

In The Matter Of:
Hays, Kansas & Russell, KS v
Edwards County, Kansas & Kansas Water Transfer Act

Formal Hearing
Vol. 3
July 21, 2023

Court Reporting Service, Inc.
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CITIES' EXHIBITS

EXHIBIT NUMBER	FIRST REFERENCED
Number 1765.....	651
Number 2625.....	621
Number 2654.....	648
Number 2655.....	642
Number 2666.....	696
Number 2681.....	640
Number 2827.....	672
Number 2828.....	664

1 there as your Exhibit WP01695 through
2 WP01851.
3 **MR. LEE:** Okay, yes. Same thing
4 so --
5 **PRESIDING OFFICER:** Is that correct?
6 **MR. LEE:** Yeah, I believe so.
7 **PRESIDING OFFICER:** Okay.
8 **MR. LEE:** Yeah.
9 **PRESIDING OFFICER:** So it's correct
10 that that's the page numbering for that
11 exhibit, and then, yes, if you can just
12 upload an electronic copy of that exhibit.
13 So at this point, that is the only one of
14 your exhibits that we have officially
15 admitted to the record.
16 **MR. LEE:** Okay.
17 **PRESIDING OFFICER:** Just so we're
18 aware of that and we can at some point here
19 next week kind of go through and make sure
20 that everybody has the same record, noting
21 what's been admitted and what's not so you
22 don't mistakenly think something was
23 admitted and it wasn't because of the way
24 we're going about this.
25 **MR. LEE:** Sure. Well, we definitely

1 **PRESIDING OFFICER:** We'll go ahead
2 and go on the record here and get things
3 started here for Friday, July 21st for our
4 hearing.
5 Now, Mr. Lee, you were just addressing
6 the deposition, and I want to apologize
7 because I indicated that I didn't think you
8 had listed that on your exhibit list. Now,
9 the list I was looking at, whatever -- for
10 whatever reason, cut off and I didn't get
11 those last couple pages of your exhibits.
12 I had your exhibits as being up through
13 page 532, and then 533 started the next
14 page, so I wanted to clarify, then, I think
15 I made myself a little sticky note on that
16 somewhere, if I can find it. So you'd
17 indicated that being an exhibit number
18 starting at 2091.
19 **MR. LEE:** That's the -- that's the
20 figure that we wrote or the number we wrote
21 down, Your Honor. That would be after --
22 **PRESIDING OFFICER:** When I went back
23 through your witness list -- or your
24 exhibit list last night, it looked like
25 Mr. Dougherty's deposition was listed on

1 will check on that, and I appreciate Your
2 Honor's approach to it. We will upload
3 this over the weekend, an electronic
4 version.
5 **PRESIDING OFFICER:** Okay thank you.
6 **MR. TRASTER:** Your Honor, from my
7 perspective, I didn't intend that only the
8 Cities' exhibits would be admitted; I
9 assumed that we were admitting all of the
10 exhibits provisionally. But that's --
11 **PRESIDING OFFICER:** Okay.
12 **MR. TRASTER:** Whatever, I'm not --
13 **PRESIDING OFFICER:** Mr. Lee, would
14 you --
15 **MR. LEE:** I won't make a strenuous
16 objection to that, Your Honor.
17 **PRESIDING OFFICER:** Okay. So with
18 that, then, we will go ahead and all of
19 those that were on your list, then, will
20 be --
21 **MR. LEE:** Thank you.
22 **MR. TRASTER:** Admitted for whatever
23 purpose.
24 **PRESIDING OFFICER:** Uh-huh.
25 **MR. TRASTER:** I mean, I

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1 appreciate -- appreciated Mr. Lee's
2 willingness to do that and I will
3 reciprocate.
4 **MR. LEE:** Thank you, Mr. Traster.
5 **PRESIDING OFFICER:** Thank you,
6 Mr. Traster. I just want to make sure the
7 record's clear on that. When we were on
8 the record on the first day we had
9 addressed your exhibits, but we hadn't
10 mentioned Mr. Lee's exhibits there for
11 Water PACK, and we just need --
12 **MR. TRASTER:** And I intended it to
13 be -- to include all exhibits so that we
14 didn't have to do --
15 **PRESIDING OFFICER:** Okay.
16 **MR. TRASTER:** -- all the foundation
17 and admission and -- so that's -- very
18 good, thank you.
19 **PRESIDING OFFICER:** All right.
20 That's fine. So let's see, I guess
21 yesterday when we concluded for the day we
22 were finishing up with Mr. Cole's questions
23 for Mr. Quinday. And then I guess,
24 Mr. Traster, Mr. Buller, did you have
25 questions for Mr. Quinday? Mr. Quinday, I

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1 guess we'll have you come back up to the
2 stand. We've already sworn you in, so we
3 don't need to go through that again.
4
5 **JON QUINDAY,**
6 having previously sworn or affirmed, was
7 examined and testified as follows:
8
9 **CROSS-EXAMINATION**
10 **BY MR. TRASTER:**
11 Q I have two questions, and generally when a
12 lawyer says he has two questions, that's, you
13 know, not true.
14 Mr. Quinday, yesterday, you testified to a
15 number of, I guess I have three, a number of
16 numbers, you know, this much money and this many
17 bushels and this -- and I wasn't -- just for the
18 record want to make it clear that when you were
19 talking about those numbers for PureField's
20 income and employment and payroll -- not the
21 employment but payroll, those are annual
22 numbers --
23 A **Yes.**
24 Q -- that you were giving? You said that there
25 were 2300 -- no, 23 million bushels of grain --

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1 A **Yes.**
2 Q -- that are purchased from Kansas --
3 A **Yes.**
4 Q -- by PureField? How much money is that?
5 A **Based on current prices, about \$176 million**
6 **annually.**
7 Q So PureField is buying grain from Kansas farmers
8 and -- at currently \$176 million --
9 A **Yes.**
10 Q -- a year? And if they double their production,
11 what do you think --
12 A **If they double their production, I don't know**
13 **for a fact, but I could assume that they would**
14 **double their purchase.**
15 Q And they can't double their production unless
16 they've got water?
17 A **Correct.**
18 Q Thank you, no further questions.
19 **PRESIDING OFFICER:** All right. I
20 guess, Mr. Lee, we'll move to you.
21 And I guess before we do that, we are
22 getting a little bit of feedback on the
23 microphone. Can I just ask everybody at
24 the counsel table to make sure that your
25 microphones are turned off and so we just

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1 have the podium and the witness stand, and
2 then if we still have that, we'll see if we
3 can get one of the AV people to come in and
4 make some adjustment for us. It seems to
5 get a little better when I shut mine off,
6 but I still hear a little bit coming
7 through. So there's something causing a
8 little feedback somewhere.
9 But go ahead, Mr. Lee, and you can go
10 ahead and step up to the podium there.
11 **MR. LEE:** Thank you, Your Honor.
12
13 **CROSS-EXAMINATION**
14 **BY MR. LEE:**
15 Q Mr. Quinday, good morning.
16 A **Good morning.**
17 Q I think you probably at this point know
18 everybody's names, but I'm Charles Lee with Lee
19 Schwalb, LLC, we're -- our firm represents Water
20 PACK and Edwards County in this proceeding. I
21 appreciated listening to your testimony
22 yesterday, and I would like to have a
23 conversation with you about some of those
24 things.
25 Just in no particular order, the question

1 that you were just asked by Mr. Traster,
2 obviously that's a significant amount of sales
3 and revenue from a company in Russell, and I
4 understand that those purchases -- purchases, if
5 I can say that, are from Kansas farmers,
6 correct?
7 **A Correct.**
8 Q That would be true whether the company was
9 located in Russell or someplace else in Kansas,
10 would it not?
11 **A That I don't know.**
12 Q But presumably?
13 **A I don't know. I just know what I've spoken with**
14 **the CEO and vice-president about.**
15 Q Okay. Fair enough. In terms of the --
16 Russell's interest in the R9 Ranch project,
17 Mr. Quinday, how much did Russell pay for its
18 interest in that project?
19 **A Off the top of my head, I don't know.**
20 Q Do you know what percentage it is -- it owns?
21 **A 18 percent.**
22 Q And would there be records somewhere that show
23 what the City paid for that?
24 **A Yes.**
25 Q Who would have those?

1 **A That's the estimate, yes.**
2 Q Is that an amount that Russell can pay?
3 **A That's an amount we'd have to finance or find**
4 **funding for.**
5 Q And if you finance it, how would you do that?
6 **A Either through the state revolving loan fund or**
7 **through the EPA or other federal programs.**
8 Q So it sounds like it would be fair to say that
9 you don't know whether it can be financed if you
10 have to pay 18 percent, fair?
11 **A Yeah.**
12 Q Okay. Would one of the options be if you go the
13 route of having to pay X amount for your share,
14 Russell's share of the project cost, to increase
15 rates for ratepayers?
16 **A That wouldn't be the sole reason to. If there**
17 **was a rate increase, that wouldn't be the sole**
18 **reason. We regularly look at our operating**
19 **costs for the utility and project out for ten**
20 **years our capital needs and base our rates on a**
21 **cost-of-service study which allocates a certain**
22 **portion of those costs to different customer**
23 **classes. So it's not as simple as we need X**
24 **amount of dollars so we're going to raise rates**
25 **this much, we have to ...**

1 **A City clerk, finance director.**
2 Q Then if there is a 15 -- or 18 percent interest
3 in the project, is that Russell's percentage of
4 the capital cost that it will have to pay?
5 **A That'll still be negotiated.**
6 Q It's unknown at this point?
7 **A We still have options of -- that the Cities will**
8 **have to negotiate that, how that arrangement**
9 **will be made.**
10 Q Well, tell me about the options.
11 **A One of the options is to purchase or pay for**
12 **18 percent of the development cost, or the other**
13 **would be to be a preferred customer.**
14 Q And what is entailed in being a preferred
15 customer?
16 **A The details of that are being worked out, but**
17 **paying no more than the cost to produce the**
18 **water.**
19 Q And would that be in perpetuity or until some
20 percentage of the development cost was paid?
21 **A That's to be determined when that's negotiated.**
22 Q So let's look at option one, 18 percent of what,
23 \$138 million, is that the project cost, as you
24 understand it, as estimated by Burns &
25 McDonnell?

1 Q Well, I got that. I think what I hear you
2 saying is that one of the options the City would
3 consider as part of a financing package is a
4 rate increase; is that right?
5 **A That's an option.**
6 Q And if you were to -- I take it a bond issue
7 might be one of the financing options; is that
8 right?
9 **A That's an option.**
10 Q Based on your experience -- maybe I'm getting
11 ahead of myself, you have experience with bond
12 issues, do you not?
13 **A Yes.**
14 Q And based on that experience, would it be the
15 case that there would be expected to be a
16 covenant about rate -- what ratepayers would
17 pay?
18 **A In a revenue bond, there would be a requirement**
19 **that the rates are sufficient to meet the debt**
20 **service and operating maintenance. A general**
21 **obligation bond does not have that requirement.**
22 Q Okay, thank you. So I know you are conversant
23 with the Water Transfer Act application, right?
24 **A I've read it.**
25 Q Okay. You seem to be well versed in it, is that

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1 a -- is that incorrect?
2 **A I don't know what you mean by well versed, I've**
3 **read it.**
4 Q Well, let's talk about it, at least, a bit. You
5 understand and -- from reading it and probably
6 from listening to the proceedings up to now that
7 there is a part of the WTA application that
8 talks about population growth, are you aware of
9 that?
10 **A Sure.**
11 Q And you heard the discussion that I would have
12 had with Mr. Dougherty about the 2 percent --
13 **A Yes.**
14 Q Okay.
15 **A Yeah.**
16 Q Are we all agreed that the 2 percent projection
17 would be incorrect both for Hays and for
18 Russell?
19 **A Depending on which context you're looking at.**
20 **In the application or the document you're**
21 **talking about, that was a number set by the**
22 **chief engineer as the process. If you're**
23 **looking as far as, say, a planning document for**
24 **the entire city that we use for everything, our**
25 **comprehensive plan has a .25 percent annual**

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1 **growth rate.**
2 Q Let's look at Quinday 1, if we could, Myndee.
3 I don't want to be unclear about this.
4 This is, as you know, taken from the WTA
5 application, and one of the questions that we've
6 talked about that the regulations require that
7 the application provide population -- population
8 projections for the public water supply system.
9 And there is a table there, table 6, as you can
10 see.
11 **A Uh-huh.**
12 Q And it has numbers for 2010 and -- through 20 --
13 2036, and it explains that, below that, as I
14 think you can see, that it says, The 2010
15 population and the 2017 population estimates are
16 from the U.S. Census. Population projections
17 for 2026 and 2036 are based on a 2 percent
18 annual population growth as approved by the
19 chief engineer. So my question, I think, is
20 fairly simple, you don't expect Hays or Russell
21 but particularly Russell to grow by 2 percent
22 over those years, do you?
23 **A In '26 and '36, I couldn't project what we're**
24 **going to. As I said yesterday, I'm seeing a**
25 **small amount of growth, but I don't know what's**

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1 **going to happen in the next three years or**
2 **13 years.**
3 Q Well, Russell does not have its own opinion from
4 an expert about projected population growth,
5 does it?
6 **A I believe in our 2014 Bartlett & West study**
7 **there may be something in there, but I'm not**
8 **positive.**
9 Q But at least as part of what has been presented
10 to this tribunal, there is a population growth
11 estimate for Hays but not for Russell; is that
12 right?
13 **A If the Bartlett & West study is an exhibit, then**
14 **I would say it's --**
15 Q Let's look at -- this is taken from Haase's --
16 Ms. Haase's direct testimony at page 3, and she
17 is asked, what is the purpose of your direct
18 testimony?
19 And she responds, My opinions are set forth
20 in detail in my expert report, but in general my
21 testimony relates to Hays population projection.
22 And the question, In summary, what did you
23 conclude?
24 I conclude within a reasonable degree of
25 professional certainty that an estimated growth

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1 rate of 1 percent annually over the next 10 to
2 20 years is likely for the City of Hays.
3 So my question simply, that does not
4 include Russell, correct?
5 **A No.**
6 Q And you don't have a document that you're going
7 to present to this tribunal that projects growth
8 for Russell aside from the WTA application; is
9 that right?
10 **A I'd have to go through the records, all the**
11 **exhibits.**
12 Q You're not aware of it, at least?
13 **A Right.**
14 Q Okay. If we can look at the next exhibit,
15 Myndee.
16 This is actually taken -- we retained a
17 firm called Harvey Economics to do a population
18 growth analysis, and you may have seen this, but
19 this is taken from their report at page 3-3, and
20 it shows -- first of all, in the column in the
21 middle under the City of Russell, it shows
22 population -- population amounts for Russell for
23 1980, '90, 2000, 2010, and 2020. So from
24 looking at that, does that appear to be
25 accurate?

1 **A Can you zoom in, please.**
 2 Q You bet. I say that like I'm controlling
 3 things.
 4 **A Yeah, yeah. And out just a little bit so I**
 5 **can --**
 6 **MS. LEE:** Oh, sorry.
 7 **BY MR. LEE:**
 8 Q Is that better?
 9 **A Yes, thank you.**
 10 Q Okay. So 1980, for example, was 5,427 and so
 11 on. Does that seem right?
 12 **A I'd have to look at the census, but I have no**
 13 **reason to say it's not.**
 14 Q Okay. And would it be true that the population
 15 of Russell over that period of time since 1980
 16 has been declining through 2020?
 17 **A According to -- by that chart it looks that way.**
 18 Q And you wouldn't dispute that, I guess?
 19 **A If those are the census numbers, no.**
 20 Q Okay. So another part of the WTA application,
 21 Mr. Quinday, that is incomplete, it appears, is
 22 that there is not any part that is -- shows what
 23 the projected water needs are going forward. Do
 24 you agree with that?
 25 **A I'd have to look at the document.**

1 knowledge, that is not a study that has been
 2 provided as part of the application on behalf of
 3 the City of Russell, correct?
 4 **A I'm not aware.**
 5 Q Okay. So in terms of water usage just on a
 6 current basis, I think it would be true, at
 7 least from the things I've seen and the
 8 testimony I've heard, that by and large the City
 9 uses about 1,000 acre-feet a year; is that
 10 right?
 11 **A On average use 1,000 acre-feet a year, yeah.**
 12 Q Okay. Let's look at Quinday 6. This is --
 13 **MR. TRASTER:** I didn't hear the
 14 exhibit number, sorry.
 15 **MR. LEE:** This is taken,
 16 Mr. Traster, from the Hamilton rebuttal
 17 report.
 18 **MR. TRASTER:** Okay. I need to kind
 19 of know where we are with exhibits so thank
 20 you very much for that.
 21 **MR. LEE:** Certainly.
 22 **BY MR. LEE:**
 23 Q This is, I'm sure I'm repeating myself, but this
 24 is taken from Mr. Hamilton's rebuttal report.
 25 Mr. Hamilton, I think you know, is an economist

1 Q Well, let's look at the next exhibit, Myndee.
 2 This is what's being asked in the
 3 application, that the applicant provide the
 4 projected water needs of the applicant and of
 5 any other entities to be supplied water by the
 6 applicant and the basis for those projections,
 7 that is not something that the City of Russell
 8 provided; is that right?
 9 **A I'm not sure if it's in the application, but we**
 10 **have records or documents that do project our**
 11 **water needs.**
 12 Q Well, we'll talk a bit more about that --
 13 **A Okay.**
 14 Q -- as we go forward, but are you aware, let me
 15 put it that way, of any document that's part of
 16 the application that projects the future water
 17 needs for the City of Russell?
 18 **A No.**
 19 Q And, similarly, if we could look at the next
 20 page or next slide, this is another question
 21 that's part of the application, which I think
 22 you've seen, that to be complete the application
 23 needs to include the projected per capita per
 24 day usage of any public water supply user to be
 25 supplied water by the applicant, and to your

1 that's been retained, I think jointly by the
 2 Cities but at least by the City of Hays.
 3 **A Okay.**
 4 Q You're aware of that?
 5 **A Yes.**
 6 Q Okay. And he says, and I'm starting not with
 7 the truncated sentence but after that where it
 8 says, Specifically, my report considers annual
 9 supply of 1,648 acre-feet for Russell absent
 10 drought, 1,152 acre-feet under moderate drought,
 11 and 789 acre-feet under exceptional drought.
 12 Is -- is that information, are those numbers
 13 correct?
 14 **A The amount of supply that we have?**
 15 Q Yes. And can you see that adequately because
 16 I'm sure we can make it --
 17 **A Yeah, I'm just trying to -- the amount of supply**
 18 **that we have, we have a lot of water rights but**
 19 **the actual -- what's available to us, usable is**
 20 **881 acre-feet from Big Creek and then 1776**
 21 **from -- I'm sorry, 881 from the wellfield in**
 22 **Pfeifer and 1767 from Big Creek surface rights.**
 23 Q Okay. So by those numbers, which would be in
 24 excess of the numbers Mr. Hamilton has there, so
 25 Mr. Hamilton's numbers, at least, on the low end

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1 would be appropriate. Is that fair?
2 **A If the Big Creek is flowing, yes, but it's not**
3 **dependable.**
4 Q Well, I think what Mr. Hamilton is talking about
5 is in the first instance what is normally
6 available, in the second what's available under
7 situations where there's moderate drought, and
8 in the third what's available in those cases
9 where there's exceptional drought. So does that
10 make sense?
11 **A Yes, except for, maybe it's somewhere else, it**
12 **doesn't take into account the possibility of**
13 **contamination to the surface water which makes**
14 **it unusable.**
15 Q Okay. Well, and I don't think that's part of
16 his report.
17 **A Okay.**
18 Q So is it -- is it something that we can agree on
19 that -- that the City of Russell is -- is only
20 entitled to -- to water rights that are
21 commensurate with its reasonable needs?
22 **A We have water rights, 5,000 and some acre-feet**
23 **of water rights, but we're only able to use Big**
24 **Creek and the Pfeifer wellfield combined.**
25 Q Well, and I've asked an inartful question, which

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1 is not all that unusual. Is -- if you're going
2 to acquire a water right, you're only entitled
3 to that amount that is commensurate with your
4 reasonable need. Would you agree with that?
5 **A Yes.**
6 Q Okay. And as I understand, and correct me if
7 I'm misstating this, the City of Russell at the
8 moment has more water theoretically available to
9 it that it can use; is that right?
10 **A No.**
11 Q Okay. So how is that -- how is that wrong?
12 **A Because Big Creek is not reliable. If Big Creek**
13 **flowed every day of the year and we were able to**
14 **use it, then we'd have enough water supply, but**
15 **it doesn't flow regularly. When it doesn't**
16 **flow, we have to use our wellfield more often,**
17 **and the more often we use it, the more strain we**
18 **put on it. And we also, because of that, Post**
19 **Rock Rural Water supplies between 100,000 and**
20 **200,000 gallons a day to our industrial**
21 **customers. So, no, we don't have enough.**
22 Q Okay. So let me ask a slightly different
23 question: If -- if you were to get your full
24 share of the R9 water, is -- is that more water
25 than the City can use presently?

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1 **A No.**
2 Q Or more water than the City needs presently?
3 **A No, we would take quite a bit from it.**
4 Q Quite a bit doesn't mean all of it?
5 **A You mean all 4800 acre-feet?**
6 Q Yes.
7 **A The City of Russell wouldn't -- couldn't take**
8 **all 4800 acre-feet.**
9 Q Well, of course, you would only be -- I'm not
10 privy to your agreement with Hays, but I'm
11 assuming that you would be entitled to some
12 percentage of that; is that right?
13 **A We would take all of our percentage.**
14 Q Okay.
15 **A And use it.**
16 Q And how many acre-feet would that be?
17 **A 18 percent of 4800.**
18 Q So that part -- that part of it is simply based
19 on your percentage interest?
20 **A Yes.**
21 Q Okay. So you did talk some yesterday about
22 people moving back to Russell. Do you have --
23 in recent years. Do you have a number for that?
24 **A Oh, I'd say in probably the last two or three**
25 **years, 40 or 50.**

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1 Q Okay. And is there a common reason they're
2 moving back or a variety of reasons?
3 **A I think a lot of it has to do with them being**
4 **able to work remotely so there -- a lot of -- we**
5 **have high-speed internet, have for a long time,**
6 **and they're moving back. Mostly for that and to**
7 **be back with family and back in their hometown.**
8 Q And so when you say moving back, have these been
9 mostly or exclusively people that were -- were
10 Russell residents and now are returning?
11 **A No, we're getting quite a few people from the --**
12 **Colorado and California.**
13 Q So would you characterize Russell's business
14 prospects at the moment as promising?
15 **A What do you mean business prospects?**
16 Q People moving back, new business?
17 **A Yes.**
18 Q Okay. And I think you talked also about what I
19 wrote down as downtown development, I think you
20 specifically were talking about apartments,
21 perhaps, in the downtown area, but has there
22 been some downtown development or redevelopment?
23 **A Yes.**
24 Q And over what period of time?
25 **A Last ten years.**

1 Q Okay. Is that accelerating at this point?
2 A Yes.
3 Q You talked at some length about -- about
4 PureField, which is a significant employer in
5 Russell, correct?
6 A Yes.
7 Q Let's look maybe at the next slide. This is,
8 just by way of explanation, a -- an excerpt from
9 a article from worldgrain.com. The link to the
10 article is at the bottom of the -- bottom of the
11 page, and it's from February 9th of 2022. And
12 it has a dateline of Russell, Kansas and states
13 that, in the first paragraph, that PureField
14 Ingredients has completed an expansion of its
15 facility at Russell that will increase annual
16 production of its Heartland brand wheat protein
17 by 50 percent. I think that is the -- was an
18 issue that you talked about yesterday; is that
19 right?
20 A **You are talking about the expansion, no. This**
21 **is an expansion that they completed in '22 like**
22 **the article says.**
23 Q Okay.
24 A **They increased their wheat gluten production by**
25 **50 percent and also because of, whether it's**

1 A Yes.
2 Q And I understand that you were talking about
3 another contemplated expansion yesterday; is
4 that right?
5 A Yes.
6 Q They also talk about that in this article, I
7 think, and the second part that's highlighted
8 says, The company already is planning for
9 another extension of its facility too. That
10 doesn't say that that's on hold in some sense,
11 is that an incomplete statement or an inaccurate
12 statement?
13 A **I'm going to be accurate that they are planning**
14 **for another extension -- or expansion.**
15 Q So when you say -- it says here, planning for an
16 expansion, that says to me that nobody's pulled
17 the plug on that at this point. Is that fair?
18 A **You mean have they signed documents that said**
19 **we're going?**
20 Q No, have they said we're not going to do it?
21 A No.
22 Q So we're probably ambiguous at that point. Have
23 they said that they are planning to pursue the
24 expansion depending on circumstances, for
25 example?

