly 19 accurate. We don't know that; correct? 20 A. Yes. It means that the -- some agency did it 21 for the city. 22 Q. Right. And we don't know where they got their 23 information; correct? 24 A. Correct. 25 Q. Okay. All right. Let me keep this out, and
Page 62	Page 64
1 Q. Okay. You said you looked at evidence of 2 usage. What, what did you look at? 3 A. If you look at some of these photographs, you 4 will see pavements, which indicate extensions of 5 streets, and if you walk down there you see a lot of 6 people walk through here just west of the museum. 7 You see the evidence of Oliver Street, I 8 believe it was called, that, that was an extension of 9 approximately where Bell Street and Oliver Street, 10 those usage came in. 11 That's the reason the blue map is so 12 important. It points out that there was an Oliver 13 Street, and there was a -- there is a Bell Street 14 that the city has mapped in the past. 15 So that's about the only evidence that I 16 have. Plus there are pavements -- now I never went 17 and surveyed and detailed those. I wasn't building a 18 case, you know, to reestablish some old crossing. 19 I just realized that, yes, there have been 20 other crossing points that were used frequently, 21 probably commercially, you know. 22 Now I understood that this is only hearsay, 23 that there was a residence down here that used Oliver 24 and, in fact, several residences. But the city, the 25 city people would have to tell you that who lived	1 we'll probably come back to 186. We'll just leave it 2 like that for a moment. 3 (Exhibit No. 187 was marked.) 4 BY MS. JONES: 5 Q. All right. What is 187? 6 A. 187 is very similar to 186. It's just another 7 version of the same document. 8 Q. Okay. 9 A. This was a work in progress, and I simply 10 reached -- 11 Q. I understand. 12 A. -- into the file -- 13 Q. Okay. 14 A. -- and these are the documents that were in the 15 file. 16 (Exhibit No. 188 was marked.) 17 BY MS. JONES: 18 Q. Okay. What's 188? 19 A. 188 is a little bit of an enlargement of this, 20 of this previous design of the dock -- 21 Q. Okay. 22 A. -- of 186. Apparently it's just a little 23 larger version. 24 Q. Okay. 25 (Exhibit No. 189 was marked.)

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Page 65 1 BY MS. JONES: 2 Q. Okay. What is 189? 3 A. Now, 189 is, is unique in our design process in 4 that it shows for Terry and I the, really the, the 5 various facts concerning the levels. 6 Q. I should have gotten that mosquito out. 7 A. Anyway, he's gone now, the mighty might. This 8 shows the -- this is really important to us because 9 it shows the ground levels, and I highlighted this 10 for Terry and I's use to show the surveyed ground 11 levels of both above and below the water. 12 Q. Okay. 13 A. And it also shows the slopes that would be 14 required for a person to navigate or to walk down to 15 the dock. 16 And so Terry and I were trying to figure 17 out what would be the ramping problems and the 18 landing problems if this were indeed a handicapped 19 access site. 20 And that's the reason that we detailed the 21 track grades, so that we could, indeed, put a hard 22 surface for a handicapped person in a wheelchair, for 23 instance, and then what would be the ramping 24 considerations or stairway conditions if it turned 25 out to be nonhandicapped accessible.	Page 67 1 the river rises to the full 100 year flood. So that 2 made the fixed facility much more attractive in terms 3 of just fix the dock and let the river rise and fall 4 below it. 5 And a couple of feet above the pool is not 6 prohibitive to a fisherman to jump out of his boat 7 and crawl up on the dock. It's pretty friendly, in 8 fact. 9 Q. Okay. 10 A. So, anyway, this study really told us a lot 11 about the physical conditions that we were up 12 against. 13 The 100 year event is really rare, you 14 know, a one in a hundred chance in any given year, so 15 that's really rare. So that really told us a lot. 16 That's a very important -- that 189 is very important 17 to us. 18 (Exhibit No. 190 was marked.) 19 BY MS. JONES: 20 Q. All right. What's 190? 21 A. 190 is where Terry put his name and my name on 22 the drawing, and we added some utility locations to 23 our survey information. 24 Q. Uh-huh. 25 A. We added some approximate, very approximate
Page 66 1 But this is a grade study that shows the 2 landing requirements and the slope requirements to 3 get down to this dock. 4 Q. Okay. 5 A. Yes. 6 Q. Describe for us what, and kind of in a lay way. 7 I mean, is it a steep grade? Is it leveled grade? 8 What if -- if I'm a person using this dock, what am I 9 experiencing? 10 A. You would have to -- you could access it by a 11 series of ramps, which are handicapped accessible, 12 which meet the rules of the ADA. 13 Q. Okay. 14 A. So we, we were quite relieved to find that. 15 The other thing that this shows, as I mentioned 16 earlier, we looked at the 100 year floods -- 17 Q. Uh-huh. 18 A. -- and what is the variation in river height. 19 In Little Rock in this reach of the river where the 20 river is confined, the heights change dramatically 21 with increase in flood height or increase in flow. 22 Here as the flow increases due to rainfall 23 events the river doesn't fluctuate but from normal 24 pool of 371.4 up to 373.5 at the 100 year level. 25 So from 71.4 to 73.5 is only 2.1 feet that	Page 68 1 right-of-way lines to the street. This is just a 2 further developed drawing of the, of the survey 3 concept. 4 Q. What's the railroad's right-of-way? 5 A. It is 100 feet. 6 Q. Okay. And how did you measure that. 50 feet 7 from each side of the center line? 8 A. Yes, from the main line. 9 Q. Okay. And do you know what other property the 10 railroad owns in that section? 11 A. No. 12 Q. Okay. 13 A. No. We have not at any point done extensive 14 title work. 15 Q. Okay. You're not here to testify about who 16 owns what or where any right-of-way or easement lines 17 are? 18 A. No. We simply made use of whatever information 19 we could obtain, and we obtained that 100 foot 20 dimension of the railroad from their record drawings. 21 Q. Okay. Does this 190 show the hiking/biking 22 trail at all? 23 A. No. 24 Q. Okay. Have you had any, any work on the 25 hiking/biking trail?

17 (Pages 65 to 68)

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1 A. No. 2 Q. Okay. So you are only the floating dock? 3 A. Except. 4 Q. Okay. 5 A. Except we drew the lease area as defined by the 6 Corps' legal description. 7 Q. Okay. 8 A. We plotted that onto an aerial photograph to 9 get an image of where that land is. 10 Q. Okay. 11 A. Now -- 12 Q. Are we going to hit that at some point? 13 A. Yes, yes. 14 Q. Okay. 15 A. Now, that's about the limit of my knowledge of 16 the intent or the location of the proposed trails. 17 Q. Okay. 18 A. I don't really know where they are, and I don't 19 know who is working on that. 20 Q. Okay. 21 A. Okay. 22 (Exhibit No. 191 was marked.) 23 BY MS. JONES: 24 Q. All right. Exhibit 191, what's that? 25 A. This is as we tried to take the city's maps and	1 ready to stamp this as a, you know, a complete 2 survey. It's more like the city's map of all its 3 streets. 4 Q. Okay. And you're -- 5 A. It's just an image, you know. 6 Q. And you're not testifying that any of those are 7 actual city streets or that they were dedicated, or 8 accepted, or platted, or anything, any legal 9 description of the, of the street; correct? 10 A. Correct, see that's a title problem -- 11 Q. Right. 12 A. -- and I don't have information to base that 13 opinion on, or... 14 Q. And we can agree that no matter what you say 15 today you are not making any sort of title opinions? 16 A. Yes, correct. 17 Q. That will save a lot of follow-up questions. 18 A. And then, and then Oliver, Oliver, you know, I 19 approximated -- I was thinking where did that Oliver 20 Street connect? 21 Well, it's somewhere between First and 22 Bell, so, you know, there's -- I could plot it right 23 there. 24 And I asked my CAD guy to kind of scale 25 that in and see how that fits, and, you know, you can
Page 70	Page 72
1 define rights-of-way and the limits of the 2 rights-of-way, and, and kind of examine the records 3 of where these various features might be based on the 4 1975 information. 5 And so we drew these street rights-of-way. 6 That then defines private ownership, and we were 7 trying to see if the buildings as built conformed to 8 the approximated street right-of-way width. 9 Q. Did they? 10 A. Yes. 11 Q. Okay. 12 A. Yes. It was, it was pretty evident where, you 13 know, this River Street -- that was the key to us, is 14 where is this River Street. I believe it's River 15 Street, if I'm calling it correctly. 16 This, this first street down here parallel 17 to the river, we wanted to know where its 18 right-of-way was, and then how the other streets 19 north and south of the river aligned with it and 20 joined to it. 21 And so we -- this is just a study. It's 22 just a general study to get a photo image of where 23 these various features are. And that's, that's the 24 limit. 25 This is not based on survey. I am not	1 see some utilization right there that may indicate an 2 Oliver Street historically. 3 Q. Or a street. We are calling it Oliver, but a 4 street; correct? 5 A. Yes, yes. 6 Q. Okay. 7 A. But that's about the limit of our, of our 8 research on it. 9 Q. Okay. 10 A. Investigation. 11 (Exhibit No. 192 was marked.) 12 BY MS. JONES: 13 Q. All right. Tell us what 192 is. 14 A. Okay. 192, we took a description of the lease 15 area, as I recall. The city told us they had leased 16 a tract of land from the Corps of Engineers, which is 17 really a unique concept, for the city to lease from 18 the Corps, but that's what we were told. 19 And they asked us, Can you put that onto a 20 map? And we said, Well, we'll give that a try. And 21 this is, this shaded area is the area that we 22 recorded to match the legal description of the Corp's 23 lease area, and then this... 24 (Exhibit No. 193 was marked.) 25 BY MS. JONES:

