

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

Formal Hearing
Vol. 9
July 31, 2023

Court Reporting Service, Inc.
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1 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
 2 STATE OF KANSAS
 3
 4 IN THE MATTER OF:)
 5 THE APPLICATION OF THE)
 6 CITIES OF HAYS, KANSAS) OAH No. 23AG0003 AG
 7 AND RUSSELL, KANSAS)
 8 FOR APPROVAL TO)
 9 TRANSFER WATER FROM)
 10 EDWARDS COUNTY, KANSAS)
 11 PURSUANT TO THE KANSAS)
 12 WATER TRANSFER ACT)

13 FORMAL HEARING
 14 VOLUME IX

15 This matter came on for Formal Hearing
 16 before Matthew A. Spurgin, Presiding Officer, at
 17 Hyatt Regency Wichita, Riverview Ballroom, 400
 18 West Waterman, Wichita, Sedgwick County, Kansas,
 19 commencing at 12:01 p.m. on the 31st day of
 20 July, 2023.
 21
 22
 23
 24
 25

1 **PRESIDING OFFICER:** All right. So
 2 we'll go ahead and go on the record and
 3 resume our hearing, it's July 31st at noon,
 4 and we are picking up to address some of
 5 our final things before we close out our
 6 evidentiary hearing portion of this
 7 proceeding. And I guess just a few things
 8 as I was going through everything to try to
 9 get -- get this lined up and ready to go.

10 **MR. TRASTER:** Your Honor, do you
 11 mind using the microphone, please.

12 **PRESIDING OFFICER:** Sure. Okay. So
 13 we had the proposed schedule that the
 14 parties had circulated and agreed to.
 15 We'll go through some matters today to make
 16 sure we've got everything taken care of as
 17 far as evidence and exhibits admitted to
 18 the record. And then by September 15th,
 19 the parties will submit proposed findings
 20 of facts, conclusions of law, and then I'm
 21 going to add into that any supporting
 22 briefs that they choose to argue out their
 23 opposing positions.
 24 And then October 27th will be the
 25 deadline for the potential commenting

1 A P P E A R A N C E S
 2 City of Hays, Kansas appears by its
 3 attorneys, David M. Traster, Foulston Siefkin LLP,
 4 1551 North Waterfront Parkway, Suite 100, Wichita,
 5 Kansas 67206; Daniel J. Buller, Foulston Siefkin
 6 LLP, 7500 College Boulevard, Suite 1400, Overland
 7 Park, Kansas 66210. Also present were Toby
 8 Dougherty and Jami Buck.

9 City of Russell, Kansas appears by its
 10 attorney, Kenneth L. Cole, P.O. Box 431, Russell,
 11 Kansas 67665. Also present was Jon Quinday.

12 Water PACK and Edwards County appear by
 13 their attorneys, Charles D. Lee and Myndee M. Lee,
 14 Lee Schwalb LLC, 7381 West 133rd Street - Second
 15 Floor, Overland Park, Kansas 66213.

16 Division of Water Resources appears by
 17 their attorney, Kate Langworthy, Kansas Department
 18 of Agriculture, 1320 Research Park Drive,
 19 Manhattan, Kansas 66502.
 20
 21
 22
 23
 24
 25

1 agencies to file any comments if they
 2 choose to do so. Any of those entities
 3 that wish to seek status as a commenting
 4 agency will need to notify the Office of
 5 Administrative Hearings, and we'll get them
 6 added to the service list and they can
 7 submit those comments and those comments
 8 will be accepted in the -- just because a
 9 potential commenting agency notifies us
 10 that they want to be a potential commenting
 11 agency doesn't require them to file
 12 comments. They can just notify us and if
 13 they review everything and decide they
 14 don't want to make any comment, that's
 15 fine. But they'll have that opportunity to
 16 if they choose to do so.