1 **technology or processes, they reduced the amount**
2 **of water used by 24 percent per pound.**
3 Q Okay. So the --
4 **MR. TRASTER:** Mr. Lee, is this in
5 your exhibits?
6 **MR. LEE:** No.
7 **MR. TRASTER:** Okay. So it's not --
8 not in your exhibits and -- how are we
9 going to know -- are you planning to make
10 it an exhibit or offer it?
11 **MR. LEE:** Well, I could but, no, I
12 was not planning to.
13 **MR. TRASTER:** I appreciate that, I
14 think we need it in -- the URL in the
15 record so we can read the entire document
16 at some point. I mean, I'm not -- if you
17 can somehow --
18 **MR. LEE:** We're happy to do that.
19 **MR. TRASTER:** Okay, very good, thank
20 you.
21 **MR. LEE:** You bet.
22 **BY MR. LEE:**
23 Q So the -- the first sentence in this screenshot
24 is related to a now completed expansion; is that
25 right?

1 A **They have told me that they are planning that**
2 **expansion in phases, and one of their concerns**
3 **is the availability of a long-term water supply.**
4 Q But they're still planning on the expansion, it
5 sounds like?
6 A Yes.
7 Q Okay. PureField is a fairly good size employer
8 for a community the size of Russell, was it
9 offered incentives to come to Russell?
10 A **I'm not aware of anything.**
11 Q And how long ago did they come to Russell?
12 A **I believe the -- well, PureField purchased them,**
13 **the previous company several years ago, I**
14 **couldn't tell you the date when they took over.**
15 Q During your tenure as city manager?
16 A **I think it was before then.**
17 Q And if they weren't offered incentives or at
18 least you don't know that they were offered
19 incentives, do you know why they chose to locate
20 in Russell?
21 A **If you're talking about PureField, to move to**
22 **Russell or to buy the company, I have no idea**
23 **why they chose to buy the existing gluten and**
24 **ethanol facilities, and we did not offer them**
25 **incentives to purchase the existing company.**

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1 Q So would it be accurate, then, that they, as far
2 as you know, chose Russell on the merits?
3 A **Pure -- yeah, I'd say PureField made their own**
4 **decisions on why they purchased the existing**
5 **gluten and ethanol facilities.**
6 Q Has -- are you in fairly regular communication
7 with PureField, at least, local executives?
8 A **Yes.**
9 Q And have they threatened at this point to leave
10 Russell?
11 A **No.**
12 Q You indicated that PureField is receiving a
13 fairly significant amount of water from the Post
14 Rock entity?
15 A **Uh-huh.**
16 Q Right?
17 A **Yes.**
18 Q And I think you said 200,000 gallons?
19 A **Up to 200,000 gallons a day.**
20 Q Okay. So I was -- I was curious, as I listened
21 to your testimony, that you said that -- first
22 off, apparently Post Rock services a pretty --
23 pretty wide area; is that right?
24 A **Yes.**
25 Q And I believe that you said that the source of

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1 their water is Kanopolis Reservoir; is that
2 right?
3 A **That's my understanding.**
4 Q You, meaning Russell and the City of Hays,
5 apparently considered Kanopolis not to be a
6 viable alternative to R9; is that right?
7 A **I believe so.**
8 Q And do you know why Post Rock gets water from
9 and uses water from -- do you know why Post Rock
10 uses and obtains water from Kanopolis but it's
11 not a viable option for Russell and the City of
12 Hays?
13 A **I don't know why they do, and I'd have to look**
14 **at the reports of why it was not chosen for**
15 **Russell.**
16 Q Okay, fair enough. One of the things that
17 Mr. Cole showed you yesterday were at least a
18 couple of studies that I want to talk to you a
19 little bit about. Let's look at 8. You recall
20 this -- this exhibit, it's the Wilson & Company?
21 A **From what year?**
22 Q It actually is from March of 1967.
23 A **Okay, yes.**
24 Q I'm assuming, and maybe you'll disabuse me of
25 this, but I'm assuming that you are not

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1 accustomed to using engineering studies that are
2 56 years old?
3 A **Well, they may be part of our overall decision**
4 **looking at historical thought processes or what**
5 **was available then. We take a holistic approach**
6 **when we're looking at plans.**
7 Q I think that's fair, but I think the more
8 specific question is if you've got an
9 engineering study in the file that's 56 years
10 old, you're not going to rely on that as the
11 sole source of information, right?
12 A **Not as the sole source, correct.**
13 Q Okay. So let's look maybe at the next slide and
14 if we could make that a bit bigger. This is
15 taken from the -- can you read that?
16 A **No.**
17 Q Well, I can help. This is taken from the Wilson
18 report, the top part of this is from page 15,
19 and it's talking about population growth, which
20 I think is something you were alluding to
21 earlier. And Wilson projects a population for
22 Russell in 2020 of 12,300 persons. That misses
23 the mark, does it not?
24 A **Excuse me. Yes.**
25 Q And then the Wilson report further at page 17

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1 talks about a projection for annual total
2 demand, and I'll read this for you because I
3 know it's difficult from your vantage point to
4 read, but the bottom part of it says, This
5 amount to an annual total -- amounts to an
6 annual total demand of 359 million gallons in
7 1970 and 728 million gallons in 2020 if normal
8 rainfall occurs. So is that consistent with
9 anything else that you have in your drawer at
10 the City of Russell?
11 A **The 728 million gallons in 2020 is more than**
12 **we're authorized now, but it's a significant**
13 **amount of water.**
14 Q Well, that's -- yeah, let's scroll down just a
15 little bit, Myndee, please.
16 This is the math, 728 million gallons
17 equals 2234 acre-feet, so this is a projection,
18 I think the significance of this, the reason I
19 wanted to tie these together for you to look at,
20 this is a projection of 728 million gallons in
21 2020, which is 2234 acre-feet, based on a
22 population of 12,000 people. So none of that
23 really fits Russell's present circumstances,
24 right?
25 A **Well, this, it looks like, is basing it solely**

1 on population growth. What it does not account
2 for is our industrial customers. If you take
3 the -- the annual use and acre-feet of water for
4 the City in 2004 before we started becoming
5 heavily restricted, which was a little bit more
6 than 1400 acre-feet, and if you add in what
7 PureField would need for their expansion, we
8 would be over 2,000 acre-feet of water a year.
9 So that's fairly close.

10 Q Well, thinking about the Wilson report and
11 looking at the information that's there, I think
12 we can agree that it at least in some respects
13 is not reliable, true?

14 A I think at the time it was reliable. If that
15 report is from 1967, a lot of things have
16 happened in Russell between then and now that
17 caused our population to go up, then caused our
18 population to decline. You had the Walker Air
19 Base, the discovery of oil, and Russell's
20 population exceeded 6500 people; then when oil
21 crashed in the '80s, people started moving out
22 because there was no longer that need for those
23 supports. So -- but at the time I think it was
24 relevant. Is it relevant solely by itself
25 today? No. But to look at it holistically with

1 Q Let me simply get over closer so I can read this
2 to you.

3 A Okay.

4 Q This is, again, from the Bartlett & West report,
5 and the part that's highlighted here says that
6 Even though the City has more than adequate
7 water rights for their estimated future demand
8 of 2748 acre-feet, and then it goes on to talk
9 about the restrictions that DWR has -- has
10 imposed. Is that an accurate statement that the
11 City has more than adequate water rights for
12 their estimated future demand of 2,748
13 acre-feet?

14 A We have water rights, but we only have access to
15 a certain amount of water from those water
16 rights because the -- one of the water rights is
17 Smoky Hill surface water right for 1,000
18 acre-feet; we can't take water from the Smoky,
19 it's -- so we have a lot of paper water rights,
20 but what we can actually use is not adequate.

21 Q Okay. So I understand what you're saying is
22 that as far as this goes in terms of water
23 rights, that's accurate but in terms of what you
24 think is actually available to you, that
25 requires further discussion; is that right?

1 other planning documents, I would use it.

2 Q But you would -- surely you would discount it
3 significantly based on how old it is and the
4 fact that there are a number of assumptions,
5 some assumptions at least, that are wildly
6 inaccurate?

7 A I wouldn't discount it.

8 Q Okay. We also talked -- you talked during your
9 testimony about a Bartlett & West water supply
10 study from December of 2014; is that right?

11 A Yes, sir.

12 Q And this is the study we're talking about, isn't
13 it?

14 A Yes.

15 Q Okay. Let's look at the next slide. You don't
16 have anyplace you need to be?

17 A No, it's okay.

18 MS. LEE: It's like an all or
19 nothing. That's about as good as it's
20 going to get.

21 MR. LEE: If I walk over here and
22 look this way, can you hear me?

23 THE REPORTER: Yeah, just look this
24 way.

25 BY MR. LEE:

1 A Yeah.

2 Q Okay. If we could look at the next slide. This
3 states, and you can tell me if this is just
4 something that is not within your -- your
5 knowledge wheelhouse, but this is on page 5 of
6 the Bartlett & West report, and it's under the
7 heading 3.01 of existing demand.

8 MR. COLE: Counsel, would you mind,
9 I think we have a copy of that exhibit --

10 MR. LEE: Sure.

11 MR. COLE: -- if we can provide --

12 MS. LEE: It's 2887.

13 A I don't have one with me.

14 BY MR. LEE:

15 Q And we've probably made it a little better in
16 any event. I think this is -- well, is this
17 page 5?

18 A Yeah.

19 MS. LEE: Yes.

20 BY MR. LEE:

21 Q Where it says under existing demand, Historical
22 water demand criteria are necessary to develop a
23 future demand projection, is that accurate?

24 A Yes.

25 Q Look at the next slide. Bartlett says --

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1 **A What page is that?**
2 **Q That is page 8, I believe.**
3 **A Okay.**
4 **Q Are you there?**
5 **A Yes.**
6 **Q Okay. In the middle paragraph, it -- the**
7 **Bartlett report says, Because the purpose of**
8 **this study is to help identify a water source**
9 **adequate to keep the City out of water**
10 **conservation measures. Does that mean the City**
11 **is looking to abandon its conservation, I guess**
12 **it's probably characterized as a carrot and**
13 **stick sort of -- sort of approach, is it the**
14 **City's intention to -- to back away from**
15 **conservation measures that the -- that have been**
16 **traditionally imposed in the City?**
17 **A No, not at all.**
18 **Q So would you intend to keep those in place**
19 **regardless of what happens with the R9 project?**
20 **A Yes. I think what this is talking about, to**
21 **keep the City out of conservation measures,**
22 **would be to allow our community and customers to**
23 **have access to water like every other community**
24 **does. But, no, the conservation plan and**
25 **measures that we have in place would not change.**

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1 **I believe that the community now has a**
2 **culture of conservation. Like Hays we have**
3 **staff that go in and talk with students all the**
4 **time about saving water, fix a leak. It's kind**
5 **of neat to see a young person, 7, 8 years old**
6 **come in proud because they took one of the**
7 **little dye sticks, put it in the toilet, and**
8 **found out they had a leak, and they're telling**
9 **Mom and Dad to turn off the water when they're**
10 **brushing their teeth. So I don't think that's**
11 **going to go away, it's ingrained in our**
12 **community.**
13 **Q Okay. Well, I think that's admirable. So from**
14 **a conservation perspective, the lifestyle**
15 **wouldn't be really expected to change in**
16 **Russell, fair?**
17 **A Well, I think that the conservation mentality**
18 **would still be there, but I think that having an**
19 **adequate water supply that our residents and**
20 **commercial businesses would be able to do things**
21 **that they're currently restricted from doing**
22 **that other communities enjoy, such as having a**
23 **garden and knowing that they'd be able to water**
24 **it, taking care of their trees and knowing if**
25 **they invest in one it's not going to die, that**

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1 **type of stuff. So I don't think the**
2 **conservation culture is going to change, but**
3 **their quality of life would improve.**
4 **Q So does quality of life equate to increased**
5 **per capita water use?**
6 **A I couldn't tell you that. Quality of life is a**
7 **bunch of different factors, but quality of life**
8 **equates to improved economy. The gallons**
9 **per capita per day is usage by different**
10 **customer classes.**
11 **Q Well, and that's really my question, would it be**
12 **the expectation that the gallons per capita per**
13 **day figure would stay roughly the same as it is**
14 **now.**
15 **A I couldn't tell you 'cause it fluctuates year to**
16 **year. I know that in our conservation plan that**
17 **our stated goal is not to exceed the regional**
18 **average. I don't see it -- that it would**
19 **skyrocket and exceed that. We're still going to**
20 **be conservative as a community.**
21 **Q Okay. And you don't have a projection or an**
22 **idea of what that is because you didn't have an**
23 **analysis done, correct?**
24 **A On the gallons per capita per day?**
25 **Q Yes.**

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1 **A No.**
2 **Q Okay. Let's look at 11. You were there.**
3 **MS. LEE: I know.**
4 **BY MR. LEE:**
5 **Q Despite the fact that this is a Kansas statute,**
6 **I don't, sir, intend to ask you for a legal**
7 **interpretation. What I do want to ask you is,**
8 **and I'm just going to read the highlighted part**
9 **of this that says, No water transfer shall be**
10 **approved, and as you can tell from the language,**
11 **this is taken from the Water Transfer Act, No**
12 **water transfer shall be approved unless the**
13 **presiding officer determines that the applicant**
14 **has adopted and implemented conservation plans**
15 **and practices that, (A), are consistent with**
16 **guidelines developed and maintained by the**
17 **Kansas Water Office pursuant to K.S.A. 74-2608.**
18 **And it goes on to say, if the transfer is for**
19 **use by a public water supply system, include the**
20 **implementation of a rate structure which**
21 **encourages the efficient use of water and will**
22 **result in wise use and responsible conservation**
23 **and management of water used by the system.**
24 **Really my only question about that is do**
25 **you understand that obligation under the Water**

1 Transfer Act?
 2 **A Yes.**
 3 Q And has Russell achieved those things as we
 4 speak?
 5 **A Yes, we have a conservation plan that was**
 6 **approved by the Kansas Water Office, our rate**
 7 **structure encourages an efficient use of water**
 8 **and -- yes.**
 9 Q And so those plans, those requirements as you
 10 understand are built into the Water Transfer
 11 Act?
 12 **A I'd have to look at the act. From what you're**
 13 **showing me there, yes.**
 14 Q Okay. So my question ultimately is the City of
 15 Russell, I'm assuming, would continue to do what
 16 it has done in terms of representations made as
 17 part of the Water Transfer Act application?
 18 **A Yes, we will continue to have a water**
 19 **conservation plan that follows the guidelines,**
 20 **the 2007 guidelines, we'll have a rate structure**
 21 **regardless that will encourage the efficient use**
 22 **and continue as we have for many decades to be**
 23 **good stewards of the water supply that we do**
 24 **have.**
 25 Q Thank you.

1 **A Yes, yes.**
 2 Q And what was that related to?
 3 **A Oil --**
 4 Q Okay.
 5 **A -- I believe the Carrie-Oswald.**
 6 Q Okay. Carrie-Oswald is the name of a well
 7 drilled in Russell County in, I think, the mid
 8 1930s or so?
 9 **A Yes.**
 10 Q You testified on direct yesterday that the crash
 11 of the oil industries had an impact on the
 12 Russell economy?
 13 **A Yes.**
 14 Q And you also indicated that the industries that
 15 have found their home now in Russell have had a
 16 stabilizing impact on the economy -- on the
 17 economy?
 18 **A Yes, that's correct.**
 19 Q And potential growth of the community?
 20 **A That's correct.**
 21 Q And that industry is dependent upon a reliable
 22 water source?
 23 **A Correct.**
 24 Q The Wilson report also suggested that for a
 25 community to survive and perhaps thrive it needs

1 **MS. LANGWORTHY:** No questions, Your
 2 Honor.
 3 **PRESIDING OFFICER:** All right, thank
 4 you. All right. Mr. Cole --
 5 **MR. COLE:** Thank you.
 6 **PRESIDING OFFICER:** -- any redirect?
 7 **MR. COLE:** Just a little.
 8
 9 **REDIRECT EXAMINATION**
 10 **BY MR. COLE:**
 11 Q Just a few points. During cross, you were asked
 12 about the Wilson report that was dated in 1967.
 13 **A Yes.**
 14 Q And one of the matters that is before this
 15 tribunal deals with projections of growth, and
 16 it was pointed out in that report that we have
 17 at Russell fallen short of that growth
 18 projection made in 1967 --
 19 **A Correct.**
 20 Q -- correct? And you mentioned that oil was a
 21 big part of Russell's economy in the past?
 22 **A Yes.**
 23 Q Are you aware of the boom that took place in the
 24 City of Russell and the explosion in the
 25 population back in the '40s and '50s?

1 industry?
 2 **A Yes, it did.**
 3 Q And it suggests that one of the reasons it needs
 4 industry is that the children that are raised in
 5 the community and leave perhaps for college or
 6 other adventures will have something to come
 7 back to?
 8 **A Correct.**
 9 Q You as city manager, do you think that's a wise
 10 idea?
 11 **A Yes.**
 12 Q Is it part of the City's vision to create an
 13 environment where our kids can return?
 14 **A We want our children to return.**
 15 Q Is water a big part of that?
 16 **A Yes, it is.**
 17 Q There's been discussion, and will probably be a
 18 lot more discussion, about whatever -- what
 19 reasonable needs are. From your perspective,
 20 does your town presently have a secure water
 21 supply of all of the water that it needs?
 22 **A No, it does not.**
 23 Q And that's why we're here?
 24 **A Yes.**
 25 Q Thank you.

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1 **MR. TRASTER:** Your Honor, I have a
2 few questions but I'm looking for a
3 document or two. If you don't mind taking
4 a break now, that would help me out, but
5 I'm happy to proceed if --
6 **PRESIDING OFFICER:** All right. Why
7 don't we take a short break, we'll come
8 back at 10:10 and pick up with
9 Mr. Traster's cross-examination at that
10 time.
11 (Thereupon, a recess was taken;
12 whereupon, the following was had.)
13 **PRESIDING OFFICER:** All right.
14 We'll go ahead and go back on the record
15 then. If you're ready, Mr. Traster, we'll
16 let you begin your cross.
17 **MR. TRASTER:** I was born ready, Your
18 Honor.
19
20 RE-CROSS EXAMINATION
21 **BY MR. TRASTER:**
22 Q Mr. Quinday, on cross-examination, you were
23 asked about financing for this project and
24 concerns about financing and rates, and you
25 provided some options and discussed bonds and

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1 different things that could happen. Have -- has
2 the City of Russell done the same kinds of
3 things that the City of Hays and -- has done to
4 look at other sources for -- of a significant
5 quantity of water?
6 A **Yes.**
7 Q And the City of Russell did that in cooperation
8 with the City of Hays, you -- via the public
9 wholesale water supply district --
10 A **Correct.**
11 Q -- at one point? And now they're doing that in
12 cooperation with the City of Hays in this
13 project, right?
14 A **Correct.**
15 Q Is it fair to say that -- and I believe you
16 testified very clearly that the City of Russell
17 is in significant need of a new source, an
18 additional source of water that is -- that is
19 actually -- that it can actually use; is that
20 correct?
21 A **That's correct.**
22 Q And this project has been selected because it,
23 as Mr. Dougherty testified, this was the most
24 economical, best option available to both
25 Cities. So is -- do you agree with

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1 Mr. Dougherty's testimony in that regard?
2 A **Yes.**
3 Q So it seems to me that Russell's going to have
4 to pay for it -- is going to have to pay for its
5 share regardless at some point, isn't it?
6 A **Yes.**
7 Q And that's -- the options for how to pay for it
8 are on the table and you'll figure that out, but
9 if it -- hopefully it won't increase rates, but
10 if it increases rates, that'll have to be the
11 way it is. Is that a fair way to say it?
12 A **Correct.**
13 Q Because you don't really have any other options.
14 Is that fair?
15 A **That's fair.**
16 Q Jami, can I see Exhibit 1-2, please.
17 And this is -- I'm going to show you the
18 Master Order that was issued by the chief
19 engineer, and this is in the reasonable-needs
20 section of the Master Order, and it's in
21 particular paragraph 232 that I want you to look
22 at. And it basically says that the -- that the
23 City of Russell has -- is entitled to a maximum
24 reasonable annual quantity of water for
25 municipal use for all water rights -- for all of

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1 the R9 water rights combined with all other
2 municipal rights for which Russell or its
3 immediate vicinity is the place of use is 18 --
4 1,841.3 acre-feet of water. Do you see that?
5 A **Yes.**
6 Q You testified that you have, I think, I don't
7 want to put words in your mouth, but I think I
8 heard 5,000 acre-feet of water on paper?
9 A **Yes.**
10 Q But they are all limited to -- they are all
11 limited to this quantity, correct?
12 A **That is correct.**
13 Q So that is a cap on the quantity of water that
14 you can use now?
15 A **Correct.**
16 Q And it's a cap on the quantity of water that you
17 can use unless and until it's increased?
18 A **That's correct.**
19 Q And there's a mechanism in the -- in the Master
20 Order for -- to increase those numbers, this
21 quantity, if the City of Russell grows to the
22 point that it needs more than 1841 --
23 1,841.3 acre-feet?
24 A **Correct.**
25 Q And until you ask for that and until the

1 Division of Water Resources actually increases
2 that number, that's the limit from all your
3 sources, including the R9 Ranch, that's all you
4 can use, correct?
5 **A Correct.**
6 **Q** And that's -- if you could use 1800, that's
7 enough for you right now, is it not?
8 **A Right now it is.**
9 **Q** Jami, can I see Exhibit 154 -- 1-54 please.
10 And I would like you to go to page 8 which
11 is the paragraph that Mr. Lee had on the screen
12 earlier, and he had highlighted the first part
13 of this, the first line or maybe part of the
14 second that reads, because the purpose of this
15 study is to help identify a water source
16 adequate to keep the City out of water
17 conservation measures, and then his highlighting
18 stopped. Now, my understanding of your
19 testimony is that those conservation measures
20 that you were talking about aren't -- you went
21 on to testify that you're going to continue to
22 conserve water and have a conservation program?
23 **A Yes.**
24 **Q** I think you testified yesterday that in the
25 last, I think 12 but I don't want to -- I don't

1 **have the three stages, but those restrictions**
2 **would not be in place, unless something changed,**
3 **which would allow the community and our**
4 **customers to act like normal communities and be**
5 **able to grow a garden or wash their car. But**
6 **the -- the mindset of conservation, even with a**
7 **adequate water supply, has been ingrained in the**
8 **community for so long that's not going to**
9 **change.**
10 **Q** And so with an adequate supply, the residents in
11 Russell would be -- would avoid having
12 significant restrictions -- excuse me, an
13 adequate drought-resistant supply would have --
14 be able to use reasonable quantities of water --
15 **A Correct.**
16 **Q** -- fair?
17 **A Fair. They'd still have the rate structure in**
18 **place that is still going to, to some degree,**
19 **have conservation. The more you use, the more**
20 **you pay.**
21 **Q** So Mr. Lee had a portion of the statute, of the
22 Water Transfer Act up and highlighted, and the
23 last part of that that's highlighted included
24 something to the effect of, and I'll mess it up,
25 but reasonable management.

