



Sydney Metro West

Eastern Tunnelling Works Incentivised Target Cost Contract – Amendment Deed 3

Sydney Metro

ABN 12 354 063 515

and

John Holland Pty Ltd

ABN 11 004 282 268

and

CPB Contractors Pty Ltd

ABN 98 000 893 667

and

Ghella Pty Ltd

ABN 85 142 392 461

**In relation to the Eastern Tunnelling Works Incentivised Target Cost
Contract (Contract No. 00013/13102)**

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THIS DEED is made on

2023

BETWEEN:

- (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (the **Principal**); and
- (2) **John Holland Pty Ltd** ABN 11 004 282 268 of Level 3/65 Pirrama Road, Pyrmont NSW 2009;
CPB Contractors Pty Limited ABN 98 000 893 667 of Level 18, 177 Pacific Highway, North Sydney NSW 2060; and
Ghella Pty Ltd ABN 85 142 392 461 of Level 12, 2 Elizabeth Plaza, North Sydney NSW 2060,

(together the **Tunnelling Contractor**).

RECITALS:

The parties wish to amend the Principal Document in the manner set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Effective Date means the date of this document.

Principal Document means the Sydney Metro West – Eastern Tunnelling Works Incentivised Target Cost Contract (Contract No. 00013/13102) between the Principal and the Tunnelling Contractor dated 25 November 2022, as amended from time to time.

1.2 **Terms defined in the Principal Document**

A term (other than a term defined in clause 1.1) that is defined in the Principal Document (as amended by this document) has the same meaning in this document.

1.3 **Rules for interpreting this document**

Clause 1.2 of the Principal Document will apply to the interpretation of this document as if set out in full herein.

2. **AMENDMENT AND CONFIRMATION**

2.1 **Amendments to Principal Document**

- (a) On and from the Effective Date the Principal Document is amended as follows:
 - (i) the General Conditions are amended as set out in Schedule 1 of this document;
 - (ii) Schedule A2 is amended as set out in Schedule 2 of this document;
 - (iii) Schedule A4 is amended as set out in Schedule 3 of this document;

- (iv) Schedule A23 is amended as set out in Schedule 4 of this document;
 - (v) Schedule D1 is amended as set out in Schedule 5 of this document;
 - (vi) Schedule E1 is amended as set out in Schedule 6 of this document.
 - (vii) Schedule E16 is amended as set out in Schedule 7 of this document.
 - (viii) Schedule F1 is amended as set out in Schedule 8 of this document.
- (b) Paragraph (a) does not affect any right or obligation of either party that arises before the Effective Date.
- (c) Where the amendments to the Principal Document contemplated by paragraph (a) refer to only part of a particular clause or part of a schedule, the remainder of the relevant clause or schedule remains unaffected.

2.2 **Effect of amendment**

Except as expressly amended by this document, no changes to the Principal Document are to be inferred or implied, and in all other respects the Principal Document is confirmed and remains in full force and effect.

3. **GENERAL**

3.1 **Governing law**

This document is governed by and must be construed according to the law applying in New South Wales.

3.2 **Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any action or proceedings that may be brought at any time relating in any way to this document; and
- (b) waives any objection that it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if the venue falls within clause 3.2(a).

3.3 **Further acts and documents**

Subject to the terms of this document, each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by any applicable laws or reasonably requested by another party to give effect to this document.

3.4 **Operation of this document**

- (a) Subject to paragraph 3.4(b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

3.5 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

3.6 Amendment

This document may only be varied by a deed executed by or on behalf of the Principal and the Tunnelling Contractor.

3.7 Counterparts & Electronic Execution

- (a) This document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.
- (b) The counterparts of this document may be executed electronically and delivered by electronic transmission. A counterpart executed electronically and delivered electronic transmission is deemed to have the same legal effect as delivery of an original executed copy of this agreement.

3.8 Expenses

Except as otherwise expressly provided for in this document, each of the parties must pay their own costs and expenses of and incidental to the negotiation, preparation and execution of this document.

SCHEDULE 1

Amendments to the General Conditions

With effect from the Effective Date, the General Conditions to the Principal Document are amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strikethrough~~ indicating deletions from the Principal Document):

1.1 Clause 1.1 of the General Conditions is amended to read as follows:

[...]

Portion Handover Date means, in respect of:

- (a) each Portion other than Portions 8, 9 or 10, the later of:
 - (i) the day after the Date of Substantial Completion of the Portion; or
 - (ii) where the Principal's Representative gives written notice under clause 21.16(a) in respect of the Portion, the date notified in the corresponding notice given under clause 21.16(d) in respect of that Portion; ~~and~~
- (b) Portion 10:
 - (i) where Portion 10:
 - (A) is the last Portion to achieve Substantial Completion, the day after the Date of Substantial Completion of Portion 10; or
 - (B) is not the last Portion to achieve Substantial Completion, the day after the Date of Substantial Completion of the last Portion to achieve Substantial Completion; or
 - (ii) if the Principal's Representative specifies an earlier or later date in a written notice given under clause 21.16(d) in respect of Portion 10, such earlier or later date as is specified in that notice; and
- ~~(c) Portions 8 and 9, the later of:~~
 - ~~(i) the day after the Date of Substantial Completion of Portion 8;~~
 - ~~(ii) the day after the Date of Substantial Completion of Portion 9; or~~
 - ~~(iii) if the Principal's Representative specifies an earlier or later date in a written notice given under clause 21.16(d) in respect of Portion 8 or 9, such earlier or later date as is specified in that notice.~~

1.2 Clause 21.16 of the General Conditions is amended to read as follows:

[...]

(b) Unless otherwise directed in writing by the Principal's Representative, the Tunnelling Contractor must perform Transitional Handover Services in respect of:

- (i) Portion 10 from the Date of Substantial Completion of Portion 10 until the Date of Substantial Completion of the last Portion to achieve Substantial Completion without the need for any notice to be given by the Principal's Representative under clause 21.16(a)(1)

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in respect of Portion 10, without being entitled to any adjustment to the Target Cost and without being entitled to any payment pursuant to clause 22.14;

(ii) Portion 8 from the Date of Substantial Completion of Portion 8 until the Date of Substantial Completion of Portion 9 without the need for any notice to be given by the Principal's Representative under clause 21.16(a)(1) in respect of Portion 8, without being entitled to any adjustment to the Target Cost and without being entitled to any payment pursuant to clause 22.14; and

(iii) Portion 9 from the Date of Substantial Completion of Portion 9 until the Date of Substantial Completion of Portion 8 without the need for any notice to be given by the Principal's Representative under clause 21.16(a)(1) in respect of Portion 9, without being entitled to any adjustment to the Target Cost and without being entitled to any payment pursuant to clause 22.14.

(c) If the Principal's Representative gives a notice under clause 21.16(a) or if clause 21.16(b) applies:

[...]

(ii) in respect of Portions 8, 9 and 10, such Transitional Handover Services will constitute Reimbursable Work (and for the avoidance of doubt will not constitute Provisional Sum Work); and

[...]

(d) At any time after issuing a notice under clause 21.16(a) in respect of a Portion or a Milestone Area (as applicable) or after Substantial Completion of Portions 8, 9 or 10, the Principal's Representative may give further written notice to the Tunnelling Contractor that the Tunnelling Contractor is to cease performance of the Transitional Handover Services in respect of the Portion or Milestone Area (as applicable) on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the Tunnelling Contractor receives such notice.

SCHEDULE 2

Amendments to Schedule A2 (Portions and Milestones)

With effect from the Effective Date, Schedule A2 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strike through~~ indicating deletions from the Principal Document):

Clause 2 of Schedule A2 is amended as follows:

2. PORTIONS

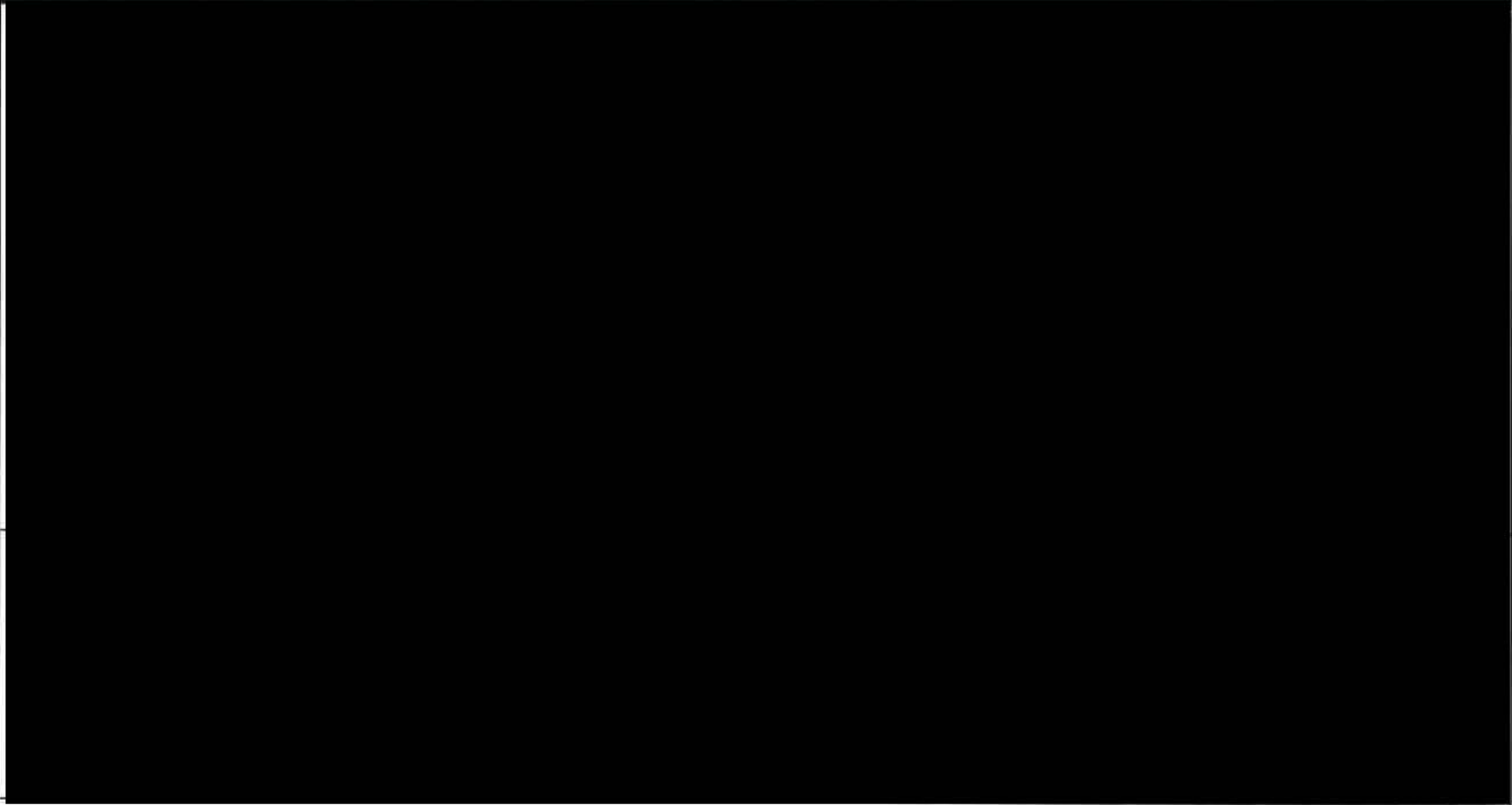
Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional conditions precedent to Substantial Completion	Part of Construction Site

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Portion	Description Infrastructure	of	Date for Substantial Completion	Liquidated (clause \$/day	damages 21.10(d)(ii)	Additional precedent Substantial Completion	conditions to	Part of Construction Site
[Redacted Content]								

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Portion	Description	of	Date for Substantial	Liquidated	damages	Additional	conditions	Part of Construction Site
	Infrastructure		Completion	(clause	21.10(d)(ii))	precedent	to	
				\$/day		Substantial	Completion	



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Portion	Description Infrastructure	of	Date for Substantial Completion	Liquidated (clause \$/day	damages 21.10(d)(ii)	Additional precedent Substantial Completion	conditions to	Part of Construction Site
[Redacted Content]								

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Portion	Description Infrastructure	of	Date for Substantial Completion	Liquidated (clause \$/day	damages 21.10(d)(ii))	Additional precedent Substantial Completion	conditions to	Part of Construction Site
[Redacted Content]								

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Portion	Description Infrastructure	of	Date for Substantial Completion	Liquidated (clause \$/day	damages 21.10(d)(ii)	Additional precedent Substantial Completion	conditions to	Part of Construction Site
[Redacted Content]								

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Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated (clause \$/day	damages 21.10(d)(ii)	Additional precedent to Substantial Completion	Part of Construction Site

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SCHEDULE 3

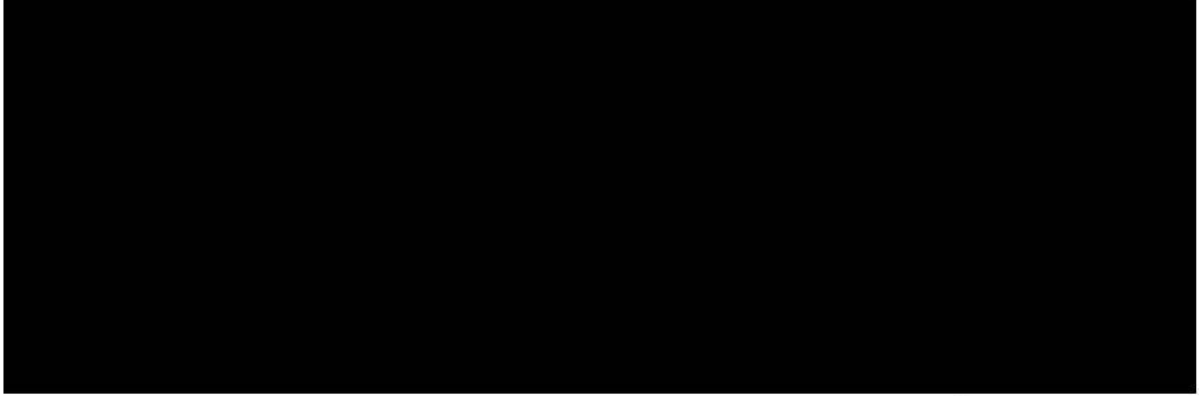
Amendments to Schedule A4 (Transitional Handover Services)

With effect from the Effective Date, Schedule A4 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strike through~~ indicating deletions from the Principal Document):

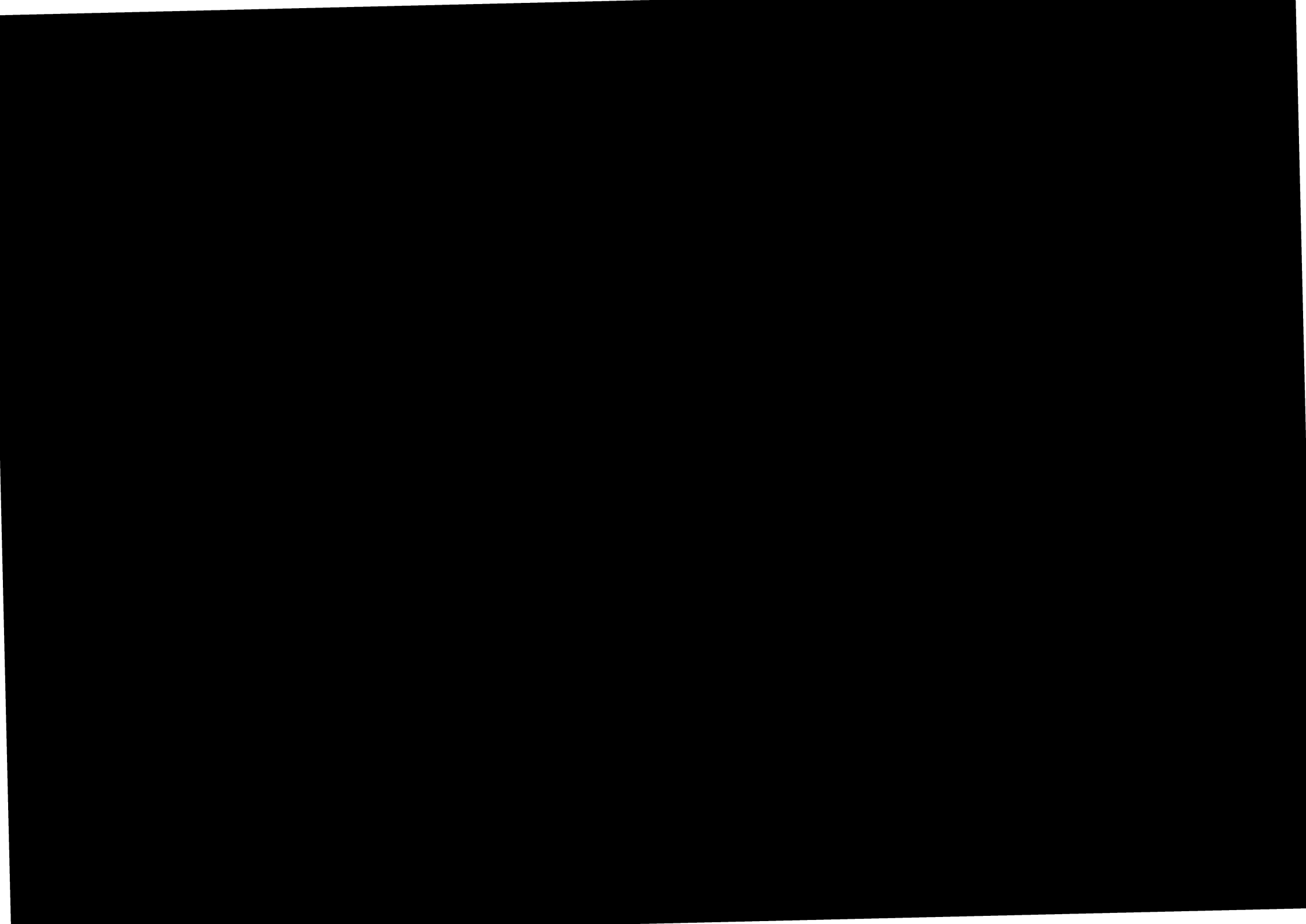
Where the Principal's Representative gives a notice under clause 21.16(a) for a Portion or Milestone Area or, in the case of Portions 8, 9 or 10 where clause 21.16(b) applies, the Transitional Handover Services to be performed by the Tunnelling Contractor in respect of that Portion or Milestone Area (as applicable) comprise the general Transitional Handover Services described in clause 1 of this Schedule A4.

SCHEDULE 4

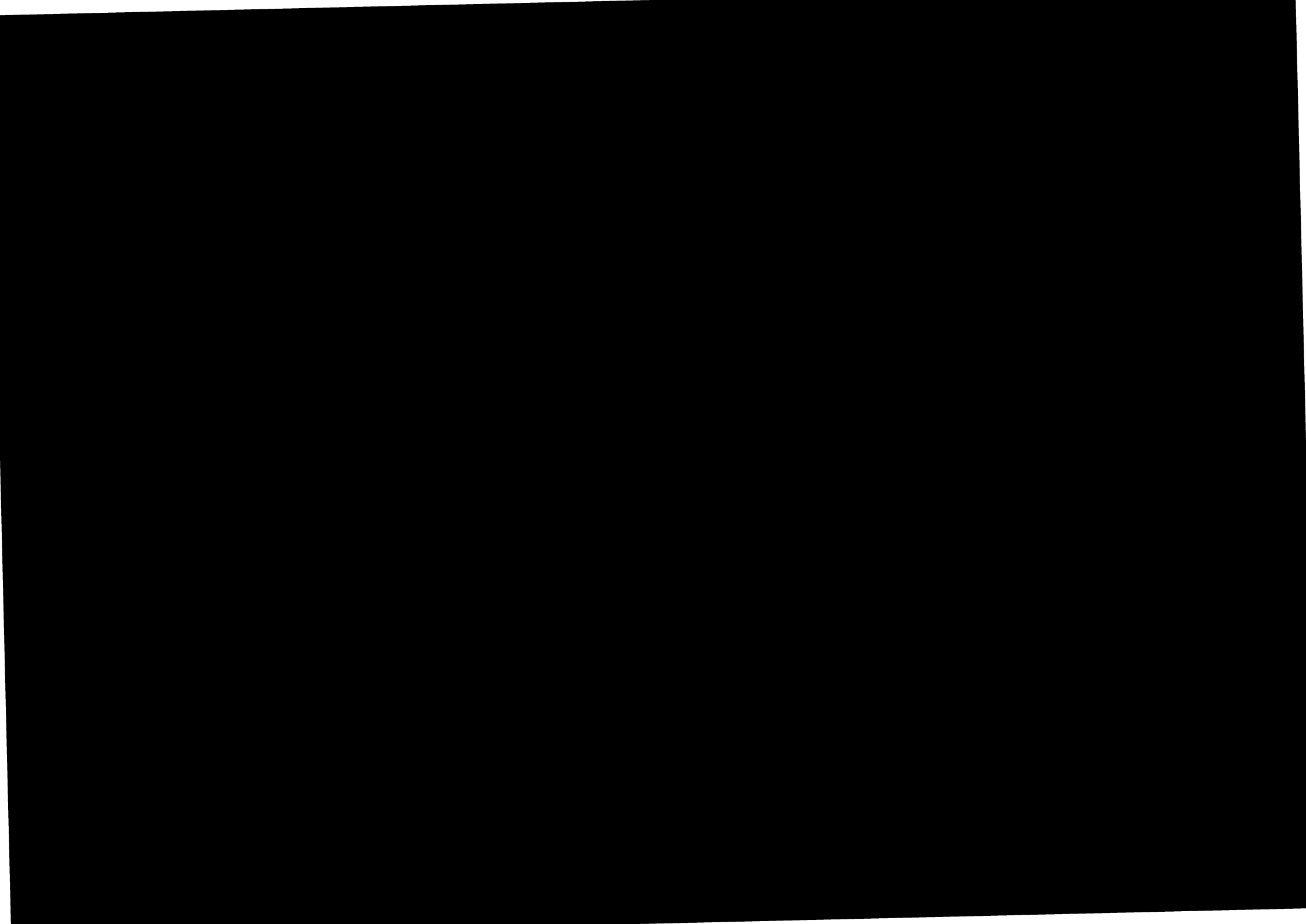
Amendments to Schedule A23 (Overall ETP Program)



