

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

Formal Hearing
Vol. 4
July 24, 2023

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Min-U-Script® with Word Index

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1 **PRESIDING OFFICER:** All right. So
2 we're back on the record. It is July 24,
3 2023, it's now 1:43 p.m. The counsel for
4 the parties and I have had a little bit of
5 discussion about some procedural issues
6 that will impact how we move forward the
7 next several days, so we'll keep playing
8 some of that by ear with witnesses and
9 everything.
10 Do want to address, I did receive over
11 the weekend a request from the Water Office
12 to allow comment to be filed through
13 October 31st. We're going to have to
14 address some issues and look at some
15 calendaring issues to see if that's
16 something that can be accommodated.
17 Under the statute, my decision has to be
18 issued within 90 days of when the public
19 hearing that we are conducting right now,
20 when that hearing concludes. At this
21 point, the last day we have scheduled for
22 that hearing would be August 2nd, and by my
23 count, then, October 31st would be that
24 90th day after that, so that would be the
25 date my order would be due if that is the

1 meeting all those requirements for the
2 statutory deadlines.
3 All right. Are there any other
4 preliminary issues that parties think we
5 need to take up before we start hearing
6 from witnesses today?
7 **MR. TRASTER:** Nothing from the City
8 of Hays, Your Honor.
9 **MR. COLE:** Nothing from the City of
10 Russell.
11 **MR. LEE:** Nor from Water PACK.
12 **MS. LANGWORTHY:** Nor from DWR.
13 **PRESIDING OFFICER:** All right.
14 Mr. Buller, do you have the first witness
15 of the day, then?
16 **MR. BULLER:** I do, Your Honor, good
17 afternoon. The City of Hays calls Holly
18 Dickman to the stand.
19 **PRESIDING OFFICER:** Can you please
20 raise your right hand.
21
22 HOLLY DICKMAN,
23 having first duly sworn or affirmed, was
24 examined and testified as follows:
25

1 last day of the hearing.
2 So we'll have to address a few more
3 things and see what -- what we can work out
4 as far as schedules for how we're
5 proceeding with everything, post-hearing
6 briefs, proposed findings, and all that
7 before we can determine what that date
8 would be that commenting agencies would
9 need to have any sort of comments filed,
10 make sure that we're complying with those
11 deadlines.
12 And, Mr. Unruh, I see you there in the
13 audience there. Realistically, if you file
14 comments the same day that my order was
15 due, there'd be no way that I could
16 consider anything in those comments and
17 have those worked into what is going to
18 most likely be a very lengthy order; it is
19 going to take a significant amount of time
20 to get drafted up.
21 So we'll have to address some of those
22 things here over the next week and see kind
23 of what sort of -- what sort of options the
24 minds in this room can come up with that
25 will work for everything to make sure we're

1 **PRESIDING OFFICER:** Go ahead,
2 Mr. Buller.
3 **MR. TRASTER:** Your Honor, could you
4 use the mic when you're speaking, please.
5 **PRESIDING OFFICER:** Yes.
6 **MR. TRASTER:** Go ahead.
7
8 **DIRECT EXAMINATION**
9 **BY MR. BULLER:**
10 Q Good afternoon, Ms. Dickman, thank you for
11 joining us and taking the time out of your day
12 to provide this testimony. Please state your
13 name for the record, spelling your last name.
14 A **Holly Dickman, D-I-C-K-M-A-N.**
15 Q And your business address, please.
16 A **It's 1002 Vine Street, Hays, Kansas.**
17 Q And what is your current employment?
18 A **I am the water conservation specialist for the**
19 **City of Hays.**
20 Q How long have you been in that position?
21 A **Just -- six years as of last week.**
22 Q So since 2017?
23 A **Yes.**
24 Q July 2017 if it's six years last week?
25 A **Yes.**

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1 Q And what are your duties as water conservation
2 specialist for the City of Hays?
3 A **I take care of the water conservation rebate
4 programs, education and outreach related to
5 water conservation, pretty much anything
6 regarding marketing of our programs, those sorts
7 of things.**
8 Q So rebate programs, marketing, anything else?
9 A **Education and outreach, working with others in
10 the community to partner on programs, those
11 sorts of things.**
12 Q Okay. And what department are you a part of as
13 water conservation specialist for the City?
14 A **I'm part of the water resources department.**
15 Q Ms. Dickman, what is your highest level of
16 education?
17 A **I have a bachelor's degree in agriculture with
18 an emphasis on horticulture from Kansas State
19 University.**
20 Q And when did you graduate?
21 A **2002.**
22 Q What did you do prior to joining the City as
23 water conservation specialist?
24 A **Prior to joining the City, I worked as the
25 horticulture extension agent for K-State**

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1 **Research and Extension in Ellis County for ten
2 and a half years.**
3 Q Before you went to K-State, where did you go to
4 high school?
5 A **I went to Hays High.**
6 Q Okay. And where did you go to middle school?
7 A **I went to Kennedy Middle School in Hays.**
8 Q Okay. Where did you go to elementary school?
9 A **I went to elementary school at Schoenchen
10 Elementary School, which is no longer open.**
11 Q Okay, I was going to ask. So that's where --
12 Schoenchen is where the City's Smoky Hill River
13 wellfield is located, near Schoenchen?
14 A **That is correct, yes.**
15 Q We've heard that city's name come up a time or
16 two in this testimony. Have you had an
17 opportunity to listen to any of the testimony so
18 far in this hearing?
19 A **I have, I've tried to listen to it, yes, when I
20 can.**
21 Q Okay. All right. I won't make you spell
22 Schoenchen, although I know you can, it's
23 already been spelled on the record. How, if at
24 all, has your education and your prior
25 employment experience as horticulture extension

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1 agent for Ellis County affected or -- or
2 benefited you as water conservation specialist
3 for Hays?
4 A **Well, with a background in horticulture, it
5 gives me the ability to speak to outdoor water
6 use especially, but with an extension
7 background, I have a great deal of experience
8 with education and outreach, working with the
9 public, working with others, and just
10 communicating messages in general.**
11 Q So how long has the City had a water
12 conservation specialist on staff?
13 A **I think prior to me, the person on staff was
14 there for about seven years, and then I think
15 that was back in -- several, several years
16 already, but I can't recall exactly how long.**
17 Q So seven years would make it 2012, 20 --
18 A **Yes.**
19 Q -- 2012-ish range?
20 A **Uh-huh.**
21 Q Okay. And who was that person?
22 A **Jason Riegel was the conservation specialist
23 prior to me.**
24 Q Okay. So you're the City of Hays water
25 conservation specialist, and that's -- I presume

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1 by the title that that is one aspect of their
2 water conservation efforts?
3 A **Yes.**
4 Q Okay. Do you know how long the City of Hays has
5 had a water conservation program?
6 A **Water conservation efforts started in the early
7 '90s so ever since then.**
8 Q Okay. As part of your duties as the City's
9 water conservation specialist, do you provide a
10 status report to the city commission from time
11 to time?
12 A **I give a yearly report to city commission on
13 water conservation programs and efforts.**
14 Q Okay. And in general terms, what does that
15 status report include?
16 A **Typically, we go over the rebate programs and
17 how they performed in the previous year and then
18 what might be new for the upcoming year, efforts
19 that we've done as far as education and outreach
20 programs, other sorts of information regarding
21 marketing and advertising and things like that.**
22 Q Poster contest?
23 A **Oh, yes, definitely.**
24 Q Okay. We'll come back to that.
25 Jami, pull up Exhibit 933, if you would.

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1 If you would start that over for me.
2 Ms. Dickman, Exhibit 933 is a link to a
3 YouTube video, is that you up on the screen?
4 **A That is.**
5 **Q** Okay. Jami, would you be able to make that full
6 screen? To the right, to the right. There it
7 is.
8 Okay. And this was -- up on the TV screen
9 that is a part of this video, it says
10 February 27, 2020 Hays City Commission meeting.
11 Do you see that?
12 **A Yes.**
13 **Q** Was -- are you familiar with this video,
14 Ms. Dickman?
15 **A I am, yes.**
16 **Q** And is this a video of the annual update that
17 you gave to the city commission on that date in
18 2020?
19 **A Yes, it is.**
20 **Q** Okay. We're going to play most of this video,
21 we'll cut out a little bit to try and make it as
22 short as we can, but it's -- this video
23 summarizes, I think, does a good job of
24 summarizing your efforts in 2019 and will, I
25 think, speed your testimony along.

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1 So, Jami, if you would go ahead.
2 (Video playing.)
3 **MR. BULLER:** Your Honor, could we go
4 off the record for just a second to address
5 a technical issue?
6 **PRESIDING OFFICER:** Sure. We are
7 off the record.
8 (Discussion held off the record.)
9 **PRESIDING OFFICER:** We'll go back on
10 the record, then. We are back on the
11 record. You may proceed, then, Mr. Buller.
12 **MR. BULLER:** Thank you, Your Honor.
13 And we are -- now have attempted to address
14 the technical issue and would ask that Jami
15 go ahead and click play.
16 **(REPORTER'S NOTE:** The following
17 video was played and transcribed
18 by the reporter.
19 **MS. DICKMAN:** Holly Dickman, water
20 conservation specialist for the City of
21 Hays and tonight I'm going to give the
22 program update for 2019 so kind of a recap
23 of what happened in 2019 and kind of
24 looking forward into 2020.
25 And I always like to start out by

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1 showing a drought monitor just to kind of
2 give us an indication of where we are right
3 now. We're really in pretty good shape as
4 of right now, but in a recent presentation
5 I gave, I showed this picture from 2012,
6 which indicates that we were in okay
7 position at that time, but within a matter
8 of months, we were in this position. So
9 just goes to show that things can change
10 really quickly. So it's always important
11 to remember that. This was a year that we
12 received less than 15 inches of rain for
13 that entire year, so I remember that very
14 clearly.
15 This is a picture of the drought outlook
16 for our area that's good through
17 April 30th, and as you can see right now we
18 are in good shape, so hopefully with the
19 moisture we've been receiving, we will
20 continue that trend through the growing
21 season.
22 Just to recap, 2018 was the third
23 wettest year on record according to the
24 30-year average, and 2019 was very wet as
25 well, we were well above average. But just

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1 to give you perspective, we were still over
2 7 inches above average, yet we were not
3 nearly what we had in 2018. So things were
4 a little bit less but still in great shape.
5 Moving into rebate programs for 2019,
6 toilet rebates, again, was the most popular
7 rebate program that we have, definitely one
8 that I get a lot of -- a lot of rebate
9 forms coming in for. In 2019 we had 347
10 total toilets replaced; there was 449 in
11 2018, but I will note that a hotel had
12 replaced 98 of those in 2018, so that
13 accounts for some of that difference there.
14 The majority or 62 percent of those
15 toilets that were rebated were for the most
16 efficient toilet you can purchase in Hays
17 which is your .8 gallon per flush toilet.
18 So that's an increase over 2018. That
19 toilet's becoming more popular, I think.
20 And as you can see, potential water saved
21 8.3 acre-feet.)
22 (Video paused.)
23 **BY MR. BULLER:**
24 **Q** Okay. Ms. Dickman, I want to pause it there
25 quickly, you referred to the drought of 2012,

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1 did you hear that part of your presentation?
2 **A I did.**
3 Q Tell us about the drought of 2012 and how that
4 affected your job, the feeling in the city, just
5 describe that if you would.
6 **A So at that time, I was working for extension in**
7 **the county, and I remember that clearly because**
8 **it was such a significant drought that I was**
9 **working with outdoor water use and outdoor**
10 **plants, things were dying in the landscape that**
11 **had not died before that we could recall, and so**
12 **it was very impactful as far as people's**
13 **landscapes and outdoor water use at that time**
14 **and I just -- there was a lot of talk about it,**
15 **it made an impact on me because I was very busy**
16 **dealing with other communities as well in the**
17 **county. So it was something that stood out a**
18 **lot in my mind, and I always brought it up**
19 **because people remembered it, and it was a good**
20 **reference to start out a presentation with.**
21 Q At that part of your presentation, you had a map
22 of Kansas with the drought monitor overlaid on
23 that. Do you recall that?
24 **A Yes.**
25 Q And you stated that here's where we are now, but

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1 just as a reminder, this is how quickly things
2 can change. What did you mean by that?
3 **A Well, drought is inevitable sometimes in Kansas,**
4 **and that was definitely evident that year, we**
5 **were in good shape and then within six months we**
6 **were in exceptional drought, and it changed**
7 **very, very quickly. So I just like to remind**
8 **people of that.**
9 Q And we're going to try to forward this along a
10 little bit to expedite all of this. There was
11 an interchange with some other people at the
12 meeting. Okay. Starting back then, okay, go
13 ahead, Jami.
14 **(REPORTER'S NOTE:** The following
15 video was played and transcribed
16 by the reporter.
17 **MS. DICKMAN:** Going into the washing
18 machine rebate program, in 2019, we had 85
19 total replaced, which was less than in
20 2018. 95 percent of those, however, were
21 integrative water factor of 3.2 or less, so
22 to stipulate for -- or to qualify for the
23 rebate at that time, it was 3.7 or less was
24 required integrated water factor; and so
25 the majority of them were well above -- or

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1 well below that I should say. Again,
2 potential water saved 2.8 acre-feet.
3 I'll bring up right now new for 2020
4 with the washing machine rebate is that we
5 did increase the rebate for those 3.2
6 integrative water factor or less to \$250.
7 And I don't know if the last month and a
8 half are any indication, but I see more of
9 those rebates coming in right now.
10 So that was the whole goal was to get a
11 little more participation. Right now, it
12 seems like it's doing its job; we'll see as
13 the year goes on. Didn't want to eliminate
14 that \$100 rebate for the 3.7 to 3.3
15 integrative water factor, but really the
16 majority of the machines you buy nowadays
17 are under that 3.7 unless it's a top-load
18 type machine.
19 Talking about turf conversions, 2019 was
20 a great year for turf conversions. I
21 promoted it a lot, we had great weather, it
22 rained at the right times in 2019. So we
23 had 21 total conversions in 2019 which
24 accounted for over 41,000 square feet
25 converted total. And we only had nine in

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1 2018, but as you recall, the weather in
2 2018 just wasn't that great for turf
3 conversions.
4 Since -- with turf conversions, they
5 have a year to get that conversion
6 completed, so we do have some
7 pre-inspections that were done in 2019 that
8 are still pending, and so that's what the
9 pending conversions square footage is
10 listed there.
11 New for 2020, going into what's new here
12 real quickly, for the turf conversion
13 rebate, we did go ahead and increase that
14 square foot maximum to 3,000 square feet
15 for 2020. Main goal there is those
16 straight turf-to-turf conversions are
17 really beneficial as far as water savings
18 go, and that is a little bit of a more
19 incentive sometimes to get those people to
20 switch over to a warm-season turf grass or
21 drought-tolerant landscaping of some kind
22 and maybe help with the cost associated
23 with that. I know I had a homeowner that
24 was concerned about water bills during that
25 time to get the conversion done and things

1 like that so upped it to 3,000 square feet.
 2 Something very new for 2020 is we will
 3 be offering a buffalo grass seed rebate so
 4 we will pay \$10 per pound to buffalo grass
 5 seed, and I will have to go through the
 6 same process as I do for the turf
 7 conversion currently. So there will be a
 8 pre-inspection where I will go and inspect
 9 the lawn, make sure they qualify; they have
 10 to have full sun, they have to have good
 11 conditions for buffalo grass to grow to
 12 qualify, and then I will do the
 13 measurements and tell them how many pounds
 14 of buffalo grass seed they will need.
 15 Seeding rates for that are much, much
 16 lower than your typical cool-season turf
 17 grass, so it might only be 1 to 3 pounds
 18 per thousand square feet versus 7 or 8. But
 19 we will go ahead and -- and try that this
 20 year. I don't know how it will work out,
 21 but all the rebate details can be found at
 22 WaterSmartHays.com if you have more
 23 questions about that.
 24 **SPEAKER:** Holly, what is the going
 25 price for buffalo grass now?

1 list of things that were done in 2019.
 2 One of the biggest benefits, I think,
 3 was the ability to direct people directly
 4 to that WaterSmartHays website, and I
 5 appreciate so much the ability to go in and
 6 actually update this page when I need to
 7 make additions and changes. And in talking
 8 with IT, we were in the top ten of city
 9 pages visited. So, you know, I think
 10 that's great, we're up there with police
 11 and some of those types of pages, so --
 12 bids, things like that. But hopefully we
 13 can do more work with that in 2020.
 14 I'm going into some of the events. We
 15 did sponsor, in conjunction with KSU
 16 Watersheds, a Fort Hays basketball game
 17 back in February of last year. Over 3500
 18 people attended and we gave out those
 19 showerheads and things like that and
 20 educational information. One of the nice
 21 things is that both teams, men's and
 22 women's, were wearing shirts that had "Do
 23 your part, be water smart" and kind of
 24 promoting the City of Hays message through
 25 that.