17 And then October 27th will also be that
 18 deadline, then, for the parties to file any
 19 responses to what the opposing parties have
 20 filed back on September 15th. And then the
 21 parties have agreed that we'll resume this
 22 proceeding by Zoom videoconference, at
 23 which time we will then conclude the public
 24 hearing on November 6th, 2023 at 9:00 a.m.

25 **MR. TRASTER:** And the date again,

1 please.

2 **PRESIDING OFFICER:** November 6th.
3 And so after today there won't be the
4 opportunity for any additional evidence to
5 be admitted to the record absent some --
6 some sort of good cause or if the parties
7 file a motion and they all agree that this
8 should have been admitted but we overlooked
9 it and they all agree on it.

10 **MR. BULLER:** Your Honor, one other
11 matter I thought we discussed was that the
12 parties here would have an opportunity to
13 file responses to any of the commenting
14 agencies' comments in between the
15 October 27th deadline for commenting
16 agencies and the November 6th deadline
17 for -- or the November 6th closure of the
18 hearing.

19 **PRESIDING OFFICER:** I believe we did
20 discuss that, did we set a date on that?

21 **MR. BULLER:** Not a specific date for
22 the deadline of the responses. I had
23 presumed, and Mr. Traster and I discussed
24 and both just presumed that that would be
25 anytime before 9:00 o'clock a.m. on that --

1 originally suggested the 3rd, and I said,
2 well, how about the 6th, that we discussed
3 working over that weekend, so
4 9:00 o'clock -- prior to the 9:00 o'clock
5 hearing works for us.

6 **PRESIDING OFFICER:** You want to get
7 them filed Friday and enjoy your weekend,
8 you're welcome to it.

9 **MR. BULLER:** That's not our style,
10 Your Honor.

11 **PRESIDING OFFICER:** Well, don't
12 blame me when you're working that weekend,
13 then, Mr. Buller.

14 **MR. BULLER:** We won't.

15 **MR. TRASTER:** One other matter on
16 that, my understanding is, and I'm asking,
17 I think this is right, there was an
18 opportunity for the public to make comments
19 and -- both orally on June 20th and then in
20 writing by submitting them to the DWR.

21 **PRESIDING OFFICER:** The public
22 comment period has closed so no more public
23 comments; the only comments that will be
24 accepted will be from the commenting
25 agencies.

1 on that Monday, but if you want to, you
2 know, make it Friday before, or whatever,
3 that's fine with us as long as we have --
4 you know, we were hoping for a week or so
5 in between comments being submitted and the
6 response deadline.

7 **PRESIDING OFFICER:** Any input from
8 the other parties?

9 **MR. LEE:** We don't have any
10 objection to that scenario, Your Honor.

11 **PRESIDING OFFICER:** Okay. Mr. Cole?

12 **MR. COLE:** No objection.

13 **PRESIDING OFFICER:** Ms. Langworthy?

14 **MS. LANGWORTHY:** Seems perfectly
15 reasonable. I don't have a dog in that
16 fight so ...

17 **PRESIDING OFFICER:** I would say
18 9:00 a.m. will be sufficient; that way it's
19 before we get together to resume our
20 continued hearing, everything's filed, and
21 at that point, it's just if there's
22 something that one party or the other needs
23 to point out regarding the comments.

24 **MR. BULLER:** Thank you, Your Honor.

25 **MR. TRASTER:** I think you had

1 **MR. TRASTER:** I just wanted --
2 that's what I thought and I wanted to
3 make --

4 **PRESIDING OFFICER:** Correct. Now,
5 any of the comments that come in from the
6 commenting agencies, it will be very
7 helpful if any of those comments are able
8 to address those criteria that are set
9 forth in 1502 or even in 1504 regarding
10 that provision in there that states that I
11 have the ability to grant a lesser amount
12 of a transfer than requested and impose any
13 terms and conditions be necessary for the
14 benefit of the public, the entire state, so
15 if there's anything that addresses those
16 that the commenting agencies want to
17 address, it'll be helpful if they focus
18 that. I will issue an order kind of
19 setting forth that, that comments are most
20 helpful if they cover the criteria in 1502
21 or 1504 and how -- how those factors should
22 be considered.

