

KANSAS DEPARTMENT OF AGRICULTURE
BEFORE THE DIVISION OF WATER RESOURCES

In The Matter of the Designation of
the Groundwater Management District
No. 4 District-Wide Local Enhanced
Management Area (LEMA) in Cheyenne,
Decatur, Rawlins, Gove, Graham, Logan,
Sheridan, Sherman, Thomas and Wallace
Counties in Kansas.

PROCEEDINGS had before DAVID BARFIELD,
Hearing Officer, Division of Water Resources,
Kansas Department of Agriculture, at the City Limits
Convention Center, 2227 South Range Avenue, Colby,
Kansas on the 14th day of November, 2017 at 9:05
a.m. and reported by Elaine Shogren, CSR, Satanta,
Kansas.

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1 HEARING OFFICER BARFIELD: All right.
2 Please come to order. We will now go on the record.

3 My name is David Barfield. I am Chief
4 Engineer of the Division of Water Resources, Kansas
5 Department of Agriculture, and I will be your
6 Hearing Officer today. With me is Kenny Titus,
7 Chief counsel for the Kansas Department of
8 Agriculture, and he will be assisting me in this
9 hearing.

10 Today is November 14th, 2017. The time is
11 9:05 a.m. and we are holding this hearing at the
12 City Limits Convention Center in Colby, Kansas. If
13 you have not already done so, I would ask that
14 everyone present, please go and sign the attendance
15 sheet located by the door. If you plan to give
16 testimony, please indicate that on the sign-in
17 sheet.

18 Thank you each for taking time today to
19 attend this hearing related to this very significant
20 matter of groundwater management within the
21 boundaries of Northwest Kansas, Groundwater
22 Management District No. 4.

23 This hearing is being held pursuant to
24 K.S.A. 82a-741, which governs the establishment of
25 local enhanced management areas, or LEMAs as we tend

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1 to call them.

2 This is the second of two hearings to
3 consider the management plan proposed by GMD No. 4,
4 Groundwater Management District No. 4, otherwise
5 known as GMD No. 4. In the plan, I will refer to it
6 as the GMD4 District-Wide LEMA.

7 Pursuant to K.S.A. 82a-1041(b), timely
8 notice of this public hearing was published in the
9 Colby Free Press on October 13th, 2017; the Goodland
10 Star News on October 13th, 2017; and the Kansas
11 Register on October 12th, 2017. Each water right
12 owner within the boundaries of the proposed LEMA was
13 also mailed an individual notification of this
14 hearing.

15 I would like to provide just a little bit
16 of history on sort of what has transpired here, and
17 particularly on sort of my role in the plan
18 development. The GMD board, as I understand it,
19 started its discussion and development of the
20 district-wide plan, or LEMA, in 2015. My first
21 knowledge of it was when I attended their 2016
22 annual meeting. I believe it was in February
23 of 2016. I and several of the staff from Manhattan
24 went and participated in the annual meeting. We
25 attended a board meeting just before the annual

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1 meeting and were briefly briefed on their concepts
2 for the plan at that point. It has evolved since
3 then. And our basic involvement was to give them
4 input, particularly to ensure that the plan that
5 they would develop ultimately would be consistent
6 with state law and its requirements more broadly.

7 From there, the GMD, after kicking off and
8 making the public aware at that annual meeting in
9 2016 of the plan, had a significant public
10 involvement process. Several of our staff attended
11 some of the public meetings. I did not personally.

12 My next knowledge of really the plan was
13 when they set it up early this year. They set up a
14 plan that was, as I understand it, substantively the
15 same as the plan we have today, that I am required
16 to review the plan and make sure it complies with
17 state law and a number of other requirements before
18 we kick off the public process.

19 In reviewing it, I found a number of
20 things that needed to be clarified, you know, just
21 written in a more clear way. And so we did provide
22 the GMD with some input in terms of how to make the
23 plan just be written more clearly. They took that
24 input and ultimately rewrote the plan, again to be
25 more clear. I also directed staff to assist the GMD

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1 to make sure that the control provisions would
2 accomplish the goal, and you will hear more about
3 that as we go forward today.

4 So ultimately then the plan as it is
5 before us today was sent to me for review and then
6 we have the process since then.

7 So this hearing process then was formally
8 initiated in June, when I found the proposed plan
9 submitted by GMD4 was acceptable for consideration.
10 As part of the hearing process, it was necessary to
11 hold an initial hearing to resolve three factual
12 matters to determine -- one, to determine if one or
13 more of the circumstances identified in K.S.A.
14 82a-1036 existed; two, whether it was in the public
15 interest to adopt one or more corrective controls;
16 and, three, whether the geographic boundaries were
17 reasonable.

18 I delegated the authority to preside over
19 the initial hearing to Ms. Connie Owen. Ms. Owen
20 held this initial hearing on August 23 in Colby and
21 issued findings on September 23. Ms. Owen's
22 findings were favorable on all three required issues
23 and as required by K.S.A. 82a-1041(b) and (c), I am
24 holding this second hearing on the proposed
25 management plan.

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1 I would note for the record, and to
2 provide additional background on our hearing
3 procedures today, that on October 10 we received a
4 notice of intervention and a motion for continuance
5 by attorney David Traster on behalf of the group of
6 intervenors. The Liner [phon] motion sought to
7 delay this hearing. Additional pleadings were filed
8 on October 27.

9 On October 31, I conducted a prehearing
10 conference to allow for discussion of the hearing
11 procedures for today and on the motions filed. On
12 November 6 -- I am sorry, on November 1 and
13 November 6th, I issued orders of decisions related
14 to these motions and November 6 I issued a
15 prehearing order to outline the procedures we will
16 use for today's hearing. All of these pleadings and
17 orders have been posted on the department's website.

18 So let me discuss the procedures for
19 today's hearing then. As outlined in my prehearing
20 order, today's hearing will be divided into two
21 phases. First, we will hold the formal phase of the
22 hearing. The formal phase of the hearing will
23 consist of testimony and questions presented by
24 those parties that have requested to participate in
25 this portion of the hearing. Those parties are

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1 Groundwater District No. 4, the Division of Water
2 Resources and the Intervenors. And each of these
3 parties is represented here by legal counsel.

4 The public will not participate in the
5 formal portion of the hearing. Testimony in this
6 formal portion will be presented by the parties in
7 the following order. Number 1, GMD4; Number 2, the
8 Division of Water Resources; and Number 3, the
9 Intervenors represented by David Traster.

10 During this formal phase of the hearing,
11 the parties may present their testimony and call
12 witnesses to present testimony. The other parties
13 will be allowed to cross-examine or ask clarifying
14 questions of all witnesses, once they complete their
15 testimony. I may also ask questions of each of the
16 witnesses at any time during the proceedings.

17 While I will not be allowing the public to
18 participate in cross-examining witnesses, you are
19 free to provide your comments or questions on that
20 testimony or on any testimony provided here today in
21 the informal phase or written comments provided
22 after the hearing within the time period that we
23 will allow.

24 Again, as noted in my prehearing order, I
25 will not be strictly applying the rule of evidence

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1 in these proceedings, but I expect all
2 cross-examination to bear some reasonable
3 relationship to the testimony presented by each
4 witness.

5 Overall, my purpose here is to ensure that
6 each party has the fullest opportunity to be heard
7 and to present evidence for the record.

8 So following the formal phase of the
9 hearing, we will probably take a break at that point
10 and then we will proceed to the informal phase of
11 the hearing. During this phase, the public will be
12 allowed to comment on the GMD's proposal. Public
13 comments may be made by any member of the public
14 including water right owners, businesses,
15 organizations or anyone that wishes to place a
16 comment on the record.

17 Prior to starting the informal phase, I
18 will again ask that anyone who wishes to comment
19 would put their name and the organization they
20 represent, if any, on the sign-in sheets located by
21 the door. I will then call for those comments in
22 the order they appear on the sign-in sheets.

23 Again, during the informal phase of the
24 hearing, I may ask clarifying questions of anyone
25 who provides comments to ensure that we have a

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1 complete record.

2 As outlined in my prehearing order the
3 parties, after I have asked my clarifying questions,
4 may also ask clarifying questions. However, such
5 questions shall not constitute formal
6 cross-examination or an attempt to undermine
7 someone's comments.

8 So while you may not be a party here
9 represented by legal counsel, I want you each to
10 know that your comments will be carefully considered
11 as I seek to decide this matter pursuant to statute.

12 If anyone wishes to respond to a question
13 in writing following the hearing, they will be
14 allowed to do so. You may also provide your
15 testimony or comment in a written form. These may
16 include rebuttal testimony based on anything you
17 heard today. I will accept written comments here
18 today or you can mail that testimony to Ronda Hutton
19 at the Kansas Department of Agriculture, 1320
20 Research Park Drive, Manhattan, Kansas 66502.

21 The deadline for submitting the testimony
22 is Tuesday, December 12, 2017. It must be
23 postmarked by this date. There is also an
24 information sheet with further instructions located
25 by the door. So the dates and the address for the

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1 testimony are on that information sheet. Written
2 comments will be compiled and posted on DWR's
3 website for public review. Prior to today's
4 hearing, comments have already been submitted.
5 These comments will be made part of the record and
6 posted on DWR's website, along with any comments
7 received today and prior to December 12th.

8 So I guess -- does anybody have comments
9 on the procedures for the hearing before we start
10 the formal stage?

11 MR. TRASTER: I am wondering -- harvest
12 is --

13 HEARING OFFICER BARFIELD: Oh, yes. Can
14 you -- thank you.

15 MR. TRASTER: Harvest is ongoing and there
16 may be people who might want to make comments and
17 leave. Others may want to stay and listen to the
18 whole thing. We could be tomorrow before we get to
19 the public comment. And I am just -- a suggestion.
20 It is not -- would it make sense to have at least
21 some people be given the opportunity to make their
22 comments so that they can get back out in the field
23 or do whatever they want? Obviously they can stay
24 and listen, maybe have comments afterwards. I maybe
25 should have brought this up before, but it just

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1 occurred to me today. It is up to you. Thank you.

2 HEARING OFFICER BARFIELD: All right.

3 Thank you. So again, as I outlined, we are going to
4 have a formal phase that probably will last -- it is
5 hard to know at this juncture, but it certainly
6 could last through the morning, easily. I guess if
7 there is a member of the public who wishes to make a
8 statement, an oral statement, I guess -- you know,
9 we could go to an informal stage at any point, pause
10 the formal phase and go to the informal stage if
11 somebody needs to make a comment. So if you wish to
12 make an oral statement, please -- I tell you what,
13 Chris Beightel, raise your hand. If you wish to
14 make a formal statement on the record today, an oral
15 statement on the record, and you have to leave,
16 let Chris know and he will let me know and we will
17 find a way to accommodate you, okay, at any point.
18 All right?

19 MR. BEIGHTEL: I will stand back there.

20 HEARING OFFICER BARFIELD: Well, this
21 could happen later in the morning. Okay, that is
22 good. Of course, again, everyone is free to provide
23 a written statement before December 12th as well.

24 Any other questions before we get started?

25 All right. Seeing none, we will go ahead and then

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1 start the formal phase of this hearing.

2 As a preliminary matter, I have pre-filed
3 testimony that I received from GMD4 and from the
4 Division of Water Resources, which we again have
5 posted on our website. To the extent they are not
6 presented here today, they are incorporated into the
7 record of these proceedings. These have already
8 been marked by the court reporter as Exhibits A and
9 B.

10 (Marked Exhibit A, Exhibit B.)

11 Since this hearing may only be held
12 following an initial hearing, I am incorporating the
13 record from the initial hearing conducted on
14 August 23, 2017 into this record, the complete
15 record from that hearing into this hearing. These
16 have already been marked by the court reporter as
17 Exhibit C.

18 (Marked Exhibit C.)

19 I would also like to remind everyone for
20 this hearing that it is being transcribed by a court
21 reporter, Ms. Elaine Shogren. If you are giving
22 oral testimony today, we will ask you to come
23 forward, the witnesses will come forward to this
24 because here during the formal stage, just to my
25 left.

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1 When we are in the informal stage, the
2 public will come to the podium just in front of me.

3 We would ask that you speak clearly enough
4 so she hears you. If she cannot understand your
5 comments, she will interrupt and ask you to repeat
6 those so they can be accurately recorded.

7 Before you make your comments or give
8 testimony, Ms. Bailey (sic) will place you under
9 oath. You will be asked to state your name and
10 address before testifying. And please remember
11 that, you know, we need obviously only one person
12 speaking at a time.

13 Finally, please remember that the primary
14 purpose of this hearing is to determine whether the
15 local enhanced management plan with the corrective
16 control provisions proposed by GMD4 should be
17 adopted.

18 If the district-wide LEMAs adopt it, it
19 will result in additional restrictions to use
20 currently authorized from the underlying base rights
21 within the proposed LEMA boundary. And these
22 restrictions will vary according to the rate of
23 decline by township within GMD4.

24 This decision must be supported by the
25 record of these proceedings. It is appropriate to

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1 provide testimony regarding groundwater conditions,
2 the management plan's sufficiency to deal with these
3 conditions or any other topics you believe are
4 relevant to the criteria set forth in K.S.A.
5 82a-1041 and to my ultimate decision whether or not
6 to approve the district-wide LEMA.

7 All right. With these preliminaries
8 completed, before I commence with the formal phase
9 I would again ask if anyone has questions on our
10 proceedings today? Okay.

11 With that, I would now call upon Adam
12 Dees, attorney for GMD4, to come forward and to call
13 his witnesses.

14 MR. DEES: Chief Engineer, I am Adam Dees.
15 I represent the Northwest Kansas Groundwater
16 District -- Management District No. 4. And in the
17 spirit of having a more informal hearing, we are
18 going to have Ray Luhman testify. He is going to
19 give his presentation and then I believe Mr. Traster
20 will have an opportunity to ask him questions.

21 HEARING OFFICER BARFIELD: All right.
22 Very good. Ray, if you could come to the because.

23 For those testifying, these mics
24 apparently -- I tried to put it on my lapel, but it
25 did not work. You really pretty much have to have

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1 the mic -- you have to hold it in your hand and put
2 it right next to your mouth. That is not true for
3 the public for this mic, but for the lapel mics you
4 pretty much have to have it in your mouth.

5 MR. DEES: And just briefly, we had
6 submitted -- or GMD has submitted written testimony
7 that I believe has already been recorded on the
8 website. But we have copies for the intervenors,
9 for DWR, for the Chief Engineer and counsel, for the
10 court reporter. These copies also include the
11 various citations and articles that support the
12 written testimony. If I can approach?

13 HEARING OFFICER BARFIELD: Certainly.

14 MR. TRASTER: What exhibit is this? How
15 is it marked, is this A?

16 UNKNOWN SPEAKER: D, as in dog.

17 MR. TRASTER: Okay.

18 HEARING OFFICER BARFIELD: Just a second
19 here. Adam, is this Exhibit A then, the pre-filed
20 testimony that we have already marked as Exhibit A,
21 or is this something different?

22 MR. DEES: It is Exhibit A, although it --
23 in Exhibit A, we had referenced varying articles and
24 publications and those types of things. This
25 includes all of those references that are not

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1 submitted but are in testimony.

2 HEARING OFFICER BARFIELD: So do you want
3 us to replace Exhibit A or make it Exhibit D?

4 MR. DEES: It is whatever is most
5 convenient for you guys.

6 HEARING OFFICER BARFIELD: All right. If
7 it is okay with you, I would like to replace it as
8 Exhibit A. It is just a more complete version; is
9 that correct?

10 MR. DEES: That is correct. We can
11 replace it or we can --

12 MR. TRASTER: However you want to do it is
13 fine with me.

14 HEARING OFFICER BARFIELD: All right. We
15 will call this Exhibit A then, this fuller version.

16 MR. DEES: Thank you.

17 TESTIMONY OF RAY LUHMAN

18 My name is Ray Luhman. I am the manager
19 at Northwest Kansas Groundwater District No. 4. I
20 am going to present this testimony that has been
21 approved by the board of directors of GMD4, and I
22 will go through it briefly. I am definitely not
23 going to read the whole thing.

24 As we go through the testimony -- I have
25 got to get my glasses here. Basically, you know, we

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1 started out that -- we said we are submitting this
2 testimony in support of the Chief Engineer finding
3 that our proposed local enhanced management area
4 with one modification will conserve water and
5 educate water users on further conservation methods
6 to extend the life of the Ogallala Aquifer in
7 Northwest Kansas.

8 GMD4 provides a short history of the Water
9 Appropriation Act, Groundwater District Act, the
10 LEMA Act and previous actions taken in this
11 proceeding, then we restate our goal. Lastly, GMD4
12 shows how our corrective control measures should
13 reach the goal in this case.

14 Basically then we go through a brief
15 history of the Kansas Water Appropriation Act. We
16 go through additionally some history on the
17 formation of the Groundwater Management District
18 Act. And then -- so I am not really going to go
19 through that. I think that is fairly common
20 knowledge.

21 One thing I do want to bring out then was
22 in 2012, the Kansas Legislature passed a local
23 enhanced management area statute, K.S.A. 82a-1041.
24 Any LEMA is a creature of that statute. This
25 statute allows the GMDs to address groundwater

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1 declines and other conditions of concern through
2 management plans that include specific goals and
3 corrective control procedures while being consistent
4 with state law.

5 This local autonomy over the management
6 plan distinguishes LEMAs from (inaudible). It needs
7 to be stated that, you know, a LEMA is basically --
8 we present our plan, the Chief Engineer can review
9 and look at that plan, but he cannot change that
10 plan in any way that is more restrictive than what
11 we propose.

12 The history of these proceedings. On
13 June 7th, Jim Defore [phon] submitted a revised LEMA
14 proposal to the Chief Engineer. Before submitting
15 that proposed LEMA, GMD4 held four public meetings
16 in Colby, Goodland, Hoxie and St. Francis and had
17 multiple board meetings with many interested people
18 attending over a two-and-a-half-year period between
19 January of 2015 and June of 2017 to discuss the
20 proposal. This represents significant public
21 involvement in the process that resulted in a
22 locally-developed and locally-requested plan.

23 Additionally, GMD4 had previously
24 presented a more restrictive program, had an
25 additional four meetings. Public acceptance of that

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1 program was less positive and, therefore, the board
2 rejected that program.

3 On June 27th, the DWR and Chief Engineer
4 found that on its face, the proposal met the
5 threshold requirements of 1041 and initiated these
6 proceedings.

7 The determination on whether the proposal
8 met the K.S.A. 1041 threshold was not a final
9 determination, but an initial determination that the
10 proposal warranted further review, input,
11 investigation, testimony and consideration.

12 To begin that review, the Chief Engineer
13 delegated his authority on the first hearing to
14 Independent Hearing Officer Constance C. Owen to
15 conduct that initial hearing. Notice of that
16 hearing was given as required by K.S.A. 82a-1041.

17 On August 23rd, Ms. Owen, the Hearing
18 Officer, conducted the initial hearing. As David
19 previously stated, that could cover just three main
20 questions. Those were whether or not the boundaries
21 were reasonable, whether or not it was in the public
22 interest to institute corrective control measures
23 and -- let's see, what is the other one? Well, I
24 have lost it. The third one is -- well, I will
25 look. But, anyway, it is in the testimony. I got

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1 it, but I forgot it.

2 Anyway, based on that hearing she found
3 that that -- that the proposal met the initial
4 hearing bar. And on September 23rd of 2017, she
5 issued her initial order concluding that the
6 proposal satisfied those three initial requirements.

7 Basically we go through some additional
8 information on Ms. Owen's findings on that, which I
9 won't go through here now.

10 When the LEMA process comes from the local
11 board of directors and the corrective control
12 provisions have been requested from that process are
13 consistent with state law, then the public interest
14 of the K.S.A. 82a-1020 has been satisfied.

15 In any event, GMD4 provided the water
16 users information very early in the discussions on
17 the district-wide LEMA. The evidence provided the
18 water users showed that adopting any corrective
19 control provisions of water use would also extend
20 the life of the regional aquifer.

21 A web page was created to keep the process
22 available to the public and was updated regularly by
23 GMD4's staff. Beginning in January of 2015, the
24 process was covered by at least 28 board meetings,
25 many of which were attended by members of the

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1 public, and the board did listen to comments that
2 were given at those meetings.

3 Basically we go through that the
4 corrective control measures should reach the LEMA
5 goal. One of the goals of the LEMA is improved
6 management of water and not to exceed irrigating 1.7
7 million acre-foot over a five-year period of time.

8 Through that process, you know, we feel
9 that the proposals that we have made will reach this
10 goal and, therefore, we should go forward with
11 those.

12 Some basic information on the corrective
13 control measures is basically we went in and it was
14 kind of a two-tiered process. We, first of all,
15 went in and used Kansas Geological Survey section
16 level data, which I think Brownie will cover here in
17 a little bit. But basically that section level data
18 establishes a bedrock elevation and a water table
19 elevation for the center of every section in the
20 district.

21 We looked at that data for the period of
22 2004 through 2015 and established an annual decline
23 rate for each section in the district. Then at that
24 time, we coalesced the sections into the legal
25 townships, six-by-six sections, and came up with an

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1 average annual decline rate for every township
2 within the district.

3 Those townships were then ranked from no
4 decline, zero to .5 percent decline, .5 percent to
5 one percent decline, one to two percent decline, and
6 then greater than two percent decline. Those
7 townships then were set in these categories.

8 Then we went into the Natural Resources
9 Conservation Service irrigation requirements for
10 corn for our area, and we zoned out our district
11 from east to west, basically setting two zones per
12 county. I interpolated the net irrigation
13 requirement figures to the western edge of each one
14 of the boundaries that are in the district.

15 Then at that time, depending on which zone
16 they fell in and what the decline status of the
17 townships were, we then assigned an amount of water
18 on an acre-inch-per-acre basis. The acreage was
19 determined from the Division of Water Resources WRIS
20 system, Water Rights Information System, of reported
21 acres. And I believe we used 2009 through 2015.

22 The reason that we started with 2009 was
23 the fact that that is the first year that all water
24 use in Groundwater District 4 was metered and we
25 ended at '15 because that was the last data

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1 available at the time we were putting together this
2 plan.

3 Based on that, then we assigned an amount
4 for each water right in the district and then
5 converted that into an acre-foot amount for each
6 water holder. It needs to -- also one thing we did
7 was for some of the more heavy users, we said that
8 we will not decrease anyone more than 25 percent
9 except for those that are going to be decreased down
10 to a maximum of 18 inches. In the areas of the
11 district that will have corrective control measures
12 provided, there will be no pumpage over an average
13 of 18 inches per acre.

14 So we will -- it is our contention that
15 this LEMA proposal does have the effect of
16 establishing or identifying aquifer subunits.
17 Although it is district-wide, by using the decline
18 status for each township it does differentiate
19 between areas that have little or no decline and
20 areas that have high decline. And from that
21 standpoint, I believe that we do look at local
22 aquifer subunits.

23 Each allocation for irrigation will be a
24 total five-year amount. There is not any annual
25 inches-per-acre requirement or anything. It is just

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1 a total five-year quantity of water that the
2 individuals can use as they see fit, as long as they
3 do not over-pump their water right.

4 If, in fact, an individual wants to
5 possibly over-pump that water right, we have a
6 multi-year flex account available or those water
7 rights can negotiate with the Division of Water
8 Resources on a water conservation area.

9 After completing this calculation, about
10 65 percent of the wells or well groups slated for
11 LEMA allocations will have a LEMA allocation that is
12 less than their combined diversions from 2009
13 through 2015.

14 Now, this is an area that we do want to
15 request that a modification be made in our regional
16 proposal. For the non-irrigation use type, the GMD
17 board requests that the following language modify
18 the stock water portion of the proposed LEMA
19 modification for two reasons.

20 First, the total acres allocated for stock
21 water usage in GMD4 is less than 0.5 percent of the
22 total appropriations. Secondly, the animal feeding
23 and dairies represent a significant market for our
24 local crops and the GMD board reasoned that animal
25 feeding and dairies should not be unduly restricted.

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1 The GMD board will still encourage
2 livestock and poultry operations to only use
3 90 percent of the amount they are allocated. The
4 proposed modifications read, in Part 2(a), livestock
5 and poultry use will be encouraged to maintain their
6 use at 90 percent of the said amount provided by
7 K.A.R. 5-3-22 based on the maximum amounts
8 reportable by the number of animals authorized by
9 current facility permit. Again, at no time will a
10 stock water right be authorized to pump more than
11 its authorized quantity.

12 Part 2(d), we would request that that be
13 converted [sic] to read, "When converting from
14 irrigation to non-irrigation use, the base water
15 right will be converted under the procedures in
16 K.A.R. 5-5-9, 5-10, or any Groundwater Management
17 District regulation. And the appropriate
18 non-irrigation, the locally enhanced management area
19 allocation will apply as found in Section 2 for the
20 remainder of the LEMA. Parts 2(b), 2(c) and 2(e) of
21 the proposal would remain the same.

22 Again, let me restate our thoughts that
23 there really doesn't need to be any additional
24 restrictions and we don't think we want to restrict
25 water use to our animal feeding and dairies.

GMD4

1 As we get further into this, we have
2 proposed an appeal process whereby people who
3 believe that their acre allocations have been not
4 figured correctly will be able to meet with GMD
5 staff to see if the situation can be rectified. And
6 then if they cannot come to an agreement with the
7 staff, they can bring their appeal to the entire
8 Groundwater District 4 board.

9 We did this just to make sure that there
10 weren't any discrepancies in the irrigated acres.
11 And this appeals process is an effort by GMD4 to
12 make sure that the allocations are correctly set.

13 Okay. We go into violations. In our
14 proposal this time, we just note that they will be
15 consistent with the violations section of the
16 Sheridan 6 LEMA. Also as an attachment to today's
17 testimony, we do have the entire proposal attached
18 to that, so there is more detail as far as the
19 violations in our proposal.

20 One thing that we have added was that --
21 it concerns meter tampering. And we say if a
22 preponderance of evidence suggests that actions have
23 been taken to remove or alter the meter's ability to
24 accurately measure flow, the offending water right
25 will be suspended for a period of five years and any

GMD4

1 remaining LEMA allocation will be lost. And that is
2 probably about all the detail I was going to give on
3 that.

4 Economic viability. We have had several
5 studies done, mainly by Dr. Bill Golden at Kansas
6 State University. Most of his studies have focused
7 on the Sheridan 6 LEMA, where he has found, at least
8 in the first four years that he has studied, that
9 cash flow and profitability within that LEMA, which
10 by the way has a significantly lower allocation than
11 what we are proposing in the district-wide, have
12 remained pretty much the same as their peer group
13 around the outside of that.

14 A previous study done by Dr. Golden and
15 then Peterson and O'Brien, which was the potential
16 economic impact of water use changes in Northwest
17 Kansas was done in 2008. It was a very large study.
18 But one of the main issues that was brought out in
19 that is that if you are going to reduce water use in
20 an area, the absolute worst thing you can do is
21 dried-up acres, which use of a reverse order of
22 priority system would do.

23 He maintains and shows that keeping the
24 most acres wet is the best way to institute
25 corrective control measures, and that was one of the

GMD4

1 overriding plans or overriding things that the board
2 found out when we were doing this proposal.

3 I guess about the end of this is,
4 furthermore, this proposal does not contain any
5 restrictions that are below the average water needs
6 for corn. And most of the wells or groups of wells
7 have allocations at or above the 80-percent chance
8 NIR for corn.

9 Lastly, the greatest restriction,
10 25 percent, is well within the zero reduction to
11 30-percent reduction language as contemplated by the
12 Golden reports. And we feel that we can maintain
13 economic viability in the area with this proposal.

14 In conclusion, we contend that the Chief
15 Engineer should adopt Hearing Officer Owen's order
16 on initial requirements on the Groundwater
17 Management District-Wide LEMA and incorporate it
18 into the Chief Engineer's order. Two, that the
19 Chief Engineer should issue an order of decision
20 accepting the proposal with the modifications and,
21 in turn, the proposal with modifications to GMD4 for
22 approval. And on approval by GMD4, the Chief
23 Engineer should issue an order of designation
24 designating all of GMD4 as a LEMA and implementing
25 the modified corrective controls within the proposal

GMD4

1 and as described above.

2 With that, I will stand for questions.

3 HEARING OFFICER BARFIELD: Mr. Dees, do
4 you have any questions for Mr. Luhman?

5 MR. DEES: If you have got questions,
6 Chief Engineer, you can go first.

7 HEARING OFFICER BARFIELD: Well, I tell
8 you what, I would like the parties to go. And if
9 the parties don't clarify things, I can ask my
10 questions.

11 DIRECT EXAMINATION OF MR. LUHMAN

12 BY MR. DEES:

13 Q Really quickly, Ray, just to refresh your
14 recollection a little bit. On Ms. Owen's order, was
15 the third finding that there was a need for
16 corrective controls?

17 A We had declining water tables.

18 Q Okay.

19 A Yeah, we had declining tables. That was the third
20 one.

21 Q Okay.

22 A Good catch.

23 Q And it appears that you and the Division of Water
24 Resources have worked fairly extensively on creating
25 this plan and, for lack of a better term, massaging

GMD4

1 it and getting it into shape; is that correct?

2 A Well, you know, I wouldn't necessarily put it that
3 way in the fact that the plan has been pretty much
4 entirely developed by the Groundwater Management
5 District board. We have had some conversations with
6 the Division of Water Resources about legalities and
7 that type of thing, but the proposal itself has been
8 done by staff and the board.

9 Q Okay. But you believe that the GMD4 and the
10 Division of Water Resources can effectively monitor
11 and enforce this plan to meet the corrective control
12 provisions?

13 A Yeah, I do. And that is maybe one thing I left out
14 is the fact that, you know, through this proposal we
15 will turn over the enforcement to the Division of
16 Water Resources. We have sent our initial
17 spreadsheet to them that has the allocations. And
18 it is kind of a dynamic sheet, but it is now in the
19 hands of the Division of Water Resources. There is
20 a site where you can plug in your water right number
21 and get your allocation. It is on their website.

22 Q Okay. And that relationship, you assume, is going
23 to continue?

24 A I would hope so.

25 Q That is good. Really quickly. By using the decline

GMD4

1 rate at the township level to determine the LEMA
2 allocations, does that reward water users that have
3 conserved water in the past?

4 A You know, that was kind of an issue -- you know, I
5 don't know if it is really germane, but one of the
6 earlier plans that we had looked at actually was
7 looking at each individual water right in the
8 district, saying how much have you pumped and how
9 much of a restriction should you take.

10 I don't remember the year, but the Kansas
11 Legislature has put language in several places in
12 state law that says if you are looking at doing some
13 sort of conservation cutbacks, that you have to take
14 into account previous conservation requirements.

15 So from that standpoint, we could see
16 early on that each individual that might have a
17 allocation given to them was probably going to claim
18 that they were conserving, whether they were or not.
19 But, you know, you could see with 3,600 wells, that
20 was going to be quite an extensive process.

21 So we did go back and we just decided to
22 go across the board with an allocation based on
23 their irrigated acres and we did not take into
24 account cropping type or anything like that. It was
25 just based on acres.

GMD4

1 I need to further state that this proposal
2 does not apply to vested rights either. I forgot to
3 bring that up.

4 Q Okay. But how does it reward users who have
5 conserved in the past?

6 A Well, I think in several ways. Well, I know in
7 certain ways people that have been conserving water,
8 you know, doing it just because they can conserve or
9 because their well capacities have backed off,
10 actually could receive allocations under this
11 proposal that is in excess of what they have been
12 pumping. So I think -- you know, from that
13 standpoint I think they were not further knocked
14 down because of the conservation efforts.

15 Q Okay. And then real quickly, can you explain one
16 more time to me how and why the corrective control
17 measures are going to reach the goals of additional
18 education and that 1.7 million acre-feet?

19 A Well, basically on the additional education, as you
20 can see from the map, there are some very large
21 areas -- or not large, but there is a very
22 significant area of the Groundwater Management
23 District that will not have LEMA allocations
24 assigned to them because they are in low decline
25 areas.

GMD4

1 I maintain that people in those areas
2 probably have a large incentive to maintain their
3 status in that blue or green township so that if, in
4 fact, in five years they decide to go through with
5 another LEMA process that they are not targeted.

6 As far as meeting the 1.7 million
7 acre-foot over five years, what I did on that was I
8 just did a calculation of all of the water users and
9 said, okay, if you pumped -- the average amount you
10 have pumped or the LEMA quantity, whichever is
11 more -- or whichever is less, what will that total
12 come up to.

13 Q Okay. And that total is under the 1.7 million
14 acre-feet?

15 A Yes, it was.

16 Q Okay. And then -- I know that, you know, there is a
17 limited ability for us to project in the future what
18 could happen in subsequent LEMA iterations of this
19 site.