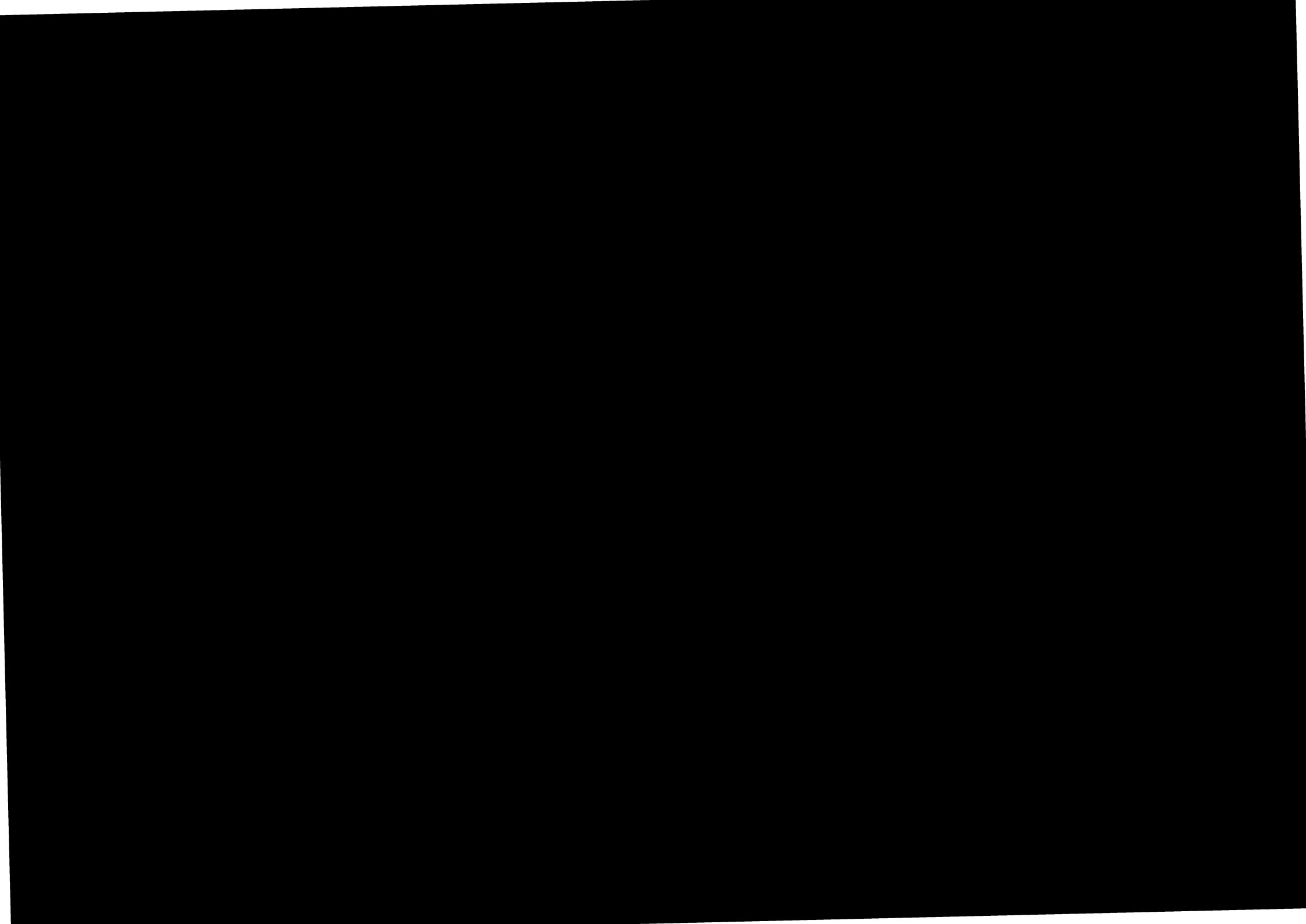




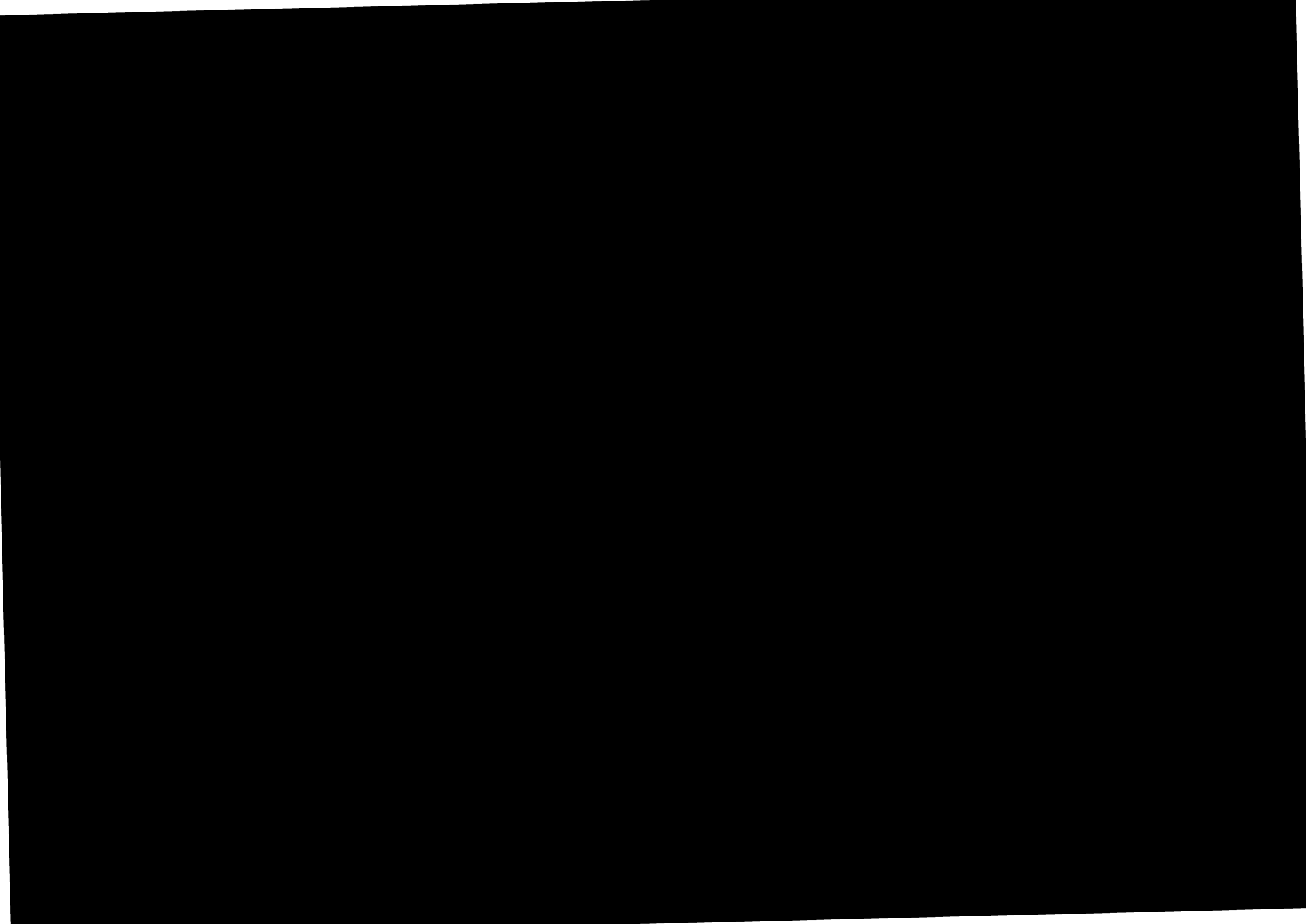




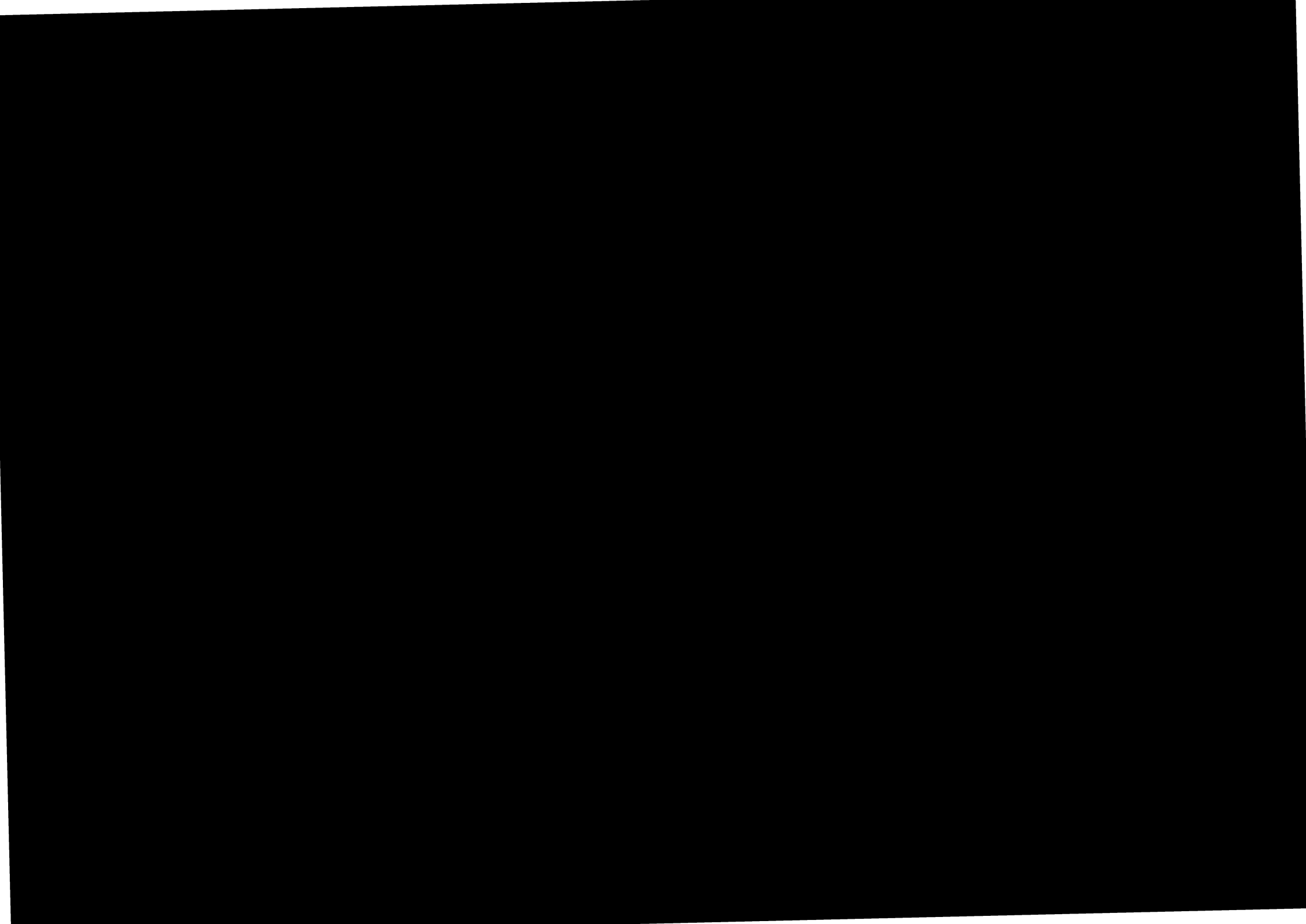


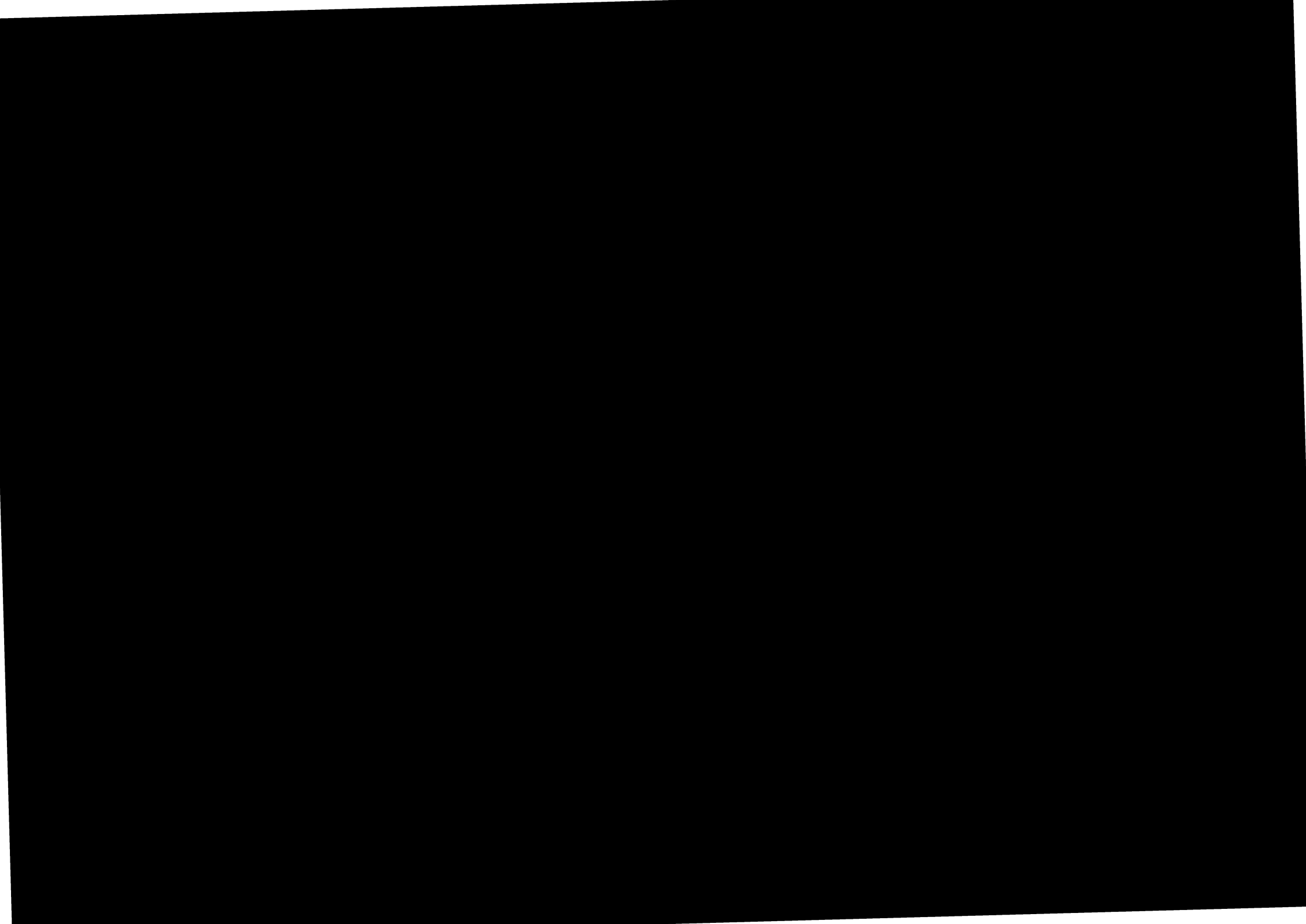


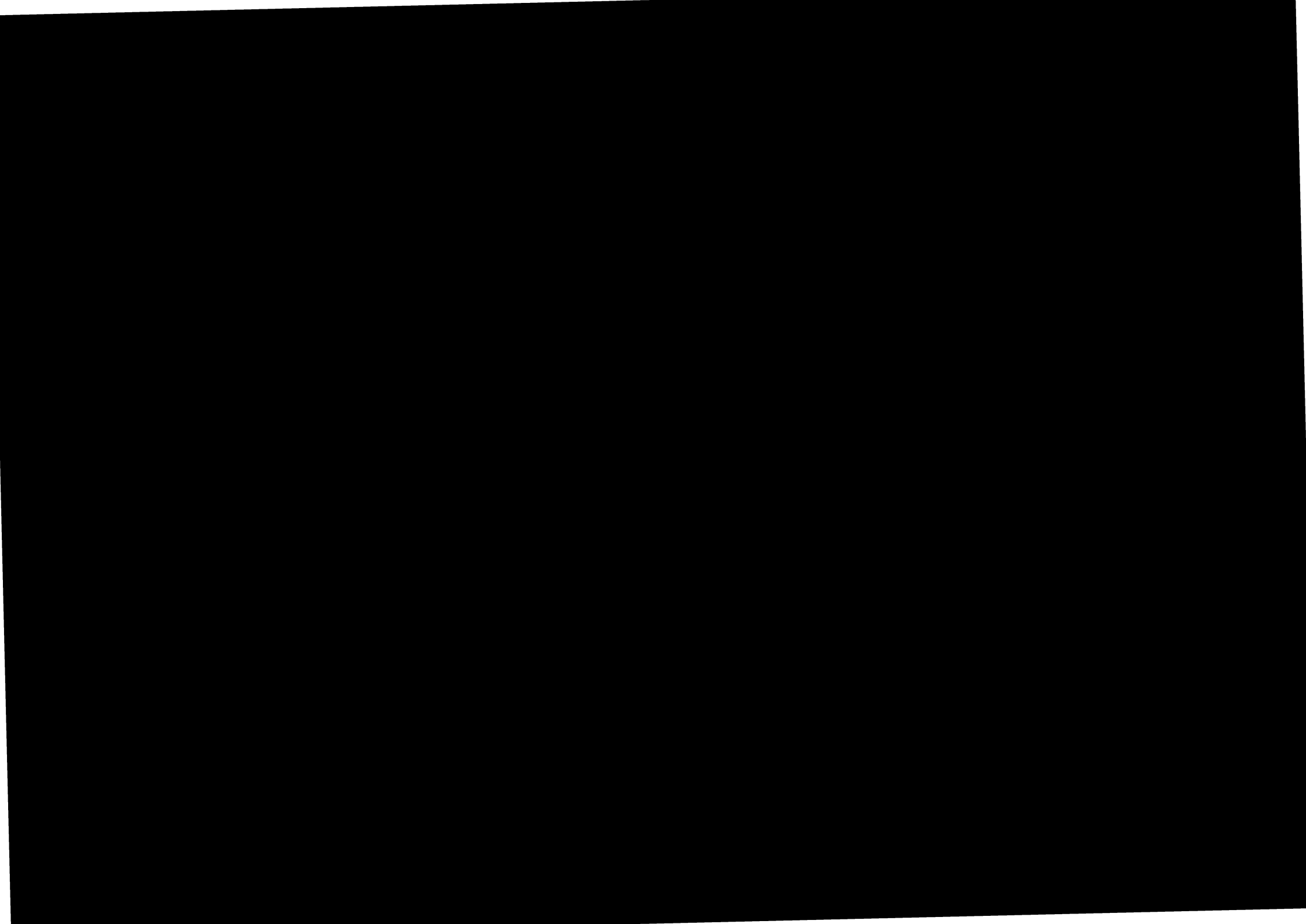


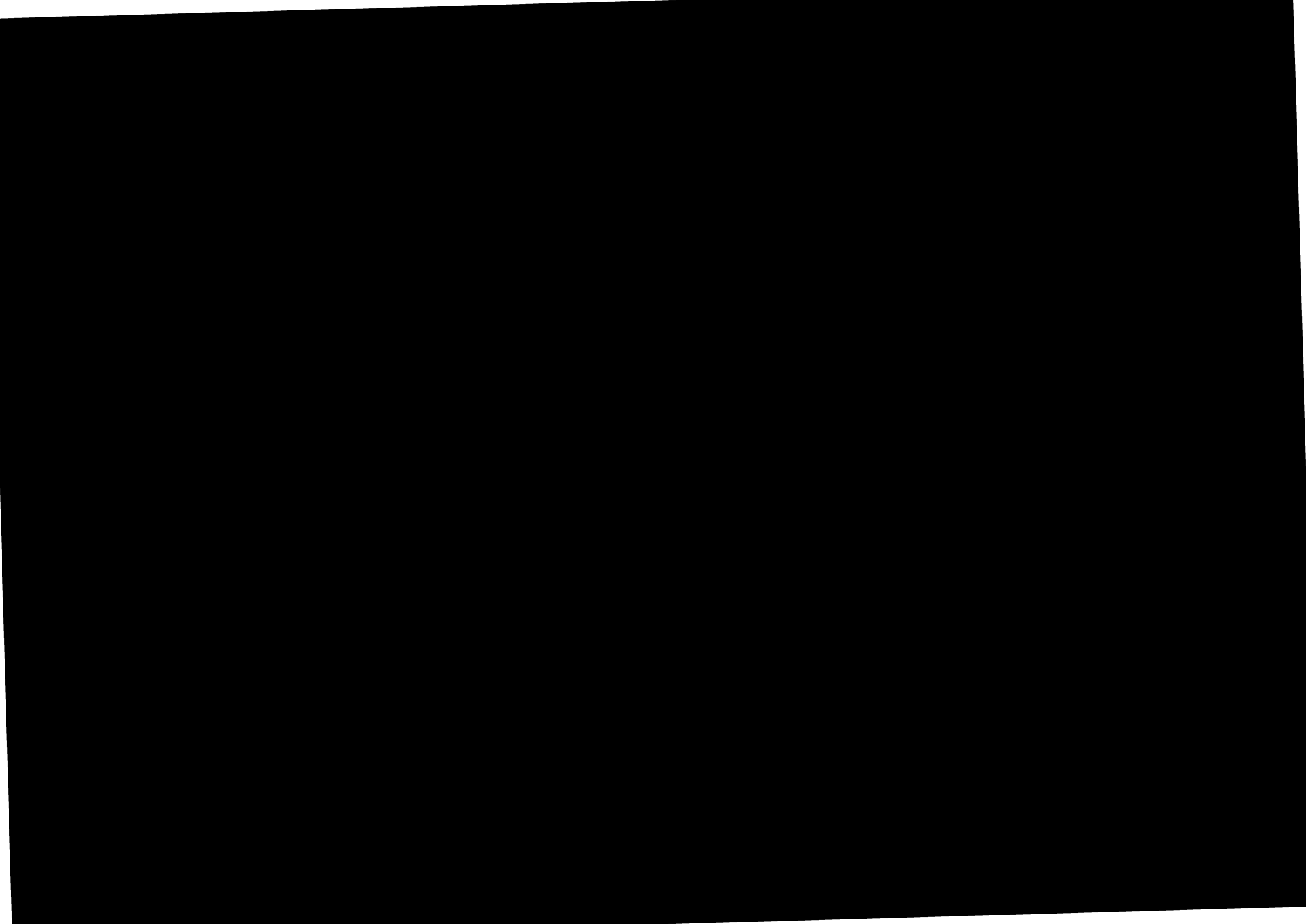


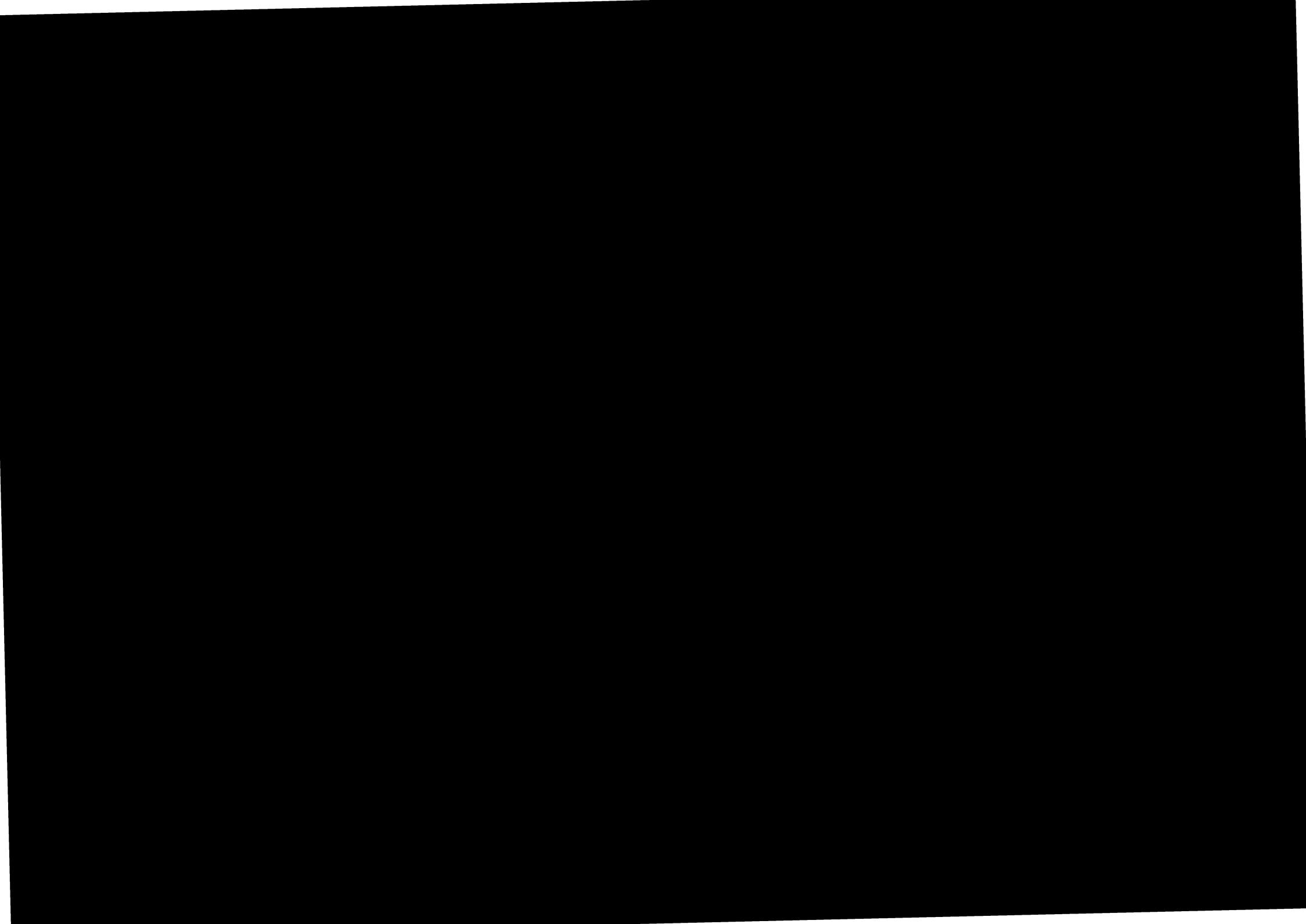




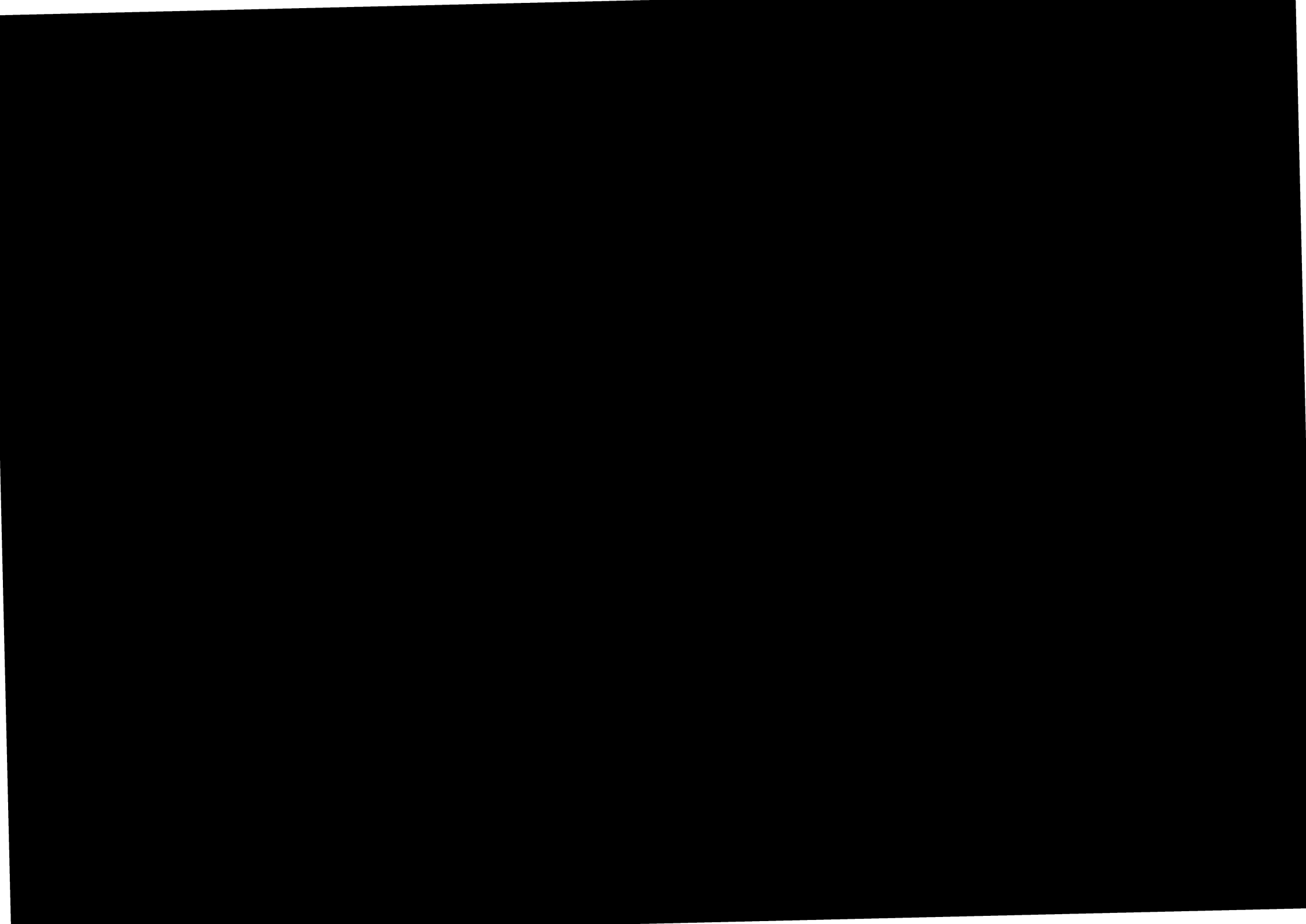




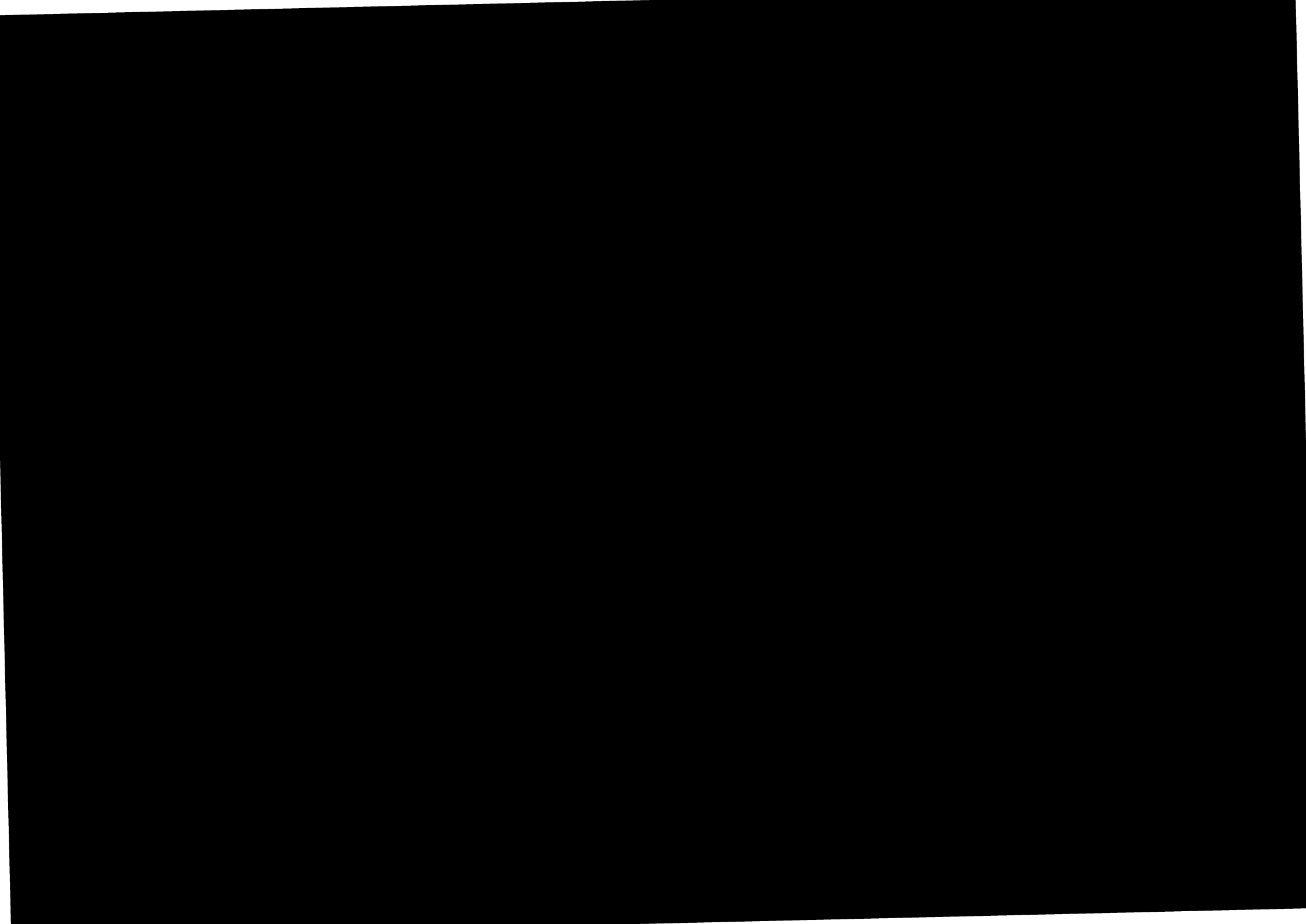




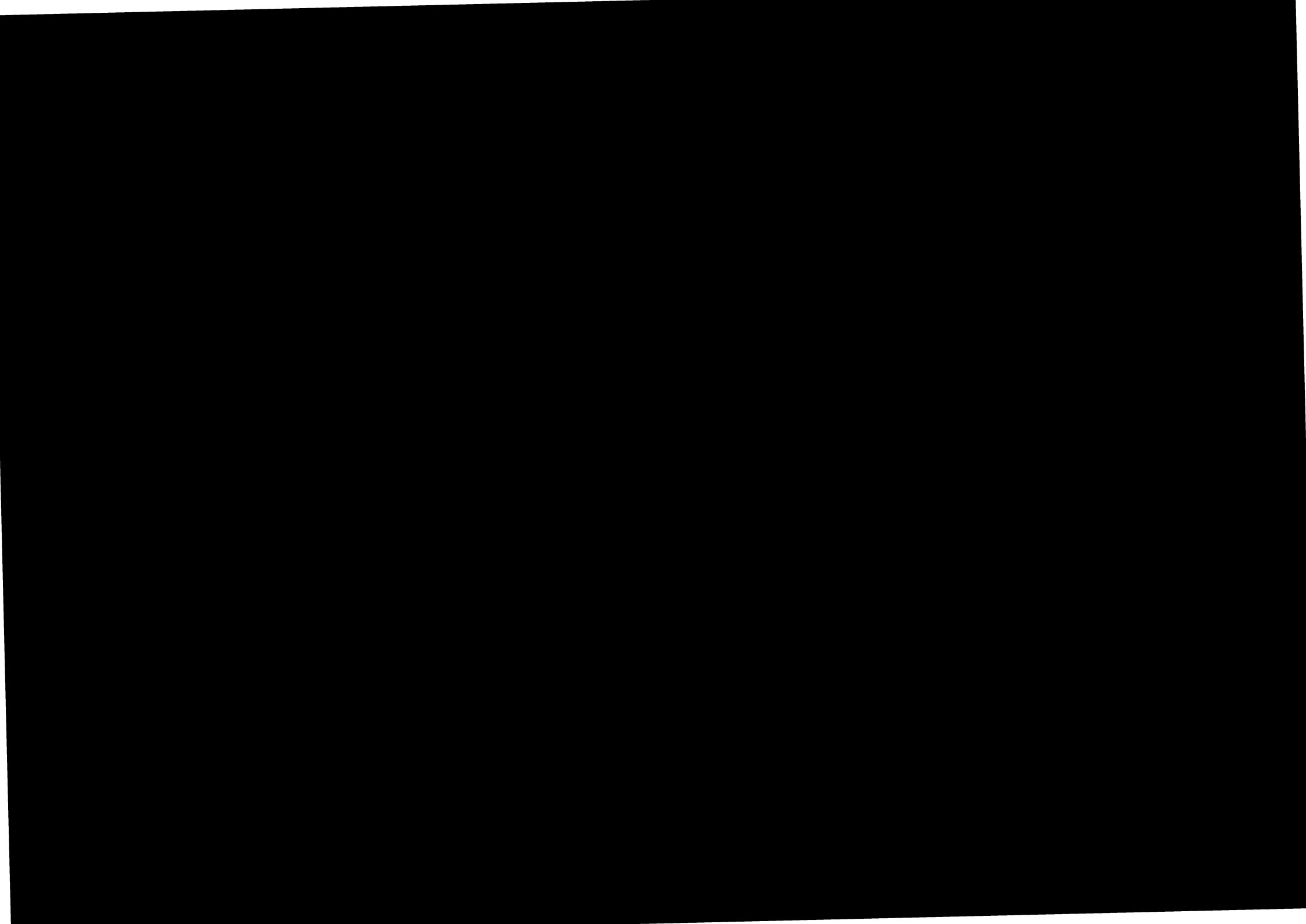




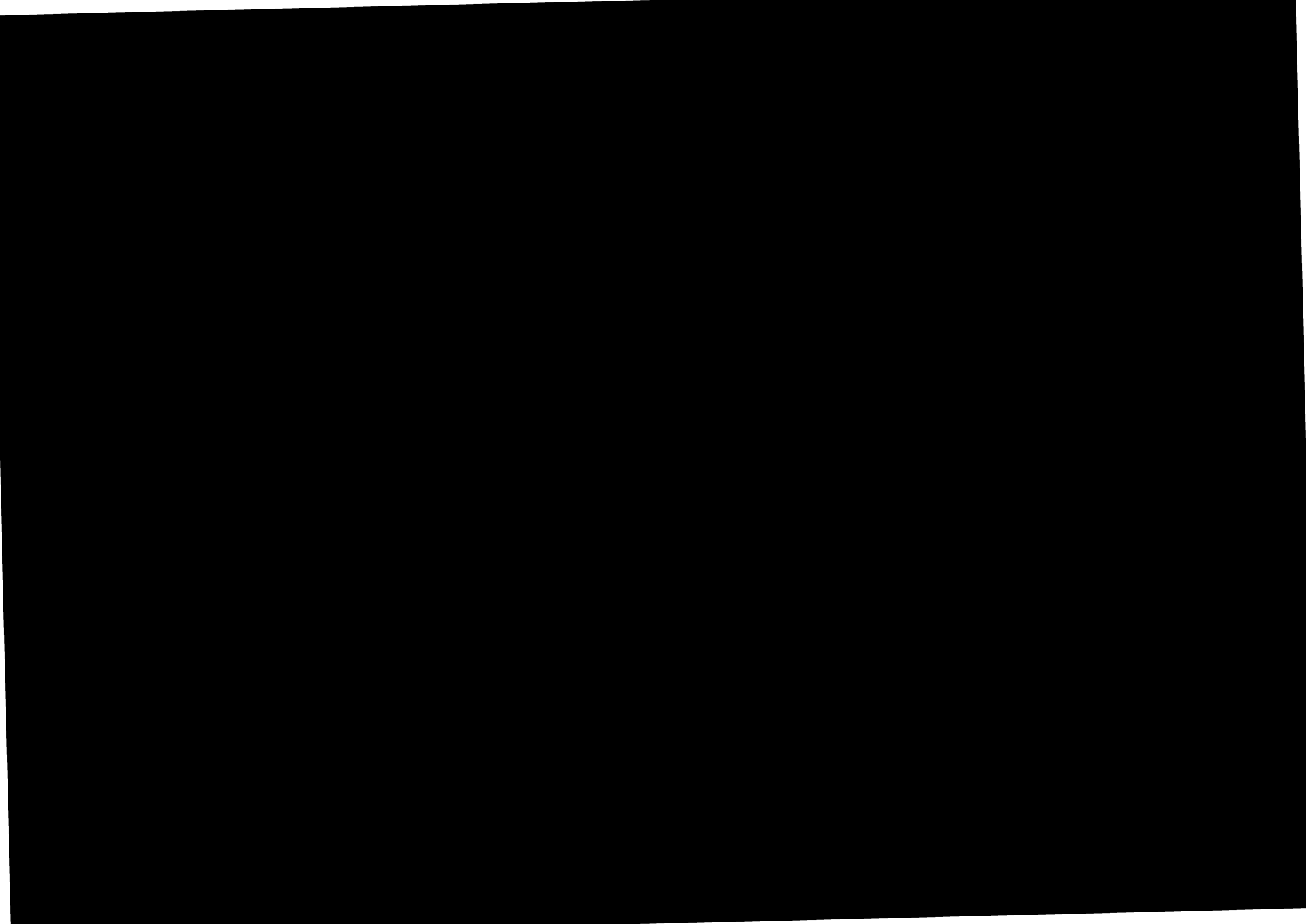




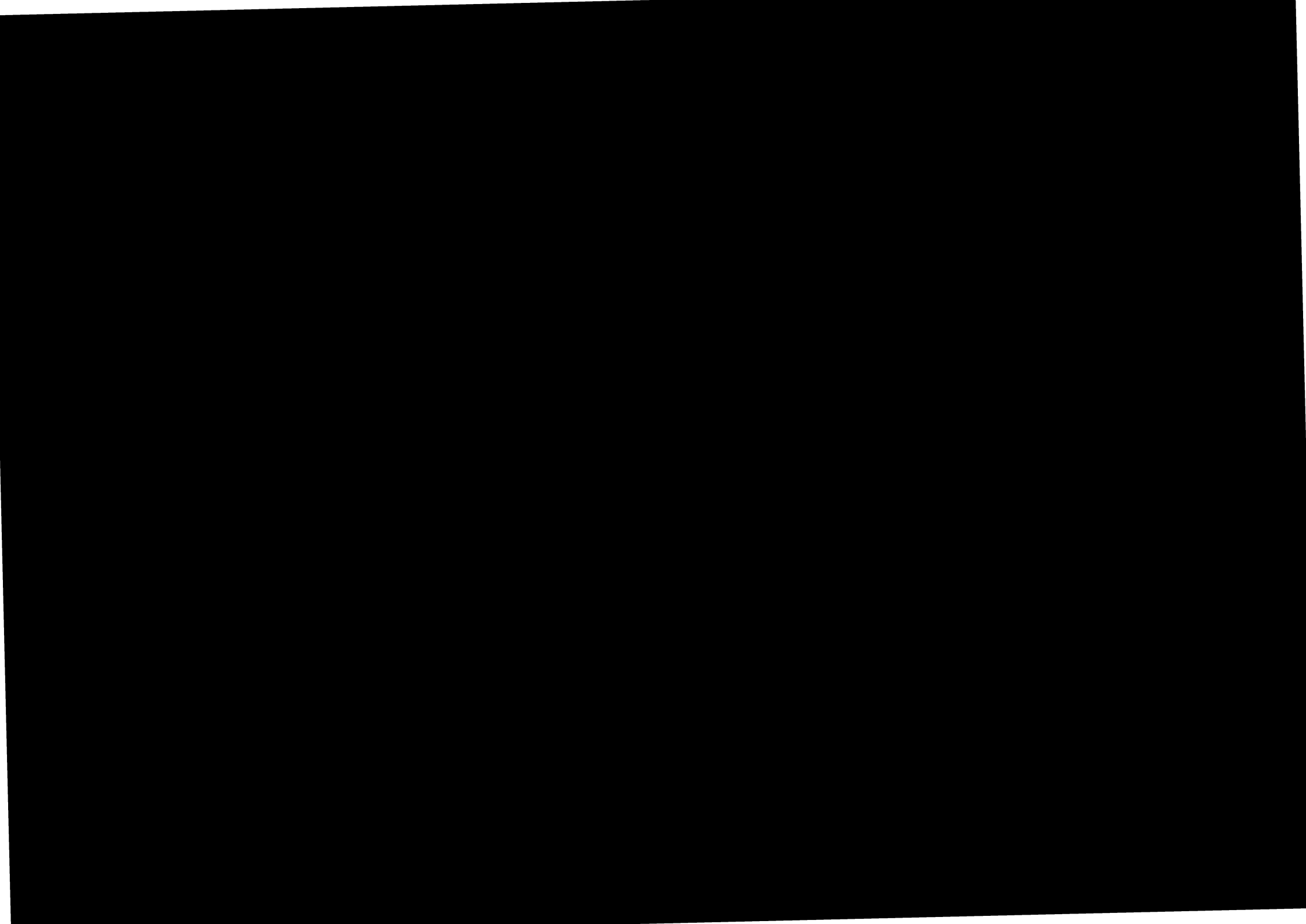


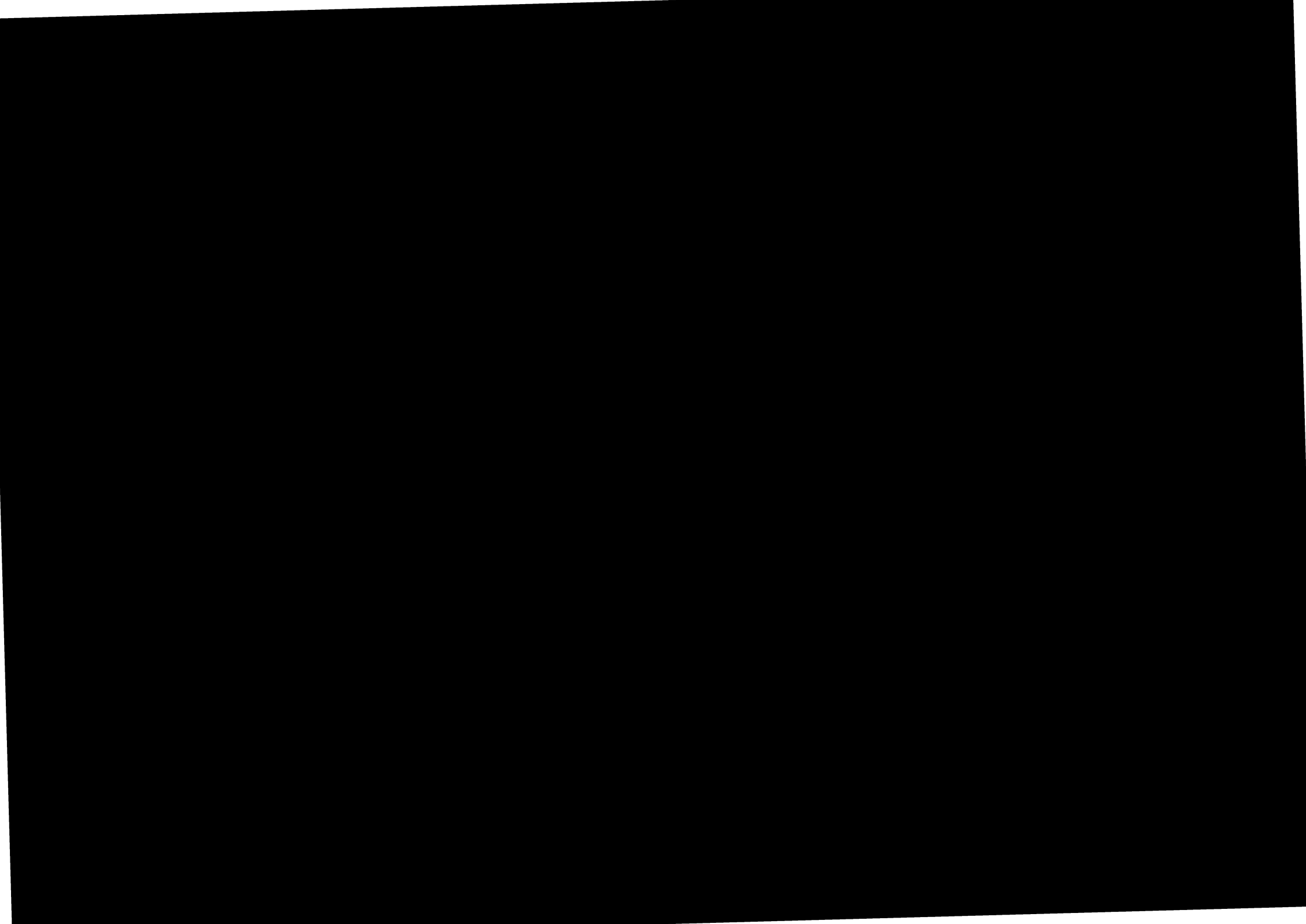


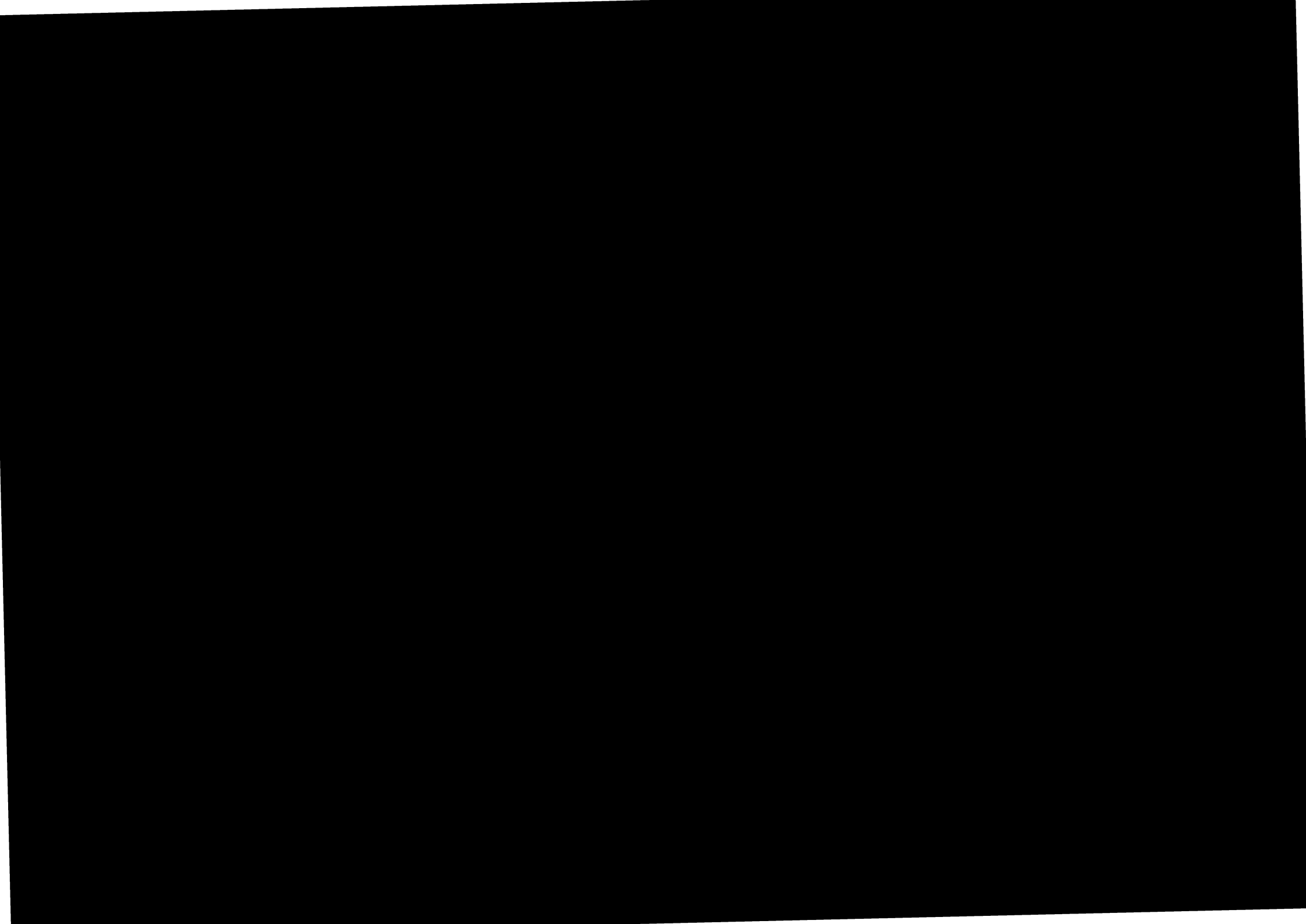


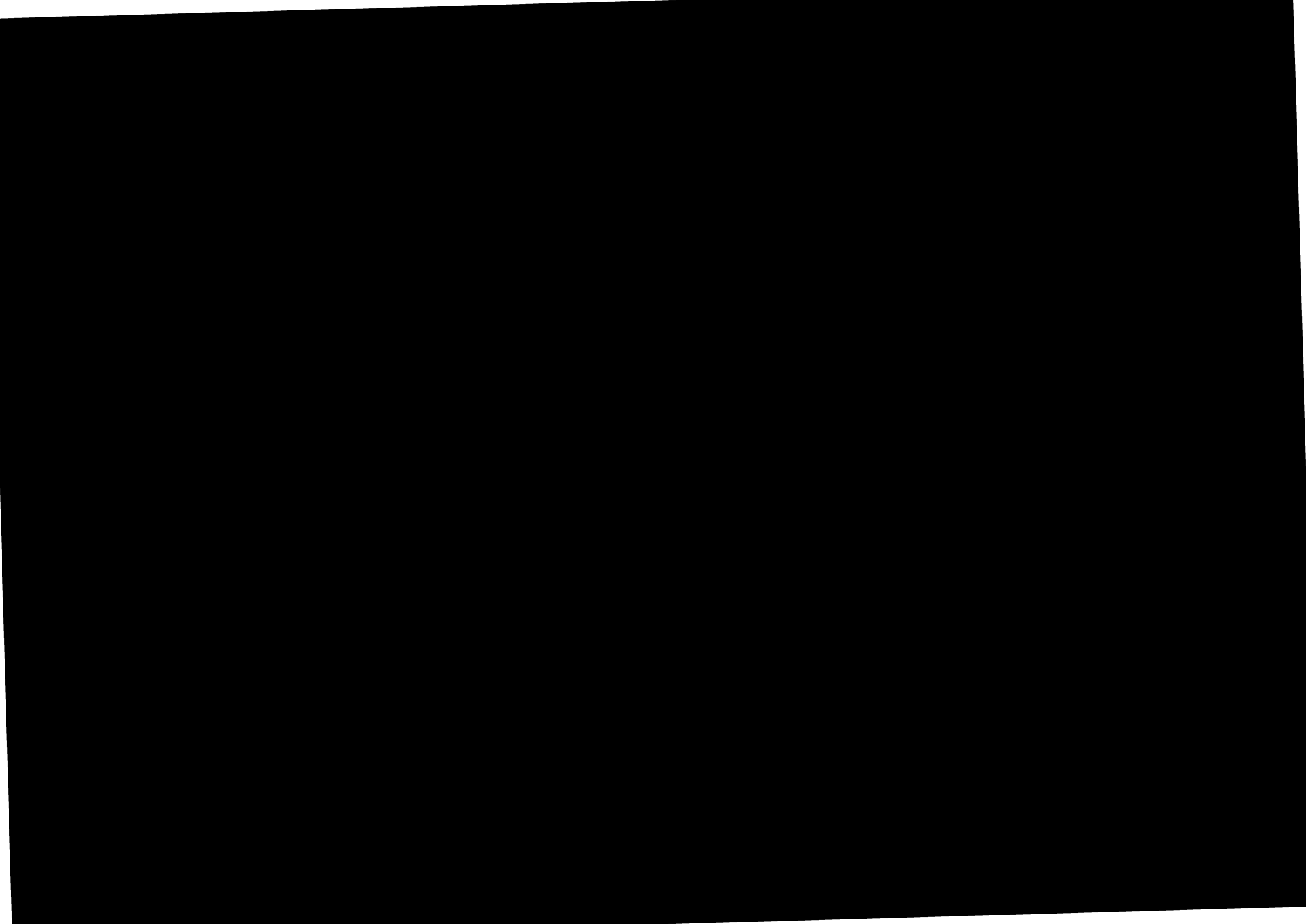


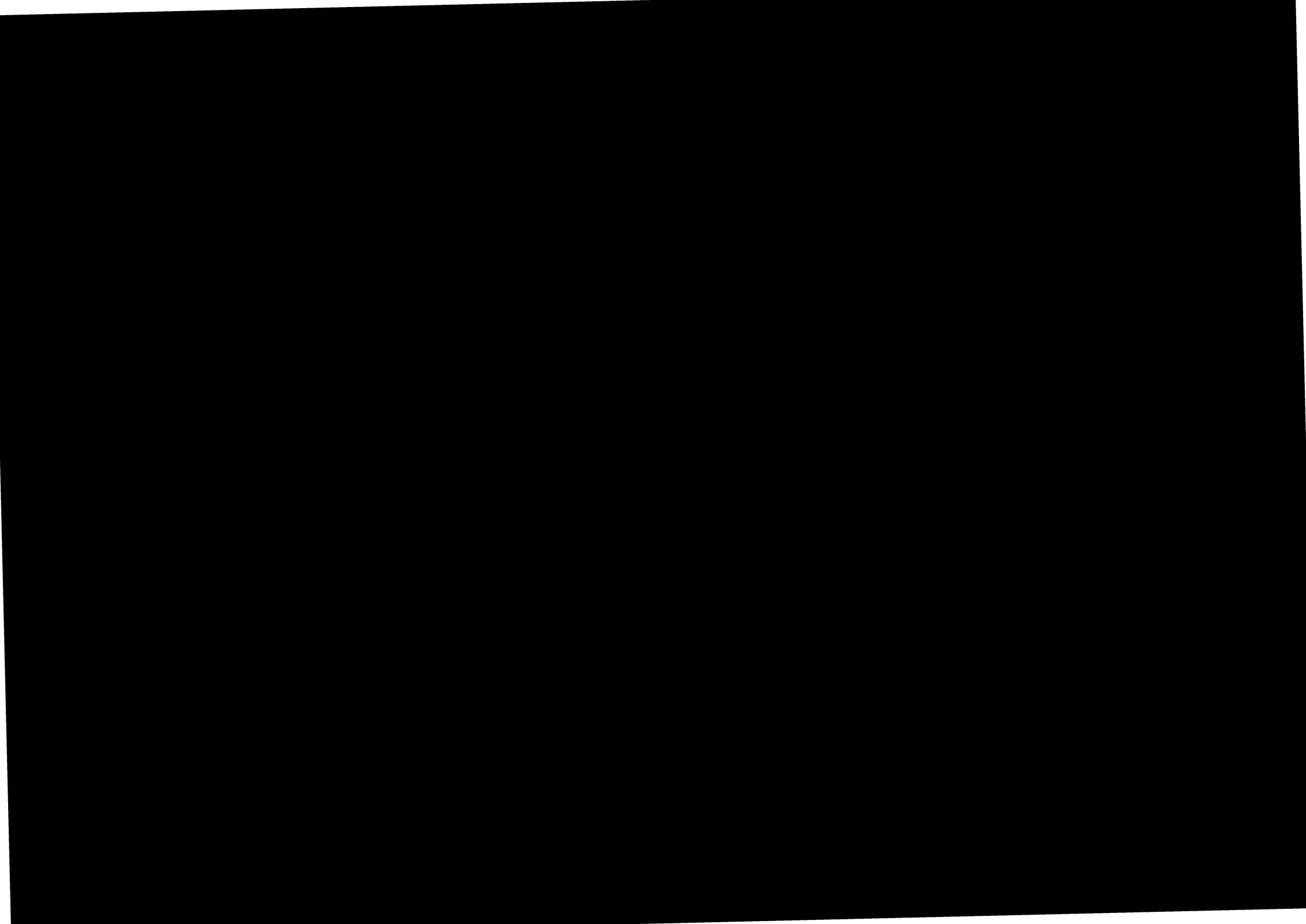