1 **MS. DICKMAN:** Good question, buffalo
 2 grass is typically a very expensive grass
 3 seed, and so it depends on your source. I
 4 know some guys buy it in bulk, you know,
 5 the contractors and things, and they may
 6 pay 10 to \$12 a pound; but generally if
 7 you're buying it at one of the big-box
 8 stores or one of the local retailers, it
 9 might be up to \$28 a pound or more so ...
 10 Showerhead program, of course we've had
 11 this for many, many years, and 2019 was a
 12 good year for showerheads too. We had 242
 13 total distributed and, again, acre-feet
 14 saved potentially with that 4.9. I do
 15 believe some of the increase here was we
 16 did distribute those at a basketball game
 17 that I'll talk about in a few minutes, but
 18 we had a couple of those events where we
 19 handed out showerheads.
 20 Next I'll move into education and
 21 outreach. Don't worry, I'm not going to
 22 talk about everything on this list, but
 23 it's just simply to show that it's
 24 communication, so in all shapes, forms, all
 25 different methods, this is just a laundry

1 Going into traditional media and digital
 2 media, I'm not going to read these numbers
 3 to you, you can see them, but a lot of that
 4 takes place in the water conservation
 5 program. So, you know, when you start
 6 adding up those numbers, it even surprises
 7 me sometimes how many total TV spots aired
 8 and total radio spots aired. The digital
 9 media, like the banner ads and things,
 10 those are typically directed right back to
 11 the website or to a specific document,
 12 whether it's a toilet rebate form or
 13 something like that.
 14 And just to give you a couple examples,
 15 many of you have seen some of these, but
 16 these are some of the digital ads that were
 17 used in 2019 through various outlets and
 18 just very basic, general information, but
 19 they click back and can get more
 20 information that way.
 21 Social media, very much used in water
 22 conservation, and now you can follow us on
 23 all three of these. Last year, it was just
 24 Facebook and Twitter, now we're on
 25 Instagram. Not going to say that we're

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1 real active on Instagram yet, but we're
2 working on it; and any of these, you can
3 find us easily if you go to
4 @WaterSmartHays.
5 And just a couple of examples, again
6 2019, this was a very popular post, people
7 see that and they share that one quite a
8 bit. Again, promoting turf conversions,
9 it's helpful if you know what qualifies,
10 this yard qualifies for sure, so trying to
11 promote that. Just simple messages, trying
12 to get the word out any way we can. And,
13 again, we try to partner with EPA
14 WaterSense or Irrigation Association, they
15 have July as smart irrigation month so
16 trying to target some education in those
17 areas as well.
18 Going into some of the educational
19 events, World Water Day Fun Fest, it was
20 the second day for this. This is an event
21 that we hold at Sternberg Museum in the
22 lobby and during spring break. We tried it
23 a couple years ago and it worked well so we
24 did it again; and once again it was a
25 success, we had almost 300 people come

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1 through.
2 And this is a workshop or a program that
3 would not be possible without community
4 partners, so we had the environmental
5 office and we had extension office, master
6 gardeners, others in the community that
7 helped with these -- this event. And so
8 going around and looking at displays,
9 participating in crafts and things related
10 to water conservation. And, of course, the
11 water resources department staff was a big
12 part of this as well. And so just a few
13 more pictures from that.
14 One thing that I participated in 2019
15 was the Fort Hays Ag Day, and this is an
16 event that takes place on their quad, and I
17 was just there to provide information, talk
18 about mulch, name that turf grass. A lot
19 of people couldn't name that turf grass,
20 but we tried it. So talking about mulch
21 and just trying to be, again, where people
22 are and talking about anything water
23 conservation related.
24 Spring Art Walk, another highly attended
25 event, and so Stacie Minson and I partnered

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1 together on this, and we provide
2 information, along with root beer and
3 cookies. And the main purpose of this is
4 to highlight the posters that we have
5 through our water poster contest which is
6 truly art. So we --)
7 (Video paused.)
8 **BY MR. BULLER:**
9 Q Jami, can you pause it for a second?
10 In the previous slide, there was a big blue
11 thing that it looked like a grown man was
12 hugging. What was that?
13 **A So he is our water conservation mascot,**
14 **WaterSmart Wally, he's a big blue water drop.**
15 Q Okay. And so somebody is, I assume, paid to
16 dress up as a big drop of water and hug people?
17 **A Yes. We usually have a city employee or another**
18 **volunteer that is so willing to do that, dress**
19 **up as WaterSmart Wally.**
20 Q Okay. And has WaterSmart Wally been a popular
21 feature of Hays water conservation programs?
22 **A He has, the kids -- we have him in parades, he**
23 **rides on the back of a water resources**
24 **department pickup in the Fort Hays Homecoming**
25 **Parade and Wild West Festival Parade and waves**

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1 **at everybody. And he's usually at some of our**
2 **educational events, like the World Water Day Fun**
3 **Fest, some of those sorts of things, and the**
4 **kids are always very excited to see him and take**
5 **pictures with him. So, yeah, he's a big hit.**
6 Q Have you ever been WaterSmart Wally?
7 **A I have not.**
8 Q Okay. Well, it looks like they're having some
9 loading problems, and that's fine, Jami, we'll
10 come back to that and resume the video when our
11 internet is running a little better.
12 (Video playing.)
13 **MR. BULLER:** Okay. Go ahead and
14 keep going.
15 (Video playing.)
16 **BY MR. BULLER:**
17 Q Take the internet for granted until it's not
18 there.
19 Ms. Dickman, you mentioned in that -- in
20 your presentation on the video certain rebate
21 and incentive programs, turf conversion
22 programs, what is the turf conversion program?
23 **A So turf conversion means that we're encouraging**
24 **people to remove cool-season turf grass or**
25 **high-water-use turf grass and replace it with a**

1 warm-season turf grass like buffalo grass or
2 Bermuda grass or a drought-tolerant landscape of
3 some kind, so whether they remove turf grass and
4 replace it with a flower bed, a mulched flower
5 bed something like that. So it's just
6 encouraging people to remove those
7 high-water-use landscapes and replace it with
8 something that's less water intensive.

9 Q Yeah. And -- and you mentioned other rebate
10 incentive programs in that section of the video,
11 why don't you just run through those, the ones
12 you discussed in the video for us and explain
13 what they are.

14 A So we have a high-efficiency toilet rebate
15 program --

16 Q Go ahead.

17 A We have a toilet rebate program, we have a
18 washing machine rebate program for
19 high-efficiency washing machines.

20 Q So let me stop you there.

21 A Yes.

22 Q So how does it work, how does the rebate
23 program, you know, work in practice?

24 A So for those two particular rebates, a homeowner
25 or a business owner would purchase the item and

1 popular program, so I get at least 89 to 100 of
2 those every year too.

3 Q And how long, if you know, how long has the City
4 been doing these different rebate programs?

5 A I don't have the exact date. I know the washing
6 machine rebate has been around longer than the
7 toilet rebate, so the toilets have been around
8 for at least -- since 2014, at least.

9 Q So before you took over as water conservation
10 specialist?

11 A Yes.

12 Q And you mentioned buffalo grass, how did that
13 program work?

14 A So we tried that to provide some rebate for
15 buffalo grass seed 'cause it tends to be a more
16 expensive grass seed to purchase and just to pay
17 a little bit per pound on that.

18 Q And did it work out?

19 A It did not. It was launched during 2020, which
20 was a very difficult year to launch something
21 new, and buffalo grass seed was a little bit
22 hard to come by at that time also and so we have
23 suspended that for now.

24 Q So sometimes you try these different programs
25 and they work and sometimes they don't work?

1 then submit a rebate form along with proof of
2 purchase to the City, and then I go through
3 and -- go through those and determine if they
4 qualify; there's stipulations there as far as
5 gallons per flush and -- and that sort of thing
6 so -- then they would receive a check back from
7 the City of Hays for that rebate.

8 Q And how much is the rebate for the washing
9 machine?

10 A For the washing machine, currently it's \$200.

11 Q Okay. And for the others?

12 A For a high-efficiency toilet, it's kind of a
13 tiered rebate, so the highest rebate you can
14 receive is \$150 back, and that's for a .8 gallon
15 per flush toilet, which is the most efficient
16 you can purchase right now in Hays.

17 Q Do you have a sense for the utili -- does the
18 term utilization rate mean anything to you,
19 Ms. Dickman?

20 A Yeah, so the toilet rebate is the most popular,
21 and we tend to get the most of those; and I do,
22 you know, over 100 for sure every year. That
23 particular year in 2019 was a very good year, so
24 that's why there was more. Washing machines,
25 once we increased the rebate, that also is a

1 A That's for sure, yes.

2 Q But you keep on trying new programs?

3 A We try new programs, and we've got a couple new
4 ones this year to try.

5 Q Which ones do you have this year that --

6 A This year we started a smart irrigation
7 controller rebate program, as well as a rain
8 sensor shutoff rebate for irrigation systems.

9 Q And those generally have the same format,
10 somebody purchases that item and then submits a
11 receipt and --

12 A Yes.

13 Q -- you determine reimbursement level?

14 A For those two programs, yes, that's how it
15 works.

16 Q Okay. And there we have WaterSmart Wally on the
17 screen again?

18 A Uh-huh.

19 MR. BULLER: Jami, let's try it
20 again.

21 (REPORTER'S NOTE: The following
22 video was played and transcribed
23 by the reporter.

24 MS. DICKMAN: ... as you might
25 imagine so it catches people's eye. And,

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1 of course, WaterSmart Wally was there and
2 he's always a popular attraction.
3 One new thing that we did in 2019, I
4 partnered with parks department, to do some
5 mulch loading events. We're always
6 promoting mulch for water conservation,
7 organic matter, those sorts of things, so
8 we did one in June and one in September;
9 and the one in June was highly successful,
10 the one in September, not so much but it
11 was still a good event to get the word out.
12 And we had one of the parks employees there
13 to load people up with mulch. And if
14 you've ever had to do that yourself, you
15 know that's a good benefit to have someone
16 there to load it for you.
17 Go Truck Go, getting into the fall now,
18 this is an event that early childhood
19 connections puts on. This year it was
20 outside --)
21 **MR. BULLER:** Jami, pause that,
22 please.
23 (Video paused.)
24 **BY MR. BULLER:**
25 Q So there's the connection that you were talking

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1 about with WaterSmart Wally and the kids?
2 **A Yes.**
3 Q We have a little kid on -- a little boy on the
4 screen who's giving WaterSmart Wally a big hug?
5 **A Yes, he gets lots of hug.**
6 Q Okay.
7 **MR. BULLER:** Go ahead, Jami.
8 **(REPORTER'S NOTE:** The following
9 video was played and transcribed
10 by the reporter.
11 **MS. DICKMAN:** ... WaterSmart Wally,
12 again, hugely popular. I played a little
13 game with the kids, flush it or trash it,
14 sounds very simple but the little ones
15 loved it. And, of course, their parents
16 are there so you can talk about flushable
17 wipes and those things that are not things
18 that you want to put down the toilet.
19 We participated in Wild West Fest Parade
20 this year, as well as support Hays'
21 homecoming parade. So, again, WaterSmart
22 Wally was there and we handed out little
23 messages encouraging people to be water
24 smart, along with our information about how
25 to find our website and things like that.

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1 Water festivals, participate in those as
2 well and, again, reaching out to your
3 middle school kids, 6th and 7th graders
4 primarily, and we play a game called water
5 smart grudge ball where we do water trivia
6 and gets the kids engaged because we're
7 playing games and stealing raindrops from
8 the other team. So that's always a popular
9 game with them and gets them involved.
10 Once again in 2019, I had the
11 opportunity to send toilet dye tabs home
12 with every elementary student in Hays, and
13 that was over 1800 of those. And so I
14 couldn't do this without good helpers to
15 help staple dye tabs to every single one of
16 those little sheets of paper that --)
17 **MR. BULLER:** Jami, pause that.
18 (Video paused.)
19 **BY MR. BULLER:**
20 Q What are dye tabs, what are you referring to
21 here and how does that work?
22 **A Toilet dye tabs are just little tablets of dye**
23 **that you can put in the tank of your toilet and**
24 **it dyes the water; and then if you have that**
25 **color show up in the bowl of the toilet, you**

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1 **know your toilet's leaking. So it's an easy way**
2 **to test your toilet for leaks.**
3 **So that's something that we do try to**
4 **promote is testing toilets for leaks, and we**
5 **have been able to send those home with every**
6 **single elementary kid in Hays for the last**
7 **several years. And they get a little incentive**
8 **to test their toilets, and, of course, they're**
9 **teaching Mom and Dad about testing the toilets**
10 **for leaks, and we found several leaks that way.**
11 Q Do you have any sense about how much water a
12 leaking toilet can -- can consume?
13 **A Well, depending on how -- how significant the**
14 **leak, it could be many, many gallons per day. I**
15 **can't give you the exact number, but it could be**
16 **upwards of thousands of gallons in a year or**
17 **more so significant.**
18 Q Every little bit helps?
19 **A Yes.**
20 Q Okay.
21 **MR. BULLER:** Jami, go ahead.
22 **(REPORTER'S NOTE:** The following
23 video was played and transcribed
24 by the reporter.
25 **MS. DICKMAN:** The main goal there is

1 to promote Fix a Leak Week, which is an EPA
2 WaterSense supported program, and it helps
3 get the word out about how to test for
4 those things. And it's fun to read some of
5 the comments that come back on that. We
6 also do some radio trivia and give out some
7 prizes through that whole week.

8 Another thing that I got to participate
9 in this year that I hadn't in the past was
10 Kids Ag Day which is sponsored by Farm
11 Bureau. And so this was out just south of
12 town, but I was there to have a station
13 about water and talked about the water
14 cycle and that there is no new water and
15 where water comes from, which by the way
16 the number one answer I got was the water
17 tower. So there's some education to be
18 done there, and we did that that day, but
19 it was all 5th graders in USD 489. So that
20 was a good opportunity, and hopefully we'll
21 get to participate in that again this year.

22 And, of course, when I can, when I get
23 invited, I go into the schools, this was
24 Lincoln Elementary School 4th grade class,
25 talked about water conservation, what they

1 that's going on. When you get kids
2 involved, they are talking about it all the
3 time and you have really done an
4 outstanding job, we appreciate it very
5 much.

6 **MAYOR MUSIL:** I would agree. I
7 mean, when you hear the radio, just the
8 commercials, they're -- you're asking
9 people to conserve, but it's very positive.
10 And that's the thing I hear is that, you
11 know, it's not so negative about, oh, you
12 need to do this and it's just the way of
13 life here. And I really like the Facebook,
14 I see it on, you know, the newspaper, Hays
15 Post, and, you know, it's really good
16 stuff, I mean, everywhere you look, you see
17 it and it's the right thing to do. So
18 great job to you and your team.

19 **MS. DICKMAN:** Thank you.)
20 (Video stopped.)

21 **BY MR. BULLER:**

22 Q Okay, Jami. And the Hays City Commission was
23 complimentary of your efforts that year?

24 A Yes.

25 Q It looks like based on that video that you're

1 could do, and we played water smart bingo,
2 water conservation bingo, which was a big
3 hit with those kids.

4 Again, there's so many more things I
5 could talk about but I know you don't want
6 me here all night so -- but water smart
7 landscape awards and things like that,
8 other presentations.

9 In 2020 and beyond, kind of continuing
10 what we've been doing. I really would like
11 to build up the web pages, that's one of my
12 goals for the Water Smart landscaping side
13 of things and just continue to build on
14 those, try to go where the people are and
15 get the word out as we can, work with
16 Stacie Minson again on the water poster
17 contest and Art Walk and other things like
18 that and just continue to look for new ways
19 to save water within the City and try to
20 help educate others about how to do that.

21 So do you have any questions?

22 **VICE MAYOR:** You know, Holly, I hear
23 as much about what you do with water
24 education in this community than I do as
25 any other department and any other thing

1 busy, you do many different programs throughout
2 the year. Is that -- was 2019 -- and you were
3 explaining 2019, is that normal for you each
4 year, year in, year out you're doing all those
5 programs?

6 A **It is normal. I would say it's increased since
7 then, honestly.**

8 Q Other than the buffalo grass incident program
9 which flopped, were the other -- are the other
10 programs that you discussed during this
11 presentation still in effect in Hays?

12 A **They are still all in effect except for the
13 buffalo grass seed rebate.**

14 Q And you spoke a lot about interacting with kids.

15 A **Uh-huh.**

16 Q Tell us about your efforts relating to education
17 and outreach into the Hays school systems.

18 A **Well, I try to get out as often as I can and
19 anywhere I can where kids are involved of all
20 ages, and so we try to -- you know, that dye tab
21 program I'm pretty proud of because we get to
22 hit every single elementary kid in Hays. But
23 the Go Truck Go program, that's usually younger
24 kids, so we're talking infants to 5 year olds.
25 And then we're -- you know, we just try to hit**

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1 all age groups; I've been into the high school
2 to do some programs with some of the classes,
3 and we work with some of the university classes
4 to present topics of that, so try to hit every
5 single age group we can as often as we can.
6 Q What about adult education?
7 A I do adult education as well. You know, I've
8 been invited to speak for civic groups and, you
9 know, help others in the community as well
10 there. Always offer to go out and talk to
11 teachers as well to help them teach students.
12 Q So your efforts extend from infants to adults;
13 is that right?
14 A They do.
15 Q How often do you go out to the schools and do
16 presentations in classrooms each year?
17 A Well, it depends on the year. This year in
18 particular, we were invited to speak to every
19 6th grade science class at Hays Middle School,
20 and so we were there a lot; and then we were
21 also in some of the elementary schools. So it
22 depends on the year, but this year it was over
23 20 presentations given.
24 Q Okay. You mentioned that, in the video, that
25 you ran many thousands of advertisements. Why

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1 is it needed or why do you think it's
2 appropriate to run so many advertisements about
3 water conservation?
4 A Well, I think everybody is busy and I think you
5 need to try to get the message out in any way
6 you can, in all different avenues that you can,
7 and so that's why we try to do radio and TV and
8 digital ads and just trying to get the word out
9 as much as possible. So that's why I just think
10 it's important to keep spreading the message.
11 Q There was one image on the screen that you said
12 was particularly popular, do you recall which
13 one that was?
14 A Yes.
15 Q And what the message was on there, can you tell
16 us?
17 A It rained, please don't water -- or please don't
18 water, it rained.
19 Q Sounds straightforward?
20 A Right.
21 Q So simple messages?
22 A Very simple messages, straight to the point, and
23 just trying to get -- get the basic information
24 out there quick, easy to digest.
25 Q Jami, pull up Exhibit 2690, if you would.