20 A Uh-huh.

21 Q But is there a provision in this LEMA that would --
22 that encourages future groundwater management boards
23 to reward or --

24 A There is -- you know, and I need to make that clear
25 is the fact that this LEMA as proposed is not one

GMD4

1 that can be extended or anything like that. It is
2 proposed for a flat five-year period. If, in fact,
3 in that sixth year or during that time that the
4 people in charge at that time want to do it again,
5 we have to go through this whole process.

6 One thing in our proposal was that if this
7 would happen, that the board of directors at that
8 time would consider up to a 10 percent carryover of
9 anything left in the existing LEMA accounts.

10 MR. DEES: Thank you, Chief Engineer.

11 HEARING OFFICER BARFIELD: All right.

12 Mr. Traster, I will go ahead and take your questions
13 next.

14 MR. TRASTER: I thought the Division was
15 going first.

16 HEARING OFFICER BARFIELD: All right.
17 That is fine. We can do that.

18 MR. TRASTER: I am happy to do whatever.

19 HEARING OFFICER BARFIELD: Either way.
20 Mr. Oleen, do you have any questions?

21 MR. OLEEN: No questions for the DWR.

22 HEARING OFFICER BARFIELD: All right.
23 Mr. Traster.

24 MR. TRASTER: Thank you.

25 CROSS EXAMINATION OF RAY LUHMAN

GMD4

1 BY MR. TRASTER:

2 Q Will you give us a little background? And, by the
3 way, my name is David Traster. We have met before.

4 A Right.

5 Q I am a lawyer from Wichita.

6 A Right.

7 Q How long have you been at GMD? How long have you
8 been employed there?

9 A Since 1979. Which is, what, 37, 38 years, something
10 like that.

11 Q 1979?

12 A Right.

13 Q And what has your role been at the GMD?

14 A I was originally hired as the assistant manager
15 field coordinator on February 1st, 1979, and I
16 remained in that position up until 2015 when I was
17 promoted to manager.

18 Q When Wayne retired?

19 A No. Actually when Wayne retired, we had an interim
20 man -- or not an interim manager, but we had another
21 manager hired at that time. And then she moved away
22 and I took that position.

23 Q Okay. So when did Wayne retire, if you recall? I
24 mean, how long was she [sic] there?

25 A I think Wayne retired in 2014, I think.

GMD4

1 Q All right.

2 A That is fine.

3 Q Would you agree that conservation -- everybody wants
4 to conserve water?

5 A Right.

6 Q I mean that is a given, right?

7 A Uh-huh.

8 Q I mean there isn't any controversy about that,
9 right?

10 A Right.

11 Q You testified that you submitted this plan to the
12 Chief Engineer for approval on June 8th and then
13 that you made a minor modification, correct?

14 A We have not made that minor modification. We are
15 requesting that through this hearing.

16 Q I see. So the minor modification, when was that --
17 you submitted that to the DWR for review and
18 approval; is that --

19 A No. We thought we would do this through this
20 hearing process.

21 Q Okay. So the minor modification has not been
22 reviewed according to the three steps that take
23 place in the LEMA process where the Chief
24 Engineer --

25 A Oh, are you talking about the first hearing? No.

GMD4

1 Q No. I am talking about the initial review that he
2 makes to cover those five or six points.

3 A No, it would not have been.

4 Q Okay. But it is being submitted. Is the plan that
5 you are asking him to approve --

6 A Uh-huh.

7 Q -- is it -- has the board formally amended it?

8 A I don't know if they have formally amended it. Now,
9 they have formally adopted the proposed change in
10 the stock water use. And so they have not modified
11 the plan per -- you know, to-date. Again, we are
12 requesting that through this process.

13 Q Sure. I am trying to get to technically, you know,
14 whether it has been -- the plan has been amended. I
15 mean, the Chief Engineer has four options under the
16 statute: He can approve it as written; he can send
17 it back and disprove it; he can send it back with a
18 few comments; or he can say, hey, start over. He
19 has four options.

20 A Yeah. But through the hearing process, there is a
21 provision in there that the Groundwater Management
22 District can or may -- or can request revisions
23 through the hearing process. He can consider those
24 and return them to the district. Either he accepts
25 them or doesn't.

GMD4

1 Q Sure.

2 A But if he does, he can return them to the district.

3 Q Well, I am not suggesting that he can or can't. All
4 I am just trying to make sure is I understand what
5 the Chief Engineer can do with this order --

6 A Right.

7 Q -- and, you know, sort of what that amendment is for
8 and what it does and how it works so that I -- I
9 mean, which one of those four options is going to
10 be -- I mean -- I guess what I am asking you to say
11 definitively is the plan as submitted, has it been
12 amended or not? I mean, they have adopted this --

13 A No, it has not.

14 Q So he could adopt it without the amendment --

15 A Yes.

16 Q -- and we would be done?

17 A Supposedly, yes.

18 Q Okay. Under that first option, right?

19 A Uh-huh.

20 Q But you want him to amend it, correct?

21 A Yes.

22 Q And the board has approved the amendment?

23 A Yes.

24 Q Okay. And can you explain in a little more detail
25 what that amendment does, what it is for?

GMD4

1 A Basically the -- I think the proposal as submitted
2 stated that stock water used would be restricted to
3 a given amount -- let me see if I can find that.

4 The plan as proposed said that livestock
5 and poultry use will be restricted to 76 percent of
6 the quantity of water deemed to be reasonable for
7 livestock and poultry provided by K.A.R. 5-3-22 in
8 townships with greater than two percent average
9 annual decline and 85 percent of that said amount in
10 townships with average annual declines between one
11 and two percent based on the maximum head
12 supportable by a feedlot per head in effect on
13 December 1st, 2015.

14 Q So the plan as it was submitted cut back --

15 A Well, it will put restrictions on -- it would put
16 restrictions on stock water, yeah.

17 Q Right. And it would put restrictions on stock water
18 that were different than the restrictions on
19 irrigation rights, correct?

20 A Yes, yeah.

21 Q And so that was the plan as submitted. But what is
22 the amendment you are asking for today?

23 A Okay. What we are asking for now is that that be
24 modified to the Part 2A, which we would say
25 livestock and poultry use will be encouraged to

GMD4

1 maintain their use of 90 percent of the said amount
2 provided by 5-3-22 based on the maximum amount
3 supportable by the number of animals authorized by a
4 current facility permit.

5 And then, again, there was -- a
6 modification was proposed in Part 2(d), whereby we
7 would say that the conversions from that -- if you
8 are going to convert irrigation over stock water,
9 that we use the current state regulations rather
10 than -- I think our original proposal said that it
11 would have to be held back to the LEMA quantity was
12 the maximum that could be converted.

13 Q So under the original proposal which the Chief
14 Engineer could adopt --

15 A Uh-huh.

16 Q -- a water right that is for stock water --

17 A Uh-huh.

18 Q So a water right that is for irrigation, that is
19 changed to a water right for stock water during this
20 process -- during the LEMA --

21 A Uh-huh.

22 Q -- would be -- would be permanently set at this
23 lower level, at the lower level in the --

24 A Through that conversion process, yes.

25 Q Right. And so would you say that this doesn't

GMD4

1 really affect these water rights, existing water
2 rights, it would affect water rights that were
3 changed from irrigation to stock water during the
4 LEMA?

5 A Yeah. That is as proposed, yes.

6 Q That is what?

7 A That is as proposed, yes.

8 Q As proposed. But you are asking that that be --

9 A Be done away with.

10 Q Okay. So I guess what I am -- what you are asking
11 the Chief Engineer to do or what you are asking him
12 not to do is approve it as submitted; you are asking
13 him to submit it back to you for --

14 A Yeah --

15 Q -- because the plan -- let me finish.

16 A Okay.

17 Q The plan has not been amended?

18 A Right.

19 Q We can agree?

20 A Right.

21 Q And so if he is going to make this adoption, he
22 doesn't get to do -- approve it as written, he has
23 to come back under the third or fourth option set
24 out in the statute, resubmit it back to the GMD for
25 the plan to be amended, correct?

GMD4

1 A Right, yeah. And if he adopts --

2 Q That is all right. I got it.

3 A Okay. You got it?

4 Q I got it. Thanks.

5 A Okay.

6 Q You indicated that you had not had any -- that you
7 developed the plan. And by "you", I mean the GMD,
8 the board and staff working together. And I have
9 been able to review very briefly your minutes over
10 the last couple of years and see that there has been
11 quite a bit of discussion about it, so I understand
12 what you are saying.

13 What was the genesis of this plan? Why
14 did you start? I mean --

15 A Basically back -- let's see, in -- I don't know if I
16 have got that note with me. I think it was back in
17 early 2015, the board of directors have -- really at
18 the urging of some of the general public that was at
19 one of our board meetings stated, you guys need to
20 have a goal statement. And so basically we started
21 to work on a goal statement.

22 And at that time -- and I am probably not
23 going to get it all right, but at that time we
24 adopted a goal statement that said by 2016, I think,
25 that we would have in place a district-wide -- some

GMD4

1 sort of program that would decrease water use and
2 would increase the conservation of the area. I
3 don't have --

4 Q I understand.

5 A But that is kind of where the process started at
6 that time.

7 Q Well, you testified, though, that there was a
8 previous plan --

9 A Yes.

10 Q -- that was rejected? Was that before or after
11 2015?

12 A That was after that.

13 Q That was after --

14 A -- after the goal statement.

15 Q I see.

16 A And -- basically I do have a map on that, but it is
17 not that one. But anyway, we had taken that first
18 out to a series of public meetings also in Hoxie,
19 Colby, Goodland and St. Francis. And although there
20 was some support for that, it was not as strong as
21 we would have hoped and we went back to the drawing
22 board.

23 Q So when were those meetings, roughly? I mean, what
24 month in 2015, if you recall?

25 A It seemed like they were -- I am thinking they were

GMD4

1 in December, but I don't know for sure. I would
2 have to look.

3 Q That is fine. And when were the public meetings,
4 those four public meetings on this plan, when were
5 they held?

6 A They were held about this time last year, I believe.

7 Q So August?

8 A Well, no, it would have been, I believe, later in
9 the year.

10 Q All right. Well -- so was it during harvest?

11 A No. No, it was not.

12 Q Okay. So you had those public meetings a year ago,
13 roughly?

14 A Roughly. Right, uh-huh.

15 Q Was the plan formulated at that time?

16 A The plan had been formulated or had been put
17 together by the board and was presented to the
18 public at that time.

19 Q I see. So the complete plan with all terms and all
20 of its conditions -- I mean, I guess there were some
21 minor modifications clarifying amendments that were
22 along -- after that. So the public had access and
23 had copies of the plan that is in the draft form at
24 that time?

25 A Not really, in the fact that the plan that we took

GMD4

1 to the public on that second round of public
2 meetings probably was slightly more restrictive than
3 the final plan. And the reason for that was we went
4 back in and did some additional -- looked at the
5 data, whereby we took out the sections that had 15
6 foot or less of saturated thickness out of the
7 calculations, re-ran the calculations and came up
8 with a map that was less restrictive, especially
9 around the fringes of the district.

10 Q Okay. But my question is whether or not there was a
11 draft plan that was actually submitted and available
12 to the public during those meetings or did you
13 simply describe it to the public in the meetings?

14 A I probably just described it, although the plan did
15 exist and was a public record, so it was available.

16 Q But was it readily available? Was it on the
17 website?

18 A I don't -- I don't know if it was at that time. It
19 may have not gone on the website until we made the
20 proposal to the Division.

21 Q Okay. So when you say "it may not have been", I
22 mean, it wasn't -- is it fair to say it was not on
23 the --

24 A I don't know.

25 Q Let me finish. It was not on the website until it

GMD4

1 was submitted to the district -- to the DWR?

2 A I can't tell you that for sure. I truly don't know.
3 If I was over at the office, I could tell you.

4 Q And that is absolutely a perfectly good answer. "I
5 don't know" is fine.

6 A Okay.

7 Q I will accept that every day.

8 A Okay.

9 Q I don't want you to tell me anything you don't know.
10 Okay?

11 A Okay.

12 Q I don't want you to guess. So would it be fair -- I
13 am asking you, would it be fair to say that the plan
14 as drafted, the written detailed step-by-step plan,
15 was placed on the website at about the time it was
16 submitted to -- in the time frame, within weeks of
17 the time it was submitted to the Chief Engineer?

18 A Yes. Yes, I would say that.

19 Q And so it was available to the public if they had
20 filed an open records request?

21 A Yes.

22 Q But it wasn't readily accessible without doing that
23 before sometime around in June, maybe late May
24 of 2017?

25 A Yes.

GMD4

1 Q Okay. In your testimony you spend some time talking
2 about the -- your written testimony, this idea that
3 it meets the public interest. And I was confused by
4 that section because I didn't understand what point
5 you were making.

6 Can you tell me what point you were trying
7 to make with your -- the section of your -- I am
8 looking at Exhibit A, I think.

9 MR. TRASTER: Is that what we said?

10 HEARING OFFICER BARFIELD: Yes, Exhibit A.
11 And what page of the testimony?

12 MR. TRASTER: I am looking here.

13 Q (BY MR. TRASTER) Page 4 of 45 has a section here
14 where it talks about the public interest. And I
15 think you testified -- well, on Page 5 of 45 it
16 talks about the public interest as set out in
17 82a-1020.

18 A Uh-huh.

19 Q What was your point in this --

20 A Basically we at least referenced in this testimony
21 the follow-up testimony that we gave in conjunction
22 with the first hearing. And in that process, I had
23 a rather large excerpt from the Groundwater
24 Management District management plan that deals with
25 the public interest. And I think, you know, through

GMD4

1 the preparation of this, maybe that got left out.

2 But basically what we maintain is by our
3 management program, this -- you know, this proposal
4 will meet the public interest as defined by our
5 management plan.

6 Q Okay. But you are also testifying here that it
7 meets the public interest as defined by 82a-1020,
8 correct?

9 A Yes, sir.

10 Q And 82a-1020, what is that? What does that say?
11 And just for your -- your recollection. I don't --
12 I have got it here, I know what it says, so I
13 am -- but what is your --

14 A I don't really even find it.

15 Q That is all right. So the public -- 82a-1020, you
16 would agree with me, is the first section in the
17 Groundwater Management District plan?

18 A Oh, okay. Right.

19 Q And it sets out the basic Kansas public policy with
20 respect to the establishment of a groundwater
21 management district; does it not?

22 A Right.

23 Q And we would all agree that basic Kansas public
24 policy -- let me back up. Strike that.

25 It is in the public interest, we agreed at

GMD4

1 the beginning of my cross-examination, that
2 conserving water is in the public interest?

3 A Right.

4 Q All right. But there are other things that are in
5 the public interest too, right?

6 A Yeah. I would assume so, yes.

7 Q So, for instance, 82a-1020 says it is the policy of
8 this act to preserve the basic water use doctrine;
9 does it not?

10 A Yes, it does.

11 Q And it says that groundwater management districts
12 are to -- that local water users get to determine
13 their own destiny insofar as it does not conflict
14 with the basic laws and policies of the state of
15 Kansas, correct?

16 A Right.

17 Q So there are other -- are you -- you have been at
18 the GMD since 1979 --

19 A Yes, sir.

20 Q -- and you have read the Water Appropriation Act?

21 A Right.

22 Q Several times, I bet, in that time?

23 A Right.

24 Q You know that the Water Appropriation Act is
25 referred to in the Groundwater Management District

GMD4

1 Act several times, right?

2 A Right.

3 Q For instance, the district powers include the
4 ability to propose regulations that the Chief
5 Engineer then adopts that are applied only within
6 the Groundwater Management District, correct?

7 A Yes, sir.

8 Q And that provision, K.S.A. 82a-1028 Subsection O
9 requires that the regulations implement the
10 provisions of the groundwater -- or of the Water
11 Appropriation Act, correct? Subsection O clear at
12 the bottom.

13 A Yeah, I have got it. So, yeah, I agree.

14 Q Okay. And in addition, the statute -- the
15 Groundwater Management District Act in 82a-1029 says
16 that before you can undertake a management program
17 you have to -- before you can undertake active
18 management you have to propose a management program
19 and the Chief Engineer has to review and approve it,
20 right?

21 A That is correct.

22 Q And in 1977, the GMD proposed a management plan and
23 it was approved, correct?

24 A Yeah. I think they even proposed one before that,
25 but I don't know that for a fact because I know --

GMD4

1 Q Okay. Well, the ones that were produced, the
2 earliest one you have produced so far is the 1977
3 one.

4 A Okay.

5 Q So that is the one I am going with.

6 A Okay.

7 Q At least by 1977, you had -- the district had -- and
8 this was before you were there, obviously.

9 A Right.

10 Q But there was a management program that had been
11 approved by the Chief Engineer in place at that
12 time, right?

13 A Yes, sir.

14 Q And that provision, 82a-1029, says that the
15 management program can only be approved if the Chief
16 Engineer finds that it is compatible with the Water
17 Appropriation Act, correct?

18 A Yes. It has got to be consistent with state law.

19 Q Right. So in 1978, the legislature enacted the
20 IGUCA statute, right?

21 A I think that is when it was, yes, sir.

22 Q And this is sort of -- the LEMA is sort of the baby
23 brother of an IGUCA, wouldn't you say? I mean, it
24 is --

25 A Well, it may be the other way around. But, yeah,

GMD4

1 they are definitely related.

2 Q Okay. Well, what do you mean by "the other way
3 around"?

4 A Because the IGUCA statute existed for many years
5 before the LEMA statute was passed.

6 Q Okay. Well, you are supposed to listen to what I
7 meant, not what I said.

8 A Oh, okay.

9 Q So the LEMA statute is the baby brother --

10 A Right.

11 Q -- of IGUCA?

12 A I would agree with that.

13 Q All right. And the LEMA statute has many of the
14 provisions of the IGUCA statute copyrighted, doesn't
15 it?

16 A Yes, sir, it does.

17 Q And the LEMA statute is -- the legislature said this
18 amends the Groundwater Management District Act; in
19 other words, it gets included in the overall
20 Groundwater Management District Act?

21 A Uh-huh.

22 Q So the control provisions that are authorized by
23 both the LEMA statute and the IGUCA statute include,
24 among other things -- close to the district's new
25 appropriations?

GMD4

1 A Uh-huh.

2 Q That has already virtually been done, right?

3 A Right. Yes, that has been done.

4 Q So one of the options is to determine the total
5 permissible withdrawal of groundwater within the
6 LEMA. And you are suggesting 1.7 million acre-feet
7 be the total?

8 A That is the goal statement, yes, sir.

9 Q Okay. But it also says that it is supposed to be
10 apportioned, insofar as possible -- I want to get
11 this right -- insofar as may reasonably be done,
12 apportion the permissible withdrawal in the area in
13 accordance with relative dates of priority, correct?

14 A Yes, that is what it says.

15 Q And that is not what you did here, is it?

16 A No. But Paragraph 3 right after that, because it
17 does not say that the Chief Engineer has to do those
18 things. It says it should include that.

19 Paragraph 3 right after that says reducing
20 the permissible withdrawal of groundwater by anyone
21 or more appropriators thereof or by the wells in the
22 Local Enhanced Management Area.

23 Q So you are relying on this third option?

24 A Yes.

25 Q Reducing the permissible withdrawal of groundwater

GMD4

1 by anyone or more appropriators thereof or by wells.

2 So are you saying, in essence, that this
3 amends or changes the prior appropriation doctrine
4 that is set out in -- I mean, you don't -- you know
5 what the prior appropriation doctrine is and how it
6 is applied?

7 A Right, uh-huh.

8 Q And that would be pretty devastating really to have
9 the prior appropriation doctrine apply strictly in
10 the district; would it not?

11 A Yes, it would.

12 Q Now, let's just take off as a little bit of aside on
13 that. You said something about a study that was
14 done that you need to keep everything wet?

15 A Yes.

16 Q Tell me about that.

17 A Okay. Just a brief overview on that is basically
18 Dr. Bill Golden and others back in -- it was
19 sometime back in -- before we came up with the
20 Sheridan 6 LEMA had done a study that said what is
21 the impact to the local value-added economy due to
22 reduced -- or water right reductions or water use
23 reductions in Northwest Kansas.

24 And he -- it is a thick study. But,
25 anyway, he went through -- he had several different

GMD4

1 scenarios that he outlined on that. And basically
2 we met with him several times as the board had
3 questions of him and as he worked his way through
4 that.

5 But one of the principles in that was
6 that, you know, the absolute worst way, whether it
7 was through KREP [sic] or whether through a reversal
8 of priority or buying out water rights, the worst
9 thing you could do to affect the local value-added
10 economy was to dry up acres.

11 Q So that is more of an economic issue than it is a
12 concern about how land is farmed?

13 A Yeah. Yeah.

14 Q Okay.

15 A Yeah. That was basically an economic study, yes,
16 sir.

17 Q Sure. Okay. All right. I think I understand that.
18 You would agree with me that the prior appropriation
19 doctrine is a key element of the Kansas Water
20 Appropriation Act, right?

21 A Yes.

22 Q It also says that -- are you familiar with K.S.A.
23 82a-707(b) that says that the priority of every
24 water right and not the purpose of use determines
25 the right to divert user water?

GMD4

1 A Yes.

2 Q And so what this is is that -- that you don't get to
3 decide -- you don't get to allocate water based on
4 the idea that it is either stock watering or
5 municipal or irrigation, but you have to follow the
6 prior appropriation doctrine?

7 A Yeah.

8 Q And you are not doing that here?

9 A No, we are not.

10 Q And the reason you are not doing that here is
11 because of that third option that you mentioned?

12 A Yes.

13 Q Okay. But you come back to the public interest
14 being -- implementing -- you are trying to implement
15 the public policy statement in 82a-1029, which says
16 preserve the basic water use doctrine, which
17 includes the prior appropriation act, right?

18 A Yes.

19 Q Okay. It is also true, is it not, that water
20 right -- the water appropriation right is a real
21 property right, correct?

22 A Well, to a certain extent, yes.

23 Q It either is or it is not.

24 A Then it is not.

25 Q It is not a real property right?

GMD4

1 A I would contend -- and this is just me personally,
2 but I but content that any certificate of
3 appropriation issued after safe yield was reached
4 in -- in any part of the High Plains Aquifer is not
5 an actual water right because it is not sustainable.

6 Q Okay. So you know how water appropriation rights
7 are created, right?

8 A Yes.

9 Q Somebody files an application?

10 A Uh-huh.

11 Q And if it is in the GMD, then the GMD reviews and
12 approves -- reviews that water right and makes a
13 recommendation to the Chief Engineer?

14 A Yes.

15 Q It is submitted to the Chief Engineer. The Chief
16 Engineer then submits it for review to the board and
17 they make the recommendation back to the Chief
18 Engineer?

19 A Right.

20 Q And the Chief Engineer then either issues the permit
21 or he does not?

22 A Correct.

23 Q And when he issues that permit, he has to make
24 certain findings; does he not?

25 A Yes, he does.

GMD4

1 Q He has to make a finding that it is in the public
2 interest, right?

3 A Yes.

4 Q He has to make a finding that the quantity is
5 reasonable, right?

6 A Yes.

7 Q He has to make a finding that it is not going to
8 impair existing rights, right?

9 A He is supposed to.

10 Q So are you saying that he issues permits without
11 making that finding?

12 A He could.

13 Q How could he do that?

14 A I don't know.

15 Q Can you give me a specific instance where he issued
16 a permit in GMD4 without making a determination that
17 didn't impair?

18 A Not -- not a specific one. But there are plenty of
19 them out there, you know, especially back when we
20 had the quarter-mile well spacing days. I will
21 guarantee you, there is a lot of those wells that
22 cannot sit in there and exist a quarter mile apart
23 and not impair one other. But that was a different
24 administration, a different time, a different
25 philosophy.

GMD4

1 Q Sure. But that -- I mean, the Chief Engineer has
2 established policies and procedures for how he is
3 going to make those determinations, right?

4 A Yeah. And they have evolved and they are much
5 better today than they were in the old days, you
6 know, I will tell you that. Because we used to --
7 even locally, we had regulations that we thought
8 covered impairment, but it was just more or less a
9 blanket regulation. I think now in today's day,
10 TICE [phon] equations are used, all kinds of
11 calculations are used to make those possible
12 impairment determinations. So I am not really
13 saying that they are doing that today, but it has
14 been done.

15 Q Sure. So those determinations that it is not going
16 to impair is a perspective of looking into the
17 future --

18 A Right --

19 Q -- of we don't think this is going to impair
20 someone, correct?

21 A Uh-huh, right.

22 Q When the aquifer was full, early in its development,
23 did quarter-mile spacings cause impairment?

24 A Probably not.

25 Q So it was after the aquifer started to be drawn down

GMD4

1 that you started to see the possibility that a
2 quarter-mile spacing for a new appropriation right
3 could possibly impair another one?

4 A Right.

5 Q And there could be impairment based on -- from older
6 water rights that had been issued previously because
7 the spacing was too narrow, correct?

8 A Correct.

9 Q But at the time, there was no -- the Chief Engineer
10 had to have found that impairment is not likely to
11 occur, right?

12 A I think you are right.

13 Q In any event, the Chief Engineer, when he issues a
14 permit, makes a determination about the potential
15 impairment, right?

16 A Yes.

17 Q And one way he makes that determination is to make
18 sure that the well spacing is adequate?

19 A Right.

20 Q I am going to come back to what I think you said;
21 and that is, that the Chief -- were you suggesting
22 that the Chief Engineer has issued permits in the
23 GMD in the past where -- that he didn't make a
24 finding that it would not impair other water rights?

25 A I don't know. You know, that is hard to say. I

GMD4

1 don't think that that is the case today. But I do
2 believe that in the past there were water right
3 applications that were approved that -- at least
4 given today's way of thinking, that are causing
5 impairment.

6 Q That is really not the question though, is it, Ray?

7 A Well, I don't know. What did you ask me?

8 Q And maybe that's my fault. I am perfectly willing
9 to accept the idea that I didn't ask a very good
10 question.

11 The act requires him to make that finding,
12 does it not, the finding that there is not -- that
13 it won't impair existing rights? I mean, that is
14 one of the findings he has to make?

15 A Yes, it does.

16 Q All right. And it is a prospective -- it is a
17 finding based on what he knows that day; is that
18 right?

19 A Yeah, I agree with that.

20 Q Circumstances change and maybe there is impairment
21 now, but at the time he didn't believe there to
22 be --

23 A Given the knowledge that we had in those days, you
24 are probably right, yes.

25 Q Okay. I am probably right or I am right?

GMD4

1 A Yeah, probably.

2 Q Okay. You are going to make this hard on me. All
3 right. So the Chief Engineer issues this permit, he
4 makes these several findings --

5 A Right.

6 Q -- set out in the statute? And then once the permit
7 is issued, at least today you can -- before 1978
8 you could drill a well and you didn't need a permit?

9 A Right, that is correct.

10 Q But in order to establish a water right, you had to
11 get a permit?

12 A Right.

13 Q So you apply, he makes the findings, he issues the
14 permit, then what happens?

15 A Basically it goes through a perfection period,
16 typically five years. It couldn't be extended
17 beyond that. But then, you know, at the end of that
18 perfection period then the state audits your water
19 right and bases the final certificate on the maximum
20 amount of water that you have used during that
21 period of record.

22 Q Limited by the amount issued in the permit, right?

23 A Yeah.

24 Q So if you had a water right that allowed you to use
25 a hundred acre-feet, you could use up to a hundred

GMD4

1 acre-feet, but if you only used 90 that is all --
2 that is the quantity on the certificate, right?

3 A Right, yeah. Like I say, it was based on your
4 maximum year of pumpage that was within the terms,
5 limits and conditions of your water right
6 application.

7 Q So a water appropriation right is defined as -- you
8 are familiar -- well, you have already said you are
9 familiar with this Water Appropriation Act. But a
10 water appropriation right is a water right that was
11 created during -- using the process that we just
12 discussed, right?

13 A Yes.

14 Q And it gives the ability to divert a definite --
15 from a definite supply, a specific quantity at a
16 specific rate, correct?

17 A Yes.

18 Q And then once it is perfected, it is -- that
19 quantity is set out in the certificate, right?

20 A Yes.

21 Q And a water appropriation right is a water right as
22 defined in the statute, correct?

23 A Yes.

24 Q And the statute defines a water right as a real
25 property right, correct?

GMD4

1 A Through the use of the water.

2 Q It is a permit to use the water; it is not -- you
3 don't own the water?

4 A Right.

5 Q But you own a water appropriation right, which
6 itself is a real property right, right?

7 A To the use of the water, yes.

8 Q Okay. So when we look back at 82a-1020, the opening
9 section of the Groundwater Management District Act,
10 and we look at what the public policy in Kansas is,
11 we are looking at water rights as real property
12 rights and the whole of the GMD Act requires that it
13 be -- that we preserve the basic water use doctrine
14 and it doesn't conflict -- and nothing in the GMD
15 Act conflicts with the basic laws and policies of
16 the state of Kansas, correct?

17 A Yes.

18 Q I need to see if I can get this fired back up.

19 Mr. Luhman, I am going to direct your
20 attention to the screen here. Is that document that
21 is on the screen familiar to you?

22 A Yes, it is. That would be the map that went in with
23 the LEMA proposal.

24 Q Went in what?

25 A Went in with the LEMA proposal.

GMD4

1 Q And it is in Exhibit A, correct?

2 A I think that is what they labeled it.

3 Q So it is Attachment 1 on Page 24 of 45 of
4 Exhibit A; is that a fair statement?

5 A I think so, yes.

6 Q All right. Now, you testified that these
7 percentages or these reductions were based on an
8 analysis of each township, right?

9 A Yes, sir.

10 Q And you also testified, if I heard correctly, that
11 you looked at the net irrigation requirement for
12 corn in each township and based the yellow townships
13 on the 50 percent net irrigation requirement and the
14 red townships on the -- excuse me, yellow on 80
15 percent net irrigation requirement, red on the
16 50 percent?

17 A Yeah. Now, I didn't do that for each -- because you
18 misunderstood. I didn't do that for each township.
19 I set the zones that you can see -- they don't show
20 up too good on that map. But basically each county
21 was split from north to south into two zones. And
22 so that net irrigation requirement applied to every
23 township that was in that portion of the county. Do
24 you see what I am saying?

25 Q I think I do, but I want to make sure.

GMD4

1 A Okay.

2 Q So you used the net irrigation requirement to set
3 from -- for each county. There is a net irrigation
4 requirement in the DWR regs for each county, right?

5 A Right. But basically I used the NRCS, national
6 engineering handbook, which is the same data.

7 Q That is where the net irrigation requirement in the
8 regulation comes from, right?

9 A Yes, sir.

10 Q So --

11 A But just to be clear, it was by county and it wasn't
12 by township. We did it --

13 Q Okay, good. Thank you for clarifying that. So --
14 but there is a net irrigation requirement, whether
15 it is an 80 percent or a 50 percent net irrigation
16 requirement, for each county, but you have split
17 each county into two zones?

18 A Yes.

19 Q And the zone to the west is different than the zone
20 to the east?

21 A Yes.

22 Q And I think I heard you say that you base the net
23 irrigation requirement on the western --

24 A Yeah. What I did was took the county net irrigation
25 requirements -- you know, each county has got one.

GMD4

1 I centered that on the center of that county. And
2 then based on distances between each one, I
3 interpolated an amount for the western edge of each
4 zone.

5 Q Is the net irrigation requirement in the irrigation
6 guide different than the net irrigation requirement
7 in DWR regs?

8 A No. No, it is not. But what I did was I was
9 setting two zones per county. Basically I was
10 interpolating figures as we went onto the west. I
11 don't think you will find anything in there that is
12 less than the value for that county.

13 Q All right. Well -- so the western county is
14 basically Zone 1 -- or Zone 2 on that map, right?

15 A Right.

16 Q And that is Sherman County?

17 A Yes, sir. 1 and 2 would be Sherman. 3 and 4,
18 Thomas. 5 and 6, Sheridan and the associated
19 counties north and south and then --

20 Q Sure. So Zone 2 says that the net irrigation
21 requirement -- or the yellow townships in Zone 2 use
22 the net irrigation requirement 50 percent chance
23 rainfall of 15.7, right?

24 A That would be the 80 percent, not the -- that would
25 be the 80 percent.

GMD4

1 Q Thank you. I am having trouble with this, keeping
2 this straight. But it is 15.7 percent --

3 A Right.

4 Q -- in Sherman County?

5 A Right.

6 Q And so you basically used the net irrigation
7 requirement for the eastern zone in each county and
8 increased it a little bit for the western --

9 A Yeah. Basically, yeah.

10 Q I wanted to understand what you did here.

11 A Yeah.

12 Q I am not challenging you. I just -- when I look at
13 the net irrigation requirements in the regs, it is
14 the eastern zone in each county that you used?