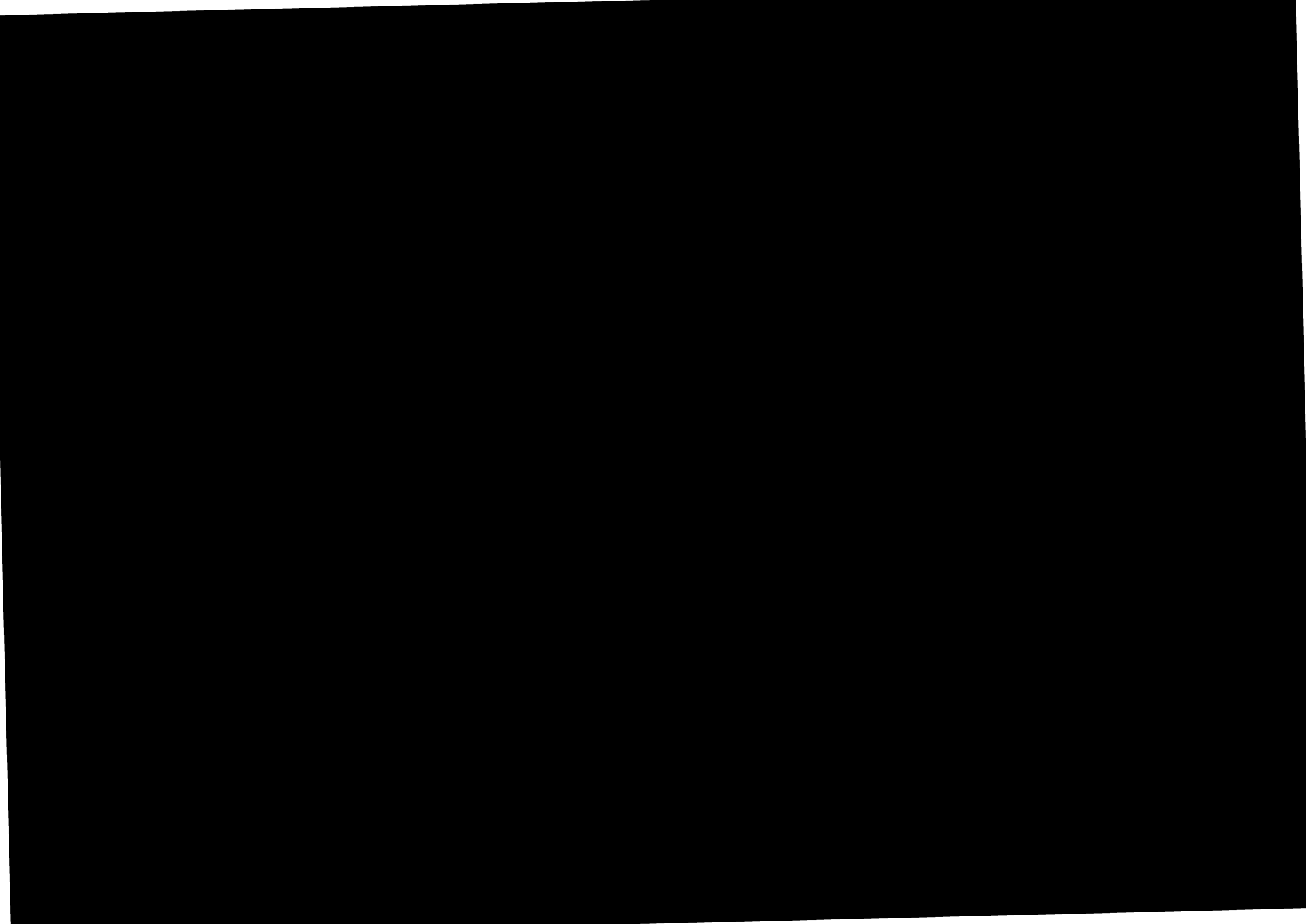




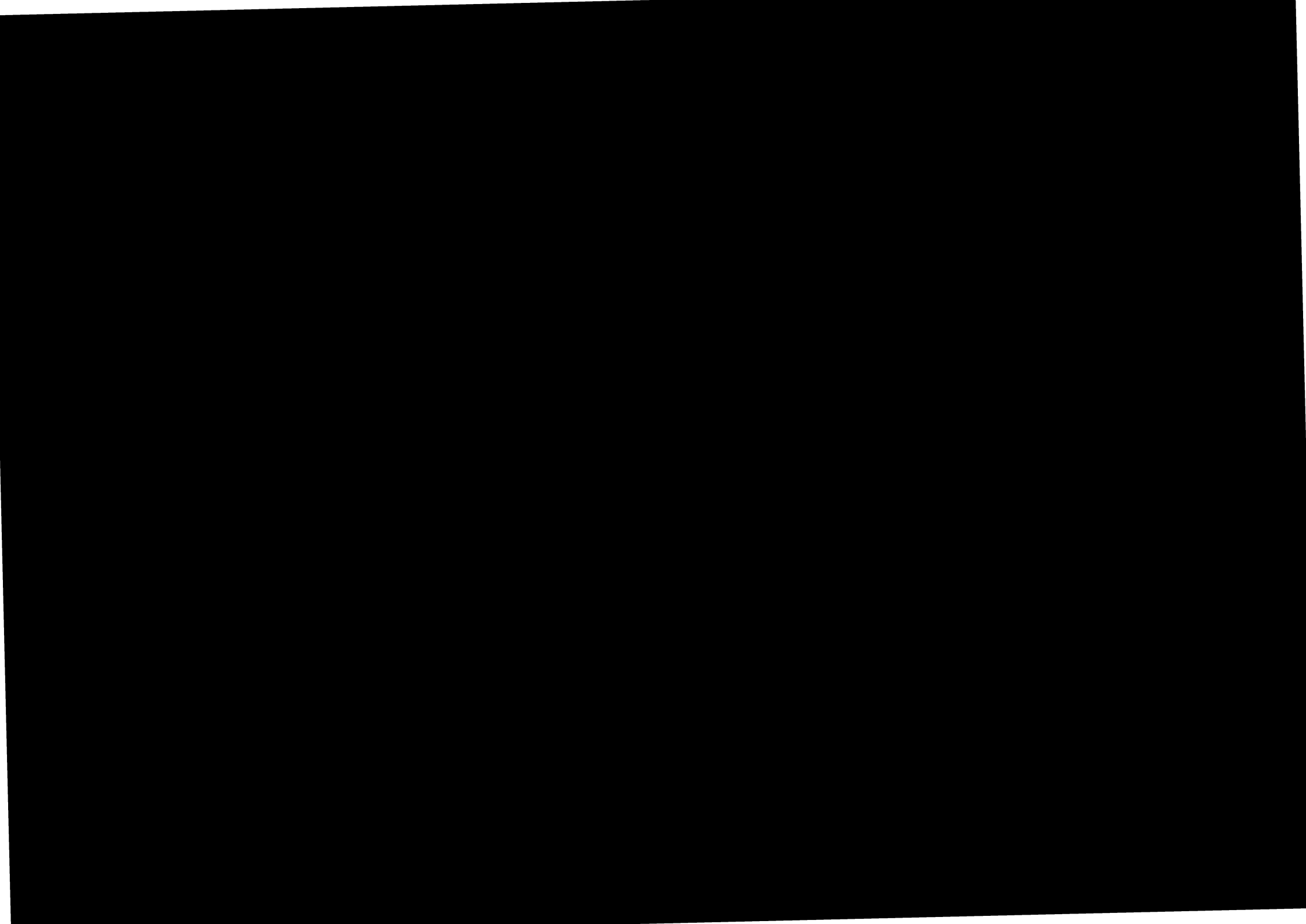


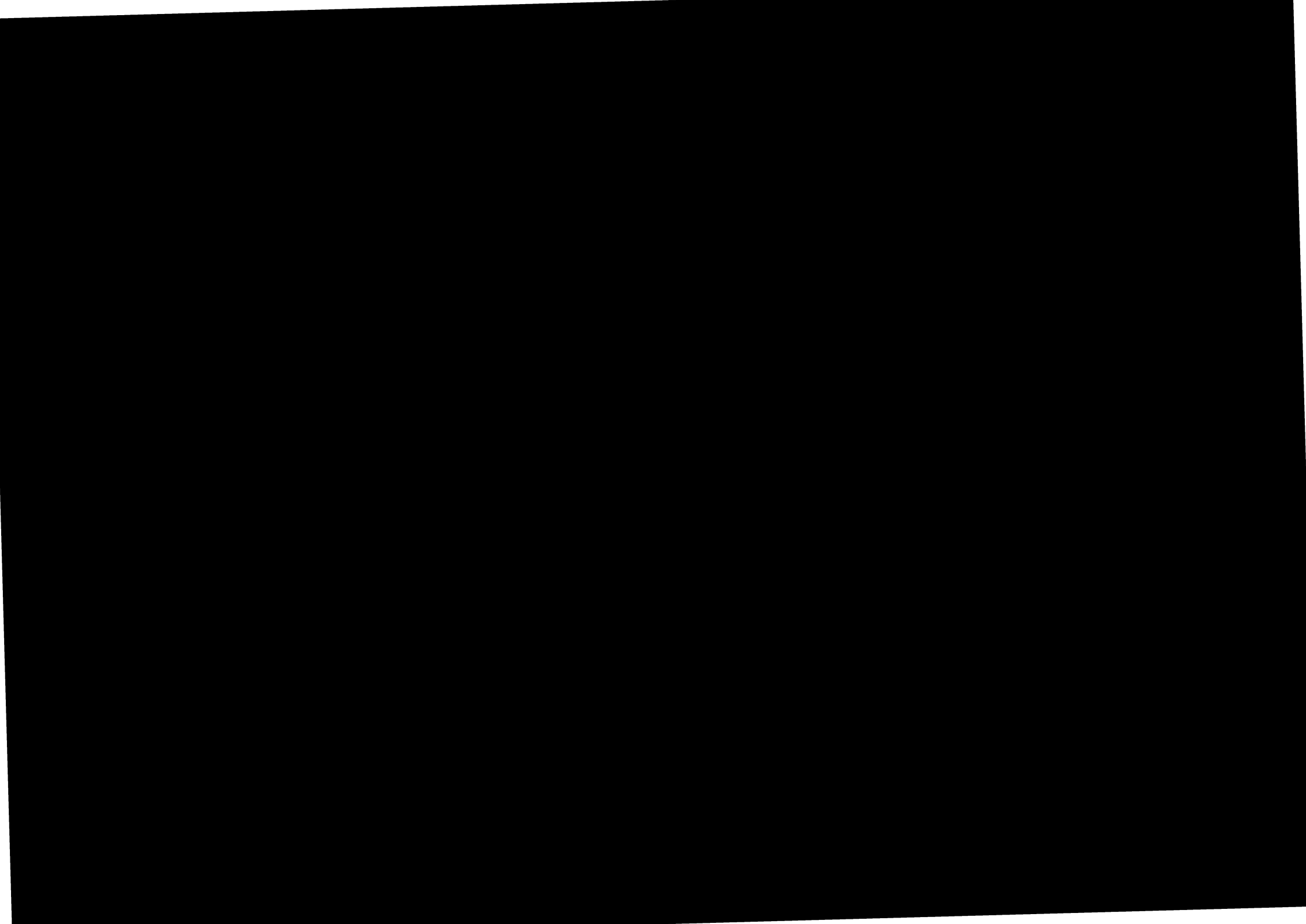


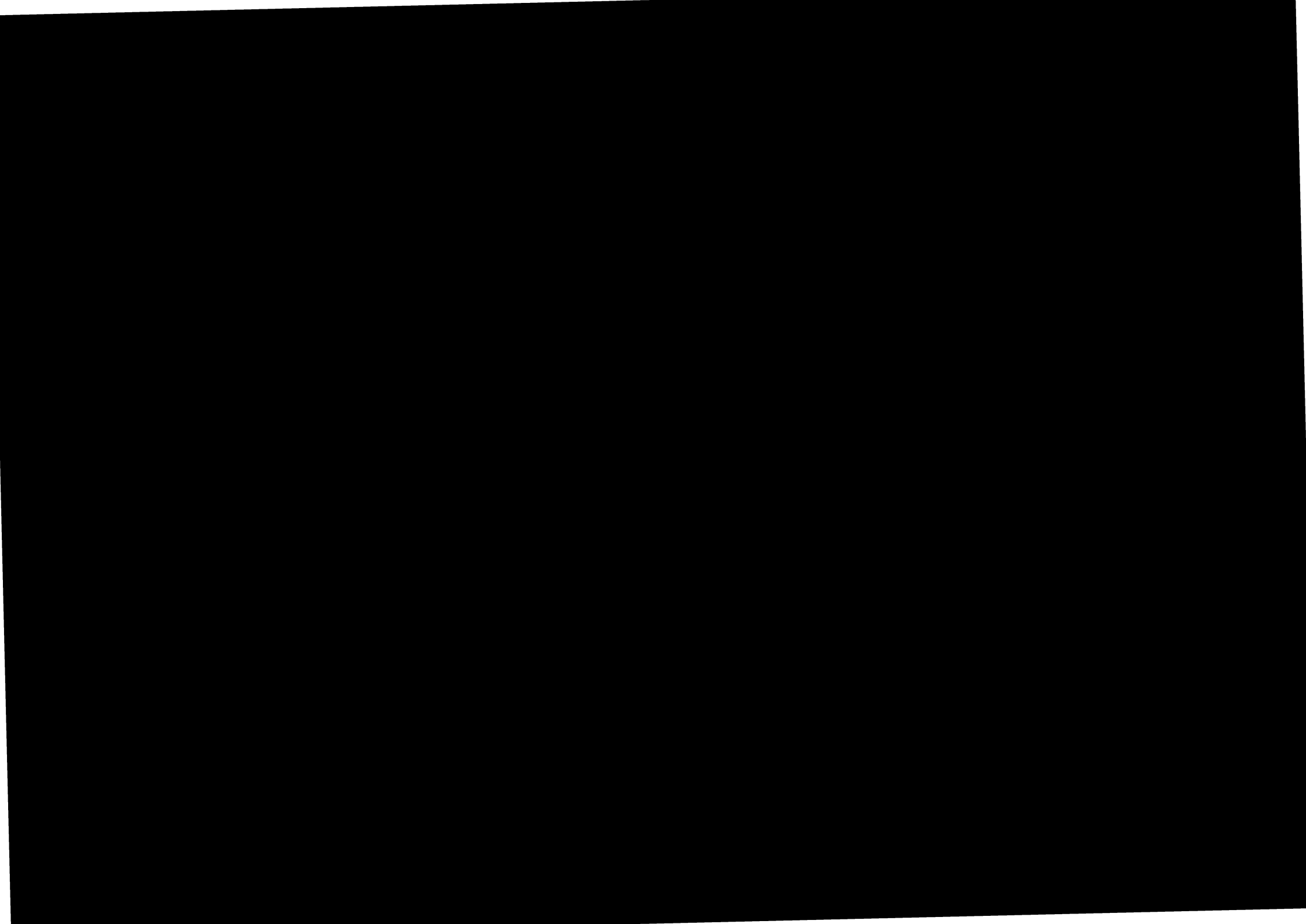


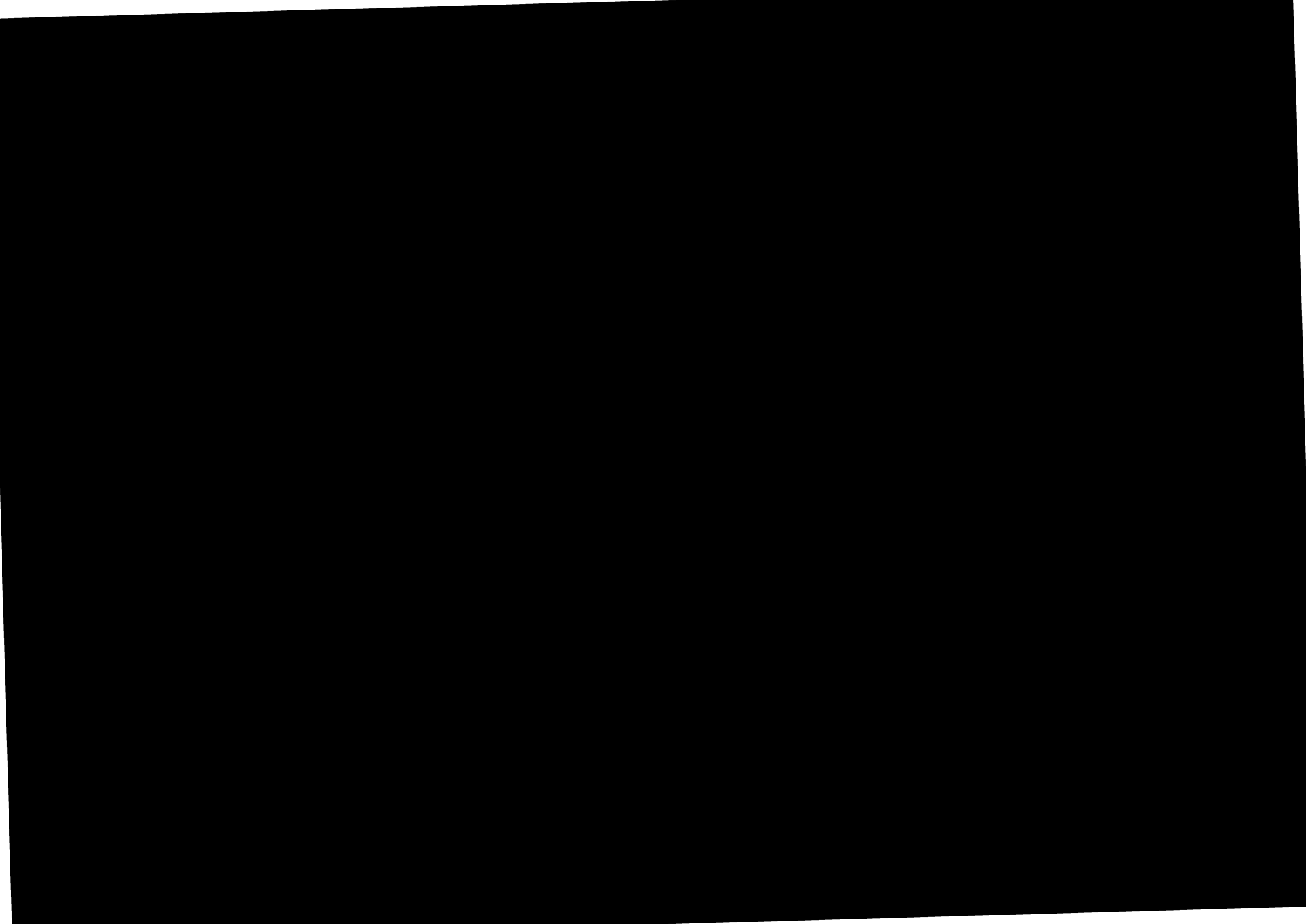


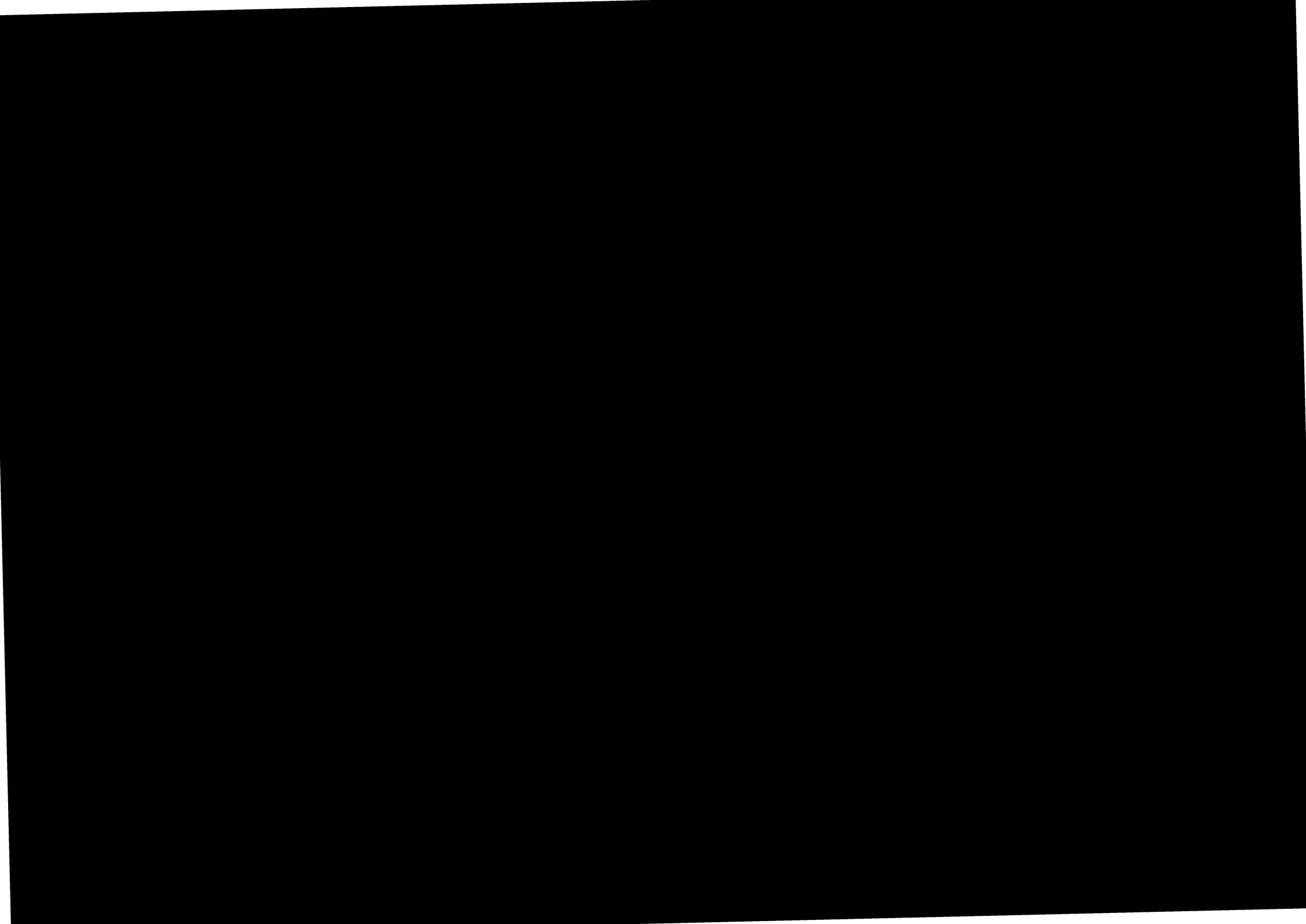




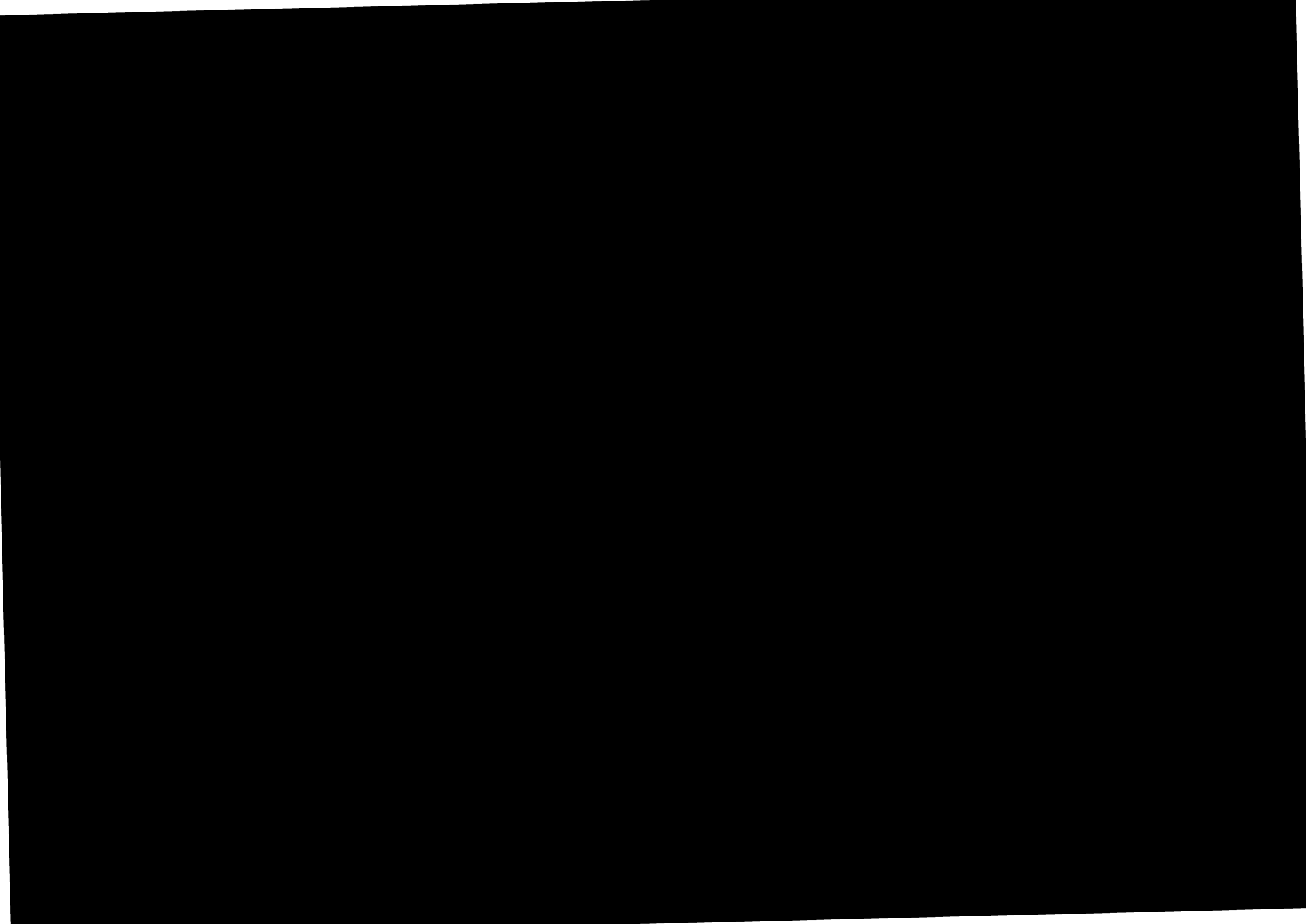




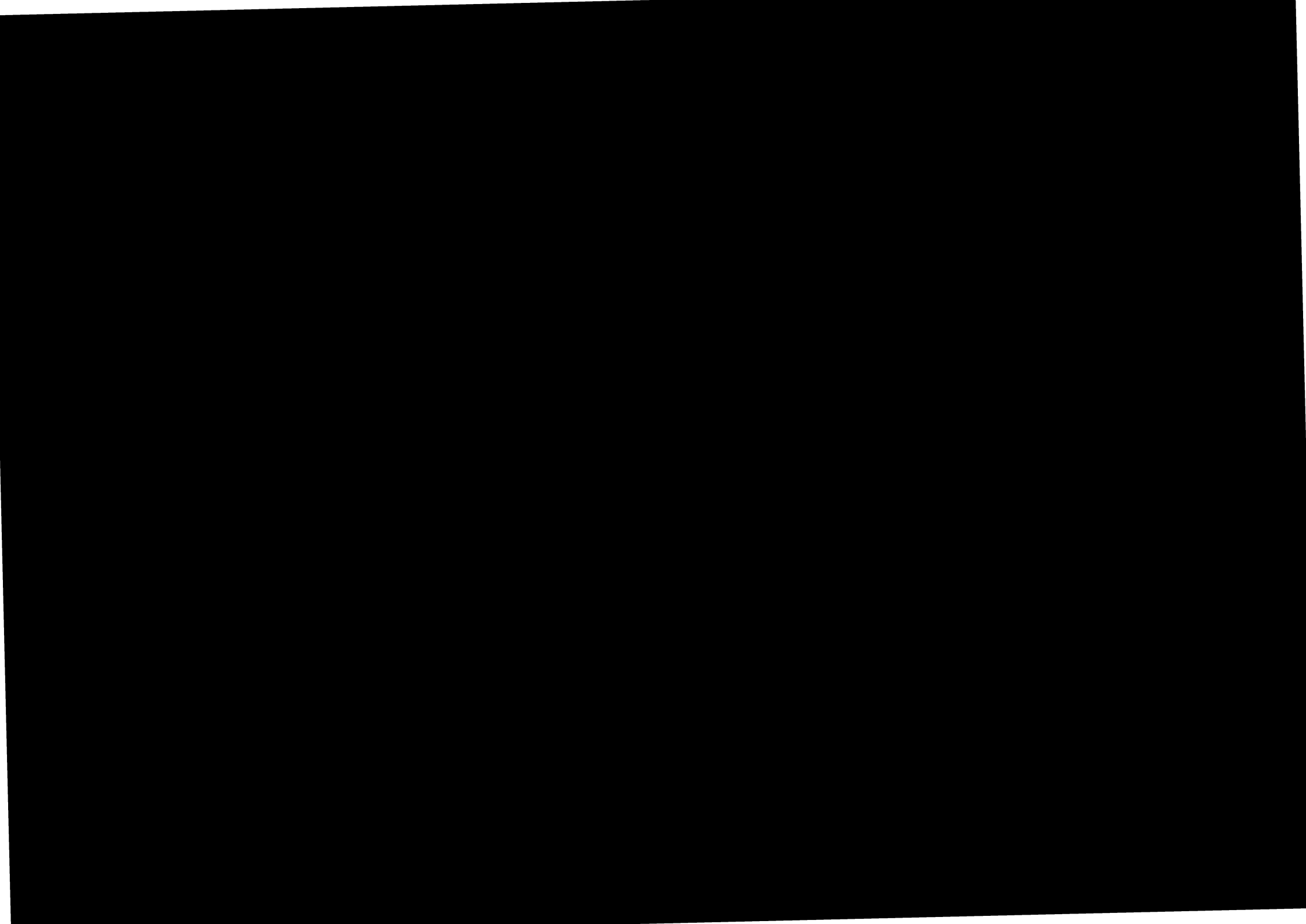


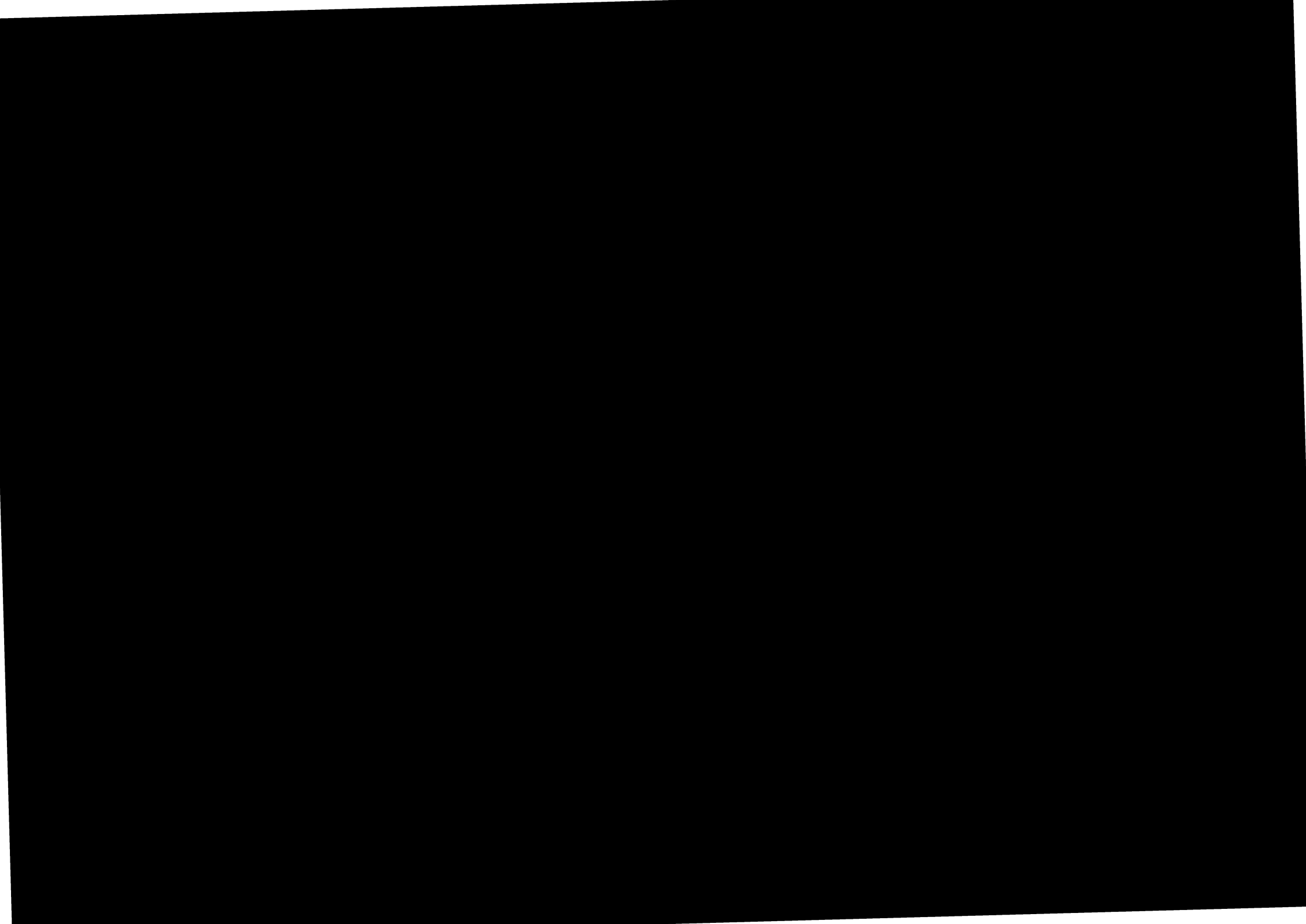


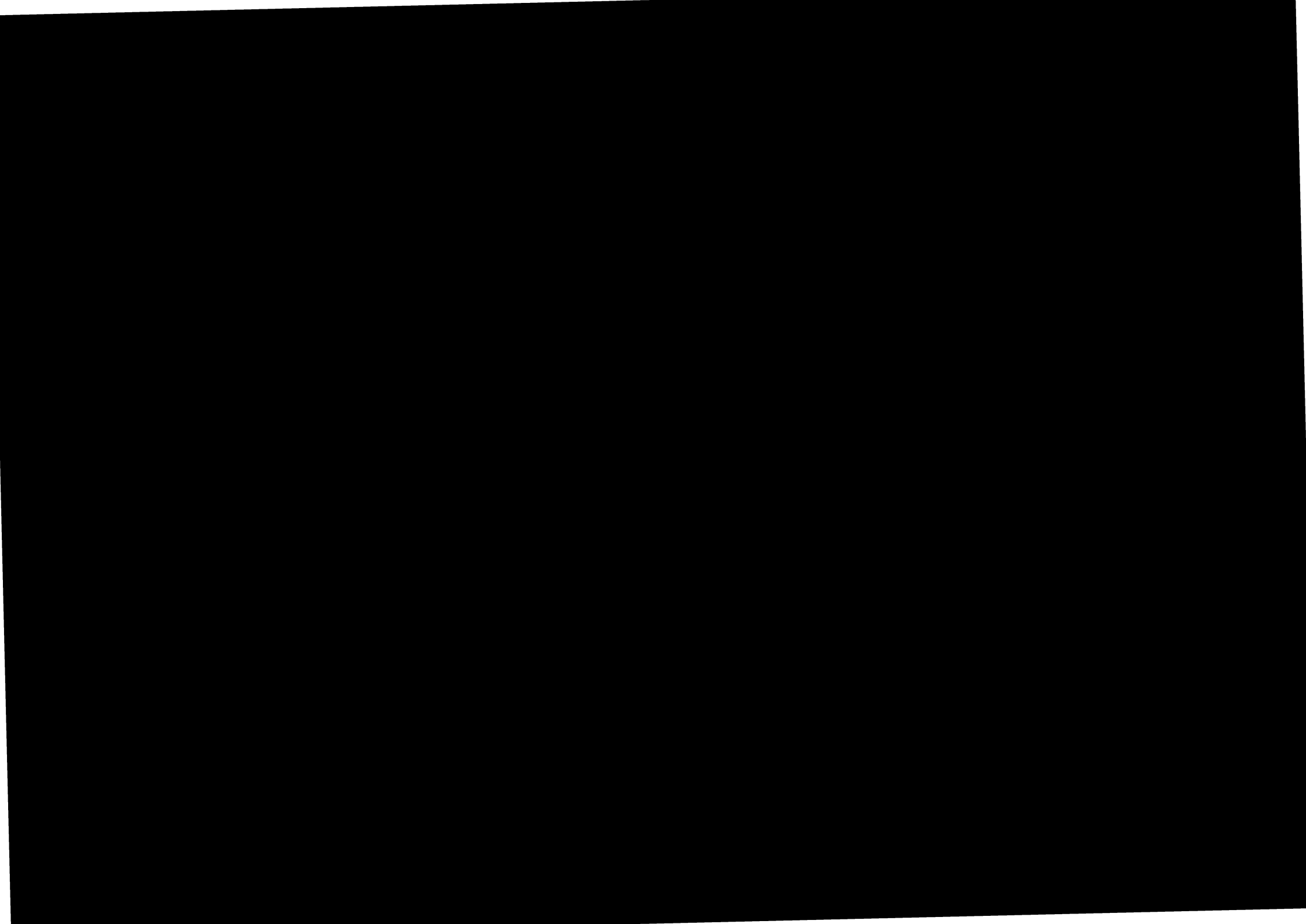


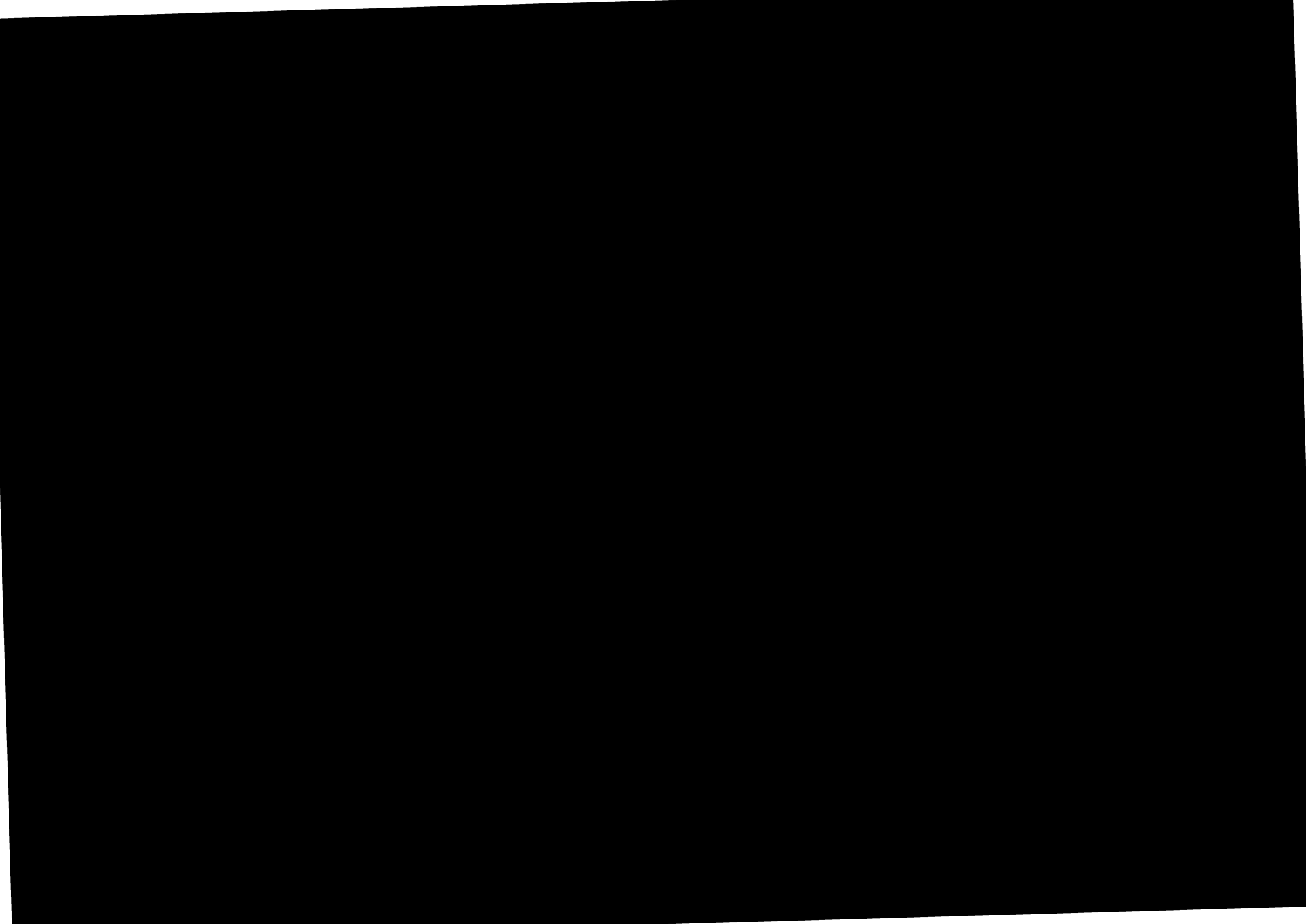


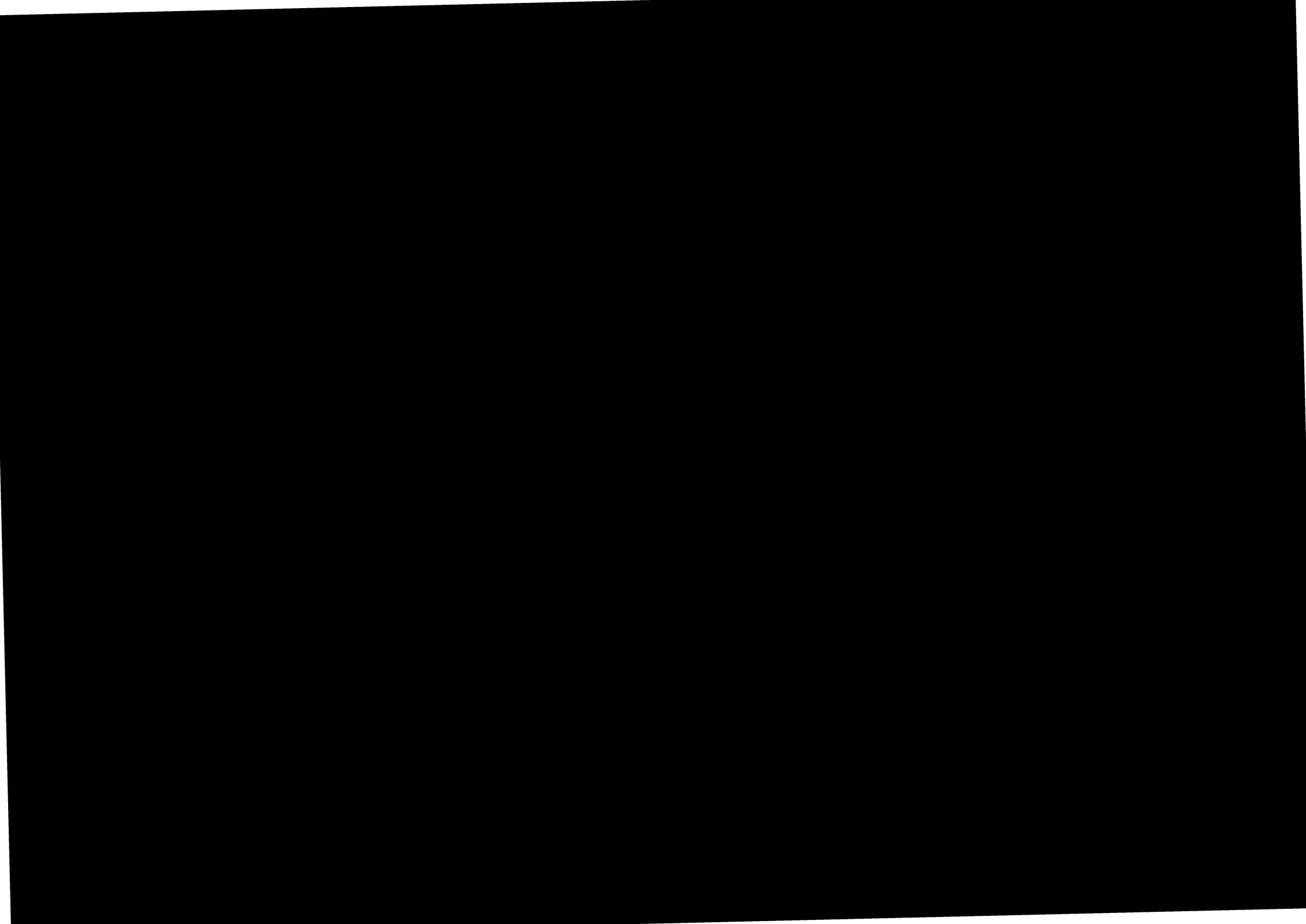




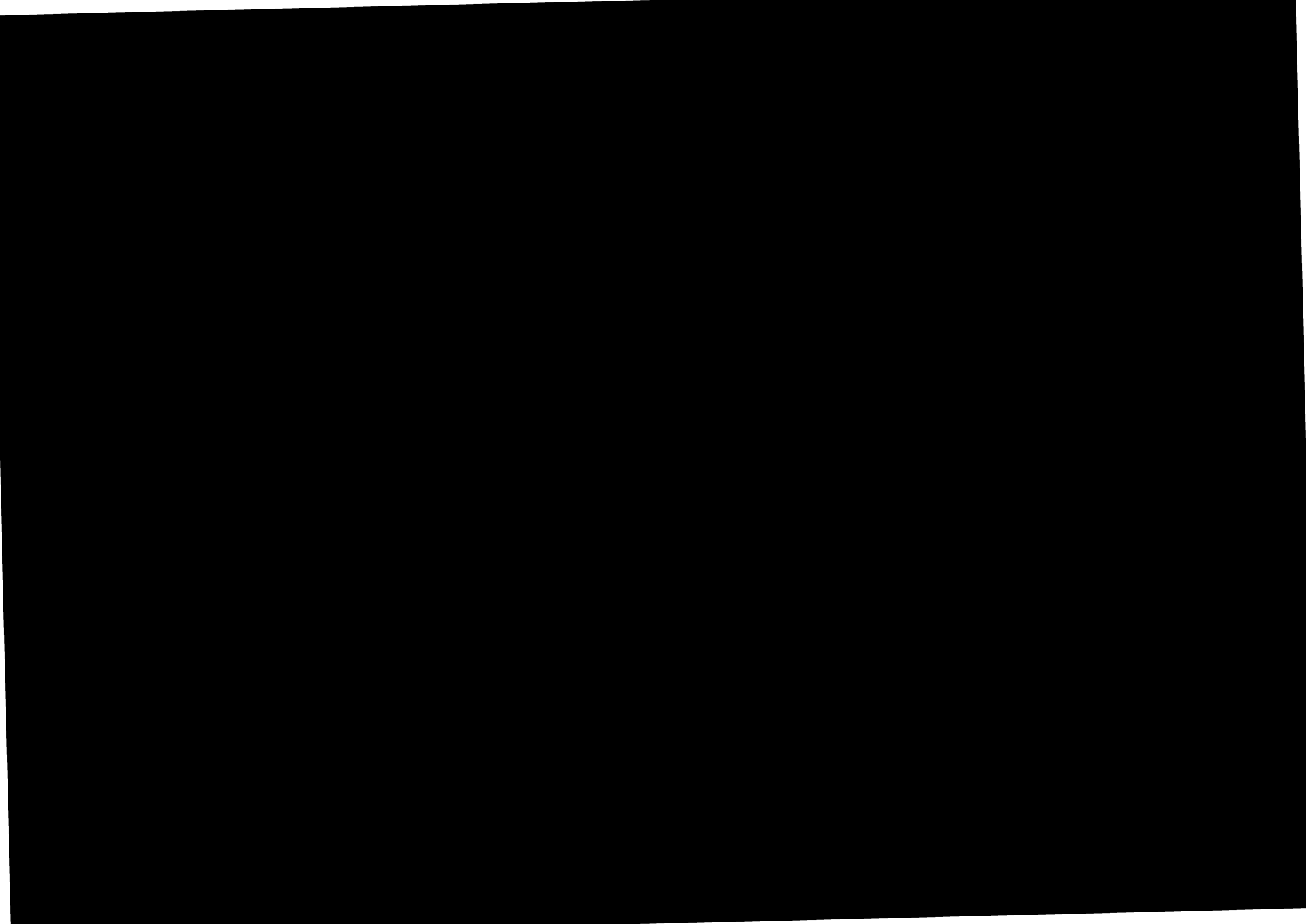




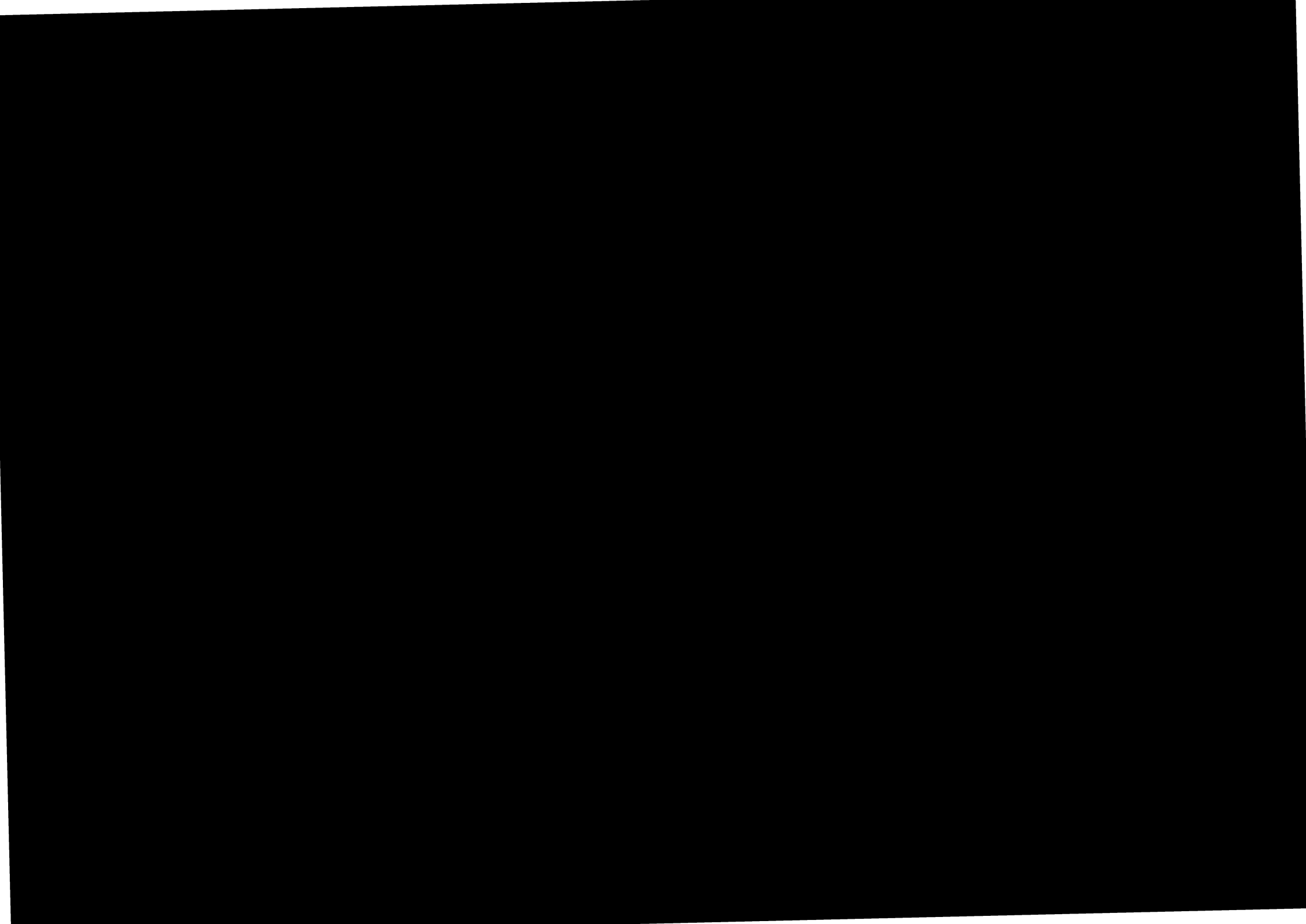


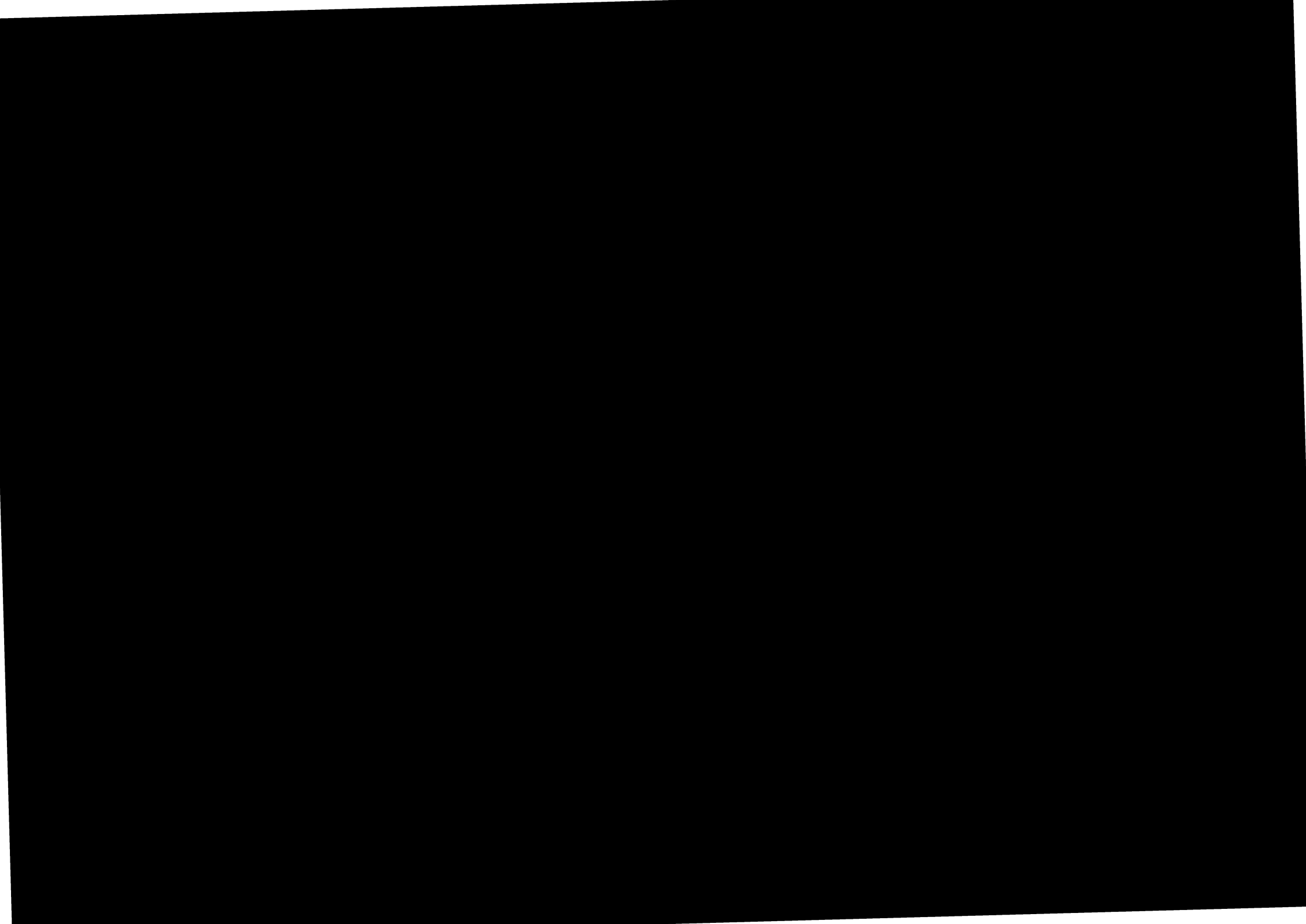


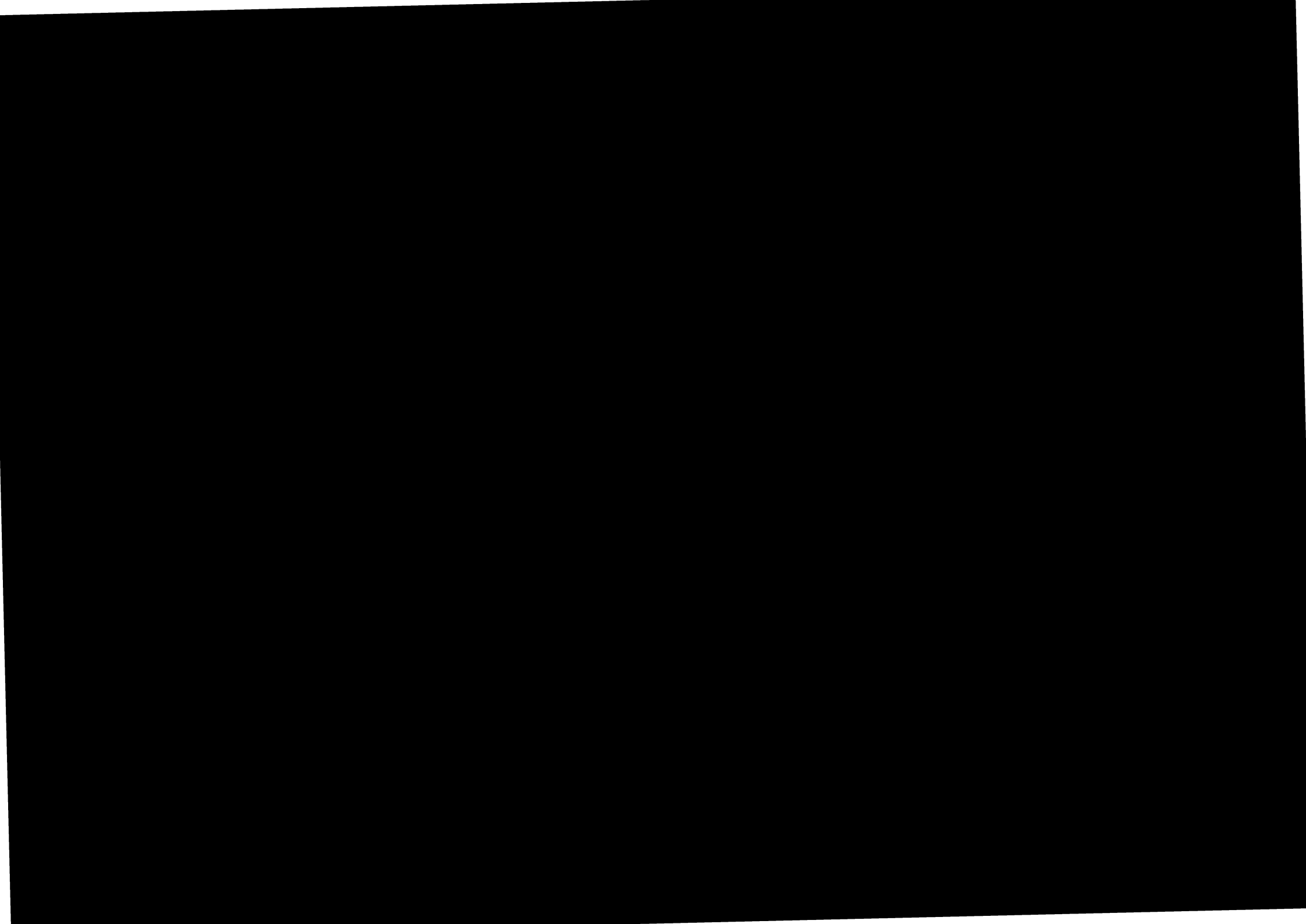


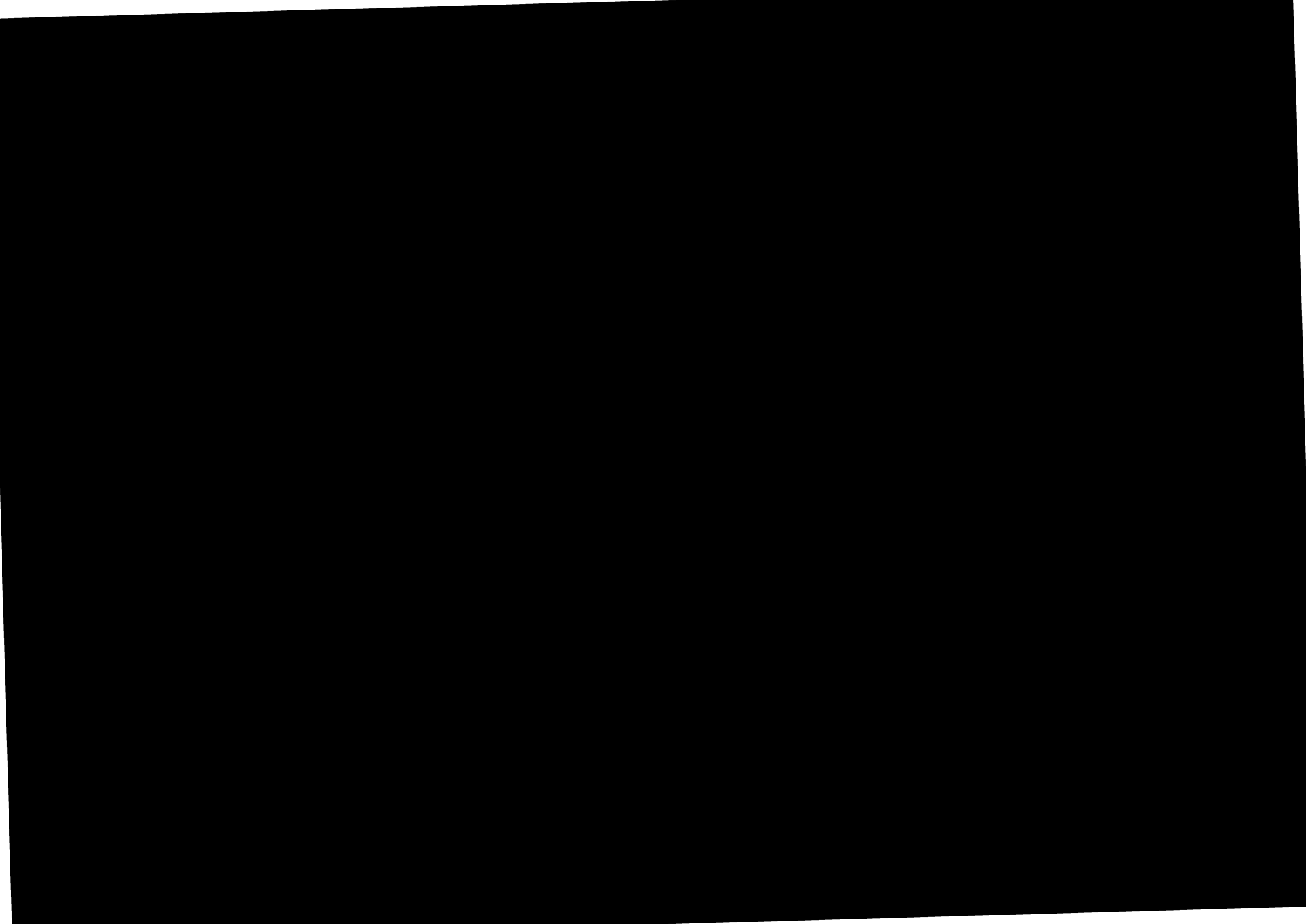