1 want to mischaracterize it, in the last 10 or
2 12 years you've been in some sort of
3 restriction, that the folks in town have been
4 under some sort of restriction. In fact, it was
5 Mr. Wagner that testified, I think, that it's
6 been a long time since there was -- the people
7 in -- the residents in Russell could use the
8 full quantity that they might want to use.
9 **A Correct.**
10 **Q** Is that fair?
11 **A Yes.**
12 **Q** And tell me a little about that emergency or
13 warning, I mean, what -- we saw the resolutions
14 with some restrictions, but have those been --
15 restrictions been in place for a while?
16 **A They've been off and on for the last 10 or 12**
17 **years. The most severe restrictions, like we**
18 **went over yesterday, was the 25 percent**
19 **reduction to the industrial customers, you can't**
20 **wash your car, you can't water your lawn, can't**
21 **fill the pool, can't water your garden,**
22 **basically any outdoor use is limited.**
23 **But this -- talking about conservation**
24 **measures, if we had adequate water supply, we**
25 **would still have a conservation plan, we'd still**

1 **A Uh-huh.**
2 **Q** Is reasonable management of a public water
3 supply in a community like Russell, if forcing
4 people to use less water, if you had it, if it
5 was available, to force them to continue to
6 use -- have the restrictions that have been
7 placed -- in place in Russell for the last
8 several years?
9 **A Not to have the mandatory restrictions but to be**
10 **cognizant that water is a valuable resource no**
11 **matter where you are. And, for example, the**
12 **waste of water, regardless of if we had a**
13 **long-term, reliable, adequate supply, I don't**
14 **think the governing body is going to change it**
15 **to make it illegal to waste water, I don't think**
16 **the governing body is going to change that you**
17 **can only water your lawn before 10:00 a.m. and**
18 **after 7:00 p.m., because it makes sense during**
19 **the heat of the day and when it's windy, you**
20 **shouldn't water. So they're still going to be**
21 **good stewards of their water source as they**
22 **always have been.**
23 **Q** I grew up in Ulysses and the wind blows, I guess
24 it blows in Russell too?
25 **A Yes, quite a bit.**

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1 Q Okay. Thank you. I don't have any further
2 questions.
3 **PRESIDING OFFICER:** Mr. Lee?
4 **MR. LEE:** Just one question, Your
5 Honor. And, honestly, I think it is just
6 one question.
7
8 **RE CROSS EXAMINATION**
9 **BY MR. LEE:**
10 Q Mr. Quinday, just to sort of cut to the chase
11 and follow up on Mr. Traster's questions, I
12 don't think that Russell wants to take more
13 water from an outside source than it needs. Is
14 that fair?
15 A **Russell doesn't want to take water from any**
16 **source more than what we need.**
17 Q Okay. Thank you.
18 **MR. COLE:** Thank you.
19 **PRESIDING OFFICER:** Thank you,
20 Mr. Quinday, I think you are done with your
21 testimony, then --
22 **THE WITNESS:** Thank you.
23 **PRESIDING OFFICER:** -- and you may
24 step down. Mr. Traster, I believe you have
25 the next witness.

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1 **MR. TRASTER:** Call Jeff Crispin,
2 please.
3 **PRESIDING OFFICER:** Mr. Crispin, as
4 you've noticed with everybody else, I need
5 to swear you in here, so would you please
6 raise your right hand.
7 **MR. CRISPIN:** Okay.
8
9 **JEFF CRISPIN,**
10 having first duly affirmed or sworn, was
11 examined and testified as follows:
12
13 **DIRECT EXAMINATION**
14 **BY MR. TRASTER:**
15 Q Will you state your name?
16 A **My name is Jeff Crispin.**
17 Q And I'd like for you to use the mic, but I don't
18 want you to be right on it, just enough that you
19 can --
20 A **Okay.**
21 Q -- that everybody can hear.
22 A **Jeff Crispin.**
23 Q And what's your business address?
24 A **1002 Vine -- excuse me, 1000 Vine, Hays, Kansas**
25 **67601.**

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1 Q And is that -- what facility is that?
2 A **I'm -- my office is located at the water**
3 **softening plant on Vine Street in Hays.**
4 Q Okay. Mr. Crispin, what -- you're employed by
5 the City of Hays; is that --
6 A **Yes, I am.**
7 Q And what is your position?
8 A **My current position is the director of water**
9 **resources.**
10 Q So I'd like to skip back, how long have you
11 lived in Hays?
12 A **This round, moved back to Hays in 2011, but I**
13 **was born and raised.**
14 Q Did you go to high school in --
15 A **Yep, went to Hays High, graduated in 1993.**
16 Q And then what?
17 A **I actually went to Fort Hays State, graduated in**
18 **1999.**
19 Q And your degree is in what?
20 A **Business management.**
21 Q So you're not a hydrologist, you're not a soil
22 scientist, you're not an engineer?
23 A **No. No, sir.**
24 Q From when you graduated from Fort Hays State
25 with a business manage -- business management

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1 degree, what did you do next?
2 A **I had been working for Walmart throughout the**
3 **end of my high school career and into college.**
4 **And I have some family that works at Walmart,**
5 **and so at the time I graduated I was promoted in**
6 **1999 to assistant store manager, and I started**
7 **moving to various places around Kansas, one in**
8 **Nebraska.**
9 Q So in -- you graduated from college in '99 and
10 then where did you move?
11 A **Wife and I got married in '99, graduated and**
12 **moved to Hutchinson, Kansas, worked there as an**
13 **assistant manager at their store for about a**
14 **year and a half.**
15 Q And then what?
16 A **Moved to Goodland, Kansas with Walmart, was**
17 **still an assistant manager. The reason why they**
18 **moved me there is they wanted me -- at the time,**
19 **the stores weren't all super centers, they**
20 **wanted me to get some grocery experience, so I**
21 **spent a year in Goodland.**
22 Q And from there you went to where?
23 A **I was promoted to comanager and moved to**
24 **Lincoln, Nebraska and worked in the Lincoln,**
25 **Nebraska store as a comanager, high-volume**

1 **Supercenter.**
2 Q And how long were you there?
3 A **Maybe two years --**
4 Q And then?
5 A **-- as the comanager there.**
6 Q And then?
7 A **Had an opportunity to move back to Kansas,**
8 **Pratt, Kansas, the store came open for a store**
9 **manager, and I applied and accepted the**
10 **position -- was offered and accepted the**
11 **position and moved to Pratt.**
12 Q Because you didn't want to live in Nebraska?
13 A **Yeah, I wasn't really much of a Husker fan.**
14 Q So you moved to Pratt in what year, if you
15 recall?
16 A **I think it was around maybe 2005, 2007 --**
17 **somewhere in 2005.**
18 Q And you were -- how long were you in Pratt?
19 A **Till 2011. I actually wanted to get some more**
20 **high-volume experience, and so I stepped into**
21 **the role of comanager in the Hays store, the**
22 **Hays, Kansas store.**
23 Q So you were manager --
24 A **Uh-huh.**
25 Q -- in -- well, strike that. So you moved to

1 **become the interim director. And so I was**
2 **promoted to interim director in about**
3 **April 2015.**
4 Q 2000 --
5 A **Excuse me, 2017.**
6 Q Thank you. And then when were you -- when were
7 you promoted from interim to the director?
8 A **After three months so --**
9 Q And that's your current position now --
10 A **Yes.**
11 Q -- is director?
12 A **Director, yes.**
13 Q So it looks like that you lived in Hays until
14 you graduated from college and then you came
15 back in 2011. You graduated -- it looks like to
16 me you're about 11 or 12 years where you lived
17 someplace other than Hays?
18 A **That's correct.**
19 Q And you lived in multiple communities?
20 A **Correct.**
21 Q You lived in Pratt, you lived in Goodland, you
22 lived in Hutchinson, and in each of those, did
23 you -- did you have a family?
24 A **Yeah, we -- I have two -- two kids, so my wife**
25 **and I have been married for 24 years, Tina, and**

1 Hays in 2011?
2 A **Uh-huh.**
3 Q And you were the comanager of?
4 A **Of the Walmart Supercenter, yes.**
5 Q How long were you in that position?
6 A **I was in that position until October of 2015 so**
7 **four years.**
8 Q At what -- then what?
9 A **Then I actually, I applied for and was offered**
10 **and accepted the assistant director position for**
11 **the City of Hays for the water resources**
12 **department.**
13 Q The assistant director --
14 A **Uh-huh.**
15 Q -- of the water resources department for the
16 City of Hays?
17 A **Yes.**
18 Q Okay. So how long were you in that position?
19 A **That position --**
20 Q Roughly, I mean ...
21 A **It was like a year and a half. Maybe -- under a**
22 **year and a half, yes.**
23 Q And you were then what?
24 A **In 2015, our director had left -- left for other**
25 **opportunities, and I had an opportunity to**

1 **we have Landon, he moved -- basically, we had**
2 **him when we moved to Hutchinson, so he went**
3 **along with all the moves, he's 22 now. And then**
4 **my daughter, Karlee, she's 15, she's made a**
5 **couple moves with us.**
6 Q So you've had a wife and two children and
7 they've -- they've lived in Hays for --
8 A **Yes.**
9 Q -- since at least from 2011?
10 A **Yes, correct.**
11 Q But they lived elsewhere?
12 A **Correct.**
13 Q They didn't -- I mean, from the time -- from the
14 time they were born they didn't live in Hays,
15 they were -- maybe they were born there but --
16 A **Right.**
17 Q -- from infancy till 2011, they lived elsewhere?
18 A **Uh-huh, correct.**
19 Q So what I'd like for you to do for me is kind of
20 give us a contrast between, with respect to
21 water conservation, a contrast between living in
22 those other communities and living in Hays. You
23 knew -- you were aware of water -- having
24 graduated from high school in 1993, do you
25 remember that 1991, 1992 drought?

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1 A Not every single day but I do remember in the
2 early '90s and through high school drought
3 issues, drought being talked about, drought in
4 the news, newspaper, on TV. I recall even
5 staff, I don't know who they were at the time,
6 coming into schools and talking about water --
7 water concerns, water issues and how to conserve
8 so taking shorter showers, not letting water
9 just run, you know, and being -- being careful
10 with the amount of water that you use, I
11 remember that.

12 Q You were here in the room during Mr. Dougherty's
13 testimony, were you not?

14 A Correct.

15 Q And you heard him testify that the 1991 drought
16 was the genesis for the significant conservation
17 programs that the City has -- that were put in
18 place?

19 A Uh-huh.

20 Q Is that -- is that consistent with your
21 recollection?

22 A Correct, yes.

23 Q So you -- there were -- there was a period of
24 maybe eight or nine years that you, in your
25 formative years, I would say, that you were

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1 living in Hays and dealing with, as a teenager,
2 as a young adult, with the need to conserve
3 water?

4 A Yes.

5 Q How was it -- how was your lifestyle -- is your
6 wife from Hays?

7 A Yes, she is.

8 Q Did she grow up there?

9 A Grew up in Ellis, rural Ellis.

10 Q And is she about your age? And I'm not asking
11 how old your wife is.

12 A She's older.

13 Q I -- I didn't -- I didn't ask. I mean, I just
14 wanted to know if she was kind of in the same
15 age range. So -- but she didn't grow up in
16 Hays, then?

17 A From time to time she did. She -- she grew up
18 on a farm outside of Ellis, there was time where
19 they moved into town, so they off and on but I
20 couldn't give you all the dates.

21 Q And I'm not asking that, I guess what I'm really
22 kind of thinking about is you got married, you
23 moved to Hutchinson --

24 A Uh-huh.

25 Q -- at some point you had your son.

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1 A Yep.

2 Q You know, I'm wondering about how life was
3 different for you and your wife with this baby
4 or this young child in Hutchinson than it was in
5 Hays in terms of water use?

6 A I don't recall necessarily the water bills or
7 the amount we paid or anything like that, but I
8 don't recall ever having a concern about water
9 in any of the communities that we lived in. And
10 we got cable, we watched the news, we watched
11 the local newspapers, I don't recall any of
12 those communities having a concern or promoting
13 that, hey, we need to conserve water, we need to
14 take shorter showers, brush your teeth with less
15 water, those type things, I don't recall that.

16 Q No -- no letters in your fliers -- in your bill
17 from the City about how, you know, how important
18 it is to conserve water and that sort of thing?

19 A Not that I can recall. I mean, I will say
20 probably nationally there was talk about
21 droughts and things like that and those things
22 that are happening, but I don't recall locally
23 any of those communities --

24 Q There was apparently adequate water for you to
25 live the lifestyle that you wanted without water

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1 restrictions in those communities?

2 A I believe so.

3 Q When you were city manager -- not city manager,
4 the manager, comanager, assistant manager in any
5 of the Walmarts in Hutchinson, Goodland,
6 Lincoln, Nebraska, or Pratt, did you ever
7 receive a ticket for wasting water?

8 A No, no, I had not.

9 Q Did you ever think you might ever receive a
10 ticket for wasting water? I mean, did it ever
11 occur to you?

12 A No, it really didn't occur to me at all.

13 Q Have you ever received a ticket as a Walmart
14 manager for wasting water?

15 A I received a warning between -- it was probably
16 2012 or '13, it was -- I remember the -- I don't
17 remember the actual date, but I was working as
18 an overnight comanager. And it was, like, 2:00
19 in the morning and got called up to the front
20 and they said, hey, there's -- there's an
21 officer that wants to talk to you. Basically we
22 had a broken sprinkler head.

23 Q There was a police officer?

24 A Yeah, the police officer was there because
25 either the police officer had a report or while

1 they were on patrol, they noticed that water was
 2 escaping the property because of a broken
 3 sprinkler head, and they issued me a warning
 4 basically because I was the manager on duty for
 5 that property.
 6 Q It was a sprinkler head like from a --
 7 A From the irrigation system for the store in
 8 Hays. It was along 43rd Street.
 9 Q And what'd you do?
 10 A I asked the officer, why am I getting the
 11 ticket?
 12 Q And?
 13 A He said, you're the responsible operator of the
 14 property at this time and we have to issue it to
 15 somebody.
 16 Q I called it a ticket, it was just a warning?
 17 A It was a warning, yes, it wasn't a fine, and it
 18 required me to, in the morning, call our
 19 irrigation company and have it quickly repaired.
 20 'Cause it did state what would happen if it
 21 continued.
 22 Q What would have happened?
 23 A If it would continue, there is potential for
 24 fine, different levels based on if it -- the
 25 next level, I believe, was a \$50 fine for not

1 Q -- what are your duties?
 2 A My duties are to oversee the daily operations of
 3 water, wastewater, our collection and
 4 distribution system in the city, our
 5 transmission lines, also our water conservation
 6 program, and also the R9 property itself, we're
 7 working to establish native grasses. And so I
 8 have direct reports and indirect reports of up
 9 to about 28 total employees.
 10 Q And in terms of the R9 Ranch, I mean, more
 11 specifically, there's nothing -- it's not being
 12 operated -- I mean there's no farming going on
 13 now, I mean, what --
 14 A We have a tenant at the property who grazes
 15 cattle on the property, and we're also working
 16 with a consultant to reestablish native grasses.
 17 Q And that's under your auspices?
 18 A Yes, I have a super -- I have a superintendent
 19 that reports to me and that is some of his main
 20 duties.
 21 Q Okay. Jami, may I see Exhibit 255, please.
 22 Mr. Crispin, can you identify this
 23 document, please.
 24 A Yeah, I believe that's the -- it's a letter, I
 25 believe, from 2016, March, it's called the

1 taking care of it in a certain amount of time.
 2 At that time, I don't recall, I -- just stuck
 3 with me that I was not understanding why I got
 4 the ticket.
 5 Q So what did you do, did you turn off the
 6 sprinkler system?
 7 A Yeah, I went to the back of the store, I shut it
 8 off, and then during normal day hours before I
 9 went home, I called the irrigation company and
 10 then told somebody else that, hey, this needs to
 11 be fixed.
 12 Q It was fixed?
 13 A Yes.
 14 Q So after having this little episode, you still
 15 went to work for the City?
 16 A Yeah.
 17 Q Must not have been totally an unpleasant
 18 experience?
 19 A No, no, 22 1/2 years retail.
 20 Q Say that again, what are you saying?
 21 A 22 1/2 years in retail is what I worked.
 22 Q And so -- okay, I see. So what are your -- but
 23 now fast-forward to 2017 and you're the
 24 director --
 25 A Uh-huh.

1 Aquifer Health Index, it's for Big Creek and
 2 Smoky Hill wellfields, and it's a letter from
 3 Burns & McDonnell to the City of Hays.
 4 Q And what -- what is the Aquifer Health Index?
 5 A The Aquifer Health Index is a -- it's a tool
 6 that we had asked for, the City had asked for
 7 them to develop. It's a tool basically for us
 8 to be able to operate those two wellfields in a
 9 sustainable manner. So we also understand
 10 what -- better understand what's going on in
 11 both aquifers and we can help continue the life
 12 of those aquifers as long as possible. And it
 13 also helps us make decisions based on well
 14 levels and what is going on within the wells,
 15 within streamflow of those -- over those
 16 aquifers such as the Smoky and the Big Creek
 17 Rivers.
 18 Q Is this the actual Aquifer Health Index?
 19 A No, the -- the actual health index is -- that's
 20 the documentation that basically explains it,
 21 but it's like a spreadsheet that -- it's a
 22 spreadsheet that requires some inputs but some
 23 things are already set up, that we can put in
 24 streamflow information, we can put in well level
 25 information, and then that actually helps us by

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1 **developing a score of -- a relative health score**
2 **of each of our aquifers.**
3 Q And we'll talk about that, but when you say that
4 you can put in this data, is that -- you
5 can decide whether to put it in or not?
6 A **No, we put it in.**
7 Q So it's not you can put it in, you do put it in?
8 A **Yeah, we -- we do put it in, we use it.**
9 Q So, Jami, let's take a look at Exhibit 2625.
10 Can you identify this document?
11 A **Yeah, that is a -- that is a PowerPoint, those**
12 **are PowerPoint sheets, or whatever, it is a**
13 **presentation. We had asked when that original**
14 **March report came out that we would have some**
15 **sort of a workshop to discuss how it works, and**
16 **this is -- basically gives a summary of how it**
17 **operates and how we input data.**
18 Q And this was prepared by Burns & McDonnell?
19 A **Burns & McDonnell, yes.**
20 Q And they're the ones that prepared the Aquifer
21 Health Index report --
22 A **Yes.**
23 Q -- and the Aquifer Health Index spreadsheet,
24 correct?
25 A **That's correct, yes.**

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1 Q Jami, I can't tell you exactly which page I want
2 but -- okay, let's -- yeah, back up. I want the
3 second page.
4 Is this kind of a summary, page 2, of
5 Exhibit 2625?
6 A **Yeah, it --**
7 Q Of the basics of what it's for?
8 A **Yeah, it gives the basics, it lets us know the**
9 **general condition of both wellfields; it helps**
10 **us provide a need if we need to initiate a**
11 **conservation measure, such as a watch, warning,**
12 **or emergency; and it provides us guidance for**
13 **our operators, our superintendent and our**
14 **operators on what wells they should or should**
15 **not be using based on their current conditions.**
16 Q You know, I want to skip back and ask you
17 another question about -- about your employment
18 and your department. You said that you have --
19 water conservation is in your department?
20 A **Yes.**
21 Q So is that -- tell me about the -- your water
22 conservation program. Not the description of
23 the program and what's going on, but how does
24 that -- who does that and ...
25 A **Holly Dickman is our current water conservation**

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1 **specialist, and she manages the -- the**
2 **operations. And I will say water conservation**
3 **is not just it's own little silo. For us, for**
4 **our whole department, it's important, from --**
5 **you know, whether it's out in the field and we**
6 **have a water main break and we need to get to**
7 **that quickly so we're not wasting water. But**
8 **our conservation program is run by Holly, and**
9 **our resources are important to her as well --**
10 **just as well as me.**
11 Q So she's the face of the conservation program, I
12 guess?
13 A **Yeah, she's -- yeah, she's a better face than I**
14 **am.**
15 Q Well, I met her and I --
16 A **But she's very good at her job.**
17 Q So it's interesting, I mean, so your employees,
18 I mean, she -- does she ride herd on your
19 employees to make sure they -- they're doing
20 what they need to do, or is that you or that's
21 not needed?
22 A **Our employees, I would say, citywide understand**
23 **water conservation as a priority, not just us,**
24 **you know, not just our department, but I would**
25 **say all employees do. We live it.**

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1 Q So let's skip down another one. I think it's --
2 so -- there we go.
3 So you talked earlier about putting data
4 into the spreadsheet and is -- are these the
5 three inputs, the saturated thickness,
6 streamflow, and pumping?
7 A **Yeah, those are -- those are the inputs that go**
8 **into the spreadsheet itself, and then when those**
9 **are inputted, and there's -- there's five wells,**
10 **monitoring wells for the Smoky, there's five for**
11 **Big Creek, and then also we have USGS stream**
12 **gages, we have two on the Smoky and one on Big**
13 **Creek, those are used for the streamflow. And**
14 **then staff, we will -- the pumping data we**
15 **actually enter in as well, all those we enter**
16 **in.**
17 Q So, Jami, let's go back to 255. And let's
18 scroll down to the map that we've been -- that
19 we've seen before.
20 Now, Mr. Crispin, I'm showing you the map
21 that Mr. Dougherty testified to yesterday or the
22 day before, figure 1 in the Burns & Mac report
23 that's Exhibit 255, and I think Mr. Dougherty
24 testified that the red dots, the larger red dots
25 labeled are city wells?

1 **A Correct.**
2 Q And it's your job to operate those wells through
3 your employees, right?
4 **A Correct.**
5 Q And these blue dots are?
6 **A I believe those were water rights, other water**
7 **rights.**
8 Q Private wells?
9 **A Yeah, private wells.**
10 Q And then there's some green triangles here,
11 there's some up here by C33, well C33, there's a
12 green triangle down by C19 at the bottom of the
13 screen, and there are probably some others. You
14 said there were five?
15 **A Yes, correct.**
16 Q And those are the monitoring wells?
17 **A Yeah, those are -- those are the monitoring**
18 **wells that are used for determining the health**
19 **of the aquifer, of the Big Creek aquifer, yes.**
20 Q And it's not very prominent on this -- on this
21 map, but Big Creek flows sort of across the
22 south side of town, right?
23 **A Yeah, that's correct.**
24 Q And the flow in Big Creek is measured where?
25 **A Further south, kind of by the legend, I think**

1 **that line, and then on the far west and the far**
2 **east, those are the two USGS streamflow gages.**
3 Q And they're labeled that? They're triangles but
4 they're labeled?
5 **A They're labeled. And I don't recall how exactly**
6 **the monitor wells are labeled, but they may be**
7 **in the triangle as well.**
8 Q Well, it looks like to me from here, and it is
9 kind of small, but we got to be able to see the
10 whole thing, that they're red dots.
11 **A Okay.**
12 Q Which, you know, if -- but there are five
13 monitoring wells in that area?
14 **A Correct.**
15 Q And they monitor the --
16 **A The depth -- the depth to water.**
17 Q And that matters why?
18 **A Because if it's dropping, then water's leaving**
19 **the aquifer or it's being pumped out.**
20 Q What do you mean leaving? If you're not pumping
21 it out, it's right there for you, right?
22 **A But still flows under -- even if there's no flow**
23 **in the Smoky, there's flow underground, and it**
24 **could be leaving the aquifer anyway. So it**
25 **could -- could drop that way.**

1 **it's in red, to the left.**
2 Q Actually, I don't see that it's --
3 **A No, along 183 there is a dot to the left of the**
4 **legend. I mean, if you blow it up -- it's right**
5 **there.**
6 Q Oh, that?
7 **A There's a streamflow gage there, a USGS**
8 **streamflow gage.**
9 Q So you put the daily readings from the
10 streamflow gage --
11 **A Yeah, there's a historical record, but it's**
12 **monitored through the USGS.**
13 Q Okay. So you put that information in, the
14 streamflow, you put in the monitoring well
15 levels, and then how much you pump?
16 **A Yeah, then the overall pumping for the entire**
17 **wellfield.**
18 Q And then the spreadsheet does its magic and it
19 kicks out a score?
20 **A Yes, it does.**
21 Q Let's go to the next page. So -- and this is
22 figure 2 of Exhibit 255, and what is this
23 showing?
24 **A That shows our Smoky Hill wellfield, that shows**
25 **our 12 wells, so 183 is north and south there,**

1 Q You're telling me that if you don't -- if you
2 stop pumping, the water isn't there for you? Or
3 at least it's less or what?
4 **A Well, it has potential if there's no recharge**
5 **upstream.**
6 Q Okay. So let's go back to 2625, please. And go
7 back up one page, I think. So there are --
8 there you go, four categories, tell us about
9 those four categories.
10 **A So -- I'm not an engineer, so my understanding,**
11 **basically, there's a cumulative frequency curve**
12 **that is created based on historical data.**
13 Q Let's not do those curves, nobody's going to
14 understand them anyway. I'm just looking at the
15 four categories over here and asking you what --
16 what are you --
17 **A The output data, if it's between 61 and 100,**
18 **tells me we're in good status.**
19 Q What -- what's your current status?
20 **A 65 to 70 in both aquifers.**
21 Q So they're in, quote, good --
22 **A Currently in good status, yes.**
23 Q Okay. What's watch?
24 **A Watch would be, it would drop to the number of**
25 **51 to 60 would be the actual score.**

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1 Q And so when you put your numbers in every day,
2 it kicks out a score?
3 A **Uh-huh.**
4 Q And right now it's 65 to 70, and so things are
5 fine, but there -- it's kind of getting close to
6 60 -- 65, I mean, that's the low end of good,
7 right?
8 A **Correct, yeah.**
9 Q So are you watching it pretty --
10 A **Watch it daily.**
11 Q So you're in Wichita, I mean, somebody kicked
12 out a score and you --
13 A **I call and ask for a score, yes.**
14 Q Okay. So what happens when you hit the watch
15 category?
16 A **Well, when we hit a watch category, we also look**
17 **at our water conservation -- we look at our**
18 **water conservation plan, and that could trigger**
19 **us to take some additional measures based on our**
20 **current plan.**
21 Q An example, just one?
22 A **Well, that would increase our education efforts**
23 **based on current wellfield conditions, it --**
24 **basically that would be the gist of it is more**
25 **education because we're wanting to watch what's**

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1 **going on.**
2 Q Making sure that the public is aware --
3 A **Yes.**
4 Q -- that, hey, listen, we're getting close. Is
5 that fair?
6 A **Yes, that's fair.**
7 Q So Holly has to go do that?
8 A **Oh, yeah.**
9 Q Okay. So what happens if it continues to drop?
10 A **Then it triggers other levels in our water**
11 **conservation plan.**
12 Q Okay. And then warnings and emergency, what are
13 those?
14 A **Well, in emergency situation, we would have no**
15 **flow in either of our -- in either Big Creek or**
16 **Smoky, that would trigger close to being an**
17 **emergency situation, but it would be a drop, a**
18 **significant drop in our wells also.**
19 Q Okay. I need to step away for just a second.
20 **MR. TRASTER:** Your Honor, I -- this
21 isn't a -- I don't really care one way or
22 the other, but I think one of the video
23 feeds may be frozen 'cause I looked over
24 and I thought, I'm not that skinny. I
25 mean, I wish I was.