15 A Right, yeah. Because what I did would have been,
16 through that interpolated value, set it for the
17 maximum value at the western boundary of that zone.

18 Q I got you.

19 A So if in a county -- the county average would have
20 been that for the eastern zone in each county.

21 Q You kind of confused me when you said something
22 about western and I wanted to get that cleared up.

23 One of the things I don't understand about
24 this map is why you want a district-wide LEMA when
25 you are not imposing any requirements or limitations

GMD4

1 on anything in the green or blue areas.

2 A Basically our philosophy on that is there will be
3 the additional monitoring requirements as far as
4 what you have to do if your meter goes down, that
5 type of thing.

6 And then, of course, the meter tampering
7 policy would apply to every -- everywhere in the
8 district. I agree that there are no cutbacks in
9 allotments, but the other provisions of the LEMA
10 request would apply to those areas.

11 Q But doesn't DWR have a pretty robust meter --

12 A I think this is more robust than DWR's.

13 Q Is it? Okay. Thank you. That helps me understand
14 what you are doing here.

15 A Okay.

16 Q All right. Back to the net irrigation requirement.
17 What did you say -- you were telling us that the net
18 irrigation requirement is going to allow, what? I
19 mean, why -- I mean, the reasonable quantity --
20 regulations for reasonable quantity of water that
21 can be used for irrigation in this district is
22 one and a half acre-feet per acre, right?

23 A That is correct.

24 Q And these are generally -- 18 inches is --

25 A 18 inches is --

GMD4

1 Q And so in the yellow and red, it is --

2 A Less.

3 Q -- less?

4 A Right.

5 Q But you said that somehow that the net irrigation
6 requirement allows you to grow corn -- still grow
7 corn --

8 A Basically -- and it gets confusing. But basically
9 there are two main values that are set by the NRCS
10 for these net irrigation requirements. There is a
11 50 percent chance rainfall net irrigation
12 requirement and an 80 percent chance rainfall
13 irrigation requirement.

14 The 50 percent said that that is enough
15 water to irrigate corn five out of 10 years, with
16 the rainfall that you get five out of 10 years. So
17 that is 50 percent of the time.

18 The 80 percent chance value, which is
19 higher, says that is enough water to irrigate corn
20 eight out of 10 years. So it still does not take
21 into account the two -- you know, the two supposed
22 drought years, but that is -- that is the way those
23 figures are set.

24 Q But it is a net irrigation requirement -- it is the
25 quantity of water that is needed to grow the crop

GMD4

1 over and above rainfall, correct?

2 A Yes. Yeah, that would be the combination of
3 rainfall and irrigation water.

4 Q So if there is a net irrigation requirement, there
5 is also a gross irrigation requirement?

6 A Yes, there is.

7 Q And the gross irrigation requirement takes into
8 account irrigation efficiency, does it not?

9 A Irrigation application efficiency, yes.

10 Q So in order to actually be able to grow the same
11 amount of corn on the same tract of land, you would
12 have to have at least normal rainfall, and the two
13 drought years, you wouldn't be able to grow corn?

14 A Right.

15 Q You apply in Zone 1, 16.1 or 14.5 inches, but you
16 would have to apply it at a hundred percent of
17 efficiency to get the same result, wouldn't you?

18 A That is correct, yeah.

19 Q So it doesn't -- I mean, is irrigation a --

20 A No, it is probably -- a lot of the newer systems are
21 probably at least approaching 95 percent.

22 Q Okay. So --

23 A And that is irrigation application efficiency.

24 Q So if I am a farmer and I want to grow corn, I am
25 going to be -- that five percent --

GMD4

1 A You are going to be five percent short.

2 Q Well, not necessarily. I am going to have some
3 rainfall, so it is a little less than five. But if
4 I don't have a brand new system --

5 A It doesn't have to be a new system. It is just
6 basically if you have got a good nozzle package and
7 are applying -- which, frankly, most of our folks up
8 here do.

9 Q All right. And so --

10 A You know, I think I can jump forward on this.
11 Basically we are saying that the producer has to eat
12 the irrigation application efficiency loss.

13 Q Okay. But that is not what you testified to when
14 you were giving your main testimony, is it?

15 A I think -- let's see, what did I say? I don't know.
16 I will have to go back and look, but probably not.

17 Q Okay.

18 A Okay.

19 Q What did you tell them at the public meetings?

20 A At the public meetings? Basically that there would
21 be -- you know, that --

22 Q Did you tell them that they are going to have to
23 upgrade their systems and they are going to have
24 to -- and if they can't get a hundred percent
25 efficiency, they are going to have to use less

GMD4

1 water?

2 A I don't --

3 Q Did you tell them that, Mr. Luhman?

4 A I don't remember, sir.

5 Q Okay. That is fine. I just need to know. And so
6 were those meetings recorded?

7 A No, they weren't recorded. You know, the comments
8 and -- you know, basically what we did was ran kind
9 of a question and answer setup and basically we took
10 down questions and that type of thing from them.

11 Q Well, you probably made a presentation; you told
12 them what was going to happen, right?

13 A Right.

14 Q So you outlined the procedure, even though they
15 didn't have a copy of it or have access to a copy of
16 it, you told them what was going to happen, the
17 basics?

18 A Basically, yes.

19 Q Sure. All right. One of the factors that was
20 considered in the first hearing is -- one or more of
21 the circumstances that was present in that was
22 whether or not groundwater tables are declining?

23 A Yes.

24 Q And the Hearing Officer found that water tables are
25 declining?

GMD4

1 A Yes, sir.

2 Q Not a controversial finding, is it?

3 A No.

4 Q But didn't DWR promulgate a regulation for the
5 Groundwater Management District in 1983 that talked
6 about plan depletion?

7 A I think there was a plan depletion either regulation
8 or policy back at that time, yes, sir.

9 Q Okay. So back in 1983, K.A.R. 5-24-2 was titled
10 "Plan Depletion."

11 A Okay.

12 Q And it was based on the idea of a two percent per
13 year reduction in the water table at that time,
14 right?

15 A Yes.

16 Q And before that, there wasn't a formal plan
17 depletion policy --

18 A Before that, we just --

19 (Talking over each other.)

20 Q (BY MR. TRASTER) Let me put it in question and
21 answer --

22 A Okay.

23 Q I am not trying to cut you off, but she can't take
24 down -- if she is like every other court reporter,
25 she doesn't like to have to take down when two of us

GMD4

1 are talking at the same time. I am not trying to be
2 rude or difficult, but -- it is her, not me.

3 A Oh, okay.

4 Q Anyway, in 1983 the GMD asked the DWR to issue a
5 regulation calling for a plan depletion of the
6 aquifer at the rate of two percent per year, right?

7 A Yes.

8 Q And that regulation was adopted?

9 A Yes.

10 Q And in 1987 or so, they reduced that to one percent,
11 right?

12 A Yes.

13 Q And in 1991, they reduced it to safe yield or
14 sustainable yield, however -- whatever language you
15 want to use?

16 A Yes.

17 Q It is the calculated amount of recharge. So since
18 1991, all new permits have been based on the
19 calculated recharge available in a two-mile radius
20 circle around the proposed point of diversion?

21 A Yes.

22 Q So prior to 1983 there wasn't a plan depletion
23 policy, right?

24 A No. It was just well spacing at that time.

25 Q Right. And so -- but the Water Appropriation Act

GMD4

1 specifically says that new water rights can be
2 granted even though they might deplete the aquifer,
3 correct?

4 A I think it does.

5 Q Okay. If that is 82a-711 and 711(a), is that --

6 A It sounds good to me.

7 Q Okay. So any water right with a priority date
8 before 1991, there has been a finding that it is in
9 the public interest to allow that water right to be
10 granted at either two percent or more, or after '83
11 two percent, and after '86 or '87, one percent,
12 correct?

13 A Yes.

14 Q So it is not surprising that Ms. Owen would find
15 that there has been a decline in the water table
16 because that was the policy for many years, right?

17 A Yes.

18 Q And if allowed -- I mean, most of the water rights
19 were granted under that two percent per year or
20 earlier, '83 or earlier. I mean, the vast majority
21 were already granted when the Groundwater Management
22 District was formed in the first place?

23 A Yeah, you are right.

24 Q And so of course it has declined because there is a
25 plan depletion policy in place and that is the

GMD4

1 public policy in the state of Kansas, right?

2 A It was at that time, yes, sir.

3 Q Well, it still is because 7-11 and 7-11(a) haven't
4 been amended, have they?

5 A No, but the -- I guess what I am saying is the
6 development criteria have changed over time.

7 Q Sure. And will likely settle. I mean, as we have
8 grown more, the regulations have tightened down. We
9 have just been through that from two percent to one
10 percent to a calculated recharge and now you can't
11 get a new water right in GMD4 unless you can meet
12 some very specific requirements, right?

13 A Yes.

14 Q You mentioned that the district -- that the --

15 A Can we --

16 Q We can take a break. It is the Chief Engineer's
17 prerogative. But if you need to take a break, tell
18 him and depending on whether he likes you or not, he
19 might let you have a break.

20 HEARING OFFICER BARFIELD: Mr. Traster, do
21 you have any sense of how much longer your questions
22 are going to go?

23 MR. TRASTER: Yeah. It is going to be a
24 while.

25 HEARING OFFICER BARFIELD: It is going to

GMD4

1 be a while?

2 MR. TRASTER: Yes.

3 HEARING OFFICER BARFIELD: Well, I will
4 want to take a break about 11:00, if not before.

5 MR. TRASTER: I have no idea what time it
6 is, so if we need to take a break --

7 HEARING OFFICER BARFIELD: It is 10 to
8 11:00 now. So if we are not going to complete him
9 before a break, then I think maybe we ought to take
10 a break. So why don't we do that. We will take a
11 break until 11:00 and then we will reconvene.

12 (Recess taken at 10:45 a.m. Resumed at
13 10:57 a.m.)

14 HEARING OFFICER BARFIELD: We will go back
15 on the record while Mr. Luhman is finding his seat.

16 So what we will do here, we will let this
17 continue until 11:45. At 11:45, we will take a
18 break from the formal phase. And if you need to --
19 and we will take public comments, basically. If you
20 need to leave before our lunch break, I would like
21 to provide opportunities for public comment starting
22 at 11:45 and we will go through everyone who needs
23 to testify before the lunch break.

24 So if you want to be one of those persons,
25 you need to go and talk to Chris and he will make a

GMD4

1 list of those who need to testify before our lunch
2 break. Again, I will make sure that if you are here
3 today and you want to make a public comment, that
4 you have an opportunity to do that before the day is
5 out. We can switch back and forth as is necessary
6 to accommodate this. And we can continue this into
7 tomorrow, if we need to as well. I am hoping we can
8 get through it today.

9 So with that, Mr. Traster, you can
10 continue. Again, if you need to make a comment,
11 talk to Chris and we will take your comments at
12 11:45.

13 Q (BY MR. TRASTER) Mr. Luhman, we are back on the
14 record. You understand that you are still under
15 oath?

16 A Yes, yeah.

17 Q You have provided through your attorney a number of
18 documents pursuant to my request; have you not?

19 A Yes.

20 Q And some of the documents I requested I haven't
21 received yet, right?

22 A I don't know. I thought you had all --

23 Q Well, I will tell you. Some of the documents that I
24 have asked for, I haven't received yet.

25 A Okay.

GMD4

1 Q And some of them, I haven't received in the format I
2 needed them. In other words, I was looking for
3 formats like spreadsheets and I don't have those.
4 And that is not a criticism at all, because we
5 are -- we have been working under some pretty tight
6 time frames. But I am just saying that I haven't
7 seen all the documents that I -- even the documents
8 that I have got, I haven't had time to really look
9 at.

10 So in some respects -- I am really trying
11 to find out what is going on or what these issues
12 are. In my review of the documents, I noticed
13 several places where -- especially in the minutes of
14 the board meetings -- there was extensive discussion
15 about carryover, allowing some carryover?

16 A Yes.

17 Q Okay. Tell me, what does carryover mean?

18 A Basically as it applies to the district-wide LEMA
19 and, as I have stated before, the LEMA itself is
20 only for a five-year period. But there was a
21 provision in there to say that up to 10 percent of
22 the original LEMA allocation could be carried over
23 if it still existed in each individual's account.

24 Q All right. So if I understand the LEMA correctly,
25 and please make sure -- I mean, if I say it wrong,

GMD4

1 you tell me. There is a limitation based on
2 location in the township of a certain number of
3 acre-feet per year --

4 A No --

5 Q -- multiplied by five?

6 A Yes.

7 Q So, for instance, in Zone 1 in the yellow -- in the
8 townships that are designated in yellow, you get
9 16.1 inches per year for five years and you can use
10 that however you want to; you can use up to the
11 amount of your water right in one year, you just
12 have to cut back in a later year?

13 A Yes.

14 Q Is that fair?

15 A Yes.

16 Q But if you didn't use -- okay. So the five-year
17 allocation in Zone 1 or someone in a township
18 designated yellow is 80.5 inches, right?

19 A Yeah.

20 Q According to the map. And if a farmer, an irrigator
21 in that area uses less than -- he can carry 10
22 percent over at the end of that five-year period if
23 he or she hasn't used the full 80.5 inches, right?

24 A Yes, that is correct. Now, in the proposal it just
25 says that if they propose a second district-wide

GMD4

1 LEMA that they could consider up to a 10 percent
2 carryover.

3 Q Right. The LEMA on Exhibit A, Page 17,
4 subparagraph right above the second 2 says that the
5 board will consider a maximum of 10 percent
6 carryover, right?

7 A Yes.

8 Q Now, in a meeting on March 2nd, 2017, there was a
9 motion made to include a carryover amount, correct?
10 The board made a motion to include a carryover
11 amount in the LEMA plan?

12 A I think -- that is correct, I think.

13 Q But it doesn't say anything about consideration. It
14 says -- well, let me just read it to you. Mr. -- is
15 it Goson [phon] or Goossen?

16 A Yeah, Goossen.

17 Q "Mr. Goossen moved to include a carryover amount of
18 up to 10 percent of the LEMA allocation in purple,
19 yellow and red areas. The motion was seconded and
20 passed."

21 So I guess there is "up to" in that
22 motion, but there is no idea about the board being
23 able to either grant or not grant that 10 percent in
24 a second LEMA? I mean, what I guess I am trying to
25 get to is do you get the 10 percent or not? I mean,

GMD4

1 is it up to the board's discretion? What does "up
2 to" mean?

3 A Basically it would be up to the discretion of the
4 board of directors, you know, five years from now.

5 Q I see.

6 A Ostensibly that they could consider up to 10
7 percent, but they are not required to.

8 Q Okay. So if one farmer conserves and uses 72
9 acre-feet instead of 80, he might get that moved
10 over into the next LEMA, but he might not?

11 A That is correct.

12 Q But that is not what the motion was back in March
13 of 2017, is it?

14 A I thought you said that it read that they could
15 consider up to a 10 percent --

16 Q No. It just says that they could -- to include a
17 carryover amount of up to 10 percent. So, I mean,
18 it either includes -- the board says it is included.
19 The plan says that it is to be considered. There is
20 no consideration in the motion approved in the
21 minutes?

22 A But the motion says up to 10 percent.

23 Q Right. So --

24 A So zero to zero is up to 10 percent.

25 Q Okay. I just wondered how that worked, because it

GMD4

1 wasn't clear. So is there no guarantee -- somebody
2 could conserve and still not be able to carry that
3 over?

4 A That is correct. If, in fact, a new LEMA was
5 proposed.

6 Q And there is quite a bit of discussion in the
7 documents about the idea that in a new LEMA, then --
8 I mean, while this is a LEMA that ends in five
9 years, the consideration or the belief at this point
10 is that it probably is going to go forward; wouldn't
11 you say?

12 A You know, that is really hard to say because you
13 don't know what the circumstances are going to be
14 five years from now. The board could consider going
15 into a new LEMA but, you know, they don't -- you
16 know, that is just going to be a decision for down
17 the road.

18 Q I see. So you think maybe there is not going to be
19 any more depletion in five years?

20 A No, I don't think that. But I don't know what every
21 board of directors we have five years from now, what
22 their decision will be.

23 Q Sure. But the door is wide open for a new LEMA
24 after that, right?

25 A It definitely could be proposed and we would go

GMD4

1 through this whole process again. Not me, but
2 someone could.

3 Q Why wouldn't you want to? I mean, it is so much
4 fun.

5 A Yeah, right, but -- I hate to miss it, but --

6 Q Yeah. We are having fun.

7 A There you go.

8 Q All right. I am going to represent to you that what
9 I did is to take the data that Brownie Wilson
10 provided to you and that you based your information
11 on and I took that data and put it in a spreadsheet
12 and did this section by section instead of township
13 by township.

14 Then I used your colors. They are a
15 little bit different. I didn't use the bright red
16 because it covered up the text that you can't see
17 anyway. But essentially this is a district map
18 with -- the best job I could do, and I will tell you
19 that I am not sure that I did it just perfectly.
20 But, generally speaking, this is section by section
21 rather than township by township.

22 Does that -- I mean, just looking at it
23 generally, I am not asking you to verify that I did
24 it right, but generally is that -- does that look
25 close to you?

GMD4

1 A I would think it looks fairly close to me. Again,
2 based on what I can see right now.

3 Q Right. And I am not asking you to verify that it
4 is. But what I am troubled by or have questions
5 about are the townships. There are numerous
6 townships here that are mostly one color, mostly
7 blue or mostly purple, some mostly yellow. But
8 there are some townships in here that are varied.

9 Now, you testified that you took out all
10 of the town -- all of the sections -- let me ask
11 you. You took out all the sections that had less
12 than 15 feet of saturated thickness?

13 A Yeah. I removed those from the calculations that I
14 did.

15 Q And I did not do that because I didn't know you did
16 that.

17 A Okay.

18 Q So I will tell you that those -- if it is less than
19 15 acre-feet -- and the reason you did that too,
20 because when you do the percentage calculation it
21 ends up with a huge percentage, doesn't it?

22 A Yeah. Yeah, a relatively small decline given a
23 small saturated thickness comes up to, I thought, an
24 unreasonable percentage.

25 Q In some cases over 2,000 percent?

GMD4

1 A Well, yeah. Yes, sir.

2 Q All right. So this is inaccurate from the
3 standpoint of your map to the extent that you have
4 got an area that has got a saturated thickness less
5 than 15 acre-feet -- or 15 linear-feet, correct?

6 A Yeah. Especially down along -- primarily along the
7 southern border of the district, down -- yeah, down
8 through there.

9 Q So this is a map that shows the saturated thickness
10 and it is one of those -- it is just by section.
11 Again, if I did the math right, which I was careful,
12 but I am not a mathematician by any means.

13 So in the blue, if it is dark -- the
14 darker blue is less saturated thickness, the orange
15 is more. And so when we see percentages in these --
16 in the -- I used a formula that if it was -- if it
17 increased, if there was an increase, there was just
18 no color. So those are areas that are either no
19 data -- and some of them there is just no data. In
20 others, there is an increase. So it is -- I mean, I
21 am trying to make sure you understand the map here.

22 So the areas down in the southeast corner
23 is an area where there is very limited saturated
24 thickness and across the bottom border, in that
25 area, in the southeast quarter of Sherman County,

GMD4

1 right?

2 A Yes.

3 Q So back to the map --

4 MR. TRASTER: And I have got copies of --
5 single copies of these maps. I am going to talk to
6 Mr. Titus ahead of time and we will mark the copy.
7 I didn't make multiple copies of these, but I can
8 provide them to you.

9 MR. DEES: I appreciate it.

10 Q (BY MR. TRASTER) So this map that -- in fact, let's
11 mark it so we get the record straight.

12 HEARING OFFICER BARFIELD: That would be
13 good.

14 (Marked Exhibit D, Exhibit E.)

15 Q (BY MR. TRASTER) For the record, the map that I am
16 going to show on the screen is going to be Exhibit D
17 and it is the map that has the percentages based on
18 section by section versus township by township. And
19 Exhibit D -- no, E is the saturated thickness map
20 that I showed you a moment ago.

21 HEARING OFFICER BARFIELD: Mr. Traster, so
22 the first one is for the same period they
23 considered. This is just your attempt to replicate
24 it using the KGF section-level data?

25 MR. TRASTER: It is my attempt, yes.

GMD4

1 HEARING OFFICER BARFIELD: Right. Okay.

2 MR. TRASTER: And I will provide copies to
3 counsel and to --

4 HEARING OFFICER BARFIELD: Right.

5 MR. TRASTER: -- the Hearing Officer so
6 that you have it.

7 HEARING OFFICER BARFIELD: Without any of
8 the additional corrections made; it is just the pure
9 section-level data?

10 MR. TRASTER: I used the information that
11 was available to me and I didn't know that -- that
12 was a big question I had is if we were going to take
13 20 minutes to figure out about the percentages. But
14 he has already taken that out. So, no, I didn't --
15 I didn't know that he had taken that out.

16 HEARING OFFICER BARFIELD: Okay. That is
17 fine. Thanks.

18 MR. TRASTER: But you are right. It is
19 not corrected to reduce -- to take out the sections
20 that are 15 feet of saturated thickness or less.
21 But they show up in either green or blue on this
22 map, I think.

23 HEARING OFFICER BARFIELD: Right. I was
24 going to wait to ask my questions later, but since
25 we have got the map up --

GMD4

1 MR. TRASTER: Sure, that is fine.

2 HEARING OFFICER BARFIELD: When you say,
3 Ray, that you removed them, what does that mean?

4 MR. LUHMAN: Basically what I did is any
5 section that showed 15 foot of saturated thickness
6 or less, I removed from the database and then redid
7 my calculations -- let's say I pulled 10 sections
8 out of one township, then my average went back down
9 to dividing that by 26, that type of thing. So I
10 removed it completely from the database.

11 HEARING OFFICER BARFIELD: So there
12 weren't any of these townships -- the whole township
13 was less than 15 feet, that didn't exist?

14 MR. LUHMAN: I don't believe so, no.

15 HEARING OFFICER BARFIELD: All right.

16 Thanks.

17 Q (BY MR. TRASTER) Now, that township on the south
18 end about the middle, that is mostly green but it
19 has a little bit of blue, would mostly be less than
20 15, right? Or not? I may be --

21 A Yeah, I think it would be. I really do.

22 Q But it is --

23 A Yeah.

24 Q There are some townships, particularly down in the
25 southeast corner, where you have got -- in the same

GMD4

1 township you have sections that that are green
2 showing no decline, sections that are purple, then
3 the very southeast corner there is blue, which is
4 less than five percent and -- but, I mean, you have
5 got some red sections in there too. But the
6 saturated thickness in that area is pretty light?

7 A Yeah, it is a very thin aquifer and very variable
8 down in that area.

9 Q And so -- but you are still -- those irrigators are
10 going to be reduced to 18 inches or to the yellow
11 designation on your map, right?

12 A Yes.

13 HEARING OFFICER BARFIELD: Can you point
14 out the townships you are talking about?

15 MR. TRASTER: I will try.

16 MR. LUHMAN: They would be right there
17 [indicated].

18 HEARING OFFICER BARFIELD: Okay. So at
19 the very southern and eastern side --

20 MR. LUHMAN: Right.

21 HEARING OFFICER BARFIELD: -- when I look
22 at those particular townships?

23 MR. TRASTER: I am talking about townships
24 11 and 12 south and 20 -- 11 south, 27 west and
25 28 -- no, 11 and 12 south and 27 and 28 west.

GMD4

1 HEARING OFFICER BARFIELD: Okay.

2 MR. TRASTER: Down in that southeast
3 corner.

4 HEARING OFFICER BARFIELD: Right. I am
5 with you now. Can you switch back to the other map?

6 MR. TRASTER: Yes.

7 HEARING OFFICER BARFIELD: Okay. So as
8 you say, they are variable at one point and then
9 they are either purple or yellow. Okay. Thank you.

10 Q (BY MR. TRASTER) So as the Chief Engineer said,
11 going back to your map that is part of the -- it is
12 Attachment 1 to the plan, you have got those folks
13 restricted either to 14.7 inches per year times five
14 or 18 inches, depending on whether they are purple
15 or yellow. And all of those sections down there are
16 restricted, even though the saturated thickness is
17 fairly -- across those townships is limited?

18 A Yes, sir.

19 Q And this is a question. I mean, isn't the
20 aquifer -- doesn't that self-limit their ability
21 to -- I mean to be able to divert the water, is it
22 really necessary to do that?

23 A Really in that area -- again, there is a lot of
24 variability. And I would agree that, you know, the
25 thin aquifer does limit just basically diversion

GMD4

1 capacity down there.

2 Q Right.

3 A But, you know, on the other hand, we have got some
4 fairly good wells in there that -- we are showing
5 declines. And, you know, that is one thing that
6 when I went in and took the 15 foot and less
7 saturated thickness out, that is one area that
8 concerned me because the original map had both 11-26
9 and 12-26 period as red.

10 And so when I pulled those less than 15
11 acre-foot or less than 15 foot saturated thickness
12 out of there, it changed one of them to yellow and
13 one of them to purple. So --

14 Q So you already accommodated some of my concern?

15 A Well, I think I have. I don't know what your
16 concern is, but --

17 Q Well, I have just expressed that isn't it
18 self-limiting? I mean, that is my --

19 A Yeah.

20 Q Why impose an additional requirement on a township
21 that is virtually self-limited, is my concern or
22 question?

23 A Okay. So we did go ahead and put it in the -- you
24 know, the modified map, there is -- one of those
25 down to 15 inches and the other one, of course,

GMD4

1 would be 18 inches. I -- I don't know without
2 looking at the data. I seriously doubt that a lot
3 of the wells in that area could pump that anyway.

4 Q Okay.

5 HEARING OFFICER BARFIELD: So,
6 Mr. Traster, the map you have here is our Exhibit E
7 map, correct?

8 MR. TRASTER: No, this is going to be
9 Exhibit F, I think.

10 HEARING OFFICER BARFIELD: Oh, this is a
11 new one?

12 MR. TRASTER: A new --

13 HEARING OFFICER BARFIELD: Are you going
14 to use Exhibit E anymore? And the reason I am
15 asking is I was just going to clarify what it was.

16 MR. TRASTER: Yeah, go ahead. Let's do
17 that so that it is all in the record at the same
18 point. If I could find which one it was.

19 HEARING OFFICER BARFIELD: It was the
20 saturated thickness map. And I guess I just wanted
21 to clarify for -- is this the current, latest
22 saturated thickness map?

23 MR. TRASTER: No. It is the 2015
24 saturated thickness map.

25 HEARING OFFICER BARFIELD: Okay. Thank

GMD4

1 you.

2 MR. TRASTER: It is based on the data from
3 KGS provided to be by Brownie Wilson that was used
4 by the GMD, according to Brownie and Brownie's
5 testimony in the original -- in the first hearing.
6 That is the data I used.

7 HEARING OFFICER BARFIELD: Okay. I just
8 wanted to clarify what it was. Mr. Dees?

9 MR. DEES: Can I ask one real quick
10 question on these exhibits? Did you create these,
11 Mr. Traster, or did someone else create these?

12 MR. TRASTER: I did it all my by myself.

13 MR. DEES: Okay. Good deal. Thank you.

14 RAY LUHMAN: Good job.

15 MR. TRASTER: Well, when you get the data,
16 you may say it is not -- you may be, what the heck.

17 HEARING OFFICER BARFIELD: Should we go
18 ahead and mark the next exhibit?

19 MR. TRASTER: Yeah. I am not sure -- what
20 time is it?

21 HEARING OFFICER BARFIELD: It is 11:26.

22 MR. TRASTER: Okay.

23 HEARING OFFICER BARFIELD: Chris, no one
24 has actually indicated -- okay, that is fine. If no
25 one needs to, we will just continue on then.

GMD4

1 MR. TRASTER: This young lady said she
2 wanted to speak.

3 HEARING OFFICER BARFIELD: All right. Do
4 you want to provide a comment before lunch? Okay.
5 So we do have one here. Anyway, why don't you carry
6 on.

7 (Marked Exhibit F.)

8 Q (BY MR. TRASTER) Mr. Luhman, I have placed on the
9 screen another iteration of this map that I have
10 been working on and we have marked it as Exhibit F.
11 And I will represent to you that it is the gross
12 number of feet of decline from 2004 to 2015 based on
13 that same dataset that we have been using.

14 And I marked anything that was increased
15 in blue. And then it varies as the orange gets
16 darker, it goes from a zero to five-foot decline,
17 five to 10, 10 to 15, 15 to 20, 20 to 25. And then
18 if there is no color, like down in the southwest
19 corner where there is no color, that is more than
20 25 feet of decline is what I tried to do. And I
21 think that is -- to the extent any of this is
22 accurate, that is accurate.

23 So the decline in Attachment 1 to your
24 report, those two red townships correspond roughly
25 to the two bright -- the two spots where the decline

GMD4

1 is the most, right?

2 A Yes.

3 Q And, generally, this map shows where the decline is
4 section by section. And, again, there is a
5 variation. Some of the townships have very little
6 variation. I mean, it is -- the decline is roughly
7 the same.

8 In other sections, in other townships
9 there is variation. And, again, where you have got
10 more or less, in some cases, increases in -- I guess
11 what I am trying to get to here, Mr. Luhman. When
12 you look at Exhibit F and compare back to Exhibit D,
13 which is my section-by-section map, compare back to
14 your Attachment 1. In some cases, this appears to
15 be equitable as far as the amount of decline and the
16 percentage of decline across the entire township is
17 roughly or similar.

18 But in other townships you have got areas
19 that are -- you have got no -- a lot of variation.
20 And I am trying to understand how that is fair. And
21 let me go back to Exhibit D and to particularly
22 point out Township 9 South-Range 34 West. And I am
23 going to see if I can approach here. I believe it
24 is this township that I am pointing to right here.

25 A Okay.

GMD4

1 Q In that township you have got a couple of red
2 sections. In other words, there is more than two
3 percent decline. But within just a mile or two or
4 three, you have got areas with half a percent or
5 less decline. Because the two sections in the
6 corners of that particular township are in blue and
7 then purple and then the rest of it is yellow. I
8 mean, how is it fair to take the person who has
9 those two blue townships in the southern part of
10 that -- the two blue sections in the southern part
11 of that township and treat them differently than the
12 people who have water rights in the section
13 immediately below it that is almost entirely blue
14 and don't have any restrictions?

15 A Well, first of all, I wish -- and I don't know that
16 you have it. I wish we had an overlay on that that
17 shows the actual points of diversion for the wells.
18 I don't know what that -- I don't know what the
19 level of development down there is. I suspect that
20 there is not much development there whatsoever.

21 So, again, I guess, you know, to answer
22 your question, where we did the designation by
23 townships, there is some variability that is in
24 there. So I don't know. I really don't know.
25 Because I know a lot of the areas down in that

GMD4

1 southwestern part of Thomas County, there are no
2 wells whatsoever. As a matter of fact, there is not
3 much water there at all.

4 Q Okay.

5 HEARING OFFICER BARFIELD: So, Ray, you
6 are saying they are blue because there is probably
7 not wells there; is that what you are saying?

8 RAY LUHMAN: That is what I think. I
9 don't have that map with me. I have got it at the
10 office, but I don't have it here.

11 HEARING OFFICER BARFIELD: Let's mark
12 this.

13 THE REPORTER: This is Exhibit G.

14 (Marked Exhibit G.)

15 HEARING OFFICER BARFIELD: Can you
16 describe Exhibit G?

17 Q (BY MR. TRASTER) I am going to hand you what has
18 been marked Exhibit G. Can you tell me what that
19 is? I mean, it is something, I think, that you
20 produced.

21 A Basically what this is is a copy of a map. It is an
22 earlier map of the first proposal, but it does have
23 the wells plotted on here.

24 Q Right. So --

25 A And I can go to --

GMD4

1 Q Hang on just a minute. Let's make sure the record
2 is clear first.

3 A Okay.

4 Q I mean, it is a map of the GMD. It is an earlier
5 proposal with different colors on it that aren't
6 relevant here, so we are not paying attention to the
7 colors on the map, but it is a map of the district
8 and it has the points of diversion shown, meaning
9 the wells, correct?

10 A Yes.

11 Q All right. And when you look at that particular
12 township that we have been talking about, and let me
13 get my bearings again, it the 9 South-34 West, there
14 are wells in the -- at least there were wells in the
15 southeast corner of that township, right?

16 A Yes. There are wells clear along the east half of
17 that township and up in the northwest quarter of
18 that township, but basically no wells whatsoever in
19 the southwest quarter of that township.