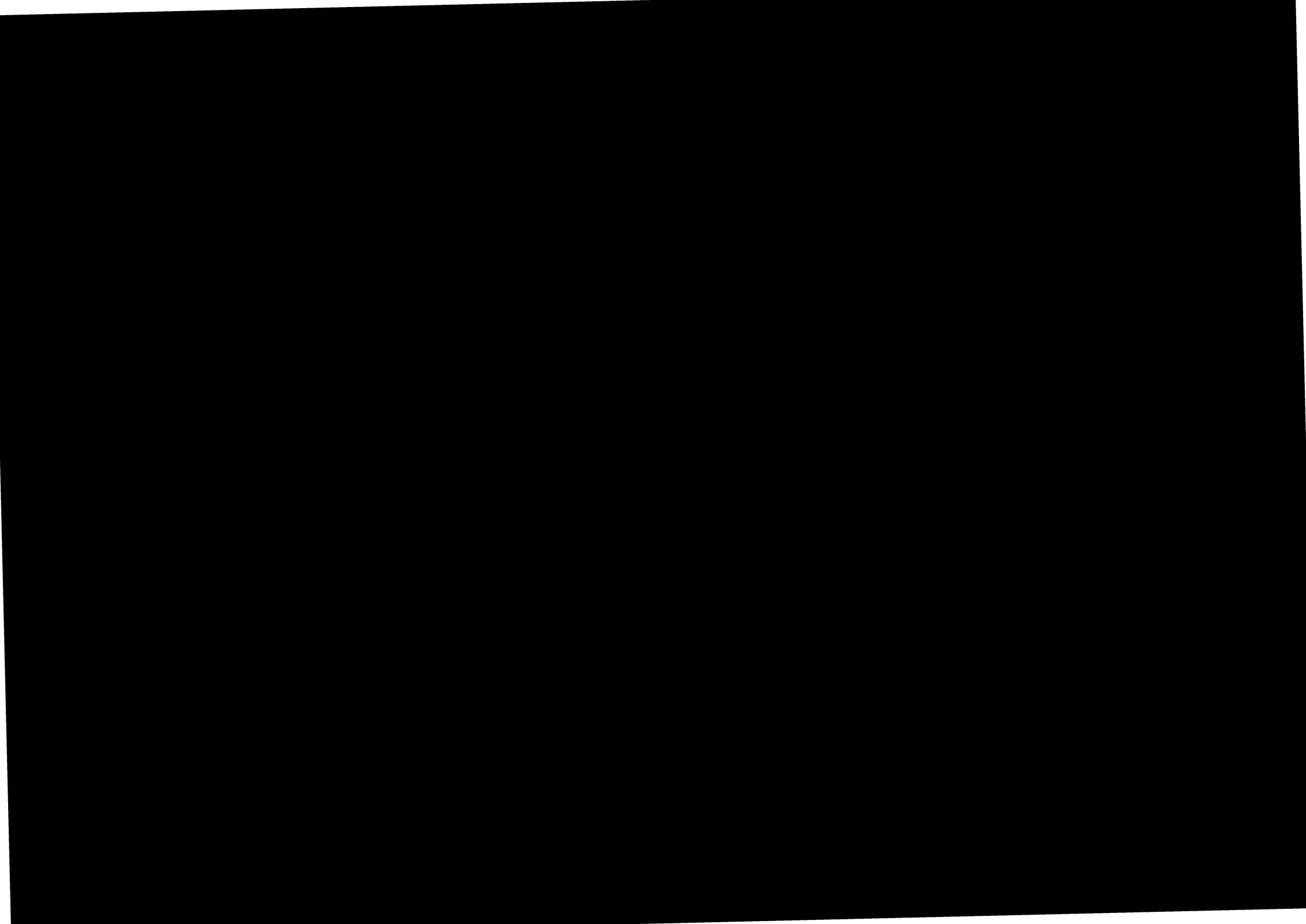




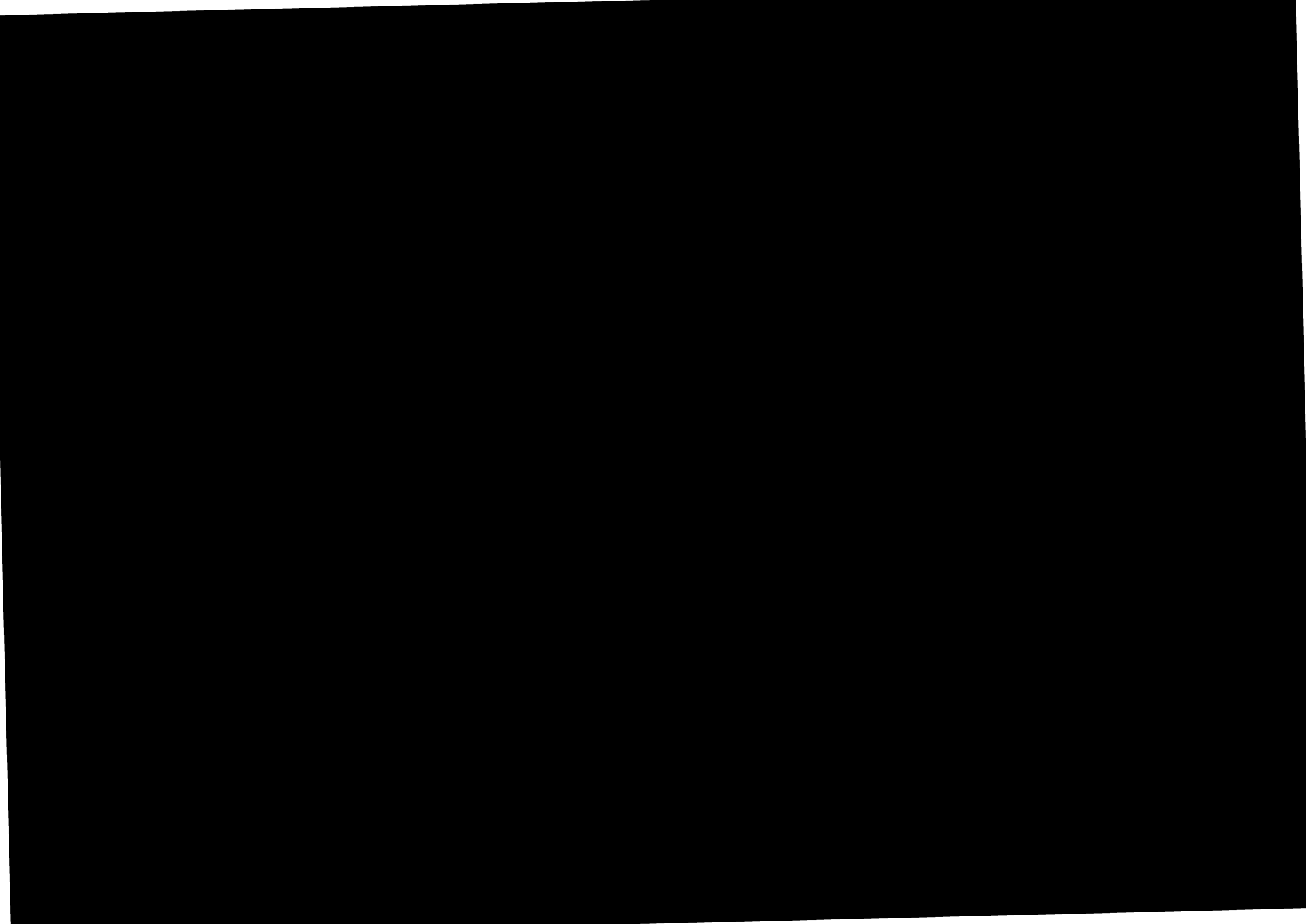




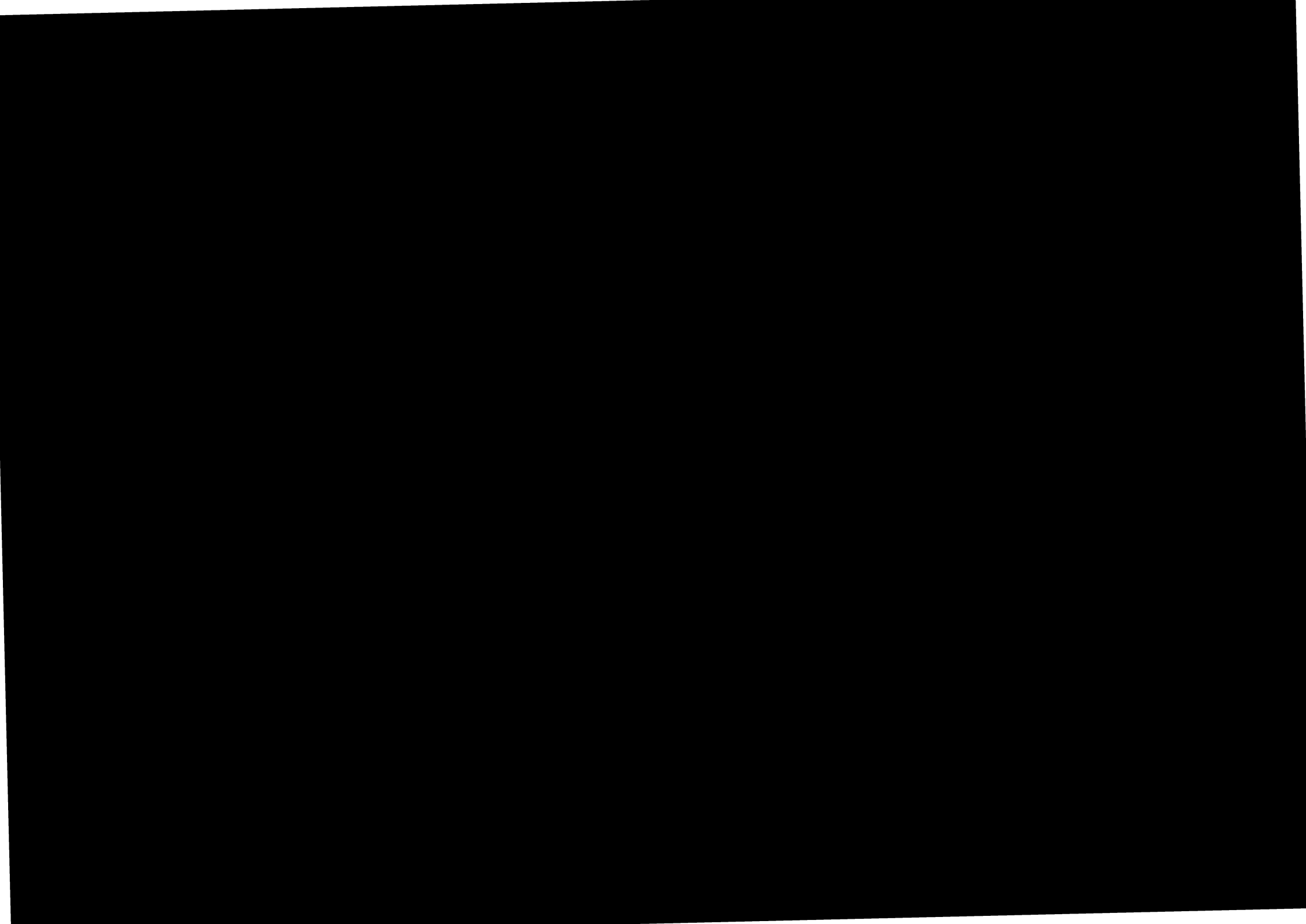


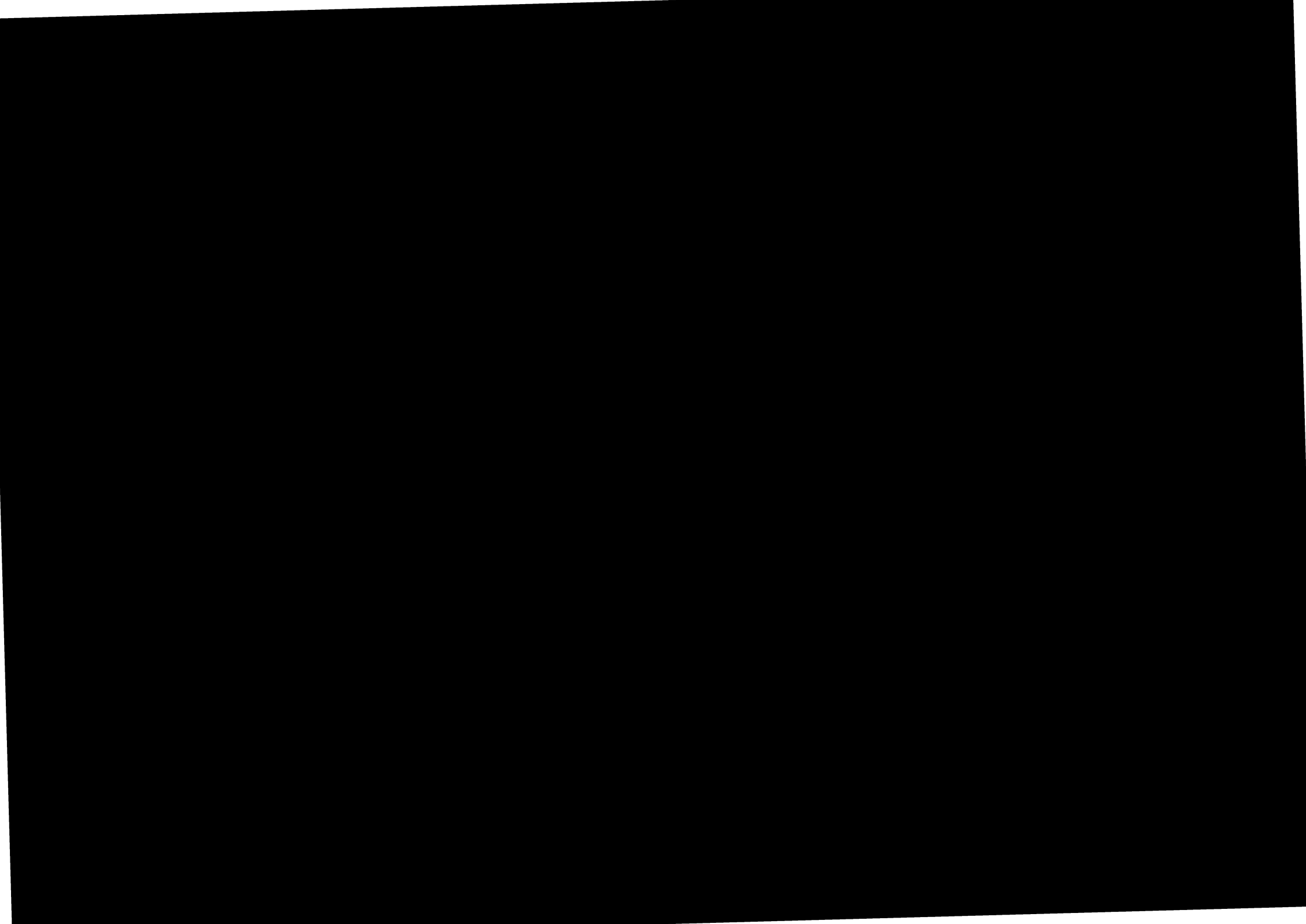


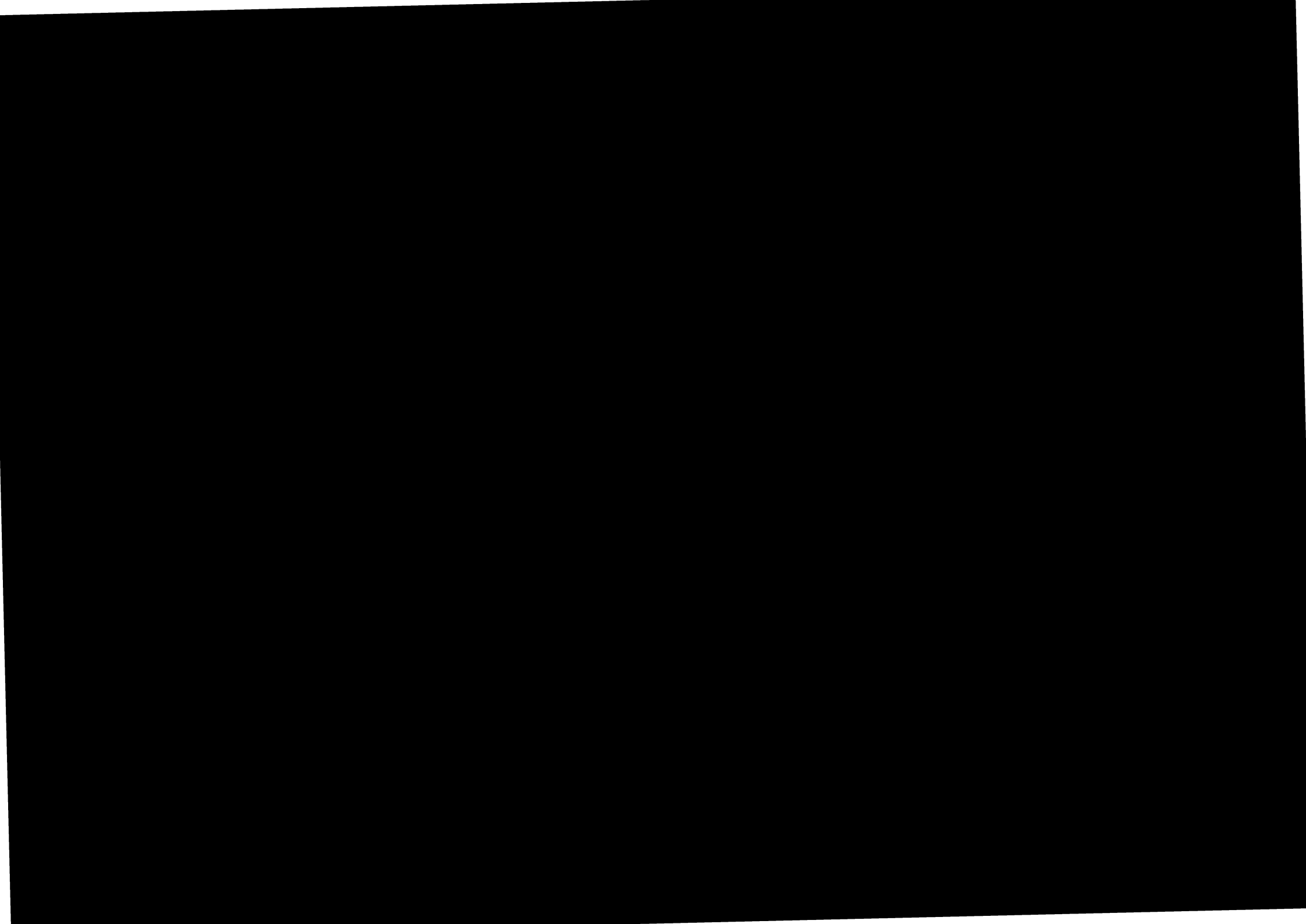


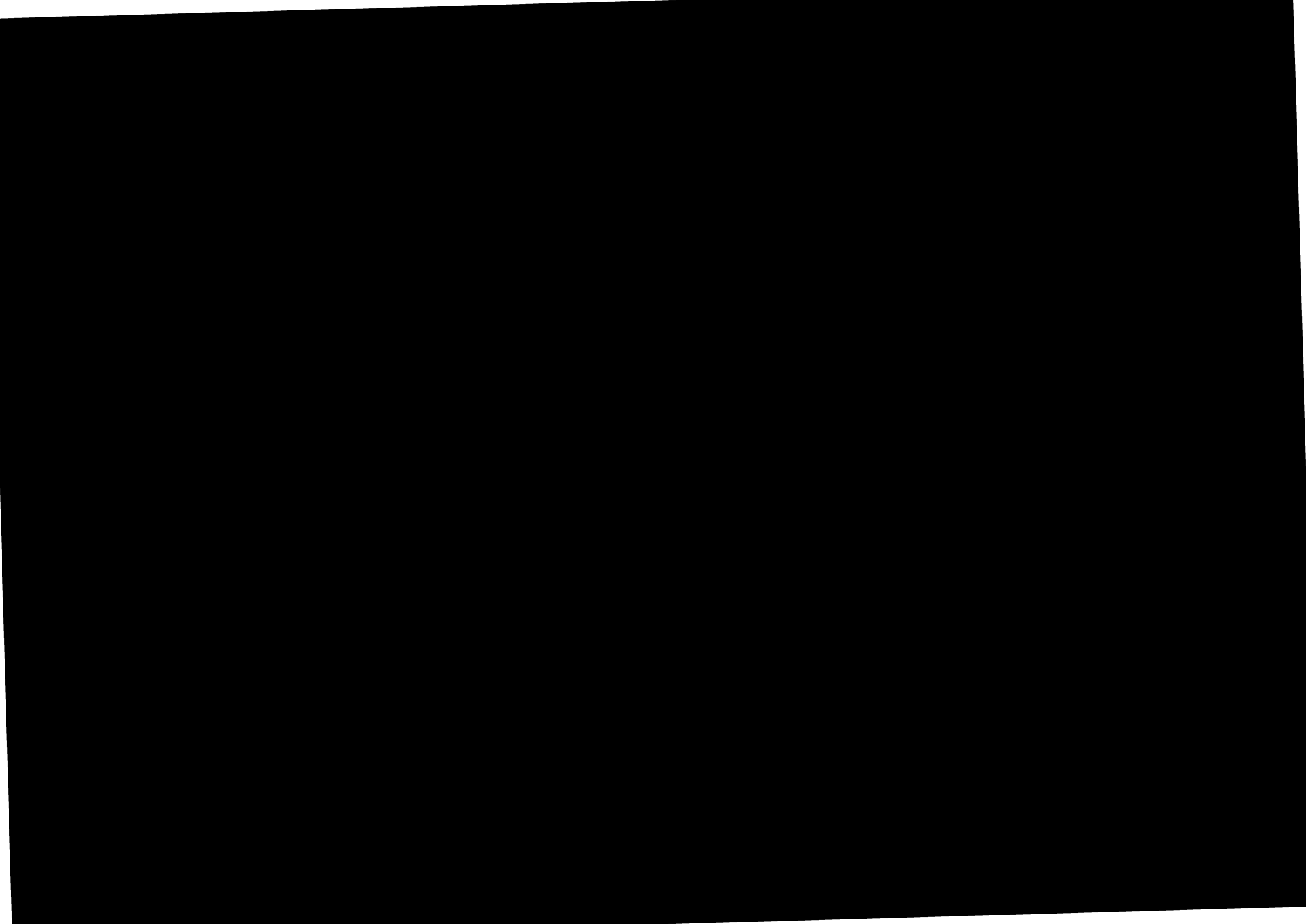


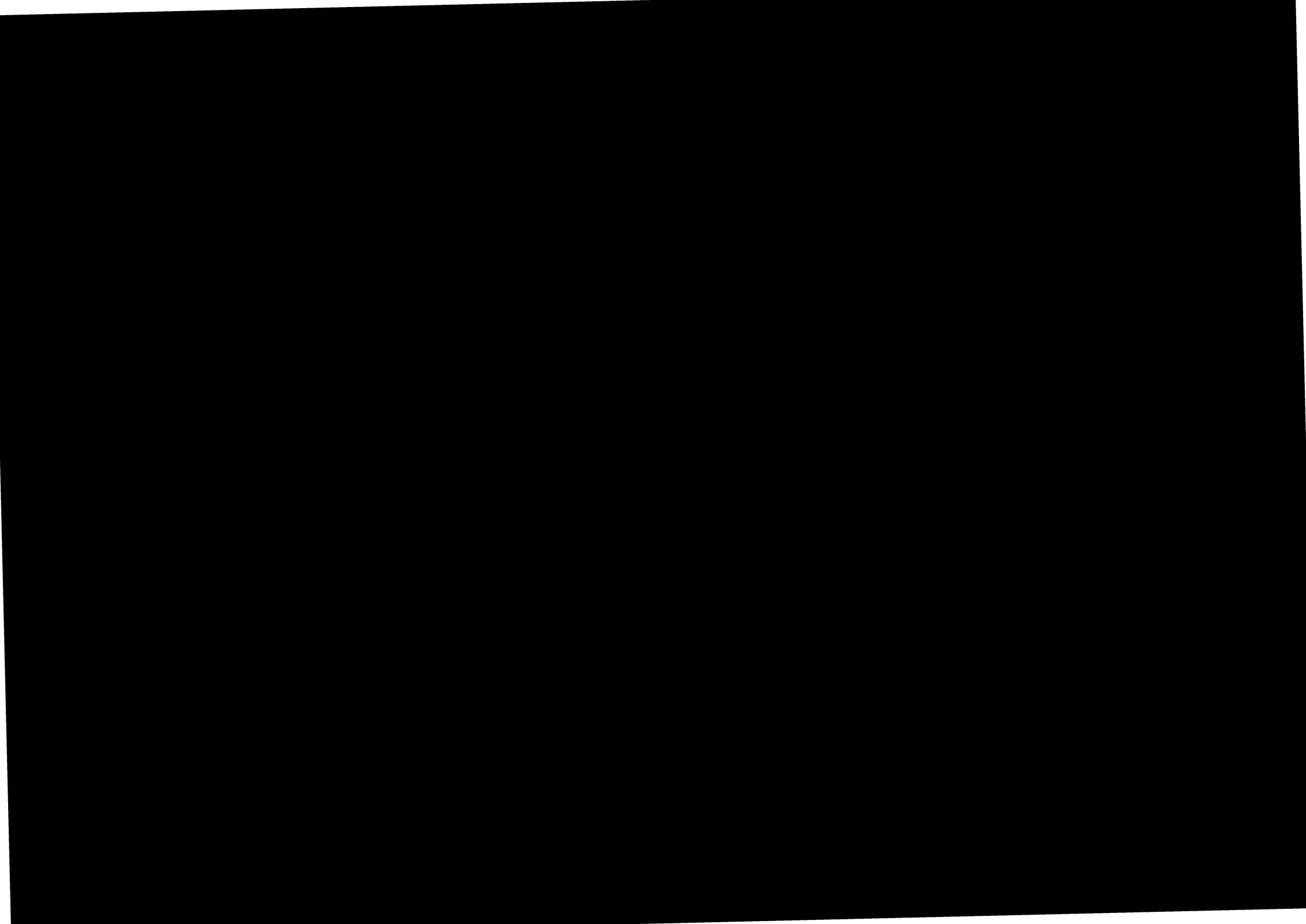




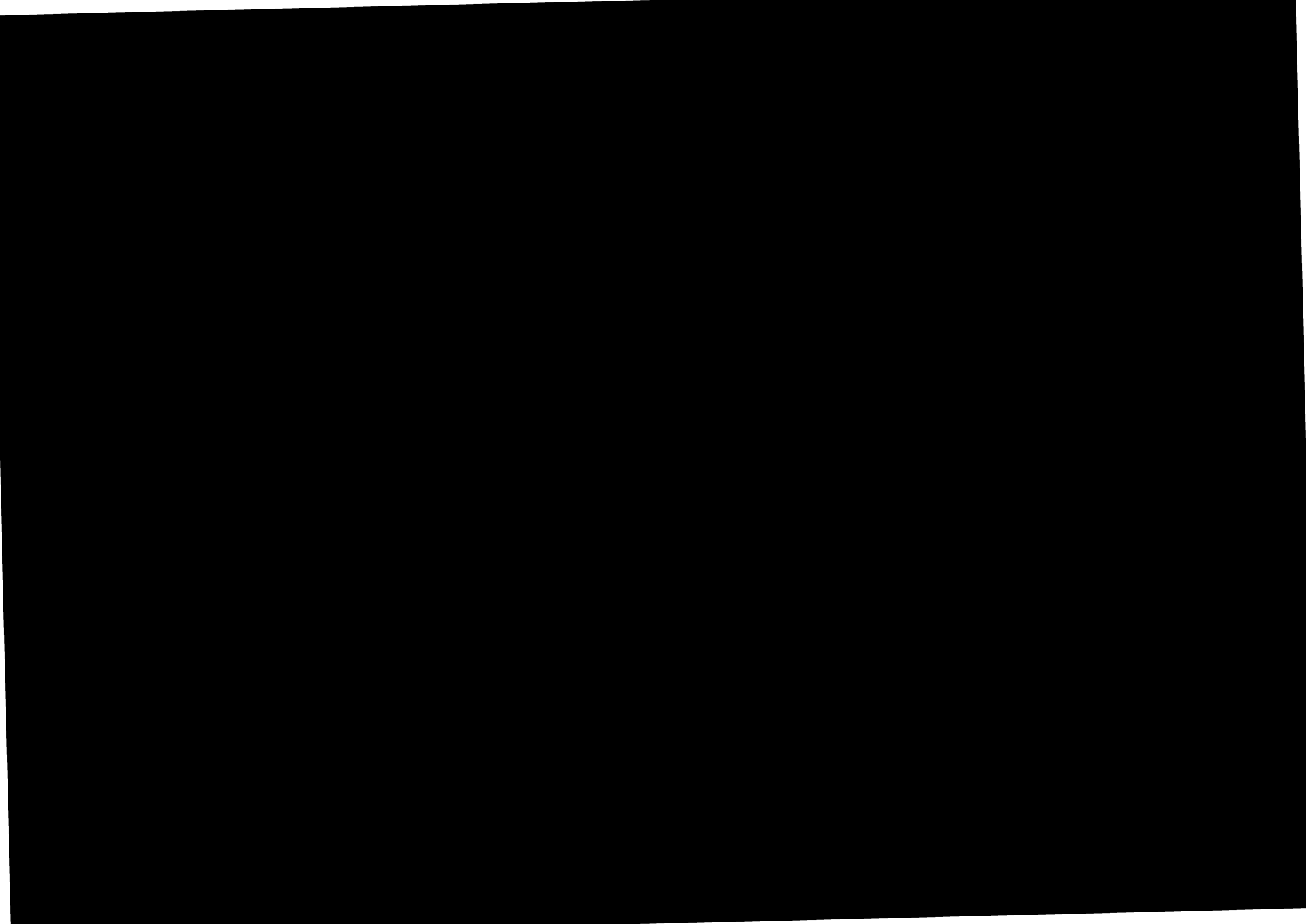




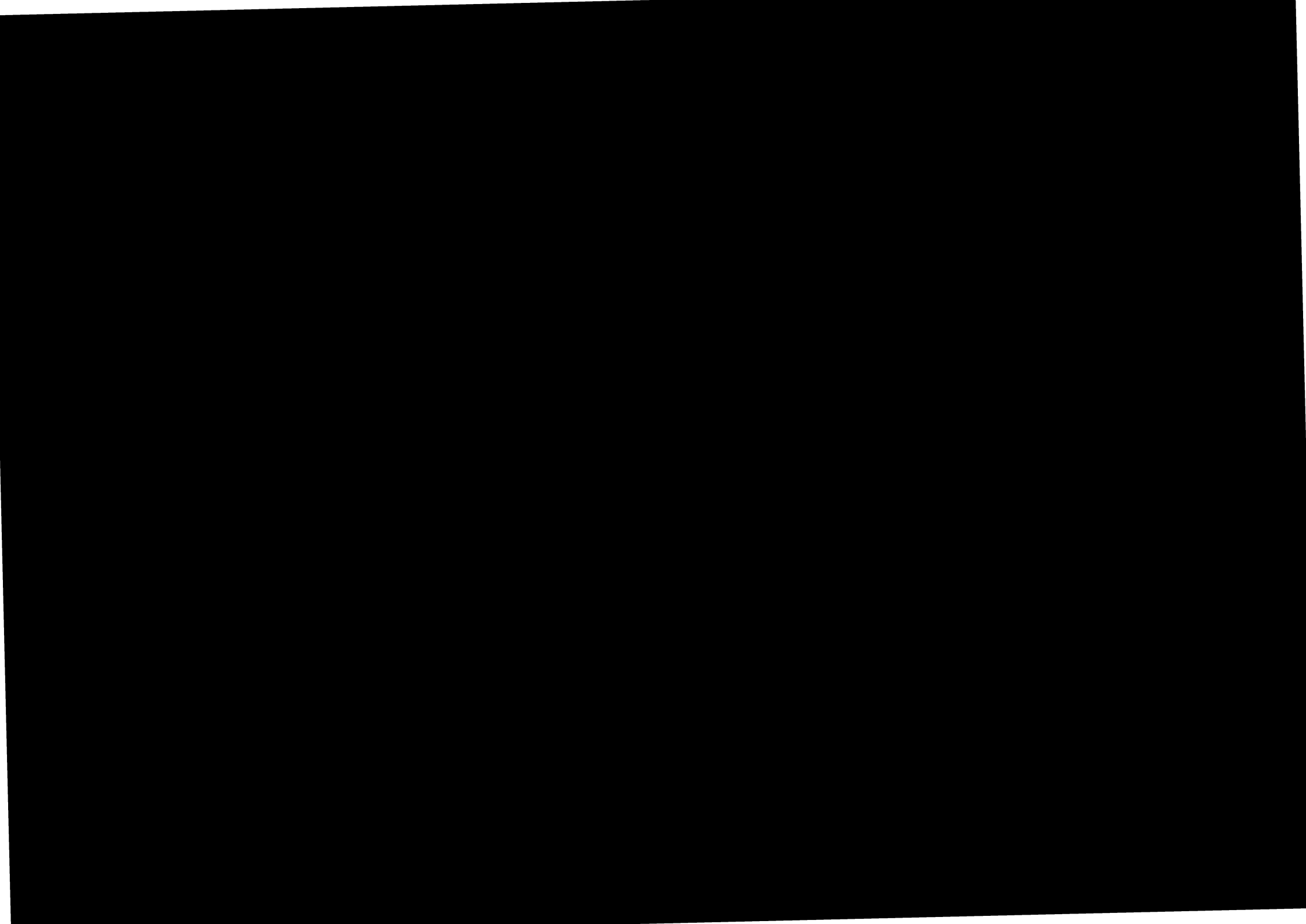


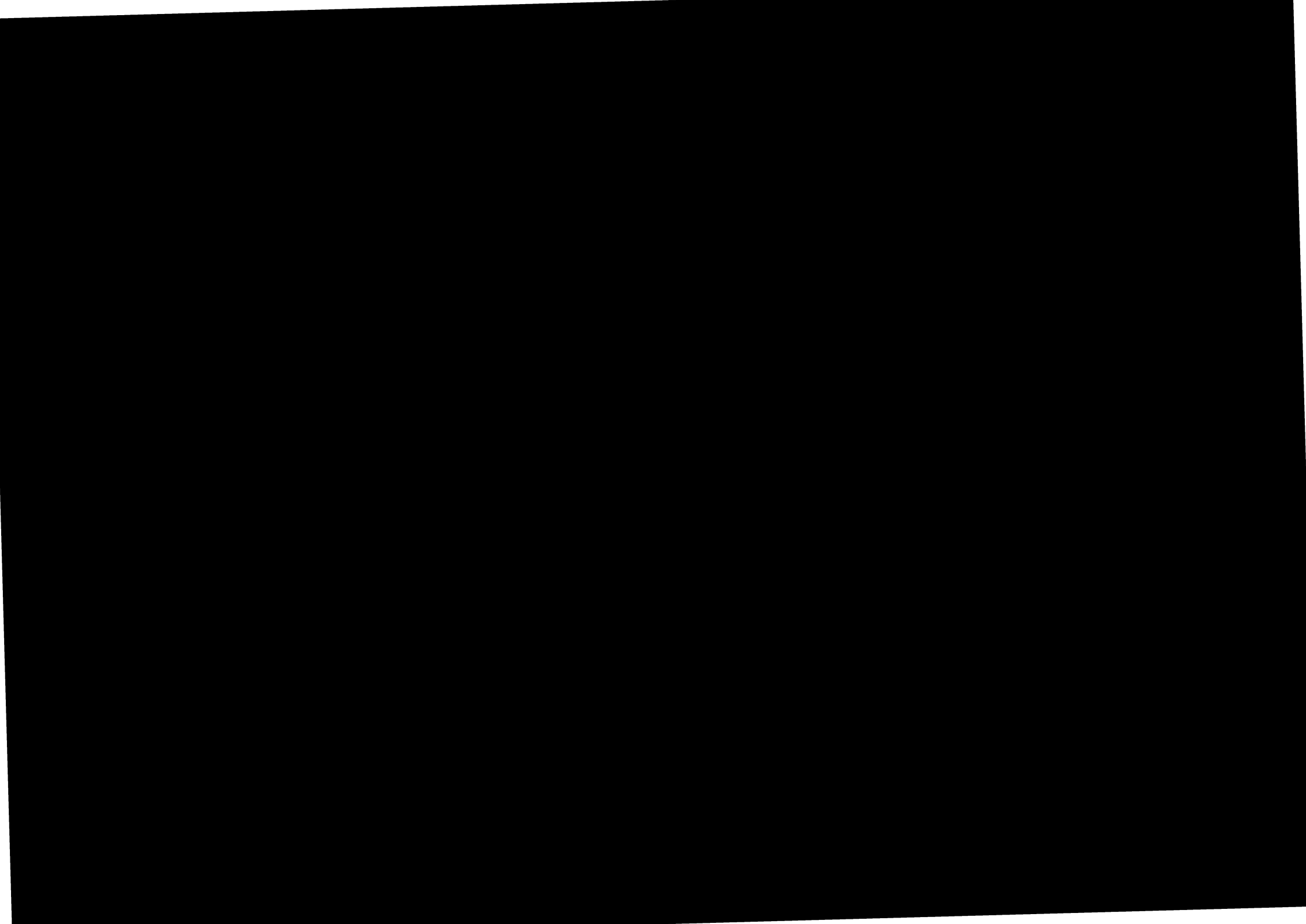


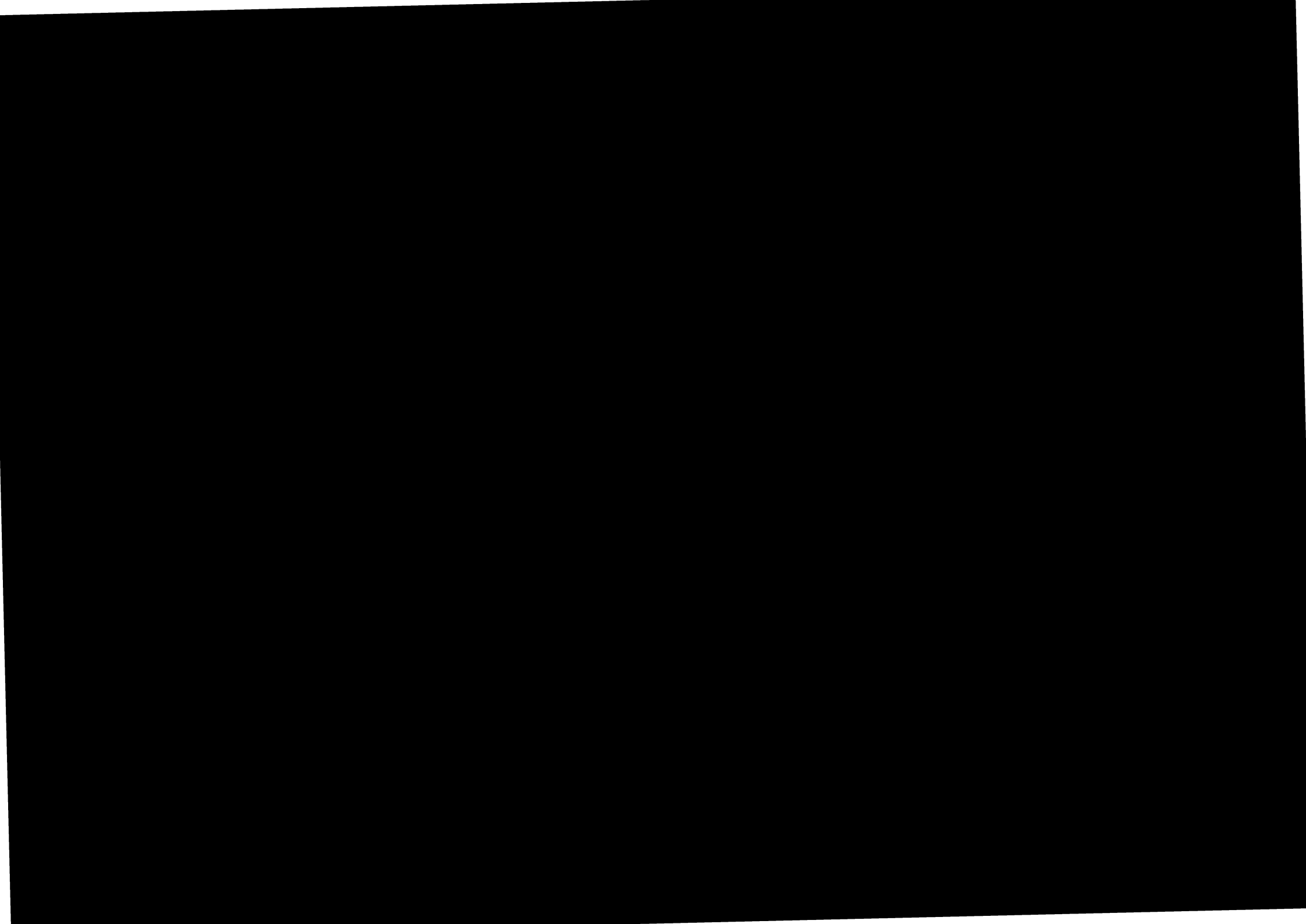


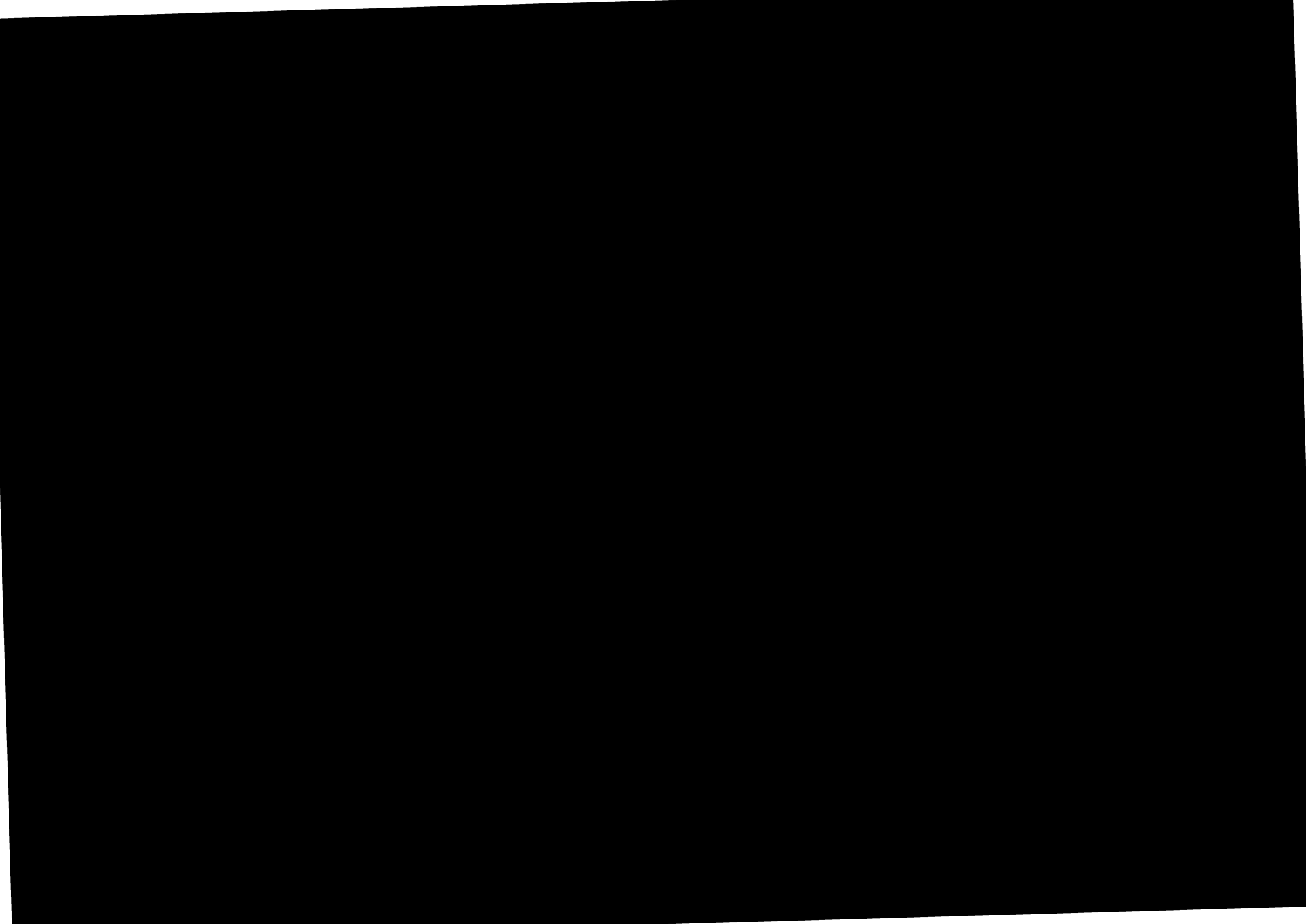


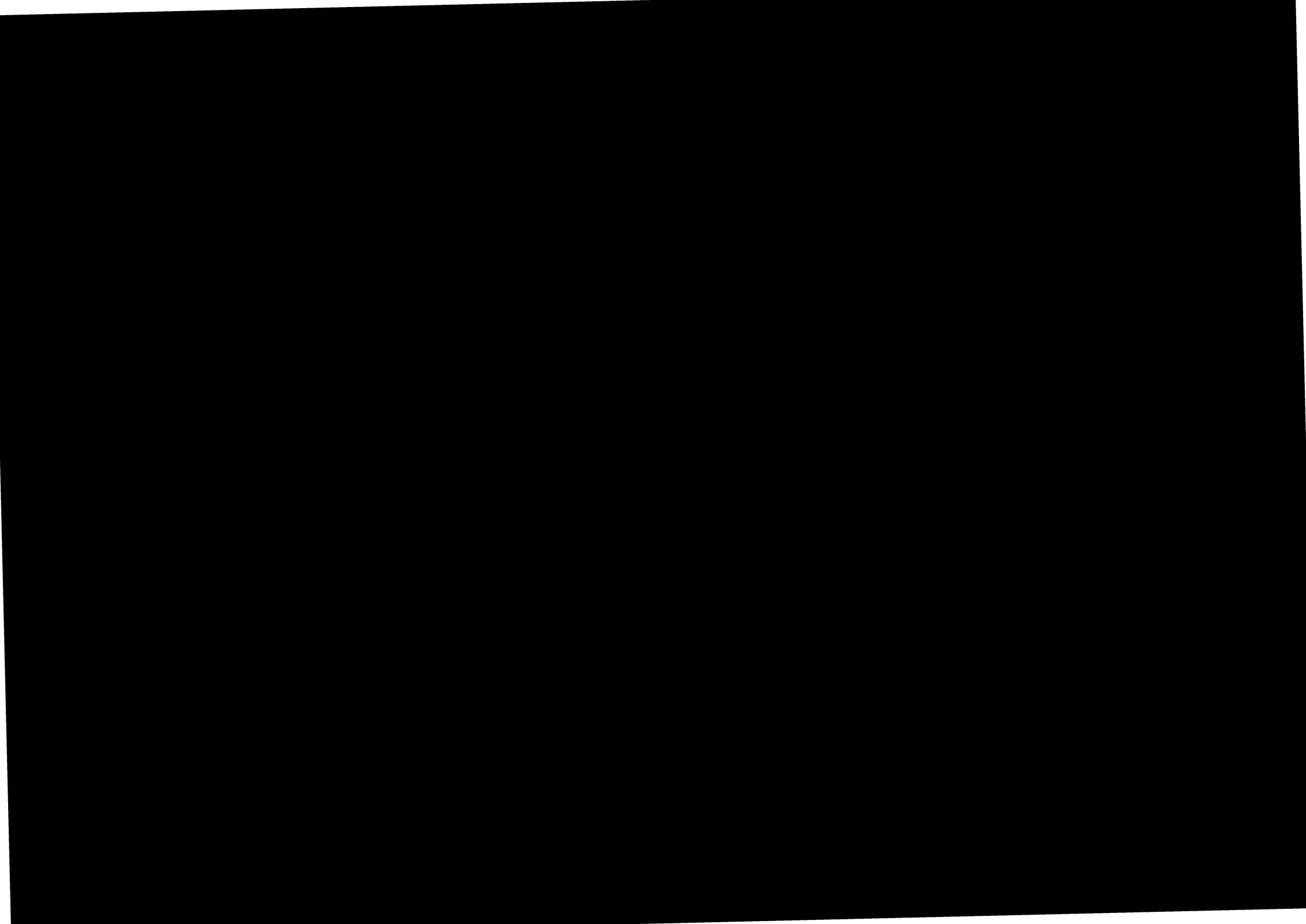




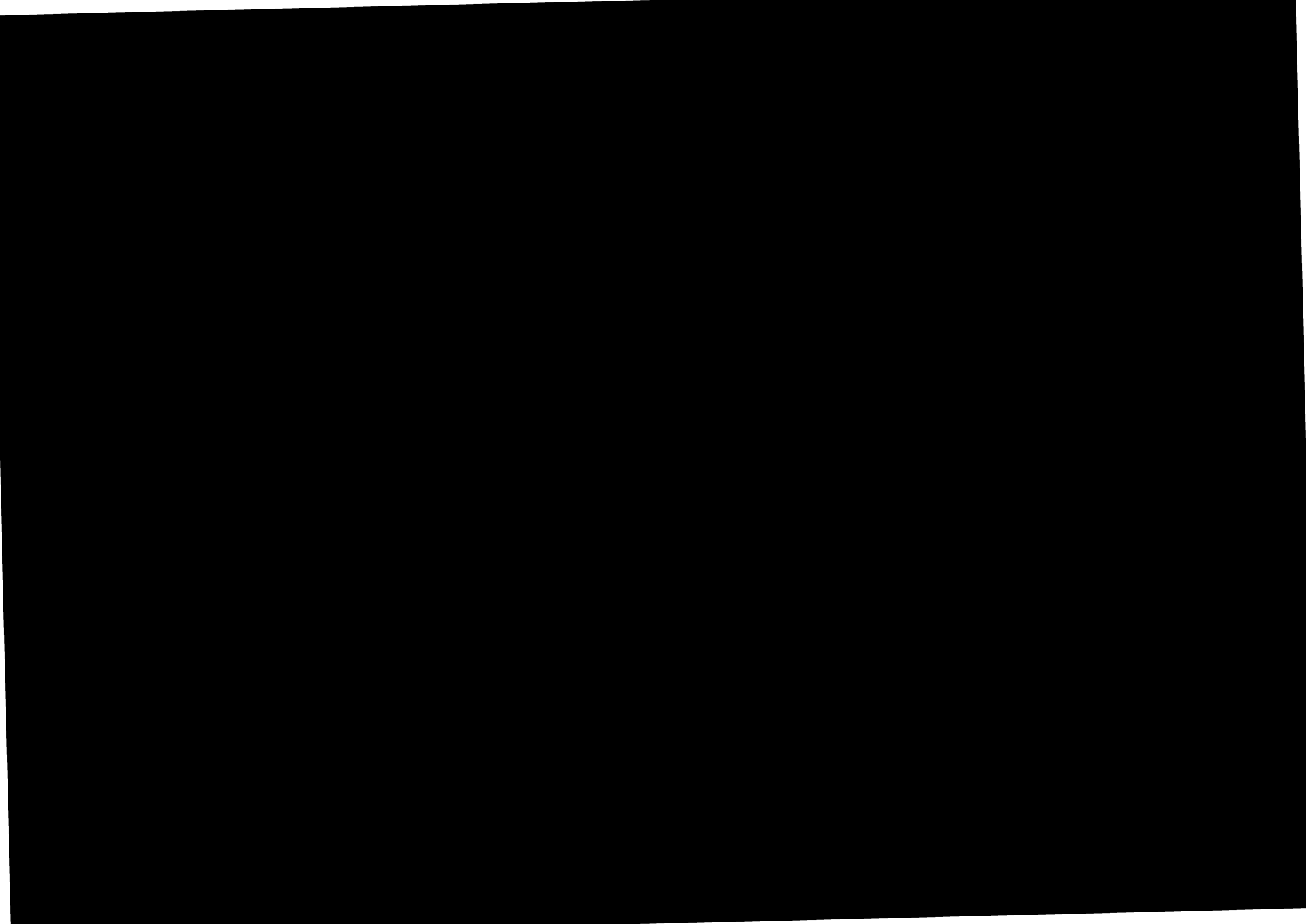




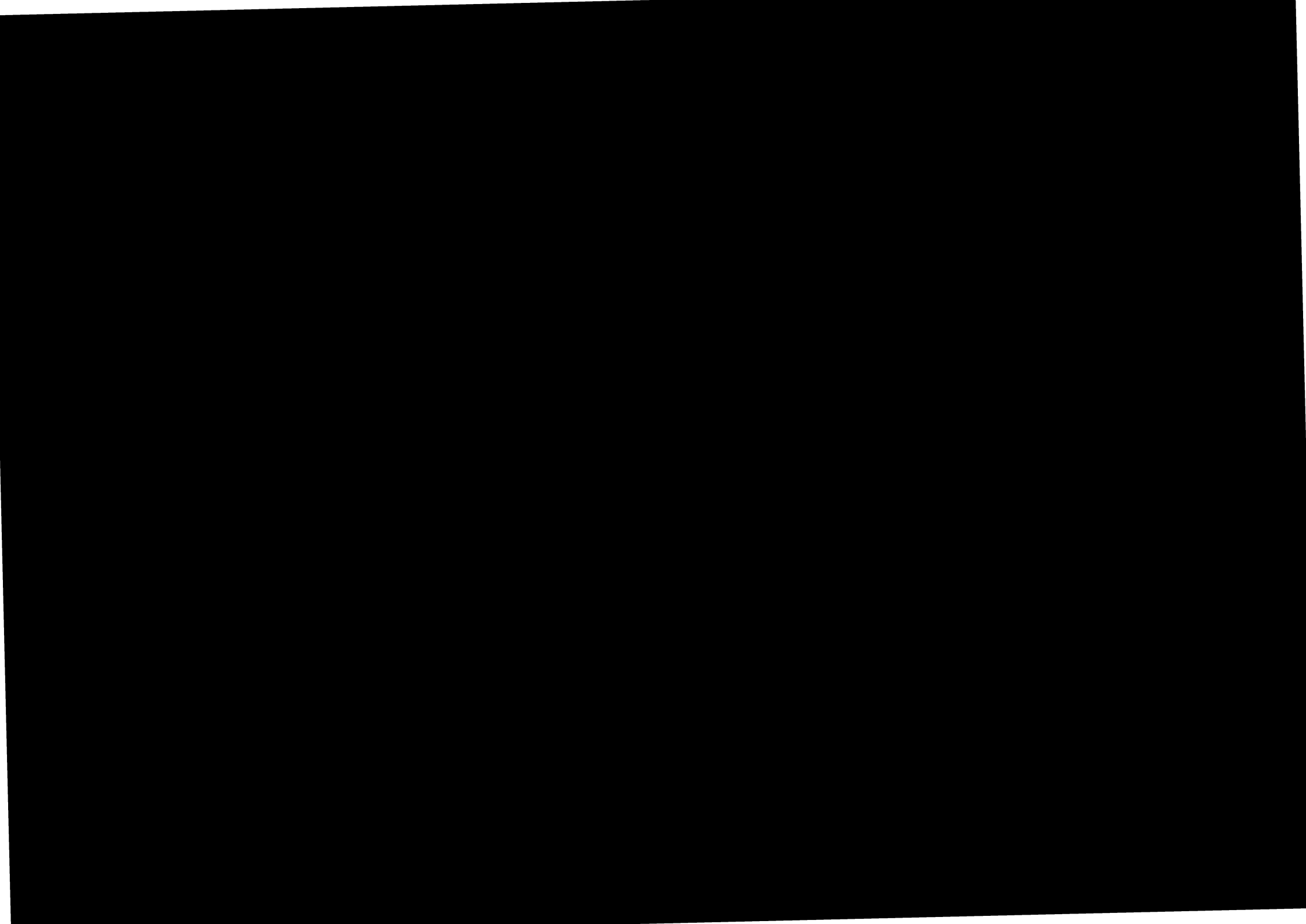


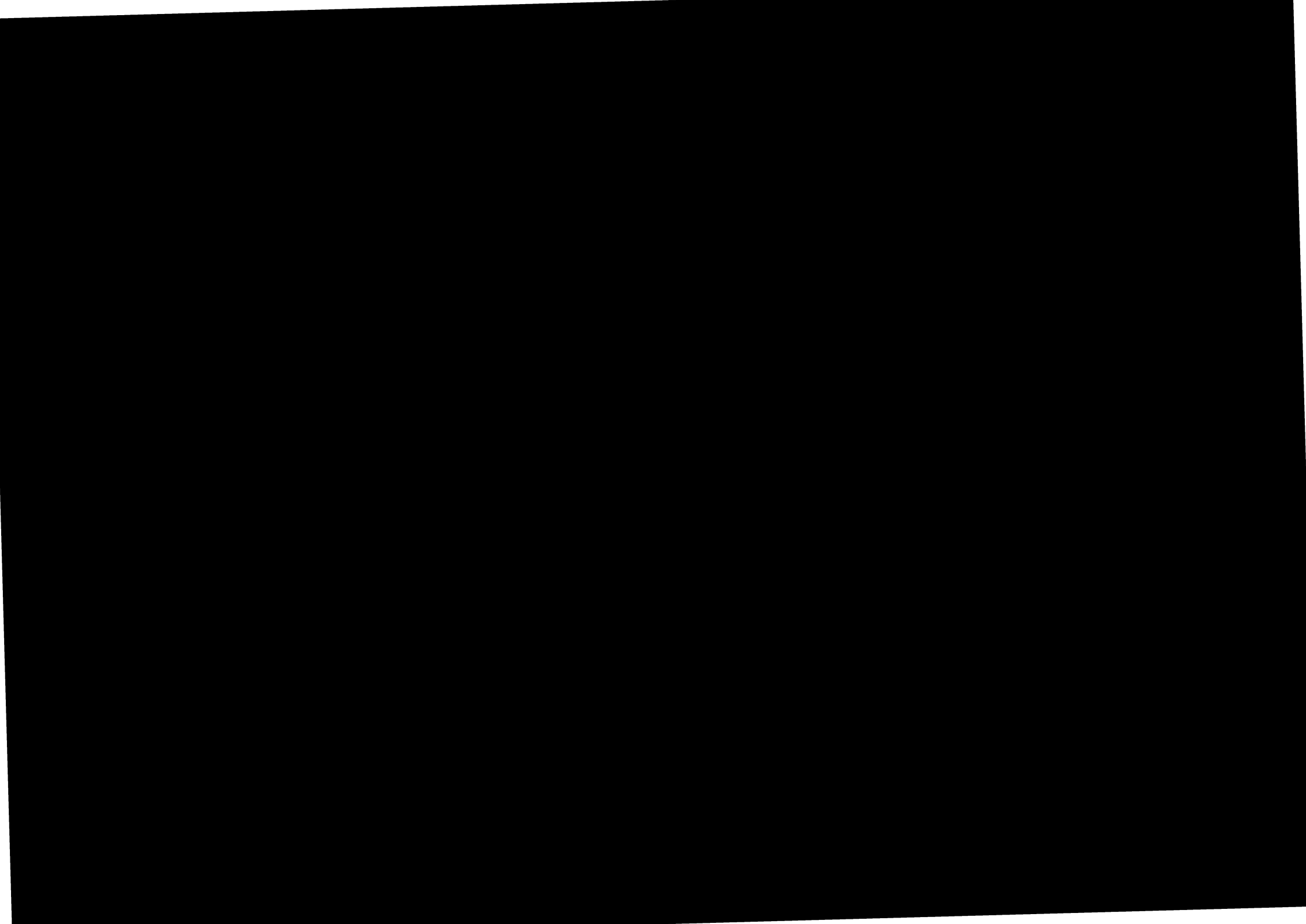


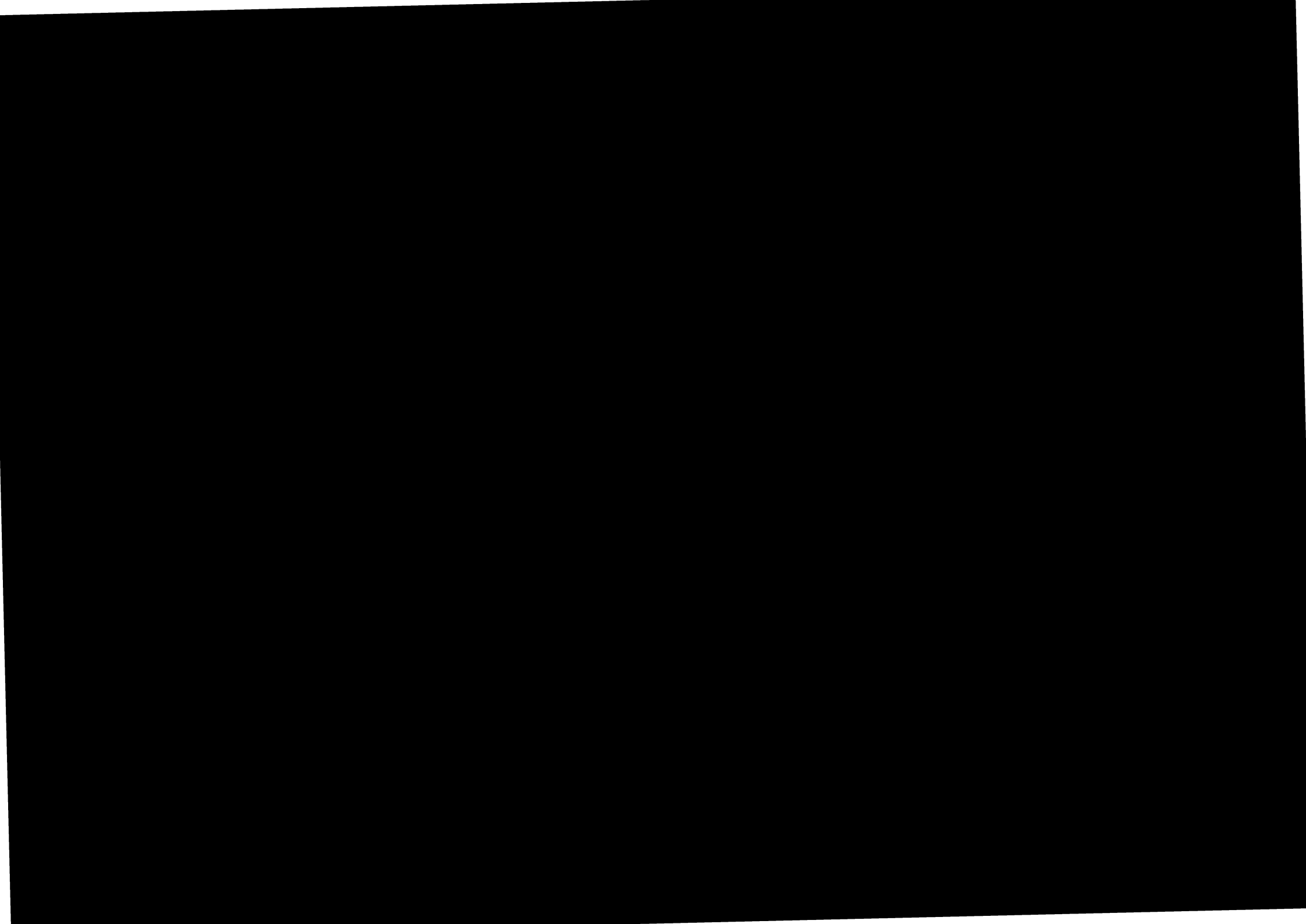