23 And then also from the parties in your
24 filings addressing how -- how in your
25 findings of fact and conclusions and any

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1 supporting briefs that you want to file in
2 closing, then how those facts or
3 conclusions should support a finding one
4 way or the other. As you're aware, the
5 statute provides that my order needs to
6 address each of those criteria in 1502, and
7 then if anything is going to be addressed
8 under 1504, anything that helps to
9 establish one way or the other if that is
10 applicable or not.
11 **MR. TRASTER:** Sure.
12 **PRESIDING OFFICER:** Again, we just
13 want to make sure we have a complete
14 record. I can't say I'm going to apply any
15 of those provisions of 1504 but just want
16 to make that statement to the parties so
17 they are prepared to address that in their
18 filings so that's all clear, the record is
19 complete, that whatever is done one way or
20 the other, I can make sure that it is
21 supported by the facts and we have
22 sufficient record for this matter should
23 ever any party choose to appeal it.
24 **MR. TRASTER:** Your Honor?
25 **PRESIDING OFFICER:** Yes.

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1 **MR. TRASTER:** Sort of tangential to
2 that, there was a mention earlier in the
3 proceeding about an article that Mr. Buller
4 and I wrote, and it was for a publication
5 out in Oregon that it was caught by our
6 marketing people, put it on our website.
7 It does say that, you know, you can enter
8 an order that -- for a smaller amount, but
9 it cites 1504.
10 And so I want to just be clear on the
11 record that -- that we have not said
12 anything other than -- about smaller
13 quantity other than what 1504 provides.
14 And I have a copy of this here that I can
15 provide to you or we can post it on the
16 website or we can just let it go, but I
17 just want the record to reflect that
18 Mr. Buller and I have never taken a public
19 position that you have the authority to
20 reduce the quantity or to put terms and
21 conditions and limitations on just
22 generally; it must be based on the --
23 **PRESIDING OFFICER:** The public
24 benefit of the state as a whole.
25 **MR. TRASTER:** Yeah, state as a

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1 whole.
2 **PRESIDING OFFICER:** Yes.
3 **MR. TRASTER:** And we've been clear
4 in this proceeding, but there might be some
5 confusion about that when someone's
6 reviewing the record and I want it to be
7 clear. And I would like to have your
8 instruction on whether you want a copy of
9 this now from our website or you want me to
10 post it or you can find it, it's on our
11 website if you want it.
12 **PRESIDING OFFICER:** All right.
13 Well, I guess we can get into that in just
14 a little bit here --
15 **MR. TRASTER:** Okay.
16 **PRESIDING OFFICER:** -- when we start
17 going through all the exhibits, and if
18 that's something that you want to have
19 included in the exhibits, then that can be
20 addressed.
21 **MR. TRASTER:** Okay. That's fine, I
22 just -- you were talking about state as a
23 whole and it sort of seemed like a natural
24 point to make this point.
25 **PRESIDING OFFICER:** I understand,

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1 yeah. Yeah, and I hope everybody
2 understands that clarification that, yeah,
3 I have no authority to address anything
4 that was addressed through the change
5 application; I can't go back and address
6 anything that the chief engineer approved
7 on that, that's a separate proceeding.
8 What my authority is under is under the
9 Water Transfer Act, so I have that ability
10 to approve or deny, and then under 1504 the
11 criteria there where I could approve
12 with -- with terms and conditions or a
13 reduced quantity, with a finding that it is
14 for the benefit of the state as a whole.
15 **MR. TRASTER:** Thank you, Your Honor.
16 **MR. LEE:** And, Your Honor, just to
17 be clear, we will address in our briefing
18 what we think is your authority in relation
19 to the application, so that will be
20 forthcoming by our deadline.
21 **PRESIDING OFFICER:** Okay. That's
22 fine. As the administrative law judge in a
23 administrative proceeding, I have limited
24 ability to address things that are outside
25 the scope of what's before me. And that