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1 (Discussion held off the record.)
2 **BY MR. TRASTER:**
3 Q All right. Well, I -- so the PowerPoint lays
4 out these levels and scores, and it's scored
5 now, what do you -- do you, like, report those
6 scores to somebody?
7 A **Yes, every two weeks, every other Friday**
8 **basically, I compile what the current report**
9 **looks at -- looks like, along with the current**
10 **drought monitor map that's released by UNL on**
11 **Thursdays, and I send that, along with our**
12 **precipitation, current precipitation situation**
13 **in Hays, and I send that to city staff, our**
14 **department, our department heads, our city**
15 **attorney, and city manager's office to make sure**
16 **that everybody is informed. And then in turn**
17 **that gets shared with our commission.**
18 Q You said precipitation, you add that to your
19 report, but that doesn't go in the Aquifer
20 Health Index?
21 A **No, but you use that -- you use those drought**
22 **outlook reports and drought maps and you use**
23 **precipitation to understand are we in a**
24 **situation where we haven't had rain for two,**
25 **three months and that is concerning, so --**

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1 Q Are you in that situation?
2 A **We're still in exceptional drought. We are**
3 **not -- our local KSU report is 154-year average**
4 **of rain, and we are below the 154-year average**
5 **year to date.**
6 Q By?
7 A **The 154-year average by the end of month is**
8 **supposed to be 14 inches -- 14.6 inches, and I**
9 **believe today, I haven't seen the latest report,**
10 **we actually had a little rain last night, but I**
11 **believe we're 12 1/2 so probably 2, a little**
12 **over 2 inches of rain that we're short.**
13 Q You heard that it rained in Garden City last
14 night?
15 A **Yes.**
16 Q 5 inches or something?
17 A **Yes.**
18 Q Make you jealous?
19 A **A little bit. We don't want it all at once.**
20 Q Yeah. I'm -- I love to quote my dad and, you
21 know, he said, it rains 20 inches a year in
22 Ulysses and I remember the day it came.
23 So these water warnings -- watch, warnings
24 and emergencies, do they play into the City's
25 rate structure?

1 **A Yes, they do. They can -- we have a tiered**
2 **structure that --**
3 Q Let's -- let's look at 1762, please. I'll put
4 it up for you so that you can talk about it a
5 little bit. I say I will, Jami will put it up
6 for you. So, Mr. Crispin, this is
7 Exhibit 1762 --
8 **A Uh-huh.**
9 Q -- and it's section 65-224, rates inside and
10 outside city.
11 **A Correct.**
12 Q Do you recognize this document?
13 **A Yes, I do, correct.**
14 Q And it is?
15 **A It shows the water rate structure for the City**
16 **of Hays.**
17 Q All right, very good. So in the top paragraph,
18 it talks about, it says, water usage as shown on
19 the January, February, and March billing is
20 averaged to determine a water use average for
21 both residential and business accounts.
22 **A Correct.**
23 Q What's that?
24 **A We use the -- we take the January, February,**
25 **March water use and we average that, and then**

1 feet, is that what you're saying?
2 **A Yes, that's -- that's what I'm saying.**
3 Q Okay. Let's scroll down, Jami, to the table at
4 the bottom of that page.
5 And tell us what this table is telling us.
6 **A That is the water use minimum charge per month**
7 **by meter size. So on the left side is the meter**
8 **size, which typically it's a five-eighths or a**
9 **three-fourths-inch meter for a resident, and it**
10 **shows what the inside city limit rates are and**
11 **what the outside city limit rate is per month.**
12 Q So if I have a typical residential use and I
13 have a five-eighths-inch meter, I'm going to pay
14 \$13 a month --
15 **A Correct.**
16 Q -- if I'm inside the city; I'm going to pay
17 22.07 outside the city?
18 **A Correct.**
19 Q And the bigger the meter, the --
20 **A Yes.**
21 Q So that -- is that figured in somehow with this
22 base rate that you were talking about?
23 **A That's the minimum charge, and then the base**
24 **rate's based on 100 cubic foot after that**
25 **amount.**

1 **that's applied to the base usage for the entire**
2 **year for that resident or that commercial**
3 **property.**
4 Q So if you have a young couple with no children
5 and they have less -- use less water, or a
6 retiree, or something, lives alone or a couple,
7 they're going to be -- their base rate -- their
8 usage in January, February, and March is going
9 to be lower than --
10 **A Well --**
11 Q -- the usage by a larger family?
12 **A Absolutely, absolutely.**
13 Q And so that, then, is taken into account in --
14 in the rate structure?
15 **A It is. In that paragraph, it does mention that**
16 **the water rate average shall be a minimum of**
17 **500 cubic feet.**
18 Q Okay. So this person living alone is going to
19 have to pay for 500 cubic feet of water no
20 matter how much they use in January, February,
21 and March?
22 **A Correct, 'cause they pay the base rate.**
23 Q Right, okay. So then in that -- about
24 three-quarters of the way down, water usage --
25 use average shall be a minimum of 500 cubic

1 Q Okay.
2 **A Because the first 100 cubic foot is included in**
3 **that minimum charge.**
4 Q All right. Let's go to the next page, Jami,
5 please.
6 So this table shows that the first, what
7 you just said, the first 100 cubic feet -- how
8 much is 100 cubic feet in gallons?
9 **A Times 7.48, 7500 gallons.**
10 Q Roughly 7500?
11 **A Uh-huh.**
12 Q 7 -- 7,400 something --
13 **A Yeah.**
14 Q But it's, just for our purposes, 7500 gallons.
15 So you get the first 7500 gallons free -- or not
16 free, it's included --
17 **A It's included in that charge?**
18 Q -- but there's a minimum. So the base tier
19 is -- the inside limit is \$2.71 and outside is
20 \$4.59?
21 **A That's correct.**
22 Q And so that first 100 cubic feet is included?
23 **A Correct, in the \$13 charge.**
24 Q And so you would take -- for somebody who used
25 less than 500 cubic feet, you would just take

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1 the 2.71 times four and add it to 13 and that'd
2 be their bill?
3 **A That's correct.**
4 **Q** What happens if they go above 500 cubic feet?
5 **A** **If you go above the 500 or your average, let's**
6 **say that that -- so that's your minimum or**
7 **that's the average, anything up to 1,000**
8 **cubic -- the next 1,000 cubic feet goes to the**
9 **conservation tier 1. And so that charge is**
10 **added to the bill for that extra usage.**
11 **Q** Okay. So I'm going -- if I'm living by myself,
12 I have to pay for 500 whether I use it or not,
13 but if I've got a big family and we use a lot of
14 water, then I'm still going to pay 2.71 for
15 the -- until I go over that base rate?
16 **A Yeah.**
17 **Q** Okay, very good. 2.71 per 100. So what is this
18 conservation tier 2? And I note that there's a
19 residential only and then a business and mixed
20 family, what's this conservation tier 2 rate?
21 **A** **So after you exceed that first 1,000 cubic feet,**
22 **anything over that first 1,000 cubic feet on top**
23 **of the minimum is the -- the tier 2 rating, the**
24 **tier 2 costs, so it's an additional charge.**
25 **Q** So I pay 2.71 for my first 500, 13 plus 2.71

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1 times four, and then another 1,000 I pay at
2 5.40, but above that I'm paying 10.82, right?
3 **A Uh-huh.**
4 **Q** Okay. And so it's -- what's this conservation
5 tier 2 water emergency, \$15, what's that all
6 about?
7 **A** **If we are in a water warning or a water**
8 **emergency based on our water conservation plan,**
9 **excess of the base charge would actually be the**
10 **15.01.**
11 **Q** Okay. So has this -- this rate is in effect
12 now?
13 **A Yes, it is.**
14 **Q** How long has it been in effect, if you know?
15 **A** **I don't know that off the top of my head, I**
16 **would have to see --**
17 **Q** That's fine.
18 **A -- if there's a date.**
19 **Q** That's fine. Let's go to Exhibit 820, please.
20 Mr. Crispin, will you identify this document?
21 **A** **This is our current water conservation plan and**
22 **drought response plan that's been filed with the**
23 **Kansas Water Office.**
24 **Q** Have you reviewed it?
25 **A Yes, I have.**

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1 **Q** Have you reviewed it recently?
2 **A** **We review it quite often, yes.**
3 **Q** Have you reviewed it recently?
4 **A** **Yes.**
5 **Q** And it has drought response, water watch, water
6 warning, water emergency right on the front
7 page?
8 **A** **Correct.**
9 **Q** Let's scroll down to where the rates are shown.
10 So I think, yeah, this is a little different
11 than your rate structure? This shows that a
12 five-eighth-inch meter inside is \$9.18 but
13 it's -- you just showed us the -- or I just
14 showed you and it was 13 so --
15 **A** **It's because that's -- that's a dated report,**
16 **and our current ordinance on our city website**
17 **shows the adopted rate.**
18 **Q** So let's go to paragraph -- or to Exhibit 817.
19 Can you identify this document?
20 **A** **That's the 2007 municipal water conservation**
21 **guidelines, it's put out by -- it was put out by**
22 **the Kansas Water Office in cooperation with some**
23 **other state entities.**
24 **Q** And are you familiar with this document?
25 **A** **Yes, I am.**

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1 **Q** Have you read -- reviewed it recently?
2 **A** **Yes, I reviewed it recently.**
3 **Q** And have you compared the requirements in the
4 2007 Kansas Municipal Water Conservation Plan
5 Guidelines that are in Exhibit 817 to your -- to
6 Exhibit 820, the -- your current conservation
7 plan?
8 **A** **Yes, I have.**
9 **Q** And are they -- are you -- do you comply with
10 the requirements --
11 **A** **Yes.**
12 **Q** -- in that plan? Has your conservation plan
13 been approved by the Kansas Water Office?
14 **A** **Yes, it was approved.**
15 **Q** Does the -- does your current conservation plan
16 require the use of the Aquifer Health Index?
17 **A** **No, it does not.**
18 **Q** So is that on top of --
19 **A** **Yes, we use that in -- in conjunction with to**
20 **make sure that we're -- we understand the health**
21 **of all of our sources.**
22 **Q** Jami, let's -- let's switch gears here and go to
23 2681, please.
24 So this is just a -- kind of a placeholder,
25 and it says soil samples collected from the R9

1 Ranch and other locations. Can you tell us
2 what -- what that means, what soil samples are
3 you talking about?
4 **A At the end of April of this year, staff, we had**
5 **made a trip out, as a group, out to the ranch to**
6 **look at soil types in different areas within the**
7 **property in the area, we wanted to kind of just**
8 **take a look at what the soil makeup was. I've**
9 **seen it, I know what it looks like, but we**
10 **wanted to get some samples.**
11 Q And were you present when those samples were
12 taken?
13 **A I was.**
14 Q And did you participate in the collection of
15 those samples?
16 **A I did, I dug some. I did -- I did dig and I**
17 **helped collect samples.**
18 Q And so those samples came from the surface?
19 **A Some from the surface, some from, I believe,**
20 **about 18 inches below surface.**
21 Q And do you have those samples with you today?
22 **A Yes, I do.**
23 Q And they're in the boxes sitting beside you on
24 the --
25 **A Yes.**

1 labeled circle 3, and then it drops down and
2 goes southwest down to sample 31, then back over
3 to 11A samples, is that -- those were all on the
4 ranch?
5 **A Yes, that is correct.**
6 Q And those samples in the middle there, untilled
7 sample surface, there were a couple sample
8 locations there?
9 **A Yes.**
10 Q And was one taken where a circle had been and
11 one where a circle -- that had never been broken
12 out?
13 **A Yeah, that's correct, we wanted to get areas**
14 **that -- different types of areas within --**
15 **different locations within the ranch.**
16 Q So did you collect -- you said that you dug some
17 holes, did you take a sample, surface sample and
18 a sample 18 or -- inches below?
19 **A I believe so on most occasions.**
20 Q Okay. So do you have sample 30 -- the samples
21 from 31 --
22 **A I can take a look.**
23 Q -- with you?
24 **A Oh, sorry. I'm going to turn these around**
25 **'cause it's kind of hard to see.**

1 Q Let's take a look, Jami, at 2655, please. And I
2 think that -- yeah, let's scroll down a page or
3 two to the whole -- there you go. Let's look at
4 that. Can you zoom in just -- where the blue
5 is? All right, very good, thank you.
6 So are these -- are these -- it looks like
7 a T, I don't know, maybe it's something else,
8 but there are -- it looks like there are maybe
9 one, two, three -- five or six sample locations?
10 **A I believe so. I know that one in the middle is**
11 **kind of hard to see 'cause it looks like it's**
12 **overlapped, but yeah.**
13 Q Who prepared this document?
14 **A I prepared that. When getting onto the**
15 **property, I cannot recall the app I used on my**
16 **phone, but -- it may have been Google Maps, or**
17 **something, but it shows a start, where we**
18 **started it, those are the locations I drove to,**
19 **and then each pin is a GPS coordinate of where**
20 **we took a sample.**
21 Q Okay. So you took -- and it's hard to see, but
22 the ranch is -- it comes across the top of where
23 that blue line -- I mean, it comes across the
24 top there where that blue line under -- right
25 under the S and on the -- the location that's

1 Q If the city manager put them in the right place,
2 it'd be easier for you.
3 **A That would help.**
4 Q Yeah.
5 **A I have two 31s, one's at the surface and -- this**
6 **one's at the surface, and this one was 28 inches**
7 **below the surface.**
8 Q And I asked you at the beginning whether you're
9 a soil scientist or a geologist or an engineer
10 and you said you're not?
11 **A No, I'm not.**
12 Q So you don't -- I mean, I'm not asking you to --
13 you know, what that soil is, but what's it look
14 like to you as a layperson?
15 **A Well, they look -- this one's a little bit**
16 **darker, this one kind of to me looks like sand.**
17 Q Yeah.
18 **A That one was taken the 28 inches deep. This**
19 **does have quite a bit of sand in it, it is a**
20 **little bit darker, but this was the surface.**
21 Q Okay.
22 **A At number 31.**
23 Q At number 31. So then I don't care which one
24 you pick now but --
25 Jami, I wonder if one of the other pages of

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1 this exhibit will give us a better idea of --
2 Okay. So circle 3 west by the river, do
3 you have those samples?
4 **A Yeah, I have one that's a surface sample and**
5 **then this one is 20 inches deep.**
6 Q And are they significantly different than the
7 samples that you've -- from the other area?
8 **A Not really, these are a little bit closer to the**
9 **color of this one, but they're both somewhat**
10 **sandy, with a little bit of soil mixed in, a**
11 **little bit darker.**
12 Q Okay.
13 **A But one was surface, one was 20 inches deep.**
14 Q Okay. So let's go to the next location that
15 makes sense. So sample -- untilled sample
16 surface in jar, it says. Or sample 12, you
17 can -- either one?
18 **A They were 12?**
19 Q The 12 is fine.
20 **A Oh, okay. These are -- this is circle 12, and**
21 **it's at the surface, and it's -- it's darker as**
22 **well, but it's quite sandy, with some soil**
23 **worked in there. And then also this is the same**
24 **area, but it's 28 inches deep and it's very**
25 **similar.**

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1 Q Okay. Again, I'm not asking you to classify
2 soils. What about the untilled sample surface
3 in jar, I don't know whether -- how that -- what
4 that exactly means but ...
5 **A These -- this is untilled hilly area, it was in**
6 **a hilly area, I remember where we were because**
7 **you could kind of look down and see other**
8 **things, but this one's 26 inches deep.**
9 Q Okay.
10 **A And then this one was on the surface. They're**
11 **quite similar.**
12 Q Sandy?
13 **A Yeah, absolutely.**
14 Q Okay. All right. Jami, let's see another
15 location. Okay, that's -- I think we skipped
16 past something.
17 11A samples?
18 **A I have 11A, this one's at the surface. Although**
19 **it looks to me a little bit lighter, but it**
20 **is -- looks very porous.**
21 Q Very sandy?
22 **A Yep.**
23 Q All right.
24 **A And then I have 25 inches deep, and that one's**
25 **kind of clumped together; it may have had a**

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1 **little bit of moisture in it.**
2 Q Okay. Very good.
3 **A But it looks sandy.**
4 Q Let's look at 1705, please. This might be --
5 does this better depict kind of where those
6 samples were taken?
7 **A Yeah, those -- I believe that -- I did not make**
8 **the map, but I believe the coordinates, the GPS**
9 **coordinates are the exact locations based on**
10 **what I provided.**
11 Q You provided the coordinates --
12 **A Yes.**
13 Q -- the GPS coordinates from your iPhone?
14 **A Yes.**
15 Q And it wasn't a fancy, you know, \$5,000
16 instrument --
17 **A No.**
18 Q -- so we're not saying it's precise but it's
19 close?
20 **A Yes, correct.**
21 Q So of these samples, 31, 11A, 12, and untilled
22 near 12 and circle 3, those are the sample
23 locations on the ranch that -- that you've just
24 shown us?
25 **A Yes, correct.**

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1 Q And does this map -- this map shows the outside
2 boundaries of the R9 Ranch?
3 **A That is correct.**
4 Q So each of the samples that you have in front of
5 you are samples, soil samples from various
6 locations someplace on the ranch?
7 **A Yes, that's correct.**
8 Q Let's go to 2654, please. And, Mr. Crispin,
9 this -- this exhibit, the title of this exhibit
10 includes the text Buller pictures. So I will
11 represent to you that, and you already know,
12 that Daniel Buller took those pictures?
13 **A That is correct.**
14 Q And he's a lawyer representing the City of Hays?
15 **A That is correct.**
16 Q And were you with him when he took those
17 pictures?
18 **A I was there, yes.**
19 Q Are these -- do these -- does this depict a
20 location someplace on the R9 Ranch?
21 **A Yes, it does. I don't exactly remember where it**
22 **was, but it looks similar.**
23 Q The pictures he took were someplace on the
24 ranch?
25 **A Yes.**

1 Q Why don't we just skip down one page at a time,
 2 there are several of them. And I don't think we
 3 need to go through every one of them exactly,
 4 but I think that just -- yeah, just give us a
 5 few seconds each time, I might stop you at some
 6 point. These -- these are typical examples of
 7 the contours and the -- the growth of -- on the
 8 ranch --
 9 A **That was --**
 10 Q -- the day those pictures were taken?
 11 A **For the day that those were taken. That was**
 12 **before the growing season kicked off.**
 13 Q Okay. I want you to slow down just a little
 14 bit, but do you recall this area?
 15 A **I do.**
 16 Q Okay. And there's -- it looks like there's
 17 maybe a -- I think there are better pictures
 18 on -- but looks like there's some erosion or
 19 that the road level is ...
 20 Let's skip one ahead, Jami, please. And
 21 another one.
 22 So this picture is taken right beside the
 23 road --
 24 A **Correct.**
 25 Q -- you were driving on that day? And it shows

1 **property.**
 2 Q Okay. Thank you. I don't know what we're at,
 3 looks like we're almost to the end of the
 4 series; is that right? Is there one more?
 5 Okay.
 6 **MR. TRASTER:** For the record,
 7 Exhibit 1764 and 1765 are just short videos
 8 of some -- that were taken that day to show
 9 it's a little sandy and, you know, somebody
 10 walking through, so that's -- and you can
 11 look at them at your leisure. I'd be happy
 12 to show them if you want to see them, but I
 13 didn't want to take the time, they're not
 14 long but --
 15 **PRESIDING OFFICER:** It's your case
 16 to present so however you feel you need to
 17 present it.
 18 **MR. TRASTER:** Okay.
 19 **PRESIDING OFFICER:** It's already
 20 submitted there so --
 21 **MR. TRASTER:** What?
 22 **PRESIDING OFFICER:** Your evidence is
 23 submitted, it's admitted to the record
 24 there so --
 25 **MR. TRASTER:** Right, they're

1 sort of a cross section of the --
 2 A **Uh-huh.**
 3 Q And is that -- are there other places that are
 4 sort of like that on the ranch?
 5 A **Yeah, there's numerous places where you can go**
 6 **along the road and see a cross section like**
 7 **that.**
 8 Q And, again, you're not a soil scientist and
 9 you're not an engineer, but, you know, is this
 10 sort of a typical view that you can see from
 11 your perspective?
 12 A **Even when you get off road.**
 13 Q Okay. Let's go one more. One more. Okay, keep
 14 going.
 15 So it looks like there's some areas here
 16 that are, you know, they're still struggling to
 17 get established?
 18 A **There are some, yes.**
 19 Q And what's going on, are you making progress in
 20 that?
 21 A **Yeah, we -- we have a consultant that we work**
 22 **with, Dr. Keith Harmony, he's a rangeland and**
 23 **native grass specialist, and he helps advise us**
 24 **on what areas maybe need replanted and just to**
 25 **help us reestablish native grasses on the**

1 there --
 2 **PRESIDING OFFICER:** -- however you
 3 feel you need to go about your case.
 4 **MR. TRASTER:** Yeah.
 5 **BY MR. TRASTER:**
 6 Q I don't know where they are, there were some
 7 pictures of some blowouts, there are still some
 8 areas that are -- that need more work?
 9 A **Yes, they are improving, but there are some**
 10 **areas -- anybody could go on Google Earth to see**
 11 **we have a good -- there's one that I stop at**
 12 **almost every time I'm there, and it's about a**
 13 **5-acre -- 5-acre blowout basically, you can see**
 14 **it in the distance.**
 15 Q There it is, back up, I saw it, there it is. Is
 16 that the one you're talking about or one like
 17 it?
 18 A **It's one like it. Within that area there's --**
 19 **you can -- on the horizon, you can see a couple**
 20 **others but ...**
 21 Q Sure. Let's look at Exhibit 1718, please, Jami.
 22 So let's zoom in to the -- well, back up.
 23 This is Exhibit 1718, can you identify the
 24 document?
 25 A **I believe that is a map that it shows different**

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1 zones in the area, and I believe it shows --
2 it's an area near the ranch.
3 Q Right. I'll represent to you that it's figure
4 33 from the Balleau groundwater model report --
5 A Okay.
6 Q -- that was prepared back in the day.
7 Jami, can you zoom in on --
8 I'll represent that's the base map; this
9 map is not in the Balleau report but the base
10 map is.
11 Can you zoom in on the ranch area, please.
12 On -- on -- superimposed on the base map
13 prepared by Balleau is the outline of the ranch,
14 correct?
15 A Yes, that's correct, in red.
16 Q And there are two dots, one of them is numbered
17 16 and the other is 17, what are those
18 locations?
19 A Those are soil sample locations obtained outside
20 of our property.
21 Q And were they obtained the same day as the
22 earlier soil samples?
23 A No, I don't believe so.
24 Q So if I were to tell you that the earlier
25 samples, you said late April, I'm going to -- if

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1 I said April 24th, 2023, would that -- for the
2 earlier samples?
3 A For the main -- all the main ones, yes, for the
4 ones that you showed earlier, yes.
5 Q And didn't you collect -- did you collect
6 samples at those locations 16 and 17 as shown in
7 this map?
8 A I did, correct.
9 Q And did you collect those samples on the day
10 before or the day of the public meeting that was
11 held in Hays in -- on June 19th or 20th,
12 whatever date?
13 A Yeah, I believe the public hearing, it was --
14 was it the day of?
15 Q It doesn't -- I'm not --
16 A I would have to -- I would have to go back and
17 look.
18 Q That's fine, I'm just trying to get sort of the
19 season --
20 A Absolutely.
21 Q -- when they were collected, and it was
22 collected at that --
23 A Mid June.
24 Q -- in June, day before, the day of that -- okay.
25 And can you -- do you have sample 16?