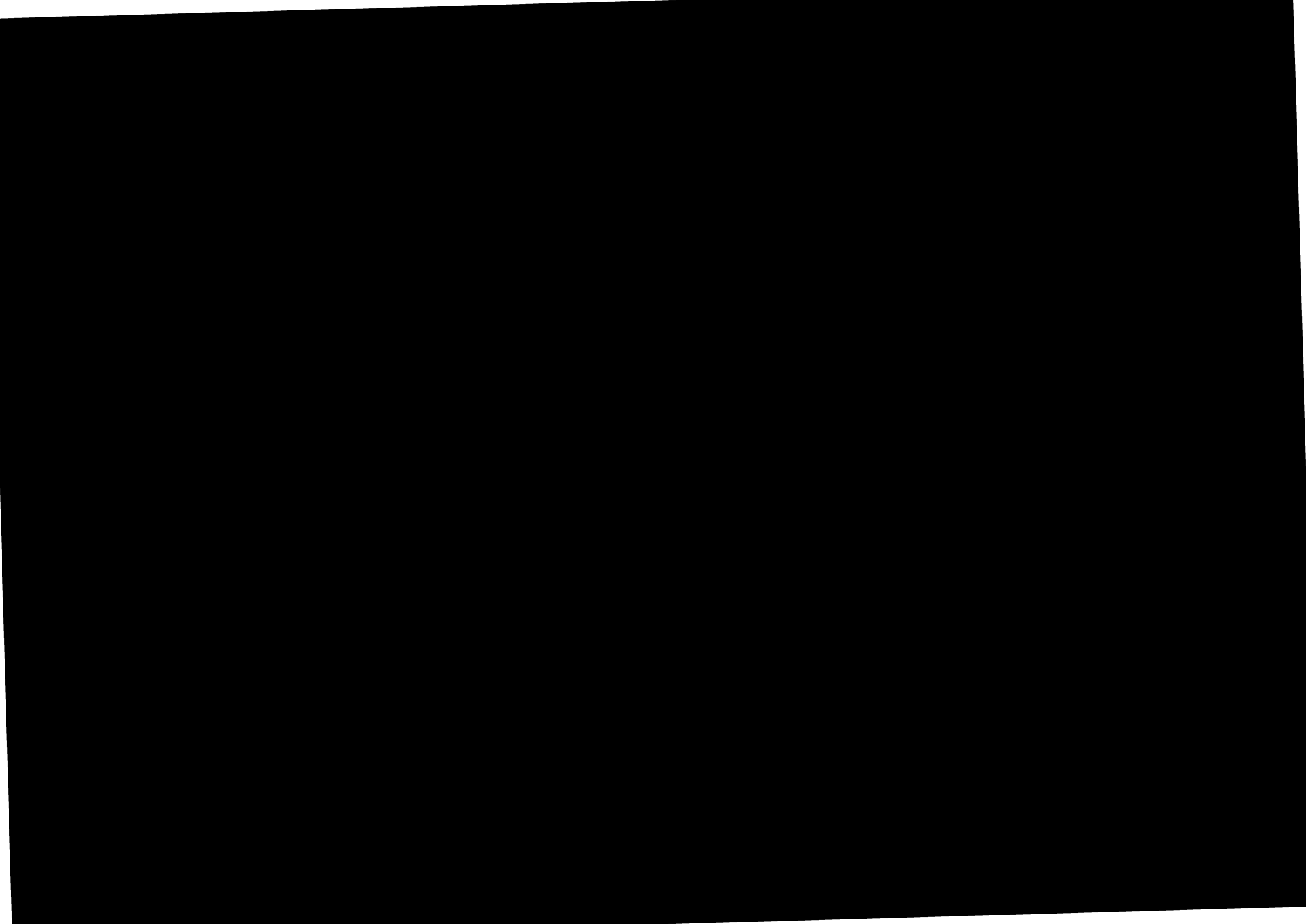


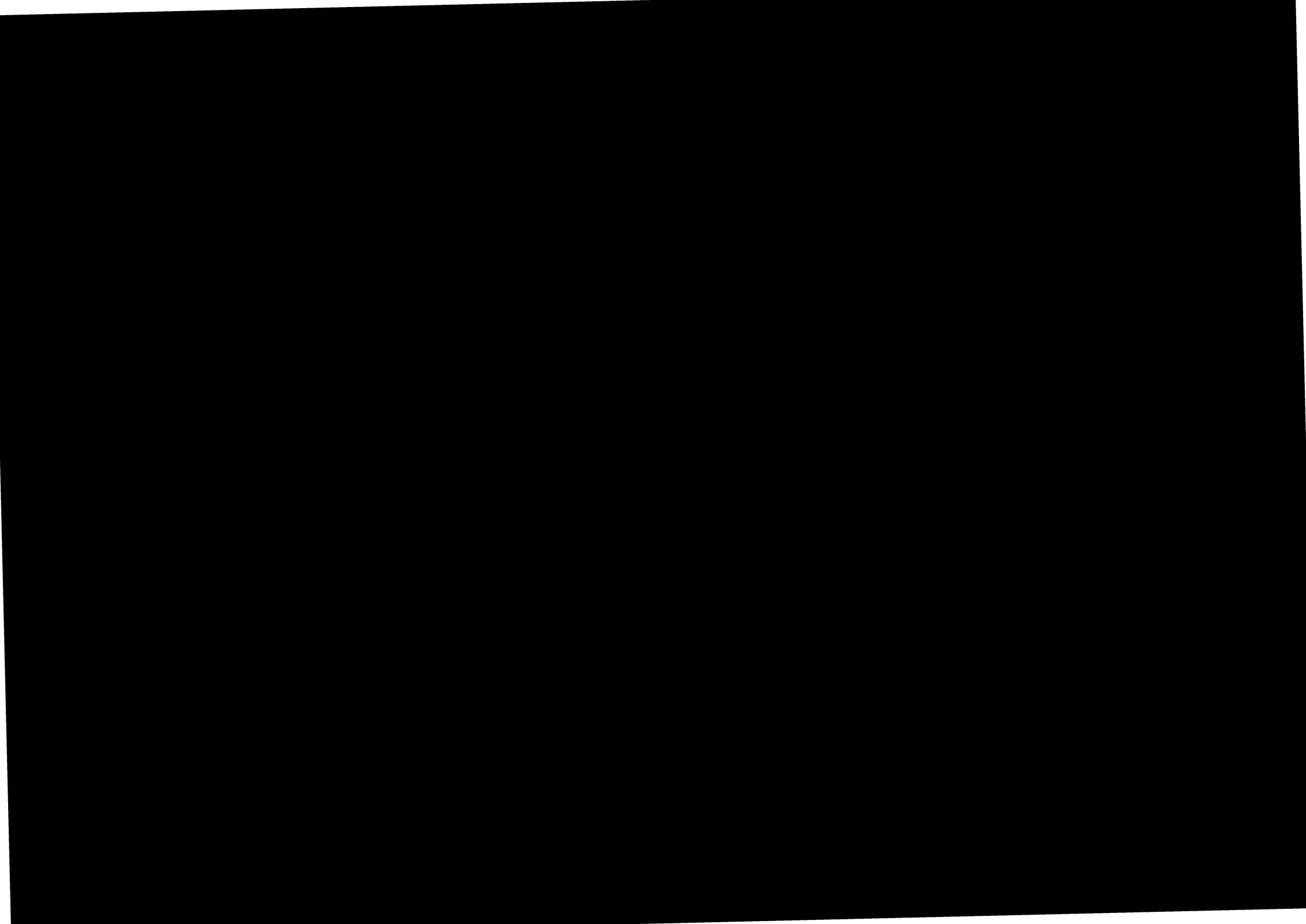




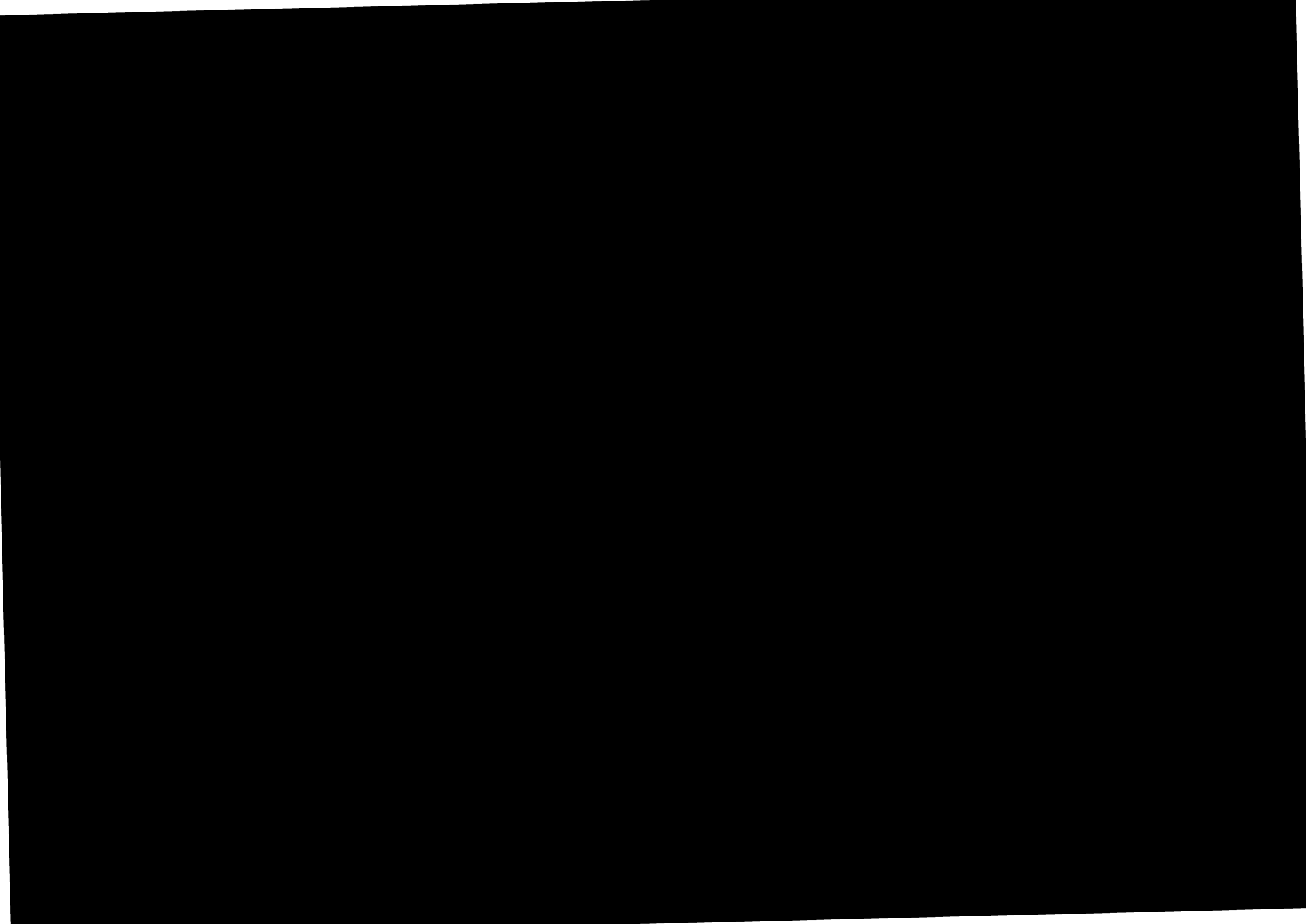




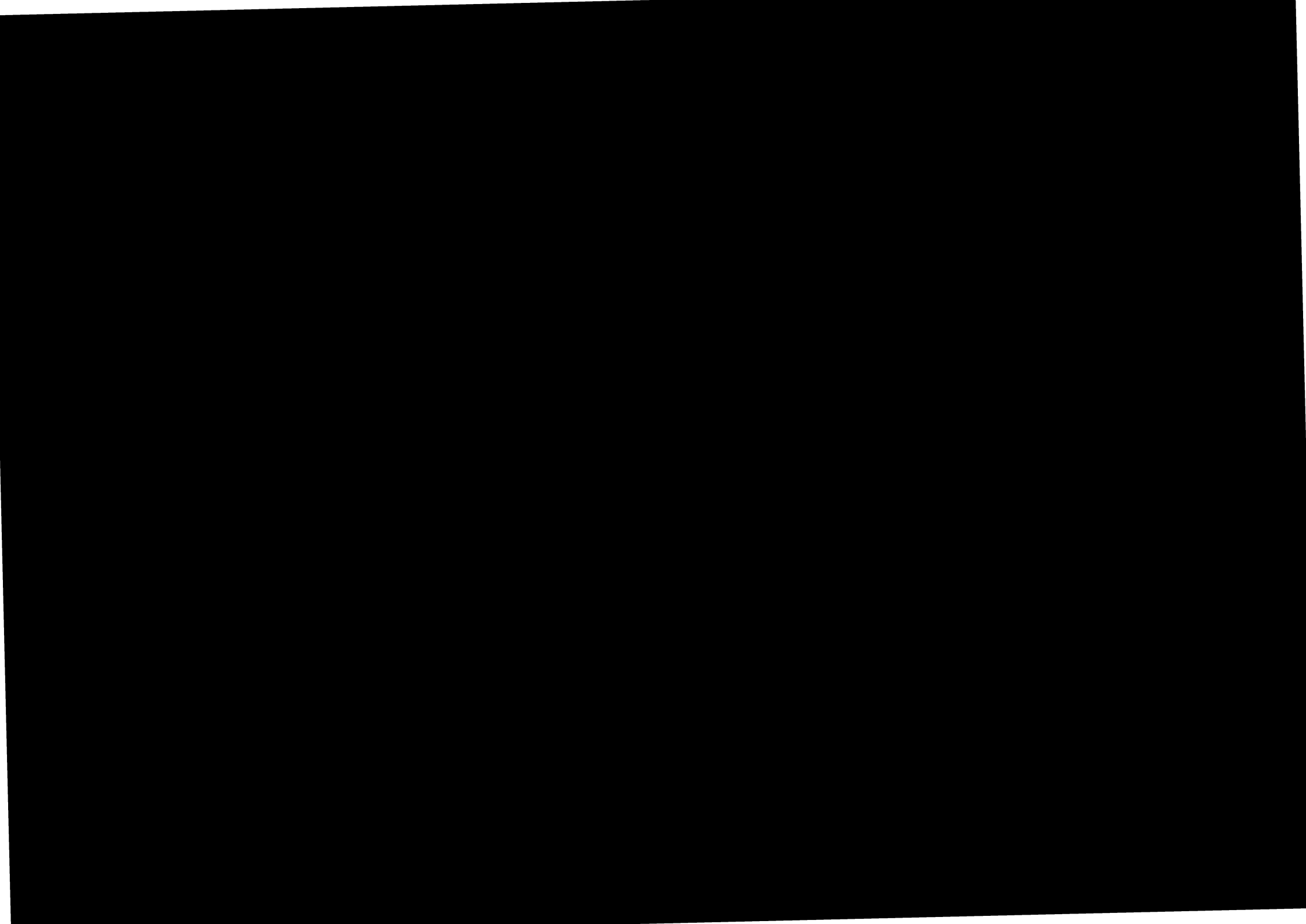


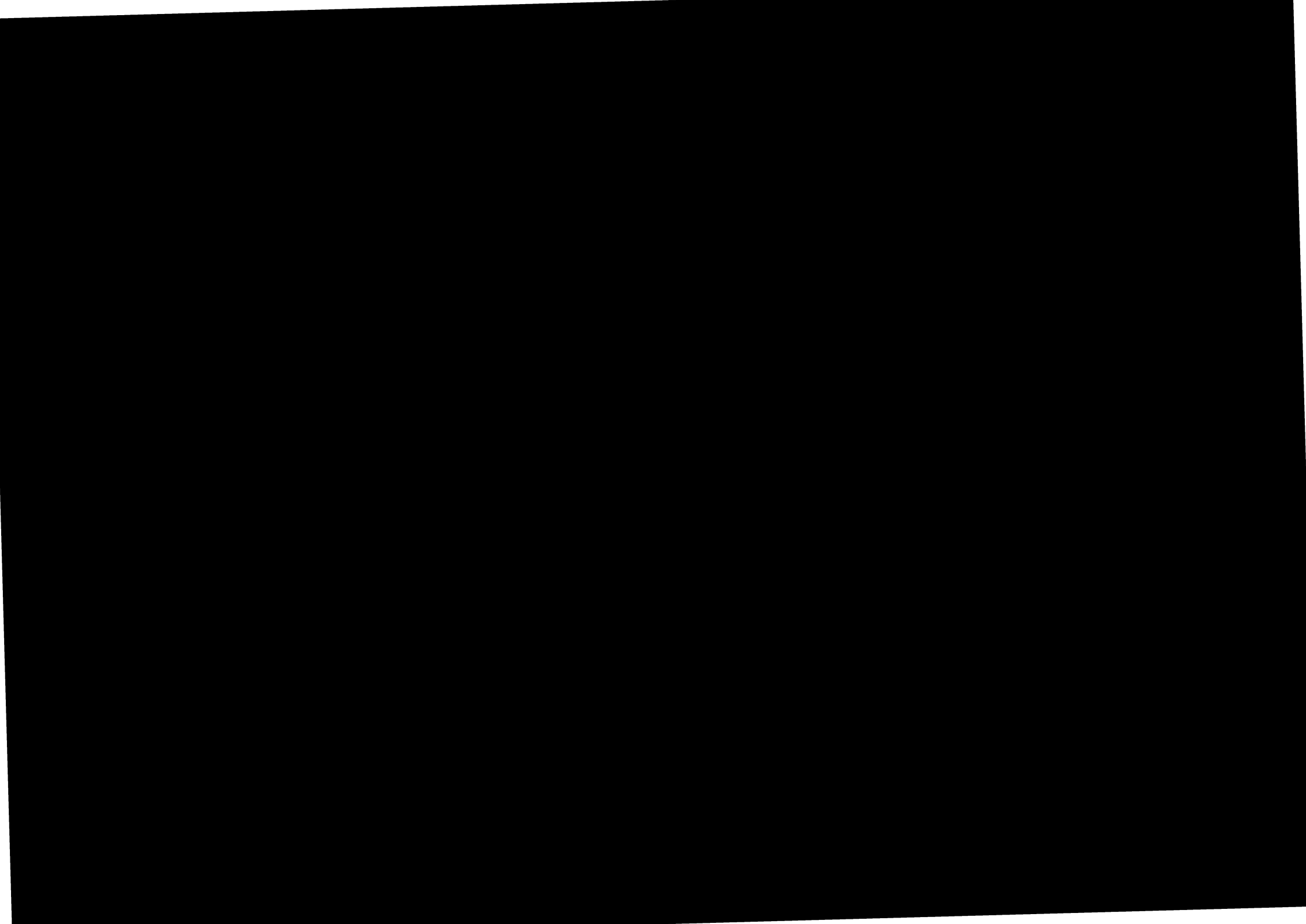


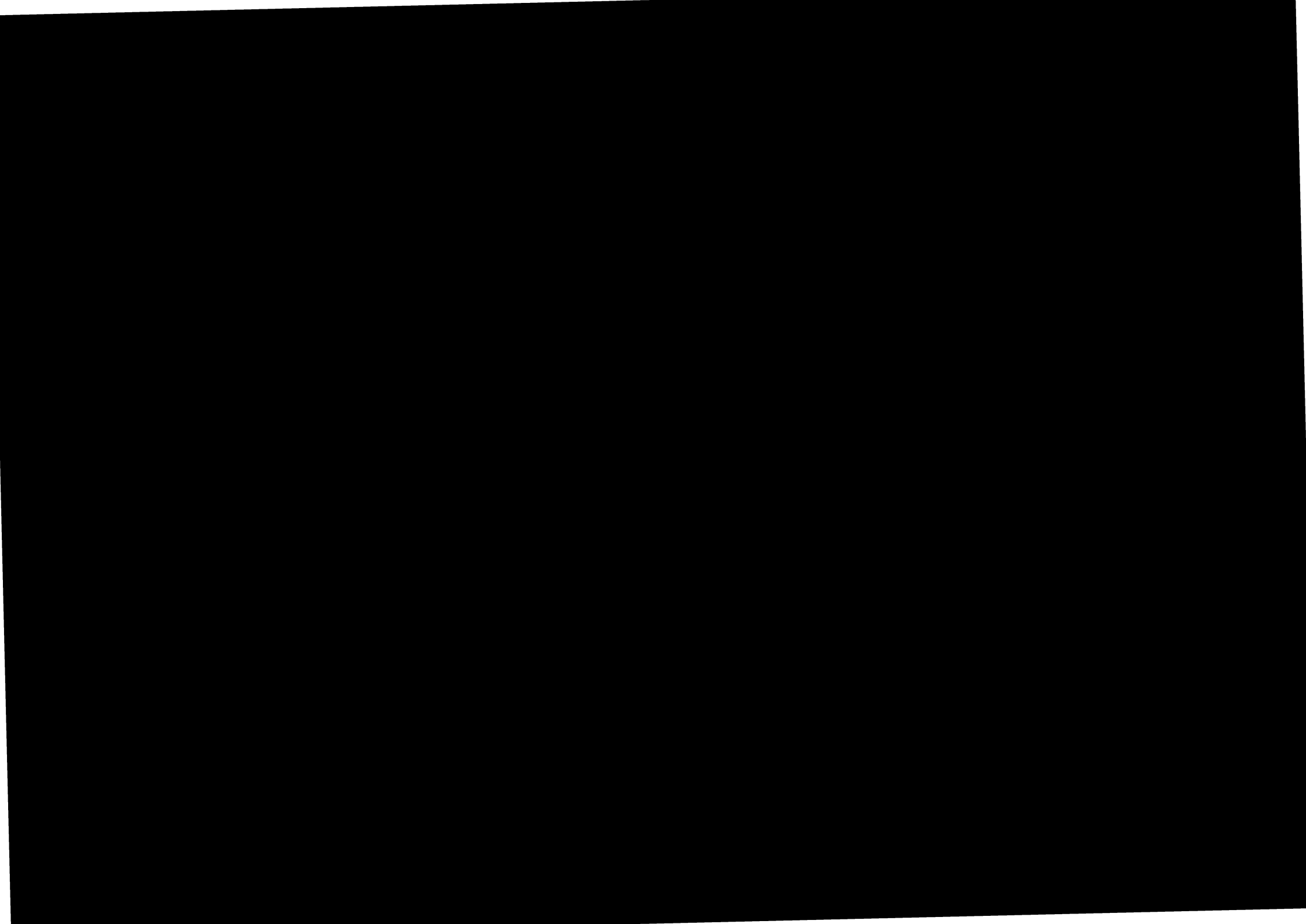


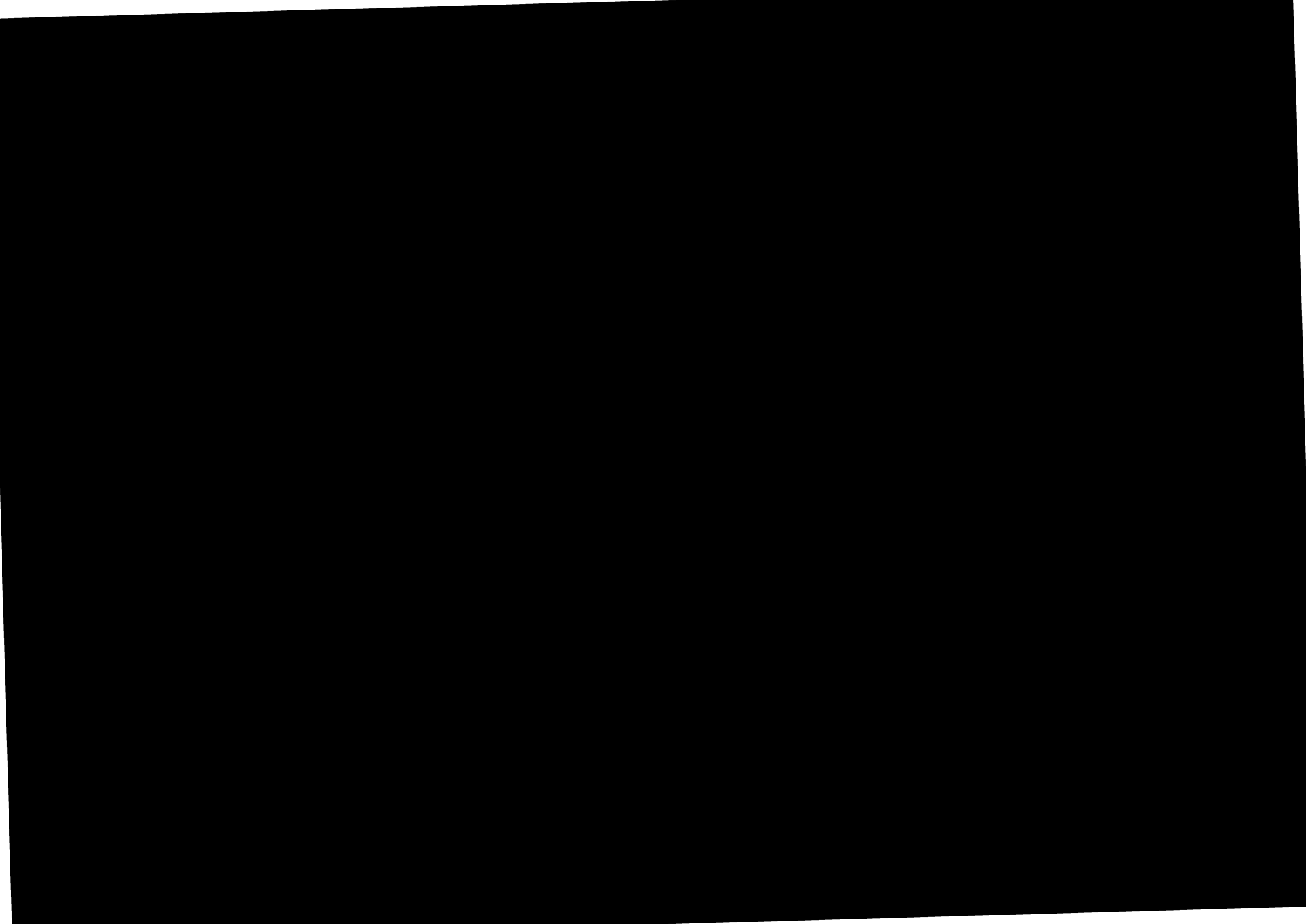












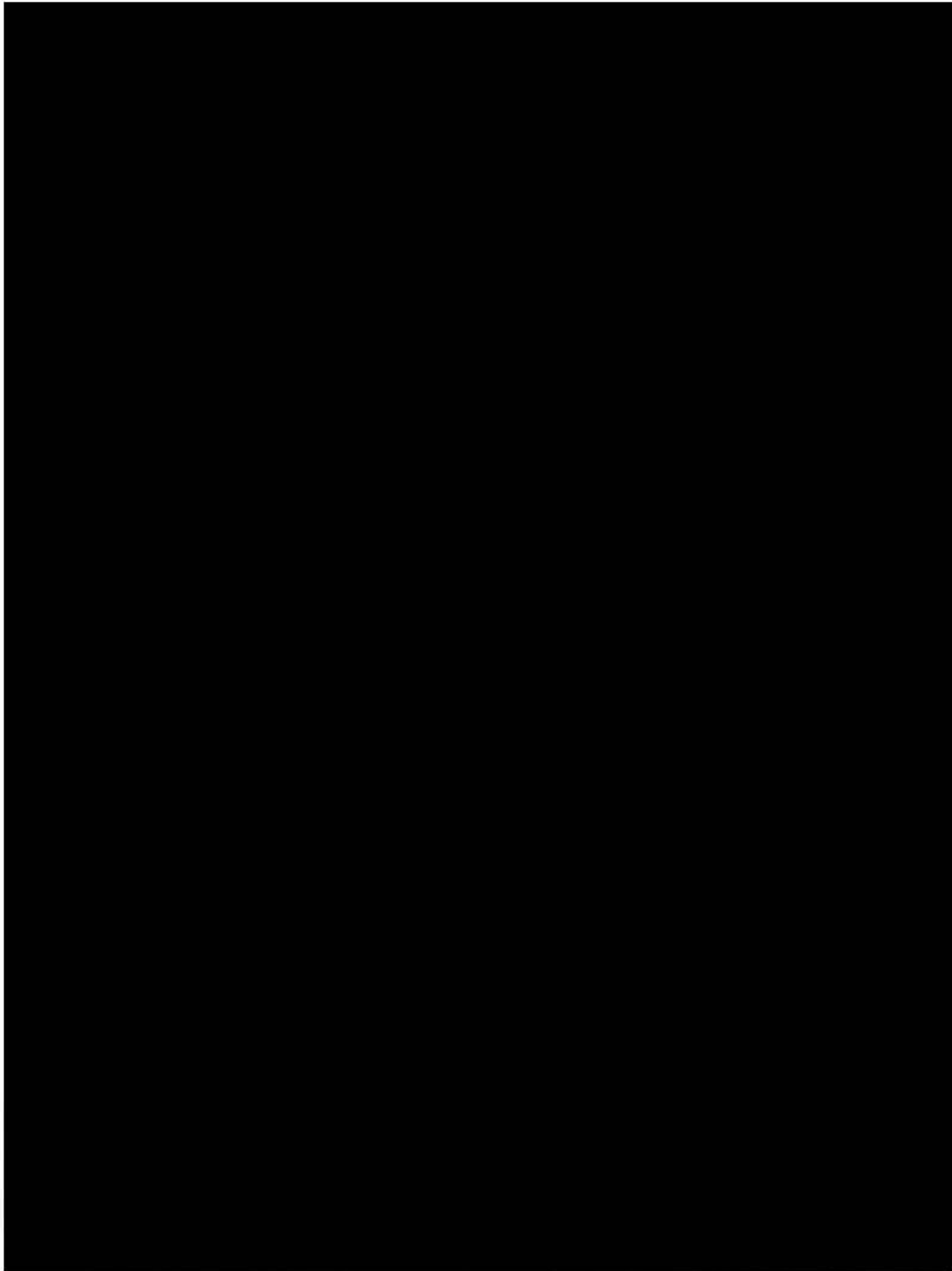
SCHEDULE 5

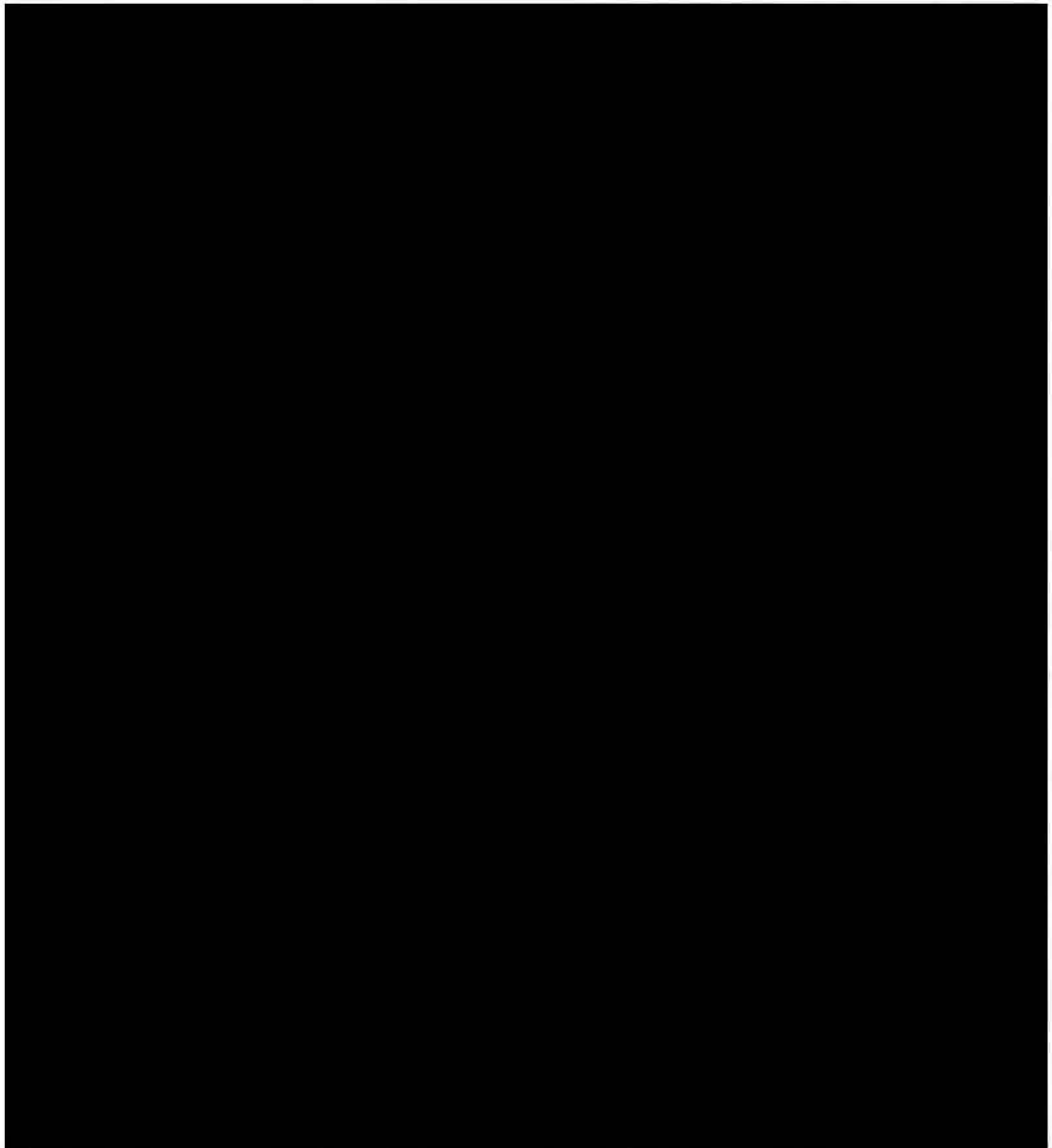
Amendments to Schedule D1 (Site Access Schedule)

With effect from the Effective Date, Schedule D1 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~striketrough~~ indicating deletions from the Principal Document):

Table 4 of Schedule D1 is amended as follows:

Table 4 Site Access Dates