1 comes up very often in the various hearings
2 that we have where somebody will want
3 something else addressed, and that's
4 outside of what I have the ability to do,
5 and I'm -- as a creature of statute, I can
6 only do what the statutes say I can do.
7 The other thing I wanted to address with
8 the parties, under 82a-1503,
9 subsection (e), there's a provision in
10 there regarding the assessment of cost for
11 the proceeding. When the parties file any
12 closing findings, conclusions, or
13 briefings, if the parties want to include
14 anything in there as to what their
15 arguments would be as to what the fair
16 distribution of cost of the proceeding
17 should be, you can include that in there
18 since I'll have to address that at some
19 point at the close -- at the close of
20 everything and how any costs should be
21 divided up.
22 All right. I think that covers what I
23 had on my initial list. So at this point,
24 then, should we start going over the
25 exhibits and make sure that we've covered

1 2866?
2 **MR. BULLER:** 2866, that was unused.
3 **PRESIDING OFFICER:** Okay. And then
4 I did not have anything noted for 2869
5 through 2871?
6 **MR. BULLER:** Okay. And, Your
7 Honor -- yes, Your Honor, those exhibits
8 are included in the -- the Cities'
9 supplemental exhibit list filed with the
10 OAH last evening.
11 **PRESIDING OFFICER:** Okay.
12 **MR. BULLER:** And they're all listed
13 in a table there. And it even indicates a
14 couple exhibit numbers there that were
15 unused. It does include the 2867 we just
16 talked about, and I'm happy to go through
17 each one, if you'd like me to, but they're
18 all right there in our exhibit list that
19 was filed.
20 **PRESIDING OFFICER:** Okay. I am
21 seeing that now, that came in after I shut
22 everything down last night so ...
23 **MR. BULLER:** And, Your Honor, we did
24 file each of the exhibits associated with
25 those supplemental exhibits.

1 all the exhibits that each of the parties
2 have, or do the parties have any comments
3 or questions about anything before we move
4 on to the exhibits?
5 **MR. LEE:** No, Your Honor.
6 **MR. BULLER:** We're ready for that --
7 that part, Your Honor.
8 **PRESIDING OFFICER:** Okay. I guess
9 we'll start with the Cities' exhibits. We
10 had -- I guess your initial exhibit list
11 had Exhibit 1 through 2865, and those were
12 all admitted. I did not have a note for
13 whatever has been marked as 2866 or 2867.
14 **MR. BULLER:** I believe, Your Honor,
15 that Exhibit 2867, Jami, correct me if I'm
16 wrong, but I believe that is David
17 Barfield's rebuttal report. And I should
18 have referenced that when he was on the
19 stand, and I think I may have asked Jami
20 what the exhibit number is, but that's what
21 that exhibit number is.
22 **PRESIDING OFFICER:** Okay. And his
23 testimony was admitted so that will be --
24 **MR. BULLER:** Yes.
25 **PRESIDING OFFICER:** And how about

1 **PRESIDING OFFICER:** Okay. Okay. So
2 your supplemental list, I think it's the
3 first one, then, is 2867 through 2882A, and
4 then you had your additional one that had
5 2881?
6 **MR. BULLER:** Yes, Your Honor, we
7 filed 2881 this morning, we just neglected
8 to include that in our first list.
9 **PRESIDING OFFICER:** Okay. All
10 right. And then I think we discussed some
11 of this in kind of a prehearing setting off
12 the record with the photos of the soil
13 samples, and I see you identified those as
14 2681-1 through 2681-42?
15 **MR. BULLER:** Yes, Your Honor.
16 **PRESIDING OFFICER:** All right.
17 **MR. BULLER:** And we did have one,
18 you know, as I mentioned, the 2881 exhibit
19 was included in our second supplemental
20 exhibit list. I'm being handed a note
21 here, and I believe Your Honor referenced
22 the last exhibit listed on our supplemental
23 exhibit list 2822A, just want to make sure
24 that's included in what you have in front
25 of you there --