20 Q All right.

21 HEARING OFFICER BARFIELD: In the
22 southwest is where the blue was; is that right?

23 MR. TRASTER: Let's zoom in here.

24 RAY LUHMAN: Yes.

25 Q (BY MR. TRASTER) So I zoomed into the township that

GMD4

1 is 9 South-34 West and we note that both of the
2 sections 30 [sic] and 36 in that township are in
3 blue, right?

4 A Yes.

5 Q And --

6 HEARING OFFICER BARFIELD: Actually that
7 is 31 and 36, correct?

8 MR. TRASTER: Correct. Again, he is
9 supposed to listen to what I meant, not what I said.

10 Q (BY MR. TRASTER) So in looking at Exhibit G, there
11 aren't any wells in Section 31, but there appear to
12 be wells in or around Section 36, correct?

13 A Yeah, there are wells in 36, 25 and you will go on
14 north from there.

15 Q Right. So my question is --

16 A If you are talking 31, there is no wells over in
17 that area.

18 Q Right. So my question is, how is it fair to the guy
19 that -- the irrigators in Section 36, Township 9
20 South-Range 34 West, when -- and that is a section
21 or township that you designated as yellow, and so it
22 is given a decline -- they get, whatever, 16 inches
23 roughly, whatever it is on your map?

24 A Uh-huh.

25 Q But how is it fair to those irrigators when the guy

GMD4

1 directly across the road, assuming there was a road
2 and a township line, is in a section -- in a
3 township that is blue and gets no reduction?

4 A I think that is just the nature of the data and the
5 way that it was chosen for this project.

6 Q So the idea is that by going township by township
7 instead of section by section or some other
8 designation, the owner of the wells in the southeast
9 corner of that township, 9 South-34 West, gets
10 treated differently than the owner of the wells in
11 the township directly south?

12 A Yeah. Unfortunately -- and you understand this.
13 But when you do water policy or whatever, there are
14 lines.

15 Q Right.

16 A And you just can't get around that, you know. If,
17 in fact, you chose different boundaries, there is
18 going to be a line.

19 Q Right.

20 A So it was our board's determination on this to go on
21 the township basis, knowing full well that as you
22 get more of a coarse look at that, there will be
23 some --

24 Q Unfairness.

25 A Well, if that is what you want to call it.

GMD4

1 Q That is what I want to call it.

2 A Okay. Well, you can call her that.

3 Q I mean, it is not fair. It is not -- I mean, to
4 have -- to treat one water right owner who -- and I
5 don't know why his percentage is lower. Maybe it is
6 because of saturated thickness, maybe because it is
7 because he is the one that conserved.

8 A Or couldn't pump it.

9 Q Well, any number of things that could happen, right?

10 A Right.

11 Q But one of the possibilities is that it was because
12 he and his neighbors conserved and the others
13 didn't, right?

14 A That is one possibility.

15 Q And you are familiar with the tragedy of the commons
16 concept about who -- you know, take all you can get
17 while you can get it, right?

18 All right. Well, you moved one township
19 to the east and you have -- in Section 1 you have
20 got greater than two percent. In Section 31 you
21 have got less than half a percent. So you have got
22 this variability across a number of townships. I
23 mean, more than just one or two townships here,
24 right?

25 A Yes, sir.

GMD4

1 Q Now, when we zoom back out on the map that is
2 Exhibit D, you could draw up -- I mean, I agree you
3 have to have lines and those lines don't
4 necessarily -- I mean, the water doesn't know that
5 we have a section line here or a property line. But
6 there are -- township designation has some
7 rationality in some cases. In other cases it is
8 just not fair, right?

9 A I don't know that I would agree with that. But, you
10 know, you do run into some variability in a
11 subsection of a township.

12 Q Now, one of the things about doing townships in
13 terms of draft of the plan is it makes it a lot
14 easier, doesn't it?

15 A It does to a certain extent. Although, you know,
16 given today's computers and stuff, you can take it
17 to about any level that you want to. It doesn't
18 take that much --

19 Q Right. Even a lawyer can figure out how to do it if
20 he just --

21 A That is what I was thinking.

22 Q -- misses church, you know. I hate to miss church.
23 So -- I mean, you would agree with me then
24 that it would -- there is a way to do this that
25 would be more equitable?

GMD4

1 A No.

2 Q Okay.

3 HEARING OFFICER BARFIELD: Well, we have
4 reached 11:34, so is this a good breaking point
5 or --

6 MR. TRASTER: It is a good breaking point
7 for me or we can go on, either way.

8 HEARING OFFICER BARFIELD: Why don't we do
9 what we said and sort of stop the formal process and
10 provide an opportunity for at least the one
11 informal, and then I think maybe a lunch break from
12 there. Thank you.

13 MR. TRASTER: Thank you.

14 HEARING OFFICER BARFIELD: All right.

15 So we will take whatever public comments,
16 if you need to leave before lunch, and when that is
17 done, we will take a lunch break.

18 So did you have a comment you wanted to
19 make? And, Chris, did you have anyone else? Okay,
20 so we will take this one public comment and then we
21 will take a break.

22 If you could state your name and address
23 for the record and then we will ask you to be sworn
24 in after that.

25 MS. IRENE SIEBERT: My name is Irene

GMD4

1 Siebert. I live at 2932 East 96th Place in
2 Thornton, Colorado.

3 HEARING OFFICER BARFIELD: Ma'am, can you
4 spell your last name for me, please?

5 IRENE SIEBERT: S, as in Sam, I-E, B as in
6 Boy, E-R-T, Tom.

7 HEARING OFFICER BARFIELD: Okay. Please
8 make your comment.

9 (Ms. Siebert was sworn.)

10 IRENE SIEBERT: Okay. I grew up in Thomas
11 County. I believe the township was Sumner, if that
12 would be right. And it is not an eight-hour day
13 that you spend as a child, as an adult, working the
14 land, working with the animals, working with the
15 poultry and all that. We experienced everything
16 like that. It is not an eight-hour day, ever.

17 So my question is, how many of you have a
18 background in agriculture, hands-on, feet on the
19 ground, boots on the ground, to use that expression?

20 I would encourage you, by way of -- to get
21 acquainted with farmers on a personal level. I
22 think you would find it really enlightening and
23 encouraging.

24 Now, my parents were in the 1930s. You
25 know, the Depression years. And I was born in that

GMD4

1 era and we -- we did a lot without. There was no --
2 nothing like wells until 1940. That certainly was
3 encouraging to us as farmers, to have the ability to
4 irrigate land and grow crops very well and supply
5 food for other countries maybe, supply food for
6 military. My husband was -- instead of going to the
7 military, went into the medical field because that
8 is -- they said, you know, we need some help --
9 supply that kind of thing for the ones who don't
10 know and don't have the means to supply their own
11 living.

12 So then my question is, I think we are
13 living on the edge of the aquifer right now and I
14 think we -- I can see from the map that we are
15 probably going to be hitting clay as well. Some of
16 these -- when the big wells go -- they are going to
17 be digging into clay and so forth. And you just
18 have the aquifer -- we are kind of thinking we are
19 living on the edge of the aquifer.

20 We have a wonderful tenant and he keeps us
21 informed and he is a very, very -- in spite of
22 having not [sic] a degree in anything agriculture,
23 he does supply tests for the land to the state
24 college and gets a lot of data through them, how he
25 can irrigate and fertilize and so forth so that it

GMD4

1 will be profitable and grow crops. And he can
2 determine from that which crop he will grow. Corn
3 is, of course, the most appropriate, most wished
4 for.

5 Also I want to say that my husband spent
6 very much time leveling land here in the state and
7 in the county for the wells to be put down. And I
8 appreciate the work that they have done. I just
9 think sometimes -- I have a feeling today that there
10 are so many regulations that are proposed. And I
11 can appreciate what Mr. Traster has said, and he is
12 very scientific and I appreciate that. But I think
13 you are asking for a lot of regs and maybe he is
14 going to help us decline some of those. It would be
15 helpful.

16 So anyway, the next thing I wanted to say
17 is I live in Colorado. And as you may know, people
18 are flocking to our state by the hundreds every
19 month. They are going to be having housing that
20 supplies them with water. They are going to be
21 having lawns. And we have people in the eastern
22 part of the state that have irrigation wells for
23 crops, and they are looking for -- they run their
24 wells -- you can tell they run their wells a lot.

25 So my question is, what kind of liaison do

GMD4

1 you have with Colorado agriculture to provide -- to
2 kind of limit -- you know, we are all getting our
3 water from the same aquifer. Colorado, Nebraska,
4 Kansas, what -- how are we going to see that
5 everybody has a fair chance. That word "fairness"
6 has been brought out a lot in the last hour or two.
7 And I think -- I appreciate that.

8 So anyway, that is my concern, our
9 concern, that we have water for the needs of the
10 people in their homes. You know, God only made so
11 much water and it circulates the world. So that is
12 how we have to live. And the lady next to me this
13 morning said, "Let's just be sure that everybody has
14 a fair chance at having the water they need."

15 Thank you, sir.

16 HEARING OFFICER BARFIELD: All right.
17 Thank you for your comments. Very good.

18 It is 11:50. Why don't we go ahead and
19 take a break. Let's take an hour break. Let's seek
20 to reconvene at 10 minutes to 1:00.

21 (Recess taken at 11:46 a.m. Resumed at
22 12:53 p.m.)

23 HEARING OFFICER BARFIELD: We are now back
24 on the record.

25 During lunch we visited about sort of the

GMD4

1 best procedure here for moving forward. And I have
2 talked to the parties and we would like to go ahead
3 and switch to the informal phase, as we are already
4 sort of paused anyway here, and let members of the
5 public who want to make a comment make those now.
6 And then after that is complete, we will switch back
7 to the formal stage and continue.

8 And if any of the public -- we will make
9 sure after the informal -- after the formal stage is
10 completed that if any of the public want to make
11 additional comments based on what they have heard,
12 they can do so. But that way you can make your
13 statement and if you have had enough, you can move
14 on.

15 So we are going to switch. I have got the
16 sign-in sheets that we provided and I am going to go
17 ahead and call in order, at least there in front of
18 me, and if you would like to come and make your
19 statement, I would ask you to come to the microphone
20 and state, again, your name and address and be sworn
21 in and then make any comments you have concerning
22 the district-wide LEMA.

23 You know, I would appreciate you just
24 telling us a little bit about yourself and your
25 interest in the area, your experience as a water

GMD4

1 user, or whatever special expertise you have in your
2 statement.

3 And so with that, the first person is Lynn
4 Goossen. Hopefully I am saying that correct.

5 MR. DEES: Chief Engineer, he is actually
6 one of the witnesses for the -- he is one of the
7 board members for the Division of Water Resources.

8 HEARING OFFICER BARFIELD: All right.
9 Thank you. Yes, I guess we were anticipating having
10 finished that and knowing the difference. So, yeah,
11 he can make his testimony as part of the formal
12 process later then.

13 Scott Ross is next on the list. Mr. Ross,
14 are you here?

15 SCOTT ROSS: Right here.

16 HEARING OFFICER BARFIELD: If you would
17 come forward. Are you ready to make your statement
18 now.

19 SCOTT ROSS: Yes.

20 HEARING OFFICER BARFIELD: All right.

21 THE REPORTER: Sir, your name is Scott
22 Ross?

23 SCOTT ROSS: Scott E. Ross. I live at
24 209 South Ash Street, Stockton, Kansas.

25 HEARING OFFICER BARFIELD: Will you swear

GMD4

1 him in?

2 THE REPORTER: Yes.

3 (Mr. Ross was sworn.)

4 SCOTT ROSS: I understand this is an
5 administrative hearing and it provides only limited
6 opportunities for any cross-examination. But I have
7 put a portion of my testimony in the form of
8 questions. I am not expecting a response, but I
9 know that as a truth-seeking individual, the Hearing
10 Officer will see that the appropriate answers are
11 acquired and incorporate them in the decision.

12 So, first, additional property of the
13 district. Jim Defore has, since its beginning, the
14 district-wide recharge value of one-half inch per
15 acre. This has prevailed through several
16 different -- you really did break it.

17 HEARING OFFICER BARFIELD: Try it again.

18 SCOTT ROSS: In any other calculation
19 for --

20 HEARING OFFICER BARFIELD: Just a second.
21 There must be a connection issue here. Why don't
22 you try mounting the mic so it doesn't go in and
23 out. Thank you.

24 SCOTT ROSS: The half-inch recharge has
25 prevailed throughout their computations of allowable

GMD4

1 depletions through safe yield.

2 And in 1987, the US Geological Survey
3 adopted their numbers for recharge across the state
4 of Kansas. And those numbers were later, in 1992,
5 adopted by the Division of Water Resources as part
6 of their safe yield calculations.

7 Those numbers indicate that the far
8 western counties are receiving something on the
9 order of a quarter of an inch, while the eastern
10 counties of the district are receiving a bit over an
11 inch -- excuse me. The western counties are
12 receiving a quarter of an inch; the eastern counties
13 are over one inch.

14 So my question is, if those water rights
15 established under safe yield and allowable depletion
16 were afforded excessive recharge in the west, but
17 deprived of the additional recharge in the east, how
18 can the entire district have a declining water
19 table? Either the USGS is wrong in their
20 determinations of recharge or the district has been
21 wrong in their assessment of decline. I am assuming
22 you will determine which that is.

23 The other point is the equitable and
24 uniform distribution of measurement points that are
25 included in the determination of drawdown or

GMD4

1 declines.

2 In 1980, the Division of Water Resources
3 required that water level measurement tubes be
4 installed on all new points of diversion and have
5 continued that process since then.

6 My question is, what effort has been made
7 to compile a list of wells in the district that are
8 required to have water level measurement tubes, has
9 that list been used to improve the water level
10 measurement network? Has current water level
11 database been compared to the High Plains basal map
12 that was developed during the initial high priority
13 move by the district to provide section level data
14 on the basement of the Ogallala. And have any
15 efforts been made to incorporate all of this
16 additional data into the water level management
17 network?

18 What efforts have been made by the
19 district to collect or monitor wells independently
20 of the KGS and the Division of Water Resources?

21 Is the current water level data network
22 consistent and uniform enough to make decisions
23 regarding the district on a section level basis?

24 I am concerned about the physical impacts.
25 I understand from testimony this morning that some

GMD4

1 minimal efforts have been made, but I am concerned
2 that if land values are based on productivity and
3 productivity is based on a degree of irrigation
4 versus dryland, doesn't it stand to reason that more
5 water availability will result in lower land values?
6 If such is the case, will lower land values lead to
7 a lower tax base, ultimately resulting in a lower
8 tax and changes in the tax base, which will
9 adversely impact schools, cities, hospitals,
10 counties and eventually perhaps even the state of
11 Kansas?

12 And would these lower appraised values,
13 along with lower revenue streams, impact those
14 citizens, and how will they impact those citizens
15 who don't even get to vote in a district election?

16 Next is the equity of those water rights
17 being protected under K.S.A. 82a-718 Subsections D
18 and E. They seem to be left out in the cold. They
19 don't receive an allocation if they haven't been
20 used since 2009. Under this proposal, only the
21 irrigation rights are subject to limitations.

22 What consideration is afforded to those
23 that have been engaged in water conservation under
24 these programs of water conservation plans, WRCP
25 contracts and even changes that have been made to

GMD4

1 82a-718 under Subsection E, protecting those water
2 rights from abandonment?

3 And finally in this area, what opportunity
4 do those have who are not irrigators to speak as
5 regards to their impact or the impacts of LEMA on
6 their way of life?

7 Whose problem is being solved with this
8 LEMA? We have seen from this morning's testimony
9 that there have been declines. We agree -- most of
10 us will agree there have been declines. Those
11 declines are subject to review in terms of their
12 actual accuracy. But we don't seem to be setting
13 out to solve the problem; we just -- this is like
14 putting a Band-Aid on a busted leg.

15 How will those in Sherman and Graham
16 County, who have no declining static water levels,
17 benefit from being placed under the shadow of the
18 LEMA? Will their bankers and county appraisers take
19 that into consideration?

20 And, finally, what analysis of the
21 established high priority areas illustrates that the
22 proposed LEMAs will address their problems?

23 And finally, and perhaps most important of
24 all, I would ask you to recall the LEMA process was
25 originally designed to allow a group of courageous

GMD4

1 individuals to put their -- put in place their own
2 restrictions with the goal of preserving their own
3 way of life. When did that happen with this LEMA?

4 Thank you.

5 HEARING OFFICER BARFIELD: All right. I
6 guess, Scott, just before you leave, the parties
7 don't have cross-examine [sic] but, you know, I and
8 they have the opportunity to maybe ask clarifying
9 questions, if the testimony is not fully understood
10 just, again, to make sure we --

11 SCOTT ROSS: At your service.

12 HEARING OFFICER BARFIELD: -- understand
13 your testimony.

14 I guess I have actually got a written copy
15 of this. Do you want this entered in the record or
16 not?

17 SCOTT ROSS: You have my written testimony
18 that I want entered into the record. These are just
19 my verbal comments.

20 HEARING OFFICER BARFIELD: Right, okay.
21 So we will make sure that is made a part of the
22 record.

23 I guess for my part, I don't think I have
24 any specific questions for you. You raised a number
25 of questions. I guess, are you for or against it,

GMD4

1 maybe is the question?

2 SCOTT ROSS: As a general matter, I am in
3 favor of LEMAs. I am in favor of the way LEMAs were
4 originally designed, as a ground-up opportunity for
5 locals to have impact on their situation.

6 I am not in favor of district-wide LEMAs.
7 I think they are too broad based. I don't think
8 they adequately represent individuals or their
9 individual situations. Candidly, I don't think they
10 solve too many problems.

11 HEARING OFFICER BARFIELD: All right.
12 That helps. Mr. Traster, do you have any clarifying
13 questions about Mr. Ross's testimony?

14 MR. TRASTER: Yeah.

15 Just generally, I am interested in this
16 idea that you said how it was originally designed,
17 because I have heard that too.

18 Can you give us -- fill in some blanks
19 there? What was the -- how was it originally
20 intended, if you know, if you were involved in that
21 process? I would like to flesh that out a little
22 bit.

23 SCOTT ROSS: Okay. Well, it has been a
24 while ago and, you know, us elderly folks may
25 struggle a bit.

GMD4

1 After the original Mack and Tack [phon]
2 Reports that were published, I believe, in the early
3 2000s, Management District No. 4 embarked on the
4 process that was outlined to determine, based on the
5 best ability of the scientific data high priority
6 areas, those areas who were struggling with severe
7 declines and were in need of regulation or help, for
8 lack of a better term.

9 Groundwater Management District No. 4
10 followed the process, developed six high priority
11 areas. Meetings were held in each one of those.
12 This was not done lightly. It was a lot of work, a
13 lot of input by the board, a lot of input by the
14 staff. Analysis of both groundwater level trends.
15 There was a lot of work done to -- it was called
16 "tenting". That was a process used by the Kansas
17 Geological Survey to balance or sort of smooth out
18 those curves rather than putting them on strict
19 political boundaries, section lines, township lines.

20 Ultimately, after holding meetings in each
21 one of those -- by the way, each one of those high
22 priority areas, those that attended, and they were
23 generally well attended, agreed something needed to
24 be done. They just -- in Sherman County, they
25 actually proposed that they cut everybody's use by

GMD4

1 50 percent, which I think shocked all of us. But
2 ultimately, they really lacked sort of the local
3 leadership to move those things forward.

4 In that process of discussing that,
5 Mitchell Baalman and Brent Rogers rose to the
6 occasion and, from my perspective at least, rather
7 loudly and perhaps forcefully challenged the board
8 to bring together those people in the Sheridan 6
9 area and begin a dialogue to discuss how they would
10 solve the problem. Mitchell simply wasn't going to
11 led it ride. This continued for several board
12 meetings.

13 They formulated a plan. They notified all
14 of the landowners and tenants in the area. I wasn't
15 involved in the early meetings, but I was advised
16 that some of those were relatively spirited
17 discussions regarding how to move forward.

18 Ultimately, after 25 or 30 meetings, that
19 group came together with a consensus, it certainly
20 wasn't unanimous, but a consensus of how they would
21 like to move forward with those 11-inch designations
22 over the five-year period of time. They wanted an
23 umbrella. They wanted the flexibility to move water
24 rights around if they got into trouble.

25 And after all of that work, they found

GMD4

1 themselves in a position where there was no legal
2 remedy to implement the process.

3 At that point, they came to the Division
4 of Water Resources and made the proposal. And in
5 through the Division of Water Resources and their
6 legal staff, the LEMA statutes were drafted and
7 ultimately shepherded through the legislative
8 process and put in place so that the very first
9 allocation period, I believe, was in 2012. That has
10 certainly demonstrated in my view great success, and
11 it was all due to those local gentlemen who were
12 willing to stand up and, you know, put their family
13 fortune and sacred honor on the line to get it done.
14 And I just don't see that happening in this process.

15 Did that answer your question?

16 MR. TRASTER: Well, for the record, we
17 need to know what your role was.

18 SCOTT ROSS: I was the water commissioner
19 for the Division of Water Resources. So I was
20 basically sitting on the sideline cheering them on.

21 MR. TRASTER: And when did you leave that
22 position?

23 SCOTT ROSS: I retired September 13th of
24 2013.

25 MR. TRASTER: So you were there during the

GMD4

1 development of all this and the passage of the LEMA,
2 so you have some background information?

3 SCOTT ROSS: Yes.

4 MR. TRASTER: No further questions.

5 HEARING OFFICER BARFIELD: Mr. Dees, do
6 you have any clarifying questions?

7 MR. DEES: Just a couple real quick.

8 Can you hear me okay?

9 THE REPORTER: Yes, sir.

10 MR. DEES: Mr. Ross, are you here as an
11 individual or are you here representing other folks?

12 SCOTT ROSS: I am here as an individual.
13 I don't represent anyone else.

14 MR. DEES: Okay. Great. And are you
15 familiar with the LEMA statute? I think you are; is
16 that correct?

17 SCOTT ROSS: Yeah, generally.

18 MR. DEES: Okay. And so the
19 recommendation in the LEMA statute needs to come
20 from the groundwater management district; is that
21 correct?

22 SCOTT ROSS: That is correct.

23 MR. DEES: Okay. And in your written
24 testimony you note that the total economic impact
25 has not been evaluated in talking about the

GMD4

1 Sheridan 6 high priority area, correct?

2 SCOTT ROSS: That is my perception, yes.

3 MR. DEES: But it appears that the water
4 levels in that area have stabilized; is that
5 correct?

6 SCOTT ROSS: That is my understanding,
7 yes.

8 MR. DEES: Okay. And no immediate
9 evidence suggests anything but good economic news,
10 correct?

11 SCOTT ROSS: Nothing that I heard.

12 MR. DEES: Okay. So the economic news at
13 this point is at least -- it is either positive or
14 at least maintaining; is that correct?

15 SCOTT ROSS: It's policies were neutral.

16 MR. DEES: Okay. I don't think I have any
17 more questions at this time.

18 HEARING OFFICER BARFIELD: All right.

19 Thank you. Mr. Oleen?

20 MR. OLEEN: No questions.

21 HEARING OFFICER BARFIELD: Thank you,
22 Mr. Ross, for your comments.

23 SCOTT ROSS: Thank you.

24 HEARING OFFICER BARFIELD: Next on the
25 list I have is Brent Rogers of Hoxie. Are you here?

GMD4

1 MR. DEES: He is part of our formal phase.
2 He is the president of the GMD.

3 HEARING OFFICER BARFIELD: I should
4 probably know that. Irene Siebert. Is that the
5 lady that made the comments?

6 Then Aaron Popelka is next.

7 THE REPORTER: Can you spell your last
8 name?

9 AARON POPELKA: Sure. It is Aaron,
10 A-A-R-O-N, Popelka, P-O-P-E-L-K-A.

11 I am the vice president of Legal and
12 Governmental Affairs for the Kansas Livestock
13 Association.

14 (Mr. Popelka was sworn.)

15 MR. POPELKA: I think to start off, just
16 to clarify, I am here representing our members who
17 live within the GMD boundaries and would own water
18 rights, both irrigation and stock water.

19 I think I would like to start off by --
20 and I think this was pointed out by the GMD manager
21 that less than one percent, he used the number
22 .05 percent, depending on the year it could be a
23 little more or a little less, but the point is it is
24 a very small fraction of water use where the
25 irrigation is closer to over 97, approaching 98

GMD4

1 percent of water use.

2 When we looked at this proposal, we had
3 some significant concerns when it came to the stock
4 water allocation. As it exists now -- and I will
5 say we have worked with the board in generating some
6 of their suggested changes. We may have a few
7 tweaks, but we generally agree with them. But just
8 to get it on the record, I want to explain the laws
9 that exist in the proposal and why we object to it.

10 As it exists now, the allocation for stock
11 water right is given either 76 percent or 85
12 percent, depending on the area where the water right
13 is located, of the maximum reasonable quantity for
14 livestock as set forth in K.A.R. 5-3-22 for beef
15 cattle that I am going to base most of my testimony
16 on, and that is 15 gallons per head per day. And
17 then that was taken times the maximum head supported
18 by the feedlot permit in effect on December 31st of
19 2015.

20 And it is really with that date, December
21 31st, 2015, I think that our first objections come
22 about.

23 We are now approaching close to two years
24 from that date and things have changed. For
25 instance, one of our members, Timmerman Feeding

GMD4

1 Corporation, has since engaged and began and now
2 should be nearing completion, if it is not done
3 already, an expansion. That expansion was based on
4 available water that was under their authorized
5 permit. And if the original proposal as in the
6 document that went out with the notice for the
7 hearing were to be finalized, they would be -- not
8 have sufficient water to water the cattle involved
9 in that expansion.

10 And I think that is -- and really what we
11 are looking at with any LEMA, allocation for stock
12 water. When you look at an acre of irrigated corn,
13 I can apply less water to a certain extent and,
14 using better management techniques, still raise
15 something from that acre of corn. If you apply less
16 water to a steer, that steer will die.

17 So our only remedy is to then cut the
18 number of head that populate that feedyard. So in a
19 situation where someone has expanded since the
20 December 31st, 2015 date, they have now lost a
21 significant amount of their investment or are faced
22 with buying a water right in a captive market.

23 In addition, I think it is also important
24 to point out that even though, for instance,
25 Timmerman Feeding Corp. is in the 85 percent

GMD4

1 reduction -- or 83 percent of their beneficial use
2 calculation, that is actually not a cut to the water
3 right. If you look at the documents put out by the
4 GMD, their total authorized quantity is
5 336 acre-feet. But under the LEMA account
6 calculation, which again is based on a head count
7 from December 2015, they get 257 acre-feet. That is
8 actually -- it is not a 15 percent reduction, as the
9 document might suggest, it is actually 23. It is
10 hard to tell exactly why that might happen, but
11 it -- I would surmise that it would have to do with
12 head count being reduced potentially from
13 environmental regulations from the time the water
14 right was perfected. So December 2015, there were
15 less head than when it was perfected.

16 The second problem with the language is
17 that it just says based on the operating permit.
18 For those who may not be familiar, if you operate a
19 feedyard you actually have two permits from the
20 state of Kansas. One is from the Kansas Department
21 of Health and Environment for water pollution
22 control and the other is from the Department of Ag,
23 Division of Animal Health. Typically these permits
24 have different numbers.

25 The KDHE permit, they are going to want to

GMD4

1 push to as high as you can get for the amount of
2 pens that you have, and the health permit is annual
3 and you are going to want to push it as low as you
4 can get it based on the number of cattle you think
5 you will have because it is more expensive. So the
6 language on its face leaves us wondering which
7 permit is meant.

8 The other thing I would like to raise is
9 stock water is considered a non-irrigation use when
10 you look at the document. And the other
11 non-irrigation uses, municipal and industrial, are
12 essentially relegated in this document to
13 utilization of best management practices; whereas,
14 in the original document, stock water is given a
15 hard allocation that reduces available water.

16 It would be our contention that if we are
17 going to have differences based on irrigation and
18 non-irrigation, that all rights use -- utilize best
19 management practices.

20 I am aware that the GMD has proposed some
21 language that suggests feedyards being -- or stock
22 water uses being encouraged to maintain their use at
23 90 percent of the K.A.R. 5-3-22. While that, I
24 think, would work because it is not a mandatory
25 reduction, we would suggest the better way, the

GMD4

1 cleaner way to do this is to make it consistent with
2 the other non-irrigation rights is to simply delete
3 Section 2, Paragraph A, which is a reference to
4 stock water, and then rely on the previous portion
5 of that paragraph that simply says non-irrigation
6 rights are to utilize the best management practices.

7 The next portion I would like to bring up,
8 and it was also brought up by Mr. Luhman, deals with
9 the conversion formula from irrigation to
10 non-irrigation use.

11 Currently, the LEMA document put out for
12 notice says when converting irrigation to
13 non-irrigation, the most restrictive of the LEMA
14 allocations and GMD regulations were converted and
15 outlined in K.A.R. 5-5-9, were used to determine
16 conversion allocation amount.

17 That alone is confusing as to how exactly
18 that might be applied. But more concerningly, it
19 violates the Water Appropriation Act for changes in
20 use. Changes in use of a type are governed under
21 82a -- K.S.A. 82a-708 (b). And that has some very
22 specific requirements. But mostly the change is you
23 have to file an application with the Chief, and it
24 is for any owner of a water right may change a place
25 of use for the point of diversion over the use of

GMD4

1 native [phon] water without losing priority of
2 right.

3 And it also goes on to limit the authority
4 of the Chief in accordance with the procedures,
5 provisions and procedures prescribed from processing
6 original applications or permission of [inaudible]
7 water.

8 By putting in the LEMA document the
9 paragraph that is in there now, it essentially tries
10 to apply a non-temporary change to what the statute
11 requires be a permanent change in the water right
12 status.

13 And if you look at the LEMA document
14 itself, it says the basic water right will not be
15 altered by an order and that the LEMA shall exist
16 only for a five-year period. And so while the LEMA
17 may apply some allocation to a type of use, if a
18 water right owner applies for a change in the base
19 water right, that is governed under the Water
20 Appropriation's Act, 708(b) in the accompanying
21 regulations.

22 So -- and I believe the GMD, for the most
23 part, has adopted or is suggesting the same
24 language. We are suggesting one difference. Our
25 language says when converting irrigation and

GMD4

1 non-irrigation, the base water right will be
2 converted under the procedures in 5-5-9 and 5-5-10
3 and then the appropriate non-irrigation LEMA
4 allocation in Paragraph 2 will apply for the
5 remainder of the LEMA period.

6 I think the only difference between our
7 suggestion and GMD's suggestion is they suggest
8 that -- unless they have their own regs. We think
9 the DWR statewide regs that were just recently
10 adopted should be applied statewide, and so our
11 suggestion is it is not put in, or any other reg the
12 GMD may have.

13 The final point I would want to raise at
14 this point is on the irrigation allocations
15 themselves. If you look at the document, it bases
16 the irrigation water rights according to the maximum
17 reported and/or verified acres for years 2009
18 through 2015.

19 As that is written, this will unfairly
20 penalize some producers who chose to conserve water
21 by not irrigating a certain amount of their
22 authorized acres.

23 By not recognizing this situation where
24 this occurs, the GMD is not giving due consideration
25 to water management or conservation measures

GMD4

1 previously implemented. And that is required in two
2 places in the law; K.S.A. 82a-744 and in the LEMA
3 statute itself, K.S.A. 82a-1041(a)(4).

4 For instance, I am aware of a landowner in
5 the district who has three quarters authorized under
6 one water right; one has a pivot, two flood
7 irrigated. Due to the situation with some labor
8 shortages, only the pivot was run. And under this
9 formula, only enough water to water one of those
10 circles would go forward, despite the well testing
11 well over 900 gallons a minute. This clearly is an
12 inequitable situation that is not addressed by the
13 current formula. There is no consideration given to
14 the amount of water saved voluntarily and would
15 maintain that unless it is corrected, that it would
16 violate state statute.

17 Our suggestion is that whether the Chief
18 recommends this himself or the GMD, or recommends
19 that the GMD re-look at it and have another hearing,
20 is that rather than the system we have now based on
21 verified acres, that we look at the actual percent
22 reduction for the authorized quantity of water.
23 Because at the end of the day, that is the actual
24 property right that is being considered and that is
25 the best way, I think, to look at dealing with

GMD4

1 property rights and also some of these issues with
2 conservation of water.

3 So with that, I think I will stop and
4 simply ask at this point -- again, I want to
5 reiterate the GMD's suggestions on the stock water
6 allocation and conversion; we are willing to live
7 with it, but we would -- and this is in written
8 testimony I also submitted. We would prefer our
9 language. We think it is more technically accurate
10 and a little cleaner.