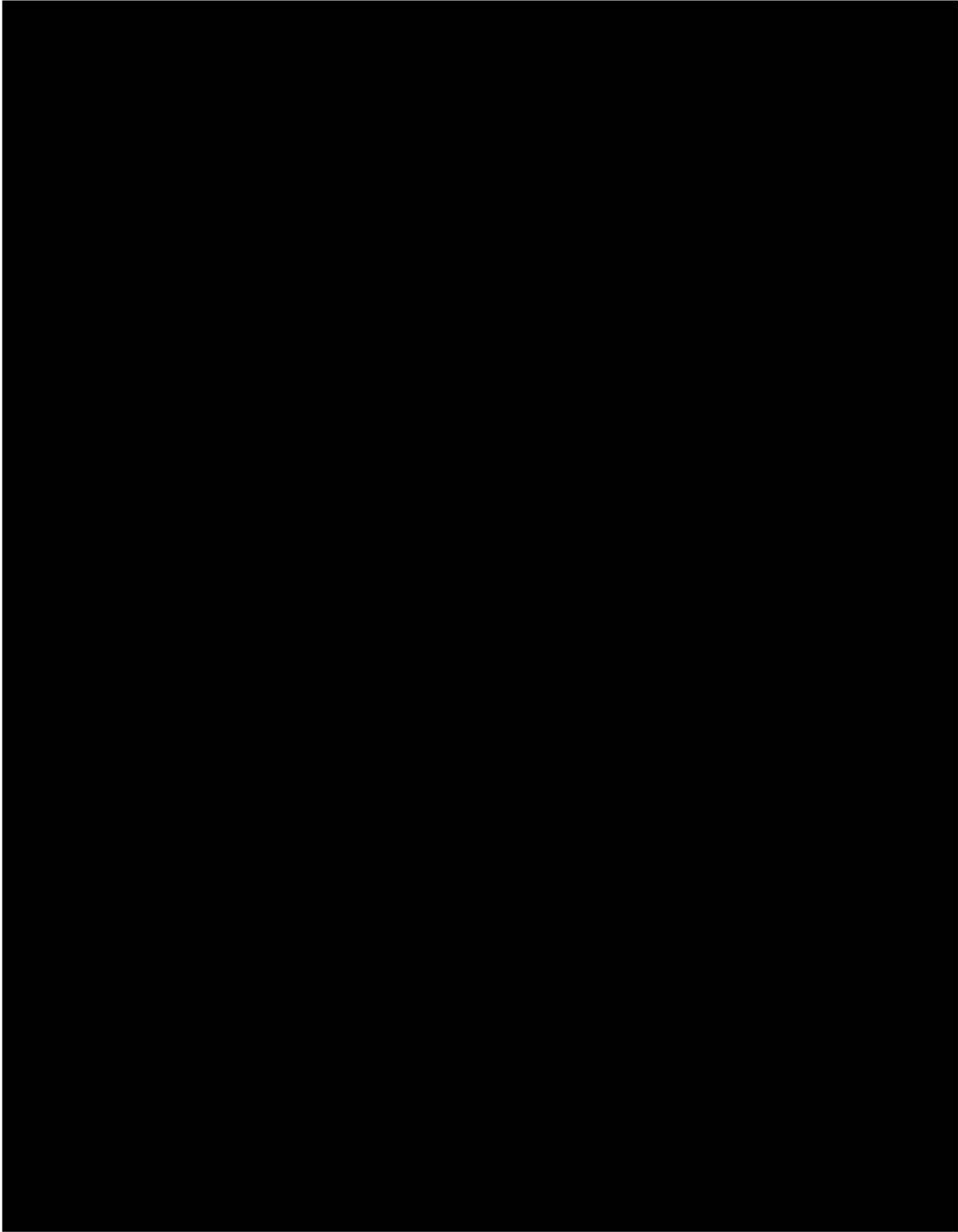


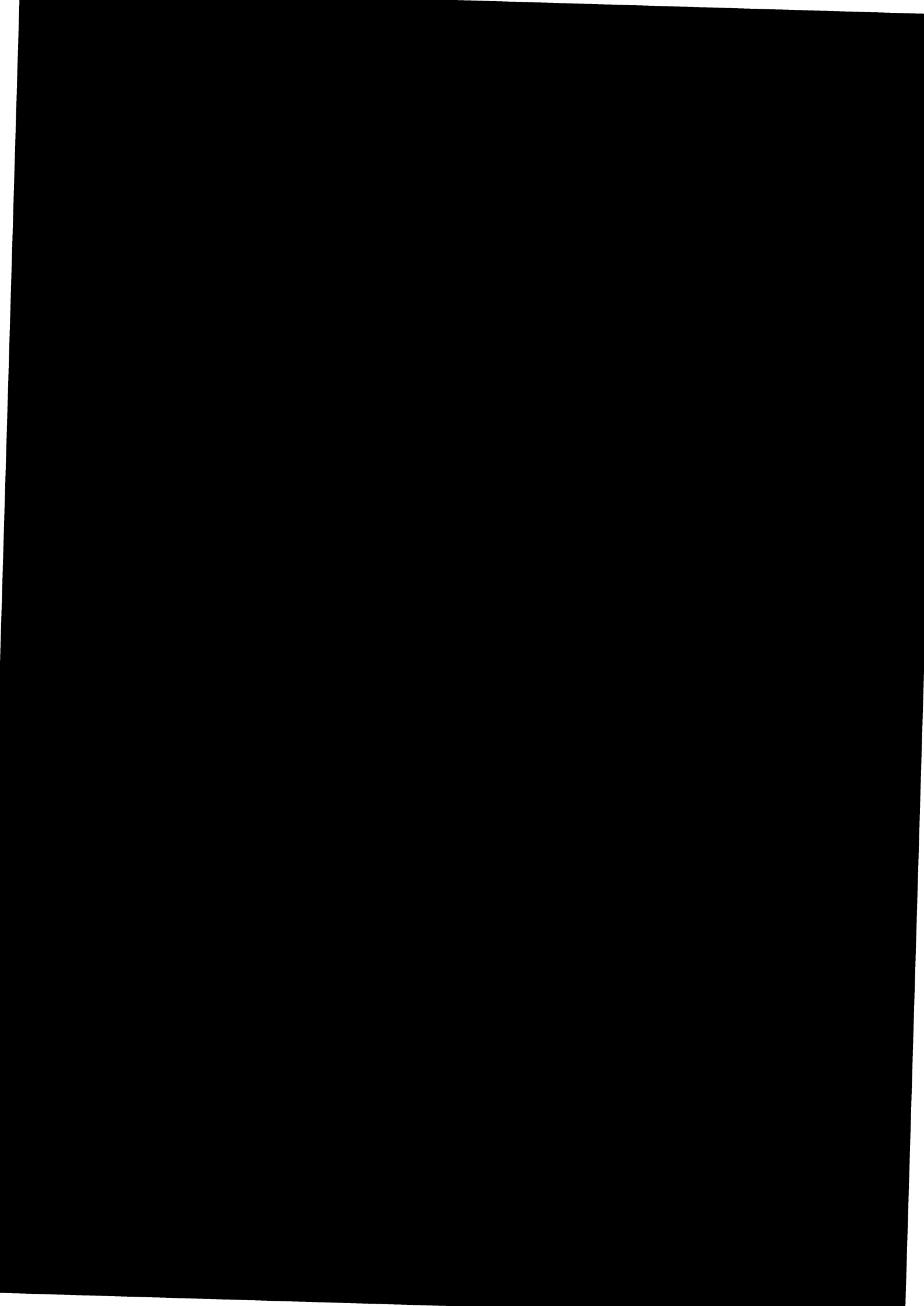
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SCHEDULE 6

Amendments to Schedule E1 (Payment)

With effect from the Effective Date, Schedule E1 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strikethrough~~ indicating deletions from the Principal Document):

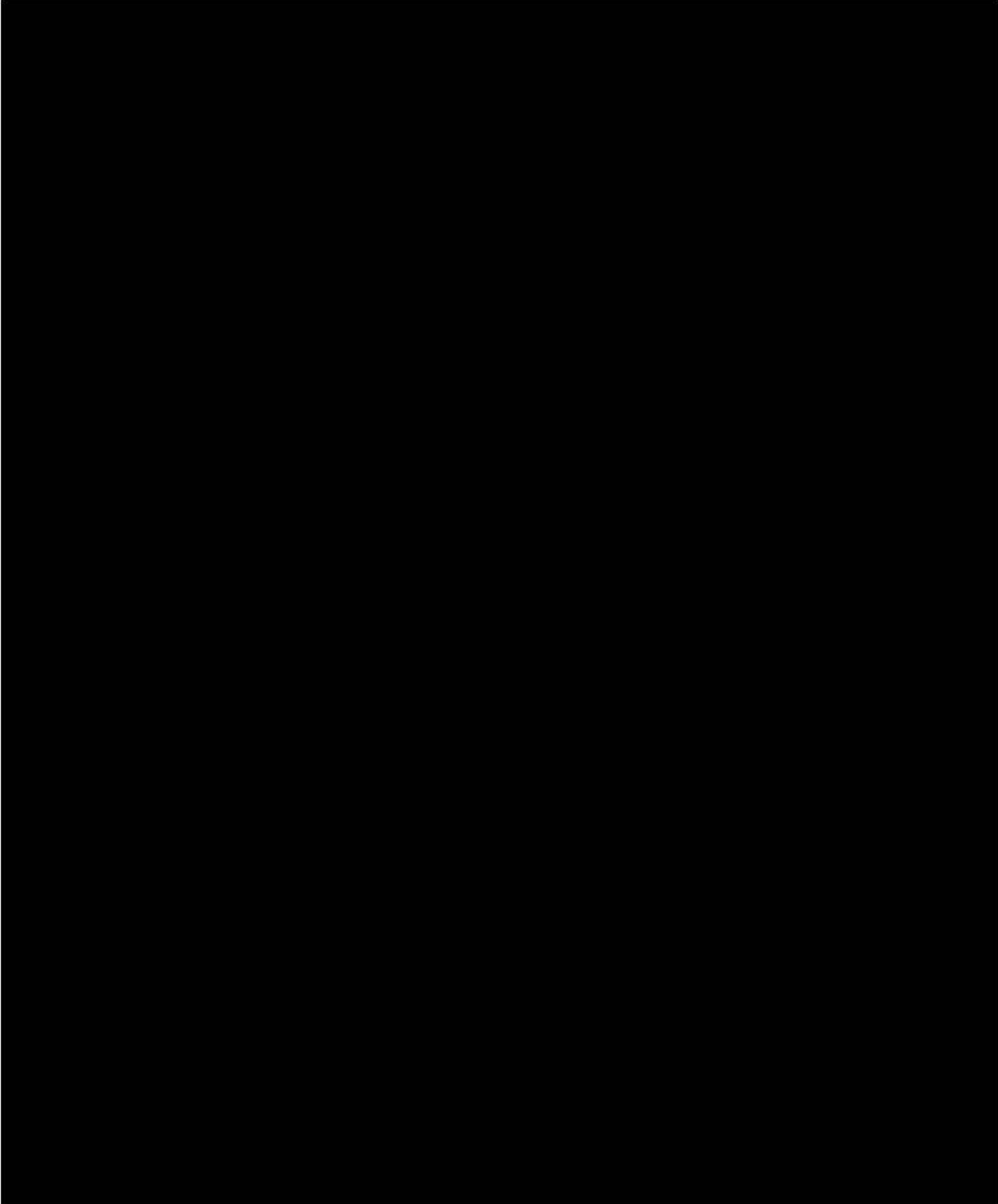




SCHEDULE 7

Amendments to Schedule E16 (KP&E Residual Value Amounts)

With effect from the Effective Date, Schedule E16 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strikethrough~~ indicating deletions from the Principal Document):

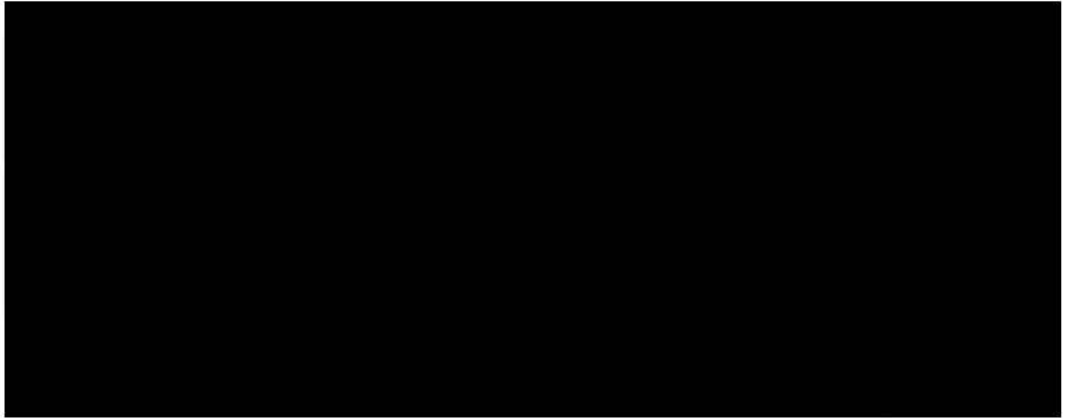


SCHEDULE 8

Amendments to Schedule F1 (Electronic Files)