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1 Okay. Ms. Dickman, can you explain --
2 identify what's on the screen here?
3 A This is a winning poster from our annual water
4 poster contest.
5 Q And here we have a picture on Cities'
6 Exhibit 2690 at page 104221 of what looks like
7 the 1st place entry in the preschool category;
8 is that right?
9 A That is correct.
10 Q Okay. And can you read us what the text on the
11 screen is? It might be a little hard for you to
12 see.
13 A Make every drop count, I can see clearly. The
14 other part --
15 Q And can you zoom in to the smaller --
16 A Okay. Turn the water off when you brush your
17 teeth.
18 Q Turn the water off when you brush your teeth, so
19 is that -- tell us about that, that message, is
20 that something that was intentionally pushed out
21 to the kids?
22 A That is certainly one of the messages that I
23 speak about when I talk to kids. So I try to
24 make it applicable to their age level. Little
25 kids, they brush their teeth, this is something

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1 that they can do to help save water, so that's
2 what's being shown here.
3 Q So here we have a preschooler who got the
4 message?
5 A Uh-huh.
6 Q Jami, go to page 104229.
7 Okay. It looks like we have a familiar
8 face there on the screen, who is that?
9 A Looks like WaterSmart Wally.
10 Q And this is a more sophisticated poster, it's
11 the 1st place entry in the 6th grade category,
12 is that what -- is that correct?
13 A That is correct.
14 Q And there are a number of different messages
15 here, Jami, zoom in to the top left part of the
16 screen and -- yeah.
17 So we have -- and I'm just going to read
18 them for you since it's a little bit far away.
19 Water your grass, not the cement; don't take
20 super long showers, do your business and get out
21 of there. Scroll down, if you would. We have a
22 picture of a short shower versus a long shower.
23 Stop leaving your faucet on while you brush your
24 teeth. Even if a drop of water may not seem
25 important, remember, every drop counts; put in

1 big loads of laundry, not small ones, emphasis
2 in original; limit your summer water activities,
3 go to the pool instead of using, there's a
4 picture of a sprinkler, it looks like. Okay.
5 And so there was a number of different messages,
6 and these are other messages that you've been
7 sending out to -- you know, if you want to
8 explain those, are those all intentional that
9 you targeted?
10 **A They are. It's amazing when you get these**
11 **posters back that you see those messages you**
12 **gave the kids just on the poster. And so when**
13 **we go give presentations to the schools, we talk**
14 **about every single one of those topics as far**
15 **as, you know, don't wash just one hoodie, make**
16 **sure you're washing a full load of clothes.**
17 **Q And finally page 104230. And I want to zoom**
18 **in on that last one there, it says, we need**
19 **water to live. Tell us about that message.**
20 **A Well, I always start the presentations out with**
21 **kids saying that, you know, we need water,**
22 **right, can you think of anything that doesn't**
23 **need water? And we talk about just what needs**
24 **water, how do we use water, and we start out**
25 **with those simple messages at the beginning,**

1 **A It is becoming more popular. We had the most**
2 **posters we've ever had this past year, so we're**
3 **excited about that and we hope that continues.**
4 **But, yes, it is a very popular event for us.**
5 **Q Do the winners of the poster contest get any**
6 **prizes?**
7 **A They do, we provide Hays Chamber Checks, which**
8 **is a gift certificate essentially to spend money**
9 **in the City of Hays, so it has to be a business**
10 **in Hays where they spend those funds. But, yes,**
11 **so the younger kids get a smaller amount, 1st**
12 **place is \$50, and then the older you get, the**
13 **more incentive you get because the adult**
14 **category, high school category top prize is**
15 **\$250.**
16 **Q So that little preschooler with the red-headed**
17 **picture got \$50?**
18 **A Yes.**
19 **Q Okay. Do you have an awards ceremony?**
20 **A We do, we try to make this an event, it is an**
21 **event, and so these kids and their parents and**
22 **the adults that participate get a chance to come**
23 **to an award ceremony. We've had it at the**
24 **Sternberg Museum lobby here the last year, and**
25 **we provide -- well, they get a chance to come**

1 **give them kind of a basic background.**
2 **Q In the video you were discussing the poster**
3 **contest, is this part of the poster contest?**
4 **A This is one of the posters, yes.**
5 **Q And is the poster contest a popular program in**
6 **your position?**
7 **A It is becoming very, very popular.**
8 **Q How many entries in the poster contest did you**
9 **have in the most recent year?**
10 **A In this most recent year, we had 629.**
11 **Q 629 posters?**
12 **A Yes.**
13 **Q Okay. And then you, in the video, mentioned the**
14 **posters being displayed during Art Walk, tell us**
15 **about that.**
16 **A Yes, so this poster contest is for anyone from**
17 **preschool age through adults, and we display the**
18 **1st, 2nd, and 3rd place winners of each of those**
19 **categories at Art Walk, the Spring Art Walk**
20 **specifically in Hays, and we get to display**
21 **those in the local businesses' Main Street**
22 **windows and then they're on display at Art Walk**
23 **and then throughout the month of May.**
24 **Q Is the poster contest becoming more popular or**
25 **less popular?**

1 **up, accept their award, shake the hands of the**
2 **city commission that is present, WaterSmart**
3 **Wally is there, and then we have a dessert**
4 **reception after that with cookies and punch.**
5 **Q Jami, if you could go to -- open up a web page**
6 **and go to --**
7 **Ms. Dickman, can you identify what's on the**
8 **screen right now?**
9 **A Yes, this is the water conservation page for the**
10 **City of Hays' website.**
11 **Q And is this the page that you indicated during**
12 **that commission meeting that was in the top ten?**
13 **A It is, yes.**
14 **Q And what does that mean?**
15 **A So top ten means that that year it was in the**
16 **top ten pages visited, right up there with**
17 **police and some of those -- bids and some of**
18 **those other pages that are pretty popular.**
19 **Q Is this how citizens, residents of Hays can get**
20 **information on the rebate programs and those**
21 **incentives?**
22 **A Yes, it is, we have WaterSmartHays.com as our,**
23 **kind of our website domain name for this page,**
24 **and so they can go right to that page to find**
25 **information about the rebates and how to save**

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1 **water indoors and out.**
2 Q Jami, can you zoom in to that top paragraph for
3 me?
4 And I'm just going to read for you this
5 sentence here, it talks about the different
6 programs and Hays not being located to a
7 sustainable water source, As a result water
8 conservation has become a, quote, way of life,
9 end quote, for citizens of Hays. Do you agree
10 with that statement?
11 **A I do agree with that statement.**
12 Q And what does that -- what does water
13 conservation being a way of life mean to you as
14 the water conservation specialist?
15 **A Well, I think especially if people have lived**
16 **there their whole lives, it's just how things**
17 **are, we're used to that, I can't imagine it**
18 **being any different. And so if you are born and**
19 **raised there, you've lived there for many, many**
20 **years, you are accustomed to shutting the water**
21 **off when you're brushing your teeth and thinking**
22 **about those things, not taking long showers,**
23 **trying to keep things as efficient as possible.**
24 Q As a part of the water conservation program, is
25 it -- how is the water conservation program --

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1 how are the water conservation program
2 requirements -- and that's the wrong question.
3 How is Hays' water conservation plan enforced?
4 **A Well, we have water restrictions every summer,**
5 **so from June 1st through September 30th outdoor**
6 **water use is limited to between -- or, I'm**
7 **sorry, no outdoor watering between noon and**
8 **7:00 p.m., and so that is something that is**
9 **enforced by the Hays Police Department.**
10 Q Does the City of Hays take any proactive
11 measures each month when it -- with respect to
12 particularly high water usage?
13 **A So the city finance office will go through the**
14 **bills or the billing cycle, and if something is**
15 **exceptionally high over last month's bill they**
16 **will call individuals, whether it be a homeowner**
17 **or a business owner, and let them know that**
18 **something may be leaking or something is**
19 **causing -- they'll question why that is high,**
20 **and oftentimes people will be thankful for that**
21 **because they found a leak.**
22 Q Also conserves water?
23 **A Yes, definitely.**
24 Q Do you or do you know of any instances where the
25 City has been contacted by other entities

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1 relating to water conservation?
2 **A Yes, I've had requests from other cities, other**
3 **areas in the state, GMD1, GMD4, just**
4 **inquiring -- Wichita, City of Wichita, inquiring**
5 **about our conservation programs, how we do those**
6 **types of things and -- and just getting general**
7 **information about that.**
8 Q Jami, pull up Exhibit 927 for us. But don't
9 start -- start it just yet.
10 Has the City in the past invested in water
11 conservation advertisement, you know, clips?
12 **A Yes, we have, we've had various TV ads run in**
13 **the past.**
14 Q Okay. Jami, play Exhibit 927, nine two seven.
15 (Video playing.)
16 **BY MR. BULLER:**
17 Q Okay, Jami, pause it. Jami, please play
18 Exhibit 928.
19 (Video playing.)
20 **BY MR. BULLER:**
21 Q Okay, Jami. Exhibit 929, please. Exhibit 929.
22 (Video playing.)
23 Q Okay, Jami, pause that. Okay. Exhibit 930.
24 (Video playing.)
25 **BY MR. BULLER:**

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1 Q Okay. And, finally, Exhibit 931.
2 (Video playing.)
3 **BY MR. BULLER:**
4 Q All right. So Exhibit 931 is supposed to be
5 another example of an advertisement that was run
6 by the City of Hays. Ms. Dickman, were those
7 the advertisements you were referring to?
8 **A Those were advertisements that were way before**
9 **my time at the City, so those are not the ones**
10 **that are currently running, but those were some**
11 **in the past.**
12 Q Okay, thank you. Jami, pull up Exhibit 820.
13 And zoom in to the top part of the --
14 Ms. Dickman, can you identify this document
15 for us?
16 **A The municipal water conservation plan for the**
17 **City of Hays.**
18 Q Have you had an opportunity to review that
19 document --
20 **A I have.**
21 Q -- before your testimony today?
22 **A Yes, I have.**
23 Q Are you familiar with that document?
24 **A I am familiar.**
25 Q Please describe in general terms what is in that

1 document.

2 **A Essentially it's just a plan that describes our**

3 **water conservation efforts and our ways to go**

4 **about dealing with significant droughts.**

5 **Q** Does it include the rebate programs and things

6 of that nature?

7 **A It mentions those things, yes.**

8 **Q** And it sets out -- and, Jami, scroll down just a

9 little bit on this first page.

10 And then on the bottom portion of that

11 page, it lists drought response, stage 1, water

12 watch; stage 2, water warning; stage 3, water

13 emergency. Did I read that correctly?

14 **A That is correct.**

15 **Q** And describe what, in general terms, what each

16 of those are?

17 **A Just as a way to respond to significant drought;**

18 **if we get to a certain level, then we will**

19 **implement more water conservation measures.**

20 **Q** Has the City followed its water conservation

21 plan?

22 **A Yes.**

23 **Q** Are there any deviations from the water

24 conservation plan, to your knowledge?

25 **A Not to my knowledge, I'd say we've done above**

1 **and beyond what's required.**

2 **Q** So you've satisfied all the requirements and

3 done more?

4 **A Yes.**

5 **Q** Jami, pull up Exhibit 788.

6 And, Ms. Dickman, I'll represent to you

7 that this is ordinance number 3881 that

8 authorized the different drought response

9 stages. Are you familiar with this ordinance?

10 **A I am familiar.**

11 **Q** Okay. Can you describe it for us, please.

12 **A Again, this is an ordinance that is in place to**

13 **help ensure that we are conserving water in an**

14 **efficient way, so dealing with droughts and**

15 **measures regarding our water conservation and**

16 **water use.**

17 **Q** And is the City in compliance with this

18 ordinance?

19 **A Yes.**

20 **Q** Okay. Thank you.

21 **MR. BULLER:** I have no further

22 questions, thank you.

23 **PRESIDING OFFICER:** All right.

24 **MR. COLE:** No questions, thank you.

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

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

2

3 **CROSS-EXAMINATION**

4 **BY MR. LEE:**

5 **Q** Ms. Dickman, good morning -- good afternoon, I'm

6 used to good morning. Thanks for your

7 testimony, it was -- it was interesting and good

8 to hear. It would appear to me that water

9 conservation measures are well received and

10 accepted in Hays. Is that fair?

11 **A I would say that's what we strive to have**

12 **happen.**

13 **Q** Sure, sure.

14 **A Yeah.**

15 **Q** I understand. And I think it is the case, other

16 than being away at the wrong university, you've

17 been in Hays all of your life basically?

18 **A I lived in Hays -- well, outside of Hays, in the**

19 **area, all of my life except for about five**

20 **years.**

21 **Q** Okay. And so you and others who are in that

22 situation would be accustomed to water

23 conservation over the years?

24 **A I have known about it for a long time.**

25 **Q** Okay. All right. I don't think I have anything

1 else, thank you.

2 **PRESIDING OFFICER:** All right.

3 Mr. Buller? I'm sorry, Ms. Langworthy?

4 **MS. LANGWORTHY:** No questions, Your

5 Honor.

6 **PRESIDING OFFICER:** All right.

7 Mr. Buller?

8 **MR. BULLER:** No questions from the

9 City, thank you.

10 **PRESIDING OFFICER:** All right. Why

11 don't we -- well, I guess you have one more

12 witness today; is that correct?

13 **MR. TRASTER:** We do.

14 **PRESIDING OFFICER:** Why don't we

15 take a break till 3:00 o'clock and we'll

16 pick back up at 3:00 and resume with your

17 witness at that time.

18 **MR. TRASTER:** Very good, thank you,

19 Your Honor.

20 (Thereupon, a recess was taken;

21 whereupon, the following was had.)

22 **PRESIDING OFFICER:** All right.

23 Mr. Traster, we're back on the record, it

24 is now 3:02 p.m. so you may proceed.

25 **MR. TRASTER:** Thank you, Your Honor,

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1 I'm going to call Lane Letourneau to the
2 witness stand.
3 **PRESIDING OFFICER:** Mr. Letourneau
4 is ready.
5
6 **LANE LETOURNEAU,**
7 having first duly sworn or affirmed, was
8 examined and testified as follows:
9
10 **MR. TRASTER:** Thank you for
11 correcting me.
12
13 **DIRECT EXAMINATION**
14 **BY MR. TRASTER:**
15 Q Mr. Letourneau, would you please state your name
16 and spell it for the court reporter.
17 A **I'm Lane Letourneau, that's L-A-N-E and**
18 **L-E-T-O-U-R-N-E-A-U.**
19 Q Mr. Letourneau, will you please give us your
20 business address.
21 A **1320 Research Park Drive, Manhattan, Kansas.**
22 Q And is that the business address for the Kansas
23 Department of Agriculture?
24 A **That's correct.**
25 Q And is that where you're employed?

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1 A **That's correct.**
2 Q We'll come back to that. Can you give us a
3 little bit of information about your background
4 and education?
5 A **I started my --**
6 Q You don't have to start like in kindergarten,
7 maybe -- did you grow up in Salina, I think you
8 told me?
9 A **Salina, Kansas High School, 14 people in my**
10 **graduating class, and I say that because that's**
11 **a lot of culture of how I deal with folks as a**
12 **regulator --**
13 Q Sure.
14 A **-- from that. But college at Fort Hays State**
15 **University, graduated 1983 with a bachelor's in**
16 **geology.**
17 Q And after college, what did you do?
18 A **Right out of college, I went to work for Great**
19 **Guns Perforating and Logging, that was an oil**
20 **com -- an oil well logging company in Hays, I**
21 **perforated wells, and then I also was an open**
22 **hole engineer, it was called. I'm not an**
23 **engineer, but that was the title of it, I ran**
24 **gamma ray neutron logs on oil wells.**
25 Q And how long did you do that?

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1 A **'83 to '85, two and a half, three years.**
2 Q And then what?
3 A **I got laid off in the oil field in the downturn,**
4 **I worked a year at Frontier Tire & Auto in**
5 **Salina while I was applying for state jobs. And**
6 **then I got on with the Division of Water**
7 **Resources 36 years ago last month. I started in**
8 **new apps, new applications, and then the water**
9 **use position came open, but at the same time**
10 **that came open the law was changed.**
11 Q So let's back up.
12 A **Okay.**
13 Q So the law changed to require water use reports?
14 A **Yes, K.S.A. 82a-732, I'll -- I don't need to**
15 **look at my book for that one. With that --**
16 Q Let's stop just for a quick second and you do
17 have your book, your, quote, book in front of
18 you, what is your book?
19 A **My book is the most recent copy of the Kansas**
20 **Water Appropriation Act, the most recent copy of**
21 **our rules and regulations, but then I also have**
22 **a copy of the Water Banking Act, the Transfer**
23 **Act, the water protection fee, administrative**
24 **matters, and then the GMD Act. And those are**
25 **the things I'm asked about all the time, so I**

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1 **carry my book with me everywhere I go.**
2 Q So you don't have it memorized?
3 A **No, I don't.**
4 Q Well, you reeled off sections pretty readily
5 so -- anyway, you -- so the law changed. Before
6 that time, were you encouraged -- DWR encouraged
7 water use reporting but they didn't require it.
8 Is that fair?
9 A **That's correct. It was a permit condition to**
10 **report your annual water use since, I believe,**
11 **the '50s, '57, I believe, but we only received**
12 **about 55 percent of the annual water use**
13 **reports. And I know it was a question about --**
14 **(Reporter requests clarification**
15 **of the witness.)**
16 A **-- nonpoint source pollution.**
17 **BY MR. TRASTER:**
18 Q You also said chemigation?
19 A **Chemigation, yeah, there's a -- there's a line**
20 **on the annual water use report for irrigation**
21 **that asks if someone chemigates.**
22 Q Can you spell that?
23 A **C-E-M-I-G-A-T-E, I believe.**
24 Q C-H-E-M?
25 A **C-H-E-M.**

1 Q Okay.
2 A **And what that means is to put pesticide or**
3 **herbicide through your irrigation system. The**
4 **legislature -- Kansas Department of Health and**
5 **Environment was concerned about nonpoint source**
6 **pollution, so they wanted to know if these folks**
7 **were permitted for check valves or not.**
8 **And they knew that our mailer at least**
9 **reached out to every irrigator, and so with**
10 **that, they changed the law that required that**
11 **folks file an annual water use report by**
12 **March 1st of the following calendar year. So**
13 **the 2022 report was due March 1st of 2023, and**
14 **there were civil penalties attached to folks**
15 **that failed to file.**
16 Q So that law was changed what year?
17 A **I believe 1987.**
18 Q And there have been some amendments to that law
19 since then, but it was first passed in '87,
20 correct?
21 A **That's correct.**
22 Q All right. So -- and why is that significant
23 for your employment?
24 A **Well, I was able then to get a promotion. With**
25 **that law came a, at that time a hydro III and an**

1 A **After that, I became the program manager in**
2 **2007.**
3 Q Okay. Did compliance and enforcement come into
4 play at some point?
5 A **Yeah, K.S.A. -- here I go again without looking,**
6 **K.S.A. 82a-737, I believe, is when the -- prior**
7 **to that statute, we only had criminal authority**
8 **for someone that was not in compliance with the**
9 **Water Appropriation Act.**
10 Q And so then that gave you the ability to use
11 civil penalties?
12 A **Civil penalty authority. And so because our**
13 **unit was already doing compliance and**
14 **enforcement with annual water use reports, our**
15 **unit then got those duties of doing civil**
16 **penalties as well for all noncompliance.**
17 Q Was there a civil -- originally a civil penalty
18 for filing a late water use report?
19 A **Not until 1987.**
20 Q Okay. Well, that's what I mean, when that --
21 okay. So in 2006 or '7, you became the program
22 manager?
23 A **That's correct.**
24 Q And are you -- is that your current position?
25 A **That's correct.**

1 **administrative assistant, and it could have been**
2 **called a keyboard operator, so we had the**
3 **position I was in but here came another position**
4 **so we became the water use unit. And with me, I**
5 **was able then to kind of meet everybody in the**
6 **state, then, because I'm sending the annual**
7 **water use reports, people are delinquent, I'm**
8 **talking to these people all the time, so that**
9 **just helped build my relationship with the water**
10 **users and the regulated community.**
11 Q I see. And then was there another change within
12 the short time after that in the law? When it
13 became -- you got civil penalty authority?
14 A **With the water use or just the Water**
15 **Appropriation Act?**
16 Q Well, I'm trying to work through your employment
17 history. So you -- you started out in new
18 applications, you were dealing with new
19 applications for new water appropriation rights,
20 reviewing and approving those or not?
21 A **Correct.**
22 Q And then you went to this water use reporting
23 function?
24 A **Correct.**
25 Q And then what happened?