11 And on the irrigation component, I think
12 some changes need to be made in order to fully
13 comply with the statutes. So I will stand for any
14 questions you might have.

15 HEARING OFFICER BARFIELD: And I just have
16 one. I think your testimony is pretty clear.

17 On that last example, you know, the
18 irrigation, you know, the LEMA process has an appeal
19 process where they could sort of bring that issue to
20 the GMD for dealing with that; isn't that correct?

21 AARON POPELKA: That is true. However, in
22 conversations with Mr. Luhman, he said that he
23 didn't think this board would be inclined to help
24 this gentleman out.

25 HEARING OFFICER BARFIELD: All right.

GMD4

1 Okay. Well, that is the only question I have.
2 Mr. Traster?

3 MR. TRASTER: No questions.

4 HEARING OFFICER BARFIELD: Mr. Dees?

5 MR. DEES: None.

6 HEARING OFFICER BARFIELD: Mr. Oleen?

7 MR. OLEEN: No.

8 HEARING OFFICER BARFIELD: All right.

9 Thank you very much. Okay. Jerry Binning of
10 McDonald. I may have the name wrong.

11 JERRY BINNING: You got it right.

12 HEARING OFFICER BARFIELD: Okay.

13 THE REPORTER: Can you spell your name for
14 me, sir?

15 JERRY BINNING: J-E-R-R-Y, B-I-N-N-I-N-G.

16 (Mr. Binning was sworn.)

17 JERRY BINNING: I live in McDonald in
18 Rawlins County. I just have a problem. I won't
19 take up near the time these other gentlemen did, I
20 hope.

21 But anyway, I have just got a problem with
22 where the lines are drawn in Rawlins County on the
23 east side of the GMD. They have got a little sliver
24 there going right down our road. And my neighbor
25 has water wells on the east side and I have them on

GMD4

1 the west side. And I had the state come in there
2 and analyze the water there for depletion -- for
3 hampering my water right impairment. And the state
4 has told me that he is hampering my water rights
5 from five to 12 percent. And I was just wondering
6 why I am going to -- the GMD is going to nail me for
7 more impairment on the -- on their deal and my
8 neighbor is not going to be in there. That was just
9 my opinion why that little sliver there, he wasn't
10 included in there with the rest of us. Because
11 there is no other wells on east of where we are at,
12 and south of us there is no wells for quite a ways.
13 So I thank you for your time.

14 HEARING OFFICER BARFIELD: So are you
15 within the Groundwater Management District?

16 JERRY BINNING: Yes, sir.

17 HEARING OFFICER BARFIELD: Okay. But your
18 neighbor is not?

19 JERRY BINNING: No, he is in the
20 Groundwater Management District.

21 HEARING OFFICER BARFIELD: He is within
22 the GMD?

23 JERRY BINNING: Yes.

24 HEARING OFFICER BARFIELD: Okay. But he
25 is within a different color on the map?

GMD4

1 JERRY BINNING: Right, yes.

2 HEARING OFFICER BARFIELD: But you are
3 restricted and he is not?

4 JERRY BINNING: Right.

5 HEARING OFFICER BARFIELD: Okay. Thank
6 you. Does anybody have any further questions?

7 MR. TRASTER: No questions.

8 MR. DEES: No.

9 MR. OLEEN: No.

10 HEARING OFFICER BARFIELD: All right.
11 Thank you very much.

12 Nathan Emig from Goodland? Sorry if I --

13 NATHAN EMIG: I just have written
14 testimony.

15 HEARING OFFICER BARFIELD: Oh, I am sorry.
16 That is correct. Thank you

17 Mr. Friesen. Mr. Traster, is he going to
18 be part of your --

19 MR. TRASTER: Yes, sir.

20 HEARING OFFICER BARFIELD: Very good.
21 Brent Meeden [sic] from Quinter?

22 UNKNOWN SPEAKER: Meranda.

23 HEARING OFFICER BARFIELD: That is
24 probably right.

25 UNKNOWN SPEAKER: He had to go.

GMD4

1 HEARING OFFICER BARFIELD: Okay. So he is
2 not here. All right. Larry Schaefer? Oh, Shultze.
3 Are you present? Apparently not. Well, that is all
4 I have.

5 Is there anyone else who -- maybe I have
6 missed that would like to make any public comments?

7 JACE MOSBARGER: I think I would.

8 HEARING OFFICER BARFIELD: Please come
9 forward. Your name, sir?

10 JACE MOSBARGER: Jace Mosbarger.

11 (Mr. Mosbarger was sworn.)

12 JACE MOSBARGER: My address is 331
13 Cottonwood Road, Goodland, Kansas 67735. So I am
14 just going to read a little bit here of what I wrote
15 after some questions by Mr. Dees about the economic
16 issues.

17 Pertaining to Sheridan 6 as being stable
18 and then implying that the trend would be carried
19 over to the entire district, I believe, is a
20 stretch. As a farmer and a rancher in the district,
21 I can speak with much confidence that our economic
22 engine has a very different set of factors from
23 Sheridan 6. So far those worth mentioning are crop
24 options and viable planting dates.

25 Weather patterns force us to drill our

GMD4

1 wheat in the west before harvesting corn. This
2 hampers our ability to rotate insurgent crops that
3 would allow us to achieve the profitability levels
4 they can just 60 miles east of us.

5 Forty-five miles to our east, it has been
6 common practice for many generations to harvest corn
7 and then drill our wheat, like I said, allowing them
8 crop options.

9 We are unable to effectively reach the
10 dairy and feeder cattle market located 90 miles to
11 our east that sits right out their back door. This
12 limits our possibility of certain crop options
13 drastically.

14 Furthermore, rainfall intensity is not
15 considered on the allocation map that we have seen
16 throughout this whole deal. The variance from
17 county to county is rather small on the allocations
18 because the yearly precipitation does not vary as
19 much as we would think.

20 However, in the west we historically
21 receive a larger portion of the annual precipitation
22 snow, which favors winter wheat farming, which at
23 the moment, once you reach the negative cause of
24 production. Or each of our neighbors receives a
25 larger amount of their moisture as summer rainfall.

GMD4

1 This allows corn, milo and other feed soft
2 production. It also lines in with the market that
3 they share.

4 So I guess briefly, my biggest concern
5 with this whole idea is that the study is over 10
6 years old [inaudible] many times as encompassing the
7 entire district as a whole, but I feel that it was a
8 very micro-climate study that is now outdated and
9 pushing 10 years old.

10 As a concerned citizen, I would like a
11 renewed interest and a new current study
12 encompassing the entire district as a whole before
13 we enact legislation to -- that will affect all of
14 us. That was all.

15 HEARING OFFICER BARFIELD: Okay. Thank
16 you. I don't have any questions.

17 MR. TRASTER: No questions.

18 MR. DEES: No.

19 MR. OLEEN: No.

20 HEARING OFFICER BARFIELD: All right.
21 Thank you for your testimony.

22 So is there anyone else who would like to
23 make a public comment? Come on forward, please.

24 THE REPORTER: Your name, sir?

25 MIKE MCKENNA: Mike McKenna.

GMD4

1 (Mr. McKenna was sworn.)

2 HEARING OFFICER BARFIELD: If you could
3 tell us your address and a little bit about
4 yourself.

5 MIKE MCKENNA: You bet. Good afternoon.
6 My name is Mike McKenna. I live at Jennings, Kansas
7 in Decatur County, which neighbors Sheridan County.
8 And, by the way, I came here with full intentions of
9 listening through the entire day and coming back
10 tomorrow to make my comments. But I understand that
11 this hearing is a project in motion, and so I
12 appreciate having the opportunity to address you.
13 And, please, I apologize if I am not very well
14 organized.

15 My wife and I own ground that is in the
16 GMD4, but I am not an irrigator. I have dryland
17 ground and pasture. But I do represent today a
18 client that is a landowner in GMD4, which is
19 irrigated, and I am here to express our concerns
20 about the proposed LEMA.

21 Many of the concerns are similar concerns
22 that you have already heard. A lack of data. Scott
23 Ross gave a perfect example of where we could obtain
24 additional data. Because I have helped a client
25 re-drill a well and we had to put in a measure tube.

GMD4

1 You know, all it required is some additional labor
2 work, measuring a couple of more wells. And we are
3 in an area where -- I don't believe any of the
4 measurement wells are in our township.

5 I became interested and involved in
6 watching the development of the LEMA at the
7 encouragement of my client. I attended
8 informational meetings in Hoxie and I have attended
9 some of the GMD4 board meetings held in Colby.

10 In 1990, I prepared a map of Sheridan
11 County noting where the water rights were at. And
12 it has been my contention all along, based on that
13 data, that a lot of the problems were due to
14 concentration; concentration of water rights,
15 concentration of wells.

16 If you look at the Sheridan 6 out west of
17 Hoxie, a lot of those sections have four wells on
18 it. So it is a matter of concentration. And I
19 still believe that if you have got more straws
20 drinking out of the same cup, you are going to use
21 more water.

22 Probably the most important issue that I
23 feel that you are going have to deal with today is
24 what is happening to this property right. And the
25 KOA -- excuse me, the KLA representative gave a

GMD4

1 perfect example, and I thank him for that. His
2 customer has a water right that entitled him to
3 water 480 acres. That property had one center pivot
4 and two quarters of flood irrigation. He chose, for
5 whatever reason -- I believe he probably chose to
6 conserve water, he was only running water through
7 the sprinkler. Under the current guidelines of the
8 proposed LEMA, that is all the water that he is
9 going to get.

10 So what have we got to do? We are going
11 to farm -- that man is probably going to farm those
12 two quarters of flood irrigation dryland. And so --
13 oh, and by the way, I forgot to tell you that I am a
14 licensed appraiser working for customers throughout
15 Western Kansas, and it is my job to estimate land
16 values. Some would say I am still practicing, but
17 that is the way it is.

18 But if that man is no longer -- does no
19 longer have that property right, which is the
20 irrigation water plan, then some in my profession
21 would say the sprinkler irrigated quarter is
22 probably irrigated ground, the two quarters that can
23 no longer have water applied to it are something
24 less than irrigated property.

25 And so basically you have taken the real

GMD4

1 property from that individual. And it has always
2 been my understanding if you take a right from a
3 person, they are entitled to just compensation. And
4 I think that is a perfect example of taking without
5 just compensation.

6 With that, I would close and address any
7 questions that you may have.

8 HEARING OFFICER BARFIELD: All right.
9 Thank you very much. I don't have any questions.

10 MR. TRASTER: No questions.

11 MR. DEES: Really quick, Mr. McKenna, if
12 you are comfortable.

13 You say that you are here representing
14 someone; is that correct?

15 MIKE MCKENNA: Yes.

16 MR. DEES: Who is that?

17 MIKE MCKENNA: I -- I represent the A.L.
18 Abercrombie Marital Trust out of Wichita, Kansas.

19 MR. DEES: Thank you.

20 HEARING OFFICER BARFIELD: All right.
21 Anything else? All right. Very good. Thank you
22 very much.

23 Would anyone else like to make a public
24 comment at this point?

25 BRIAN BAALMAN: Yes.

GMD4

1 HEARING OFFICER BARFIELD: Yes. Come
2 forward, please. If you could start with your name
3 and address.

4 BRIAN BAALMAN: I am in Menlo, Kansas. I
5 am a farmer --

6 HEARING OFFICER BARFIELD: I would like
7 the court reporter to swear you in.

8 (Mr. Baalman was sworn.)

9 HEARING OFFICER BARFIELD: Thank you, sir.

10 BRIAN BAALMAN: I would like to speak
11 maybe in opposition to Mike's testimony there.

12 I have three quarters also with one well.
13 But, you know, I put -- I got three pivots there. I
14 only run one pivot. I can't -- I don't have enough
15 water to run three pivots and I am -- I would almost
16 probably say that that fellow does too, or he has
17 just elected not to pump.

18 But I know I have taken full depreciation
19 from pivots, wire, pipe. I have built my home on
20 this section. And it is just the way it is; we have
21 lost the water. So there is them scenarios out
22 there.

23 And I am not in the Sheridan 6. I border
24 it. I have basically learned to practice -- or
25 learned to live without water. I have an example

GMD4

1 this year. Of course, this year was an anomaly. We
2 have -- I have a licensed feedyard, a 10,000-head
3 feedyard. I am kind of neighbors to Timmerman. I
4 also have ownership in two other feedyards in
5 Groundwater Management District 1.

6 And water, to me, has become relative.
7 You know, if you are going to want water for
8 whatever purpose it is going to be -- and I also
9 have property in Idaho and I have learned to deal
10 with how that works up there. It is -- whether you
11 are at the end of the canal, you got free water, or
12 you are pumping out of a pipe and you are
13 repressurizing and paying the irrigation district
14 for the water, repressurizing it, there is a cost to
15 it all. But we have learned to deal with less water
16 in my area, and I border Sheridan 6.

17 And as far as the stock water deal, it is
18 a problem because I thought about expanding on my
19 feedyard and that would be a problem. But I know I
20 would have to give up irrigation, which I have on
21 myself there beside it to do it. And I have
22 experienced that in Groundwater Management
23 District 1. It is relative. You are going to have
24 to buy it, if you don't have it. That is all I
25 got.

GMD4

1 HEARING OFFICER BARFIELD: All right. Any
2 clarifying questions?

3 MR. TRASTER: No questions.

4 MR. DEES: No.

5 MR. OLEEN: No.

6 HEARING OFFICER BARFIELD: All right.

7 Thank you for your comment.

8 Would anyone else like to make a public
9 comment? Yes, sir.

10 THE REPORTER: Your name, sir?

11 KENT VOORHIES: Kent Voorhies.

12 THE REPORTER: Can you spell your last
13 name?

14 KENT VOORHIES: V, as in Victor,
15 O-O-R-H-I-E-S.

16 (Mr. Voorhies was sworn.)

17 KENT VOORHIES: My concern is -- or the
18 concern of this whole deal is the sustainability of
19 the Ogallala. And basically the LEMA is put in
20 place for this very thing.

21 I think at the latest brochure or pamphlet
22 put out by District Management No. 4 [sic], there
23 was a plan to reduce pumping by a 95 percent factor,
24 if that is correct, to help sustain across the board
25 as far as commercial irrigation goes. Is there any

GMD4

1 truth to that?

2 HEARING OFFICER BARFIELD: Are you asking
3 me?

4 KENT VOORHIES: Yes.

5 HEARING OFFICER BARFIELD: Well, that is
6 not exactly how the deal is structured. They
7 basically provide for allocations based on the
8 amount of depletion. So the townships that are
9 going down more rapidly have a lesser allocation
10 than those that aren't -- don't have a reduction.
11 So --

12 KENT VOORHIES: Well, that is kind of
13 interesting because the brochure put out by District
14 No. 4, I think I am in that district, was that there
15 would have to be -- to make the sustainability
16 factor, there would have to be a reduction over
17 all -- over all pumping. Am I completely off base
18 here?

19 HEARING OFFICER BARFIELD: Well, I guess I
20 can't speak to -- without seeing that information --

21 KENT VOORHIES: Okay. I can bring it to
22 you.

23 HEARING OFFICER BARFIELD: Okay. There is
24 an opportunity for written comments. You could
25 present that brochure with your additional

GMD4

1 testimony. That would be fine.

2 KENT VOORHIES: I should have brought it
3 in. All right. Thank you.

4 HEARING OFFICER BARFIELD: Thank you. Any
5 questions?

6 MR. TRASTER: No.

7 MR. DEES: No.

8 MR. OLEEN: No.

9 HEARING OFFICER BARFIELD: All right.
10 Thank you. Yes, please come on forward.

11 THE REPORTER: Your name, sir?

12 STEVE ZIEGELMEIER: I am Steve
13 Ziegelmeier, Z-I-E-G-E-L-M-E-I-E-R.

14 (Mr. Ziegelmeier was sworn.)

15 STEVE ZIEGELMEIER: I am going to give you
16 a little bit of opinion and probably a couple of
17 questions.

18 I do not expect an answer obviously today,
19 but maybe something for our crowd to think about. I
20 realize there is people on both sides of this issue.
21 I want to start with -- I went to a funeral
22 yesterday of a World War II veteran. That was
23 probably a more pleasant experience than it is
24 today. But he was a World War II veteran who flew
25 off of aircraft carriers and he is a great American

GMD4

1 hero. And I just want to appreciate for a moment
2 the fact that we can have this discussion and this
3 process in the democratic way. And I think we need
4 to remember that; that no matter what side of this
5 issue you are on, it is a privilege to live in this
6 country and be able to have this discussion. And
7 almost a paradox to that, I can understand why
8 nothing gets done in Washington.

9 I have a couple of questions I will ask.
10 And one is: Does this LEMA do away with the current
11 law, which is basically senior water right first in
12 time, first in right? Does it do away with that?
13 If so, is it only for five years and at the end of
14 this five years is it back to the way it was? That
15 is just a question I might have.

16 Because if we don't have a LEMA, the
17 current law, as I understand it, is that if someone
18 files an impairment claim, then the Chief officer,
19 Chief water officer, has the right to take action.
20 And it is not with input from the board necessarily,
21 it is what needs to be done to correct that problem.
22 That is the law, if I understand it, currently and
23 anyone in this room who feels that they have an
24 impaired water right could do that. Right or wrong,
25 I believe that is correct.

GMD4

1 So there is a process already in place.
2 Sucking it dry is not an option, in my opinion, but
3 I believe this is what concerns me. As I listened
4 earlier to testimony and the question was asked by,
5 I believe, Mr. Traster. He said I believe we all
6 are in agreement that we need to conserve.
7 Conservation is where we need to head.

8 I am disturbed by that in a couple of ways
9 because I have had people personally tell me, let's
10 just suck it dry. Maybe you know some folks. To me
11 that is not an option. My kids are the sixth
12 generation to be raised on this land. Sucking it
13 dry is not an option. But I believe to make a
14 blanket statement saying that we all are in this
15 together is incorrect. Whatever reason, whether it
16 is an outside landlord who is in it just for some
17 money and realizes just -- let's just suck it dry
18 and see what happens in the next 20 years, whether
19 it is someone who has no connection to the land and
20 won't be here, maybe because they don't have kids
21 that will stay in this area, I don't know. But it
22 scares me to death that that is some people's
23 thoughts. And I know that exists. I have had
24 people tell me that. And it might surprise you
25 those people who had that opinion.

GMD4

1 If you don't believe we can suck it dry,
2 just take a trip to Leoti. Go down to some of the
3 other districts where they are dealing with no
4 water. And I am not talking about no water to
5 irrigate. I am talking about house wells that are
6 dry.

7 So I guess I just want to challenge some
8 thoughts today, whether you are in opposition to
9 this LEMA the way it is proposed. Again, it reminds
10 me a little bit of Washington, D.C., [inaudible] the
11 repeal and replace plan then. If this is what you
12 like, let's see what you want. And this process
13 isn't something that just started. This has been in
14 the works for years. My hats off to the board.
15 Those of you that have served on the board in the
16 past and present, to Ray, to all of those who have
17 worked on this process, because you are never going
18 to please everyone.

19 And whether the lines are drawn, I know it
20 has been argued today and I know there is a lot of
21 different feelings about this needs to be
22 district-wide, and maybe it does. Maybe we all
23 share in this together. Maybe this thing needs to
24 be by the section well. I know we have heard
25 testimony that, hey, why isn't it? Or whether it is

GMD4

1 township.

2 You know, I don't know what the right
3 answer is there. I know what seems maybe easiest to
4 implement, at least making more sense to me. But I
5 think we have to ask the real question: If we drag
6 our feet and continue to do so, are we willing to go
7 down the road like they are at Leoti, Kansas?

8 I think it is time that we get on the ball
9 and do something. I think that is all I have.

10 Thank you.

11 HEARING OFFICER BARFIELD: Any questions?

12 MR. TRASTER: No questions.

13 MR. DEES: No.

14 MR. OLEEN: No.

15 HEARING OFFICER BARFIELD: Seeing none,
16 thank you very much. All right. Anyone else?
17 Okay. Seeing none, we are going to switch back to
18 the formal stage as we started. But I will -- when
19 we conclude the formal stage, I will ask again if
20 anybody wants to make a statement or even to
21 supplement your statement based upon anything you
22 have heard. All right.

23 With that, I would call Mr. Luhman back
24 and invite Mr. Traster to continue his cross
25 examination.

GMD4

1 MR. TRASTER: I would move for the
2 admission of Exhibits D through G.

3 HEARING OFFICER BARFIELD: Yes. Exhibits
4 D through G are admitted. I assume there is no
5 objection of the parties to D through G?

6 MR. DEES: I am sorry?

7 HEARING OFFICER BARFIELD: Mr. Traster
8 wants to include D through G in the record. I guess
9 I am just affirming that there is no objection.

10 MR. DEES: Yes. No, there is no
11 objection.

12 MR. OLEEN: So long as it is clear that he
13 created them, no.

14 HEARING OFFICER BARFIELD: Right. That is
15 recorded in the record.

16 CONTINUED CROSS EXAMINATION

17 BY MR. TRASTER:

18 Q Mr. Luhman, I will remind you you are under still
19 under oath.

20 Where did the 1.7 million acre-feet come
21 from and how was that treated?

22 A That was a calculation that I ran. Basically I took
23 the reported average from the wells or groups of
24 wells, and then I also took what their allocation
25 would be. And I said, okay, what is the amount of

GMD4

1 water that would be pumped if they pumped either
2 their LEMA allocation or their average use from '09
3 through '15, whichever was less, and totaled up that
4 column.

5 Q Okay. So by "the allocation", you are talking about
6 the allocation --

7 A Uh-huh, the proposed LEMA allocation.

8 Q Okay. So the 1.7 came after the allocation?

9 A Yes. Yeah.

10 Q Is that fair?

11 A Yeah. We did the process and then came up with the
12 number.

13 Q Okay. So -- and how did you break down the
14 percentages or what basis did you use to break down
15 zero to a half percent, half to one, one to two and
16 above two?

17 A There again, that was on the -- using the KGS
18 section level data and combining that data for a
19 township.

20 Q But how did you choose those breaking points?

21 A Oh, as far as those actual points?

22 Q Yes.

23 A Originally we had had it zero and then zero to one
24 and then one to two. And our board of directors
25 just felt that there needed to be some break between

GMD4

1 the zero and the one is a fact that decline rates at
2 that lower portion -- you know, barely over zero
3 probably were not that significant, but something
4 above that would be. So that was a board decision.

5 (Marked Exhibit H.)

6 Q (BY MR. TRASTER) Okay. That is helpful. Thank
7 you. I am going to hand you several exhibits. And
8 I have got that formula from -- this is Exhibit H, I
9 think. Yeah, Exhibit H. And the formula is on the
10 screen.

11 But is that -- I mean, that is the formula
12 I used to determine the reduction in the quantity --
13 the percentage reduction. Is that the same formula
14 that you used?

15 A I don't think this is the formula that I used. In
16 fact, again we established the allocation amount
17 based on the zones, as we discussed this morning,
18 and then established that for each township
19 depending on its color and which zone it resided in.
20 And then that was just an amount, as you can see --
21 or could see from the old -- from our folded map.
22 And then we just took that amount times the reported
23 acres, maximum reported acres, 2009 through 2015.

24 Q Well, what this -- I am going to switch gears on you
25 a little bit here. I am asking about how you

GMD4

1 calculated the annual rate of decline starting --
2 you start with --

3 A Oh, okay. I am sorry --

4 THE REPORTER: Y'all are talking over each
5 other.

6 A Okay. I get you. I know what you are talking about
7 now. Yeah. I think that would be a fairly accurate
8 formula on how I determined annual decline rate.

9 Q Okay. So --

10 A You know, for clarification, basically what I did
11 was I took the saturated thickness in 2015, I took
12 saturated thickness in 2004. I determined what that
13 difference was, then I divided that by the saturated
14 thickness in 2004 and that came up with a gross
15 decline over that period of time. And then I
16 divided that by 11 years to come up with an annual
17 decline.

18 Q Okay. So it was a little bit different formula.
19 You just took how much was -- how much was the
20 decline over 11 years and divided by 11?

21 A Right, yeah. I took the 11-year decline and then I
22 come up with the annual decline and just divided it
23 by 11. I think your formula would come up with the
24 same thing, I think.

25 Q It comes up close, but it didn't -- you know, it

GMD4

1 depends on how many decimal points you want to go
2 out. Okay.

3 So, for the record, Exhibit H contains the
4 formula I used, for what it is worth, right or
5 wrong.

6 HEARING OFFICER BARFIELD: Okay. And it
7 is Mr. Luhman's testimony it is not what he used
8 precisely?

9 MR. TRASTER: Yeah, that is what I am
10 hearing.

11 HEARING OFFICER BARFIELD: Right.

12 (Marked Exhibit I, Exhibit J, Exhibit K
13 and Exhibit L.)

14 Q (BY MR. TRASTER) Okay. So I also handed you
15 Exhibits I, J, K and L and I will represent to you
16 that those are from the spreadsheet that I prepared
17 that is the basis for the maps. And what I did is
18 in each section, that I put the color in the -- on
19 that far last column to say -- you know, I just
20 would point out all I am showing is that there are
21 at least those four representative townships that
22 have variations, and it is back to this whole
23 question of fairness that I raised before lunch; the
24 idea that it is not fair for water rights in
25 townships with highly variable percentages of

GMD4

1 depletion being lumped together. And I am just --
2 that is what they are worth. I am explaining what
3 they are and would ask that they be admitted.

4 HEARING OFFICER BARFIELD: I guess I need
5 a little help.

6 MR. TRASTER: Sure.

7 HEARING OFFICER BARFIELD: I understand
8 Exhibit I is the formula you used -- I am sorry,
9 not I. Exhibit H is the formula you used to
10 determine the rate of decline, right?

11 MR. TRASTER: The percentage rate, yes.

12 HEARING OFFICER BARFIELD: The percentage
13 rate of decline, which is not exactly the same, but
14 similar. So then these spreadsheets, these are each
15 for a different township; is that right?

16 MR. TRASTER: Right.

17 HEARING OFFICER BARFIELD: Okay.
18 Representing your calculations then using the data
19 that Brownie Wilson provided, I presume?

20 MR. TRASTER: Correct.

21 HEARING OFFICER BARFIELD: And using the
22 formula to determine the rate of change and what
23 type of township then it would fall in?

24 MR. TRASTER: Each of those townships on
25 the GMD map are yellow. But I am showing you in the

GMD4

1 last column that there are -- that if you do those
2 section by section you will have some yellow, some
3 red, some blue, whatever the colors are.

4 HEARING OFFICER BARFIELD: Okay. I am
5 with you. So these are section calculations
6 illustrating the variation?

7 MR. TRASTER: The variation within the
8 townships. When I showed you the map of the whole
9 township -- of the whole district, there were
10 townships that had various -- everything is the
11 same, some that are different. This is sort of the
12 extreme example to follow along with that map.

13 HEARING OFFICER BARFIELD: Right. So this
14 is the math behind your math?

15 MR. TRASTER: Yes.

16 HEARING OFFICER BARFIELD: All right.
17 Thank you.

18 MR. TRASTER: For individual townships as
19 designated.

20 HEARING OFFICER BARFIELD: All right.
21 Thank you very much.

22 Q (BY MR. TRASTER) You have read Mr. -- well, you
23 read Brownie's testimony that he gave at the prior
24 hearing?

25 A Yes, I have.

GMD4

1 Q And it specifically says that Mr. Wilson provided
2 you with an Excel spreadsheet and GIS files with all
3 the sections coded and the bedrock in 2004, 2009
4 and 2015 water table elevations. And he says,
5 "Because the water table elevations are based on
6 interpolated surfaces from wells measured during
7 each time period, the change in water table between
8 those years and the saturated thickness can be
9 readily computed at the PLSS section level." You
10 recall that testimony?

11 A Right, yeah.

12 Q So the data is validated at the section level?

13 A It is calculated at the section level, yes.

14 Q And his -- okay. The water table between those
15 years and the saturated thickness can be readily
16 computed at the section level, and that is what
17 you -- that is the data you used?

18 A Yeah.

19 Q Very good. Thank you.

20 A Yeah, that is correct.

21 Q Now, if you do a -- if you have a section or a well
22 and you have got 10 feet of saturated thickness at
23 the beginning of a period and eight at the end, you
24 come up with a percent decline. And that is what
25 you did and what I did using maybe slightly

GMD4

1 different areas -- but if you have a well that has a
2 hundred foot of saturated thickness and 80 at -- a
3 hundred at the beginning and 80 at the end, it is
4 the same percentage as 10 to eight, correct?

5 A That is correct.

6 Q And if you have a thousand foot of saturated
7 thickness, wouldn't we love that, reduced to 800
8 [sic], it is still the same percentage?

9 A The same percentage.

10 Q So in areas where you have got greater saturated
11 thickness, you have got a much longer life?

12 A Yeah, that is correct. That is one reason that we
13 used the percentage value versus just feet of
14 decline or something like that.

15 Q And you took the 15 -- the saturated thickness that
16 was 15 feet or less out of the equation because at
17 that point it is -- it is not helpful? I mean, when
18 you have got less than that, it is -- because I
19 think I said self-limiting. I don't know if you
20 agree with me or not, but --

21 A Yeah.

22 Q -- it is self-limiting, isn't it?

23 A Yes, it is. And, again, it is like I said before.
24 You know, it doesn't take very much of a decline in
25 a 15-foot or less saturated thickness area to become

GMD4

1 a heck of a percentage.

2 Q Agreed.

3 MR. TRASTER: Let's mark this.

4 THE REPORTER: This is Exhibit M.

5 MR. TRASTER: And let's just mark this as
6 M1 because they go together.

7 (Marked Exhibit M, Exhibit M1.)

8 Q (BY MR. TRASTER) I am going to hand you what has
9 been marked Exhibits M and M1. Have you seen that
10 map or maps like that before?

11 A I have seen something similar to this, yes, sir.

12 Q Okay. And can you tell us -- I mean, I am handing
13 that to you out of the blue here, but can you tell
14 us what it is?

15 A Basically this is -- it is a little bit dated, but
16 it is based on groundwater trends from 2000 to 2005
17 and a minimum saturated thickness required to
18 support a 400-gallon-a-minute well. It gives the
19 estimated usable lifetime until 400 gallons per
20 minute over the district.

21 Q Right. And the legend that you have in your hand, I
22 mean it goes from already depleted to, what,
23 250 years?

24 A Over 250 years.

25 Q And there are areas in GMD4 that you have got over

GMD4

1 250 years of saturated thickness available before
2 you get to the point -- I agree it is dated. This
3 is over 10 years old already. But at that time, you
4 had over 250 years in some cases. And what is the
5 next category down?

6 A 101 to 250 is the -- kind of the light green. There
7 are some big areas on that also.

8 Q Okay. And so you have got water rights that were
9 granted to people based on the factors that we
10 discussed this morning in areas where there is a
11 very long period of water availability and you have
12 got areas that are already depleted --

13 A Yes.

14 Q -- for practical purposes within the district? But
15 they are all treated, except for those areas that
16 have 15 feet or less of saturated thickness,
17 excluding those, but all the other water rights are
18 treated exactly the same under this plan?

19 A They are to the extent that the -- they are in the
20 same decline category. Let's put it that way. So,
21 you know -- yeah, if you have got -- I think we have
22 got some areas up there that has got 200 feet of
23 saturated thickness, yeah, that was a good one. But
24 if their decline rate -- now, that could take a
25 two-foot decline in that area to equal a six-inch

GMD4

1 decline in some others. But from that standpoint,
2 yes, they are all treated equally.

3 Q Okay. So you have got areas that are going to be --
4 that under your program they are going to be
5 depleted much faster than other areas, correct?

6 A Yeah, that is right.

7 Q But your view and the board's view here is that
8 everybody needs to take the same reductions across
9 the whole district, even though there is plenty of
10 water for uses in portions of the district?

11 A Well, to a certain extent. Although the allocation
12 amounts are the same in different areas. You have
13 also got to realize that -- again, like I said, a
14 two-foot decline up there where I have got 150 foot
15 of water is not near what two foot is in an area
16 where I have got 50. So, you know, those decline
17 categories do change.

18 But if you are -- if, in fact, you are
19 declining at two foot a year even though you have
20 got, what, maybe over a hundred years left on that,
21 you still got that decline. And so that would -- we
22 would suppose that that would continue for quite
23 some time until you start to see reductions in well
24 use.

25 Q Right. But isn't the whole point of this to stop --

GMD4

1 I mean to preserve this for -- preserve the area of
2 the district for a long period of time?

3 A Well, it is not -- it is not an effort to put the
4 district at a sustainable level. It is an effort to
5 reduce the decline rate and extend the life of the
6 aquifer. But there is a lot of difference between
7 reaching sustainability and doing what we are
8 proposing to do.