With effect from the Effective Date, Schedule F1 to the Principal Document is amended as follows (with text shown in underline indicating additions to the Principal Document and text shown in ~~strikethrough~~ indicating deletions from the Principal Document):

This Schedule F1 consists of the documents and information set out in the document entitled "Schedule F1 (Electronic Files) Register", as amended, which is included in this Schedule F1 as an electronic file.

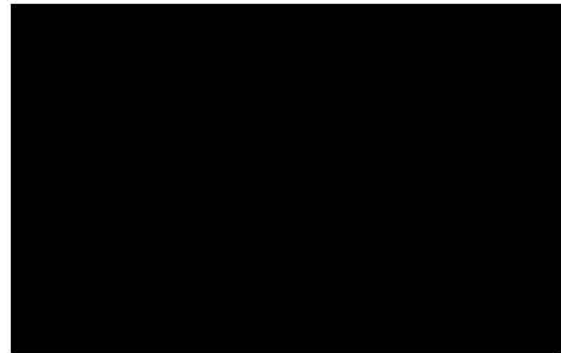
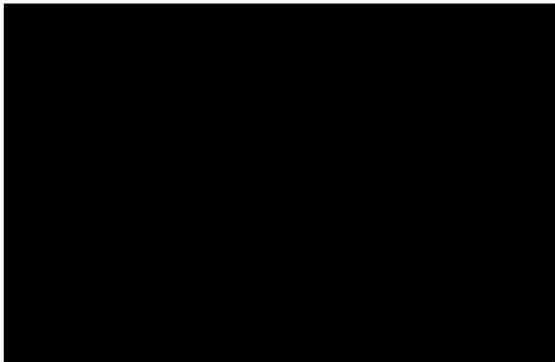


EXECUTED as a deed.

SIGNED for **SYDNEY METRO** ABN 12 354 063 515 by its duly authorised delegate, in the presence of:

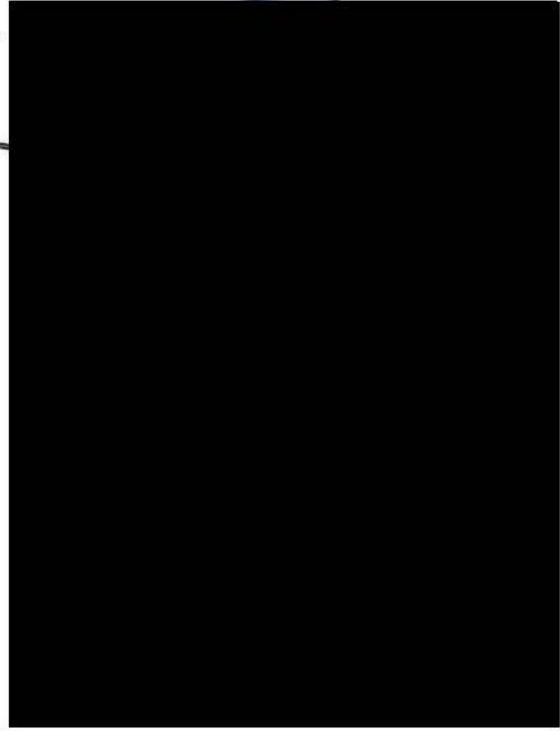