1 Q And that position is in the Division of Water
2 Resources within the Kansas Department of
3 Agriculture, correct?
4 A **That's correct.**
5 Q I see. In that -- so the Division of Water
6 Resources has other responsibilities, dams and
7 flood -- floodplains and all that, that --
8 that's somebody else, though, correct?
9 A **That's a different -- we have three programs,**
10 **Mr. Traster, we've got structures that you were**
11 **just talking about, Terry Medley is the program**
12 **manager in structures; and you're correct, they**
13 **deal with dams and floodplain fields and that**
14 **kind of -- stream obstructions. Then Chris**
15 **Beightel is water management services, and**
16 **they're the modelers, the folks that deal with**
17 **the com -- interstate compacts. And then**
18 **there's the water appropriation program that I'm**
19 **the program manager for.**
20 Q Can you spell Chris' last name?
21 A **B-E-I-G-H-T-E-L.**
22 Q So -- and the three of you, Mr. Beightel,
23 Mr. Medley, and you all report directly to the
24 chief engineer?
25 A **That's correct.**

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1 Q And he then reports to the secretary of
2 agriculture?
3 A **That's correct.**
4 Q Who's the secretary -- who's the chief engineer
5 at this time?
6 A **It's Earl Lewis right now.**
7 Q I see. And in the course of your duties, are
8 you -- I mean, describe your duties, do you
9 interpret and apply the Kansas Water
10 Appropriation Act?
11 A **Yes, every day.**
12 Q Do you help draft or draft and implement DWR
13 regulations?
14 A **Statutes and regulations.**
15 Q And you work with the chief engineer to develop
16 policies and procedures. Is that fair?
17 A **That's fair.**
18 Q And then is that your job to -- he thinks great
19 thoughts and you make it happen, you implement
20 the programs. Is that a fair way to say it?
21 A **That's very fair, yes.**
22 Q So when -- let's kind of walk through it, I
23 don't -- we don't need to go into a great deal
24 of detail, but when I -- when a person files a
25 new application and -- for a permit, how does

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1 that work and just briefly?
2 A **Briefly, a new application, it must come in and**
3 **be acceptable for filing, which really is --**
4 **acceptable for filing does not have to be**
5 **100 percent complete. It just needs a quantity,**
6 **the location, and a filing fee, and we will**
7 **accept that and assign a priority. Then we'll**
8 **work with folks to get it complete.**
9 Q So you work -- you work with the applicant?
10 A **Absolutely.**
11 Q You return it to them for additional
12 information?
13 A **Absolutely.**
14 Q And meet with them occasionally?
15 A **We meet with them a lot.**
16 Q And then -- and once the application is complete
17 and assuming that it's approvable, that there's
18 water available in the quantity that they want,
19 what happens then?
20 A **Once it's complete, we'll send out what we call**
21 **nearly notices and do a 15-day comment period to**
22 **see if there's any concerns. If there's no**
23 **concerns, if it's outside of a groundwater**
24 **management district, then we're able to go ahead**
25 **and approve it. I mean, it's got to meet all**

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1 **the standards for approval, we don't approve**
2 **everything. If it doesn't meet the standards,**
3 **like say it doesn't meet safe yield is one of**
4 **the things we look at, we'll send it back to the**
5 **applicant and allow them to modify it to see if**
6 **they can get it in a location or a -- reduce the**
7 **quantity so it does meet safe yield. So there's**
8 **a lot of back and forth.**
9 **Now, I mentioned outside the groundwater**
10 **management districts, if it's inside the**
11 **groundwater management district, we do the**
12 **nearby notices so the groundwater management**
13 **district knows the comments, then we send it to**
14 **the groundwater management district for their**
15 **recommendation.**
16 Q And then do they decide whether or not to issue
17 the permit?
18 A **No, they'll look to see if it meets their**
19 **current rules or it does not. They make a**
20 **recommendation to the chief engineer, and then**
21 **the chief engineer can accept that**
22 **recommendation or not accept it, and then we'll**
23 **go ahead and take the appropriate steps.**
24 **There's very few times I can recall we did not**
25 **accept the GMD's recommendation.**

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1 Q 'Cause they're kind of boots on the ground in
2 some respects?
3 A **Yeah, absolutely, they're a local layer of**
4 **government.**
5 Q But you also have your own local people, and
6 you've got field offices in Garden City and
7 Stockton and Stafford and --
8 A **Topeka.**
9 Q -- Topeka?
10 A **And a satellite office in Parsons.**
11 Q Parsons. So -- and so once it's approved, a
12 permit, that's a permit, then what happens?
13 A **That's when our work begins because you've got a**
14 **permit -- you've got a permit to start to**
15 **appropriate water, to develop a water right; and**
16 **develop and perfect are the same word in this**
17 **case. And so when I say our work begins, we'll**
18 **have an approval, and the person then has**
19 **whenever that application is approved and then**
20 **the remainder of that year and the next year to**
21 **complete the diversion works. The diversion**
22 **works are defined, it has to be a well or**
23 **control structure to bring water -- to be able**
24 **to divert water through a flowmeter, a**
25 **totalizing flowmeter to a diversion works.**

1 Q Okay. So --

2 **A To a system, a distribution system, I'm sorry.**

3 Q So the requirements in the Water Appropriation

4 Act requires the water be for a beneficial use,

5 correct?

6 **A That's correct, yeah.**

7 Q It has to be within reasonable limitations,

8 right?

9 **A That's correct.**

10 Q You have to divert water and apply it to that

11 beneficial use, right?

12 **A Correct.**

13 Q What happens if you apply it to some other use,

14 how's that work? Strike that, that's not going

15 to be really helpful here.

16 **A Okay.**

17 Q And it has -- it has to be within reasonable

18 limitations, correct?

19 **A That's correct.**

20 Q All right. So --

21 **A I'm sorry, just to add, each water right has**

22 **what I call terms, conditions, and limitations.**

23 Q Okay.

24 **A And that permit has to operate while it's being**

25 **perfected, and it's in the statute, within those**

1 **terms and conditions and limitations, it must**

2 **perfect in conformity with the permit to be able**

3 **for us to issue a certificate.**

4 Q Okay. What happens if you use less -- and

5 during this period, you use less -- the permit's

6 for X amount, let's say, just make it -- you

7 know, it's 100 acre-feet that you have a permit

8 for and they use 90 acre-feet is the most they

9 use in any year during the perfection period,

10 what happens?

11 **A And we refer to that as the maximum year of**

12 **record, and so they'll have their perfection**

13 **period and their certificate will be based on**

14 **the maximum year of record; and the certificate**

15 **is actually the water right document, then,**

16 **that's recorded at the register of deeds, that's**

17 **the property right.**

18 Q That -- that documents the property right that

19 has been created by?

20 **A By the use -- by the beneficial use from the**

21 **applicant.**

22 Q Okay. Do sometimes you get out -- is there a

23 field -- is there some way to check on things

24 during the perfection period or after?

25 **A Yeah, I said once we get a new application**

1 **approved, that's when our work begins.**

2 Q Right.

3 **A 'Cause once this application is approved and**

4 **it's complete, we receive a notice of completion**

5 **we call it an N&P, a notice and proof. That**

6 **triggers us, then, to go out on what's called a**

7 **compliance check, because I talked about**

8 **perfecting in conformity with the permits, so we**

9 **want to make sure the well's in the right**

10 **location, if it's irrigation they're irrigating**

11 **the appropriate place of use. We want to make**

12 **sure it's in compliance while they operate**

13 **during the perfection period.**

14 **Now, if they're pumping, we go ahead and**

15 **we'll grab the instantaneous rate at the time**

16 **because the field inspection, it's in law, folks**

17 **have to pay us \$400 for us to go out and do a**

18 **field inspection, and everything about that**

19 **permit in perfection is on that field**

20 **inspection, the place of use, the point -- point**

21 **of diversion, rate, quantity, the water use**

22 **records, and then that instantaneous rate.**

23 Q When you say it's on the field inspection,

24 there's a form that somebody fills out when they

25 go out and do this field inspection, it has all

1 the information about -- about the water right,

2 the characteristics of the water right on it?

3 **A That's the field inspection report, that's**

4 **correct.**

5 Q And so what happens if somebody has this

6 theoretical water right for 100 acre-feet and

7 they apply 110 acre-feet, then what happens?

8 **A Well, we can -- you know, you ask that if they**

9 **had perfected 90, the certificate would be**

10 **written for 90 acre-feet. If it's**

11 **110 acre-feet, then we cannot write the**

12 **certificate for 110, it would be for 100.**

13 Q Because that's all that was permitted?

14 **A That's correct.**

15 Q So if I -- we don't want to dwell on this too

16 long, but if I in my second year of irrigation,

17 for instance, I use those 90 acre-feet but then

18 I only use 60 and I don't ever use 90 again,

19 what's my certificate going to look like?

20 **A 90 based on maximum year of record.**

21 Q Okay.

22 **A Yeah.**

23 Q And once that water right is perfected and

24 certified, you issue the certificate of

25 appropriation, it sets out all the details, and

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1 that, you said, gets filed with the register of
2 deeds?
3 **A That's correct.**
4 **Q** So when you -- you also said that you have to
5 put the well in the right place, so if I -- it
6 looks -- when I've seen it, you know, the well
7 has to be 1320 feet north and 1320 feet west of
8 the southeast corner of the section, that's the
9 point. What if it's not right at that point?
10 **A It can be within 300 feet of that point and**
11 **still be in compliance.**
12 **Q** Okay. So can the place of use, can I get within
13 300 feet of the place of use?
14 **A We're not that way with the place of use because**
15 **the water right is a property right appurtenant**
16 **to where it's established, and so we're more**
17 **precise with the place of use than we are with**
18 **the point of diversion.**
19 **Q** Okay. So once I have a water right and it's
20 certified, can I -- am I stuck with those terms
21 and conditions, can I ever change it?
22 **A Everything can be changed except for the**
23 **priority; the rate cannot go up, the quantity**
24 **cannot go up, but those can be reduced. And the**
25 **point of diversion, place of use, and use made**

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1 **of water can be changed.**
2 **Q** And that's K.S.A. 70 -- 82a-708b, correct?
3 **A Yes, 708b.**
4 **Q** So I can move my well to a different location?
5 **A That's correct.**
6 **Q** If I just go out and move my well without
7 telling you, is that okay?
8 **A No, that's -- you're not in compliance.**
9 **Q** What if I just move it -- I'm within 300 feet,
10 maybe I just move it over 10 feet, what's --
11 **A Well, 10 foot still requires a change; it's a**
12 **short move change that's done in our field**
13 **office.**
14 **Q** But you still have to get approval for even
15 that?
16 **A That's correct.**
17 **Q** So I can change -- I can change my point of
18 diversion, I can change my place of use?
19 **A That's correct.**
20 **Q** So why -- why would I want to do that?
21 **A There's a whole host of reasons why someone**
22 **wants to change their place of use, they**
23 **might -- irrigation, they might have a flood**
24 **system that went to a pivot, they might buy the**
25 **pivot across the road and want to add that**

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1 **pivot, a city may be picking up a rural water**
2 **district that's part of the distribution system,**
3 **feedlot may want to expand.**
4 **Q** Okay. So you change the place of use, the point
5 of diversion, the type of use, how does that --
6 what's that about?
7 **A Well, in the case of Hays they purchased an**
8 **irrigation water right, now they want to change**
9 **it to municipal. So that's what folks do in**
10 **western Kansas anyway, if people need water in**
11 **areas that are closed to new appropriations, we**
12 **tell them to buy an irrigation water right.**
13 **Q** So when you say areas closed, we talked earlier
14 about filing new applications but some areas are
15 closed?
16 **A Some areas are closed by rule, groundwater**
17 **management districts have closed by rule. This**
18 **area, Groundwater Management District Number 5,**
19 **closed by rule, Groundwater Management District**
20 **3 closed by rule; 1 and 4 also closed by rule, 2**
21 **is still open. But then other areas are**
22 **effectively closed, I'll call it, because**
23 **they've exceeded the safe yield value.**
24 **Q** So let's talk about that just briefly. Safe
25 yield, what does that mean, what's that mean?

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1 **A Well, in our rules, we've adopted a United**
2 **States Geological survey bulletin, the author**
3 **was Christy Hanson, her recharge numbers across**
4 **Kansas. So we look at a 2-mile circle, apply**
5 **the USGS number to that 2-mile circle in inches,**
6 **inches of recharge, and then we subtract every**
7 **water right that's in that circle, we pull that**
8 **out, the prior appropriations, to determine if**
9 **there's any remaining recharge. And we'll**
10 **appropriate that recharge then with a new app.**
11 **Q** Okay. So that happens outside of the GMDs
12 except -- well, outside of except for GMD2?
13 **A That's correct.**
14 **Q** That happens across the rest of the state?
15 **A That's correct.**
16 **Q** Is safe yield applicable in the -- in the four
17 GMDs that are closed?
18 **A No. No.**
19 **Q** Let's -- we're kind of getting ahead of things
20 in my outline, but maybe my outline's the
21 problem. So when -- in the -- you're familiar
22 with K.S.A. 82a-711(c) and K.S.A. 82a-711a,
23 those two statutes?
24 **A Yes.**
25 **Q** What's the essence of those statutes, what do

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1 they mean?
2 **A They establish how we will do -- how we will**
3 **appropriate water with the new application.**
4 Q And what do they say? If you want to refer to
5 it, go ahead. You don't have to read --
6 **A No.**
7 Q You may read them --
8 **A No.**
9 Q -- or you don't have to but just basically ...
10 **A Well, what's important in 711, it just says, The**
11 **proposed use neither impairs a use under an**
12 **existing water right or prejudicially and**
13 **unreasonably affects the public interest; it**
14 **says if it doesn't do either one of those**
15 **things, the chief engineer shall approve it.**
16 Q Okay.
17 **A But it also talks about the proposed use must**
18 **take into consideration establishment of**
19 **desirable streamflow requirements, the area safe**
20 **yield and recharge rate, the priority of**
21 **existing claims, and the amount of the claims.**
22 **And so everything that I described in our safe**
23 **yield practice comes from 711.**
24 Q And that means subsection (b) of 711 -- of
25 K.S.A. 82a-711?

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1 **A Correct.**
2 Q What does -- tell us about the effect of
3 subsection (c).
4 **A Okay. With regard to whether the proposed use**
5 **will impair use under an existing water right,**
6 **impairment shall include an unreasonable raising**
7 **and lowering of the static water level.**
8 Q So basically what it says is that a new -- a new
9 permit, you can issue a new permit to a water
10 user even though it's going to lower the static
11 water level in that area; is that correct?
12 **A That's correct, because if it's a well, it has**
13 **to lower the static water level to operate.**
14 Q But -- but -- and is that in excess of recharge?
15 In western Kansas?
16 **A Absolutely in western Kansas.**
17 Q In fact, didn't they -- didn't the GMD4 and
18 GMD3, maybe 1, I don't know, but have what they
19 call regulations that called -- that were titled
20 Planned Depletion?
21 **A Yes.**
22 Q So -- and the formula in those regs allowed for,
23 I think, 25 -- 40 percent in 25 years or
24 25 percent in 40 years, I don't remember?
25 **A Groundwater Management District Number 3 was a**

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1 **depletion of 40 percent in 25 years.**
2 Q So -- okay. But that's not safe yield?
3 **A No.**
4 Q That's groundwater mining?
5 **A That's mining, correct.**
6 Q And in GMD5, historically, I mean it's closed
7 now, but historically they allowed groundwater
8 mining; is that correct?
9 **A That's correct.**
10 Q When I say they, I mean the GMD and DWR?
11 **A That's correct. Yeah, we approve the**
12 **applications.**
13 Q Okay. When -- when, if you know roughly, when
14 did GMD5 close its area to new appropriations?
15 **A It was 1992 or 1994, one of those two years, I**
16 **can't remember.**
17 Q So the water rights that were in existence when
18 they -- when DWR and GMD agreed to close that
19 area to new appropriations are still valid and
20 can continue to divert water?
21 **A Absolutely.**
22 Q There's some minor exceptions?
23 **A 15 acre-foot exemptions are what they're called,**
24 **yeah.**
25 Q Right. And domestic use?