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1 **PRESIDING OFFICER:** Uh-huh.
2 **MR. BULLER:** -- I believe it is and
3 so that's covered.
4 **PRESIDING OFFICER:** Okay.
5 **MR. BULLER:** Oh, I think -- I think
6 what my -- what our paralegal heard was you
7 say 2882A and it's 2822A.
8 **PRESIDING OFFICER:** Okay.
9 **MR. BULLER:** Just for the record,
10 yeah.
11 **PRESIDING OFFICER:** So with those
12 exhibits, we've already at the start of the
13 hearing addressed 1 through 2865, so 2867
14 through 2882A, is there any objections with
15 any of those exhibits?
16 **MS. LEE:** No, Your Honor.
17 **PRESIDING OFFICER:** Okay. Mr. Cole,
18 I'm assuming no objections on your end but
19 I need to ask you?
20 **MR. COLE:** No.
21 **PRESIDING OFFICER:** Ms. Langworthy?
22 **MS. LANGWORTHY:** We uploaded -- or
23 no objection, sorry.
24 **PRESIDING OFFICER:** Okay. All
25 right. So then the record will reflect

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1 that 1 through 2865 and 2867 through
2 2882 -- sorry, 2822A of the Cities'
3 exhibits --
4 **MR. BULLER:** With also 2881
5 which -- 'cause some of those are a little
6 out of order because -- because we filed
7 our supplemental exhibit list and then we
8 filed another -- just one more exhibit this
9 morning so I want to make sure that 2881
10 is --
11 **PRESIDING OFFICER:** Yeah,
12 numerically it would fall in here.
13 **MR. BULLER:** Yes, it would, you're
14 correct, yes.
15 **PRESIDING OFFICER:** So those are all
16 admitted to the record, then.
17 **MR. BULLER:** Okay. Thank you, Your
18 Honor.
19 **PRESIDING OFFICER:** And then there
20 were also those exhibits that were marked
21 as Exhibit A and B.
22 **MR. BULLER:** Your Honor, there's
23 some confusion over here whether or not the
24 record is going to be clear what these
25 exhibits -- okay. So just to eliminate any

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1 iota of doubt here, Exhibits 1 through
2 2881, that should encompass all of our
3 exhibits, including several sub-exhibits
4 within those numbers, but that's the number
5 range that spans all of the Cities'
6 exhibits.
7 **PRESIDING OFFICER:** Okay. And so
8 those will be admitted, but I will note
9 that there was no 2866 --
10 **MR. BULLER:** Correct.
11 **PRESIDING OFFICER:** -- correct? And
12 then additionally there was the additional
13 Exhibit 2875, video of Orrin Feril that was
14 marked but then was not admitted.
15 **MR. BULLER:** Correct.
16 **PRESIDING OFFICER:** So with the
17 exception of 2866 and 2875, 1 through 2881
18 are admitted.
19 **MR. BULLER:** With one additional
20 correction, I also show that 2874 was not
21 used. So it will be 2874 and 2875 that
22 were not -- were not used. And that is
23 reflected on our supplemental exhibit list,
24 Your Honor.
25 **PRESIDING OFFICER:** Okay. Does that

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1 track with everybody else's record as well,
2 then?
3 **MR. COLE:** That's my understanding.
4 **PRESIDING OFFICER:** Okay. So those
5 are admitted to the record with the
6 exceptions that have been noted.
7 **MR. BULLER:** Thank you, Your Honor.
8 And how would Your Honor wish to address
9 the water transfer article authored by
10 myself and Mr. Traster that Mr. Traster
11 mentioned earlier?
12 **PRESIDING OFFICER:** Is that
13 something that you would like to offer as
14 an exhibit?
15 **MR. BULLER:** We're happy to do that,
16 Your Honor, if that would make it cleaner
17 on your end.
18 **PRESIDING OFFICER:** All right. Is
19 there any objection to that article being
20 offered as an exhibit?
21 **MS. LEE:** No objection, Your Honor.
22 **PRESIDING OFFICER:** Okay. So that
23 would then be -- that article, we'll note
24 that as 2882, would that be correct?
25 **MR. BULLER:** That would be correct,