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1 A Yes.
2 Q Why don't you pull out 16? Were you present
3 when these two samples were collected?
4 A I was.
5 Q Did you -- did you collect them?
6 A I participated in collecting them, yes.
7 Q All right. And tell -- tell us about those.
8 A This -- this number 16 on the point on the map,
9 this is the surface, and it's quite darker than
10 all the other -- all the other samples.
11 Q Okay.
12 A And so you can kind of -- you can tell a little
13 bit when you shake it, it's a lot heavier.
14 Q Could be wet?
15 A Could be wet. And then this one was taken at
16 the same location, but this one was 18 inches
17 deep.
18 Q And is it --
19 A It doesn't feel -- I don't see really, and,
20 again, I'm not the expert, but I don't see a lot
21 of sand or really anything. To me it's just
22 like just regular soil.
23 Q Okay. So what about the sample at location 17?
24 A Those would be very similar too, they're dark
25 compared to the others. That -- this one is not

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1 as full as those are. That one was the surface,
2 and then this one was 18 inches deep also.
3 Q Okay. So did you take photographs or record the
4 GPS locations of --
5 A Yeah, we did -- I did the --
6 Q Let me finish. Like you did the others?
7 A Yes, correct.
8 Q You were going to go on or not?
9 A I was not happy I was in one of the pictures.
10 Q Oh. Let's look at 1738. And so there are --
11 this is Exhibit 1738, looks like kind of a
12 close-up of what we saw before?
13 A Yes.
14 Q And there are two red dots?
15 A Yes.
16 Q And are those two red dots where 16 and 17 were
17 collected?
18 A Yes, those are correct.
19 Q And, Jami, I think there's a second page to
20 this.
21 Those two red dots, another zoom in?
22 A Yes, that's correct.
23 Q And is 16 in that blue area that's designated as
24 zone 9?
25 A If that is -- yeah, if that red dot there is 16,

1 yes, it is.
 2 Q And the one on the -- 17 was collected in -- it
 3 isn't zone 9?
 4 A **I think it is outside of the zone, yes.**
 5 **MR. TRASTER:** Just one minute.
 6 **PRESIDING OFFICER:** Sure.
 7 **BY MR. TRASTER:**
 8 Q Mr. Crispin, thank you for your time.
 9 A **Thank you.**
 10 Q Oh, you're not done.
 11 A **Oh, I know. I'll stay.**
 12 **PRESIDING OFFICER:** Does that mean
 13 you're done with your questions, though,
 14 Mr. Traster?
 15 **MR. TRASTER:** What's that?
 16 **PRESIDING OFFICER:** You are done?
 17 **MR. TRASTER:** No further questions,
 18 I'm sorry.
 19 **PRESIDING OFFICER:** Okay, thank you.
 20 **MR. COLE:** I have no questions,
 21 thank you.
 22 **PRESIDING OFFICER:** Mr. Lee?
 23 **MR. LEE:** Well, Your Honor, this
 24 won't take very long.
 25 **PRESIDING OFFICER:** All right.

1 A **If we had a resident outside of the city limits.**
 2 Q That seems a little like an oxymoron.
 3 **MR. TRASTER:** I can't hear, I'm
 4 sorry, it seems what?
 5 **BY MR. LEE:**
 6 Q Seems like -- a little like an oxymoron. The --
 7 when you say a resident outside the city limits,
 8 what does that mean?
 9 A **It could be a homeowner on the outside of our**
 10 **city limits that may be right outside our**
 11 **boundary.**
 12 Q Okay. Well, I guess just a couple of quick
 13 questions. Are you saying that, to your
 14 knowledge, Hays is not selling to any customer
 15 presently outside the city limits?
 16 A **No, I'm not saying that; I'm just saying I've**
 17 **not known of any new additions in my time.**
 18 Q Okay. And so the City would have the authority
 19 to quit selling to any customer outside the city
 20 limits if it chose, would it not?
 21 A **I would have to read the ordinance, I'm not**
 22 **aware.**
 23 Q Okay. And how many customers outside the city
 24 limits take city water?
 25 A **I would have to get that information. I don't**

1 **CROSS-EXAMINATION**
 2 **BY MR. LEE:**
 3 Q Mr. Crispin, good morning.
 4 A **Good morning.**
 5 Q My name is Charles Lee, I'm with Lee Schwalb,
 6 LLC, which you've probably heard repeatedly as
 7 you've sat here. You indicated in your
 8 testimony, and just not really the point of it,
 9 I don't think, but there was a rate document
 10 that you talked about that showed differentiated
 11 rates between citizens of Hays and those who
 12 live outside the city limits?
 13 A **We have a difference between inside and outside**
 14 **city limits.**
 15 Q I'm curious about why the City sells water to
 16 those outside the city limits?
 17 A **There may be some situations where there's no**
 18 **other opportunity or they may have -- honestly,**
 19 **there's not been one that I've been aware of in**
 20 **the last five years, but we have it -- we've had**
 21 **it on there as a possibility.**
 22 Q Okay. So the rate document you're referring to
 23 is essentially a contingency in the event that
 24 you do sell to a customer outside the city
 25 limits?

1 **have that.**
 2 Q What's the volume, if you know?
 3 A **I don't know at this point.**
 4 Q Do you know if it's a significant number of
 5 folks outside the --
 6 A **I do not believe it is, no.**
 7 Q Okay. And do you know if it's a significant
 8 volume of water?
 9 A **I do not know.**
 10 Q And are both the -- those questions answerable
 11 by reference to your records?
 12 A **I'm unaware of that information being within the**
 13 **records.**
 14 Q I'm talking about if we were to go to your
 15 facility in Hays, is that information --
 16 A **Oh, I believe it could be produced, yes.**
 17 Q Okay, thank you.
 18 **MR. LEE:** Nothing else, Your Honor.
 19 **PRESIDING OFFICER:** Ms. Langworthy?
 20 **MS. LANGWORTHY:** No questions, Your
 21 Honor.
 22 **PRESIDING OFFICER:** All right.
 23 **MR. TRASTER:** One moment. No
 24 questions, Your Honor.
 25 **PRESIDING OFFICER:** All right.

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1 Looks like we are done with your questions,
2 then, Mr. Crispin, so thank you.
3 **THE WITNESS:** Thank you.
4 **PRESIDING OFFICER:** I guess what are
5 you thinking for your next witness and
6 amount of time, I'm just wondering at what
7 point we should take some sort of break
8 here? It would be a little early lunch if
9 we broke now, but that might be better than
10 waiting an hour and a half or ...
11 **MR. TRASTER:** I'll leave that up to
12 Mr. Buller, this next witness is his so ...
13 **MR. BULLER:** So we're going to be
14 calling Paul McCormick next. Paul has two
15 expert reports. One of them, I suspect,
16 but don't know will be quicker than the
17 other and so we can present Paul and the
18 shorter expert report, maybe get that done
19 before lunch, maybe not, but we could forge
20 ahead with him as far as I'm concerned.
21 **PRESIDING OFFICER:** All right.
22 **MR. LEE:** That's fine with us, Your
23 Honor.
24 **PRESIDING OFFICER:** Okay.
25 **MR. BULLER:** The City calls Paul

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1 Q Please state your title and specialty.
2 A **My title is senior associate geological
3 engineer, and I specialize in hydrogeology.**
4 Q Are you a licensed professional engineer?
5 A **Yes, in Missouri, Kansas, Iowa, Nebraska, and
6 South Dakota.**
7 Q Did you offer direct testimony filed in this
8 matter on May 29, 2023 titled Direct Testimony
9 of Paul McCormick on Behalf of the Cities of
10 Hays and Russell, Kansas Relating to the
11 Wellfield Yield for the City -- Cities of Hays
12 and Russell, Kansas?
13 A **Yes, I did.**
14 Q Have you had a chance to review those documents
15 prior to your appearance here today?
16 A **Yes, I did.**
17 Q As you sit here, do you have any changes or
18 corrections to make to those documents?
19 A **No, I do not.**
20 Q If I asked you the same questions today as
21 appear in your prefiled testimony, would your
22 answers and opinions remain the same?
23 A **Yes, they would.**
24 **MR. BULLER:** Your Honor, at this
25 time I would move to admit the prefiled

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1 McCormick, City of Hays calls Paul
2 McCormick.
3 **PRESIDING OFFICER:** All right.
4 Mr. McCormick, I'll need to swear you in,
5 would you please raise your right hand.
6
7 **PAUL A. MCCORMICK,**
8 having first duly sworn or affirmed, was
9 examined and testified as follows:
10
11 **PRESIDING OFFICER:** Go ahead,
12 Mr. Buller.
13 **MR. BULLER:** And we will go through
14 the simple questions, Your Honor, and that
15 will be it for direct examination. And
16 we'll begin with Mr. McCormick's wellfield
17 yield report, Y-I-E-L-D.
18
19 **DIRECT EXAMINATION**
20 **BY MR. BULLER:**
21 Q Please state your name for the record.
22 A **Paul A. McCormick.**
23 Q Please state your employer and work address.
24 A **Burns & McDonnell Engineering, 9400 Ward
25 Parkway, Kansas City, Missouri 64114.**

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1 testimony of Mr. McCormick relating to his
2 wellfield yield report and direct testimony
3 into the record, which I understand has
4 already been contingently admitted but
5 would ask if there are any -- would ask
6 that it be admitted.
7 **PRESIDING OFFICER:** All right.
8 **MR. BULLER:** And that would be
9 Exhibit 2828, Cities' Exhibit 2828.
10 **PRESIDING OFFICER:** Okay.
11 **MR. LEE:** Your Honor, no objection
12 from Water PACK and Edwards County.
13 **PRESIDING OFFICER:** All right. And
14 just for clarification, you indicated this
15 was filed on May 29th, and I guess I'm
16 showing that it was filed in our E-file
17 system on May 30th, not a big deal but --
18 **MR. BULLER:** Your Honor, I believe
19 we submitted it on May 29th, and maybe the
20 file stamp didn't happen until the next
21 day, unless I'm mistaken, but we -- I know
22 we submitted it on the deadline and not
23 after the deadline, and I think the
24 deadline was May 29.
25 **PRESIDING OFFICER:** All right.

1 That's fine. I want to make sure that
2 we're identifying things properly there
3 so -- okay. And there's no objection, so
4 that will be admitted. And then do you
5 have additional questions you need to ask
6 him on direct examination before you tender
7 for cross?

8 **MR. BULLER:** My understanding, Your
9 Honor, is that I'm not supposed to ask any
10 substantive questions at this time. I
11 would offer Mr. McCormick to respond to any
12 questions you might have at this time.

13 **PRESIDING OFFICER:** All right. I do
14 not have any questions, so we'll see if the
15 other parties --

16 **MR. BULLER:** Thank you.

17 **PRESIDING OFFICER:** -- have anything
18 to ask.

19 **MR. BULLER:** The witness is
20 available for cross-examination.

21 **MR. COLE:** The City of Russell has
22 no questions.

23 **PRESIDING OFFICER:** Mr. Lee?

24 **MR. LEE:** Thank you, Your Honor.
25 Mr. McCormick, good morning.

1 contained within the scope of each
2 respective report.
3 **PRESIDING OFFICER:** Okay. Mr. Lee,
4 do you have any problem with kind of
5 addressing each of them separate? I'm all
6 for keeping the record as clear as possible
7 'cause, you know, I -- given what's
8 involved here, I'm speculating whatever
9 happens, one side may end up appealing, and
10 even if it goes past an appeal to the water
11 transfer panel, anything that would go out
12 to the court for judicial review, we just
13 need to make sure everything is as clear as
14 possible in the record. So whatever we can
15 do to make that record as complete and
16 clear as possible would be my preference.
17 **MR. LEE:** I appreciate that, Your
18 Honor, and I'm just looking here -- I
19 think, Your Honor, the questions that I
20 have almost entirely relate to the
21 un-admitted report at this moment so we
22 would simply pass him for cross-examination
23 in relation to this report.
24 **PRESIDING OFFICER:** Okay. So with
25 that, then, do you want to move on to the

1 **THE WITNESS:** Good morning.

2 **MR. LEE:** My name is Charles Lee, I
3 have -- you've been sitting here, I think,
4 throughout so I suspect you know that at
5 this point. So I have really just a few
6 questions for you, and it may overlap
7 between your two reports, frankly, but,
8 Your Honor, per Mr. Buller's information,
9 we're not going to object to admission of
10 the other report. So to the extent that I
11 may ask you about something that overlaps
12 those two reports, hopefully that's not an
13 issue for you.

14 **MR. BULLER:** Your Honor, I would say
15 that we offered the direct testimony of
16 Mr. McCormick relating to the wellfield
17 yield report; we've intentionally kept that
18 separate from the groundwater model report.
19 If it would be convenient for the Court
20 to -- for us to admit them both together,
21 we can, but that wouldn't be our
22 preference, we would prefer to address both
23 separately in order to, we think, make
24 Mr. McCormick's testimony clearer and more
25 concise and ensure that the questioning is

1 next report then?
2 **MR. BULLER:** Your Honor, in light of
3 the time and the apparent certainty of
4 Mr. Lee's cross-examination, it might make
5 sense to break for an early lunch and
6 resume Mr. McCormick's testimony after we
7 come back, if that works for the Court.
8 **PRESIDING OFFICER:** That will work,
9 why don't we come back at 1:00 o'clock,
10 we'll pick up at 1:00 o'clock, we'll go
11 back on the record then and go through the
12 formalities of admitting his prefiled
13 testimony for that second report on the
14 record and then we'll go to
15 cross-examination.
16 **MR. BULLER:** Sounds great, thank
17 you, Your Honor.
18 **PRESIDING OFFICER:** Okay. Thank
19 you, everybody, we will adjourn until
20 1:00 p.m.
21 (Thereupon, a lunch recess was
22 taken; whereupon the following was
23 had.)
24 **PRESIDING OFFICER:** Let's go ahead
25 and go back on the record now, it looks

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1 like we have everybody back in the room,
2 and we'll move on. And I believe,
3 Mr. Buller, you're going to address the
4 second report. And I guess also for
5 clarification, this will be the, I believe
6 it was 73 pages and not the 400-page one;
7 is that correct?
8 **MR. BULLER:** That is correct, Your
9 Honor, this will be the groundwater model
10 report. The previous one was the wellfield
11 yield report.
12 **PRESIDING OFFICER:** All right. All
13 right. Go ahead and you're still under
14 oath, Mr. McCormick, so ...
15 **THE WITNESS:** Yes, sir.
16 **BY MR. BULLER:**
17 Q Good afternoon, Mr. McCormick, thanks for
18 joining us. Please state your name for the
19 record.
20 A **Paul A. McCormick.**
21 Q Please state your employer and work address.
22 A **Burns & McDonnell Engineering, 9400 Ward Parkway**
23 **Kansas City, Missouri 64114.**
24 Q Mr. McCormick, if you could scoot up a little
25 bit closer to the microphone, I would appreciate

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1 it, thank you.
2 A **Sure.**
3 Q Please state your title and specialty.
4 A **My title is senior associate geological**
5 **engineer, and my specialty is hydrogeology.**
6 Q Are you a licensed professional engineer?
7 A **Yes, in Missouri, Kansas, Iowa, Nebraska, and**
8 **South Dakota.**
9 Q Did you author direct testimony filed in this
10 matter on May 29, 2023 titled Direct Testimony
11 of Paul McCormick, P.E. on Behalf of the Cities
12 of Hays and Russell, Kansas Relating to R9 Ranch
13 Modeling Results Summary?
14 A **Yes, I did.**
15 **MR. BULLER:** And I understand that
16 that particular filing may have been file
17 stamped on May 30th, 2023, for the record.
18 **PRESIDING OFFICER:** Yes, and I guess
19 for the record, that initial schedule that
20 we put out that was the one parties had
21 agreed to, May 29th was the date that was
22 on there, but that was actually a holiday
23 so it rolled everything to May 30th, then.
24 **MR. BULLER:** Thank you, Your Honor.
25 So I will correct the record briefly right

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1 now.
2 **PRESIDING OFFICER:** No problem.
3 **BY MR. BULLER:**
4 Q The prior wellfield yield report was actually
5 filed on May 30, 2023, and you are the author of
6 that report that we discussed before lunch,
7 correct?
8 A **That's correct.**
9 Q And this report, the groundwater model -- the R9
10 Ranch modeling results summary was filed on
11 May 29, 2023, and you are the author of that
12 report, correct?
13 A **That is correct.**
14 Q Have you had a chance to review those documents
15 prior to your appearance here today?
16 A **Yes, I have.**
17 Q As you sit here, do you have any changes or
18 corrections to make to those documents?
19 A **No, I do not.**
20 Q If I ask you the same questions today as appear
21 in your prefiled testimony, would your answers
22 and opinions remain the same?
23 A **Yes, they would.**
24 **MR. BULLER:** Your Honor, at this
25 time I would move to admit the prefiled

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1 testimony of Mr. McCormick into the record
2 relating to the R9 Ranch modeling results
3 summary.
4 **PRESIDING OFFICER:** All right. Any
5 objections?
6 **MR. LEE:** No objections from Water
7 PACK or Edwards County, Your Honor.
8 **PRESIDING OFFICER:** All right, thank
9 you, it will be admitted. So at this point
10 is Mr. McCormick available for
11 cross-examination on his testimony from
12 that prefiled testimony?
13 **MR. BULLER:** He is, Your Honor, and
14 just for the record, that -- the report we
15 are referring to is the Cities'
16 Exhibit 2828. Okay. Correction, for the
17 record, the modeling report that
18 Mr. McCormick is now addressing is Cities'
19 Exhibit 2827. I apologize. The witness is
20 available for cross-examination.
21 **MR. COLE:** City of Russell has no
22 questions.
23 **PRESIDING OFFICER:** Thank you,
24 Mr. Cole. Mr. Lee?
25 **MR. LEE:** Thank you, Your Honor.

1 **CROSS-EXAMINATION**

2 **BY MR. LEE:**

3 Q Mr. McCormick, since it's Friday I won't
4 introduce myself again. Up on the screen is
5 what I think is a quote from your direct
6 testimony which says that I am a senior
7 associate geological engineer with Burns &
8 McDonnell Engineering Company, which is from
9 page 2 of your testimony. A few questions about
10 that, what is a senior associate geological
11 engineer in the hierarchy at Burns & McDonnell?

12 A **Chief peon.**

13 Q I feel ya.

14 A **I've been there a few years, so it's just a -- a
15 ranking level of -- of seniority of number of
16 years you've worked, that sort of thing.**

17 Q And in terms of -- obviously it's an engineering
18 firm, but in terms of engineers at Burns &
19 McDonnell, where is that in the hierarchy?

20 A **It's pretty senior.**

21 Q Okay. And who is senior to you at Burns &
22 McDonnell? In terms of title?

23 A **The managing directors, the vice-presidents,
24 principals, most people.**

25 Q Okay. In terms of the -- well, let me ask a

1 there may not be relevance, but I
2 understand your point as well, Mr. Lee,
3 that you just want to kind of establish
4 where he is, is he down here on the level,
5 is he up here and where everything plays
6 out on the totem pole there.

7 **MR. LEE:** Thank you, Your Honor.

8 **MR. BULLER:** Thank you.

9 A **To answer your last question, Ron Coker is the
10 head of the water group.**

11 **BY MR. LEE:**

12 Q And are there people that you report to
13 directly?

14 A **Yes.**

15 Q And who would that be?

16 A **I report directly to Rachele Lowe, she approves
17 my time sheets and things like that. She
18 reports to our engineering director, Kerrie
19 Greenfelder. Kerrie reports to, I can't think
20 of his exact title, but Darin Brickman, who then
21 reports to Ron Coker.**

22 Q Okay, that's helpful. The second --

23 A **I have no managerial or personnel management
24 duties whatsoever, I'm purely technical.**

25 Q Okay. In terms of preparing your report, was

1 better question: You are, I assume, in some
2 form or some category of an engineering
3 department at Burns & McDonnell?

4 A **Yes, I am.**

5 Q And what is that department or category called?

6 A **We're in the water group.**

7 Q Okay.

8 A **And the hydrogeology group within the water
9 group.**

10 Q Okay. And who is the -- the person who is the
11 top of the hierarchy in the water group?

12 **MR. BULLER:** Objection, Your Honor,
13 how is this relevant to Mr. McCormick's
14 opinions in this matter?

15 **PRESIDING OFFICER:** Do you have a
16 response before I ...

17 **MR. LEE:** Well, Your Honor, I think
18 that background information about any
19 witness is something that we always go
20 through and I think it provides context.

21 **PRESIDING OFFICER:** Okay. I
22 understand your point, Mr. Buller, I'm
23 going to overrule the objection, though,
24 I'll let him explore that a little bit.

25 We're not going to go too far on it because

1 there a reviewer?

2 A **Yes.**

3 Q And who was that?

4 A **Daniel Clement helped me with review, Brian
5 Meier helped with review, and that was it for
6 the summary report.**

7 Q Were you the principal drafter?

8 A **I was the principal drafter.**

9 Q Okay. So looking at -- and can you see this?

10 A **Yes, I can.**

11 Q Okay. Looking at the screen, then,
12 Mr. McCormick, it goes on to say in your direct
13 testimony at page 5 that it was determined in
14 consultation with the chief engineer that the
15 increases and decreases described above were, in
16 quotes, reasonable, as those fluctuations are
17 less than 1 percent of the average saturated
18 thickness of the aquifer on the ranch. So kind
19 of backing up, in relation to that statement,
20 what is the average saturated thickness of the
21 aquifer?