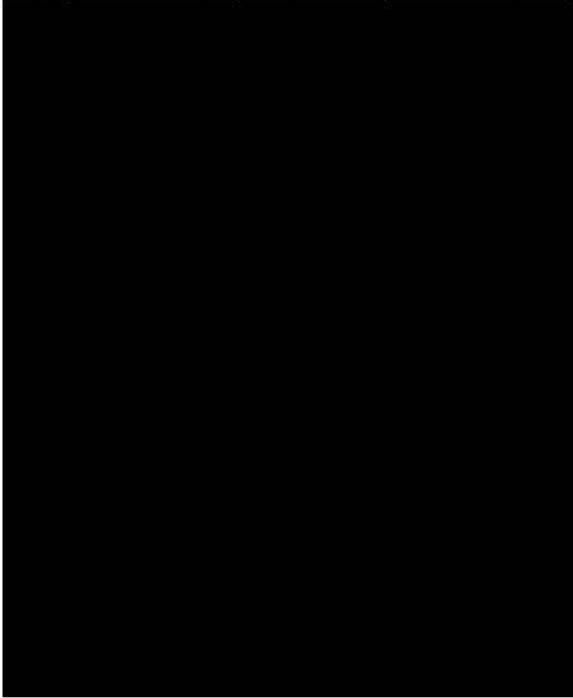


EXECUTED for and on behalf of **JOHN HOLLAND PTY LTD** (ABN 11 004 282 268) by its attorney under a power of attorney dated *23 June 2023* (and the attorney declares that the attorney has not received any notice of the revocation of such power of attorney), in the presence of:



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EXECUTED for and on behalf of **CPB CONTRACTORS PTY LIMITED** ABN 98 000 893 867 by its Attorneys under a Power of Attorney dated 16 January 2023 (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney), in the presence of:



EXECUTED by **GHELLA PTY LTD** ABN 85 142 392 461 in accordance with section 127 of the *Corporations Act 2001* (Cth):