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1 Q. And then 193? 2 A. This next exhibit, this other exhibit is simply 3 a little better graphically illustrated. 4 Q. Okay. 5 A. It's, it's -- and it's -- 193 is an improvement 6 over the first draft of one -- which is 192. 7 Q. And here's 194. Is this -- 8 A. I notice that, that these are identical, I 9 believe. 10 Q. Okay. 11 A. They are just two copies of the same thing. 12 Q. Okay. So 193 -- or 194 is probably identical 13 to 193? 14 A. Yes. 15 Q. So we agree those are identical? 16 A. Right. 17 Q. Okay. Then I am going to take 194 out. 18 A. Okay. 19 Q. And I will even let you have that one back. 20 A. Okay. 21 Q. We will try to keep duplicates to a minimum. 22 Okay. 23 MS. JONES: All right. So we have 24 been going for a while. Why don't we take 25 a break since we've stopped at the end of	1 A. Yes, yes. 2 Q. Okay. We won't mark that then. Okay. 3 (Exhibit No. 194 was marked.) 4 BY MS. JONES: 5 Q. So 194, what is this? This looks like we 6 haven't seen this before? 7 A. Correct. 194 is a drawing that the city 8 furnished to us. 9 Q. Okay. 10 A. The Missouri Pacific Railroad keeps a very 11 detailed record of its rights-of-way and facilities, 12 some, some facilities along the side, and these are 13 historical records of an accumulation of years. And 14 I've used these for all of my career, essentially, to 15 document where and what the railroad has. 16 Q. Okay. 17 A. And, and they're very good at documenting 18 geometry, if you need to know what is the curvature 19 of the track -- 20 Q. Okay. 21 A. -- and where are the tangents, they define that 22 for you. And then that's a great tool for land 23 surveyors to define rights-of-way in private 24 ownership versus railroad ownership. 25 Q. Okay.
Page 74	Page 76
1 these pictures? We will take just a quick 2 break, and then we will come back and get 3 into it. 4 THE WITNESS: Sure. 5 THE VIDEOGRAPHER: We are going off 6 the record. It's 10:29 p.m. 7 (Short break) 8 THE VIDEOGRAPHER: We are back on the 9 record. It's 10:40 a.m. 10 BY MS. JONES: 11 Q. All right, Mr. Ruck. We also have some large, 12 oversized maps on the floor. Are these all 13 duplicates of what's in here, or are they any 14 different ones? 15 A. They are duplicates, but they're easier to see 16 at larger scale. 17 Q. Okay. Well, let's by all means look at them. 18 A. I think looking at those would be, perhaps, 19 enlightening. This is -- 20 Q. Why don't we mark this as 194? Are they -- 21 A. Well, this is a repeat. 22 Q. Okay. Okay. This is something Terry had done? 23 A. Uh-huh. 24 Q. And it looks like, I think this was probably 25 one of the conceptual designs from early on?	1 A. If you're surveying for a private party that 2 lives along the railroad, you would really need to 3 study this map to figure out the geometry of that 4 right-of-way. 5 Q. Okay. 6 A. So that's what it's used for. 7 Q. Okay. 8 A. And the railroad shares these freely. 9 (Exhibit No. 195 was marked.) 10 BY MS. JONES: 11 Q. Okay. And what's 195? 12 A. 195 is more track plans. 13 Q. Okay. 14 A. So this, this is not right at the city. 15 Q. Okay. 16 A. It is further up or down the line. 17 Q. All right. Anything else we need to look at 18 down there? And this is just a figure of your 19 navigation channel; right? 20 A. Yes. This is where we were plotting to large 21 scale the, what we could see in the aerial 22 photographs. 23 We were trying to discover where are these 24 streets located, and, you know, if a person came from 25 the depot to get to downtown how would he go.

19 (Pages 73 to 76)

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1 And so we were looking at photographs, and 2 we were trying to best site the, the proposed 3 facilities on the water with respect to the 4 navigation channel. 5 Q. Okay. 6 A. We were also looking, as things and discussion 7 progressed with the railroad, we were looking at 8 where are their sidings, and how long are they, and 9 how much are they used, and so forth. 10 We were also looking for evidence of that 11 identified street, Oliver Street, and Bell Street, 12 and looking for evidence of previous occupation. You 13 know, that became an issue with the city. 14 And so we began to kind of examine the 15 photographs, and this, this was just a way of doing 16 it from, from the office rather than out on the 17 ground. 18 But, you know, we were looking for evidence 19 of usage downstream. And, you know, there is some 20 usage along this River Street here that we see that 21 might be Oliver Street. 22 (Exhibit No. 196 was marked.) 23 BY MS. JONES: 24 Q. Okay. So I have marked this as 196, and we can 25 clearly see the railroad is using the main line and	1 A. Do you want the long answer or the short 2 answer? 3 Q. Just hand me the file. 4 A. Let me give you the summary answers here; okay? 5 Q. Okay. Why don't we, why don't we just -- 6 A. If I -- 7 Q. Yeah -- 8 A. If I might -- 9 Q. Uh-huh. 10 A. Can I help you -- 11 Q. Yes. 12 A. -- lead you through these documents? 13 Q. That would be good. We just have to mark them 14 as we do this. 15 A. Okay. Does that mean you are going to need 16 to -- could I pitch some of them as being 17 unimportant? 18 Q. Absolutely. Let's just go through them. 19 A. Lay the unimportant ones aside? 20 Q. Yes, uh-huh. 21 A. Okay. This is a 2008 article where I first 22 learned of the city's intent to develop the 23 riverfront. 24 Q. Okay. 25 A. This is a letter that we wrote in '09, Jess
Page 78	Page 80
1 the siding from this photograph; can't we? 2 A. Yes. 3 Q. So we can see that it's stocked full of trains? 4 A. You see the cars, yes. 5 Q. Okay. I will get these large ones out of our 6 way for right now. Okay. And do we need to look at 7 that, or are we good? 8 A. I think we're good. This is simply an 9 enlargement of that railroad map. 10 Q. Okay. All right. Then we're good. 11 A. As we, as we studied Second and First Street -- 12 Q. Okay. 13 A. -- and so forth. 14 Q. And we'll go ahead and -- since it's a good 15 enlargement, we will do this as 197. 16 (Exhibit No. 197 was marked.) 17 A. The, the other thing that we were using this 18 for was to identify where pipe culverts and drainage 19 facilities were so that we wouldn't inadvertently 20 land on top of something that was essential to 21 drainage in downtown. 22 Q. Okay. 23 A. So it was just good information. 24 Q. All right. What else do you have with you from 25 your file?	1 Griffin wrote Terry that said, We sure would like to 2 work with you if you get more involved with the 3 city's project. 4 Here is a copy, an unsigned copy of the 5 contract for our engineering services. This is a fax 6 where, a fax from the mayor, as she said that others 7 had done surveying in the downtown area that might 8 give us evidence of where the rights-of-way were. 9 Q. Okay. So let's mark that letter as 198. 10 A. Okay. 11 (Exhibit No. 198 was marked.) 12 BY MS. JONES: 13 Q. And by mayor at the time, you are talking about 14 Carol Sneath at that time? 15 A. Carol Sneath, yes. 16 Q. Okay, okay. 17 A. And this is March of 2012, as we were 18 proceeding on that same course of action to establish 19 street rights-of-way and so forth. 20 Here is a survey that actually shows a lot 21 that crosses the UP right-of-way. I thought that was 22 a pretty interesting document. That survey, that is 23 a boundary survey done by others. 24 (Exhibit No. 199 was marked.) 25

20 (Pages 77 to 80)