1 Your Honor. Shall we file that with OAH
2 after this?
3 **PRESIDING OFFICER:** Yes.
4 **MR. BULLER:** Okay. We will do that.
5 **PRESIDING OFFICER:** And then that
6 initial group of 2,865 exhibits, you
7 provided a flash drive, and we're working
8 on getting those combined so it does not
9 make that docket list just super long with
10 2,000 exhibits there; actually, it was more
11 than that because, like, Exhibit 1 had, I
12 think, 202 --
13 **MR. BULLER:** Yeah.
14 **PRESIDING OFFICER:** -- sub-exhibits
15 on it because it was that whole application
16 there.
17 **MR. BULLER:** Right.
18 **PRESIDING OFFICER:** We're trying to
19 get those merged. So those are part of the
20 record, we'll figure out a way to get those
21 uploaded in that system eventually there,
22 but we have a placeholder noting those were
23 filed and those are admitted to the record.
24 **MR. BULLER:** And, Your Honor, if
25 your staff needs any assistance with that,

1 state it when we went through all this
2 there, but since we've noted these are
3 admitted to the record, at some point if
4 somebody realizes it was not uploaded
5 there, I'll still allow that to be uploaded
6 because we're not accepting new evidence
7 with that, we've already admitted it, we've
8 already covered it in the proceeding here.
9 Just if you determine later that it's not
10 in this group that we thought we uploaded
11 here, that can be provided then.
12 **MR. TRASTER:** And I think one of the
13 documents that we uploaded yesterday was in
14 that category. I don't remember, 2254, I
15 think it was uploaded; it isn't reflected
16 on our supplemental list, but I -- it could
17 have been missed. It was on our original
18 list, but I'm not sure -- it may not have
19 been uploaded; I'm sure it was provided to
20 the parties, though.
21 **PRESIDING OFFICER:** All right. Then
22 additionally, then, Mr. Traster, there was
23 the exhibits that were marked as A and B
24 when Mr. Wenstrom was testifying last week.
25 **MR. TRASTER:** One of them was his

1 we're happy to help any way we can, just
2 let us know, we can put our IT people on it
3 as well if you need assistance.
4 **PRESIDING OFFICER:** All right. I
5 think we've got it handled, just a matter
6 of people being out sick --
7 **MR. BULLER:** Ah.
8 **PRESIDING OFFICER:** -- and different
9 kinds of things like that that have
10 prevented us from getting finished with
11 that where I can give them the approval
12 that, yes, that's the format they need to
13 get it uploaded in.
14 **MR. BULLER:** Sounds great, thank
15 you.
16 **MR. TRASTER:** And if the parties
17 need any documents that we haven't already
18 provided, I think we provided them, but
19 we're happy to provide again to the parties
20 as well, separately if that helps.
21 **PRESIDING OFFICER:** And then with
22 the additional ones that are uploaded to
23 the E-file system, everybody should have
24 the access there with those, and I'll go
25 ahead and state it now, I was going to

1 resume, which I have no -- and the other
2 was something about some soils, but we have
3 copies of them, I have no -- I'm ambivalent
4 about whether they should be added to the
5 record. I don't think I inquired about
6 them in any detail.
7 **PRESIDING OFFICER:** They were marked
8 as exhibits, so I'm just covering our bases
9 here; if that's something you wanted
10 admitted to the record, I was going to
11 address it.
12 **MR. TRASTER:** We're not asking that
13 they be admitted.
14 **PRESIDING OFFICER:** Okay.
15 **MR. TRASTER:** But we have no
16 objection if somebody else wants to.
17 **MR. COLE:** Yeah, I'm not going to.
18 **PRESIDING OFFICER:** Okay. And then
19 I guess we'll just move down the road here,
20 then.
21 Mr. Cole, I don't believe there were any
22 additional exhibits that Russell submitted
23 outside of those that were jointly
24 submitted by the Cities; is that correct?
25 **MR. COLE:** That's correct.