22 A **At the ranch?**

23 Q What is it in concept?

24 A **About 100 feet on average across the ranch.**

25 Q Okay. And so when you talk about in your

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1 opinion that the fluctuations are less than
2 1 percent, what does that mean in terms of
3 actual fluctuations in terms of feet or
4 however -- whatever metric that is?
5 **A Well, the water level fluctuates --**
6 **MR. BULLER:** Objection, what page of
7 the report is this?
8 **MR. LEE:** It's direct, his direct
9 testimony.
10 **MR. BULLER:** At page 5 or
11 paragraph 5?
12 **MR. LEE:** Page 5.
13 **MR. BULLER:** Thank you.
14 **A Well, 1 percent of 100 would be 1 foot, plus or**
15 **minus 1 foot.**
16 **BY MR. LEE:**
17 **Q** Okay. Well, I get that. In terms of its
18 application to the aquifer that you're referring
19 to, is it possible to quantify that?
20 **A Could you clarify your question, please, I'm not**
21 **sure I follow you.**
22 **Q** Sure. If you're talking about fluctuations are
23 less than 1 percent of the average, is that
24 talking -- is that a volume metric?
25 **A No, it's a -- 1 foot.**

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1 **Q** Okay. So you're talking that this, because it's
2 an average of 100 feet, then it's 1 foot here
3 that you're referencing?
4 **A Yes. I think if I understand your question**
5 **correctly, yes, since the average saturated**
6 **thickness is 100 feet, then the fluctuation of**
7 **less than 1 percent would be less than 1 foot.**
8 **Q** Okay. So you -- at the first part of your
9 statement, you say that it was determined in
10 consultation with the chief engineer, who was
11 the chief engineer?
12 **A David Barfield.**
13 **Q** And how often did you meet with him?
14 **A Several times, every couple of months. I'd have**
15 **to look at my calendar to give you an exact.**
16 **Q** I'm not looking for exact, what's your estimate
17 of how many times?
18 **A Oh, three or four.**
19 **Q** And when you met with him, did you meet with
20 him -- when you met with him, did you meet with
21 him privately?
22 **A No.**
23 **Q** And who was there in each instance?
24 **A I don't remember attendees at each meeting.**
25 **Typically, we'd have a couple of people from**

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1 **Burns & Mac, myself, Brian Meier, Daniel**
2 **Clement, David Barfield was there, I believe**
3 **Chris Beightel attended one meeting, I'm not**
4 **sure. Sam Perkins, their modeler, attended, I**
5 **believe I remember him at one, at least one**
6 **meeting. And I honestly couldn't tell you who**
7 **else was at all the meetings.**
8 **Q** So in each meeting, it sounds as if that would
9 have been just Burns & McDonnell personnel and
10 Kansas Department of Agriculture personnel?
11 **A I would -- to be completely accurate, I'd need**
12 **to see the -- a list of who attended, but that's**
13 **sort of my recollection is that's who was at the**
14 **meetings.**
15 **Q** Do you have a list of who would have attended
16 those meetings?
17 **A I might if I went back through my notes. I**
18 **can't say for sure that I do.**
19 **Q** Was it your practice in taking notes to show who
20 the attendees were?
21 **A I can't say that I took minutes at the meetings,**
22 **which would include a list of attendees.**
23 **Q** So it sounds to me, Mr. McCormick, as if your
24 assumption would be that the only people who
25 attended these meetings would be Burns &

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1 McDonnell personnel and folks from the
2 Department of Agriculture?
3 **A That is who I recall being at the meetings, but**
4 **I can't say that there weren't other people**
5 **there.**
6 **Q** Fair enough. This is actually from your report,
7 Mr. McCormick, at page 3-2, it says, the chief
8 engineer and DWR's hydrologist met with Burns &
9 McDonnell on multiple occasions and consulted
10 extensively. Does that sound like more than
11 four times to you?
12 **A It doesn't state a number.**
13 **Q** Okay. What -- how would you interpret that?
14 **A That we met on multiple occasions and consulted**
15 **extensively.**
16 **Q** And what were you consulting about?
17 **A Oh, plans for how to proceed. When we kick off**
18 **a project, we tend to meet with the regulators**
19 **to make sure that we're going to meet their**
20 **expectations of what they need to approve or**
21 **disapprove, make sure that our plans and -- what**
22 **we plan to do is going to be adequate, you know,**
23 **what's going to get us through the path in the**
24 **most expeditious manner and make sure that we**
25 **provide everything that's necessary.**

1 Q And what information in a generalized sense, at
 2 least, were you providing to the chief engineer?
 3 A **We started off, we talked about different models**
 4 **that were available in the area and what would**
 5 **be the best tool, settled on the GMD5 model. We**
 6 **talked about the best way to meet their**
 7 **expectations for showing what the impacts of**
 8 **making these changes would be, talked about**
 9 **different types of data and accuracy of data and**
 10 **where to get data, things along those lines.**
 11 Q Was the goal in talking to the chief engineer,
 12 Mr. McCormick, to facilitate approval of what
 13 your client wanted to do?
 14 A **It was to make sure we met the chief engineer's**
 15 **expectations that we would provide the data that**
 16 **he would need to approve it.**
 17 Q But you were retained -- when I say you, Burns &
 18 McDonnell was retained in order to develop a
 19 plan that would allow transfer of water from the
 20 R9 Ranch, were you not?
 21 A **We were retained to determine the sustainable**
 22 **yield of the ranch. We were not specifically**
 23 **retained to complete a transfer application for**
 24 **them.**
 25 Q Did anyone from the City of Hays ever say to you

1 A **Yes.**
 2 Q Do you respect his opinions?
 3 A **I do.**
 4 Q This is taken from a report, testimony that
 5 Mr. Romero provided in this proceeding, and he
 6 states at page 3-4 of his rebuttal that the
 7 BG -- BGW groundwater model was premised on the
 8 concept of increased groundwater recharge from
 9 precipitation on irrigated lands. To be
 10 consistent with this premise when evaluating --
 11 let me back up because really I'm -- this is
 12 misleading to you. Mr. Romero was asked to
 13 critique Steve Larson's report.
 14 A **Yes.**
 15 Q And which is -- this is what he is saying about
 16 it. And to take up where I left off, to be
 17 consistent with this premise when evaluating a
 18 transfer, the groundwater recharge on irrigated
 19 land must be reduced when that land is no longer
 20 irrigated. That's quoting Mr. Larson. And
 21 Mr. Romero goes on to say, I agree with
 22 Mr. Larson's description. Do you agree with
 23 Mr. Larson's description?
 24 **MR. BULLER:** I'm going to object to
 25 this as a mischaracterization of

1 personally that they would like to have the
 2 transfer water application -- water transfer
 3 application approved?
 4 A **Yes.**
 5 Q This goes on to say that during that process,
 6 meaning the extensive consultation, that the
 7 Division of Water Resources vetted, provided
 8 input, and endorsed Burns & McDonnell's modeling
 9 methodology. Was the vetting, Mr. McCormick,
 10 was that done in writing or verbally or both?
 11 A **I'm honestly not sure that there was something**
 12 **written. We exchanged some emails, so I suspect**
 13 **there was something in there that might have**
 14 **been written, but I don't believe we ever**
 15 **provided a list of this is what we're going to**
 16 **do, do you approve all of this, and they said**
 17 **yes, or something like that.**
 18 Q So it sounds as if most of this was
 19 conversational. Is that a fair statement?
 20 A **I think it's fair to say that a good deal of it**
 21 **was conversational.**
 22 Q Okay. If we can look at the next page. Do you
 23 know who Dave Romero is?
 24 A **I do.**
 25 Q Have you met him?

1 Mr. Romero's rebuttal report, that -- that
 2 quotation is not in Mr. Romero's rebuttal
 3 report. If I'm mistaken, please display
 4 that report on the screen.
 5 **MR. LEE:** You don't think that's in
 6 the testimony?
 7 **MR. BULLER:** I'm looking at pages 3
 8 and 4 of Mr. Romero's rebuttal report, and
 9 I do not see anywhere where he's -- where
 10 that language is there, but if I'm
 11 mistaken, please correct me.
 12 **MR. LEE:** Well, I think we can find
 13 that, if you'll indulge us, Your Honor.
 14 **PRESIDING OFFICER:** Okay. We'll
 15 take a moment here. Rather get everything
 16 correct than rush through something.
 17 **MR. LEE:** And if you can just make
 18 that a little larger, Myndee.
 19 Your Honor, this is Dave Romero's
 20 rebuttal report, let me read for the record
 21 what it says. He's answering a question
 22 where he says, Steve Larson writes on
 23 page 3 of his report, the BMCD projected
 24 future scenario does not account for a
 25 reduction in groundwater recharge

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1 associated with changing the status of
2 lands in the R9 Ranch from irrigated to
3 nonirrigated. The BGW groundwater model
4 was premised on the concept of increased
5 groundwater recharge from precipitation on
6 irrigated lands. To be consistent with
7 this premise when evaluating a transfer,
8 the groundwater recharge on irrigated land
9 must be reduced when that land is no longer
10 irrigated. He says, I agree with
11 Mr. Larson's description of this
12 hydrological concept.

13 **PRESIDING OFFICER:** Okay. And just
14 for clarification, I believe you were on
15 page 3 of Mr. Romero's report with that
16 quoted paragraph. Are you on line 54, is
17 that it?

18 **MR. LEE:** I believe so, yes.

19 **PRESIDING OFFICER:** Okay.

20 **MR. BULLER:** And now can we go back
21 to the black screen?

22 **MR. LEE:** We may.

23 **MR. BULLER:** So it's not a quotation
24 by Mr. Romero, it's a quotation of Larson
25 included in Mr. Romero's rebuttal.

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1 **MR. LEE:** It doesn't say that it is,
2 and that's just what I said to
3 Mr. McCormick, that it is a quote from
4 Mr. Larson that Mr. Romero is agreeing
5 with.

6 **MR. BULLER:** Okay. Ordinarily I
7 would need a quotation parenthetical but
8 understood.

9 **PRESIDING OFFICER:** Okay. I think
10 this resolves itself then with that.

11 **MR. BULLER:** Yes.

12 **PRESIDING OFFICER:** And it's
13 clarified for the record that it's
14 Mr. Romero's quotation of Mr. Larson?

15 **MR. BULLER:** Yes.

16 **PRESIDING OFFICER:** All right. Go
17 ahead.

18 **BY MR. LEE:**

19 Q So I'm glad you're still with us. The -- you
20 can see that, I take it?

21 A **I can see the quote, yes.**

22 Q Do you agree with it?

23 A **I do not. I don't agree with the**
24 **characterization of it, and I don't agree with**
25 **who said it.**

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1 Q Well, let's take that one at a time. When you
2 say you don't agree with the characterization,
3 what do you mean by that?

4 A **I don't agree that the BGW groundwater model was**
5 **premised on the concept of increased groundwater**
6 **recharge from precipitation on irrigated lands,**
7 **and I believe that if you went back to**
8 **Mr. Romero's rebuttal report, he agrees with the**
9 **hydrologic concept of increased groundwater**
10 **recharge from precipitation on irrigated land,**
11 **but I don't believe he's stating that he agrees**
12 **with this quote.**

13 Q Well, we can go back and look again. Do you see
14 that?

15 A **It's a little fuzzy but --**

16 Q Okay. Let me help and I'll try and be pointed
17 the right direction here.

18 A **Okay.**

19 Q Here, Mr. McCormick, is the quote, you can see
20 that?

21 A **Yes, I can see that.**

22 Q And then it goes on to say, I agree with
23 Mr. Larson's description of this hydrologic
24 concept?

25 A **Yes.**

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1 Q Okay.

2 A **And I also agree with that hydrologic concept --**

3 Q Okay.

4 A **-- that precipitation can be enhanced on**
5 **irrigated lands in some cases.**

6 Q Okay. Let's go back to the slide. So let's
7 just focus, if we can, and maybe get a little
8 bit of ...

9 Back to the slide we were looking at,
10 Myndee.

11 Let's just focus on the part that is in
12 red, Mr. McCormick. I think what you're saying
13 is that if I were to quote only that highlighted
14 part, the groundwater recharge on irrigated land
15 must be reduced when that land is no longer
16 irrigated, you're saying you agree with that?

17 A **I agree with the concept that in some cases the**
18 **difference between irrigation -- irrigated and**
19 **nonirrigated land there is a difference in**
20 **recharge. I believe it is a site specific**
21 **concept that must be reviewed and applied**
22 **correctly.**

23 Q What's the -- what's the -- when you say site
24 specific concept, what does that mean to you?

25 A **It means it's dependent on where the recharge is**

1 **being applied and the irrigation is being**
2 **applied and how it's being applied.**
3 Q So when you have these questions, is it
4 important to have a site specific review?
5 A **It is one of the hardest concepts to quantify,**
6 **and it needs to -- you need to apply it in the**
7 **proper case.**
8 Q So sometimes it would be, I think you're saying?
9 A **Sometimes it would be what?**
10 Q Important to have a site specific analysis?
11 A **I would say it is always important to know what**
12 **site you're talking about.**
13 Q And would it be important in some cases to have
14 a site specific analysis?
15 A **I would need to know what you mean by a site**
16 **specific analysis.**
17 Q What do you mean by site specific when you talk
18 about it?
19 A **I mean you need to consider the application that**
20 **you're using it in.**
21 Q I don't understand your answer, I'm sorry?
22 A **You need to be cognizant of the area and the**
23 **conditions in the area that you're applying the**
24 **concept.**
25 Q So in order to be cognizant of those items, then

1 **some of it's moistening the soil, and some of**
2 **it's infiltrating, that's what they're talking**
3 **about when they're talking about irrigation**
4 **return flows. They're not talking about**
5 **rainfall precipitation recharge.**
6 Q Well, let's go back to the slide that's
7 highlighted in red. In terms of this concept,
8 Mr. McCormick, that the groundwater recharge on
9 irrigated land must be reduced when that land is
10 no longer irrigated, was that a concept that
11 Burns & McDonnell took into account when it was
12 doing its work?
13 A **Meaning that -- meaning that the concept of**
14 **precipitation recharge enhanced --**
15 Q Well, just to be sure we're talking about the
16 same thing, and I apologize for reading this
17 again, but just to avoid uncertainty, the
18 groundwater recharge on irrigated land must be
19 reduced when that land is no longer irrigated.
20 Was that, what I just read, was that
21 incorporated into the analysis and report that
22 Burns & McDonnell applied?
23 A **In the concept of the irrigation return flows,**
24 **yes, it was.**
25 Q Okay. And do you recall, at least in general,

1 you have to understand the area that is in
2 question, correct?
3 A **You need to know where it is being applied, yes.**
4 Q Okay. So if we could look at the next screen.
5 This is a Kansas Geological Survey quote.
6 The -- it's the -- it is authored by those on
7 the left, and the hyperlink to the article is
8 also on the left. And it states that irrigation
9 return flows, the infiltration of irrigation
10 water to the water table has been determined to
11 be a significant recharge component in several
12 studies, which are then listed. This factor
13 includes return flow of the sprinkler or flood
14 irrigation water plus leakage from irrigation
15 diversion canals and ditches. Do you agree with
16 those statements?
17 A **Yes. I would state that the irrigation return**
18 **flows that they're talking about here are a**
19 **different thing than what was being discussed in**
20 **the previous quote.**
21 Q And how are they different?
22 A **Irrigation return flows are a -- when water is**
23 **applied for irrigation, a portion of it directly**
24 **infiltrates, you know, you're putting water on**
25 **the ground, some of it's going to your crop,**

1 where in your report it says that?
2 A **It says it several times in my report. When**
3 **we're talking about the -- describing the**
4 **scenarios, it says that the irrigation wells**
5 **were removed, I'm paraphrasing here, it's not**
6 **word for word.**
7 Q That's okay.
8 A **The irrigation wells and their associated**
9 **irrigation return flows were removed.**
10 Q And that says that more than once by your
11 recollection?
12 A **It says it several times in the report, yes.**
13 Q Okay. We'll review the report. Are you,
14 Mr. McCormick, qualified to create a groundwater
15 model?
16 A **Yes, I am.**
17 Q Do you know whether David Barfield is qualified
18 to do so?
19 A **I can't speak to David's qualifications.**
20 Q Have you ever known that he's created a
21 groundwater model?
22 A **I do not know that for sure. I know he's worked**
23 **with numerous models, in the development of**
24 **numerous models, but I don't know if he's**
25 **actually ever created one himself.**

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1 Q Okay. Thank you for your time.
2
3 **REDIRECT EXAMINATION**
4 **BY MR. BULLER:**
5 Q Mr. McCormick, you were asked about Dave
6 Romero's rebuttal report, and Mr. Lee displayed
7 a quotation that Mr. Romero was quoting from
8 Larson -- Mr. Larson's report on the screen and
9 was asking you several questions about that.
10 Jami, could you pull up Mr. Romero's
11 rebuttal report? Let's show the document here.
12 Go to page 3, if you would. Scroll down to the
13 bottom of page 3, if you would. Sorry about
14 that.
15 On the bottom of page 3, scroll down just a
16 little bit more, beginning at line 67, question:
17 Do you concur with the methodology Larson used
18 to rerun the various simulations of potential
19 future conditions considered by Burns &
20 McDonnell reducing the amount of recharge in the
21 R9 Ranchlands that would not be irrigated under
22 future municipal pumping conditions?
23 Did I read that correctly, sir?
24 **A I think so, yes.**
25 Q Beginning at line 71 of page 3, answer: I have

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1 not developed an alternative methodology or
2 reviewed Mr. Larson's analysis at the level of
3 detail associated with examining the actual
4 input and output associated with the model
5 simulations. However, my review of his reported
6 methodology set forth on pages 4 and 5 of his
7 report are compatible with my expectations. To
8 that extent, I concur with Mr. Larson's
9 methodology.
10 Did I read that correctly?
11 **A I believe so.**
12 Q Does it appear to you that Mr. Romero ran the
13 model in evaluating Mr. Larson's conclusions and
14 methodology?
15 **A No, I believe he specifically says he did not.**
16 Q What -- why do you say it specifically says he
17 did not? Explain that to those of us who aren't
18 familiar with modeling -- groundwater modeling
19 terminology.
20 And, Jami, if you could scroll back up to
21 the first -- or the previous page.
22 **A Yeah, it says --**
23 Q Zoom in just a little bit at line 71, please.
24 **A Thank, it's a funny angle for me. At the level**
25 **of detail associated with examining the actual**

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1 **input and output associated with the model**
2 **files. Yeah, model simulations.**
3 Q Okay. Let me try that just to clarify, okay?
4 Go back up to the previous page and I'll try to
5 read it and you can tell me which terms --
6 **A Thank you.**
7 Q -- that you're referring to. Answer, beginning
8 at line 71, I have not developed an alternative
9 methodology or reviewed Mr. Larson's analysis at
10 the level of detail associated with examining
11 the actual input and output associated with the
12 model simulations.
13 **A The input and output would be the files that**
14 **actually run the model and then come out of the**
15 **model once it's run. So if he has not examined**
16 **the inputs and outputs, that would imply to me**
17 **that he has not run that simulation to verify**
18 **Mr. Larson's results.**
19 Q So Mr. Larson's results were not verified by
20 Mr. Larson, is that the way you understand this
21 language?
22 **A I believe you misspoke, I'm sure Mr. Larson**
23 **verified the results of his own runs. It**
24 **appears to me that Mr. Romero did not verify the**
25 **results of Mr. Larson's runs.**

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1 Q Thank you for correcting me, you're right, I did
2 misspeak. You were asked a question about
3 saturated thickness on the ranch by Mr. Lee. Do
4 you recall that?
5 **A I do.**
6 Q Okay, Jami pull up Exhibit 2666. And, Jeff, I'm
7 looking for the cross section of the R9 Ranch.
8 Thank you.
9 Can you see this okay, Mr. McCormick?
10 **A Yes, I can.**
11 Q And I have Exhibit -- Cities' Exhibit 2666
12 displayed on the screen and we've got a foam
13 board copy of 2666 in front of you here in hard
14 form, Mr. McCormick. So examining 2666 --
15 Jami, zoom in a little bit on the top third
16 of the screen with the illustration up there,
17 and -- and, actually, let's go down to the
18 bottom left-hand corner, the image of the --
19 okay.
20 So that -- in the bottom left-hand corner
21 of the ranch, that is the satellite -- I'm
22 sorry, the bottom left-hand corner of this
23 exhibit, that's a satellite image of the ranch,
24 is that -- is that what you see, Mr. McCormick?
25 **A Yes, it is.**

1 Q Okay. And there is a purple line running from
2 left to right across roughly the middle of that
3 image, is that -- is that what you see, sir?

4 A Yes.

5 Q Okay. Moving back up to the top portion of this
6 image, okay, and zoom out just a little bit,
7 Jami.

8 Okay. There is on the top left an
9 indication of west, top right indication of
10 east, back to the top left indication of A, and
11 top right indication of A prime?

12 A Yeah.

13 Q Is that what you would say?

14 A Yeah.

15 Q And so describe for me, if you would, what
16 the -- what that illustration is showing.

17 A **That's a cross section through the R9 Ranch at
18 the location of that purple line. You can see
19 A and A prime on the aerial image, those
20 correspond with the ends of the cross sections
21 so that you can get an idea of the direction and
22 where things are located. You can see on the
23 cross section the Arkansas River is on the west
24 near A, and then the cross section extends
25 across the ranch to the east to the location of**

1 report?

2 A **Yes, it's in there.**

3 Q Okay. So when -- you have 140 feet of saturated
4 thickness, explain that to us in lay terms so
5 that, you know, we can sort of understand what
6 that means. Not from a groundwater model
7 perspective but try to dumb it down so that I
8 can understand it.

9 A **Okay. It's where the water is.**

10 Q Thanks.

11 A **Sand and gravel of the aquifer extends for some
12 thickness. The saturated thickness is the
13 portion of that thickness that is saturated with
14 water to where it is an extractable, I'm going
15 to say commodity; I'm not sure that's the best
16 term but I'm going to use commodity, the water
17 is extractable.**

18 Q When you can pump water out?

19 A Yes.

20 Q And so is it -- is it correct, then, and tell me
21 if this is incorrect, please, when you have
22 140 feet of saturated thickness, that's like
23 literally a foot, 12 inches is 1 foot of
24 saturated thickness, 24 inches is 2 feet of
25 saturated thickness, 36 inches is 3 feet of

1 A prime.

2 Q And does that cross section indicate the
3 saturated thickness along that line that's
4 running from A to A prime?

5 A **It is illustrated on there, yes.**

6 Q Can you please describe that for the record.

7 A **Near the Arkansas River, on the west side, the
8 saturated thickness is approximately 45 feet,
9 and on the east side near A -- the point A
10 prime, the saturated thickness is 140 feet
11 approximately, and the average thickness across
12 there is approximately 100 feet.**

13 Q And that 100-foot average saturated thickness is
14 not reflected on this exhibit, is it?

15 A **It is not written on there, no.**

16 Q Then how do you know what the average saturated
17 thickness on the ranch is?

18 A **That's a calculation that we've done.**

19 Q Okay. And was that figure included in your
20 groundwater model report, sir?

21 A **This cross-section figure is not included in my
22 groundwater model report.**

23 Q Okay. Was the information relating to the
24 average saturated thickness on the ranch of
25 100 feet included in your groundwater model

1 saturated thickness, and I'm not going to go all
2 the way up to 140, but that's what that is
3 referring to. Is that accurate?

4 A **That is correct, yes.**

5 Q Is that accurate?

6 A **Yes.**

7 Q So let's talk about saturated thickness a little
8 bit more on the ranch.

9 So, Jami, if you could pull up Exhibit
10 2827, that's Mr. McCormick's groundwater model
11 report. And go to page 103726. That should be
12 figure 4-6.