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1 BY MS. JONES: 2 Q. Okay. I have marked that as Exhibit 199. 3 A. And there may be more than one survey attached. 4 Q. Okay. 5 A. Here's where a transfer of property occurred 6 for a parcel that Terry Burruss was working on, and 7 he asked us to plot this parcel, and I don't -- this 8 is undated. 9 I don't know when I received this, but 10 that's a parcel of city ownership, and that's a deed 11 that verifies the transfer from one city agency to 12 another. 13 (Exhibit No. 200 was marked.) 14 BY MS. JONES: 15 Q. Okay. I have marked this as Exhibit 200. 16 A. Okay. This is where we established elevations 17 so that we could track with the Corps of Engineers' 18 records of proper elevation control. 19 Q. Okay. Mark that as Exhibit 201. 20 (Exhibit No. 201 was marked.) 21 A. This is a document that shows that we did the 22 research to locate utilities in the area. 23 Q. Okay. Mark that as Exhibit 202. 24 (Exhibit No. 202 was marked.) 25 A. Arkansas One Call publishes that and let's you	1 letter to Charlie Felkins from Mayor Sneath. 2 (Exhibit No. 205 was marked.) 3 A. Yeah, that's August of 2012. Here is another 4 similar document in response, October of 2012. 5 Q. Mark that as -- 6 A. October 23. 7 Q. -- 206, and it is a letter from Patrick Halsted 8 to Carol Sneath. 9 (Exhibit No. 206 was marked.) 10 A. And here is November of 2012, a response from 11 the City of Ozark. I was simply copied on this. 12 Q. Yeah. 13 A. On this correspondence. 14 Q. I will mark as 207 the November 30th, 2012, 15 letter. 16 (Exhibit No. 207 was marked.) 17 A. And then here is a letter from UP to this, to 18 Carol Sneath, February of 2013. 19 MS. JONES: Marked as 208. 20 (Exhibit No. 208 was marked.) 21 A. And then we discussed by phone a meeting with 22 the railroad, and I believe this is the -- I believe 23 this refers to the meeting we had at the state 24 capitol -- 25 Q. Okay.
Page 82	Page 84
1 know which utilities were contacted. 2 Q. Okay. 3 A. Here is simple correspondence between Union 4 Pacific and the Mayor of Ozark, Mayor Sneath. 5 Q. Okay. Mark that as Exhibit 203. It's a May 9, 6 2012, letter to Mayor Sneath from Charlie Felkins. 7 (Exhibit No. 203 was marked.) 8 A. By the way, I tried to put these in 9 chronological order. 10 Q. You are better than most witnesses. 11 A. Okay. 12 Q. I appreciate that. 13 A. Sure. They were not in chronological order 14 when I started. This is July 17th, 2012, as we 15 arranged to meet with the Corps. 16 Q. Okay. 17 A. And the Colonel, Colonel Masset. 18 Q. I will mark that as 204. 19 (Exhibit No. 204 was marked.) 20 A. And that led to further meetings with his staff 21 where we discussed the viability of the project. 22 Q. Okay. 23 A. Here is correspondence between the city and UP 24 Railroad that I was copied on. 25 Q. Okay. Exhibit 205 is the August 20, 2012.	1 A. -- March of 2013, and it discusses what the 2 railroad is interesting, interested in discussing. 3 Q. Okay. Mark this as 209. 4 (Exhibit No. 209 was marked.) 5 A. And this is the agenda for that meeting, 6 March 15th of 2013. 7 Q. Mark this as 210. 8 (Exhibit No. 210 was marked.) 9 BY MS. JONES: 10 Q. And I am going to go through -- when we come 11 back I'm going to go through and talk with you about 12 those meetings and what you remember; okay? 13 A. Uh, huh, right. 14 Q. Okay. 15 A. July 19th of 2013, this is when they asked us 16 to plot the lease area that they have downstream of 17 the First Street -- 18 Q. Uh-huh. 19 A. -- depot and all. This is that description 20 that we plotted, and this is where the City of Ozark 21 transferred that to us for plotting. 22 That's -- there are a number of pages in 23 that one. You might -- I just want to mention that 24 it's a lengthy document. 25 Q. I will mark this as Exhibit 211.

21 (Pages 81 to 84)

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1 (Exhibit No. 211 was marked.) 2 A. In fact, it even has some graphics -- 3 Q. Okay. 4 A. -- attached to it. This is October, you know, 5 getting late in 2013, just emails from, to Walter 6 from Terry Burruss about things he had requested in 7 relation to the highway department. 8 Q. I'll mark this as Exhibit 212. 9 (Exhibit No. 212 was marked.) 10 A. And the remainder of this is more standards and 11 previous studies that we were given access to just 12 for information. 13 Q. Okay. 14 A. This is Arkansas Highway Department policy as 15 they partner with local entities on projects. 16 (Exhibit No. 213 was marked.) 17 Q. Okay. I have marked that as 213. 18 A. We did a little research to see what standards 19 there were regarding guidelines for marinas. 20 Q. Okay. 21 A. That's kind of a design guideline, very dif -- 22 very general in nature. 23 Q. Okay. Marked as Exhibit 214. 24 (Exhibit No. 214 was marked.) 25 A. Here is a document from the Corps of Engineers	1 Q. Okay. 2 A. -- in '07. 3 Q. Okay. I will mark that as 217. 4 (Exhibit No. 217 was marked.) 5 A. It's a long time before we even heard of the 6 project. 7 Q. Okay. 8 A. The Corps requested that we do a risk 9 assessment, and that was a new term that I had not 10 been familiar with before, but they said, We had not 11 like you to define the risks along the river and 12 related to the river or the water side, I mean or the 13 land side that we, that we need to face and we need 14 to find solutions for. 15 Q. Okay. 16 A. And so they wanted us to do a risk assessment. 17 And so we, we took some go-bys that, you know, were 18 provided to us, and we generated a risk assessment. 19 Q. Okay. So I have marked that as 218. 20 (Exhibit No. 218 was marked.) 21 BY MS. JONES: 22 Q. All right. This risk assessment you don't do 23 any risk assessment of the impact of the at-grade 24 crossing; correct? 25 A. I think, I think the fact that there is an
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1 in which they define for us the constraints that they 2 impose on development along the river. 3 Q. Okay. 4 A. And it's, it's very general. It talks about -- 5 it doesn't use the term "constraint line." 6 Q. All right. 7 A. But it does kind of say there are minimums that 8 we require off the navigation channel, and so that in 9 general it tells you those requirements. 10 Q. Okay. That will be Exhibit 215. 11 (Exhibit No. 215 was marked.) 12 A. I don't know where I got this or who gave it to 13 me. It's just some other project. 14 Q. Okay. Well, we'll -- 15 A. Let me pitch that out of there. That's not a 16 part of the record you want. That's probably for 17 education of my own. 18 Here is a crossing application from October 19 of '09. This is something Sandy Keith [sic] wrote to 20 me, I believe, Key gave to me. 21 Q. Okay. I will mark that as 216. 22 (Exhibit No. 216 was marked.) 23 A. I think this did have some value to us, 24 environmental assessment of River Bend Marketplace, 25 and it was prepared by Mickie Wagner Coleman --	1 active railroad there would be a part of the risk, 2 but it's not related to the water side utilization. 3 The Corps is looking for the water side more than the 4 railroad. 5 Q. Do you know what types of materials that the 6 railroad transports? 7 A. No. 8 Q. You would, you would probably agree on a 9 commonsensical level that they, that there are 10 hazardous materials that would be transported by the 11 railroad? 12 A. Might be, yeah, sure. 13 Q. And have you taken any sort of risk assessment 14 of derailment at that location? 15 A. No. 16 Q. Okay. Can we agree on a commonsensical level 17 if there was a derailment of hazardous materials that 18 given the closeness of the tracks of the river it 19 could go in the river? 20 A. Yes. 21 Q. Okay. And you have done a survey, so you know 22 that there are in places 15 feet that you have the 23 tracks from the river; correct? 24 A. No. 25 Q. Okay.