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1 **A Domestic, temporaries.**
2 Q So it's not absolute, but you can't get a new
3 irrigation right?
4 **A You cannot -- well, you can get one for**
5 **15 acre-feet.**
6 Q Okay.
7 **A Yeah.**
8 Q So let's talk a little bit about priority, can
9 you explain first in time, first in right?
10 **A Yeah. So every application that came in after**
11 **1945, the first application received the**
12 **number 1, the next one 2, and we're up to 50,800**
13 **maybe now. When I started, the first**
14 **application I worked on was 38,665 and -- but**
15 **now we are a first in time, first in right**
16 **state. K.S.A. 82a-707 says it's priority and**
17 **not the type of use that puts water to**
18 **beneficial use in our state.**
19 Q Mr. Letourneau, when we were listening to the
20 video, Holly Dickman was talking and sometimes
21 she was right in the microphone and sometimes
22 she spoke softly and you're kind of doing that a
23 little bit.
24 **A I'm sorry.**
25 Q I think that's why the court reporter is having

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1 a little bit of a problem, sometimes you turn
2 your head and -- but she's right on it and
3 she'll be -- she'll make sure that you -- get
4 you to say the right thing.
5 **A She knows me really well actually.**
6 **Q Does she?**
7 **A From other hearings, yes.**
8 **Q I see, okay. I completely lost my thought, what**
9 **was I --**
10 **A Talking about priority.**
11 **Q What?**
12 **A Priority.**
13 **Q Oh, yeah, priority of course, very important.**
14 **So each water right has a number and they are --**
15 **if my number is lower than yours, I'm senior to**
16 **you; if my number is higher than yours, then I'm**
17 **junior to you. Is that kind of the way it**
18 **works?**
19 **A That's correct.**
20 **Q So does it matter -- it only matters when I'm --**
21 **when the wells are close by, I would assume?**
22 **A That -- that's correct.**
23 **Q And so in a -- how does that affect people who**
24 **are water right owners in real life, I mean, why**
25 **do we care about priority?**

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1 **A Because priority -- in the western states, we**
2 **have a limited supply, and so it's best if you**
3 **are senior because then you can put your water**
4 **right to full beneficial use and get the biggest**
5 **economic impact from it, that's my understanding**
6 **as why we do it. Instead, if you have 100**
7 **gallons and you're senior, you're going to get**
8 **more benefit than spreading 100 gallons amongst**
9 **100 people and they only have 1 gallon of water.**
10 **Q So there's a doctrine in the law called**
11 **correlative rights that says we're going to**
12 **distribute something fairly among people, and at**
13 **the end of the day if you take -- if you only**
14 **have 100 acre-feet and ten people get it, nobody**
15 **gets any benefit. Is that fair?**
16 **A That's -- that's fair.**
17 **Q But -- but by giving all the water to the senior**
18 **user, there is an economic benefit that -- to**
19 **society from -- from the use of the smaller**
20 **quantity that's actually available?**
21 **A That's correct, having a senior water right, it**
22 **actually means something.**
23 **Q So I think it's 707, 82a-707, does it say**
24 **something about during times of short supply?**
25 **A Well, it --**

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1 **Q Right at the end. Or maybe not right at the**
2 **end, it's -- you said earlier that the -- it's**
3 **the type -- it's the date of priority, not**
4 **the -- not the purpose of use that determines**
5 **priority in times of short supply or something**
6 **to that effect?**
7 **A That's correct.**
8 **Q Am I misremembering?**
9 **A No, that's right.**
10 **Q Okay.**
11 **A You're correct.**
12 **Q So as long as there's plenty of water, as long**
13 **as there's water available, everybody can divert**
14 **water, but it's only when there's a supply**
15 **shortage that it becomes a problem?**
16 **A That's correct.**
17 **Q So it's -- is it fair to say that -- that this**
18 **prior appropriation doctrine works really well**
19 **for surface water and a little less well for**
20 **groundwater?**
21 **A I think it's the same; it's just in groundwater**
22 **we need a little bit more time to figure it out.**
23 **Q Okay. I mean, it applies both cases but --**
24 **A Absolutely.**
25 **Q -- but it's a lot easier -- I see what you're**

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1 saying. I mean, it's easier to -- you can look
2 out the window and see there's water in the
3 river right now --
4 **A Right.**
5 **Q -- and so if you have a water right, you can**
6 **divert water. When you look out and there's no**
7 **water, then you got a problem and you know right**
8 **then. But with groundwater it takes longer?**
9 **A Okay.**
10 **Q I think I'm understanding.**
11 **A Yeah, with groundwater, we need to be able to**
12 **conduct a pump test.**
13 **Q Sure. So the factors that go into this question**
14 **of availability of water include, what,**
15 **saturated thickness?**
16 **A Yes.**
17 **Q And proximity, the distance between wells?**
18 **A Yes.**
19 **Q And how many wells there are in a particular**
20 **area?**
21 **A Yes, and the rate and quantity.**
22 **Q And the rate and quantity. So let's talk a**
23 **little bit about direct interference and then**
24 **let's get into this -- to regional issues. But**
25 **it's my understanding, and you're a geologist,**

1 right?
2 **A Correct.**
3 **Q** Tell us a little bit about cones of depression
4 and -- around a well.
5 **A All right. So the well is setting in an**
6 **aquifer, it's saturated, and when you turn the**
7 **pump on, the pump's going to draw down the**
8 **aquifer and pull the aquifer into the well. And**
9 **so if you can imagine just a cone around the**
10 **wellbore, that's going to be your -- what we**
11 **call the cone of depression; the impact that**
12 **well has on the aquifer is the cone of**
13 **depression.**
14 **Q** So -- okay. So the well is off and the water
15 level is at its static water level across
16 whatever it is that you're -- that aquifer?
17 **A Correct.**
18 **Q** When you turn the pump on, it immediately pumps
19 water, the water that's in the wellbore out?
20 **A Correct.**
21 **Q** And then water starts flowing into the well
22 through the screens?
23 **A That's correct.**
24 **Q** And as you continue to pump, it -- it pulls more
25 and more water in, correct?

1 **A Because there's enough water in the aquifer.**
2 **Q** Okay. So does that -- when you're looking at a
3 new application or you're looking at a -- an
4 application -- how far can I move my well? You
5 said if I move it 10 feet, I still have to get
6 your permission, can I move it 5 miles?
7 **A No, in the statute, the change statute, 708(b),**
8 **it talks about the well must be in the same**
9 **local source of supply.**
10 **Q** And what's that mean?
11 **A To me, that means that cone of depression, but**
12 **to our -- to DWR, Division of Water Resources,**
13 **David Pope set that at a half mile decades ago.**
14 **So we will allow someone in a groundwater**
15 **setting to move a half mile, that's considered**
16 **the same local source of supply as long as they**
17 **do not impair.**
18 **Q** Okay. So I can move my well a half a mile --
19 **A You got to meet spacing and you cannot impair.**
20 **Q** You can't what?
21 **A You have to meet well spacing and you cannot**
22 **impair, but you can move half a mile.**
23 **Q** Okay. So when you say meet well spacing, I can
24 move a half a mile, so I think what you're
25 saying is -- well, I have -- but I have to stay

1 **A That's correct.**
2 **Q** And then that cone keeps growing and gets larger
3 and larger, right?
4 **A Well, it's going to reach an equilibrium at some**
5 **point, but, yes, I mean -- yeah, the well's**
6 **going to reach an equilibrium and the aquifer**
7 **will support that well.**
8 **Q** Okay. So if you have sufficient saturated
9 thickness and your well is deep enough and
10 penetrated enough, you're going to start
11 pulling -- you start pulling water and the cone
12 of depression gets -- it goes out radially from
13 the wellbore, in essence, I mean, there are some
14 circumstances that causes a little bit
15 different, but generally speaking it's a radial
16 circle around the well?
17 **A Correct.**
18 **Q** And -- but when the rate of flow into the well
19 exceeds the rate of withdraw from the well, is
20 that the equilibrium you're talking about?
21 **A No, just when the aquifer, if it supports the**
22 **well pumping, there'll be a cone of depression**
23 **but then it doesn't get -- the cone of**
24 **depression doesn't get any bigger.**
25 **Q** Because?

1 far enough away from other wells; is that right?
2 **A That's correct.**
3 **Q** What if I'm the senior water user and I want to
4 move closer to a well that's junior?
5 **A You still have to meet spacing and you still**
6 **cannot impair.**
7 **Q** So I can't -- what is impair, what happens --
8 how would my well impair a junior well?
9 **A By interfering with its pumping. It is illegal**
10 **for someone with a junior by diversion to keep**
11 **water from getting to a senior water right.**
12 **Q** Okay.
13 **A And so -- but even in the case of a change**
14 **application, we would not allow that same**
15 **standard to happen with the change application**
16 **'cause if you moved closer to somebody based on**
17 **that change, you could not cause that same test**
18 **of impairment.**
19 **Q** Okay. So let's say I want to move closer to a
20 well -- I mean, is it the -- my cone of
21 depression can't get close to his cone of
22 depression, or how does that work?
23 **A The cone of depressions can get closer, it's**
24 **just the cone of depression cannot -- cannot**
25 **impact the other cone of depression to the point**

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1 **that it keeps water from getting to it.**
2 Q And what is the well spacing requirements, I
3 mean, what's the limit?
4 A **It's different across the state but 660 feet to**
5 **a domestic and 1320 to another -- 1320 feet to**
6 **any other well.**
7 Q Irrigation well?
8 A **Irrigation or municipal.**
9 Q Okay. So I can -- if I'm a half mile away from
10 your well, I -- and I'm senior, I can move
11 toward you, I just can't get too close?
12 A **That's correct.**
13 Q All right. Now, as long as I don't get too
14 close, then I'm not -- there's no direct
15 impairment?
16 A **Well, the well spacing is the first test of**
17 **direct impairment, but then if direct impairment**
18 **occurs, we still have the authority to curtail**
19 **pumping so impairment does not occur.**
20 Q Okay. So it -- the well spacing is sort of a
21 threshold question, but -- but in certain -- in
22 some circumstances, that may not be enough?
23 A **Absolute -- I know of a case -- well, two,**
24 **two cases where I think the wells are over a**
25 **mile apart but we saw an impact, and we've made**

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1 **adjustments to the pumping to where impairment**
2 **is not occurring now.**
3 Q So even if there is a -- if there's a pumping at
4 the original permitted rates and quantities,
5 adjustments can sometimes be made to avoid
6 direct impairment.
7 A **Absolutely.**
8 Q Is that what you're telling me?
9 A **Absolutely.**
10 Q And is that case, is that -- was there something
11 unusual about the geology? I think you were
12 talking about a case in Stevens County; is that
13 correct?
14 A **Stevens County.**
15 Q There's something unusual about the geology in
16 that situation that made that --
17 A **Absolutely.**
18 Q -- unusual was the situation? We don't need to
19 do names but --
20 A **Right. Well, the well log showed 600 feet of**
21 **saturated thickness, and the wells were a mile**
22 **apart, if I recall correctly, but there was**
23 **direct impact within 24 hours of the junior**
24 **pumping to where the senior could not --**
25 **couldn't get their rate. So we did a pump test,**

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1 **and sure enough there was impact. We thought**
2 **there was a problem with the well, the guy**
3 **invested money into his well. But just because**
4 **we had a pump test and things, we were able to**
5 **establish a water level to where the junior**
6 **could operate 400 gallons a minute, he wouldn't**
7 **get below that water level, and the senior could**
8 **be satisfied.**
9 Q Could still operate?
10 A **Yeah.**
11 Q That's a rather unusual situation, wasn't it?
12 A **Yeah, because once we got to really looking at**
13 **the well logs, there was probably only about**
14 **40 feet of saturated thickness and it had a**
15 **confining layer over it.**
16 Q So confined layers have a completely different
17 dynamic, don't they?
18 A **Absolutely.**
19 Q And that's why there's, like, a 4-mile
20 separation of wellfield spacing in the confined
21 Dakota versus a quarter mile in unconfined
22 areas. Is that fair?
23 A **That's -- that's fair.**
24 Q So these rules about well -- moving wells and
25 original well placement, they're designed to

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1 protect both junior and senior rights from
2 direct impairment. Is that fair?
3 A **That's fair.**
4 Q Is there any -- I don't want to -- I mean, is
5 that correct?
6 A **Absolutely correct because if the junior comes**
7 **in, we want to be able to protect their**
8 **investment, I mean, we want -- they're putting**
9 **money into this thing, so we don't want them to**
10 **immediately be curtailed; but then the senior's**
11 **there and their property right is valuable**
12 **so ...**
13 Q Okay. So you were here, I believe, when
14 Mr. Dougherty testified about -- well, when he
15 was testifying, weren't you?
16 A **The first half of it, yes.**
17 Q Then the governor wanted to take a picture with
18 you, is that what happened? Sorry.
19 Jami, can you put up Exhibit 1-1, please.
20 So I don't know if you can see this very
21 well, but this is Exhibit 1-1, Cities'
22 Exhibit 1-1, and it is, for the record, it is a
23 map of the -- it's an aerial photo with the
24 outline of the R9 Ranch, the borders around it.
25 And it's hard for me to see, but I can see that

1 it also shows the different proposed municipal
2 wells?
3 **A Correct.**
4 **Q** And it shows the -- the irrigation wells and how
5 they're consolidated into the municipal wells.
6 But you -- you can see these orange semicircles
7 around -- are you aware of what those are?
8 **A Yes.**
9 **Q** Will you explain that, please.
10 **A So when working on the change application, the**
11 **City agreed to create a buffer around existing**
12 **irrigation wells, and I believe that buffer is a**
13 **half a mile. And the City also agreed to**
14 **increase their well spacing, which makes it**
15 **better when you increase the well spacing to not**
16 **have the impact. And then they've also agreed**
17 **to reduce -- well, to operate the rate of**
18 **350 gallons a minute, which makes it not as big**
19 **a cone of depression basically.**
20 **Q** Okay. I might correct you there, that's the
21 plan is to operate at 350 --
22 **A Right.**
23 **Q** -- but the rates, they have the permission to
24 operate at little higher rates?
25 **A Absolutely, sure.**

1 do you -- have you -- if I told you that there
2 was over 40,000 gallons per minute authorized
3 for all of the water rights on the ranch, would
4 that surprise you?
5 **A No.**
6 **Q** And if I told you that it's reduced to, like,
7 14,000 gallons per minute, the max, would that
8 surprise you?
9 **A No.**
10 **Q** Okay. And, in fact, if they operate at 350,
11 it's even less?
12 **A Correct.**
13 **Q** Okay. You don't have a crystal ball, you can't
14 see underground even though you're a geologist
15 and know a lot about what's down there, but
16 based on the available evidence, do you see any
17 significant potential for impairment of any of
18 the neighboring wells by virtue of approval of
19 this transfer application?
20 **A No, not -- not everything that's in front of me**
21 **right now, no, no impairment.**
22 **Q** Not with everything that's in front of you?
23 **A Right.**
24 **Q** Right, okay. Is there any evidence that you're
25 aware of of a potential -- of potential

1 **Q** Okay. So 1320 feet is a quarter mile, that's
2 the -- that's the regulatory limit and that's a
3 limit in GMD5?
4 **A Correct.**
5 **Q** And that's the statewide limit, isn't it?
6 **A I believe, yes.**
7 **Q** But the -- but the Cities agreed to -- to a half
8 mile and I think -- I don't know if you were
9 here when Toby said the reason that he -- if you
10 recall? Yeah, he said we want to be good
11 neighbors is what he said.
12 **A Right.**
13 **Q** But it reduces the chance of impairment?
14 **A It's the first step in reducing the chance of**
15 **impairment, better well spacing.**
16 **Q** Okay. So when you talk about increasing well
17 spacing, you're talking about -- are you talking
18 about increasing well spacing on the ranch
19 itself or increasing well spacing in some other
20 way?
21 **A Taking the wells from the edge of the ranch and**
22 **moving them interior to the ranch.**
23 **Q** Okay.
24 **A So it's increasing spacing from the neighbors.**
25 **Q** Right. And -- and then reducing the -- I mean,

1 impairment?
2 **A No.**
3 **Q** So the K.A.R. 5-4-1 is a DWR regulation that
4 you're familiar with, I think, can you
5 describe -- tell us what that regulation says?
6 **A Yeah, so if someone files an impairment**
7 **complaint, we -- they have to show to us that**
8 **their well and their pumping plant is in good**
9 **shape, and then we start the process then --**
10 **Q** Let me just ask you about that. So if I -- if I
11 have got an old plant and it's not working very
12 well and -- but -- and I'm upset because I can't
13 get water, that isn't enough, I mean, I have to
14 get -- my pumping plant, my well has to be deep
15 enough, what do I have to do?
16 **A Yeah, your well has to be deep enough and it has**
17 **to be in working condition to -- to ensure you**
18 **can put water to beneficial use. We don't want**
19 **to do a futile call and just automatically shut**
20 **off a junior if the senior cannot even operate.**
21 **Q** Okay. And so -- okay. So you first have to
22 figure out, make sure that your water right
23 is -- that your operation is -- your pumping
24 plant is operational. I'm kind of dry but I've
25 been -- there's water there.

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1 A Oh, I'm fine. Thank you.
2 Q Okay. So step one, make sure my -- my well --
3 my diversion works are in good shape?
4 A Correct.
5 Q What's next?
6 A Then if it's in good shape, then we conduct a
7 hydrologic test.
8 Q How does that work?
9 A Well, John Munson in our staff is extremely good
10 at this, and he will go out and put rate loggers
11 on the meters, transducers in any well that he
12 can find within the area.
13 Q What's a transducer?
14 A It is what measures the water table and actually
15 then will record it then on a logger.
16 Q So it measures the water table, measures, what,
17 the height of the water table?
18 A Well, the static water level, I'll call it,
19 where the water is in the aquifer.
20 Q Okay. The top of the aquifer?
21 A Top of the aquifer. Then once John gets
22 everything -- instruments on everything, then we
23 let folks operate; they can operate normally, we
24 try to do a 48-hour pump test. But then with
25 that information, John can tell when wells are

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1 coming on, going off. He then with that pump
2 test information, he can determine what's called
3 storativity, how much the aquifer stores, and
4 I'm going to struggle spelling that.
5 Q And I struggled spelling it too, but I think I
6 can tell what it means --
7 A And I'm really going to struggle spelling
8 transmissivity, that's how much the aquifer will
9 give up.
10 Q The ability of water to move through the aquifer
11 to a well?
12 A Exactly. So with that information, then John
13 can determine which well impacts the senior, if
14 any, and what percentage it impacts. 'Cause
15 we've got a case in Haskell County where there's
16 multiple wells impacting a senior, and John
17 could tell how much each one was impacting that
18 senior. So with that, then, we can tell if
19 there is impairment and where the impairment is
20 coming from.
21 Q So John has done this in some locations, has he
22 found situations where there is no impairment?
23 A Yes.
24 Q What -- what are the circumstances that would
25 be -- can you give us a for instance, an

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1 example?
2 A Yeah, where the senior well operates but it's on
3 its own, I mean, it's pretty much out of water
4 and the other ones around aren't even touching
5 it, their cones of depression aren't even
6 touching that particular one because they're --
7 the one I talked about with five or six touching
8 the senior, he started out with probably 10 or
9 15 wells and found out that they weren't
10 touching but five or six were, if that makes
11 sense.
12 Q Sure. So at that point, the senior well can ask
13 that the junior wells be cut off or ...
14 A They file what's called a request to secure
15 water.
16 Q Okay.
17 A And once we have that request to secure water,
18 it's -- the chief engineer does not have any
19 discretion at that point in the statute, he must
20 curtail the junior to satisfy the senior.
21 Q So in this situation, there's been some --
22 MR. TRASTER: Your Honor, could we
23 have about a five-minute break? If that's
24 all right?
25 PRESIDING OFFICER: Yeah. It's

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1 4:00 o'clock now, let's just take a short
2 recess until five after, then.
3 MR. TRASTER: Thank you very much.
4 (Thereupon, a recess was taken;
5 whereupon, the following was had.)
6 PRESIDING OFFICER: All right. So
7 we'll go ahead and go back on the record
8 then.
9 MR. TRASTER: Thank you for your
10 indulgence here.
11 BY MR. TRASTER:
12 Q So we've been talking about direct impairment
13 and separation distance and well-to-well
14 interference, and I think the statute -- just
15 for the record, the regulation is K.A.R. 5-4-4.
16 A For spacing.
17 Q For spacing.
18 A Correct.
19 Q So earlier we -- you talked about the idea under
20 711 -- K.S.A. 82a-711(c) and 82a-711a about the
21 ability -- that DWR has the authority to issue
22 new permits even though they will cause a
23 decline in the static water. Do you remember
24 that testimony and you're familiar with those
25 statutes?