13 And, actually, do you remember the figure
14 that is the maximum pumping figure, Paul?

15 A **What's --**

16 Q That is the -- not the maximum pumping, that's
17 the operations. I was looking for --

18 A **It would be 4-5 or 4-4 then.**

19 Q Okay. So it would be up a page. Keep going.

20 A **Keep going.**

21 Q There you go.

22 A **Yep.**

23 Q Okay. So here when you -- please describe this
24 figure for us, sir.

25 A **This is a contour, water level contour map, it's**

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1 **showing changes in water level caused by**
2 **municipal pumping on the ranch as compared to**
3 **the documented irrigation pumping on the ranch.**
4 Q Okay. And in this figure 4-3 down on the bottom
5 right-hand corner states that Model generated
6 difference in water levels, scenario two,
7 historic irrigation pumping versus proposed
8 municipal wells pumping 4800 acre-feet per year,
9 1991 to 2007 simulation. Did I read that
10 correctly to the best of your ability to see?
11 A **Yes, I believe you did. So this would be the**
12 **short-term --**
13 Q Right.
14 A **-- scenario.**
15 Q This -- this is the short-term maximum pumping
16 scenario where the Cities are pumping
17 continuously, 24/7/365, year after year their
18 maximal allocated quantity under the
19 4800 acre-feet per year average quantity
20 limitation, correct?
21 A **That is correct.**
22 Q Okay. So the Cities can't pump any more than
23 under this scenario for 17 years, that's what
24 this is showing, the water level impacts under
25 that scenario; is that --

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1 A **That is correct.**
2 Q Okay. And what I'm looking for now is the
3 figure showing the 51-year simulation of the
4 maximum irrigation pumping and I'm going --
5 **MR. LEE:** Your Honor, objection,
6 this is beyond the scope.
7 **MR. BULLER:** Your Honor, he asked
8 about saturated thickness, this is relating
9 directly to saturated thickness.
10 **MR. LEE:** It doesn't sound like it
11 to me, Your Honor, he is talking about a
12 51-year simulation.
13 **MR. BULLER:** The 51 year -- sorry.
14 **PRESIDING OFFICER:** I'm going to
15 overrule the objection, I'll give you a few
16 moments to show me that this is related to
17 that saturation.
18 **MR. BULLER:** Gotcha.
19 **PRESIDING OFFICER:** Mr. Lee, you can
20 raise that objection again if he doesn't
21 get there here within a short time.
22 **MR. LEE:** Thank you, Your Honor.
23 **BY MR. BULLER:**
24 Q Okay, Jami, page 103726.
25 Mr. McCormick, this is figure 4-6 of your

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1 groundwater model report showing the impacts of
2 51 years of maximum pumping under the Cities'
3 4800 acre-feet limitation; is that true?
4 A **Yes, in reading the title.**
5 Q Jami, please zoom in to this area of the ranch
6 over here on this side right there. Okay. And
7 down just a little bit so we can see the contour
8 line.
9 Okay. Mr. McCormick, in this area of the
10 ranch, what does your modeling report show with
11 respect to the decline, and how is that related
12 to the saturated thickness in that area?
13 A **My model report shows a decline of .4 feet**
14 **caused by -- as a difference of -- the change in**
15 **water level caused by changing from irrigation**
16 **pumping to municipal pumping, and in that area,**
17 **the saturated thickness of the aquifer is**
18 **approximately 140 feet.**
19 Q Okay. So about how much of the saturated
20 thickness, if you know, in percentage terms
21 is -- of 140 feet is 0.4 decline?
22 A **Just doing really quick math in my head, less**
23 **than .3 percent.**
24 Q I show -- okay, well, I won't hold you to that.
25 So -- but that 0.4 is important related to

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1 saturated thickness and explain to us why, when
2 you're looking at the decline in water level,
3 why is reviewing that in the context of
4 saturated thickness relevant?
5 A **You -- you try to avoid reducing your saturated**
6 **thickness; obviously, when pumping it's going to**
7 **be reduced some. But that's a minuscule amount,**
8 **it's covered by regular fluctuations in the**
9 **water table. It is not a significant detriment**
10 **to the aquifer as a whole.**
11 Q And so -- and that's after 51 years of maximum
12 pumping by the Cities, correct?
13 A **That is correct.**
14 Q So after 51 years of maximum pumping -- so back
15 to the saturated thickness, a 1-foot -- 1-foot
16 decline in saturated thickness would be
17 impactful if you only have 5 feet of saturated
18 thickness; is that true?
19 A **That's true.**
20 Q But when you have 140 feet of saturated
21 thickness, not so much?
22 A **Not so much.**
23 Q Not at all really?
24 A **Very small percentage change.**
25 Q Okay. And, Jami, if you could go to 103722.

1 Please identify this figure, if you would.
2 **A This is -- could you scroll down so I could read**
3 **the title, please, Jami. This is our predictive**
4 **model simulated recharge and pumping scenarios**
5 **3, 4, and 5, this illustrates what municipal**
6 **pumping we estimated in the model scenarios 3,**
7 **4, and 5.**
8 Q Okay. And this pink line with X's overlaid,
9 that's the 4800-acre-feet-per-year line?
10 **A That's correct.**
11 Q And this is 51 years, this is a 51-year graph?
12 **A That's correct.**
13 Q What is this blue line that begins around 1300
14 and increases every decade?
15 **A That is the predicted actual pumping under**
16 **operational conditions if we develop the R9**
17 **Ranch.**
18 Q And what do you mean by operational conditions?
19 **A That's what we -- the anticipated demand in**
20 **pumping from the ranch.**
21 Q It's not 4800 acre-feet per year?
22 **A No, it is not.**
23 Q In fact, even after 51 years, it doesn't get up
24 to 4800 acre-feet, does it?
25 **A No, it does not.**

1 **A Yes, they do.**
2 Q Okay.
3 **A Quite a few of them do.**
4 Q Would you say it's common, infrequent, how would
5 you characterize the frequency of that situation
6 when you're meeting with regulatory reviewers
7 relating to those projects?
8 **A It's standard practice for us --**
9 Q Okay.
10 **A -- to meet with the regulators and make sure**
11 **that our work is going to meet their**
12 **expectations --**
13 Q Okay.
14 **A -- so that we can get through the permitting**
15 **process with them.**
16 Q Okay. So we know you've met with members of DWR
17 in the course of developing the groundwater
18 model for the change application proceeding; is
19 that true?
20 **A That is true.**
21 Q Mr. Lee asked you about some of those meetings?
22 **A Yes.**
23 Q Have you met with DWR in the course of other
24 work that you've done?
25 **A Often, very often.**

1 Q Okay. So in the operational scenario, would the
2 impact to the water level be -- cause a water
3 level decline similar to the maximum pump, how
4 would that impact the water level in relation to
5 saturated thickness?
6 **A Less pumping would result in less -- draw down**
7 **less declines.**
8 Q Under the operational scenario, are water levels
9 improved or -- do water levels go up or do they
10 go down when you compare them to the Cities'
11 historic irrigation pumping?
12 **A They actually go up.**
13 Q Mr. Lee asked you a series of questions about
14 meetings with -- meetings that you had in the
15 course of developing your groundwater model
16 report. Do you remember that?
17 **A Yes, I do.**
18 Q Have you had the opportunity to work on other
19 projects as a hydrogeologist for Burns &
20 McDonnell?
21 **A Yes, I have.**
22 Q Have you -- and have you had an -- in the course
23 of those -- that work, do some of those projects
24 involve regulatory review and approval of the
25 projects?

1 Q Have you ever met with Kansas Department of
2 Health and Environment in the course of work
3 that you've done when they have review and
4 approval authority?
5 **A Regularly, often.**
6 Q Have you met with any other state agencies in
7 Kansas or elsewhere in the course of your work?
8 **A I would say we meet with the state regulators in**
9 **every state that we work. I personally --**
10 **Wisconsin, Texas, Oklahoma, Idaho, any state**
11 **that we're working in, we make sure that we're**
12 **meeting the regulators' expectations and have**
13 **consultations with them to plan our process so**
14 **that we can accomplish that.**
15 Q Is that a part -- is that standard operating
16 procedure when you're working on projects that
17 entail regulatory review and approval?
18 **A Yes. Yes, it is.**
19 Q Have you ever worked on a project that involved
20 regulatory review or approval in which you did
21 not meet and collaborate with the reviewing
22 agency?
23 **A I can't think of any. I think there have been**
24 **occasions where the client preferred to meet**
25 **directly with them and we advised the client and**

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1 they met, but I -- I think in all cases that we
2 have at least had consultations of some sort
3 with the regulatory agencies.
4 Q What is the purpose behind meeting with the
5 regulatory agencies in these projects?
6 A It's in our client's benefit to make sure that
7 the work that we're going to do is appropriate
8 for meeting the regulatory agency's
9 expectations. Otherwise, we could go down a
10 pathway and do a whole bunch of work that costs
11 the client money and time and effort on our part
12 that is wasted because it was either something
13 that the regulatory authority did not need, did
14 not want, or was not the correct path that they
15 wanted us to take to provide the information
16 that they needed.
17 Q Mr. Lee asked you about communications, and
18 I'm -- I believe it was a quotation from maybe
19 the Master Order, I can't recall, relating to
20 communications between you and DWR or maybe it
21 was Burns & McDonnell, not you, but Burns &
22 McDonnell and DWR relating to this meeting and
23 review process that we've been discussing, and
24 you couldn't recall any written work product
25 that -- or written work that DWR provided as far

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1 as technical review of your report and -- do you
2 recall that testimony?
3 A I believe he was referring to technical vetting,
4 and I can't remember the other terms that were
5 listed off the top of my head, but it was --
6 yeah, technical documentation of the process and
7 the conclusions reached.
8 Q And -- and just to clarify about these meetings
9 that Mr. Lee asked you about, none of these
10 meetings occurred during the water transfer
11 proceeding, correct?
12 A No, no, we haven't met with -- this was when we
13 were developing the concept of what we needed to
14 model to provide the information that DWR would
15 need.
16 Q And that was during the change application
17 proceeding, correct?
18 A That is correct.
19 Q And so regarding this vetting, did DWR provide a
20 technical assessment of your groundwater
21 modeling work?
22 A Yes, they did.
23 Q And was that in written form?
24 A Yes, it was.
25 Q Who was the author of that document?

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1 A DWR's modeler, Sam Perkins.
2 Q And what did -- do you know Mr. Perkins?
3 A I do.
4 Q Have you had experience to work with Mr. Perkins
5 in the past?
6 A Yes, I have.
7 Q Okay. And is he -- is he a groundwater modeler?
8 A He is, he's an exceptional groundwater modeler.
9 Q Okay. And what did Mr. Perkins' technical
10 assessment of your groundwater model conclude?
11 MR. LEE: Your Honor, I would renew
12 my objection on the same basis, beyond the
13 scope.
14 PRESIDING OFFICER: Respond.
15 MR. BULLER: Sure, this isn't about
16 saturated thickness anymore. This is now
17 about Mr. Lee's questions relating to no
18 written product vetting Mr. McCormick's
19 work, that's precisely what Mr. Perkins did
20 in the technical assessment.
21 PRESIDING OFFICER: Go ahead,
22 Mr. Lee.
23 MR. LEE: Thank you, Your Honor.
24 The question was was the -- was the vetting
25 done in person or in writing or both.

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1 That's different than what Mr. Buller is
2 talking about here. He's looking for
3 documents, seeking documents; my question
4 simply was, was it in writing or was it
5 verbal.
6 MR. BULLER: We can read back the
7 transcript, but I recall a follow-up
8 question by Mr. Lee in which he said, it
9 sounds like most of these vetting were done
10 verbally or orally, and I'm responding to
11 that question.
12 PRESIDING OFFICER: I think I did
13 have a note of that, and the answer was
14 something about he couldn't say for sure,
15 they exchanged some email but large part
16 were conversational. So I'll allow you to
17 answer the question, I'll overrule the
18 objection, allow you to take a few steps
19 with that, make sure you're not going too
20 far off the basis of that -- of Mr. Lee's
21 cross.
22 MR. BULLER: Understood.
23 BY MR. BULLER:
24 Q What was the conclusion of Mr. Perkins'
25 technical assessment, which was a written

1 document, of your groundwater modeling work?

2 **A I think he agreed with it, he agreed with my**

3 **conclusions.**

4 **Q** Okay. Moving on. Mr. Lee asked you a question

5 or quoted a quotation from Mr. Larson's report

6 relating to an argument that the Balleau

7 groundwater model was premised on, I'll call it

8 irrigation enhanced recharge. Do you recall

9 that?

10 **A I do.**

11 **Q** Do you -- have you had an opportunity to review

12 Mr. Balleau's groundwater model report?

13 **A I have, I've reviewed it quite a number of times**

14 **and referenced it several.**

15 **Q** So you're familiar with Mr. Balleau's

16 groundwater model report?

17 **A Yes.**

18 **Q** And I understand you don't have it in front of

19 you, but to your recollection and based on

20 your -- as you sit here right now, do you agree

21 with the statement that Balleau's groundwater

22 model was premised on this notion of irrigation

23 enhanced recharge?

24 **A No, I do not.**

25 **Q** Do you recall Mr. Balleau ever using the words

1 enhanced recharge would be a factor on R9 Ranch?

2 **A I would say no.**

3 **Q** Have you been on the R9 Ranch?

4 **A I have.**

5 **Q** How many times?

6 **A At least three, probably more that I can think**

7 **of.**

8 **Q** Were you present for Mr. Crispin's testimony

9 this morning?

10 **A I was.**

11 **Q** Did you see some of the photographs taken from

12 the R9 Ranch that were displayed during his

13 testimony?

14 **A I did.**

15 **Q** Did those photographs comport with your

16 understanding and recollection of the soil

17 composition on the R9 Ranch based on your

18 experience?

19 **A Yes.**

20 **Q** Would you say that the soil composition on the

21 ranch would have an impact on whether or not

22 irrigation enhanced recharge would be a factor

23 in this case?

24 **A I would say so, yes.**

25 **Q** In your opinion, is irrigation enhanced recharge

1 that -- to the effect that his methodology in

2 that groundwater model was premised on

3 irrigation enhanced recharge?

4 **A I do not recall that being in the report**

5 **anywhere.**

6 **Q** Does anything in the Balleau groundwater model

7 report suggest or imply that the Balleau

8 groundwater model is premised on irrigation

9 enhanced recharge?

10 **A Nothing that I read indicated that.**

11 **Q** Does the Balleau groundwater model report or the

12 Balleau groundwater model itself explain or

13 provide any mechanism for calculating or

14 quantifying irrigation enhanced recharge?

15 **A No, it does not.**

16 **Q** Mr. Lee asked you questions relating to

17 irrigation enhanced recharge, and you stated

18 that it can be a factor at times, can you

19 explain that?

20 **A It can be a factor in areas that are, you know,**

21 **obviously flood irrigation. If you currently**

22 **got a field that's flooded and rain falls on it,**

23 **well, more of that's going to run off than is**

24 **going to infiltrate, that's certainly a factor.**

25 **Q** Would it be your opinion that irrigation

1 a factor on the ranch?

2 **A No, I do not think it is.**

3 **Q** And what is the basis for that opinion?

4 **A The ranch is essentially dune sand, it's like**

5 **being on a beach. Water that falls on the ranch**

6 **immediately sinks into the ground, there are not**

7 **runoff features, there's not retention features**

8 **where water is ponded, there aren't streams**

9 **or rills; it's sand, it's just like pouring a**

10 **bucket of water out on the beach, it goes**

11 **straight down into the ground.**

12 **MR. BULLER:** Thank you, I'll pass

13 the witness.

14 **PRESIDING OFFICER:** Mr. Cole?

15 **MR. COLE:** No questions.

16 **PRESIDING OFFICER:** All right.

17 Mr. Lee?

18 **MR. LEE:** Thank you, Your Honor.

19

20 **RE CROSS EXAMINATION**

21 **BY MR. LEE:**

22 **Q** Mr. McCormick, as to the question of meetings

23 with the chief engineer, when's the last time

24 you met with him? In relation to this -- in

25 relation to the change ...

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1 **A It was prior to filing the change applications,**
2 **I couldn't give you an exact date.**
3 Q Okay.
4 **A But it's been years ago.**
5 Q Like sometime before 2018, I presume?
6 **A Yeah, we -- we published the model report in**
7 **2018, so, yes, it would have been 2017 or**
8 **earlier.**
9 Q Okay. I just want to be sure listening to your
10 responses to Mr. Buller's questions that we're
11 all talking about the same things here, so if we
12 could put the first of those slides up very
13 quickly. I think we agreed a bit ago and seemed
14 like maybe this got a little muddled that if you
15 look at the red highlighting here that says,
16 Groundwater recharge on irrigated land must be
17 reduced when that land is no longer irrigated, I
18 think you said conceptually you agree with that?
19 **A I said in -- it needs to be reviewed depending**
20 **on what site you're working on and the**
21 **conditions on that site, but I agree with the**
22 **concept as a whole that it's something that**
23 **needs to be considered.**
24 Q Okay. So if we look at the next one of these,
25 which is essentially what the Kansas Geological

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1 is no longer irrigated. So are we talking about
2 the same thing here that you're -- here we're
3 talking about a reduction in recharge rate once
4 irrigation is stopped?
5 **A No, the two quotes are referring to completely**
6 **different processes. This quote is dealing with**
7 **precipitation recharge, as it said in the second**
8 **line, groundwater recharge from precipitation;**
9 **the other quote from the DWR document is talking**
10 **about irrigation return flows, which is the**
11 **irrigated water infiltrating into the ground.**
12 **They are two completely different subjects.**
13 Q And so to the -- the highlighted part here,
14 then, and not to belabor the point, that is
15 something in certain circumstances that you
16 agree with conceptually?
17 **A The concept is something that I would agree with**
18 **conceptually after looking at the site and**
19 **determining the conditions at an individual**
20 **site.**
21 Q Okay. Thank you.
22 **PRESIDING OFFICER:** All right.
23 Ms. Langworthy?
24 **MS. LANGWORTHY:** No questions, Your
25 Honor.

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1 Survey article is saying, at least the way that
2 we would interpret it, That irrigation return
3 flows, the infiltration of irrigation water to
4 the water table has been determined to be a
5 significant recharge component in several
6 studies, I guess your answer or response to that
7 would be the same?
8 **A These irrigation return flows are not recharge**
9 **irrigation from precipitation that we're talking**
10 **about, these are two different things.**
11 Q Well --
12 **A What is referred to in the previous quote is not**
13 **irrigation return flow.**
14 Q Well, but we're talking about the difference
15 once irrigation stops, you recall that, right?
16 **A We are talking about the difference between**
17 **irrigation and nonirrigated land, yes.**
18 Q Okay. And so your sense would be that if you go
19 back to the previous slide, and I'll read the
20 entire thing, The BGW groundwater model was
21 premised on the concept of increased groundwater
22 recharge from precipitation on irrigated land.
23 To be consistent with this premise when
24 evaluating a transfer, the groundwater recharge
25 on irrigated land must be reduced when that land

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1 **MR. BULLER:** No further questions,
2 Your Honor, thank you.
3 **PRESIDING OFFICER:** All right.
4 Thank you, Mr. McCormick.
5 **MR. TRASTER:** You ready?
6 **PRESIDING OFFICER:** I'm ready,
7 Mr. Traster, whenever you are.
8 **MR. TRASTER:** Call Daniel Clement.
9 **PRESIDING OFFICER:** Mr. Clement.
10 **MR. TRASTER:** While he's coming up,
11 we can go off the record for just a moment
12 if you don't mind.
13 **PRESIDING OFFICER:** Sure.
14 (Discussion held off the record.)
15 **PRESIDING OFFICER:** All right. We
16 can go back on the record. Mr. Clement, I
17 will get you sworn in here, would you
18 please raise your right hand.
19
20 DANIEL WAYNE CLEMENT,
21 having first duly sworn or affirmed, was
22 examined and testified as follows:
23
24 **PRESIDING OFFICER:** All right. You
25 may proceed, Mr. Traster.

1 **DIRECT EXAMINATION**

2 **BY MR. TRASTER:**

3 Q Mr. Clement, state your name, business address
4 for the record, please.

5 A **Sure, Daniel Wayne Clement, business address,
6 800 East First Street, Wichita, Kansas.**

7 Q And by whom are you employed?

8 A **Burns & McDonnell.**

9 Q And what is your position at Burns & McDonnell?

10 A **I am a senior hydrogeologist with Burns &
11 McDonnell.**

12 Q How long have you been in that position?

13 A **Ten and a half years now.**

14 Q And what did you do before that?

15 A **I worked with the Groundwater Management
16 District Number 2 as their hydrologist.**

17 Q So when you say with, do you mean for or --

18 A **For.**

19 Q You were an employee at GMD2?

20 A **Correct.**

21 Q And how long were you in that position?

22 A **Approximately three years.**

23 Q How many?

24 A **Three.**

25 Q And before that, what did you do?

1 move certain irrigation wells on the R9 Ranch to
2 new locations. Is that fair?

3 A **Correct.**

4 Q And those new locations would be new proposed
5 municipal wells; is that correct?

6 A **Correct, yes.**

7 Q Those well locations were selected by -- who
8 were they selected by, the locations, were you
9 involved in that process?

10 A **I was involved in that process, yes.**

11 Q Were -- were other people involved?

12 A **At the time, some discussions with the City but
13 largely myself.**

14 Q Okay. Jami, I didn't ask you for this, but what
15 I'd really like to have is 1 -- Exhibit 1-1.

16 So can you identify this document,
17 Mr. Clement?

18 A **It appears to be a map of the ranch. And we'll
19 have to zoom in a little bit because my eyes
20 aren't that good. A map of the ranch showing
21 the proposed municipal well locations, they're
22 labeled by letter, A, B, C, D, et cetera.**

23 Q And, Jami, why don't you scroll to page 2, I
24 think it's a little easier to see.

25 Is the data on page 2 of Exhibit 1-1

1 A **Worked at Kansas State University in their
2 information technology department as I was
3 getting my degree.**

4 Q And what is your degree in?

5 A **I have a bachelor's of science in geology from
6 Kansas State University.**

7 Q And is that -- is geology -- but you're a
8 hydrologist, I mean, how does that work?

9 A **Geology and hydrogeology naturally -- naturally
10 overlap.**

11 Q But you are employed now as a hydrogeologist?

12 A **Correct.**

13 Q In the course of your employment with Burns &
14 McDonnell, did you work with the City of Hays to
15 develop the attachments to the change
16 applications that were filed with DWR in June of
17 2015?

18 A **Yes.**

19 Q And were you the principal person who prepared
20 the maps that are -- the maps required to be
21 attached to those change applications?

22 A **Yes.**

23 Q Were the -- those change applications were
24 required in part because the Cities were
25 requesting permission from the chief engineer to

1 essentially the same as the -- or is it the same
2 as the data on the first page of Exhibit 1-1?

3 A **Yes.**

4 Q Is this the map that you prepared?

5 A **Yes.**

6 Q And just generally, is it fair to say that the
7 blue dots on that map are irrigation wells that
8 were in place at one time?

9 A **Correct.**

10 Q And they -- they've now been plugged and
11 abandoned, have they not?

12 A **Most of those wells are plugged and abandoned,
13 yes.**

14 Q So are there some that aren't?

15 A **I believe there are two that are left that were
16 essentially brand-new wells, only two to
17 three years old, but the large majority are
18 plugged and abandoned, yes.**

19 Q So they're irrigating out of those two or three
20 wells?

21 A **No, they are not.**

22 Q Well, why are they -- why did they leave them?

23 A **As far as I know, perhaps cattle watering or
24 some other feature, but they've been capped,
25 best of my knowledge.**

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1 Q Okay. So they're not -- they're not -- no
2 longer being used for irrigation, but they just
3 weren't plugged and abandoned?
4 A **Correct.**
5 Q Okay, thank you. The map -- let's go back up to
6 page 1 of that Exhibit 1-1, there's some
7 semicircles that are in orange. Do you know why
8 those semicircles are on this map?
9 A **In some discussions with the City, we wanted to**
10 **buffer -- even though the spacing requirement**
11 **would have been, I believe, a quarter mile, we**
12 **wanted to buffer the proposed municipal well**
13 **locations by an additional distance, and that**
14 **distance was approximately one-half mile, which**
15 **is what the orange circles are showing is a**
16 **buffer from surrounding water permits, trying to**
17 **maintain that half-mile distance.**
18 Q So I think I understood what you said, but I
19 want to make sure, are you saying that it would
20 have been permissible to move some -- some of
21 these irrigation wells closer to neighboring
22 wells as long as they remained at least a
23 quarter mile away from the neighboring well?
24 A **I believe that was the regulation at the time,**
25 **yes.**

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1 Q So you put those in orange, but would it be fair
2 to say that they're sort of the blackout area
3 where you're not going to put wells?
4 A **Correct, yeah, in this case, it would be**
5 **showing -- the red would be showing where we**
6 **would not locate a well, municipal well.**
7 Q Thank you. Jami, would you please turn -- show
8 Exhibit 1-12. And if you'd go down to the, I
9 think the easiest way is to look at the
10 bookmarks and go to the amended change -- there
11 you go, and then scroll down to page -- Bates
12 page 1011 and it's a map that -- actually any
13 one of these would be fine. This is the right
14 one.
15 Mr. Clement, can you see what that is?
16 A **Yes.**
17 Q For the record, it's a concept well site E for
18 file number 21,734, that's the Division of Water
19 Resource file number 21,734, and it's Exhibit X
20 to that -- to Exhibit 1-12, which is a series of
21 change applications that the Cities filed.
22 Jami, are you able to show us page 1018,
23 Bates number 1018 at the same time or not?
24 **MS. BUCK:** One eight or one seven?
25 **BY MR. TRASTER:**

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1 Q I want one eight, please. Actually, if you want
2 to just show it to us we can -- we can -- if
3 that's going to be a problem. So, Jami, will
4 you zoom in to the top, show us -- keep zooming
5 it, that section right there.
6 It might be useful, Mr. Clement, if you
7 could make some notes so that you can remember
8 the numbers and letters here, but I'm not
9 intending to create a new exhibit other than
10 just -- I thought maybe I could show you this
11 side by side.
12 But this refers to an irrigation well in
13 section 5 that is 2348 feet north and 3,773 feet
14 west of the southeast corner of section 5, and I
15 would note that the rate is 1500 gallons per
16 minute at that location.
17 And I -- let's scroll down to the next box.
18 And this refers to a present -- present at the
19 time location of an irrigation well, also in
20 section 5, that is 1,264 feet north and
21 1,340 feet west of the southeast corner of
22 section 5, and the rate there is 1,035 gallons
23 per minute. I don't want to misquote that, but
24 I want to -- so do you see that that's -- those
25 are the numbers there in the -- I don't know if

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1 you can see them, but that is 1264 north and
2 1340 west of the southeast corner and
3 1,035 gallons a minute?
4 A **Agreed, yes.**
5 Q And I -- we can go look at the others, but I'm
6 just trying to -- okay.
7 Jami, let's scroll back down -- or back up,
8 I guess, to 11, 1011. That's the map where we
9 were at. There you go. So let's zoom in so we
10 can kind of see --
11 Mr. Clement, I'm going to represent to you
12 that -- that this line here -- you know what,
13 back up, I want to talk -- cover something else
14 first. So when you were preparing these maps,
15 are you aware of the normal distance that
16 someone can -- once a particular well location
17 is established at a particular point, if a
18 person drills a well that isn't in that -- at
19 that precise point, is there a standard distance
20 from that point that they can put the well in?
21 Not a very good question. In a 300 -- you can
22 put a well within 300 feet of the authorized
23 point and it'll be in compliance, right?
24 A **Correct, yes.**
25 Q In this case, the Cities asked for a larger

1 circle?