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1 A. I -- no, I really haven't examined that. 2 Q. Well, I mean, we can look at the pictures and 3 look at, just glance at the survey, and we can, we 4 can agree, I think, on sort of an obvious level that 5 the track and river are pretty close -- 6 A. Close. 7 Q. -- to each other? 8 A. Yes, I agree. 9 Q. Okay. And that if there was a derailment it 10 wouldn't be a huge leap to take that the, the length 11 of the cars might exceed the length between the 12 tracks and the river; correct? 13 A. Uh-huh. 14 Q. Is that "yes"? 15 A. Yes. 16 Q. And that it's not a big leap to say if there 17 was a derailment there, there was a very strong 18 probability that whatever was derailed was going in 19 the river? 20 A. Yes. 21 Q. Okay. But that's not in your formal risk 22 assessment, anything about a derailment into the 23 river; correct? 24 A. I don't recall. 25 Q. Yeah, do you want to take a minute and look?	1 BY MS. JONES: 2 Q. Okay. So 219 is of an existing dock, so I 3 assume this is the one behind the Marriott at the 4 Peabody? 5 A. Yes. 6 Q. Okay. 7 A. Yes. 8 (Exhibit No. 220 was marked.) 9 Q. The same as 220; correct? 10 A. Yes. 11 Q. And 221, 222, 223. 12 (Exhibit Nos. 221, 222, 223 were marked.) 13 BY MS. JONES: 14 Q. I'm trying to go for the record here -- 224, 15 225. 16 (Exhibit Nos. 224 and 225 were marked.) 17 A. In the digital age it's easy to take a lot of 18 pictures. 19 Q. And 226. 20 (Exhibit No. 226 was marked.) 21 (Exhibit No. 227 was marked.) 22 Q. All right. In 227 we see some, it looks like 23 Google Earth photographs of Ozark; correct? 24 A. Yes, yes. 25 (Exhibit No. 228 was marked.)
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1 A. I don't recall. 2 Q. Because I didn't see anything in my quick 3 glance. 4 A. (Witness reviews document.) No, I don't see 5 anything regarding the railroad at all. 6 Q. Okay. 7 A. Yeah. 8 Q. That's what I was seeing, too. 9 A. Yeah. 10 Q. Okay. 11 A. The Corps' risk assessment format was more 12 about river utilization as opposed to land side -- 13 Q. Okay. 14 A. -- hazards, yeah. 15 Q. So not only is there not a risk assessment of 16 the risk of derailment, there is no risk assessment 17 of injury to a pedestrian who was crossing the 18 at-grade crossing; correct? 19 A. Correct. 20 Q. Okay. All right. What have you got next? 21 A. These are some photographs that I took at two 22 locations, one at the project site in Ozark, and the 23 secondly the Little Rock very similar floating dock 24 that they have. 25 (Exhibit No. 219 was marked.)	1 Q. And 228, this looks to be some of the tracks on 2 Ozark? 3 A. Yes. 4 Q. I have to ask, did you get permission to get on 5 our tracks? 6 A. No. 7 (Exhibit No. 229 was marked.) 8 Q. Okay. 229 is another picture on our tracks; 9 correct? 10 A. Correct. 11 (Exhibit No. 230 was marked.) 12 Q. Okay. 230, another picture on our tracks; 13 correct? 14 A. Yes. 15 Q. 231 is a picture on our tracks? 16 (Exhibit No. 231 was marked.) 17 A. Yes. 18 Q. What is the significance of the photographs of 19 the railroad tracks? 20 A. We were examining in a very, in a very general 21 way what would be the improvement type that we would 22 recommend if we indeed had an at-grade crossing for 23 pedestrians. 24 And we wanted to improve our memory -- you 25 know, as we made a site visit we just wanted to just

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1 record that with a photograph, or two, or three, or 2 four, or 20. I don't know how many are actually in 3 the, in the computer at my office, but we recorded 4 evidence in order to indicate to us the form of 5 design that we ought to do and recommendations that 6 we ought to make. 7 There are a number of materials we could 8 use for an at-grade crossing for pedestrians, and it 9 could be concrete, as being the hardest. It could be 10 asphalt, could be sand, could be earthen. 11 You know, it could be a lot of materials 12 that we could use. It could be gravel or ballast 13 material, and make a crossing for pedestrians. 14 So we were just looking at what is, you 15 know, what is going to be the recommended option, and 16 we were just generalizing our thinking. 17 Q. Okay. All right. What else do you have in the 18 file? 19 A. That's about it. I mentioned that we had a 20 format for a risk assessment, you know, a typical 21 go-by. I have that. We received that 9-17 of '12. 22 Q. Is it -- I mean, is it just a form? 23 A. No. It's, it's an actual risk assessment. 24 Q. Okay. 25 A. Burkhalter Technologies produced that.	1 Q. What is -- as I understand, now that we have 2 kind of gone through the file -- 3 A. Uh-huh. 4 Q. -- your involvement is with respect to the 5 floating dock itself; correct? 6 A. Yes. 7 Q. Okay. 8 A. That's a part of -- 9 Q. Okay. 10 A. -- what we explored, uh-huh. 11 Q. And you have done some looking at the at-grade 12 crossing by the floating dock; correct? 13 A. Yes. 14 Q. Okay. You don't have any information, and 15 you're not going to testify about the city's current 16 plan for a biking/hiking trail; correct? 17 A. Correct. 18 Q. And you're not going to be testifying about any 19 plans for a marina; correct? 20 A. Marina being differentiated from the floating 21 dock that we were -- 22 Q. I think we would agree a marina is different 23 than a floating dock; correct? I mean, a marina you 24 would anticipate multiple boat slips, or at least 25 more than a floating dock?
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1 Q. Okay. So I'll mark -- 2 A. They were generous enough to loan us that. 3 Q. I will mark the folder as Exhibit 234 (sic), 4 and that's the folder risk assessment draft, and 5 within it is the Burkhalter Technology assessment. 6 A. Yes. And this is a repeat of another document 7 I feel sure the Corps leased to Ozark. 8 Q. I think that is 234. I grabbed the wrong 9 sticker. That should be 232. 10 (Exhibit No. 232 was marked.) 11 BY MS. JONES: 12 Q. The exhibit is the Corps assessment? 13 A. No. This is the information concerning the, 14 the Corps property leased to the City of Ozark. 15 Q. Okay. 16 A. And those are just supporting documents for 17 that lease. 18 Q. Okay. I will mark that as Exhibit 233. 19 (Exhibit No. 233 was marked.) 20 BY MS. JONES: 21 Q. Okay. Have we got through your file? 22 A. That's it. 23 Q. All right. Now let's ask the actual questions 24 now. Okay. 25 A. Okay.	1 A. That's correct. 2 Q. Okay. 3 A. Correct. 4 Q. So -- 5 A. I did not, I did not do any conceptual work on 6 a marina. 7 Q. Okay. 8 A. No. 9 Q. So let's talk about the floating dock and the 10 at-grade crossing. What is the current plan, and we 11 can go back and, I think, look at, look at the 12 documents if we need to. 13 A. Uh-huh. 14 Q. But what is the current plan for the city with 15 respect to a floating dock? What is the current 16 status of that? 17 A. Yeah. It would, it could be floating, but then 18 again it could be a stationary platform. We haven't 19 done a final design on any of this, so we are, we are 20 keeping all options open -- 21 Q. Okay. 22 A. -- as far as floating or fixed. 23 Q. Okay. If it is a fixed platform, what does 24 that mean? Does it mean it's into the, the bed of 25 the river and with pylons or something that affixes

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1 it? 2 A. Yes. 3 Q. Is that right? 4 A. Yes. 5 Q. Okay. 6 A. Fixed in height, as opposed to floating up and 7 down with river level. 8 Q. Okay. 9 A. Yeah. 10 Q. And if it's floating it's somehow affixed to 11 the bank, is that how it would be? 12 A. Either way it would be tied back to the bank. 13 Q. Okay. 14 A. Yes, either way. 15 Q. All right. So kind of tell me what the design 16 difference is between floating and stationary? 17 A. Stationary is simply supported with four 18 columns. 19 Q. Okay. 20 A. Most likely four columns. 21 Q. Uh-huh. 22 A. As a bridge would be, you know, just simply 23 sitting. Floating would be supported by plastic or 24 some other form of flotation and allowed to either be 25 hinged or fixed with vertical columns on which the	1 That is the last conversations that I recall where 2 actual railroad personnel were there. 3 Q. Okay. 4 A. I, I ran into one of your partners, one of your 5 members of your firm, I ran into him at a social 6 gathering, and he mentioned that it looked like we 7 were, you know, headed, you know, toward a hearing. 8 And so I said, Well, let's -- let's proceed on, you 9 know. 10 Q. Okay. 11 A. But we didn't discuss any details at all. 12 Q. Right. What -- are you going to testify that 13 the railroad has made any sort of representations 14 about the plan for the floating dock? 15 A. I don't understand. 16 Q. Okay. 17 A. Re -- 18 Q. In the conversations that you have had with the 19 railroad, I guess let's talk about the meeting at the 20 capitol. 21 A. Uh-huh. 22 Q. What. what do you remember the railroad saying? 23 A. They did not want, as I recall, pedestrians 24 crossing the track. 25 Q. And can you understand why?
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1 dock could float up and down as water level changes. 2 Q. Okay. 3 A. And I've, I've seen both types, you know, used. 4 Fixed -- I own a fixed, you know, and I own a 5 floating, and I have -- and I own a hinged floating, 6 so I'm kind of familiar with those on the White 7 River, you know, from a practical standpoint and just 8 by observation. And I know those are the main ways 9 that I've seen up and down the river that these are 10 done. 11 Q. Okay. 12 A. So, anyway, but we haven't finalized a design 13 on any of these. 14 Q. Why? What are we waiting on? 15 A. It, it becomes a matter of a contract, number 16 one. We are not under contract to design the details 17 for the dock. We are trying to get the project fixed 18 with agreement from all sides that this is the proper 19 course of action. 20 Q. Okay. Who are the sides? 21 A. The city, the railroad, and the Corps. 22 Q. Okay. So when is the last time that you spoke 23 with anyone at the railroad? 24 A. I would say probably at the meeting at the 25 capitol there were representatives of the railroad.	1 A. Yes. 2 Q. Because there are -- 3 A. Yes. 4 Q. -- some serious safety concerns with 5 pedestrians crossing the track; correct? 6 A. That's what they felt like, yes. 7 Q. Okay. Can you understand why the railroad 8 would feel that way? 9 A. Yes. 10 Q. Okay. 11 A. Sure. 12 Q. And you understand -- now you've, you've looked 13 at that track. Can we agree that there is a curve 14 coming into the city? 15 A. Yes. 16 Q. Okay. In -- and I'm guessing in at least some 17 of the limited work -- well, you've had extensive 18 work with the short line, but in your sort of role 19 with that, you understand that a train just doesn't 20 stop immediately when it hits its emergency; correct? 21 A. Yes. 22 Q. Yeah, there's -- and especially when you're 23 dealing with larger than a short line -- 24 A. Yes. 25 Q. -- coming in, there's some time period in which