1 A Yes.

2 Q And we've talked a little bit about priority,
3 and so what -- what happens when there's -- it's
4 just -- there's no well -- direct well-to-well
5 interference or it can be managed, what happens
6 when somebody runs out of water because the --
7 we've emptied the aquifer, is that -- does that
8 happen?

9 A **Yeah, Scott County, Lane County, Wichita County,
10 they've dewatered themselves without any impact
11 to a neighboring water right. So basically
12 those statutes allow you to dewater the aquifer
13 as long as you don't impact anybody.**

14 Q And so in this area, I think you were here when
15 Mr. McCormick testified that the aquifer in this
16 area is -- ranges from 45 feet thick to, like,
17 145 or 50 feet, were you there for that --

18 A **That's --**

19 Q And does that comport with your understanding of
20 the aquifer in this?

21 A **Yes.**

22 Q And I would direct you to this poster here,
23 Exhibit 2666, and that's not intended to be an
24 exact representation, you know, of the precise
25 qualities of the aquifer but to give an idea of

1 have been plugged, but -- but during irrigation
2 operations they were all contributing to the
3 decline?

4 A **That's correct.**

5 Q And once the wells start back up -- I've just
6 been handed a note, 140 feet 'cause I said 145
7 and I want to be correct on this, but evidently
8 it's 140 feet is the maximum saturated
9 thickness. So once -- if the transfer
10 application is approved and Hays and Russell
11 start withdrawing water from this aquifer, which
12 if I understand you correctly, they have the
13 right to do; is that correct?

14 A **That -- that's correct, once this is all
15 approved.**

16 Q Okay. So they'll be able to -- they'll start
17 pumping, and -- and has the impact on the
18 aquifer been assessed in any way?

19 A **Not with the -- well, with the model.**

20 Q The model?

21 A **Yeah.**

22 Q The model assessed the aquifer, right?

23 A **And I think Daniel Clement had done some pump
24 tests and things, but I think that's about all I
25 know about it.**

1 what that aquifer looks like in general. And so
2 Mr. McCormick testified that up by the river
3 there was about 45 feet of saturated thickness,
4 and there's 145 -- 140, 145 on the east side of
5 the ranch. Is that your recollection of his
6 testimony?

7 A **Yes.**

8 Q So this cone of depression and the well in -- on
9 the east side where you've got a, you know, more
10 saturated thickness, is the -- does that affect
11 the size or -- of the cone of depression at all?

12 A **Yes, it -- the -- the better the aquifer, the
13 smaller the cone of depression is my
14 understanding.**

15 Q Okay. And so the -- if I understand your
16 testimony and the statute, if we've got 145 feet
17 of saturated thickness -- and there are a lot of
18 wells out there, it's not just the ranch,
19 correct?

20 A **That's correct.**

21 Q And all of them are contributing to the decline,
22 aren't they?

23 A **That's correct.**

24 Q And right now, the ranch isn't contributing to
25 the decline 'cause the wells have been shut --

1 Q Well, but they -- GMD has a model, correct?

2 A **Absolutely.**

3 Q And tell us about that model.

4 A **It's a really good model from my understanding;
5 I'm not a modeler, but I'm very fortunate to get
6 to work with some modelers. And I know that Sam
7 Perkins, he's got a Ph.D., he runs that model --
8 now, the seven-layer model that the GMD has, it
9 takes Sam's computer all weekend to run
10 scenarios. So he and Gaoshong from Kansas
11 Geological Survey have worked to update the
12 model, GMD has paid to update it through 2022, I
13 believe, they worked to update it and get it to
14 a one-layer model is my understanding. And then
15 they can run scenarios a lot faster, and the
16 one-layer model does this type of work for us
17 very well.**

18 Q So it's my understanding that Mr. Larson, who is
19 the ex -- the expert for Water PACK in this
20 case, also collapsed the seven-layer model into
21 a one-layer model for that very purpose; is that
22 correct?

23 A **Okay, that could be, yes.**

24 Q So you're not aware that he did or didn't --

25 A **No, I'm aware of Steve Larson, sure.**

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1 Q Sure. Everybody is.
2 **A Yeah.**
3 Q So does the -- does the model as modified by DWR
4 perform as well as the model that -- that -- the
5 GMD5 model, if you know?
6 **MR. LEE:** Your Honor, I think that's
7 a foundation issue, frankly. Based on
8 Mr. Letourneau's conversation, he's not a
9 hydrologist, and all he know is what he's
10 gotten by proximity to Mr. Perkins.
11 **MR. TRASTER:** I would suggest that
12 Mr. Letourneau has to make policy and
13 management decisions on a daily basis and
14 he consults with Mr. Perkins. I think he
15 will testify, would testify on a daily
16 basis that he works with these modelers,
17 including the modelers at the Kansas
18 Geological Survey and that he is competent
19 to testify about the -- how he uses the
20 model and what he's been told about whether
21 or not he is capable -- or should be able
22 to rely on the modeling results that are
23 achieved by Mr. Perkins.
24 **PRESIDING OFFICER:** Okay. So I
25 think we have a couple things here. There

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1 was the first question that you asked
2 Mr. Letourneau, and then we had Mr. Lee's
3 objection, and then you're basically -- it
4 sounds like you're countering those
5 foundation arguments by saying what you
6 think Mr. Letourneau will testify here.
7 **MR. TRASTER:** Well --
8 **PRESIDING OFFICER:** Just so we have
9 the record clear --
10 **MR. TRASTER:** Yep.
11 **PRESIDING OFFICER:** -- can you kind
12 of go through --
13 **MR. TRASTER:** I can.
14 **PRESIDING OFFICER:** -- ask those to
15 Mr. Letourneau and then go back to your
16 question? And then if Mr. Lee has that
17 objection, raise that objection then, and
18 we'll see if that clarifies everything
19 then.
20 **MR. TRASTER:** Sure. We haven't had
21 lots of objections here so I was kind of
22 jumping around and I apologize.
23 **PRESIDING OFFICER:** I understand.
24 Since there's the objection there, I just
25 want to make sure that we have everything

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1 clear for the record.
2 **MR. TRASTER:** Yep, no, he's entitled
3 to object and he's entitled to foundation.
4 **BY MR. TRASTER:**
5 Q So you heard me, my -- that argument here but I
6 want to go back through that. Who's
7 Mr. Perkins?
8 **A Sam Perkins is a staff member in Chris's --**
9 **Chris Beightel's program, water management**
10 **services, and Sam is our modeler.**
11 Q He's our modeler that --
12 **A The Division of Water Resources' modeler.**
13 Q And he -- is he in an office next to you or is
14 he -- where does he -- where's his office?
15 **A Now after COVID he works remotely because he**
16 **works in Lawrence, but he's always just a Teams**
17 **Meeting or a Zoom meeting away. But for years,**
18 **yeah, he was just 20 feet away from me.**
19 Q And what has he told you about what he did to
20 the GMD5 model --
21 **A Okay.**
22 Q -- to modify it?
23 **A He -- he reduced it from a seven-layer model to**
24 **a one-layer model.**
25 Q Okay. When we say a seven-layer model, I guess

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1 I -- I don't know exact -- I think I know what
2 that means, but can you --
3 **A I think I know what it means too, I think it**
4 **might be water quality and some other things,**
5 **you know. I don't know, that's a question for a**
6 **modeler.**
7 Q Okay, very good, then I don't want you to step
8 past what you know.
9 **A Right.**
10 Q In the course of your business and your
11 operation as a program manager for the water
12 appropriation program at DWR, do you work with
13 modeling and rely on modeling?
14 **A I rely on modeling, what -- what the model tells**
15 **our modelers.**
16 Q For decisions about what?
17 **A Decisions like water administration, new**
18 **applications, change applications, impairment.**
19 Q Okay. So when -- when John Munson goes out and
20 gathers all this data, does that go into the
21 model or not?
22 **A It does in that site specific area, that'll go**
23 **in there. Sometimes if John can't get it, he'll**
24 **pull those things that he needs out of the**
25 **model, like the storativity and the**

1 **transmissivity, he'll get that from the model**
2 **and do the best he can; but most of the time, we**
3 **try to get that from pump tests.**

4 Q From on-site testing?

5 A **On-site testing, yes.**

6 Q So in the course of your business and your work
7 on water rights in Kansas, do you need that
8 water -- that model that Sam uses, Dr. Perkins
9 uses to be -- to be, I don't want to say
10 accurate because it is not precise -- models
11 aren't perfect, are they?

12 A **No.**

13 Q But -- but to be useful and representative of
14 the aquifer where you're examining?

15 A **Yes, and what's important is the model is what**
16 **we all agreed to; we agreed to use that model**
17 **for the analysis on these applications.**

18 Q Okay. You're talking about the app -- the
19 change applications for Hays and Russell?

20 A **Correct.**

21 Q Okay. Do you -- if you know, was the -- did
22 Burns & Mac use the seven-layer model or the
23 one-layer model, if you know?

24 A **I don't know.**

25 Q Okay, that's fine. So in the course of your

1 discussion or your -- well, in the course of
2 your discussions with Mr. -- with Dr. Perkins,
3 do you know whether or not, has he told you
4 whether or not the model that he collapsed from
5 seven to one layer is comparable, produces
6 comparable results?

7 A **Yeah, he ran it, he ran the model to make sure**
8 **that he got the same results as Mr. McCormick,**
9 **is my understanding.**

10 Q Okay. My questions are a little more general.

11 A **Okay.**

12 Q In terms of Mr. Perkins running of the model for
13 you for just kind of generally in GMD5 for
14 making management, water management decisions in
15 GMD5?

16 A **Yes, the GMD5 model is a very good model is my**
17 **understanding.**

18 Q Okay.

19 A **Sam -- Sam runs it and he provides us**
20 **information from it.**

21 Q Okay. So it's my understanding, then, that --
22 let's back up and let's talk specifically about
23 the change applications for the R9 Ranch for
24 Hays and Russell. It's my understanding based
25 on what you've testified today and what I

1 and various issues that were -- that were
2 actually -- that the model was used for by
3 Burns & McDonnell. Do you remember that
4 testimony?

5 A **Yes.**

6 Q Were you at any of those meetings?

7 A **Some of them, yes.**

8 Q Do you, as a regulator, more generally meet with
9 consultants to discuss these kinds of things,
10 what to model, how to model it, what -- or maybe
11 it's not even modeling, other technical issues?

12 A **Yes, we have a culture that we meet with**
13 **consultants, we meet with water users, we meet**
14 **with everybody.**

15 Q And are those meetings helpful?

16 A **Absolutely.**

17 Q How?

18 A **Well, we want to meet with any individual to**
19 **make sure that we can guide them on the right**
20 **path on what to give us, whether it's an**
21 **individual -- actually, if it's an individual,**
22 **we have to help them because our applications**
23 **can be complicated, we want to make sure that**
24 **they're correct coming in, that way we're not**
25 **immediately sending them back to them. We know**

1 **what to expect from the applicant, they know**
 2 **what to expect from us.**
 3 **They ask us if their project meets the**
 4 **statutes and the rules, a lot of people talk to**
 5 **us about the consumptive use. We probably bring**
 6 **in over 1,000 calculations from multiyear flex**
 7 **accounts at the end of 2022; I mean, people are**
 8 **coming into our field office asking -- coming**
 9 **into our field offices asking what my**
 10 **calculation will be on a multiyear flex account**
 11 **because they've overpumped so --**
 12 Q So they want a calculation of the quantity that
 13 they'll be able to pump if they enroll in a
 14 multiyear flex account, they'll want to know how
 15 much they have in the next four years?
 16 A **That's correct.**
 17 Q Okay.
 18 A **But we -- we're constant outreach, we're**
 19 **constant meeting with people, I mean, not**
 20 **just -- we meet with Dodge City, we met about**
 21 **Arkansas City, I mean, so, yeah, we -- City of**
 22 **Wichita, we probably met with those folks more**
 23 **than Hays regarding the aquifer storage and**
 24 **recovery. So, again, we meet with people all**
 25 **the time.**

1 And so my question to you, sir, is if the
 2 City of Hays were to divert -- the City of Hays
 3 and Russell -- Cities of Hays and Russell were
 4 to divert 4800 acre-feet per year for 51 years
 5 from the R9 Ranch, in the area where we got
 6 140 feet of saturated thickness, would -- would
 7 an additional 2.6 feet of decline -- or would --
 8 I'm not sure it's additional but it may be, but
 9 would 2.6 feet of decline over what the model --
 10 the model that Mr. McCormick ran be significant?
 11 A **No, they wouldn't even notice it.**
 12 Q Who wouldn't even notice it?
 13 A **The surround -- any of the people pumping around**
 14 **there wouldn't even know a decline of 2 feet,**
 15 **2.8 feet.**
 16 Q So there -- so did I say 2 --
 17 A **2.8.**
 18 Q I really want to ask for about 2.8 feet?
 19 A **Okay, 2.8 feet, I don't -- personally, I don't**
 20 **think anybody would notice that.**
 21 Q In the area where there's 140 feet of saturated
 22 thickness?
 23 A **That's correct.**
 24 Q Why?
 25 A **It's just not -- it's less than 1 percent of the**

1 Q So during the course of the discussion about --
 2 and the application, the consideration of the
 3 change applications, you met with -- DWR
 4 personnel, you and others met with Mr. McCormick
 5 and others to discuss how the model was going to
 6 be used?
 7 A **Yes.**
 8 Q And you met with the Cities and the lawyers and
 9 Burns & McDonnell --
 10 A **Yes.**
 11 Q -- and others during the course of that as well?
 12 A **That's correct.**
 13 Q Okay. Paul McCormick testified, as I said
 14 earlier, that there's 45 to 140 feet of
 15 saturated thickness, and we've learned that
 16 Mr. Larson has suggested that the model that --
 17 that Mr. McCormick ran understated the -- the
 18 decline that is likely to occur on -- at and
 19 outside of the ranch. And I think that it's
 20 fair to say that the most -- the most decline
 21 approached 2.8 feet, in other words there's --
 22 he is saying that the -- that the model -- that
 23 there would be 2.8 feet more decline in the way
 24 he ran the model than in the way Mr. McCormick
 25 ran the model.

1 **total saturated thickness. I don't have my**
 2 **calculator here, but I think it's less than**
 3 **1 percent.**
 4 Q Okay. And so you've heard the discussion -- I
 5 mean, you've talked to the folks that have
 6 irrigation wells in the vicinity, have you not?
 7 A **Yes.**
 8 Q And you know they're concerned about impairment?
 9 A **Absolutely.**
 10 Q Is their concern justified?
 11 A **We have not had an impairment complaint from**
 12 **anybody, and I don't think based on even the**
 13 **work that Mr. Larson did, 2.8 feet is not**
 14 **significant in 140 feet. It's -- it's not even**
 15 **significant in 45 feet.**
 16 Q So if you -- let's say they -- let's say, how
 17 about after 100 -- double, if they run it for
 18 102 years, do you think that it's going to be
 19 significant at that point?
 20 A **No, I don't. Personally, I do not.**
 21 Q And is this based on what? I mean, that's your
 22 job to be --
 23 A **Right.**
 24 Q -- to make these decisions, right?
 25 A **That's correct.**

1 Q In consultation with staff and the chief
2 engineer and others?
3 **A Right. And then I just have to add, if there's**
4 **impact, say after 50 years, we still have the**
5 **authority to do the pump test and determine**
6 **where that impact is coming from, and if there**
7 **is impact, we would curtail water rights.**
8 Q So have you -- assuming that there is a well
9 with a senior right that is impaired, that does
10 have some impact and it's in the -- it's near
11 the ranch, is it a foregone conclusion that it's
12 the ranch, the wells on the ranch that are
13 causing it?
14 **A No, not until we do a pump test, we don't know.**
15 Q Okay. So if someone were to make a -- an
16 impairment complaint and you did a pump test,
17 what -- I mean, which wells would be shut off?
18 **A The -- if there was impact by direct diversion,**
19 **the wells that were causing the problem by**
20 **direct diversion would be curtailed.**
21 Q If there was a well that was impacted directly
22 but it -- but it was being impacted by a senior
23 well, would it -- would the senior well be cut
24 off?
25 **A No.**

1 **A Yes.**
2 Q Okay. So you've testified that you don't think
3 that, based on the analysis that was done, you
4 don't think there's going to be direct
5 impairment between -- by approval of these
6 wells, approval of this transfer application is
7 not likely to result in direct impairment; is
8 that correct?
9 **A That's correct.**
10 Q And -- and that -- and that steps have been
11 taken to try to make sure that doesn't happen by
12 increasing separation distances?
13 **A That's correct.**
14 Q And I think it's also your testimony, and
15 correct me if I'm wrong, that you don't think
16 there's -- approval is going to cause regional
17 impairment?
18 **A That's correct.**
19 Q Okay. So I'm going to skip back to some of your
20 duties. Are you -- is your -- you or your --
21 the people who report to you responsible for
22 implementing administration of minimum desirable
23 streamflow requirements?
24 **A It's a combination of water management services**
25 **and then the water appropriation program. We've**

1 Q So it would be cut off in order -- in order of
2 priority?
3 **A Correct.**
4 Q Until the -- until the most senior right that
5 was actually impacted could produce its
6 authorized quantity, fair?
7 **A That's correct.**
8 Q Okay. And when -- when the -- do you know when
9 the change -- the Cities of Hays and Russell
10 filed their change applications roughly?
11 **A Oh, seven years ago, seven, eight years ago.**
12 Q So -- and I'll just tell you it was in June of
13 2015.
14 **A Okay.**
15 Q And the Master Order was issued in March of
16 2019. And during that time, what, DWR was
17 involved in -- in detailed analysis of all those
18 rights; is that correct?
19 **A Correct.**
20 Q And I think Mr. Barfield said these were the
21 most complex change applications he's ever had
22 to deal with, is that -- do you recall him
23 saying that?
24 **A I don't recall that but --**
25 Q They were complex?