2 **A Yes.**

3 Q And what was the size of that circle?

4 **A 1,000 feet.**

5 Q And in this picture or in this map, is that the

6 red circle surrounding the proposed municipal

7 well?

8 **A It is, yes.**

9 Q So when you were -- and are these maps to scale?

10 **A They are, yes.**

11 Q So when you were preparing these exhibits and

12 you had -- you knew where you wanted the well,

13 you drew a circle, a 1,000-foot-radius circle

14 around that particular location, right?

15 **A Correct, yes.**

16 Q And in this -- and that became the starting

17 point for the request for the location of a new

18 well?

19 **A Yes.**

20 Q And then there are other regulatory limitations

21 as well, aren't there?

22 **A There are.**

23 Q For example, you can move -- we already talked

24 about the fact that you can move a well as long

25 as you stay a quarter mile away, but you can't

1 move a well more than half a mile, can you?

2 **A In this instance, no.**

3 Q Okay. So it looks -- it looks like to me

4 that -- that you drew a half-a-mile radius

5 circle around each of these irrigation wells.

6 Is that a fair -- well, tell me what you did.

7 **A Yeah, to me this is a geographical inter --**

8 **geographical information systems problem, so**

9 **it's really geography, taking all of the other**

10 **things out of it. Really it's a map exercise to**

11 **understand what the constraints of locating that**

12 **municipal well are to the regulatory**

13 **considerations.**

14 **The first one we just talked about, let's**

15 **go from the half-mile circle first, the red**

16 **triangles represent existing irrigation wells,**

17 **and if you apply the limitation that we can't**

18 **move beyond a half mile, we simply drew the kind**

19 **of orange-dashed lines, buffered those by**

20 **one-half mile to find the constraints of the**

21 **gray-hashed area, if you will. And then that**

22 **gray-hashed area is also further constrained by**

23 **that 1,000-foot radius, the red line that we**

24 **talked about for consideration. And also when**

25 **we talked about the buffer that we wanted to**

1 **maintain to surrounding water rights, the sort**

2 **of red filled-in area also truncates that hashed**

3 **area that we would be able to locate the**

4 **proposed municipal water.**

5 Q So if I understand it, but for the -- the

6 truncated area in pink, you would have been able

7 to drill a well in this little -- it's not a

8 perfect triangle but it looks like one, right?

9 **A Correct.**

10 Q But you -- but the Cities instructed you and you

11 put together a map to say, well, we're not going

12 to put our well in that little triangle even

13 though it's within 1,000 foot and we're not

14 going to put it anyplace where the pink

15 semicircle intersected the 1,000-foot-radius

16 circle?

17 **A Correct.**

18 Q All right. So based on the numbers, the figures

19 that we just discussed, and I will represent to

20 you that I believe, I should say I believe this

21 line here at the east side of the

22 1,000-foot-radius circle is the east line, east

23 side of section 5.

24 **A Okay.**

25 Q And if you go up the -- one of the distances I

1 gave you and the other, would that be the

2 approximate location of one of the triangles?

3 **A Yes.**

4 Q And would this other well over here be the -- on

5 the west side of this map be the location of one

6 of the other triangles?

7 **A Yes.**

8 Q And the -- do you -- the combined rate for those

9 two wells is what?

10 **A I have 1500 plus 1035.**

11 Q So 2535?

12 **A Correct.**

13 Q So if I understand it, then, the authorized rate

14 that could be withdrawn from these two wells

15 together would -- would equal 25 -- 2,535

16 gallons per minute if they were operating at

17 their full authorized rate?

18 **A Correct, yes.**

19 Q Are you aware of the rate at which the Cities --

20 that Burns & McDonnell is recommending the

21 Cities divert the new municipal wells?

22 **A Yes, each municipal well is anticipated to**

23 **operate at approximately one-half million**

24 **gallons a day or 300 -- approximately**

25 **350 gallons a minute.**

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1 Q 300 -- what's the ratio of 350 to 2,500 and -- I
2 mean, roughly?
3 A **It's a lot less.**
4 Q It's a lot less, thank you. Now -- so, yeah,
5 this -- this well that is off to the -- to the
6 left, I mean, it's not connected -- it's not
7 going to be connected directly to what is
8 well E, it's going to be connected to a
9 different well?
10 A **Correct, those are consolidated to two different**
11 **municipal well locations.**
12 Q And I -- I stand corrected, I mean, it's -- but
13 nevertheless there's going to be -- if you
14 return to irrigation and put those wells back in
15 those same places, you'd still be able to pump
16 2530, whatever it was, acre-feet from those --
17 these two locations for irrigation purposes,
18 right?
19 A **Yes, they are authorized for that quantity.**
20 Q Right. And then this well, we can go look at
21 it, but I'm just going to tell you that there --
22 the record indicates that in the file for -- DWR
23 file number 21,842 at Bates number 1145 is a
24 document similar to the rate and quantity that
25 we -- that we saw for this particular file, and

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1 there's a well located at 1300 and -- you
2 probably ought to write this down.
3 Again, I'm sorry to make you do all this
4 work, but it's my fault, I told Jami the wrong
5 page. 1301 feet north and 3910 feet west of the
6 southeast corner of section 4 at 900 gallons a
7 minute. So because this is -- this is
8 section -- and section -- these sections are at
9 a correction line so they're fairly tall
10 sections so it looks out of kilter, it looks out
11 of sync. But -- and the Cities don't own the
12 southeast quarter of section 4, so this is the
13 southwest quarter of section 4, and if -- if --
14 assuming that to be the case, if you were to go
15 1301 feet north and 3910 feet west of the
16 southeast quarter of section 4, would you be in
17 the approximate location of this well that is
18 labeled 21,842 that I've got my pointer on?
19 A **Yes.**
20 Q You sounded hesitant?
21 A **That's -- okay, I think -- I think we're in the**
22 **same space now.**
23 Q You what?
24 A **I think we're in the same space now, yes.**
25 Q Okay. And the rate that is associated with that

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1 well for irrigation purposes is 900 gallons per
2 minute. And so we have three wells that are
3 across the south side, south half of section 5,
4 4 and 5 at the south side of the ranch that --
5 that for irrigation purposes, let's see, 20 --
6 what'd we say, 2530 --
7 A **2535 is what I have.**
8 Q 2535 plus 900 would be 34 something, right,
9 3432? So at the end of the day, we've got these
10 three wells and it's being reduced to two wells
11 with -- I mean, the rates are going to be
12 substantially less?
13 A **Yes.**
14 Q Now -- can we go back? It froze? That happens.
15 I want to be really clear here, I'm not
16 saying anything about, you know -- I mean, I'm
17 not trying to equate, you know, rates -- the
18 rates from those municipal wells, I mean, it's a
19 more complicated factor than -- than maybe is
20 apparent from what I've said, but my point is
21 that there's a significant rate decrease by
22 moving these wells around?
23 And let's just stay right there. That
24 also, file -- this is Exhibit 1-12, it's the
25 same water right, there are multiple wells, this

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1 is another example of 1,000-foot-radius well
2 that is truncated by the -- by the distance of
3 the -- from -- of half-mile distances from the
4 three wells that are being consolidated there,
5 right?
6 A **Correct, yeah, you can see the truncation,**
7 **especially with the more southern located**
8 **irrigation well effectively cuts off a big chunk**
9 **of where that 1,000-foot radius would otherwise**
10 **allow.**
11 Q And if you would have moved the municipal well a
12 little bit south, you could have probably picked
13 up a little more?
14 A **Correct.**
15 Q Can you, based on what we've talked about
16 today --
17 Jami, can you put -- pull up Exhibit 1-7
18 and go to page 617?
19 While I'm -- while she's doing that, based
20 on the information that you have available to
21 you at this moment, can you quantify the impact
22 or the reduction in actual rate that is going to
23 be diverted from neighboring wells? I mean, you
24 talked about this ahead of time and you said,
25 yes, it's quantifiable but you're not -- you

1 don't have the information really to know
 2 exactly what those -- how that -- how other
 3 wells are going to be affected?
 4 **A I believe the question you're asking is how will**
 5 **drawdown change because there's a significant**
 6 **reduction in the rate that these wells will**
 7 **pump, especially seasonally.**
 8 Q Well, that wasn't my question, but that's where
 9 I was headed so ...
 10 **A Okay. I don't have the calculations to give you**
 11 **a number, but because the pumping rate is less,**
 12 **then the drawdown must be less.**
 13 Q And the rate is pretty dramatic, it's
 14 dramatically less?
 15 **A It's order of magnitude, yes.**
 16 Q Thank you. Looking at the image on the screen,
 17 I'll represent to you that this is concept
 18 well G with -- associated with file 21,730, and
 19 it's Exhibit Q to that file, and I just wanted
 20 to point out that there's another factor. You
 21 mentioned distance to -- the half-mile limit on
 22 moving wells, but the -- this -- in this case
 23 this is on the west side of the ranch, and that
 24 blue line, what does that mean to you?
 25 **A That's -- looks to be the Arkansas River.**

1 producing, is that correct, than it presently
 2 does or did under irrigation?
 3 **A Yes, there will be less total municipal wells**
 4 **than total irrigation wells that formerly**
 5 **operated.**
 6 Q And the rate of production is reduced as well?
 7 **A Yes.**
 8 Q And in many cases significantly reduced?
 9 **A Yes.**
 10 Q And the well locations will, in several
 11 instances, be further away from adjoining
 12 property owners' wells?
 13 **A Yes.**
 14 Q No other questions. Thank you.
 15 **PRESIDING OFFICER: Mr. Lee?**
 16 **MR. LEE: Thank you, Your Honor.**
 17
 18 **CROSS-EXAMINATION**
 19 **BY MR. LEE:**
 20 Q Mr. Clement, as you may have heard, I'm Charles
 21 Lee so I won't belabor that. Just really a
 22 couple questions. When you were talking about
 23 drawdown, you used the phrase order of
 24 magnitude, I am assuming you're using that in a
 25 conversational sense and not as a ten times

1 Q So we heard earlier today that there's a
 2 limitation you cannot move irrigation wells more
 3 than 10 percent closer to the centerline of the
 4 creek?
 5 **A Correct.**
 6 Q And is that -- but for that limitation, there
 7 would be -- these two wells could be moved up to
 8 the north and basically use the whole half,
 9 bottom half -- not half exactly but the bottom
 10 half of that radius circle, but -- of that
 11 1,000-foot-radius circle, but that's -- you also
 12 truncated these well locations based on other
 13 regulations as well?
 14 **A Yes, the purple area is also truncated by the**
 15 **limitation of moving no more than 10 percent**
 16 **closer to the river.**
 17 Q Okay. I had another map I wanted to show you,
 18 but, Mr. Clement, thank you, I have no further
 19 questions.
 20 **PRESIDING OFFICER: Mr. Cole?**
 21
 22 **CROSS-EXAMINATION**
 23 **BY MR. COLE:**
 24 Q Mr. Clement, as I understand your testimony, the
 25 project as envisioned would have less wells

1 difference?
 2 **A I used order of magnitude relative to the**
 3 **pumping reduction, not the quantifiable amount**
 4 **of drawdown.**
 5 Q Yeah, that order of magnitude, if you're going
 6 to be technical about it, is a factor of ten, I
 7 am assuming you're not talking about that?
 8 **A I'm referring to order of magnitude as, yes, as**
 9 **a factor of ten, yes.**
 10 Q You are.
 11 **A Yeah, order of magnitude in my -- for the**
 12 **purposes of today, yeah, is ten.**
 13 Q Okay.
 14 **A Approximately ten.**
 15 Q And you were -- you were asked a question or a
 16 series of questions about the difference in
 17 pumping volume essentially over time. That
 18 would be -- that difference would be moderated,
 19 would it not, because of the year-round pumping
 20 that is contemplated with the municipal use as
 21 compared to seasonal irrigation?
 22 **A Could you repeat the question?**
 23 Q Sure. Maybe to break it into more digestible
 24 parts, we can agree that pumping for irrigation
 25 is a seasonal proposition, correct?

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1 A Yes.
2 Q So in other words, it doesn't go on year-round?
3 A Yes.
4 Q And pumping for municipal purposes is a
5 year-round activity?
6 A It can be, yes.
7 Q And would be contemplated here, wouldn't it?
8 A Sure, yes.
9 Q So there isn't -- that isn't simply a gross
10 difference in the sense of looking at the rate
11 and making that distinction because during part
12 of the year in irrigation use, the pumps aren't
13 going to be on, right?
14 A Let me think about that for a second. There is
15 a difference in time, in total operating time
16 that an irrigation well would pump and that a
17 municipal well may pump.
18 Q So if -- it's more complicated than simply
19 saying that this well pumps at 10 gallons and
20 this well pumps at five to come up with that
21 five difference if there is a difference in how
22 long or what the duration of the pumping is?
23 A Correct.
24 Q Okay. Thank you.
25 MR. LEE: I don't have anything

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1 else, Your Honor.
2 PRESIDING OFFICER: Mr. Traster?
3
4 REDIRECT EXAMINATION
5 BY MR. TRASTER:
6 Q Is -- a couple questions. Always means there's
7 more. The municipal -- are the municipal wells
8 planned to be pumped continuously year-round, or
9 are they going to be cycled?
10 A Normal wellfield operations, we recommend
11 cycling of pumps. There are very few wellfields
12 and wells that pump 24/7/365. Redundancy is a
13 must and therefore rotation naturally happens
14 because of that factor.
15 Q At -- but -- but he's right that -- that the
16 municipal wells are likely to be pumped for a
17 longer period of time than normal irrigation
18 wells are normally pumped?
19 A Correct.
20 Q I mean, we're -- there's cycling and there's
21 turning it off, that doesn't mean they're equal?
22 A Yes.
23 Q When you use order of magnitude, sometimes
24 there's order of magnitude that's absolute
25 precision, you know, absolutely ten times or

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1 greater than an order of magnitude ten times
2 more, but there's also conversational order of
3 magnitude. You didn't do the math to know
4 whether it was actually ten times or more
5 greater, did you?
6 A No, I -- I have not calculated decimal dust in
7 this situation, no.
8 Q It's just simply more, conversationally a lot
9 more?
10 A Yes.
11 Q Okay, thank you. Now, one of the things I was
12 trying to get to is the idea that changing from
13 irrigation to municipal is going to have less of
14 an impact on the neighboring irrigation wells,
15 but if -- if it returns to irrigation, it seems
16 to me, I'm not a hydrologist, it seems to me
17 that the impact -- the interference of drilling
18 three wells within -- within a mile of someone
19 else's irrigation well would have a
20 significantly larger impact than one 350-gallon
21 permanent well. Is that fair?
22 A The seasonal impacts would be different, yes.
23 Q Well, but the rate -- the rate of withdrawal at,
24 what'd we say, 3435 from three wells nearby
25 would be quite a lot greater than one well at --

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1 one or two wells at -- at 350 gallons a minute?
2 A Yeah, because the rate would be less, yes.
3 Q And seasonality matters, rate matters, yes?
4 A Yes.
5 Q Quantity matters?
6 A Yes.
7 Q All of that matters?
8 A Correct.
9 Q So it isn't -- but we're not here to quantify
10 that precisely, it's just that changing from
11 irrigation to municipal is going to be less
12 dramatic of an impact on neighboring wells. Is
13 that fair?
14 A Yes, I think so.
15 MR. TRASTER: Thank you, no further
16 questions.
17 MR. BULLER: David, I put a comment
18 up here.
19 MR. TRASTER: Oh, I didn't see it.
20 Oh, the map that I was looking for came up,
21 and I would just like to show it but I've
22 already given the witness --
23 MR. LEE: That's fine.
24 MR. TRASTER: Any objection?
25 MR. COLE: No objection.

1 **PRESIDING OFFICER:** I have no
2 objection, go ahead.
3 **BY MR. TRASTER:**
4 Q So, Mr. Clement, what's this -- have you seen
5 this before?
6 A **Yes, I created it.**
7 Q You what?
8 A **I created this map, yes.**
9 Q And does this just basically show the various
10 areas on the ranch within which those wells
11 could be drilled, the various truncated or
12 non-truncated circles?
13 A **Yes.**
14 Q How come there's no -- what happens on well J?
15 A **Well J, it so happens with the geographic**
16 **constraints that we just talked about, there's a**
17 **very small potential well relocation area for**
18 **that footprint.**
19 Q Okay. That's all, I just wanted to provide an
20 opportunity to see the global picture. That's
21 all. No further questions. Thank you,
22 Mr. Clement.
23 **MR. COLE:** No questions.
24 **PRESIDING OFFICER:** Mr. Lee?
25 **MR. LEE:** Nothing, Your Honor, thank

1 you.
2 **PRESIDING OFFICER:** All right.
3 **MR. TRASTER:** We have no further
4 witnesses ready to go at this time today.
5 **PRESIDING OFFICER:** Okay. All
6 right. Well, looks like we will end a
7 little bit early today, then, and we will
8 pick up on Monday, start up at 1:30 in the
9 afternoon on Monday. We've been moving a
10 little faster with these last several
11 witnesses, and I think as most hearings or
12 trials go, it's usually those first few
13 witnesses who are the longer witnesses, and
14 I'm hoping that kind of continues along
15 that path given that, what, there's still
16 13, 14 witnesses potentially between
17 everybody that we need to address over the
18 next week and a half.
19 **MR. LEE:** Your Honor, I might
20 inquire of Mr. Traster, Mr. Buller, we at
21 this point are looking maybe to bring our
22 experts on Wednesday of next week. Does
23 that seem reasonable?
24 **MR. BULLER:** Well, we plan -- we
25 have experts, at least one flying in, and

1 so --
2 **PRESIDING OFFICER:** We can go ahead
3 and go off the record for this.
4 (Thereupon, a recess was taken;
5 whereupon, the following was had.)
6 **PRESIDING OFFICER:** We'll go ahead
7 and go back on the record here for just a
8 moment. So parties had some brief
9 discussion about working out some
10 scheduling issues for next week, we will
11 pick up at 1:30 in the afternoon on Monday
12 to resume the hearing.
13 Then there was the motion that has been
14 filed by Water PACK regarding the exclusion
15 of Mr. Barfield's rebuttal testimony,
16 excluding him as an expert witness. I'm
17 going to overrule their objection,
18 Mr. Barfield will be allowed to testify. I
19 think most of the issues there are going to
20 be -- come down to what they've addressed,
21 and I think as Mr. Traster's response
22 addressed there, they are issues of
23 credibility and how much weight should be
24 put on whatever his opinion may be.
25 When you question -- when you have a

1 chance to cross-examine him, you can
2 question him on any of those issues that
3 you have concerns about. Since this is an
4 administrative proceeding, those rules of
5 evidence are relaxed and a lot of it comes
6 down to just weighing the -- putting the
7 appropriate weight on the testimony offered
8 by the various parties and various
9 individuals who provide that expert
10 testimony.
11 So you can question him what you want on
12 that, Mr. Lee, as far as, you know, how
13 reliable or credible his opinion would be,
14 but he will be allowed to appear as an
15 expert and you can offer his testimony.
16 **MR. LEE:** Thanks for your
17 consideration, Your Honor.
18 **MR. TRASTER:** Thank you, Your Honor.
19 **MR. BULLER:** Your Honor, will you be
20 issuing a written ruling on that?
21 **PRESIDING OFFICER:** I'm not going to
22 do a written one before the final --
23 **MR. BULLER:** Okay.
24 **PRESIDING OFFICER:** -- order here.
25 I guess technically the initial order that

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1 will come out following the end of the
 2 hearing here, but in there -- it will be
 3 included in there that on the record it was
 4 addressed.
 5 **MR. BULLER:** Thank you.
 6 **MR. TRASTER:** Your Honor, one
 7 question about that, are you -- do you want
 8 findings of fact, proposed findings of
 9 fact, conclusions of law briefing on
 10 issues? Have you given that any thought?
 11 **PRESIDING OFFICER:** I think that's
 12 something that the parties kind of
 13 indicated they would like to do, and in a
 14 case where we have attorneys on all sides
 15 there, it makes it a lot easier for that to
 16 be done than in those cases where one party
 17 is self-represented, doesn't understand the
 18 whole aspect of how that works there.
 19 So we'll work out, as we get further
 20 along in the process, kind of what seems to
 21 be a reasonable schedule for that once we
 22 conclude the hearing for a deadline for
 23 filing any of your closing briefs, if you
 24 want to do closing briefs instead of
 25 closing statements. Usually in longer

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1 hearings like this, I've seen that parties
 2 tend to prefer to do that as opposed to try
 3 and summarize everything in a 15-minute
 4 speech. We'll work out a schedule that's
 5 going to be acceptable to everybody there
 6 and still allow time for me to get a
 7 decision out.
 8 **MR. TRASTER:** Does that mean you're
 9 not going to rule from the bench in this
 10 case?
 11 **PRESIDING OFFICER:** I will not rule
 12 from the bench, we'll leave some time for
 13 the commenting agencies to finalize
 14 everything and comments they want to submit
 15 to the record and for those findings that
 16 the parties would like to present with
 17 their closing arguments.
 18 **MR. TRASTER:** Thank you, Your Honor.
 19 **MR. LEE:** Thanks, Your Honor.
 20 **PRESIDING OFFICER:** Any other
 21 questions before we break for the weekend?
 22 **MR. TRASTER:** Have a lot of
 23 questions but probably not ones that are
 24 appropriate in this forum. Thank you so
 25 much.

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1 **PRESIDING OFFICER:** All right.
 2 Thank you, everybody, have a good weekend,
 3 we are adjourned until 1:30 on Monday.
 4 (Whereupon, the proceedings were
 5 adjourned at 5:01 p.m.)
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1 C E R T I F I C A T E
 2 STATE OF KANSAS)
 3 SEDGWICK COUNTY) ss:
 4 I, Nancy L. Rambo, a Certified Shorthand
 5 Reporter, within and for the State of Kansas, do
 6 hereby certify that the foregoing is a true and
 7 correct transcript of the proceedings had at the
 8 time and place hereinbefore set forth.
 9 I further certify that I am not a relative
 10 or employee or attorney or counsel of any of the
 11 parties, nor am I a relative or employee of such
 12 attorney or counsel, nor am I financially
 13 interested in the action.
 14 WITNESS my hand and official seal at
 15 Wichita, Sedgwick County, Kansas, this 3rd day of
 16 August, 2023.
 17
 18 _____
 19 NANCY L. RAMBO, R.P.R., C.S.R.
 20 Registered Professional Reporter
 21 Certified Shorthand Reporter
 22 Costs:
 23
 24
 25

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