9 Q Well, you heard some testimony earlier about -- and
10 I am not sure what it means, but I heard the guy
11 say, well, it takes 90 percent. And the way I
12 interpreted that is you would have a 90-percent
13 reduction to get to sustainable. Is that -- I mean,
14 I don't know. I am guessing. Is that right?

15 A I don't -- I don't think it is that high. And I
16 don't know for sure what article he was referencing.

17 Q I am not either. I am --

18 A I just -- I know basically from the newest
19 calculated data we have got up here, we probably
20 recharge about 165,000 acre-foot a year on average
21 and we will pump anywhere from 3 to 500,000
22 acre-foot a year, you know, pumpage.

23 Q Okay. Well --

24 HEARING OFFICER BARFIELD: Mr. Traster,
25 are you going to move onto a new subject? Because

GMD4

1 there is a little bit of that last discussion I
2 didn't follow.

3 MR. TRASTER: All right.

4 HEARING OFFICER BARFIELD: You two seem to
5 understand each other, but I didn't. And I might
6 reading the transcript, but -- so obviously there is
7 different saturated thicknesses in different areas,
8 but they treat a rate of decline the same no matter
9 if it is 40 feet of saturated thickness remaining or
10 a hundred feet, right? We are looking at the rate
11 of decline to determine the allocation?

12 MR. TRASTER: Right. That is my
13 understanding.

14 RAY LUHMAN: That is correct.

15 HEARING OFFICER BARFIELD: So I guess,
16 what was the point I was supposed to get from the
17 questioning that you made to Mr. Luhman?

18 MR. TRASTER: That if you are trying to
19 preserve this aquifer for the long term, there is no
20 indication whether we are trying to preserve it for
21 20 years or 50 years or a hundred years or 200.
22 That if you have got a minimum amount of saturated
23 thickness, you are treating that area -- you know,
24 it makes sense to me to conserve. And I am not
25 suggesting that I agree with the approach. But it

GMD4

1 makes sense to me to conserve in that -- the drive
2 to conserve in those areas ought to be -- is more
3 important or more compelling than where you have got
4 250 years of saturated thickness. I mean, why is it
5 that we have a district-wide LEMA back -- so as
6 Scott Ross was saying, this is designed -- the LEMA
7 process was never designed for a district-wide
8 approach.

9 RAY LUHMAN: I disagree with Mr. Scott
10 Ross on that in the fact that I think the
11 development of each township based on its own
12 depletion criteria or depletion rate in there does,
13 in effect, establish local aquifer subunits. So he
14 and I disagree on that.

15 MR. TRASTER: Well, I understand that it
16 develops those. But it develops those based on
17 lines that are more artificial than the lines he
18 described for the high -- the high -- whatever the
19 term --

20 RAY LUHMAN: Oh, the high priority areas?

21 MR. TRASTER: High priority areas. But, I
22 mean, I am not here to debate it. I was just trying
23 to -- well, I guess I am. But I was trying to
24 explain. My point is that the district-wide LEMA
25 treats different situations the same, rather than

GMD4

1 allocating or looking at the specifics of a
2 particular area.

3 HEARING OFFICER BARFIELD: All right.
4 Thank you.

5 MR. TRASTER: Did I answer your question?

6 HEARING OFFICER BARFIELD: Yes, I think
7 so. What is the date of that map?

8 MR. LUHMAN: It is based on groundwater
9 trends from 2000 to 2005. Let's see. I don't see a
10 date on that. It is a fairly old map, but it is --
11 you know, it still brings across the point, I think.

12 Q (BY MR. TRASTER) Let me just -- it is just an
13 excerpt of a map, of a bigger map. I didn't want to
14 produce the whole thing because it -- anyway, that
15 is -- I will provided the larger map to counsel.

16 MR. TRASTER: So I think I moved for the
17 admission of H through L, and I am -- but I don't --
18 did you admit those or not admit them?

19 HEARING OFFICER BARFIELD: I don't think
20 we have dealt with them, so let's deal with them.

21 MR. DEES: Have we gone -- maybe I missed
22 it, but I don't think we have gone over any of the
23 information in L through K [sic] at this point.

24 MR. TRASTER: Well, I just explained that
25 they are representative. They are just

GMD4

1 illustrations of particular townships.

2 MR. DEES: Okay.

3 MR. TRASTER: And they just show that they
4 are treated -- the color coding in the last column
5 is the same color coding as on the map that is
6 Exhibit, whatever it is. And I am just -- they are
7 just to follow onto that map to show that there is
8 variation in these four townships, instead of them
9 being homogenous.

10 MR. DEES: Sure. And really just a
11 question, one other question about these.

12 REDIRECT EXAMINATION OF RAY LUHMAN

13 BY MR. DEES:

14 Q Did you take out the 15 feet of --

15 A No.

16 Q -- saturated thickness? So that is still in this
17 data?

18 A If it is -- to the extent that it is relevant, yes.
19 I didn't know to do that.

20 MR. DEES: All right. Then I don't see
21 any reason that can't be admitted, with those
22 comments.

23 HEARING OFFICER BARFIELD: Okay.

24 Mr. Oleen?

25 MR. OLEEN: What was the purpose of these

GMD4

1 excerpts? Did you go over this first page?

2 MR. TRASTER: No. Those are just excerpts
3 out of the -- I didn't -- I wanted to make sure I
4 was using the proper formula. And the excerpts are
5 all instances where it says it is based on the
6 annual rate of decline for the period in
7 percentages. And so these are just excerpts out of
8 the GMD management plan and -- at the bottom from
9 the map attached to the plan, to make sure that it
10 was clear that that is the language from the plan
11 that I used to come up with this idea that is the
12 annual rate of decline formula.

13 MR. OLEEN: I have no objection then.

14 HEARING OFFICER BARFIELD: All right. So
15 they are admitted, noting that Mr. Traster's
16 calculation using his method to determine the annual
17 rate of decline, not dealing with the 15-foot
18 minimum saturated thickness and the variability in
19 the sections.

20 MR. TRASTER: Right. It is for what they
21 are worth.

22 HEARING OFFICER BARFIELD: Thank you. And
23 then also we have got Exhibit M here. Any
24 objections to that?

25 MR. DEES: I haven't seen that, but --

GMD4

1 HEARING OFFICER BARFIELD: Okay. Why
2 don't we take a look at it here. So do you still
3 have areas that the method says have 250 years of
4 life?

5 RAY LUHMAN: I would think we do in a few
6 areas.

7 HEARING OFFICER BARFIELD: Just because
8 there is little development in --

9 RAY LUHMAN: There is very little
10 development is the main reason on that. And we have
11 got some areas that have some fairly substantial
12 saturated thickness, yet it has very little
13 development in it.

14 HEARING OFFICER BARFIELD: All right.
15 So what was the consensus?

16 MR. OLEEN: Well, it appears that those
17 maps were created by someone who is here to testify.

18 HEARING OFFICER BARFIELD: Sure.

19 MR. OLEEN: So we would -- I think the
20 consensus is we agreed to -- let's hold off on
21 actually formally admitting them until a little bit
22 can be discussed by the creator.

23 HEARING OFFICER BARFIELD: All right.
24 That is fine. Since he is here, we will do that.
25 Thank you.

GMD4

1 MR. TRASTER: I have a question, Mr. Chief
2 Engineer.

3 At the beginning of your opening
4 discussion, did you say that the plan was provided
5 to the public at those public meetings? Is that --
6 do you -- I don't remember what you said about
7 whether the plan -- it was provided -- Mr. Luhman
8 testified that it wasn't; it was public record. It
9 could have been available, but --

10 HEARING OFFICER BARFIELD: Yeah. Well,
11 good question. My recollection of what I said, I
12 was basically giving a little bit of background with
13 respect to my involvement. And I did reference
14 the -- I think it was February of 2016 -- annual
15 meeting that I attended where they discussed the
16 LEMA proposal. If I said they presented a plan, I
17 didn't mean a detailed plan. I meant an overview of
18 what they were thinking.

19 MR. TRASTER: All right.

20 HEARING OFFICER BARFIELD: That is my
21 recollection, anyway.

22 MR. TRASTER: That is fine. I just wanted
23 to make sure the record is clear that the plan
24 itself, the written details, weren't available to
25 the general public without doing an open records

GMD4

1 request until later and --

2 HEARING OFFICER BARFIELD: Okay.

3 MR. LUHMAN: And he is right in the fact
4 that there was a map provided at those meetings, but
5 the -- "X" number of pages of the proposal itself
6 was not available.

7 MR. TRASTER: Sure. I just wanted to make
8 sure we were clear about that.

9 HEARING OFFICER BARFIELD: Now,
10 Mr. Traster -- and actually I was going to let you
11 finish your cross examination before I got my
12 questions. But I was going to ask the GMD to
13 provide in the comment period that follows, I guess
14 I would like to know, you know, what was presented
15 at each -- at the annual meeting I referenced as
16 well as their public outreach meetings. I think it
17 would be helpful to see what was presented. But,
18 again, my recollection is you did present the
19 previous version of that map.

20 MR. LUHMAN: Right.

21 HEARING OFFICER BARFIELD: But I will ask
22 the GMD to provide --

23 MR. TRASTER: Yeah. I have asked for that
24 too, but it is just -- the timing has been bad
25 and --

GMD4

1 HEARING OFFICER BARFIELD: Sure.

2 MR. TRASTER: -- I am sure it is on its
3 way.

4 HEARING OFFICER BARFIELD: Right. Okay.

5 FURTHER CROSS EXAMINATION OF RAY LUHMAN

6 BY MR. TRASTER:

7 Q In some earlier testimony you -- maybe in your
8 original testimony -- you indicated that the
9 Sheridan 6 LEMA, that preliminary indications are
10 that income or production or whatever it is, is
11 sustainable or on par. I mean, I don't want to
12 mischaracterize what you said.

13 A Yeah. What Dr. Golden has found, and he has gone
14 through now I believe four years of data -- of
15 course, 2017 is just finishing up. But his
16 preliminary assessment at the end of 2016 shows the
17 profitability within Sheridan 6 remaining basically
18 the same as that on the area -- just the fringe area
19 surrounding Sheridan 6.

20 Q Right. But you have also said publicly that
21 during -- that you have had quite a lot more
22 precipitation over the last two or three years?

23 A I know we have had -- at least two of those four
24 years, I would say, were at or above normal precip.

25 Q And we know that the drought is coming again, right?

GMD4

1 A Yeah.

2 Q And that the data could change based on the fact
3 that we had a climate change -- climate cycles? I
4 didn't say that -- strike "climate change". But we
5 had cyclical drought?

6 A I would agree.

7 Q So the jury is still out on the question of whether
8 the Sheridan 6 LEMA is going to -- will be at
9 long-term profitability --

10 A I don't know if the jury is still out, but that is a
11 fairly short period of time to be doing a study like
12 that.

13 Q Okay. So there was some discussion about water use
14 between 2009 and 2015, and that is what you are
15 basing this -- I mean, you are looking at acres from
16 2009 to 2015 and then multiplying that times the
17 number of inches you got?

18 A Right. We selected the maximum number of acres
19 reported irrigated in that 2009 through 2015 period.

20 Q And there was an example mentioned of three quarter
21 sections, but only one of them had been watered
22 during that period. And so you would only get the
23 130, or whatever acres, that were under that center
24 pivot system that would be -- that allocation would
25 be based on that 130 --

GMD4

1 A If --

2 Q So what about CRP or other programs? Where do
3 you --

4 A Basically there is a provision, I don't know how
5 well it is written in there, but through that appeal
6 process someone that has either been in CRP,
7 Equip [phon], you know, there is several programs
8 out there where they idle land, we can go back in --
9 if they are going to put that land back into
10 production through all or part of that LEMA period,
11 we can assign them an amount based upon probably
12 their last reported acreage before they went into
13 that program.

14 Q That are reduced by the number of years. I mean, it
15 would be the inches per acre times three years or
16 four years --

17 A Right.

18 Q -- or one year depending on when they brought it
19 back in, correct?

20 A Yes, sir, I agree with you.

21 Q So the situation where it wasn't in a program but
22 just wasn't irrigated, is that subject to that?

23 A You know, I personally know about the individual
24 that Aaron is talking about.

25 Q Okay.

GMD4

1 A That land has changed hands. He failed to tell you
2 that the individual that was doing all of this
3 conservation -- which he wasn't, he was just old and
4 didn't irrigate anymore -- but that land has sold.
5 And I think under that set of the circumstances, I
6 don't know that we would go back and say, okay, back
7 in 1974 you irrigated all this other land.

8 Q He didn't fail to tell me that. He did tell me
9 that, just not here.

10 A Okay.

11 Q Okay. So for whatever reason -- so putting it in a
12 CRP program is conservation, but just being old
13 isn't conservation?

14 A Correct.

15 Q Now, that is -- you are discriminating against, you
16 know, guys like you and me.

17 A (Witness indicated.)

18 Q So --

19 A And I do need to say on that, too. I think -- you
20 know, on that appeal process, I think where he met
21 with the staff first, I don't think I would give him
22 those extra acres. But that still gives him the
23 ability to meet with my board of directors. And if
24 they can make a compelling argument there, then we
25 can change those acres.

GMD4

1 Q All right. So if -- but what about CRP? If I have
2 got CRP, am I automatically back in or is that still
3 subject to the board's decision?

4 A I think on any type of a government program to set
5 aside whatever you have got, if it is an official
6 government program, I think you are automatically
7 back in, or you would be under my estimation.

8 Q Well, does the plan say that or does it not? I
9 mean, I --

10 A It doesn't really -- it doesn't really speak to
11 that, I don't think.

12 Q So it is not clear?

13 A I have got to check, but it may not be.

14 Q Well, you have given me -- sorry.

15 HEARING OFFICER BARFIELD: Well, if you
16 are looking at the plan allocations, Number 1, for
17 water rights and royalty, Equip [phon] or AWE
18 [phon], that will be coming out, the allocation
19 quantity shall be set by the annual allocation for
20 only the remaining years. It seems to be pretty --

21 Q (BY MR. TRASTER) So it is straightforward; it shall
22 come back in?

23 A Right.

24 Q All right. Back to the map that is in
25 Attachment 1 to the GMD LEMA plan. And I want you

GMD4

1 to pay attention or focus on the two red townships.
2 One in Zone 6 that is 13.2 inches times five years.
3 And then on the west end, 14.5 inches times five
4 years. But the plan says in Section K, 1K, that
5 there will be no more than a 25 percent reduction
6 except when there is an 18-inch cap.

7 So there is no 18-inch cap for the red
8 townships?

9 A We do have a situation, at least in 941, where some
10 of those water rights pumped in excess of 24 to 26
11 inches every year. And we are going to reduce those
12 down to 18 inches per acre, even though that is
13 bigger than a 25 percent reduction.

14 Q Okay. The plan doesn't say that though, does it?

15 A Yes, it does, sir.

16 Q Where does it say that?

17 A Where it says we will not reduce anyone over
18 25 percent except for those being reduced to the
19 18-inch maximum.

20 Q Right. And so that is in Section 1K. But these are
21 not being reduced to the 18-inch maximum?

22 A No. It goes on to say that -- let's see, 1K. Okay.
23 The LEMA allocation will not reduce water users by
24 greater than 25 percent except for those being
25 reduced to an 18-inch per acre per year cap. No

GMD4

1 LEMA allocations within areas of decline greater
2 than 0.5 percent will receive an allocation in
3 excess of 18 inches per year. This amount -- these
4 amounts apply to those water rights in red, yellow
5 and purple townships.

6 Q Where are you reading from?

7 A From my testimony.

8 Q Okay. But I am not interested in your testimony. I
9 am interested in the plan.

10 A Okay. That says no water right shall be reduced by
11 more than 25 percent of their average historical
12 pumpage based on years 2009 through 2015 unless it
13 would allow a quantity of water over 18 inches per
14 acre to be pumped.

15 Q Okay.

16 A I think that is fairly clear.

17 Q Where are you, what section?

18 A Let's see. That is in Attachment 1. It is actually
19 on Page 17 of 45 of my testimony, 10K.

20 HEARING OFFICER BARFIELD: So it is in --
21 yeah, Page 17 of 45, which is -- it is the second
22 page of the proposal and it is Section 1,
23 Subsection K is what you are reading from, correct?

24 MR. LUHMAN: Yes, sir.

25 HEARING OFFICER BARFIELD: All right.

GMD4

1 Q (BY MR. TRASTER) Okay. So the folks in 941 who
2 had, for instance, two or two and a half acre-foot
3 water rights are going to get reduced to 18 inches?

4 A Right. And that is not water rights; that is what
5 they have actually pumped. And what I did under
6 those is I went in and said, okay, what is your
7 average -- I don't remember what -- average or
8 maximum pumpage through that year. I took
9 25 percent of that. That was the value. Then I got
10 14.2 or the 14.5 inch and set that as a value. And
11 we took whichever one would have been the greater of
12 those two, provided -- but a max of 18.

13 Q All right. So the 14.5 is the low end, but it can
14 go up to 18?

15 A Yes.

16 Q All right. I am just trying to make sure I
17 understood how that worked.

18 HEARING OFFICER BARFIELD: And now I want
19 to make sure I understand how it works. All right.
20 So in the purple townships we have got the 18-inch
21 max, right?

22 RAY LUHMAN: Right.

23 HEARING OFFICER BARFIELD: So in those
24 townships, there could be some water right holders
25 that will experience a reduction of more than

GMD4

1 25 percent?

2 RAY LUHMAN: Yes. They are going back to
3 the 18-inch max on that and they pumped whatever,
4 you know, 20.4, whatever that figure would be.

5 HEARING OFFICER BARFIELD: Okay. But in
6 in the red townships that they started --
7 Mr. Traster started with, they are going to get this
8 allocation, but you are going to do a check, you are
9 going to compare the historic use -- well, I assume
10 the average of 2009 to 2015, right? You are going
11 to come up with a value and make sure their
12 allocation is not reduced -- you are going to make
13 sure they are not cut more than 25 percent in
14 setting their allocation?

15 RAY LUHMAN: Except if they are going to
16 get reduced to a maximum of 18 inches. And in some
17 cases, that will result in a higher than 25 percent
18 reduction.

19 HEARING OFFICER BARFIELD: Right. But
20 those are only the purple townships?

21 MR. LUHMAN: No. Every township -- no
22 township will pump more than 18 inches per acre. In
23 some cases, in 941, although that is only a
24 14.5-inch township, I have actual usage in the 26,
25 27-inch range. I am going to reduce those back to

GMD4

1 18 inches.

2 HEARING OFFICER BARFIELD: So 941 is which
3 township? What color is it?

4 RAY LUHMAN: It is the red township in
5 Sherman County. It is the one over here on the
6 left.

7 HEARING OFFICER BARFIELD: Okay. So that
8 is a red township. They should get an allocation of
9 the 50 percent NIR -- well, actually 14.5?

10 RAY LUHMAN: 14.5, yeah.

11 HEARING OFFICER BARFIELD: Right. So
12 aren't you -- where does the 18-inch come into that
13 red township?

14 RAY LUHMAN: Well, normally what would --
15 let's say that we have this individual that is
16 pumping 25 or 26 inches. He would have got reduced
17 to 14.5. But we said we are not going to reduce him
18 more than 25 percent except in the case when that
19 reduction takes you down to 18 inches. And from 25
20 inches down to 18 inches is bigger than a 25 percent
21 reduction.

22 HEARING OFFICER BARFIELD: Okay. Thank
23 you.

24 Q (BY MR. TRASTER) So a water user in township 941 or
25 in township 830 who conserved, who spent -- who

GMD4

1 didn't pump 25, 26, 27 inches, gets reduced to 13.2
2 and 14.5?

3 A Yes.

4 Q But a producer who didn't try to conserve gets
5 reduced just to 18?

6 A Yes, sir.

7 Q And you heard Mr. Pop -- Popelka, a good friend of
8 mine, cite 82a-1041(a) that says that you have to
9 give consideration to people who have conserved,
10 right?

11 A Yes.

12 Q So when you submitted your plan to the Chief
13 Engineer -- the process is you submit your plan to
14 the Chief Engineer and he looks at it and makes a
15 determination about those factors 1 through 6,
16 right? And once he says, yeah, that all complies,
17 then you have your first hearing, which we have
18 heard that Connie was the -- Ms. Owen was the
19 Hearing Officer.

20 What evidence did you provide to the Chief
21 Engineer to support the -- he has made a finding
22 that this treats people who conserved, gives them
23 favorable consideration? What evidence did you
24 provide to support that when that example, at least,
25 is not -- doesn't appear to be the case?

GMD4

1 A I don't recall.

2 Q Did you provide any evidence?

3 A I think we did, but it would be in -- it would be in
4 the record of that first hearing, but I don't
5 remember for sure what that was.

6 Q All right. Very good. You would agree with me,
7 though, that people who, in those two townships that
8 we have been discussing, the red ones on your map --
9 I mean, if they produced -- or pumped less water
10 table they were attempting to conserve are being
11 treated worse than people who pumped the heck out of
12 their wells?

13 A I think there is that possibility.

14 Q Thank you. Again, Mr. Popelka pointed out that --
15 or suggested that the quantities -- the reductions
16 be based on a percentage of the authorized quantity
17 rather than looking back at acreage.

18 But you have looked at acreage irrigated
19 during this period of 2009 to 2015 and you have
20 based that -- you have based the reductions on those
21 acres. What analysis did you do to determine that
22 that was the important approach? I mean, why -- did
23 you look at allocations based purely on authorized
24 quantities and determine that that wasn't going to
25 work some way?

GMD4

1 A Yeah. I think through the process we had looked at,
2 you know, what both were the authorized quantity of
3 water rights and what were the authorized place of
4 use.

5 Q Right.

6 A The acreage for a water right. And it was the
7 board's determination on that that we were better
8 off using recent past historic usage as we were
9 going back to the base water right.

10 Q All right. And I am just asking you, you know, what
11 difference that made. I mean, did you look at the
12 quantity that --

13 A Actually we did -- I did not go back and do a big
14 analysis on what would have happened if we would
15 have gone against authorized acres. It would -- you
16 know, it is just intuitive that we would have had to
17 go a little bit less on our allocations if, in fact,
18 we were going to use entire places of use.

19 Q Well --

20 A And one example of that would be, I would say a
21 majority of the water rights up here at least cover
22 the full quarter section, 160 acres. And we are --
23 you know, everybody is irrigating with a pivot now,
24 so that is going to run 120 to 125 acres. So right
25 there, you are figuring your allocation then based

GMD4

1 on actual irrigated acres and not those corners.

2 Q So your concern is that you have got a quarter
3 section that was -- that was flood irrigated and the
4 authorized quantities based on flood, but they are
5 now center pivots and you want to multiple by 130 or
6 whatever acres rather than 160 and -- but what
7 percentage of those water rights -- I mean, I have
8 seen a lot of water rights that were authorized for
9 160 acres, but they were only perfected for 130.

10 And so because of the acre-feet per acre
11 limitations, the quantities were reduced when the
12 certificate was issued based on acre-feet per acre
13 during the perfection period. I mean, is that not
14 what is going on here?

15 A I don't know that as far as the place of use being
16 reduced through the certificate that we have that
17 many of those -- is that what you are getting at?

18 Q No. The place of use isn't reduced; they will still
19 issue a certificate for --

20 A Not anymore. They will only issue it for the land
21 that was actually irrigated.

22 Q Well, okay. But I have looked at a hundred water
23 rights --

24 A Well, I have looked at thousands of them. So --

25 Q What is that?

GMD4

1 A I said I have looked at a thousand of them and --

2 Q I bet you have. All I am saying is that often the
3 place of use is 160 acres. The quantity is based on
4 130 acres. And I don't -- the water rights I have
5 looked at are not -- very many of them in this
6 district.

7 And so I am asking you whether those
8 perfected quantities, certified quantities, are
9 based on 160 acres or 130, generally, in this area?

10 A Boy, you know, that is all over the place. You
11 know, a lot of the area water rights would have been
12 based on full quarters and -- you know, we have got
13 a lot of 320 acre-foot water rights out there for
14 160 acres which, you know, hasn't been pumped for
15 years. So -- and, you know, looking at the
16 authorized quantity of water rights, you know, an
17 example I could give you there is we have got
18 probably 845,000 acre-foot appropriated out to
19 irrigate right now. And we probably in 2012, which
20 was an extremely dry year, pumped about 500,000. So
21 you can see that we are not coming anywhere close to
22 pumping our appropriated amounts anymore.

23 Q Sure.

24 A So that is another reason that we decided to go on
25 recent past pumpage.

GMD4

1 Q Okay. Thank you. I am just trying to understand
2 what you did.

3 MR. TRASTER: I am reluctant to say this,
4 but I don't have any further questions at this time.

5 HEARING OFFICER BARFIELD: All right.
6 Mr. Dees, would you like to ask any sort of
7 redirect, more or less?

8 MR. DEES: I would, Mr. Chief Engineer,
9 although it is 2:50 and I don't know if the court
10 reporter would like to take a break at this point,
11 and I think this would be a natural stopping point.

12 HEARING OFFICER BARFIELD: Okay. We can
13 do that. We can take a 15-minute break. We will
14 return at 3:05.

15 (Recess taken at 2:47 p.m. Resumed at
16 3:04 p.m.)

17 HEARING OFFICER BARFIELD: You can call
18 your next witness now.

19 MR. DEES: I think I am going to ask
20 Mr. Luhman just a couple of questions.

21 HEARING OFFICER BARFIELD: Oh, I am sorry.
22 You are right. And I have a couple of questions for
23 Mr. Luhman as well.

24 FURTHER DIRECT EXAMINATION OF RAY LUHMAN
25 BY MR. DEES:

GMD4

1 Q These questions are going to try to track a little
2 bit with the pathway that Mr. Traster laid out,
3 although that path has been quite long so it may
4 deviate somewhat.

5 Just really quickly, Mr. Luhman, can you
6 explain the difference between an appropriated right
7 and a vested right?

8 A Yeah. Basically a vested right, by Kansas law, was
9 a water right that was in existence in, I believe,
10 1945 when the Kansas Water Appropriation Act was
11 passed, and so they were given preferential
12 treatment at that time.

13 An appropriated right is anything that was
14 done through the current Water Appropriation Act.

15 Q And the appropriated right can be subject to
16 additional regulation; is that correct?

17 A As we understand it, yes.

18 MR. TRASTER: Objection. It misstates the
19 law.

20 HEARING OFFICER BARFIELD: I am sorry?

21 MR. TRASTER: It is a misstatement of the
22 law, for the record.

23 HEARING OFFICER BARFIELD: Okay. Thank
24 you.

25 Q (BY MR. DEES) Okay. Just real quick to clean up

GMD4

1 the request for the modification. It seems to me
2 like Mr. Popelka also had some suggestion
3 modifications as well. Mr. Popelka had come to the
4 GMD4 board with a proposed modification; is that
5 correct?

6 A I don't recall if he came with proposed
7 modifications, but he did come to the board with his
8 concerns about the way that stock water was being
9 handled under the current proposal.

10 Q Okay. And based on that, the GMD4 board requested
11 that this modification occur, correct?

12 A Yes.

13 Q And not that the plan be resubmitted to the Chief
14 Engineer in its entirety, but that the Chief
15 Engineer simply consider that in making an order of
16 decision?

17 A Yes.

18 Q Okay. And so looking at the statute, that would
19 have been a modification proposed under
20 82a-1041(d)(4), which allows the Chief Engineer to
21 change the plan but not impose reductions in
22 groundwater withdrawal, but exceed those contained
23 in the plan, correct?

24 A Yes.

25 Q Okay. And the proposal, does it impose reductions

GMD4

1 in the groundwater withdrawal that exceed those
2 contained in the actual proposed plan?

3 A No. Actually it is more lenient.

4 Q Okay. And so it is under that section that the
5 board is asking that that modification be made?

6 A Yes.

7 Q Okay. And then that would be resubmitted to the
8 board where we can, you know, presume that that
9 would be accepted?

10 A Yes.

11 Q Okay. And if that was presumptuous of me, I
12 apologize to my board members. And, again, this is
13 just to kind of clear up the record early on.

14 Mr. Luhman, is it your belief -- and I
15 have a memorandum here from November 7th, 2016 I am
16 reading from -- that the informational meetings
17 about this LEMA were held on November 29th, 2016
18 actually here in the Colby City Limits Convention
19 Center; on November 30th, 2016 at the Northwest Tech
20 Community Hall [sic] in Goodland, Kansas; on
21 December 1st, 2016 at the Cheyenne County 4H
22 Building in St. Francis, Kansas; and on December
23 5th, 2016 at the Hoxie Elks Lodge in Hoxie, Kansas?

24 A That is right.

25 Q Okay. Kind of moving on. Is the LEMA statute under

GMD4

1 K.S.A. 82a-1041 also a public policy of the state of
2 Kansas at this time?

3 A Yes. You know, it was passed by the legislature, so
4 it also is Kansas state law.

5 Q And I believe -- I may get my section number wrong,
6 but I also believe 82a-702, that designates the use
7 of the water to all the people in the state of
8 Kansas and gives the Chief Engineer the authority to
9 regulate and control that use; is that also part of
10 the public policy of the state of Kansas?

11 A Well, yes, it would be. I mean, that is part of the
12 Water Appropriation Act.

13 Q Okay. And under 82a-1020, is it also the policy of
14 the state of Kansas that the creation of groundwater
15 management districts occur because they recognized a
16 need existed for the creation of special districts
17 for the proper management of groundwater resources
18 for the state, for the conservation of groundwater
19 resources for the prevention of economic
20 deterioration, for associated endeavors with the
21 state of Kansas through the stabilization of
22 agriculture, and to secure of Kansas -- to secure
23 for Kansas the benefit of its fertile soil and
24 favorable location?

25 A Yes.

GMD4

1 Q Okay. So in your opinion, it is the public policy
2 of the state of Kansas to allow a LEMA to come into
3 existence, correct?

4 A It is in my opinion, yes, sir.

5 MR. TRASTER: Calls for a legal
6 conclusion.

7 HEARING OFFICER BARFIELD: I am sorry?

8 MR. TRASTER: It calls for a legal
9 conclusion that he is not qualified to give.

10 HEARING OFFICER BARFIELD: Objection
11 noted.

12 Q (BY MR. DEES) And just for the record, Ms. Owen did
13 find it was in the public interest to adopt a
14 conservation plan, correct?

15 A Yes.

16 Q Okay. And, Ray, quickly. This goes back to the
17 discussion about the NIR amounts. You have stated
18 that you had used the western edge of the zones in
19 determining -- in setting those allocations; is that
20 correct?

21 A Yes.

22 Q In those western edges, are they drier or wetter
23 than the eastern edge?

24 A The NIR -- or the interpolated NIR for the western
25 edge of the zone would be the driest amount for that

GMD4

1 zone.

2 Q Okay. And so by using that, I guess -- and
3 generally speaking, as we go west it gets drier,
4 correct?

5 A Yes.

6 Q Okay. And by using that number, that gives us --
7 that builds in, I guess, a cushion or a buffer in
8 that amount. Is that correct, or am I off there?

9 A Well, to a certain extent, yes. The -- you know,
10 the net irrigation requirements, as I -- as I took
11 them, were established for the center of that
12 county. So, you know, given just the climate out
13 here, the further west you get, the drier it gets.
14 So that is why I interpolated those moving west to
15 the higher value.

16 Q And Mr. Traster asked about those, kind of moving
17 on, and I just wanted to make sure.

18 In regulating individuals in the green and
19 blue townships, is there any incentive for them to
20 continue conserving water under this plan?

21 A Well, I would think so. You know, you would have to
22 ask the individuals that are in those areas. But I
23 think that it would be in their mindset to make sure
24 that they keep their decline rates at a level that,
25 if a new LEMA were proposed, that they would still

GMD4

1 not be subject to any substantial regulations.

2 Q Okay. Kind of going on to the discussion
3 Mr. Traster and you had about what he would call
4 plan depletion, where in 1983 they said a two
5 percent reduction in 1987, a one percent in 1991,
6 safe yield or sustainable yield at that point,
7 obviously during those years there was a change in
8 what was believed to be a reasonable amount of
9 depletion to be set at the GMD level; is that
10 correct?

11 A Yes. And you have got to realize in those days, you
12 know, although it doesn't sound like a lot now, how
13 much more restrictive each one of those policy -- or
14 the succeeding policy was than the one before.

15 Q Okay. And so over time, things have a tendency to
16 change, correct?

17 A Yes.

18 Q And so this is kind of another step in that
19 succession of change; is that correct?

20 A Yes. Although it is not necessarily a regulatory
21 like a -- like our development criteria is; this is
22 another attempt by the board to reduce water use,
23 yes.