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1 **PRESIDING OFFICER:** Okay. So then
2 we'll move down to Water PACK, Edwards
3 County, so Mr. and Mrs. Lee?
4 **MS. LEE:** Yeah, I just have -- I
5 mean, we had originally 1 through -- WP1
6 through -- 1 through WP1852. And then I
7 show at the hearing we had 1863, which is
8 the Census Post-Enumeration Study; 1864,
9 which is Steve Larson's expert report;
10 1865, which was the membership list, the
11 Water PACK membership list; 1866, which was
12 the Harvey Economics expert report; 1867,
13 which was the rebuttal report; 1868, which
14 are the deposition exhibits from Dougherty
15 and Braun. And we had the deposition
16 listed and we have the original but the
17 exhibits we had labeled differently so --
18 and then 1869, an errata sheet for the
19 Dougherty deposition.
20 **PRESIDING OFFICER:** Okay. And I
21 believe I saw here you had uploaded all
22 those as well?
23 **MS. LEE:** I have, Your Honor. And I
24 uploaded 1 through this number and I just
25 combined them into a PDF so ...

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1 **PRESIDING OFFICER:** Okay. And I did
2 not note that there was any objections that
3 kept any of those out during our prior
4 portion of the hearing, is there any
5 objection to having all those -- we have
6 the preliminary admission of that first
7 group?
8 **MR. BULLER:** No objection from the
9 City of Hays, Your Honor.
10 **PRESIDING OFFICER:** Okay. So WP001
11 through WP01869 will all be admitted to the
12 record, then.
13 **MS. LEE:** Thank you, Your Honor.
14 **PRESIDING OFFICER:** All right, then.
15 Now, it looks like everybody's uploaded
16 everything. Again, if something's
17 determined that something got missed in
18 that since we admitted those exhibits, I'll
19 still allow them to be uploaded as you're
20 preparing your findings and conclusions.
21 I'm not putting any sort of page
22 limitation on what the commenting agencies
23 can file. If it's relevant and within the
24 scope of this hearing, they can file it
25 'cause they have -- obviously have

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1 personnel who have expertise that may be
2 relevant and people with background and
3 technical training that I do not have. So
4 anything that they file that would be
5 helpful, I'm not going to limit that.
6 And no limitation on what the parties
7 can file for -- lengthwise for their
8 proposed findings and conclusions,
9 whatever's going to be necessary to address
10 all those relevant factors. This is not
11 going to be just a three- or four-page
12 order. I wish it was, but it's going to
13 take a little more time than that to get it
14 all together. There's a lot, clearly,
15 involved with this.
16 **MR. TRASTER:** Your Honor, I guess
17 I'm kind of curious about what your order
18 might look like, I mean, I've seen orders
19 issued by the chief engineer, I've seen
20 orders issued by some of your colleagues,
21 but, you know, the format, do you do
22 findings of fact all numbered, I mean, is
23 there some -- what I was wondering about is
24 is there anything that we can do in
25 formatting that would be helpful to you?

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1 **PRESIDING OFFICER:** I will
2 definitely do numbered findings of fact
3 because of the length of this, and I may
4 even do numbered conclusions. You know, I
5 don't really have a template to look at for
6 how other orders have been issued on these,
7 so I'm going to try to figure out as I go,
8 comparing back to what I've done with other
9 orders and everything.
10 I started just working out what I need
11 to have in there as far as, like,
12 formatting wise and then just addressing
13 some of those evidentiary rulings. So I've
14 got some of that incorporated in there, but
15 I don't have anything for findings and
16 conclusions yet 'cause, you know, we
17 haven't finished anything yet and that
18 hasn't been filed.
19 I just am trying to go through and make
20 sure that all the evidentiary and
21 procedural background stuff was covered,
22 and that's probably what I'll be doing here
23 and there until after we close everything
24 out in November just to make sure -- I
25 always like to make sure my orders have,

1 especially the longer ones, have kind of a
2 background of the procedural basis of it,
3 especially when there's likely to be some
4 sort of appeal of it.