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1 when you hit emergency before a train can stop; 2 correct? 3 A. Yes. 4 Q. Okay. And you understand that anytime a 5 railroad engineer has to put a train into emergency 6 there is a risk of derailling the train; correct? 7 A. Yes. 8 Q. Okay. And that that risk increases when you 9 have a curve; correct? 10 A. Yes. 11 Q. Okay. And that increases when you have an 12 incline; correct? 13 A. Yes. 14 Q. Okay. And -- 15 A. And my statements are predicated on the fact 16 that I am not a railroad safety engineer. 17 Q. Right. 18 A. I want you to understand that I don't claim 19 that designation or that expertise, but in general, 20 yes, I know that's true, yeah. 21 Q. Yeah. And you're not claiming that the 22 at-grade crossing would be safe or unsafe; correct? 23 You're not, you're not going to express an opinion as 24 to the safety of the at-grade crossing at all; right? 25 A. No, no.	1 A. -- from that meeting. Do you remember that 2 agenda -- 3 Q. Uh-huh. 4 A. -- of things we discussed? There may be some 5 indication. I just recall there -- safety was their 6 number one concern at that meeting. 7 Q. All right. I will look at 210. 8 A. Okay. I do recall that the railroad commented 9 that the number of uses would be very minimal. It's, 10 it's -- they said, Well, gosh, there won't be but a 11 handful of fishermen on the best day that come from 12 the state park to park their boats at the facility. 13 And, and the city agreed with that, that at 14 any given time any given morning there might not be 15 but four boats or five boats or 20 boats in a day, 16 for instance. So, yeah, that was, that was one of 17 the points they made, looking at my notes. 18 One thing we haven't mentioned that we did 19 discuss at that meeting was that the city would 20 incorporate into their design, and something that 21 Terry and I clearly incorporated into the drawings 22 was a set of moveable gates -- 23 Q. Okay. 24 A. -- that would -- the pedestrian would not have 25 free right to cross. It would be similar to a street
Page 102	Page 104
1 Q. Okay. 2 A. Because I am not licensed really with that 3 expertise, nor have I been trained -- 4 Q. Right. 5 A. -- to supplement my license capabilities to be 6 a safety engineer. 7 Q. Okay. 8 A. Correct. 9 Q. That takes some questions out. 10 A. Correct. 11 Q. We are can rely -- 12 A. Yeah, yeah. 13 Q. -- on the fact you're not rendering any opinion 14 safety or unsafety of an at-grade crossing at this 15 point? 16 A. Yes. 17 Q. Okay. All right. So, at the meeting at the 18 capitol the railroad expressed some safety concerns 19 about having pedestrians cross at that location? 20 A. Yes. 21 Q. Okay. What else, what else do you remember 22 from the railroad? 23 A. To get details I would have to look back at the 24 notes -- 25 Q. Okay.	1 crossing of a railroad track in which there are 2 control arms that go down when a train approaches. 3 There are signal wires that connect to that 4 gate that disarm the gate from operation, and it, it 5 disarms the gate from even being opened. 6 And we talked about manual operation where 7 an adult would be required to reach high and trigger 8 an opening mechanism in the gate, and that mechanism 9 would not work if a train were approaching. 10 Now, not only am I not a safety engineer, 11 but I am not a traffic engineer, but our traffic 12 engineers in our office do signal lights and such 13 mechanisms, you know, all over. 14 And so we predict -- we protect pedestrians 15 from crossing the streets when the lights aren't 16 correctly configured and there are cars coming. 17 And so those mechanisms that protect our 18 crossings at industrial track situations where there 19 are vehicle versus train conflicts, those can be 20 handled by mechanically operated or electronically 21 operated gate mechanisms. 22 Q. Okay. 23 A. So that was something that Terry and I offered 24 to the railroad as being a, you know, a viable option 25 for the city to install those types of mechanisms to

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1 make it safe. 2 Q. Have you studied the safety of a motorized gate 3 at an at-grade crossing? 4 A. No. 5 Q. Okay. So you can't tell us whether or not that 6 actually in practicality is a safe option; correct? 7 A. Correct. 8 Q. Okay. 9 A. It's safer -- I would say just from a layman's 10 standpoint, it's safer than none at all. 11 Q. What about the person that gets stuck in 12 between the gates? 13 A. I haven't considered that. 14 Q. With an oncoming train? 15 A. Oh. I haven't considered that, but... 16 Q. What about the drunk person who can't operate 17 the gate correctly? 18 A. We haven't discussed that. 19 Q. What about the child? 20 A. The child we did discuss, because we think this 21 would be a family-oriented facility, and Terry and I 22 discussed the fact that whoever operates the gate 23 would need to be an adult operating it to, so that a 24 child couldn't reach it. 25 Q. What about the child who tries to climb to	1 Q. Right. 2 A. We, we discussed a viable, what we considered 3 to be a viable alternative, and it is one that Terry 4 Burruss introduced to me on the first day. 5 Q. And what's that? 6 A. And it's something we have not touched on. 7 Q. What's that? 8 A. But an overhead crossing. 9 Q. Okay. And an overhead crossing would be an 10 actual bridge in which they're never at level or 11 at-grade with the train; correct? 12 A. Correct. 13 Q. They go over the train? 14 A. Correct. 15 Q. Okay. And that's a viable option at that 16 location; correct? 17 A. We believe that it is, yes. 18 Q. Okay. Tell me, tell me more about the 19 viability of a pedestrian over-cross there. 20 A. Okay. What we feel like is that, and what 21 Terry had, has sketches of, drawings of, is a, a 22 simply stair step approach to an overhead crossing, 23 and it would go from right-of-way to right-of-way, 24 and it would -- so that means it would be a hundred 25 foot span plus a little bit.
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1 reach it? 2 A. That's a possibility we'd have to incorporate 3 into the design. 4 Q. What about the derailment, and we can't get our 5 trucks in and out because of the fence? 6 A. We didn't discuss that. 7 Q. Can we agree that there's -- can we agree that 8 there are issues surrounding the use of a motorized 9 gate that you have not considered? 10 A. Yes. 11 Q. Okay. 12 A. Yes. 13 Q. All right. What else do you remember about the 14 meeting with the railroad? 15 A. There was some discussion of the velocity of 16 the trains that pass through this area. 17 Q. Uh-huh. Do you know what the classification of 18 track is at that location? 19 A. No. 20 Q. Do you know what the FRA regulations allow the 21 train to run at? 22 A. No. 23 Q. Okay. Go on. 24 A. Not for certain. There was discussion, but I 25 don't recall those details, you know.	1 It would be greater than a hundred foot 2 span, and then there would be stair steps on the, on 3 both ends, you know, at the river end as well. 4 That would prohibit ADA accessibility. I 5 have indications from the ADA approval agency that I 6 could get an exemption from the ADA requirement. 7 Q. Who did you talk with at the ADA? 8 A. I don't recall. That's been a couple of years 9 ago. 10 Q. Okay. 11 A. It was -- but it was, it was an office, I 12 believe, in New York City -- 13 Q. Okay. 14 A. -- if I'm not mistaken. It was somewhere in 15 the northeast. I called, and -- you know, I did the 16 best I could on the internet to make a contact with 17 ADA, and they said, Well, our rules do not include 18 absolutely a small fishing pier, you know, in, in our 19 description. That type of utilization is not a 20 guaranteed ADA thing. 21 Now, you know, it's, it's not a park -- 22 it's not a huge park or anything like that. It is 23 simply a boat stopping place, a boat mooring place. 24 Q. Does that analysis change if you have got a 25 park and a bike and a hiking trail right there as