24 Q As approved by the Kansas legislature?

25 A Yes, sir.

GMD4

1 Q Okay. And really quickly, moving onto the motion to
2 require a 10 percent carryover that was heard on
3 March 28th, 2017 and apparently approved by the
4 board and then the June 8th, 2017 proposal that
5 basically says that the board shall consider whether
6 or not to allow a 10 percent carryover.

7 Do you remember what some of the board
8 members' concerns were about limiting future boards
9 as far as a 10 percent carryover or, you know,
10 consideration?

11 A There was some discussion on what they could and
12 could not do as far as limiting future boards to
13 what they might do. But I do know there was a
14 concern on the board of directors that they at least
15 put something in the plan that would say that any
16 succeeding LEMA would or could consider a carryover.

17 Q Okay. And the 10 percent amount was an amount that
18 was put in there; is that correct?

19 A Yes.

20 Q But they could consider a 20 percent carryover if
21 they wanted to; is that correct?

22 A Yes. Yeah, because this in no way binds the board
23 to any type of decision on any succeeding LEMA, if
24 they would decide to do one.

25 Q And that language was ultimately adopted on, I

GMD4

1 believe, June 8th of 2017 when the board approved
2 the proposal as presented that day?

3 A As I recall, yes.

4 Q Okay. And the approval of that plan, there was a
5 motion and a second to approve the proposal?

6 A Yes.

7 Q And it passed -- it passed by at least a majority?

8 A Yes.

9 Q Okay. Real quickly. Mr. Traster had presented you
10 with a map that showed the number of years remaining
11 in the aquifer. It hasn't yet been admitted into
12 evidence, but I imagine it will be.

13 Do you remember what date was used -- what
14 data and dates were used?

15 A According to the title on the map, it is based on
16 groundwater trends from 2000 to 2005.

17 Q Okay. And what date has been used as far as a time
18 period goes for the LEMA proposal for the map?

19 A Well, the decline data is from 2004 through 2015.

20 Q Okay. So the decline data is after that map that
21 Mr. Traster presented to you from 2004 -- or from
22 2000 to 2004; is that correct?

23 A Yeah, that would be subsequent to that.

24 Q Okay. And lastly, really quickly. I want to clear
25 up some of the confusion on the 25 percent reduction

GMD4

1 versus the 18-inch reduction.

2 Mr. Luhman, has this proposal been a
3 balancing act from the beginning?

4 A I would almost say yes. You know, we have tried
5 to -- we have had several issues that we have
6 discussed and re-discussed and looked at other maps
7 and different ideas. So, yeah, I would say it has
8 been kind of a balancing act, yes.

9 Q And one of the balancing considerations was that you
10 wanted to make a cap of 18 inches for everybody
11 across the board; is that correct?

12 A For everything other than the blue and green
13 townships.

14 Q Right. But did the board feel like someone taking
15 more than a 25 percent reduction would -- could
16 excessively harm their irrigation rates -- where did
17 that 25 percent come from?

18 A I think you are exactly right in the fact that the
19 board did feel like, except in the case for those
20 being reduced from a higher number down to 18, that
21 anything in excess of the 25 percent reduction could
22 have the possibility of being more restrictive than
23 what they want it to be.

24 Q Okay. And so the balancing act that you talked
25 about ended up with an 18 percent cap with --

GMD4

1 A An 18-inch.

2 Q Excuse me. An 18-inch cap.

3 MR. DEES: Have I been saying percent for
4 three or four questions?

5 HEARING OFFICER BARFIELD: Huh-uh.

6 MR. DEES: Okay.

7 Q (BY MR. DEES) An 18-inch cap and a -- but if you
8 are under 18, it is only going to be 25 percent; is
9 that correct?

10 A Yes.

11 Q Okay. And that is a policy choice that the board
12 made?

13 A Yes.

14 Q Okay. The last thing, and I promise we are not
15 going to get too much into this, but let's talk a
16 little bit about township level data versus section
17 level data.

18 First of all, just to make sure. When he
19 did his calculations, he did not remove any part of
20 the GMD that had less than 15 feet of saturated
21 thickness; is that correct?

22 A I believe so.

23 Q Okay. But when you are making -- when the board was
24 making decisions about this proposal, did they take
25 a look at the township level data or -- excuse me,

GMD4

1 the section level data?

2 A Oh, yeah. That is -- basically the section level
3 data -- which I think Brownie will explain far
4 better than I can here in a little while. The
5 section level data is the foundation of the
6 information that we used.

7 Q However, trying to, you know, use political
8 boundaries to make -- you know, to draw lines, is it
9 your understanding that, you know, the township
10 level would be an easier way to make decisions than
11 the section level?

12 A Oh, yes. And, you know, you have got -- I
13 understand where you are coming from in the fact
14 that political boundaries seldom, if ever, match
15 hydrologic boundaries. But, you know, it was just a
16 choice made that for the ease both of administration
17 and calculation, that the townships would be used.

18 Q Okay. And those were decisions the board of
19 directors made, correct?

20 A Yes.

21 Q Okay.

22 MR. DEES: At this time, I don't have any
23 more questions; although, I may have further
24 questions if Mr. Traster asks a few more.

25 HEARING OFFICER BARFIELD: All right.

GMD4

1 Mr. Traster, do you have any questions to follow up
2 on -- or Aaron?

3 MR. OLEEN: The DWR doesn't have any at
4 this time.

5 HEARING OFFICER BARFIELD: All right. Any
6 follow-up --

7 MR. TRASTER: A couple.

8 HEARING OFFICER BARFIELD: -- based on the
9 questions that Mr. Dees asked? If you would like a
10 couple of minutes to get organized, I could ask my
11 questions.

12 MR. TRASTER: Go ahead.

13 HEARING OFFICER BARFIELD: All right. Let
14 me just do that. A couple of -- they may just be
15 typos.

16 On Page 6 of your testimony and Page 8,
17 both of those have a number of .05 percent. Were
18 those supposed to be 0.5 percent?

19 RAY LUHMAN: What page?

20 HEARING OFFICER BARFIELD: On Page 6 near
21 the top there is a reference to -- in the second --
22 well, the first full paragraph.

23 RAY LUHMAN: Yes. That should be 0.5.

24 HEARING OFFICER BARFIELD: Right. Okay.
25 And then also on Page 8, kind of in the middle there

GMD4

1 is another .05 percent that I assume should be 0.5
2 percent?

3 RAY LUHMAN: That is correct.

4 HEARING OFFICER BARFIELD: All right.
5 Okay. Page 9 on the penalty, there is a paragraph
6 on penalties. I just want to make sure. I am
7 fairly confident I understand. But if somebody has
8 an allocation under the LEMA that would be 300
9 acre-feet and they have a 50 acre-foot penalty, you
10 just subtract that and give them a 250 allocation?

11 RAY LUHMAN: Yes. Or in the case of if
12 someone has actually had their pumpage suspended for
13 a period of time during the LEMA period, they would
14 lose those number of years times their allocation.

15 HEARING OFFICER BARFIELD: Okay. The
16 paragraph just at the bottom of that same page,
17 "After completing these calculations, about
18 66 percent of the wells or well groups slated for
19 LEMA allocation will have a LEMA allocation less
20 than their combined diversions for 2009 to 2015."
21 Just tell me a little more of what that says.

22 RAY LUHMAN: Basically it is just saying
23 if we have established a LEMA allocation for a water
24 right and we take that times five, basically that
25 amount is less than what their combined pumpage

GMD4

1 through that six-year period, 2009 to 2015.

2 HEARING OFFICER BARFIELD: So we are
3 talking about the red and yellow townships?

4 RAY LUHMAN: And even the purples, to a
5 certain extent. Because there would be some
6 allocations there. I think in most cases, the
7 18-inch allocation probably is not a restriction
8 very much, but -- you know, you couldn't a hundred
9 percent throw the purple townships out of there
10 either.

11 HEARING OFFICER BARFIELD: I guess let me
12 ask about the purple townships. My understanding
13 is -- well, is it limited to 18 inches in any one
14 year or is it an allocation of --

15 RAY LUHMAN: It is an allocation.

16 HEARING OFFICER BARFIELD: So it is five
17 times 18?

18 RAY LUHMAN: Yes, sir. 18 inches times
19 their program acres times five.

20 HEARING OFFICER BARFIELD: All right. So
21 for the purple, yellow and red townships, 65 percent
22 are getting less than their historic use?

23 MR. LUHMAN: Yes, sir.

24 HEARING OFFICER BARFIELD: All right.

25 Thank you.

GMD4

1 I guess lastly then, I would -- as I sort
2 of alluded to earlier, if the GMD could sort of
3 supplement somehow on this comment in the coming
4 period, its testimony or whatever to just provide a
5 summary of the initial plan, public meetings, and
6 what information was provided, as well as what
7 information was provided at the public meetings,
8 both written and in terms of presentations, I think
9 it would be helpful to the record.

10 Okay. Mr. Traster, any follow-up based on
11 Mr. Dees's, I guess, redirect?

12 MR. TRASTER: I hate to say I have two
13 questions because whenever a lawyer says one more
14 question, he is lying.

15 FURTHER CROSS EXAMINATION OF RAY LUHMAN
16 BY MR. TRASTER:

17 Q Mr. Dees asked you about what he said I would call
18 "Plan Depletion". But that is what the 1983
19 regulation called it?

20 A Correct.

21 Q It wasn't me; it was --

22 A No. You were just quoting the regulation.

23 Q Right. And so the 1987 regulation was also titled
24 "Plan Depletion"?

25 A Correct.

GMD4

1 Q In 1991 they changed the title to "Allowable
2 Withdrawal"?

3 A Yes. And I think the reason for that was at that
4 time we no longer were under a depletion formula.
5 It was just a safe yield.

6 Q Right. So Mr. Dees also asked you about the map.
7 And we acknowledged and we talked about this when I
8 presented it, and we are talking about Exhibit M,
9 that it was 2001 to 2005 data, right?

10 A 2000 to 2005, yeah.

11 Q Okay. Thank you. And the idea is that that
12 predated -- I think it overlaps one year, but
13 basically predated -- I mean, the 2004 data that was
14 used was a combination of 2003, 2004 and 2005?

15 A Uh-huh.

16 Q So it is at the end of that, the tail end of the
17 data that was used for the map, Exhibit M, right?

18 A Yeah, correct.

19 Q And that -- but the 2004 to 2015 time frame that you
20 are using here to come up with these reductions
21 doesn't -- I mean, the point of that map was that it
22 was a hundred-year discussion and it doesn't overlap
23 that, does it?

24 A No. No, it doesn't.

25 MR. TRASTER: Thank you. No further

GMD4

1 questions.

2 MR. LUHMAN: Okay.

3 HEARING OFFICER BARFIELD: Very good. Any
4 more?

5 MR. DEES: Real quick.

6 FURTHER REDIRECT EXAMINATION OF RAY LUHMAN
7 BY MR. DEES:

8 Q Mr. Luhman, was there anything you wanted to add in
9 response to Mr. Traster's last question?

10 A You know, not really in the fact that, you know, the
11 map that he provided basically was an estimated
12 usable lifetime for the High Plains Aquifer. And I
13 don't know -- I think, you know, it would probably
14 change some. Again, you might want to ask Brownie
15 about that. I think it might change some if we used
16 a different time frame on the groundwater trends.
17 But, you know, I don't really see anything that
18 really bothers me about that map.

19 Q All right.

20 HEARING OFFICER BARFIELD: All right.
21 Thank you. Actually I have one more question, even
22 though I am not an attorney.

23 The vested rights, they are not regulated
24 by the LEMA proposal. Their use is not in that
25 1.7 million either; they are just -- when you --

GMD4

1 right?

2 RAY LUHMAN: That is correct.

3 HEARING OFFICER BARFIELD: Okay. That is
4 all I have. All right. You may step down.

5 MR. LUHMAN: It is about time.

6 HEARING OFFICER BARFIELD: Yeah. All
7 right. Mr. Dees, you can call your next witness.

8 MR. DEES: Our next individual that is
9 going to testify is Mr. Wilson, Brownie Wilson.

10 HEARING OFFICER BARFIELD: All right.

11 MR. DEES: And if it is all right with the
12 Chief Engineer, I will let Mr. Wilson go ahead and
13 just give us his presentation and then we will have
14 an opportunity to ask questions afterward.

15 HEARING OFFICER BARFIELD: Sure.

16 THE REPORTER: Will you spell your first
17 name for me, please?

18 BROWNIE WILSON: B-R-O-W-N-I-E.

19 (Mr. Wilson was sworn.)

20 TESTIMONY OF BROWNIE WILSON

21 I provided written testimony in the first
22 hearing in August. And I have no changes to that
23 whatsoever, so it still stands, I guess.

24 I won't read it again, like I did the
25 first time. But really our role in this is we have

GMD4

1 a directive from the state water plan to assist the
2 GMDs and the Division of Water Resources in their
3 management, especially except for the Ogallala.

4 And in May 2016, we had a request from
5 GMD4 to look at the water level changes for those
6 years that were given; 2004, 2009, 2015.

7 So we basically pulled the data on what we
8 call our Wizard database and we focused on the wells
9 in and around -- within 20 miles of the GMD4
10 boundary. And we threw out the wells that we
11 have -- we have status [inaudible] in all our
12 measurements, on the ones that we know are abnormal.
13 Like if somebody measured the well and it was -- one
14 nearby was pumping, we will flag that if we know
15 about it. We threw all those kinds of wells out.

16 And so we then interpolate surfaces
17 because across the -- the Ogallala is based on
18 these -- on this network of wells that we have. And
19 so our interpolated grids are actually down to
20 250 by 250 meters. And then just for the sake of
21 convenience, we store that information on averages
22 for each POSS section. And then that is how we
23 get that data a lot of times that way.

24 And so the process, we kind of went under
25 a couple of iterations. The first time we used all

GMD4

1 the data we had, all the wells and all those well
2 measurements that met that criteria. We went
3 through that iteration where we had some questions
4 about a well in the southeast portion of the
5 district in 11 south 27 west, 13 that has been
6 showing a little more accelerated groundwater
7 declines than his neighbors has. So we decided
8 that -- in consultation with GMD4, to remove that.
9 And then we had some questions about what influence
10 alluvial wells had on the process, and so we went
11 through and flagged the ones that we knew and then
12 reviewed some others and we threw out some more
13 wells and repeated that whole process. And then we
14 provided them that data. So it is in the GIS format
15 and then a spreadsheet that shows the elevation of
16 the land surface, the elevation of the bedrock, and
17 then the water table elevation in 2004, 2009 and
18 2015 based on the wells that met that flexible
19 criteria.

20 And, again, that is all further outlined
21 more in the written testimony. I don't know, do I
22 need to resubmit that or is that part of the record?

23 HEARING OFFICER BARFIELD: It is part of
24 the record already.

25 BROWNIE WILSON: Okay. Then I will stand

GMD4

1 by it. It doesn't change from that.

2 DIRECT EXAMINATION OF BROWNIE WILSON

3 BY MR. DEES:

4 Q Mr. Wilson, just real quickly. And I may have
5 missed this. But based on your research, is the
6 major reason for the decline in water tables the
7 irrigated groundwater pumping?

8 A Well, I don't say irrigation. I just say
9 groundwater pumping, yeah.

10 Q Okay.

11 A It is the groundwater used -- and we -- we had a
12 couple of recent studies we put out that show real
13 high correlations between water level change and
14 water use -- groundwater use. And that is
15 especially true up here in Northwest Kansas. We get
16 really strong correlations that we don't get
17 elsewhere necessarily. That depends on the data and
18 the time periods.

19 Q You have been here for all of the testimony that has
20 been presented today, right?

21 A Yes.

22 Q Okay. And you heard the discussion about section
23 level data versus township level data; is that
24 correct?

25 A Yes.

GMD4

1 Q And, in fact, you have supplied Mr. Traster with his
2 raw data that he created those maps from, correct?

3 A Yes.

4 Q Okay. Real briefly, before we get into that
5 conversation, can you tell me, how long have you
6 been a hydrologist?

7 A I started with the Division of Water Resources in
8 '93 and I worked there until about 1999. I went to
9 the water office for a couple of years, and then I
10 have been with the Kansas Geological Service since
11 2001.

12 Q Okay.

13 A I have always been an analyst of some sort,
14 especially with GIS. So the geographic information,
15 the spacial mapping and data side is my forte, if
16 you will.

17 Q So making maps is what you do?

18 A Yeah. I really don't like making maps, but I like
19 dealing with spacial data. Actually making
20 production maps gets a little tedious. So I don't
21 do it unless I have to. But I definitely like
22 spacial data and map forms, I will put it that way.

23 Q Okay. And do you have degree for this or --

24 A I have a master's degree in geography.

25 Q Okay. And what is your bachelor's degree in?

GMD4

1 A It was the same. I had a focus on the physical
2 geography and in the geographic information systems,
3 the mapping.

4 Q Okay. And I know Mr. Traster is probably going to
5 bring this up, so I might as well at this point.
6 You can map things at a township level or a section
7 level; is that correct?

8 A I can map things at all kinds of levels. It is just
9 a matter -- you know, the challenging matter with
10 the groundwater system is that it is subsurface.
11 And so we have to use point data and we have to use
12 interpolation processes to get an idea of what it
13 looks like over a continuous space.

14 There is a lot of different ways that you
15 can interpolate data. There is statistical means.
16 There is mathematical means. But the success and
17 the failure of those is always the input data and
18 what the density of that is.

19 And so whether you are talking about how
20 comfortable you are with the township level estimate
21 or the sectional level estimate; again, it all kind
22 of goes back to what are my inputs that help me form
23 that surface. Because if I don't have any input
24 data, you are guessing on wells that are quite a bit
25 away. But if you have a lot of higher

GMD4

1 concentrations of wells at a particular location,
2 you will have a greater confidence in that
3 interpolated surface.

4 And also the aquifer kind of determines a
5 little bit of it, too. Because the more homogeneous
6 it is, you know, the less number of wells you might
7 need. Or if you get in some situations where just
8 based on the geology, it may add more wells.

9 Q Okay. And would you describe the Northwest Kansas
10 Groundwater Management District No. 4 as fairly
11 homogeneous?

12 A I would say -- like relative to some of the other
13 Ogallala ones, I would say it is a little more
14 homogeneous compared to like GMD3, where you have
15 other aquifer systems below it. Sometimes it is in
16 contact with the Ogallala. Sometimes it is not.

17 GMD4 is actually very similar to GMD1 in
18 terms of what their historical water level changes
19 have been. I think the water supplies in GMD1
20 are -- traditionally are a little bit shallower, so
21 they are a little bit more in a depleted
22 environment. So they are starting to get more
23 diversity just from that reason alone. But, yeah, I
24 would say it is probably closer to being more of the
25 same than it is different.

GMD4

1 Q Okay.

2 A On the GMD1 -- or a GMD4 scale, for sure.

3 Q And I have heard of bunch of your presentation
4 before. So based on your experience, generally if
5 there are conservation measures taken in the
6 Northwest Kansas Groundwater Management District,
7 will the Northwest Kansas GMD benefit from those
8 conservation efforts as it relates to the water
9 table?

10 A Yeah, definitely. In a place where conservation
11 efforts take place, the people in that direct
12 immediate area get the benefit of that, for sure.

13 Q Okay. So to steal a shorthand phrase, what happens
14 in the Northwest Kansas Groundwater Management
15 District stays in the Northwest Kansas Groundwater
16 Management District?

17 A That is right.

18 Q Okay. So based on this, the conservation efforts
19 that are proposed by this plan, the water users in
20 GMD should reap those benefits as far as
21 conservation goes?

22 A Okay.

23 Q Okay. Going back to township level/section level
24 data, you could actually go down clear to lots; is
25 that correct?

GMD4

1 A Yeah. I mean, we do a lot of groundwater models,
2 for example. And the one we are working on now is
3 400 feet by 400 feet. We interpolate that down to
4 that level.

5 Q Okay. But what is the difficulty -- and I think you
6 kind of explained this a little bit. What is the
7 difficulty as you kind of drill down further and
8 further?

9 A Well, it is not so much drilling down; it is that
10 the confidence you have in making a decision in this
11 cell versus this cell, whether that is a section or
12 that is a township -- because, again, the value that
13 is in those sub areas is based on input data that
14 was interpolated. And the more you have those input
15 points around or even in that area, the greater
16 confidence you have in there.

17 Q I got you.

18 A The farther away they are or the less dense they
19 are, you have less confidence into them. But,
20 again, the more homogeneous your aquifer is, then
21 that helps, versus where there is a lot of
22 heterogeneity to it.

23 THE REPORTER: It has a lot of --

24 BROWNIE WILSON:

25 H-E-T-E-R-O-G-E-N-E-I-T-Y.

GMD4

1 Q (BY MR. DEES) Can you spell that?

2 A No, I can't.

3 THE REPORTER: I can't either, but I will
4 find it.

5 A I was always the first one out of the Spelling Bee.

6 Q (BY MR. DEES) Okay. And so when you look at the
7 GMD, and I appreciate Mr. Traster keeping that
8 picture up on the screen for us --

9 MR. DEES: Thank you.

10 MR. TRASTER: Do you want it --

11 MR. DEES: Yes, I do. That is great.

12 Q (BY MR. DEES) In order to have good data, you need
13 to have multiple data points, correct?

14 A Yes. I would like so.

15 Q Okay. And based on the sectional level data and the
16 measuring -- or the points that you have within the
17 GMD that you are taking measurements from, you are
18 most comfortable using that section level data to
19 make decisions; is that correct?

20 A Yeah. Township scale in terms of making comparisons
21 of what the water levels are doing directly in that
22 township, I am more comfortable with that scale than
23 I would be at the individual section level scale.

24 I am not saying either one is right or
25 wrong. It is just that confidence that you have in

GMD4

1 the value that is being represented by that sub area
2 accurately represents the input points that are
3 around it.

4 Q So you are more comfortable with the section level
5 rather than the township level or --

6 A It all depends on how many input points I have
7 around there. I may have a township that has no
8 points in there; I got no confidence, or I have
9 little -- I have littler confidence in that than if
10 I had a lot of input points [inaudible] I would
11 rather measured wells. And the same goes for
12 sections. The more -- the better -- you know, the
13 interpolation process is just using those input
14 points to spread that value across space. And,
15 again, the more you have and the denser they are,
16 then the better your decision is going to be.

17 Q And you are a scientist, right, Brownie?

18 A I guess, yeah.

19 Q Okay. And so looking at political subdivisions is
20 not necessarily something that you enjoy doing; is
21 that correct?

22 A Say that again.

23 Q Looking at -- trying to carve this GMD up using
24 political subdivisions like townships or sections,
25 you would much prefer that we just look at the

GMD4

1 hydrology underlying that?

2 A It makes it easier, yeah. There is not -- you can
3 make a case for the township or the section level in
4 terms of people can relate to that better.

5 Q Okay.

6 A And that is probably one of the reasons why we store
7 data at the section level is that it is easy to
8 query and databases and people can relate exactly
9 where that is located at as opposed to trying to
10 describe it in other ways.

11 Q In hydrological terms?

12 A Sure, yeah.

13 Q Okay. And does it make it easier then for, you
14 know, DWR or a GMD or some other political body to
15 regulate those subunits or is that kind of --

16 A I guess. I mean, with those agencies, everybody has
17 got staff and computing power and the knowledge so
18 that it results with the subunit, yeah.

19 Q Okay. I got you. So based on your expertise, if we
20 had to choose to -- or if the Chief Engineer has to
21 choose to make a determination of a section level or
22 a township level, where would you -- which one of
23 those would you prefer?

24 A If I had to pick between those two, the political
25 boundaries, I would -- with water levels, I would be

GMD4

1 more comfortable with a township scale.

2 Q Okay. Because you -- then using those numbers, you
3 know that you have the data points that you need?

4 A Right. Our network was designed to look for
5 regional variations in the water table, and that is
6 the appropriate scale for that.

7 Q Okay. Sounds good.

8 MR. DEES: I don't have any other
9 questions. Thanks, Brownie.

10 HEARING OFFICER BARFIELD: All right.

11 Mr. Traster?

12 MR. OLEEN: No questions from the DWR.

13 HEARING OFFICER BARFIELD: Thank you,
14 Mr. Oleen.

15 CROSS EXAMINATION OF BROWNIE WILSON

16 BY MR. TRASTER:

17 Q I guess I am a little confused, which is kind of
18 normal. Don't shake your head.

19 A No, I am not.

20 Q All right. So I understand your testimony about the
21 more data points you have, the more confidence you
22 have in the data. And would you -- you have got a
23 copy of your testimony from the previous --

24 A I do.

25 Q Would you turn to the map on the fourth page or so.

GMD4

1 A Okay.

2 Q Are those crosses on the map the data points that
3 you used?

4 A Yes.

5 Q And so when you say interpolating the data, what you
6 are doing is you are taking two -- any two of those
7 points that are adjacent to one another and looking
8 at the value there and whatever else you know about
9 that area and trying to come up with the water level
10 in between them, in essence?

11 A Right. That is a general characterization of the
12 interpolation process. And there is nuances,
13 depending on what you pick, but it is -- that is
14 exactly it, yeah.

15 Q Okay. So what are -- I mean, can you give -- I
16 don't want you to go into all the nuances, but what
17 do you mean by "nuances"?

18 A Well, like in the simplest case, like there are some
19 areas that are just purely mathematically based. So
20 I have got a value here; I have got a value there.
21 Let's divide it by the distance. Just pure math.
22 And then there is others that say, okay, I want to
23 try to fit a surface over all my data points so that
24 it is -- everybody is a little bit happy and then
25 there has not been -- I want to make sure I honor

GMD4

1 the points and this and that. Those are the
2 nuances.

3 Q So you have got a data point with an elevation at
4 some -- you have got two data points with an
5 elevation that are the same, but in the middle you
6 have got a higher one. It is not a straight line up
7 and a straight line down; it is a curved line. Is
8 that kind of what you are saying?

9 A Well, it could be. It depends on -- again, there is
10 different processes. The one I use was developed by
11 the ESRI Corporation that makes the ArcMap Software.

12 Q Right.

13 A They developed a routine that is designed for
14 elevations.

15 Q And that is a routine that is commonly used by lots
16 of people --

17 A Yeah.

18 Q -- across the county --

19 A Yes.

20 Q -- for any number of things, including DWR staff
21 that you interact with?

22 A I am sure I don't know [inaudible] used. But, yeah,
23 that comes up, yeah.

24 Q Okay. And that is -- the KBS, that is the standard
25 you use?

GMD4

1 A It is one of them. We have a lot of statisticians.
2 They like Kriging.

3 Q They like what?

4 A Kriging. It is another interpolation method that is
5 out there. There are dozens of them.

6 Q Okay. But you have already told us that you are
7 like me on -- I was in the third percentile in
8 spelling.

9 A Okay.

10 Q Can you spell --

11 A Kriging is -- I think I can get that one. That is
12 K-R-I-G-I-N-G.

13 Q Okay. But the data that you used to provide to the
14 GMD is the kind of data you normally rely on?

15 A Yes.

16 Q And in your testimony you specifically -- you heard
17 me probably read, if you were paying attention, your
18 testimony?

19 A I was.

20 Q You were? Okay. So -- I mean, at the bottom of the
21 second page and onto the third page, you say that it
22 can be readily computed at the section level. Are
23 you now saying that you don't have confidence in
24 that data?

25 A No. What I meant by that statement was not so much

GMD4

1 a validation of the data, but that it was set up at
2 the section level. And the selection of the wells
3 that I chose, it was then set up so that you can
4 make water level changes appropriately between 2004,
5 2009 and 2015.

6 A lot of times people do interpolated
7 surfaces of one year and they have got wells for
8 that set. And then they do another year and they
9 have got wells for that set. And sometimes you have
10 wells that may come in one year and they are not
11 there the next. You can generate artificial highs
12 and lows by doing that.

13 And so my point by that is it was readily
14 set up so that they can do those computations of
15 water level changes for that time frame.

16 Q And the data that you provided to the GMD, and then
17 subsequently to me, has -- there were three versions
18 of it. And you testified that you started and then
19 you took out some wells and then you took out some
20 more wells. And so there was a version one, version
21 two and version three for each of the three levels
22 that you took?

23 A Yes.

24 Q And as I understand it, the level for 2004 was based
25 on readings during December of 2003, 2004 and 2005?

GMD4

1 A Yeah. We were -- I guess -- let me back up to that
2 first one.

3 Q Sure.

4 A Version one, version two, version three was --
5 version one, I used all the wells that we had in our
6 system.

7 Q Okay.

8 A And then my criteria.

9 Q Right.

10 A Version two was we had to have one well in 27 -- we
11 had the one well that was in 11 south, 27 west,
12 Section 13 that showed a significant water level
13 decline that we didn't really see in any other wells
14 around it. So I took that well out and repeated all
15 of the same interpolation process.

16 Q Okay. You took that out in consultation with the
17 GMD?

18 A Yeah, right.

19 Q So they agreed with that?

20 A Yeah. They were the one that brought it to my
21 attention, that area. And then -- either then or it
22 was later brought to my attention that they wanted
23 to see what it looked like without any alluvial
24 wells in there and try to focus solely on the
25 Ogallala. And so that was -- I went through --

GMD4

1 most of our wells have a geologic code that
2 describes what material they are pulling it from;
3 the Ogallala, or in this case the much younger,
4 shallower alluvial sediments.

5 So I -- those ones that I knew were
6 alluvial, we took those out. And some of those, I
7 had to review by hand based on the well data and
8 whatnot. And we ended up taking those out and
9 repeating the entire interpolation process. And
10 that is version three.

11 Q Okay. And so version three is the data that is the
12 most conservative in the sense of the most accurate,
13 but taking out the data that might not really help
14 us figure out what the groundwater contours are?

15 A It would be a lot more focused solely on the
16 Ogallala.

17 Q All right.

18 A And it ignores the -- you know, there is some
19 connection with the alluvial systems, but it is felt
20 to be pretty small, pretty light layers in between.
21 So we take those out of consideration. And most of
22 those, honestly, were outside the district anyway.

23 Q And so -- you and I had a conversation about this at
24 the Governor's Conference --

25 A Uh-huh.

GMD4

1 Q -- and I asked you which set of data to use and you
2 suggested to use version three?

3 A Yes.

4 MR. TRASTER: And for the record, that is
5 the version I used.

6 HEARING OFFICER BARFIELD: Okay.

7 Q (BY MR. TRASTER) So I am going to show you what is
8 marked as Exhibit -- and I can't remember --

9 HEARING OFFICER BARFIELD: I think it
10 was D.

11 Q (BY MR. TRASTER) So I am going to show you what has
12 been marked as Exhibit D, and I have that up on the
13 screen.

14 That, again -- you were here this morning
15 and I am sure you were enthralled by my direct
16 examination and so you know what I am -- that it is
17 that I am showing you here. It is the section level
18 data using the values that -- or the colors that the
19 GMD used.

20 Mr. Dees asked you several questions about
21 the confidence level at the township level. But is
22 it your -- I mean, isn't it your understanding that
23 this is the data they actually used to come up with
24 their allocation?

25 A Yeah. Yeah, and I am confident at the section

GMD4

1 level, too. Again, it is more -- it is more -- is
2 there -- whatever that subunit area is, how does
3 that relate to my input points.

4 Q Okay.

5 A And it doesn't matter if it is a section or a
6 township; if I don't have as much wells in there
7 that that interpolated surface is trying to come up
8 with values for, then I have less confidence in
9 that.

10 Q All right. So looking back at your testimony and
11 the map on the back in your testimony, there is an
12 area that is in green in the center part of Sherman
13 County, if you get --

14 A Yes.

15 Q That is on Exhibit D. And that area on the maps in
16 your -- on your testimony, it doesn't have very many
17 wells in it?

18 A No wells, yeah.

19 Q And so that area, you are not very confident about,
20 if I am understanding. I don't want to put you -- I
21 want to -- let me ask you.

22 A That is right.

23 Q You don't have a lot of confidence in that area, but
24 you have more confidence in the area where there is
25 a higher density of wells?

GMD4

1 A Yes.

2 Q And to the extent that there is a higher density of
3 wells across this district as shown on your map, you
4 have confidence in the section level data?

5 A Yes.

6 Q Is that fair?

7 A Yes.

8 Q I am going to show you -- I will also tell you that
9 not only can I not spell, I have a very good friend
10 who is a mathematician and he says, Dave, you just
11 don't have -- you are not very sophisticated in
12 math. So -- I did a search on Google. And this is
13 what I understood to be the correct formula for
14 determining the annual date of decline for -- the
15 percent of annual decline. Is that formula the
16 right formula?