1 **got a staff member in water management services,**
2 **Lizzie Hickman, that checks the stream gages**
3 **every day. And then she makes the determination**
4 **when a stream qualifies for a minimum desirable**
5 **streamflow administration.**
6 Q Just -- just high level, what is minimum
7 desirable streamflow?
8 **A It is a statute that came in in 1984 that**
9 **established flows at main gages on a large**
10 **number of our streams and rivers. And we've**
11 **got United States Geological streamflow gages,**
12 **and that statute, then, establishes a flow in**
13 **cubic feet per second per month. And I look at**
14 **it as a water right with a April of 1984**
15 **priority.**
16 Q So it's like another water right in the
17 statewide water right, if you will, that -- and
18 the idea, if I understand it, is to make sure
19 that there's surface flow in these streams?
20 **A That's Kansas' version of an in-stream flow**
21 **right.**
22 Q Okay. Well, I grew up in Ulysses and used to go
23 camping on the Cimarron River and it wasn't
24 flowing in the '70s when I was a Boy Scout and
25 it isn't flowing now as far as I know. Is there

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1 a minimum desirable streamflow on the Cimarron?
2 **A Let me look. We didn't administrate it if we**
3 **did. I don't see one, I don't see one on the**
4 **Cimarron.**
5 Q There is one on the Ark River, isn't there?
6 **A Yes, the Ark River has three locations, Kinsley,**
7 **Great Bend, and Hutchinson.**
8 Q So there's no minimum desirable streamflow from
9 the Colorado line through Lakin, Garden City,
10 Dodge City, all the way to Kinsley, there's
11 no -- no minimum desirable streamflow --
12 **A Correct.**
13 Q -- requirement? There is one at Kinsley, what
14 is it generally?
15 **A Probably about 3 CFS on average.**
16 Q Okay. Is there flow in the Ark at Kinsley at
17 3 CF on a regular basis?
18 **A No.**
19 Q It's dry, isn't it?
20 **A It's dry.**
21 Q If I told -- I'm going to represent to you that
22 the most junior right on the ranch is file
23 number 30,084 with a priority date of July 1,
24 1977. All of the other water rights on the
25 ranch are senior to that; they range from a

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1 priority date in, I'm going to say January of
2 '74 to -- to '77. Are any of those water rights
3 subject to curtailment because of minimum
4 desirable streamflow requirements?
5 **A No.**
6 Q Because?
7 **A They're senior to that April of 1984 date.**
8 Q Does the -- does your program interact -- tell
9 us a little bit about the relationship between
10 the Division of Water Resources and the GMDs in
11 general. You've already said they have
12 regulations and they review and make
13 recommendations, do they have a management
14 program?
15 **A They do, each groundwater management district by**
16 **statute is required to have a management -- a**
17 **management plan, I believe.**
18 Q Let's put up --
19 **A It's a management program.**
20 Q -- Exhibit 1-67B. And we're not going to look
21 at any details of it, but is this -- is this
22 GMD5's management program?
23 **A Yes.**
24 Q And it's been approved by Mr. Barfield, and I
25 think the date is January 2nd, 2015; is that

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1 correct?
2 **A That's correct.**
3 Q So GMD5 has a management program, have you
4 reviewed it, are you familiar with it?
5 **A I'm familiar with it.**
6 Q Did you help review it to determine whether or
7 not Mr. Barfield would put his signature on
8 there?
9 **A I did, I looked at it to make sure it was in**
10 **compliance with the statutes.**
11 Q And is it?
12 **A Yes.**
13 Q Is there anything in that management program
14 that is going to -- that would curtail or give
15 you pause to concern -- pause for concern about
16 approval of the -- of the transfer application?
17 **A No.**
18 Q So during the course of the discussions with --
19 among Hays, Russell, GMD, Burns & McDonnell and
20 others, was there any requirement that, or any
21 thought about waiver of any particular rules?
22 **A Well, it was discussed, and actually that was a**
23 **very key part of this process was Hays was**
24 **adamant, they said, we do not want to be in the**
25 **position to where anybody has to waive a rule.**

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1 Q Mr. Letourneau, you know that the City of
2 Russell owns a portion of this ranch?
3 **A Correct.**
4 Q And you know that they were an applicant here?
5 **A Correct.**
6 Q And is it fair to say that when you're talking
7 about what Hays wants that it was kind of both
8 of them?
9 **A It's both of them.**
10 Q You don't -- you're not trying to get rid of
11 these guys or anything?
12 **A No, not at all.**
13 Q Okay. I just want to be clear that it's Hays
14 and Russell that are the applicants?
15 **A Right.**
16 Q And you've been talking about Hays, and that's
17 fine, but -- were you here for the opening
18 arguments that --
19 **A Yeah.**
20 Q And did you hear the discussion about the
21 Anti-Speculation Doctrine?
22 **A Yes.**
23 Q What does the Anti-Speculation Doctrine mean to
24 you?
25 **A It's some -- well, just in my lane that I drive**

1 in, somebody cannot tie up new water rights, new
2 water that should be available to somebody else.

3 Q So if I wanted to obtain a water right because I
4 thought maybe I could sell it to somebody in the
5 future but that I didn't really need it, can I
6 do that?

7 A Yes, what -- here's how it works for us.

8 Q Okay.

9 A I mean, I know of a couple cases since I've been
10 the program manager and both parties wanted to
11 sell new water, one -- they wanted to sell it to
12 Salina, another one wanted to sell it to
13 McPherson. They were able to justify approval,
14 but then our first date of a permit is time to
15 complete.

16 Q Okay. So when I get a permit, it'll tell me --
17 it'll tell me I've got to complete my diversion
18 works within a certain period of time?

19 A That's correct.

20 Q And then I have a longer time to perfect it. Is
21 that fair?

22 A That's very fair.

23 Q Okay. So the time to complete?

24 A The time to complete so in both cases, very
25 similar, they got an approval but they couldn't

1 complete because they ultimately could not get a
2 contract with the cities, and so we dismissed
3 both of those for failure to complete.

4 Q Okay. So it's -- now this is -- you just
5 limited that to new water rights, right, why --
6 why is that?

7 A Because it's new water that's not perfected,
8 it's not a water right at that point.

9 Q And so that -- I mean -- well, can I speculate
10 with existing water rights?

11 A No, because existing water right already has a
12 use, I mean, it's a -- it's a property right
13 that's got all -- got the attributes of the
14 water right and it's an asset.

15 Q So if I went out and bought an irrigation right
16 someplace in a closed area, I could use it or
17 not use it and hold onto it and maybe someday
18 somebody come along and buy it and that would be
19 okay?

20 A Yes, it's in a closed area, the State cannot --
21 the law was changed to where there's no
22 forfeiture through abandonment anymore. We also
23 have a water rights conservation program that a
24 person can enroll a water right into to protect
25 it. But, yeah, you're correct, you can buy a

1 A As long as they're not in a closed area, that's
2 correct.

3 Q Of course, if they're in a closed area they're
4 not going to get that permit anyway but --

5 A Right. Correct.

6 Q Do you know Burke Griggs?

7 A Absolutely, yes.

8 Q And he's a -- he knows a little bit about water
9 and water law?

10 A Yeah, he was -- he was an attorney for the
11 agency when -- during the Nebraska-Kansas
12 Republican River dispute, and then Burke, he's
13 stayed engaged, he's at the water conferences,
14 Burke teaches --

15 Q He teaches water law at Washburn, doesn't he?

16 A Yes.

17 Q When I said he knows a little bit, I was trying
18 to be facetious, but, I mean, he's -- he's an
19 expert on water law, right?

20 A Yes, absolutely.

21 Q And when he says that -- that the
22 Anti-Speculation Doctrine is codified in the
23 Kansas Water Appropriation Act, is that -- I
24 mean, is your understanding of the
25 Anti-Speculation Doctrine, is that covered by

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1 regulations in the statute and DWR regulations?
 2 **A Well, at my level, we just implement it using**
 3 **the time to complete, so, yes, I would think so.**
 4 Q Okay. Some of the -- some of the concepts about
 5 reasonable need and -- and not -- not wasting
 6 water also play into the change applications,
 7 don't they?
 8 **A That's correct.**
 9 Q So what -- how does that work, I mean, you
 10 can't -- what are the restrictions on change
 11 applications?
 12 **A Well, the statute -- the restrictions are three**
 13 **things you can change, you can change point of**
 14 **diversion, place of use, and use made of water,**
 15 **point of diversion, place of use, and use made**
 16 **of water. Then it says the applicant must**
 17 **demonstrate that it's in the same local source**
 18 **of supply and it cannot impair existing water**
 19 **rights.**
 20 Q Okay. You're familiar with also -- that's the
 21 statute and there's a regulation, K.A.R. 5-5-9,
 22 you're familiar with that regulation as well?
 23 **A That's correct.**
 24 Q And it -- we don't need to get into this, but
 25 the first thing that happens is you -- you've

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1 got to reduce it to the consumptive use, right?
 2 **A That's correct, once -- 5-33, another rule,**
 3 **indicates you cannot increase the consumptive**
 4 **use once the water rights are perfected.**
 5 Q Okay. And -- go ahead.
 6 **A And then, though, when we change a water right,**
 7 **we don't want to change more than what has been**
 8 **consumed from the source because that could**
 9 **create impairment.**
 10 Q Okay. You're taking more out of the source than
 11 was authorized, in essence?
 12 **A (Witness nods head affirmatively.)**
 13 Q So -- but 5-9 -- back up, 5-5-8 or 5-5-8(a) and
 14 I think (c) talk about this consumptive use
 15 issue and place limits on it, correct?
 16 **A Correct.**
 17 Q 5-5-9 limits the change to consumptive use, but
 18 it also says that -- that you can't change a
 19 water right past the reasonable needs of the
 20 appropriator, right?
 21 **A Correct.**
 22 Q So when you change -- when an applicant comes in
 23 and asks you to approve a change of an
 24 irrigation right to in this case municipal,
 25 you've got to look and see if the quantity that

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1 they're asking for meets their reasonable needs,
 2 correct?
 3 **A Correct.**
 4 Q And there are -- if you are changing it to some
 5 other use, there are regulations that deal with
 6 reasonable needs for irrigation and stock
 7 watering and other uses, right?
 8 **A Correct.**
 9 Q That say --
 10 **A Gives you a number.**
 11 Q Huh?
 12 **A It gives you a number.**
 13 Q Gives you a number. But there isn't any
 14 specific regulation about how much is reasonably
 15 needed by cities, is there?
 16 **A That's correct.**
 17 Q And that -- is that because every city is a
 18 little different?
 19 **A Yes.**
 20 Q Now, in -- we've heard -- you've been here for
 21 some of the discussion about the 2 percent
 22 reasonable-need allocation in the Master Order
 23 and you've heard some of that discussion?
 24 **A Yes.**
 25 Q And the assertion seems to be that 2 percent is

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1 out of line, it's way too high, is that kind of
 2 what you interpret it as?
 3 **A Yes.**
 4 Q Is 2 percent unreasonable?
 5 **A 1 to 2 percent is very common with the**
 6 **applications that we receive for municipal --**
 7 **justification for the potential for population**
 8 **growth. And then also we receive other things,**
 9 **like the City of Russell, they talked about the**
 10 **potential for industry that's part of the City's**
 11 **distribution system, a potential for growth**
 12 **there. So, yeah, I mean, there's a host of**
 13 **things that can be reasonable for a city, it**
 14 **might be picking up a golf course or industry,**
 15 **the potential for more houses when the industry**
 16 **comes in, it's all part of the justification for**
 17 **an application.**
 18 Q So if -- if I'm a city manager and I think, you
 19 know, we ought to build a -- we ought to have a
 20 designated area as an industrial area and if
 21 we're going to promote and recruit people we
 22 better have water, so if I -- all I got to do is
 23 just tell you that, oh, I'm going to put in an
 24 industrial park and you'll just give us the --
 25 give that manager the water, is that the way

1 that works?
2 **A Well, we'll provide that water with -- with some**
3 **time, there's a time basis on that. I mean,**
4 **like the City of Pratt, for example, I mean,**
5 **they've got some permits that they're trying to**
6 **perfect because they thought that they were**
7 **going to have a big industrial park, and it**
8 **quite hasn't panned out that way for them.**
9 Q Okay.
10 A So ...
11 Q So --
12 **A We've given them an extension in time to**
13 **perfect, you know, because they're in a closed**
14 **area so we tried to work with Pratt, just as an**
15 **example.**
16 Q Okay. So in that regard maybe it's like the
17 speculation, the way to apply the speculation
18 doctrine is time to perfect, is that fair, or
19 not?
20 **A It's fair, yes.**
21 Q Okay. So if it's clear blue sky, are you going
22 to approve water for that?
23 **A No, no, there's got to be some justification for**
24 **it.**
25 Q Do you have any written guidelines that tell you

1 **certified.**
2 Q So did I ask you that -- you don't have any
3 written guidelines about -- about 2 percent or
4 how much to allocate to a city?
5 **A That's correct.**
6 Q And 2 percent is common, do you think 2 percent
7 is unreasonable in the case of Hays and Russell?
8 **A No. We wouldn't think it would be unreasonable**
9 **if anybody -- we wouldn't think that was**
10 **unreasonable of anybody that brought us an**
11 **application.**
12 Q Doesn't mean they're going to use it all, does
13 it?
14 **A No.**
15 Q Is one of the contingencies or -- that cities
16 plan for is drought? Is that a fair thing to be
17 concerned about?
18 **A That's very fair. And City of Wichita most**
19 **recently, they went to a 1 percent drought**
20 **planning.**
21 Q So what's that mean? I mean, what's the
22 difference, what's the other -- from 1 percent
23 to what?
24 **A Well, they -- I know there's some standards for**
25 **planning for reservoir purposes, I'm kind of**

1 what the percentages are?
2 **A No.**
3 Q And so it's case-by-case analysis?
4 **A Case by case.**
5 Q Let's say that it's -- okay. So back up here,
6 back to Pratt just a minute. They have -- they
7 applied for new water rights in a closed area?
8 **A Yes, and keep in mind cities have a 40-year**
9 **perfection period.**
10 Q Okay.
11 **A Yeah.**
12 Q So that -- these are older water rights that --
13 **A Absolutely.**
14 Q -- that predate but they've kept them alive?
15 **A Yes.**
16 Q And they're still subject to -- they haven't
17 been able to perfect the entire, I don't know,
18 maybe any of it, but they haven't been able to
19 perfect the entire quantity?
20 **A That's correct.**
21 Q Okay. That's different than the water rights on
22 the ranch that are already perfected and
23 certified?
24 **A That is very different, I mean, the City bought**
25 **full-blown water rights, perfected and**

1 **getting out of my lane here, for 2 percent**
2 **drought. But the City of Wichita felt it**
3 **important enough to plan for a 1 percent**
4 **drought, which is worse than a 2 percent.**
5 Q So it's a -- a 1 percent chance that one time in
6 100 years you're going to have that particular
7 severity of a drought, and that's what they're
8 planning for?
9 **A Correct.**
10 Q You're aware of -- I mean, you were here for
11 Ms. Dickman's testimony and you heard from the
12 testimony of part of Mr. Dougherty's and part of
13 Mr. Quinday's, right, or all of Mr. Quinday's
14 maybe?
15 **A Yeah.**
16 Q And you've heard them -- and were you here for
17 Mr. Crispin's testimony as well?
18 **A I was, yes.**
19 Q And so you've heard quite a lot about the
20 conservation efforts that both Cities have
21 undertaken, and you were aware of those before
22 today, weren't you?
23 **A Yes, very much so.**
24 Q When you say very much so, why -- why were you
25 aware?

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1 A They're -- they're both looked up to, I'll say,
2 as examples for conservation in cities.
3 Q Okay. And -- and so they have conserved for
4 reasons, they're -- they're short of water,
5 fair?
6 A Fair.
7 Q Is there -- so the fact that they're asking for
8 water, a new source that covers their existing
9 sources plus, is that a problem, the fact that
10 they've already got some water, is that -- does
11 that affect DWR's thinking about whether or not
12 it's appropriate to approve the change
13 applications in the first case?
14 A No, it -- it's fully appropriate. I mean, like,
15 I keep going back to they bought an irrigation
16 water right. When folks come to us, Department
17 of Commerce, other people coming in from out of
18 state wanting to bring an industry or a feedlot,
19 or whatever, to us, dairy, first thing we tell
20 folks, buy -- if you're in this part of the
21 state, to get water you're going to have to buy
22 an irrigation water right.
23 Q Okay. And the fact that they already have some
24 water rights, is that a problem?
25 A No.

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1 Q And the fact that they're -- that they're
2 duplicates, I mean, I guess, or redundant, is
3 that a problem?
4 A That's actually just smart business if you're a
5 city to have a redundant supply because of water
6 quality, a well can go down, there's a
7 multiple -- multiple reasons why you should have
8 flexibility and a redundant supply if you're a
9 municipality or a feedlot or any water user.
10 Q Jami, would you put up Exhibit 899, please.
11 Mr. Letourneau, are you familiar with this
12 document?
13 A Yeah, very much so.
14 Q What is it?
15 A It is a publication of all municipalities that
16 filed an annual water use report with the
17 Division of Water Resources.
18 Q And it's -- just publishes that information or
19 does -- there's some analysis that goes into it,
20 right?
21 A Yes. I mean, they -- it's -- they'll run a,
22 what's called gallons per capita per day, but
23 then also on that report is unaccounted for
24 water.
25 Q Right. So they'll take out the industrial water

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1 first, won't they?
2 A Well, so what -- part A of the annual water use
3 report is report by water right. Part B of the
4 annual water use report is basically a matrix of
5 the distribution system, and it's raw water
6 diverted, then water purchased wholesale, water
7 sold wholesale, but then you're right, any
8 customer over 2,000 gallons, then, is in a
9 column. So it's not associated with --
10 Q What they're looking for is how much each
11 person, each resident in the state uses water to
12 come up with gallons per person per day?
13 A Oh, correct.
14 Q And these reports, let's just scroll down a
15 little bit, I'm not sure, to get to the tables.
16 Just page down, I think. Keep going.
17 And that -- so it looks back five years,
18 doesn't it?
19 A Yes.
20 Q So it's going to take -- look back and say, this
21 is 2017, so those are -- the prior four years
22 are going to be included and then they're going
23 to give you an average, right?
24 A Correct.
25 Q Jami, will you scroll down to, I think it's a

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1 PDF page 55, but it's Exhibit 899 at Bates
2 number 23623, Bates number 26 -- 23623.
3 What's this -- this is a map of Kansas?
4 A Correct.
5 Q Tell us about this map.
6 A So Dr. Eklund, Darrel Eklund --
7 Q Who's he?
8 A He worked for the Kansas Water Office.
9 Q Okay.
10 A He had a Ph.D. in statistics, so he loved our
11 annual water use statement. And we had a
12 cooperative agreement with the Kansas Water
13 Office because they needed this for their
14 planning purposes and then the United States
15 Geological Survey because they do a five-year
16 water use report. And because of our statute
17 and the level of detail that we had, Kansas by
18 far had the most comprehensive water use
19 dataset. And this -- we stopped publishing this
20 when our contract with the USGS ran out; Joan
21 Kenny, she was the main person that did this,
22 well, she retired. And then our team said, we
23 can do that for that kind of money. We've never
24 done it since, which I feel bad about.
25 So Darrel, the statistician, he started

1 looking at water use data, gallons per person
2 per day for different size municipalities in
3 each one of those regions, and he was able to
4 line up the data with basically the rainfall
5 data in the state. Those two -- whoops, those
6 two datasets line up, the rainfall lines and the
7 gallons per person per day for each size city.