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1 well? 2 A. I don't know. That's -- we would have to go 3 back to them for an exemption. 4 Q. Uh-huh. 5 A. And I think -- and I told her, you know, the 6 person I spoke to, I said, I have to say that I'm not 7 ready to make you a proposal tomorrow or this week to 8 get approval. We are not definite enough in location 9 or type of facility and so forth. 10 So we did not make an application to them 11 for that exemption, but they said for agencies like 12 Game and Fish that this would sometimes work, for a 13 fishing pier or a boat mooring facility, that this 14 would sometimes work. 15 Q. And what is the cost for an overhead crossing? 16 Have you done any sort of budgetary analysis? 17 A. There, there -- we haven't done any hard 18 drawings and hard analysis, but we have done under 19 AASHTO guidelines -- 20 Q. Okay. 21 A. -- overhead facilities for highway type, you 22 know, which come under AASHTO -- 23 Q. Okay. 24 A. -- if I can use that term. 25 Q. That's Arkansas State Highway --	1 Q. Okay. 2 A. So in real, real rough numbers, there's a half 3 a million dollar budget there. 4 Q. Okay. 5 A. And, and, you know, and our conversation, and 6 if I might be allowed to say this, our conversation 7 was that -- 8 Q. Your conversation with who? Tell me -- 9 A. With my people. 10 Q. Your -- 11 A. My design people. 12 Q. Your internal conversation, okay. 13 A. My design people. They said, Do you have any 14 clue what the, what this hearing might cost? And I 15 said, No, I don't know how many people are going to 16 be involved and how, what length of time -- 17 Q. Hearing, you mean the trial of this matter? 18 A. Yes, a trial of this matter if it goes to 19 trial. They said, You could almost use a large part 20 of that half a million dollars that the railroad is 21 going to, going to use to defend against this 22 at-grade crossing, it might be better to put that 23 money up above the rail, just go ahead and spend that 24 money now and, and have everybody happy. 25 And, man, let me tell you, my career is
Page 110	Page 112
1 A. American, it's American. 2 Q. American? 3 A. It's a national -- 4 Q. Okay. 5 A. -- regulatory group. 6 Q. Okay. 7 A. And what they, what they define is, and the 8 cost is defined based on the width of the ramp that 9 would be required. 10 And my people tell me that eight to twelve 11 foot wide, and you might be into \$200 a square foot, 12 so it's very hard -- we don't know the criteria for 13 the width of this walkway. 14 I thought six would be adequate, and they 15 said, no, we think there is an AASHTO rule that says 16 eight feet minimum width. So we are really on the 17 edge of exploration here. 18 Q. Okay. 19 A. But, but I said, okay, let's say it's -- let's 20 take the average between 8 and 12. Let's say it's 21 ten feet wide, and a hundred feet long, and it has 22 supporting columns at four corners, and it has metal 23 stairs up, which would be safe for the average 24 person. They were looking at a half a million 25 dollars.	1 dedicated to bringing people together. I, I revolve 2 around building things that people are happy with. I 3 want everyone around this table to leave happy. 4 Q. Okay. Well, let's get back to the actual 5 design. 6 A. So the dollars seem to me, man, let's don't 7 argue the fine points of, of is this safe, or is this 8 safer, or is this prohibited or whatever, I don't 9 want to cost the railroad insurance money because we 10 win the lawsuit and we reestablish a pedestrian 11 crossing, and your insurance goes up. 12 That doesn't make me happy because the city 13 ultimately wants an overhead. That's what the city's 14 goal is. 15 I don't think we can reach so far as to get 16 to the two million dollar level at this time to make 17 it handicap accessible. 18 Those ramps, they advised me, are more of a 19 two million dollar effort. We can much easily get to 20 a non-accessible facility for a half a million. 21 And that's kind of an outside number. It 22 may come in less than that, but that to me just made 23 me smile. I thought, man, that's, that makes a lot 24 more sense. So anyway... 25 Q. Okay. Well, I'm not, I'm not going to get into

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1 the, to how much sense that makes or not --

2 **A. Okay.**

3 Q. -- because I -- obviously, I am rejecting to

4 the responsiveness of the answer, but let's get back

5 to the meeting. What else do you remember at the

6 meeting?

7 **A. I've got a note here that I -- well, some of my**

8 **notes here aren't clear that -- I mean, this -- the**

9 **discussion meandered far and wide --**

10 Q. Uh-huh.

11 **A. -- and so my notes are -- you're welcome to.**

12 **You have got Exhibit 210, if you want to see what my**

13 **notes indicate.**

14 Q. Well, what I'm really interested in is any

15 representations that you are going to claim that the

16 railroad made at that meeting.

17 **A. Pardon? Rephrase.**

18 Q. What I'm really interested in is any

19 representations that you will testify later on that

20 you believe the railroad made at that meeting.

21 **A. No. I remember that they were very hard, very**

22 **hard in their negotiation, and they just said**

23 **absolutely, we won't consider granting you a permit.**

24 Q. Because safety was their number one concern?

25 **A. I just --**

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1 Q. That's what you said earlier; correct?

2 **A. Yes. That was their -- yes. And the answer is**

3 **no, it's not safe, and that's in general the**

4 **railroad's position, sure, and I recognize that,**

5 **yeah.**

6 Q. Okay. Now, did you before this meeting have

7 any communications with the railroad?

8 **A. No, except I think I got a call from maybe one**

9 **of the Friday firm attorneys that works with the**

10 **railroad, but, no, I don't, I don't think I discussed**

11 **it with the railroad directly.**

12 Q. Okay. Paul Benham, does that name sound

13 familiar?

14 **A. Yes, yes, Paul Benham. I have been trying to**

15 **remember his name. I'm glad you mentioned it.**

16 Q. So you're writing on 210 Paul Benham's name

17 now?

18 **A. Yes.**

19 Q. I just want to make sure that no one thinks

20 that's contemporaneous to when --

21 **A. Do you want me to erase it?**

22 Q. No, that's fine. We have noted it.

23 **A. I'm sorry. I'm sorry. I messed...**

24 Q. All right. What do you remember about your

25 conversation with Mr. Benham?

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1 **A. Paul Benham is the person in your firm that I**

2 **ran into at the social event around the first of the**

3 **year --**

4 Q. Okay.

5 **A. -- at Christmas time.**

6 Q. Uh-huh.

7 **A. Yeah, so.**

8 Q. Okay. Any other conversations that you recall

9 with any railroad representatives about this matter?

10 **A. No.**

11 Q. Okay. All right.

12 **A. Okay.**

13 Q. All right. What else -- what other approvals

14 do you or the city need in order to move forward with

15 the, the dock plan?

16 **A. The Corps will not receive an, or will not**

17 **accept an application for a permit until we resolve**

18 **the issue with the railroad.**

19 Q. Okay. So we don't know --

20 **A. Now --**

21 Q. -- if the Corps will, in actuality, even

22 approve the floating dock plan; correct?

23 **A. We have strong indication that it is fine with**

24 **the Corps. Verbally they say, We can't point to any**

25 **problem.**

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1 Q. And that conversation was in 2012?

2 **A. Yes.**

3 Q. Okay. So you don't have anything recent to

4 suggest that the Corps would approve the plan?

5 **A. Correct.**

6 Q. And nothing in writing?

7 **A. No.**

8 Q. Okay.

9 **A. No.**

10 Q. All right.

11 **A. I, I believe that -- I believe that they will.**

12 **I believe they want us to resolve this other question**

13 **so that the Corps is not used as leverage to persuade**

14 **the railroad in, in a course of action.**

15 Q. And what's that belief based on?

16 **A. Just logic.**

17 Q. Is that something --

18 **A. Just logic.**

19 Q. But you don't have anything from the Corps to

20 suggest that?

21 **A. No. No.**

22 Q. So you're just making an assumption?

23 **A. Yes, yes.**

24 Q. Okay. So we don't have an actual plan for any

25 crossing right now; correct?