5 Just so whatever -- whether that's the
6 hearing panel or on judicial review,
7 whoever's reviewing that can go and review
8 and kind of see what happened without
9 having to go back and look through and try
10 to find every single prehearing order or
11 every different order that was issued along
12 the way addressing different matters.

13 I try to incorporate all that up front
14 as the procedural background, so that's
15 what I've been trying to kind of gather and
16 summarize so far just to get that down as a
17 template to start with, and everything else
18 will have to come after we have everything,
19 after everything's been filed and have a
20 chance to review everything and weigh the
21 evidence on the record.

22 All right. Is there anything else the
23 parties think we need to address before
24 we ...

25 **MR. BULLER:** Nothing comes to mind

1 and from our perspective they -- and
2 Mr. Preheim said he didn't care one way or
3 the other whether they were treated as a
4 party or a commenting agency, so I think
5 they -- they should be treated as a party
6 here and that evidence should be -- is not
7 in the record. I mean, they -- they are --
8 they have intervened in this -- formally
9 intervened and they did participate, one
10 day but they did participate in the
11 proceeding, I think they're a party as
12 defined by the statute.

13 **PRESIDING OFFICER:** That's something
14 I will have to consider based on whatever
15 they file. If they choose to file things
16 as a commenting agency, of course, with
17 that there always has to be appropriate
18 weight put to everything where when
19 commenting agencies were not putting
20 witnesses up to be subject for
21 cross-examination by the parties or to
22 where the parties could -- could have
23 addressed any of that with any of their
24 experts, that kind of weighs into the --
25 how much weight should be given to

1 from the City of Hays' perspective, Your
2 Honor.

3 **MR. COLE:** Nor from the City of
4 Russell.

5 **MS. LEE:** We have nothing further,
6 Your Honor.

7 **PRESIDING OFFICER:** All right.

8 **MS. LANGWORTHY:** I do have one
9 question about the David Romero report
10 submitted by GMD5 and whether that will be
11 included in the record since it wasn't
12 officially entered during the hearing?

13 **PRESIDING OFFICER:** Okay. So GMD5
14 filed that, but then nobody appeared to
15 offer that as evidence. So procedurally
16 it's included in the file, but it's not
17 part of the record to be considered in this
18 matter. So I don't know if GMD5 is going
19 to submit that as part of the comments of
20 the commenting agency, I really don't know
21 what -- what their plan would be. It would
22 just be speculation on my part, probably
23 anyone else's part at this point.

24 **MR. TRASTER:** Well, Your Honor, they
25 filed a motion to be included as a party,

1 anything. So that's something I'll have to
2 consider based upon whatever happens so ...

3 Any other questions or concerns?

4 **MR. TRASTER:** None from the City of
5 Hays.

6 **MR. COLE:** No.

7 **MR. LEE:** No, Your Honor, thank you.

8 **PRESIDING OFFICER:** All right.

9 Well, thank you, everybody. Those that
10 drove down to Wichita for this short
11 proceeding today, thank you for driving
12 down for such a short matter, but this is
13 what we needed to do to kind of close this
14 all out with everybody and make sure we had
15 everything taken care of.

16 So we're not going to call it a
17 conclusion of the proceeding, we're just
18 going to call it an adjournment until
19 November 6th. So the hearing has not
20 concluded, we're just adjourned for the
21 parties to -- and commenting agencies to
22 submit those filings, and then we'll
23 reconvene by videoconference on
24 November 6th, then.

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

1 MR. LEE: Thank you.
2 MS. LANGWORTHY: Thank you, Your
3 Honor.
4 PRESIDING OFFICER: Thank you,
5 everybody.
6 (Whereupon, the proceedings were
7 adjourned at 12:41 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
23
24
25
Costs:

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