8 Q So on the west, they get less rain, we've
9 already been through that, a lot more rain in
10 the east, and so what's that got to do with
11 gallons per person per day?

12 A Well, you're going to have higher gallons per
13 person per day as you go west because you have
14 less rainfall. And Darrel, we were just trying
15 to compare water users to their peers, same part
16 of the state and same size city.

17 Q Okay. For instance, this light yellow in the,
18 sort of in the middle part of the state has --
19 that includes Russell County, is -- has several
20 big -- several cities, Hutchinson and, I don't
21 know, maybe Salina. Nope. No. So it has
22 Russell and Barton County so Great Bend, it has
23 Hutchinson, Kingman, but it has some smaller
24 communities too, a lot smaller communities. So
25 is that region broken into different sizes?

1 A I believe -- I'd have to see the tables but it
2 should be.

3 Q If I told you that this is the six medium, ML,
4 medium-large and then there's six S, would that
5 refresh --

6 A Yes.

7 Q -- your recollection?

8 A Yes.

9 Q So from -- for region 6, the light yellow to the
10 east, there's a breakdown of -- based on size,
11 but in region 5 where Hays is, there -- there
12 isn't. Is that fair?

13 A That's fair, there's probably not enough cities
14 in that region to break them down.

15 Q So Hays is kind of -- skews the statistics a
16 little bit, I guess, but that's -- why is it --
17 why is it, then, Hays and Russell have very low
18 gallons per person per day and some of these
19 cities have much larger so the average in those
20 cities -- in those two regions are higher than
21 the gallons per person per day that Hays and
22 Russell are currently experiencing, is that --
23 are you aware of that?

24 A Yes.

25 Q And are they -- is it fair to punish them for

1 their conservation efforts to say, you can't
2 have this water because -- because your
3 conservation has been so effective and just keep
4 living the way you're living?

5 A No.

6 MR. LEE: Your Honor --

7 A Not only is it not fair but the statute --

8 MR. TRASTER: Hold on.

9 PRESIDING OFFICER: Just one second.

10 MR. LEE: That's speculation, Your
11 Honor, I think you recognize, and whether
12 this is fair or not is not an issue in this
13 proceeding, it has no relevance to whether
14 it's fair or whether it's not fair, it's
15 what the law is, and so to ask that
16 question of somebody who is not in a
17 position to answer it and is -- is -- I
18 can't imagine what the qualifications would
19 be to say is this fair?

20 MR. TRASTER: Your Honor, I think
21 that that's -- that objection is -- well, I
22 don't want to characterize it, I think
23 that's what -- the questions that he's been
24 asking all along have been focused on, but
25 I'll withdraw the question.

1 A I believe -- I'd have to see the tables but it
2 should be.

3 Q If I told you that this is the six medium, ML,
4 medium-large and then there's six S, would that
5 refresh --

6 A Yes.

7 Q -- your recollection?

8 A Yes.

9 Q So from -- for region 6, the light yellow to the
10 east, there's a breakdown of -- based on size,
11 but in region 5 where Hays is, there -- there
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16 little bit, I guess, but that's -- why is it --
17 why is it, then, Hays and Russell have very low
18 gallons per person per day and some of these
19 cities have much larger so the average in those
20 cities -- in those two regions are higher than
21 the gallons per person per day that Hays and
22 Russell are currently experiencing, is that --
23 are you aware of that?

24 A Yes.

25 Q And are they -- is it fair to punish them for

1 PRESIDING OFFICER: Okay.

2 BY MR. TRASTER:

3 Q When DWR goes about permitting a new water
4 appropriation right if the area is still -- if
5 they're still available or for determining
6 reasonable need in a -- for a city, does it
7 punish or reduce the quantity that is available
8 to those cities based on their conservation
9 efforts if they are much lower than the regional
10 average?

11 A No, and we can't, there's a statute K.S.A.
12 82a-744 --

13 Q 82a-744, go ahead.

14 A -- that -- that says that we've got to give due
15 consideration for past conservation.

16 Q So what's that mean to you?

17 A It means that if some -- we've got to give
18 consideration if somebody has conserved.

19 Q So when Hays and Russell were considering or
20 asking for changes in the -- in the type of use
21 for the water rights on the R9 Ranch and DWR was
22 coming up with its reasonable-need formula
23 that's set out in the Master Order, was that why
24 you used the regional average instead of
25 their -- the gallons per person per day that

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1 they were actually achieving at the time?
2 **A Yes, that's what we do with anybody that files a**
3 **municipal application.**
4 **Q** Do municipalities, are they entitled, just
5 generally, to try to have a little buffer above
6 what they reasonably need?
7 **A Normally they do because of drought, potential**
8 **for a well to go down, they need flexibility in**
9 **their systems. But that's kind of with every**
10 **beneficial use as well, I mean, each -- like an**
11 **irrigation water right, for example, if you run**
12 **statistics on them, normally they pump about**
13 **70 percent of their authorized quantity unless**
14 **it's a drought and then they will max out. Same**
15 **way with feed yards, they won't use a high**
16 **gallons per head per day except in a -- because**
17 **think about how a water right is perfected, it's**
18 **a maximum year record, one year out of five.**
19 **Q** Okay. Are you aware of any reasonably
20 foreseeable future users of the water on the
21 R9 Ranch other than the Cities of Hays and
22 Russell?
23 **A In Edwards County?**
24 **Q** Any reasonably foreseeable future users of the
25 water on the ranch?

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1 **A No.**
2 **Q** Why?
3 **A Hays and Russell own it; there's no**
4 **infrastructure there now, it's my understanding,**
5 **to irrigate with it; the area is closed to new**
6 **appropriation so water cannot be applied for;**
7 **plus it's closed to new appropriation and the**
8 **law doesn't allow abandonment, so that water is**
9 **locked up by Hays and Russell.**
10 **Q** So I want you to -- let's assume for a moment --
11 so the regulations apply -- was applied and it
12 was reduced from the irrigation quantity 7700
13 plus acre-feet for irrigation, it was reduced
14 for the consumptive use formula that is in the
15 regulation --
16 **A Correct.**
17 **Q** -- and then it was further reduced on average on
18 this ten-year rolling aggregate limitation, and
19 you're familiar with that, so that
20 4800 acre-feet on average is all that they can
21 use. Water PACK is asserting that they don't
22 need that and, therefore, it should be reduced
23 further, they shouldn't get 6756, they should
24 get something less, and it's not clear to me
25 exactly how much less, but assuming that the --

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1 that there was a way that it was legal to
2 approve a smaller quantity, what would happen to
3 the delta, what would happen to the amount --
4 the water right, the quantity of the water right
5 between this lower number that Water PACK is
6 asserting and 6756.8, what -- what happens to
7 that?
8 **A It would just go away. It would no longer be**
9 **authorized by anything, it'd just go away,**
10 **nobody could obtain it.**
11 **Q** And so what's the -- would that -- I mean, is
12 that -- is that okay for the government to take
13 away --
14 **A No.**
15 **Q** -- a property right like that?
16 **A No.**
17 **Q** So right now Hays and Russell divert water from
18 the Smoky Hill River and Big Creek, you're aware
19 of that?
20 **A Correct.**
21 **Q** And if the water transfer is approved, they --
22 they will probably take less from those sources.
23 Is that fair?
24 **A That's fair, yeah.**
25 **Q** And there'll be new water coming into the area

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1 from -- from the R9 Ranch, is that your
2 understanding?
3 **A That's my understanding.**
4 **Q** What -- what impact do you think there might be,
5 is there -- are there downstream users of the
6 Smoky Hill River?
7 **A Yes.**
8 **Q** And would that -- is this a benefit to them?
9 **A It could be a benefit. And I know Hays**
10 **discharges into Big Creek once they treat their**
11 **water, so if water was coming in -- coming in**
12 **from the Ark, whatever was not utilized by Hays**
13 **and then treated and discharged into Big Creek,**
14 **Big Creek would benefit from that.**
15 **Q** Okay. But at the end of the day, this --
16 downstream from Russell, there's some --
17 there'll be some benefit to those users
18 downstream, correct?
19 **A Correct.**
20 **Q** And that's a benefit to the State larger than
21 just a local benefit?
22 **A Yes.**
23 **Q** Are you -- are you aware of some of the --
24 you've been at DWR for, what'd you say,
25 36 years?

1 A 36 years.

2 Q And so you're aware of -- I think you said

3 earlier today that you know a lot, maybe not in

4 this context but you do know a lot, are you

5 aware of some of their efforts to obtain water

6 supplies from other sources?

7 A Yes, I know based on new applications that were

8 filed, I know that they filed a new application

9 on Wilson - when I say they, Hays and Russell -

10 waiting for the Corps of Engineers to do a

11 reallocation study. That -- the Corps, they're

12 more interested in flooding, I think, than doing

13 a reallocation study on the reservoirs. There

14 was a Public Water Supply District 15 that

15 included Hays and Russell, and I know that they

16 were test drilling because they contacted us

17 about if there were any requirements for a

18 permit for test drilling, and they weren't able

19 to find any water.

20 Q Do you know where they were drilling?

21 A In the alluviums --

22 Q Okay.

23 A -- along the rivers, if I recall. Also I know

24 about their Dakota wellfield and how poor water

25 quality that is and very limited. I knew that

1 they looked at Cedar Bluff, and Cedar Bluff is

2 extremely unreliable. They were talking about,

3 like, the releases for Russell and then the

4 artificial recharge pool, I know, like, when

5 they call for that, the Water Office does their

6 very best to coordinate those things to flow one

7 on top of the other --

8 Q Sure.

9 A -- because that -- the river, just trying to

10 make the river effective in getting the water to

11 them. So Cedar Bluff is unreliable. I know

12 they looked at the Cedar Bluff Cattle Feeders

13 because I knew the owner of that facility.

14 Yeah, I'm familiar with the list of things they

15 looked at.

16 Q So are you familiar with Post Rock, the Post

17 Rock --

18 A Kanopolis, yes.

19 Q -- Rural Water District? Kanopolis, is that --

20 was that considered and is that a viable source?

21 A No, Post Rock's line isn't big enough to supply

22 Russell or Hays. I know we worked pretty hard

23 to try to help Russell when the ethanol plant

24 needed water, and we -- I just know Post Rock's

25 infrastructure isn't enough. I imagine there's

1 water there but their treatment -- their

2 infrastructure is not enough, the pipeline and

3 the treatment.

4 Q Sure. Are you aware of any other impacts, I

5 mean, the statute says that -- that the hearing

6 officer and the panel must consider a wide range

7 of things and then there's a list, but are you

8 aware of any other issues or concerns, positive

9 or negative, that have any -- that bear on

10 whether or not the transfer should be approved?

11 A I'm not aware.

12 Q Of any negative -- are you aware -- we've talked

13 about a lot of factors here.

14 A Right.

15 Q Okay. And so do you see the benefits of -- do

16 you see a benefit to the State as a whole of

17 approval of the transfer?

18 A On a personal level, if that's appropriate. I

19 mean, I talk to a lot of people from western

20 Kansas, and you'll hear on their schedule,

21 because they're going to -- what I hear about

22 most in Hays is their hospital and folks from

23 western Kansas going to Hays to take advantage

24 of the medical complex, pretty much that hub, so

25 I know that folks will benefit from that.

1 Q Okay.

2 A And then Russell, I learned in this hearing that

3 that one plant was going to double in size, I

4 mean, that's -- that's a lot of commerce. When

5 you think about the number of trucks coming in

6 and out of Russell, that is commerce. So ...

7 Q And it benefits Russell, just --

8 A No, that benefits all of Kansas, people paying

9 taxes, I mean, every gallon of fuel we buy

10 there's state tax on that so -- it's not my job

11 to -- to look at the economics of something,

12 but, I mean, I -- so that was a personal -- just

13 a personal level.

14 Q Observation, thank you very much. I don't have

15 any further questions for this witness at this

16 time.

17 PRESIDING OFFICER: Mr. Cole?

18 MR. COLE: Thank you. And I don't

19 think I'll take very long at all.

20

21 CROSS-EXAMINATION

22 BY MR. COLE:

23 Q My name is Ken Cole, I represent the City of

24 Russell and appreciate your testimony today.

25 When you concluded with direct, you were kind of

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1 speaking to what might or might not be the
2 benefits to the State for approval or
3 disapproval of this transfer; is that correct?
4 **A That's correct.**
5 **Q** And one of the possibilities is that if the
6 transfer is allowed, it may reduce the demand on
7 the Smoky River as a source for both the City of
8 Russell and Hays. Is that your understanding?
9 **A That's correct.**
10 **Q** And Big Creek actually ends up flowing into the
11 Smoky River, so it might reduce the demand on
12 each of those rivers, contributing to, perhaps,
13 additional flow of the Smoky River?
14 **A Correct.**
15 **Q** Okay. Earlier you had also testified about that
16 the State had established some standards on
17 minimum desirable streamflows. Are you aware,
18 is there any such designations in the Smoky
19 River east of the City of Russell?
20 **A It's the Smoky Hill at Ellsworth, so there's**
21 **nothing east.**
22 **Q** Of Russell?
23 **A Of Russell, until you get to Ellsworth.**
24 **Q** Right.
25 **A Correct.**

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1 **Q** Which would be downstream from Russell?
2 **A Correct.**
3 **Q** So to the extent that this project might improve
4 the flow of the Smoky River, it would contribute
5 to meeting that goal of the State in providing
6 that minimum desirable streamflow at Ellsworth?
7 **A It could.**
8 **Q** Down river?
9 **A I'm sorry to interrupt you but it could.**
10 **Q** Yeah. And, of course, I think you testified
11 that you had the opportunity to listen to
12 Mr. Quinday's testimony, and did you hear some
13 of Mr. Dougherty's testimony?
14 **A Yes.**
15 **Q** And, again, getting back to the Cities' water
16 sources and the testimony suggesting, the
17 exhibits suggesting that at times, and certainly
18 times of drought, those sources are unreliable
19 or can be unreliable. Do you recall that
20 testimony?
21 **A Yes.**
22 **Q** And is that your understanding of the facts on
23 the ground?
24 **A Yes.**
25 **Q** One of the things that you mentioned that I

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1 found interesting, and I think this had -- came
2 up in the area of the reasonable-needs
3 limitation or the reasonable-needs cap, is the
4 idea of a redundant supply. What does that
5 mean?
6 **A Well, there are -- to where you would have the**
7 **same amount of water from different sources.**
8 **I'm just thinking of a city that might have**
9 **wells but they also might have a surface water**
10 **supply and they might also have storage in a**
11 **reservoir; and then when the surface water**
12 **supplies or the storage is used up, then they'll**
13 **rely on the wells in a drought. So it's just**
14 **having a duplicate source, it's just -- it's**
15 **just good business.**
16 **Q** And I think that's what you had mentioned
17 before, that it's, I think, smart business
18 planning, correct?
19 **A Correct.**
20 **Q** And in these cases, it would be smart planning
21 by municipalities?
22 **A Correct.**
23 **Q** And if I'm understanding what you're saying is
24 that when you think of what a city needs to have
25 accessible to it for its actual use at the time,

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1 that isn't enough; that if you lose that source,
2 you need another source that can be that
3 redundant source --
4 **A Correct.**
5 **Q** -- is that correct?
6 **A That's correct.**
7 **Q** And that's reasonable?
8 **A Yes, absolutely.**
9 **Q** Okay. Thank you.
10 **PRESIDING OFFICER:** All right.
11 **MR. LEE:** Your Honor, it's going to
12 take awhile.
13 **PRESIDING OFFICER:** Okay. That was
14 going to be my question to you, I didn't
15 want to --
16 **MR. LEE:** Okay.
17 **PRESIDING OFFICER:** -- not give you
18 the opportunity to do your questioning
19 today.
20 **MR. LEE:** Thank you.
21 **PRESIDING OFFICER:** Okay. So I
22 guess with what we've talked about with
23 scheduling everything, it sounds like
24 that's going to still make everything flow
25 okay if Mr. Lee continues his

1 cross-examination questions tomorrow
2 morning, with everything continuing
3 tomorrow and moving into Wednesday then.
4 So we'll just --

5 **MR. TRASTER:** So if I'm -- so we had
6 anticipated that this might be finished
7 today, so we have a number of witnesses
8 scheduled for tomorrow, we'll provide
9 Mr. Lee -- Mr. and Mrs. Lee the list. I'm
10 wondering whether we have some estimate of
11 the time, and it's difficult to estimate
12 because then there's redirect and recross
13 and --

14 **PRESIDING OFFICER:** Sure.

15 **MR. TRASTER:** -- and all that.

16 **PRESIDING OFFICER:** I'm happy to
17 address that and facilitate whatever
18 conversation we have. We'll go ahead and
19 adjourn for the day so we can go off the
20 record. As I've stated before many times,
21 we want to make sure we have a good record
22 of this, but whatever happens, I don't
23 think any reviewing body is going to be
24 concerned about whatever kind of dicta is
25 going around about procedural issues for

1 tomorrow. So we'll adjourn, we'll just
2 kind of go off the record and discuss on
3 that. So we'll adjourn until 9:00 a.m.
4 tomorrow morning, and at that time we'll
5 resume with Mr. Letourneau as the witness.

6 (Whereupon, the proceedings were
7 adjourned at 5:27 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 4th 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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