29 (Pages 113 to 116)

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1 A. Correct. 2 Q. Okay. So we don't have an at-grade crossing 3 plan? 4 A. Except the exhibits I showed you where we 5 thought it most appropriately would be sited. 6 Q. Okay. So looking at Exhibit 186, you have done 7 a designation of where you think the crossing should 8 be placed; correct? 9 A. Yes. 10 Q. And you don't know if that's where any, a 11 crossing ever was before. That's just where you've 12 determined you think the best place for it to be now 13 would be; correct? 14 A. Yes. 15 Q. Okay. 16 A. Yes. 17 Q. And you've -- it looks like you have gate, you 18 have the motorized gate on your drawing on 186; 19 correct? 20 A. Yes. 21 Q. Okay. And you don't have that listed -- it 22 just says new crossing. It's not listed as 23 pedestrian overpass or at-grade crossing; correct? 24 A. Well, it's -- the crossing is at-grade crossing 25 in this concept.	1 made any plans as to what materials that at-grade 2 crossing should be made out of; correct? 3 A. No. 4 Q. Okay. 5 A. We have done no drawings that really show that. 6 We show it as an extension of the existing sidewalk 7 area and the parking area in front of the depot. 8 They would park here, get on the sidewalk and come 9 down the sidewalk to cross the track -- 10 Q. Okay. 11 A. -- so... 12 Q. So after they crossed the track it looks like 13 from your drawing that they continue completely 14 straight on -- 15 A. Uh-huh. 16 Q. -- and don't a veer; is that correct? 17 A. Correct. 18 Q. Okay. So -- 19 A. No, no, no. Hold that. 20 Q. Okay. Describe to me -- 21 A. I said the wrong thing. 22 Q. Okay. 23 A. Because this is a handicap accessible facility 24 that we've drawn so that it has ramping and platform, 25 and ramping and platform, and ramp and platform, and
Page 118	Page 120
1 Q. Okay. 2 A. Because it's talking about a sliding, a sliding 3 gate. 4 Q. Okay. And you wouldn't need the motorized gate 5 if it was a pedestrian overpass? 6 A. Right. 7 Q. But if I understand your testimony, your belief 8 is that an overhead pass, overhead crossing would be 9 the best option in this location? 10 A. Yes. 11 Q. Okay. Okay. So looking at how you would get 12 across to the ramp, kind of tell me what this looks 13 like. 14 I mean, is -- are they walking -- let's 15 assume it's an at-grade crossing. Is the -- one, is 16 this a pedestrian at-grade crossing, or is this a 17 vehicle at-grade crossing? 18 A. Pedestrian only. 19 Q. Okay. You have not made any design or 20 consideration for a vehicle crossing; correct? 21 A. Correct. 22 Q. Okay. So the pedestrian, let's say they are 23 coming from the City of Ozark onto the boat dock. 24 A. Uh-huh. 25 Q. So, and it's an at-grade crossing. You haven't	1 ramp, and then they're back at the dock level. 2 Q. Okay. 3 A. So, so there is some ramping that needs to take 4 place to get them from track level down to water 5 level. 6 Q. Okay. From -- once they cross the tracks are 7 they immediately on a ramp? 8 A. No. 9 Q. Okay. How far do they walk off the crossing 10 until they hit the first part of the ramp? 11 A. About -- well, from the, from the -- well, it 12 depends on how you define the crossing. From the 13 right-of-way line where the gate would be, the ramp 14 would start right there. 15 Q. Okay. 16 A. At -- it would be, it would be just a hard left 17 turn. 18 Q. Okay. So they would -- 19 A. Onto the ramp. 20 Q. So they would cross the track and make a hard 21 left turn onto the ramp? 22 A. Yes. 23 Q. Okay. How far does the ramp extend? 24 A. I think it is -- I'm working on memory here, 25 so --

30 (Pages 117 to 120)

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1 Q. Well if you need to look at anything -- 2 A. It's -- I don't have a detail of this, but 3 it's -- I believe, ADA accessibility requirements 4 allow only about a two and a half feet drop, two and 5 a half foot drop per ramp. So we have one, two, 6 three, four ramps that are required. 7 Q. Do you know how many -- I guess how many feet 8 is the pedestrian on the railroad right-of-way? 9 A. A hundred feet is the width of the 10 right-of-way, correct? 11 Q. Do you know -- 12 A. Correct? I would have to ask that back to you, 13 but a hundred feet is, yes. 14 Q. Okay. Are you assuming that the railroad only 15 has a hundred feet and doesn't own any other property 16 in that location? 17 A. Yes. 18 Q. Okay. So if the railroad owns anything beyond 19 a hundred feet the person may be on railroad property 20 longer than that? 21 A. Yes. 22 Q. All right. Okay. So they walk at-grade, make 23 a hard left turn, and hit the first of four ramps; 24 correct? 25 A. Uh-huh.	1 could give you those details. 2 Q. Okay. Do you know what the hours of operation 3 for the crossing would be? 4 A. I think it would be, operate all of the time. 5 Q. Okay. Have you prepared a usage plan or know 6 if anyone has prepared a usage plan? 7 A. No. 8 Q. Okay. How big is the dock? 9 A. It's approximately 30 by 60. 10 Q. Okay. 11 A. Conceptually speaking. 12 Q. How big of a boat can be tied to it? 13 A. That, that is a detail we have not figured out, 14 but we have specified that there be dolphins, pipe 15 piled dolphins, which would afford a very large 16 marine capability. Large barges are tied to, you 17 know, such dolphins -- 18 Q. Okay. How many -- 19 A. -- so... 20 Q. -- boats do you think could be tied to it? 21 A. I don't know. 22 Q. Okay. 23 A. A large number, a large number. If, if it's a 24 busy time you could, you could, you know, configure 25 to, to point in toward, as opposed to being parallel.
Page 122	Page 124
1 Q. Okay. And those ramps extend to how many feet. 2 did you say, two and a half feet? 3 A. Vertically, yes. 4 Q. Vertically? 5 A. Yes. 6 Q. Okay. 7 A. And I think that's 32 feet of length each time 8 they go two and a half. I have forgotten the details 9 of the grades. 10 Q. Okay. And so then they would step onto the 11 boat dock? 12 A. Yes. 13 Q. Whether that's a stationary -- 14 A. Well -- 15 Q. -- or floating dock? 16 A. Well, then there's a ramp, you know, another 17 ramp out to the dock itself. The rectangle that is 18 the big dock, there's another segment of ramp. 19 Q. Okay. 20 A. That might also have slope on it. 21 Q. Have you -- 22 A. And let me say this, Terry Burruss -- 23 Q. Uh-huh. 24 A. -- who does building accessibility, you know, 25 more, much more frequently than I do, I think he	1 The other thing that I might comment on is we have 2 not planned the amount of dredging required. 3 Q. Okay. 4 A. Large boats typically would park out here and 5 use a small boat to get to the dock. 6 Q. Okay. 7 A. Large boats would drop an anchor out in the 8 deep water and then drop a smaller boat to get to the 9 dock. 10 Q. What's the budget for the project? 11 A. We've never been able to devise a budget. 12 Q. Okay. So can we agree that right now we are 13 still at sort of the initial planning phase? 14 A. We're very conceptual, yes. 15 Q. Okay. I'm trying to look for that survey. If 16 you see the survey -- 17 A. This has got the survey grades on it right 18 here. 19 Q. Okay. Let's see. Well, I don't know if this 20 will give you what you need, so you look and -- here 21 is what I want to ask you about -- 22 A. Uh-huh. 23 Q. -- and you can get what document you need, but 24 I would like to look at how close to the river, how 25 many feet from the river we are at certain points

31 (Pages 121 to 124)

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Page 125 1 along this stage. 2 So let's, let's look at the, at the 3 crossing. So at, looking at 188, at this idea of an 4 at-grade crossing, if they're standing on the center 5 line of the tracks how much, how many feet do we have 6 before we hit the water? 7 A. Approximately eight. 8 Q. Okay. And it gets -- 9 A. This is, this is 370. That is approximate pool 10 elevation -- 11 Q. Okay. 12 A. -- as I recall. I think that's what that heavy 13 dotted line indicates; that's the water's edge. 14 Q. Okay. 15 A. And I simply looked at that to say well, that's 16 about eight feet. If that's 20, that's about eight. 17 Q. Okay. So we are approximating that a 18 pedestrian standing on the center line at the 19 proposed crossing that you have in 188 would be about 20 eight feet from the water's edge? 21 A. In the middle of that last ramp, yes. 22 Q. Okay. All right. All right. Let's take a 23 short break, and I may be close to being finished. 24 A. Okay, good. 25 THE VIDEOGRAPHER: We are going off	Page 127 1 the only contacts that I can recall. 2 Q. Okay. I thank you for your time, and I 3 appreciate it today. 4 A. Okay. Very good. 5 MR. BROCKETT: I don't have any 6 questions. 7 THE VIDEOGRAPHER: This concludes the 8 deposition. We are off the record at 9 11:51 a.m. 10 (The deposition was concluded at 11:51 a.m.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 126 1 the record. It's 11:43 a.m. 2 (Short break.) 3 THE VIDEOGRAPHER: We are back on the 4 record. It's 11:49 a.m. 5 BY MS. JONES: 6 Q. Are you currently doing any work on this 7 project? 8 A. No. 9 Q. When is the last time you did any work on this 10 project? 11 A. Harder -- that's very hard to remember. 12 Probably, you know, when we published these last 13 drawings, these last concept drawings, I think. 14 Q. Those 2012 drawings, April 2012? 15 A. Well, and then we continued to discuss the, the 16 situation with the, with the railroad and with the 17 city, but that wasn't actual pen and pencil 18 drawings -- 19 Q. Okay. 20 A. As opposed to -- when you say work on the 21 drawings, we talked to them, but, but we haven't 22 actually been designing. 23 Q. Okay. Other than Sandy Key, who have you 24 spoken with from the City of Ozark? 25 A. Sandy and the former mayor, Carol Sneath, are	Page 128 1 COURT REPORTER'S CERTIFICATE 2 STATE OF ARKANSAS) 3)ss. 4 COUNTY OF SALINE) 5 I, JANESE FERGUSON SMITH, CCR, RPR, a 6 Notary Public in and for Saline County, Arkansas do 7 hereby certify that the facts stated by me in the 8 caption of the foregoing matter are true; and that 9 the foregoing matter was transcribed by me, to the 10 best of my ability and understanding, from my machine 11 shorthand notes taken at the time and place set out 12 in the caption hereto. 13 In accordance with Rule 30(e) of the 14 Rules of Civil Procedure, review of the transcript 15 was waived by the deponent or a party thereto. 16 I FURTHER CERTIFY that I am neither 17 counsel for, related to, nor employed by any of the 18 parties to the action in which this proceeding was 19 taken; and, further that I am not a relative or 20 employee of any attorney or counsel employed by the 21 parties hereto, not financially interested or 22 otherwise, in the outcome of this action. 23 GIVEN UNDER MY HAND AND SEAL OF OFFICE on 24 this, the 27th day of February, 2015. 25 26 JANESE FERGUSON SMITH, CCR, RPR 27 Notary Public for Saline County 28 and Court Reporter.

32 (Pages 125 to 128)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CITY OF OZARK, a municipal corporation	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	CIVIL ACTION NO: 2:14-cv-02196-TLB
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	
	)	

AFFIDAVIT OF COLBY W. RINKER

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

COMES NOW the Affiant, Colby W. Rinker, and states as follows under oath:

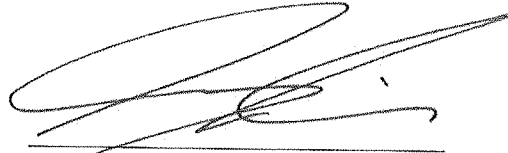
1. My name is Colby W. Rinker. I currently work at Union Pacific Railroad Company ("Union Pacific") as the Real Estate Property Manager for Arkansas. In that role, I have reviewed the real estate documents attached as Exhibit A to this Affidavit. I have also reviewed and am familiar with the Union Pacific right-of-way in Ozark, Arkansas.
2. Union Pacific owns land in Ozark, Arkansas, where its main line track, siding, and storage tracks are located. The Union Pacific right-of-way at the location of the proposed crossing in downtown Ozark, Arkansas is 100 feet wide, which is measured at 50 feet on each side of the center of the main line track.
3. As early as 1970, Union Pacific's predecessor company, Missouri Pacific Railroad Company, leased a portion of its right-of-way to a gas company for a propane tank facility. At the time the gas company was named Synergy Gas Company, but it changed hands and names throughout the lease relationship.

4. The lease was ultimately terminated by Cornerstone Propane effective October 22, 1998. By August 19, 1998, the propane tanks had been removed from the premises.

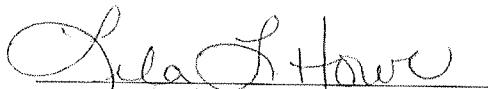
This statement is true and correct to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NAUGHT.

DATED THIS 16th DAY OF April, 2015.

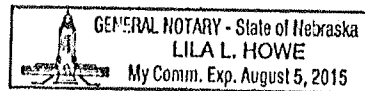

COLBY W. RINKER

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 16th day of April, 2015.


NOTARY PUBLIC

My Commission Expires:

(SEAL)



AFFIDAVIT OF CHARLES FELKINS

I, Charles Felkins, being of lawful age, upon my oath state:

1. My name is Charles Felkins. I went to work for the Missouri Pacific Railroad in 1976. Missouri Pacific was merged into the Union Pacific Railroad Company and I continued to work for Union Pacific until I retired in 2012 as Manager Industry and Public Projects. Part of my job responsibilities was to oversee the opening and closing of highway and street crossings over the railroad in Arkansas. The testimony contained in this affidavit is based on my personal experience.

2. In approximately 2000 an individual living near the depot in downtown Ozark called me several times to complain, sometimes angrily, about the fact that the trains blew their whistles as they approached the crossing immediately south of the depot. This gentleman complained that no one used the crossing and asked that the railroad remove the crossing.

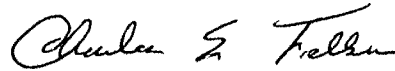
3. Shortly after those complaints, I received a call from the Mayor of Ozark. I believe that his name was Todd Timmerman. The Mayor reiterated the complaints from the previous gentleman, stated that no one used the crossing, and requested that the railroad remove the crossing.

4. At that time, the only crossing in Ozark was the crossing immediately south of the depot. It was a private crossing used by a propane company to access a propane facility located on property it leased from the railroad. It was also used by the railroad to get maintenance equipment on and off the tracks. The approximate location of the crossing was in front of the peanut shelling plant on the North side of River Street. There was a large graveled area about 50 feet wide between River Street and the tracks but there was no developed street there. I do not recall a street sign ever being in place at the crossing. To use the crossing, one had to cross the graveled area, the spur track servicing the peanut shelling plant, the mainline track, and the

storage track next to the river. Once across the tracks, one turned sharply to the left and went along the ends of the ties to get to the propane plant. This was a very tight turn due to the proximity of the river.

5. After continued requests from the Mayor of Ozark that the crossing be removed, in approximately 2001 the railroad removed the crossing at a cost of several thousand dollars.

FURTHER THE AFFIANT SAITH NOT.

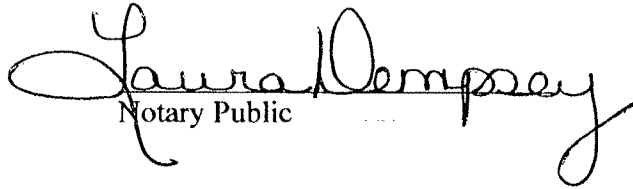


CHARLES FELKINS

VERIFICATION

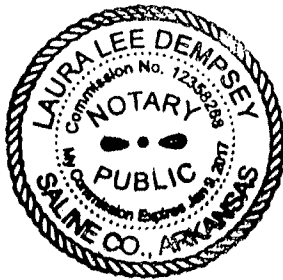
STATE OF ARKANSAS)
)
COUNTY OF) ss.

SUBSCRIBED AND SWORN to before me, a Notary Public, on this 5th day of February 2014,
2014.


Notary Public

My commission expires:

1-9-2017



AFFIDAVIT OF MATHEW BARR

The undersigned, Mathew Barr, being of legal age and capacity to so testify, doth state under oath:

1. My name is Mathew Barr. I am a licensed surveyor in the State of Colorado. I am an employee of Survtech, Inc. which was engaged by Union Pacific Railroad Company to establish its rights-of-way in the vicinity of the railroad depot/museum in Ozark, Arkansas
2. I was responsible for performing the work by Survtech, Inc. related to its engagement by Union Pacific Railroad Company and I have taken measurements of and am familiar with the relative location of the Arkansas River to the Union Pacific Railroad Company rights-of-way in downtown Ozark, Arkansas. At various locations in the vicinity of the railroad depot/museum, the mainline track is less than 15 feet from the edge of the Arkansas River.
3. In some places, the Union Pacific right-of-way goes into the Arkansas River.

I certify under penalty of perjury that the foregoing is true and correct.



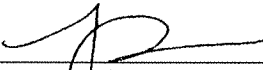
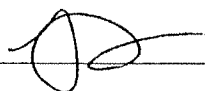
Mathew Barr
Affiant

NOTARY'S ACKNOWLEDGEMENT FOLLOWS ON NEXT PAGE

STATE OF Colorado)
)
COUNTY OF Denver)

ACKNOWLEDGMENT

Subscribed and sworn to before me on this 28 day of August, 2014.

Notary Public

My Commission Expires:
(SEAL)

BRITTANY M DANIELS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20134058848
COMMISSION EXPIRES SEPTEMBER 25, 2016