17 A That is not the one I use. I typically follow the
18 one, I think, Ray described. I take the difference
19 between -- it is close. I take the difference
20 between the absolute change from one year to the
21 next, for one time period to the next, and then I
22 divide that by the number of years in there to come
23 up with an annual rate. And then you just -- you
24 are still dealing with an absolute, and then you
25 just divide that by the original thickness and come

GMD4

1 up with a percent change of what that is.

2 Q Okay. Can you -- I appreciate that. But, again, I
3 am not all that sophisticated. Can you write that
4 formula down so I could follow it?

5 A Sure.

6 Q Because I don't how to -- tell me again how you do
7 that.

8 A Well, it is just -- [inaudible] saturated thickness.

9 Q All right.

10 A And then it drops down two -- I am sorry, I am doing
11 something for myself here. Let's say it dropped
12 down five feet in five years.

13 Q Okay.

14 A So the annual rate of the decline is about one foot
15 per year. So I found it by taking five minus 10, I
16 have negative one, it looks like [inaudible] a
17 decline on an annual basis of one foot per year. On
18 a percentage basis, then I take that one divided by
19 10 to give me that it was a nine percent, or .1
20 percent of whatever the original thickness was.

21 Q All right.

22 A It looks like you take it to a power and -- but,
23 yeah, I guess it gets to that point. That is just
24 the way I do it.

25 Q Okay. I would appreciate it if you would write it

GMD4

1 down so that I can put it in a formula and run it so
2 that --

3 A Sure.

4 Q -- my data matches their data because I don't want
5 to mislead anybody. I want to be -- I want to make
6 sure that we compare apples to apples.

7 A That is the way I do it, and I guess that is the way
8 Ray does it, but -- so, yeah.

9 Q Okay.

10 MR. TRASTER: No further questions.

11 HEARING OFFICER BARFIELD: All right.

12 Mr. Dees, any follow-up?

13 MR. DEES: Yeah, real quickly.

14 REDIRECT EXAMINATION OF BROWNIE WILSON

15 BY MR. DEES:

16 Q By using the township levels, does that ensure that
17 you have enough data points that you need to make
18 accurate determinations?

19 A It doesn't ensure it; it just helps. It is a bigger
20 area, so it covers more points.

21 Q So it increases your probability that you are going
22 to have a more accurate picture because of the
23 greater distance?

24 MR. TRASTER: I am going to object. It
25 assumes facts not in evidence. And that is not the

GMD4

1 way they did it. They didn't do it by township;
2 they did it by section.

3 HEARING OFFICER BARFIELD: Let me -- you
4 are the one that sort of brought up the section
5 levels. That is what your data is.

6 MR. TRASTER: Well, but I am just -- I am
7 recording my objection that it assumes facts that
8 aren't in evidence.

9 HEARING OFFICER BARFIELD: Okay. I will
10 go ahead and let the question be answered, but --

11 MR. TRASTER: Sure.

12 HEARING OFFICER BARFIELD: -- with that
13 objection.

14 MR. TRASTER: Absolutely.

15 A Can you ask that question again?

16 Q (BY MR. DEES) Sure. So -- and maybe I can do it
17 better than I did the last time.

18 So by using townships -- and townships are
19 bigger than the sections, right?

20 A Yeah.

21 Q Okay. By using townships as your geographical
22 boundary that encourages additional points of data,
23 because you have additional test wells and because
24 that allows for those additional data points, it
25 increases the accuracy of the information that you

GMD4

1 would have on a large scale?

2 A I don't know if I would say it increases the
3 accuracy. It increases my confidence level.

4 Q Okay.

5 A Because it is just -- again, you are dealing with an
6 interpolated continuous surface, and so you are only
7 going to be accurate in terms of how you aggregate
8 that up or down. And I don't think it
9 necessarily -- it gives it maybe a bigger -- a
10 better representation -- a greater probability of
11 representing what is actually accruing within that
12 sub area at a township level.

13 Q I am glad you answered the question I wanted to ask.

14 RE CROSS EXAMINATION OF BROWNIE WILSON

15 BY MR. TRASTER:

16 Q But the data that you provided to the GMD was
17 section level data?

18 A Right.

19 Q You didn't provide them -- I mean, they could
20 calculate the section -- the township level from the
21 data you provided. But you provided them section
22 level data; that is the data they used to come up
23 with their map?

24 A Right.

25 Q Thank you.

GMD4

1 HEARING OFFICER BARFIELD: All right.

2 Mr. Oleen, do you have anything?

3 DIRECT EXAMINATION OF BROWNIE WILSON

4 BY MR. OLEEN:

5 Q Mr. Traster just said that the sectional level is
6 the data that the GMD used to come up with their
7 map. What map? When you answered yes, what map
8 were you referring to?

9 A The one you just had up there. Well, the second
10 one. The township map right there was made from
11 that section level data. It was aggregated up to
12 the township level minus sections that didn't have
13 15 feet of saturated thickness in there.

14 MR. OLEEN: And that is Attachment 1 to, I
15 think, Exhibit A?

16 HEARING OFFICER BARFIELD: Yes.

17 MR. OLEEN: Okay. No further questions.

18 HEARING OFFICER BARFIELD: All right. I
19 think we are done with Mr. Wilson.

20 BROWNIE WILSON: Do you want me to comment
21 on this stuff?

22 HEARING OFFICER BARFIELD: Oh, yeah, maybe
23 so. That is right. Mr. Dees, why don't you ask him
24 some questions about what -- who wants to do that?

25 MR. TRASTER: I am happy to. Go ahead.

GMD4

1 FURTHER REDIRECT EXAMINATION OF BROWNIE WILSON

2 BY MR. DEES:

3 Q Mr. Wilson, are you the one that created that map?

4 A Yes.

5 Q Okay. And it is a true and accurate representation

6 of what -- that map is a true and accurate

7 representation of what you created?

8 A Right.

9 Q Okay.

10 MR. DEES: Those are all the questions
11 that I have on that. And I think at this point we
12 can just enter it into evidence, unless Mr. Traster
13 has other questions about it.

14 FURTHER CROSS EXAMINATION OF BROWNIE WILSON

15 BY MR. TRASTER:

16 Q It is old data. I mean, it is data from the time
17 frame and -- right.

18 A I think I made two of them. I think I made that one
19 in conjunction with the one from the '90s when the
20 decline rates are different.

21 Q Sure.

22 A Yeah.

23 Q But it shows that there are areas that have a large
24 saturated thickness a long time, whether it is 250
25 years or a hundred; it is a long time?

GMD4

1 A Relative to the decline rate for that period, yes.

2 Q Exactly. Thank you.

3 MR. TRASTER: I move for the admission of
4 Exhibit M.

5 HEARING OFFICER BARFIELD: All right. So
6 admitted.

7 MR. TRASTER: Thank you.

8 HEARING OFFICER BARFIELD: Thank you. You
9 may step down. Mr. Dees?

10 MR. DEES: We just have a couple of board
11 members that have been gracious enough to come and
12 make some comments. Who wants to go first? Brent
13 Rogers, President of the Groundwater Management
14 District Board. He will go first.

15 (Mr. Rogers was sworn.)

16 TESTIMONY OF BRENT ROGERS

17 I am Brent Rogers, GMD board president,
18 and I represent Sheridan County. I live at 322
19 North Road 30 N. I farm and irrigate in the
20 Northeast part of the county as well as western
21 Graham County, so I am in that finger that sticks
22 out clear on the eastern side.

23 I have no restrictions with this proposed
24 LEMA. Although I am not directly restricted, I want
25 to do all I can in this LEMA to conserve because it

GMD4

1 will be beneficial to me if I can keep my township
2 the same color if, and when, there is another
3 five-year iteration.

4 In the far western portions of my
5 irrigated acres, we see significant drawdown in the
6 latter part of the pumping season. I have had to
7 re-nozzle two pivots in that area. This area sits
8 on the edge of a purple township. If the status quo
9 continues, I will most certainly have a township
10 color change coming in the next iteration.

11 I have adopted moisture [inaudible] and
12 timely irrigation to what they are telling me. We
13 are also seeing some tremendous yields with Flex
14 hybrids, planting at lower populations, while
15 watering and fertilizing less.

16 My point is is if we try to conserve even
17 the areas that are not affected in this LEMA, we
18 will only help ourselves in the future. We have
19 seen SD6 do some wonderful things with larger cuts
20 than anyone will receive in the proposed LEMA.

21 I want to see my kids have the opportunity
22 that I have had to irrigate in the future. Thank
23 you.

24 HEARING OFFICER BARFIELD: Thank you. Any
25 questions?

GMD4

1 MR. DEES: I don't have any questions. I
2 don't know if Mr. Traster has any.

3 MR. TRASTER: Just briefly.

4 DIRECT EXAMINATION OF BRENT ROGERS

5 BY MR. TRASTER:

6 Q Were you here for Ray's testimony?

7 A Yes, I was.

8 Q And you heard it all?

9 A Uh-huh.

10 Q I mean, is -- do you have anything to add to that or
11 take away? Is there anything that -- I am not
12 suggesting that he got it wrong, but I am just
13 wondering if there is anything that you want to
14 supplement or add to or --

15 A No. I -- can I make a comment?

16 Q Yeah.

17 A I think something that just struck me, finally, in
18 the last several hours sitting here, looking out
19 across this audience.

20 If you take all the lawyers and all the
21 representation by DWR and all the organizations that
22 are here, the Kansas Corn Commission, and you take
23 them out of this scenario, how many people are
24 actually here as water users? We have 3,600 water
25 rights. And we see this at a lot of our meetings.

GMD4

1 It just -- we don't -- I mean, I know there is
2 harvest going on and I know it is -- that is very
3 important to people, but this is really important.
4 And it is hard for us board members to wrap our
5 heads around these things when we don't -- we come
6 to a meeting like this. I expected to come in here
7 today and not be able to get a seat. I really did.
8 And it shocks me. Thank you.

9 HEARING OFFICER BARFIELD: All right.

10 Mr. Oleen, I assume you have nothing?

11 MR. OLEEN: No questions.

12 HEARING OFFICER BARFIELD: My apologies.

13 All right.

14 MR. DEES: And then our last, as far as I
15 know at this point, witness is Mr. Goossen.

16 THE REPORTER: Can you give me your name,
17 please?

18 LYNN GOOSSEN: It is Lynn, L-Y-N-N,
19 G-O-O-S-S-E-N.

20 (Mr. Goossen was sworn.)

21 TESTIMONY OF LYNN GOOSSEN

22 My name is Lynn Goossen. I have been
23 farming in the southern Thomas County area for
24 34 years. I have watched the water table decline in
25 my area and I want to testify that I believe that

GMD4

1 this LEMA is a good start to slowing down the rate
2 of decline.

3 I think it is better for the whole area,
4 for all of us, to solve this problem together rather
5 than for senior water rights to attempt to shut down
6 junior rights. And if we all cut back a little bit,
7 by cutting back we slow the rate of decline. This
8 should allow all to continue to irrigate, instead of
9 the junior right owners being shut off completely.

10 All of my irrigation wells will have an
11 allocation given to them under this LEMA. I am
12 willing to work with all of my neighbors to save
13 water for the next generation.

14 HEARING OFFICER BARFIELD: All right.

15 Mr. Dees?

16 DIRECT EXAMINATION OF LYNN GOOSSEN

17 BY MR. DEES:

18 Q Lynn, I may have missed this. Can you give us your
19 address where you live?

20 A Yeah. It is 1154 County Road 22, Colby, Kansas.

21 Q Okay. Thanks.

22 HEARING OFFICER BARFIELD: Mr. Oleen,
23 anything?

24 MR. OLEEN: No questions.

25 HEARING OFFICER BARFIELD: All right.

GMD4

1 Mr. Traster?

2 CROSS EXAMINATION OF LYNN GOOSSEN

3 BY MR. TRASTER:

4 Q I didn't catch where you farm. Where is your farm?

5 A I farm in southern Thomas County about --

6 Q Thomas County?

7 A Yes.

8 Q Thank you.

9 MR. TRASTER: No further questions.

10 HEARING OFFICER BARFIELD: All right.

11 Thank you very much. I would like to take just a
12 five-minute break so we can sort of come up with our
13 plan from here. So we will reconvene at 4:20.

14 (Recess taken at 4:11 p.m. Resumed at
15 4:24 p.m.)

16 HEARING OFFICER BARFIELD: We will go back
17 on the record.

18 Mr. Dees, you are done; is that correct?

19 MR. DEES: Yes.

20 HEARING OFFICER BARFIELD: Very good. So,
21 Mr. Oleen, if you would like to go ahead and call
22 your witnesses.

23 MR. OLEEN: Again, my name is Aaron Oleen,
24 attorney for the Division of Water Resources. And
25 at this time, we call Mr. Kelly Stewart to the

GMD4

1 stand.

2 (Mr. Stewart was sworn.)

3 DIRECT EXAMINATION OF KELLY STEWART

4 BY MR. OLEEN:

5 Q Mr. Stewart, could you please explain your current
6 position with the Division of Water Resources?

7 A Okay. I am currently in the position of water
8 commissioner at the Stockton Field Office.

9 Q And the Stockton Field Office, what is its relation
10 to the GMD4 area?

11 A Well, the entire GMD board district is within my
12 field office boundaries.

13 Q Mr. Stewart, you previously, in conjunction with
14 Mr. Lane Letourneau, submitted some written
15 testimony prior to today's hearing; is that correct?

16 A That is correct.

17 MR. OLEEN: Forgive me, Chief Engineer,
18 has that written testimony been assigned an exhibit
19 designation?

20 HEARING OFFICER BARFIELD: Yes, it is B.

21 MR. OLEEN: Exhibit B?

22 HEARING OFFICER BARFIELD: Yes.

23 MR. OLEEN: Okay. Thank you.

24 Q (BY MR. OLEEN) Mr. Stewart, can you explain a
25 little bit about your office's involvement -- to

GMD4

1 what extent your office was involved with the LEMA
2 that we are here discussing today?

3 A Okay. Well, over the course of the last two years,
4 my office -- either myself or another staff,
5 we attend every board meeting. We like to go to
6 every board meeting to stay abreast of what the
7 board and staff are discussing. We are often in a
8 position where we answer questions. You know, we
9 have a lot of interaction with staff and board on a
10 regular basis. And, you know, we have attended
11 basically every meeting leading up to this LEMA
12 proposal.

13 Q Did your office instruct or recommend that the GMD4
14 initiate the LEMA proceeding?

15 A No, we did not. That was a board of directors'
16 decision to move forward on that proposal.

17 Q You said that as part of you or your staff attending
18 the GMD4 meetings on this LEMA issue that -- did you
19 say you provided some support in connection with
20 their formulation of this proposed LEMA?

21 A Well, from the aspect of looking at the data that
22 they had come up with, analyzing their spreadsheet
23 to see if we agreed with the numbers, and just a
24 little bit of cross-checking.

25 Q You said some -- or you just now mentioned some

GMD4

1 analysis. Were you referring to -- well, one
2 moment.

3 MR. OLEEN: Chief Engineer, which exhibit
4 designation is the actual proposed LEMA?

5 HEARING OFFICER BARFIELD: It is included
6 within A.

7 MR. OLEEN: Okay.

8 Q (BY MR. OLEEN) The proposed LEMA's goal of saving a
9 certain amount of gallons over a period, are you
10 aware of that stated goal, Mr. Stewart?

11 A Yes.

12 Q And what is that stated goal, to your knowledge?

13 A Well, basically their goal is to limit the total
14 amount of pumping in the townships that are being
15 restricted to 1.7 million acre-feet of water over a
16 five-year period.

17 Q And did you say that your staff did some analysis of
18 whether the proposed LEMA's corrective controls will
19 meet that goal or not?

20 A Yes, we did review that data, or my staff did review
21 the data, and we agree, it does appear that that
22 goal can be met under the proposal.

23 Q Did your staff assist with any informational website
24 tools that the public could consult as part of their
25 being informed about this LEMA process?

GMD4

1 A Right. Yes, our staff did work with GMD4 and
2 developed a tool where you could plug in your water
3 right number and look up your potential allocation
4 under the LEMA.

5 Q If the Chief Engineer chooses to designate this
6 proposed LEMA as it is currently proposed, or even
7 in any form really, will your office provide any
8 assistance to the GMD with respect to insuring that
9 the LEMA collective controls are followed?

10 A Yes. We are prepared to work together with GMD4
11 and, you know, manage the LEMA, oversee the
12 allocations, work with the public, compliance and
13 enforcement. You know, we are prepared -- we are
14 staffed to do that. In fact, we even added a
15 special position in Stockton whose primary duties
16 are to work with GMDs and also folks interested in
17 water conservation areas. So we are prepared to do
18 that.

19 Q Is it the opinion of the Division of Water Resources
20 that this LEMA will be successful in meeting its
21 stated goal?

22 A Yes.

23 MR. OLEEN: No further questions.

24 HEARING OFFICER BARFIELD: Okay.

25 Mr. Dees, anything?

GMD4

1 MR. DEES: No.

2 HEARING OFFICER BARFIELD: All right.

3 Mr. Traster?

4 MR. TRASTER: No questions.

5 HEARING OFFICER BARFIELD: No questions?

6 Very good. I don't have any questions.

7 Mr. Oleen, your next witness?

8 MR. OLEEN: The Division calls Lane
9 Letourneau to the stand.

10 (Mr. Letourneau was sworn.)

11 DIRECT EXAMINATION OF LANE LETOURNEAU

12 BY MR. OLEEN:

13 Q Mr. Letourneau, what is your current position with
14 the Division of Water Resources?

15 A I am the water appropriation program manager.

16 Q And what duties does that entail?

17 A The water appropriation program entails
18 administering the Water Appropriation Act.

19 Q So you heard the testimony of Mr. Stewart; he is the
20 water commissioner at the Stockton Field Office.

21 Are you in charge of overseeing or assisting with
22 all of the Division's water commissioners?

23 A We have four field offices in Kansas, each one with
24 a water commissioner. And those field offices are
25 in the water appropriation program.

GMD4

1 Q Mr. Letourneau, have you been here in the audience
2 throughout today's hearing?

3 A Yes.

4 Q Did you hear some testimony or mention given of the
5 prior appropriation doctrine?

6 A Yes.

7 Q Sometimes it has maybe been referred to today as
8 "first in time, first in right"?

9 A (Witness indicated.)

10 Q Is that a yes?

11 A Yes.

12 Q I can't recall whether one of the witnesses said
13 this, I think so, but I won't -- so I won't phrase
14 the question this way.

15 If this LEMA is designated as currently
16 proposed, will that be the end of the prior
17 appropriation doctrine?

18 A No.

19 Q Can you explain what you mean by that?

20 A Absolutely. Water rights in Kansas have a priority
21 based on the time the application was filed. And
22 this proposed LEMA is a management plan that
23 establishes allocations. Those allocations were
24 going to be across the board, not based on priority.

25 But you heard priority first in time,

GMD4

1 first in right and things. This LEMA does not touch
2 the first in time, first in right for priority if
3 impairment would occur. If there was interaction
4 between two water rights, then the junior water
5 right will still be curtailed to meet the senior
6 water right's needs.

7 Q Okay. So looking -- currently on the projection, we
8 have Attachment 1 to the GMD's proposed LEMA. And
9 this is their map that shows the different colored
10 townships, correct?

11 A Correct.

12 Q So I am going to ask you to -- for example, look at
13 any two townships where there are two different
14 colors that are adjacent to each other. Okay?

15 A Okay.

16 Q If a senior water right is in the more restrictive
17 of the two townships and the junior is across the
18 township line on the less restrictive of the two
19 colored townships, if the junior claims to DWR
20 that -- I am sorry. If the senior claims to DWR
21 that the junior across the township line is
22 impairing the senior's water rights, what action
23 will the Division take?

24 A Actually in that case, we would conduct a pump test
25 to see how much interaction between the two wells,

GMD4

1 if any. And we would make a determination of what
2 percentage then that junior was impacting the
3 senior's water right and we would curtail pumping
4 based on that percentage.

5 Q So this LEMA as proposed, with its different
6 allocations based on different townships, that will
7 not prevent a junior -- a senior water right from
8 claiming -- from being able to claim to your agency
9 that an impairment exists? They will still be able
10 to make that claim and you will still analyze that
11 claim?

12 A Absolutely.

13 Q And if you find that impairment has occurred by the
14 junior, you will perform some sort of action to
15 honor the priority of the senior; is that correct?

16 A Correct.

17 Q If someone is issued a certificate of appropriation,
18 does that guarantee that they -- well, let me back
19 up. Strike that.

20 If someone is issued a certificate of
21 appropriation, they are given an authorized
22 quantity; is that correct?

23 A Correct.

24 Q Is that a guarantee that they will always be able to
25 withdraw that quantity of water from the aquifer?

GMD4

1 A No. Just because you have a water right, it doesn't
2 guarantee you have water.

3 MR. OLEEN: No further questions.

4 HEARING OFFICER BARFIELD: Mr. Traster,
5 anything?

6 CROSS EXAMINATION OF LANE LETOURNEAU

7 BY MR. TRASTER:

8 Q I have told this joke five times and it gets funnier
9 every time. You know, I finally get to cross
10 examine you under oath.

11 How long have you been the program manager
12 at DWR?

13 A The program manager, Dave, I think 2008. It is now
14 nine years, I believe.

15 Q And what were you -- how long have you been with the
16 DWR?

17 A I have 30 years now.

18 Q What was your role before program manager?

19 A Okay. I came in 30 years ago as a Hydro 1,
20 processing new applications.

21 Q Okay.

22 A Then a number of years after that when -- I believe
23 a law changed to where we -- we were required --
24 folks were required to file annual water use
25 reports, and so I became the state's water use

GMD4

1 coordinator, was that title. Then as -- because
2 that had a civil penalty attached to it, when our
3 laws were changed then for civil penalty authority,
4 I got handed that also. So I was in compliance,
5 enforcement and water use for a number of years.

6 Q So reviewing new appropriations, compliance and
7 enforcement, and then in charge of the whole
8 program, generally?

9 A Yeah. Then, David, I got added -- while I was
10 working on new applications, I also worked on change
11 applications. So --

12 Q Okay.

13 A I worked on everything but the certificate.

14 Q All right. So the Division of Water Resources has
15 had a number of -- very briefly, there was -- in
16 1999, there was a statute change and DWR took its
17 policy and procedure manual and put it into
18 regulations; you were familiar with that process and
19 how that came about?

20 A Yes.

21 Q Generally speaking, tell me about the policy and
22 procedure manual versus the regulations.

23 A Okay. And I will just state it based on how I
24 understand it.

25 Q Yeah, absolutely.

GMD4

1 A We -- when I first started, we had two large books,
2 still have and I still maintain. Denise Rolfs
3 [phon] was David Pope, the previous Chief Engineer's
4 secretary. She maintained what was called policies
5 and procedures established from the Chief Engineer.

6 And those were policies that we used then
7 to, you know, process new applications, change
8 applications, certificates, on how we did things.
9 Well, then in 1999 the law changed from when we were
10 the Board of Agriculture and became the Department
11 of Agriculture. And we -- our secretary then got
12 some administrative authority. It is my
13 understanding then our policies and procedures did
14 not have the force and effect of law, so we had to
15 put those in rules and regs.

16 Q Okay. I think that is enough. It is kind of fun to
17 go into the details, but let's not.

18 A Okay.

19 (Marked Exhibit N, Exhibit O, Exhibit P,
20 Exhibit R.)

21 Q (BY MR. TRASTER) So I have handed you a series
22 of -- this stack of documents. The top document is
23 Exhibit N, as in Nathan. Is that an example of a
24 policy of -- the kind of policies that were in place
25 that were in this -- in these two notebooks?

GMD4

1 A Yes.

2 Q I have just one notebook. I didn't know there were
3 two. What is -- I mean, is it --

4 A I imagine what Denise Rolfs kept was the history.
5 And so I think our books are -- would have every
6 iteration of the policy.

7 Q Sometime I would like to see your books.

8 A Absolutely.

9 Q That is fine, a different issue. All right. So
10 take a look at Exhibit N and tell me what it is.

11 A This is Administrative Policy Number 83-33 and the
12 subject is Allowable Quantities, Certificates of
13 Appropriation For Irrigation Use.

14 Q And the certificate -- I mean, basically this
15 provides that when you issue a certificate -- now,
16 the water right has been applied for and perfected
17 and you are issuing the certificate. When you are
18 issuing a certificate, you are supposed to reduce
19 the quantity in this to two and a half -- two and a
20 quarter acre-feet per acre, correct?

21 A Yes, if it was higher than two and a quarter.

22 Q Right. So -- and if you look at the map that is
23 projected on the screen, which is Attachment 1 to
24 Exhibit A, the easternmost township shown on that
25 map is Township 21, correct?

GMD4

1 A Correct.

2 Q And so if you compare that map to the last
3 paragraph, the last indented paragraph in Exhibit N,
4 all of GMD4 is west of the Township 20-21 line,
5 correct?

6 A Correct.

7 Q So at the time this policy was in effect, every
8 water right that is certified got reduced if it was
9 higher to two and a half -- two and a quarter
10 acre-feet per acre?

11 A Yes, if it was higher.

12 Q And if it was perfected at a lower quantity, then it
13 was perfected, that was the limit. Okay. Can you
14 take a look at Exhibit O, which is the next document
15 in the series?

16 A Yes.

17 Q And that is, again, the same policy, 83.3 [sic], but
18 it supercedes the undated version that is in
19 Exhibit N, correct?

20 A Correct.

21 Q And it reduced the quantity in GMD4 and other areas
22 to two and a quarter to two acre-feet per acre,
23 right?

24 A Correct.

25 Q And take a look at Exhibit P. And this is dated in

GMD4

1 1986, right? And the second page, it has the same
2 standards showing two acre-feet per acre west of the
3 Township 20-21 line, right?

4 A Correct.

5 Q But in this policy, we have moved from changing the
6 certificate to the allowable quantity for a new
7 permit, correct?

8 A Or it was considered reasonable to apply for a new
9 permit.

10 Q Right. Okay. So then in 2000, you -- stepping back
11 a little bit. DWR publishes regulations,
12 established regulations at the request of
13 Groundwater Management Districts, correct?

14 A Correct, yes.

15 Q And those regulations -- are you familiar with the
16 regulations from '83 -- you didn't come to the
17 agency until '87, did you?

18 A I mean, if they were in place, I would be familiar
19 with them, sure.

20 Q Sure. But you are aware that there was a plan
21 depletion policy in GMD4?

22 A Yes.

23 Q And how to calculate that? I mean, you weren't in
24 the -- you were doing permits back --

25 A Correct.

GMD4

1 Q -- when you first came? So it was a two-mile radius
2 circle and it was two percent?

3 A Correct.

4 Q And then it changed to one and then it went to safe
5 yield, sustainable yield, whatever that --

6 A Yeah. Then we were very fortunate in the new
7 applications unit because we actually would make
8 sure that that application was in proper form and we
9 sent it out to the Groundwater Management District
10 for their recommendation.

11 Q Sure. And so all these permits that were issued
12 either up until '91 would have been for two
13 acre-feet per acre, and then later it was -- when
14 the regulation was amended, it went to 1.5, right?

15 A Correct.

16 Q And so -- now, when you issue a permit -- when the
17 Chief Engineer issues a permit, he makes findings of
18 fact, doesn't he?

19 A Yes.

20 Q The statute requires him to make findings of fact?

21 A Correct.

22 Q And in each one of those cases, he issues a cover
23 letter; does it not?

24 A Yes.

25 Q And the cover letter will say something to the

GMD4

1 effect that we find that the quantity is reasonable
2 and if you -- let me make sure I -- in looking at
3 Exhibit R in that stack -- and I will represent to
4 you that these came out of my files. They are not
5 necessarily in GMD4, but they are typical letters --
6 well, they are letters that came out of my file.
7 Are these -- take a look at them, 68, 72, 76. I
8 mean, these are sort of typical form letters that
9 DWR has used over the years; are they not?

10 A Yes.

11 Q And then toward then end, there are a couple of
12 judgment sheets, right?

13 A Yes.

14 Q And those judgment sheets contain the information
15 and findings that DWR has to make -- that the Chief
16 Engineer has to make in order for him to issue a
17 permit, right?

18 A Correct.

19 Q And those findings include good faith, proper form,
20 beneficial purpose, within reasonable limitations,
21 one [inaudible] use and doesn't create [inaudible]
22 or unduly affect the public interest, right?

23 A Yes.

24 Q Those are the findings that he has to make before he
25 can issue a permit by statute, right?

GMD4

1 A Right.

2 Q And so when he does that and somebody perfects the
3 water right, that water right has characteristics,
4 doesn't it? It has a priority date, it has a file
5 number, it has a rate, it has a quantity, it has a
6 place of use, it has a point of diversion, it has
7 like eight or nine characteristics --

8 A And use made of water.

9 Q Use made of water. So -- and you are familiar with
10 the Clawson versus DWR case?

11 A Yes.

12 Q And it says that once that permit is issued, the
13 Chief Engineer doesn't have authority to reduce it,
14 doesn't it?

15 MR. OLEEN: I will object. That is a
16 conclusion of law. I think Mr. Traster has had a
17 similar objection, so I will put mine on the record
18 as well.

19 HEARING OFFICER BARFIELD: Okay.

20 MR. DEES: I concur in that objection.

21 HEARING OFFICER BARFIELD: All right.

22 Very good.

23 Q (BY MR. TRASTER) You have read the Clawson case?

24 A Yes.

25 Q And it says that he can't retain jurisdiction to

GMD4

1 make reductions after the permit is issued, right?

2 If you know.

3 A You know, there is -- I do know that we can't retain
4 jurisdiction, but I don't know about reductions. I
5 will be honest about that.

6 Q All right. That is fine. So --

7 A Well, and I don't know if we are -- we are not
8 actually reducing the water right with this LEMA.

9 Q Right. I understand that.

10 A It is a management plan that sets an allocation.
11 Someone can still pump their authorized quantity as
12 long as it is within the five-year allocation, over
13 five years. So we are not making a reduction. We
14 are -- this is trying to implement a management
15 plan.

16 Q I see. Okay. So it doesn't change the terms of the
17 water right, it just means that you -- you just
18 can't use it according to its terms; fair?

19 A You can within one or two years probably, but not
20 every year for five years.

21 Q Right. Okay. But -- and without this, this water
22 right gives you the use -- the ability to divert the
23 full quantity every year, not only for five years,
24 but until there is no more water available, right?

25 A Right.

GMD4

1 Q If you want to do that. If that is -- and that is
2 the tragedy of the comments that we are dealing with
3 in Western Kansas?

4 A That is correct.

5 Q In your written testimony, according to -- well, how
6 many LEMAs are there now; do you know?

7 A One.

8 Q Just one?

9 A Correct.

10 Q And that is in the Sheridan 6?

11 A Yes.

12 Q Okay. And there are a lot of others under
13 consideration?

14 A Not LEMAs. We have got a number of water
15 conservation areas under consideration, but this is
16 the only -- oh, there is another one that is being
17 considered in GMD5.

18 Q There are some on the horizon?

19 A Correct.

20 Q People are discussing this?

21 A Yes.

22 Q And in your written testimony, you say that you have
23 hired staff to coordinate this, this LEMA, if it
24 is -- is that position filled?

25 A Yes.

GMD4

1 Q So if you got a position to coordinate and help with
2 this LEMA, but it hasn't been approved yet, can't
3 one conclude that it is complete?

4 A No. I can -- to explain our plans on staffing. I
5 was on the Governor's Water Vision Team. And we
6 went out, I don't know, 500 meetings, I think, is
7 the number of meetings we had with thousands of
8 people. And what we heard was we need to do
9 something and we need to do it locally. And so what
10 we -- then knowing that the LEMA process would
11 require additional staff time from us and then also
12 the water conservation areas was going to require
13 additional staff time from us, so it wasn't just
14 thinking that this LEMA is going to go through; we
15 have got multiple conservation plans that we needed
16 additional staff for.

17 Q And that was pretty much what Kelly testified to as
18 well, right, that -- well, it was more than that.
19 But in your written testimony that you submitted,
20 you say it is a dedicated staff person with the
21 primary responsibility of assisting within the field
22 office area, including GMD4 stakeholders, in
23 developing and administering LEMAs and water
24 conservation hearings. I mean, really it looks like
25 you hired somebody to administer this LEMA, even

GMD4

1 though it hasn't been approved yet? I am just
2 telling you how it looks. I am not -- I mean, I am
3 just saying. Do you see what I am saying?

4 A Yeah. We do, but we also know that we will have
5 water conservation areas also that -- where we
6 needed help.

7 Q All right.

8 MR. TRASTER: I don't have any further
9 questions.

10 HEARING OFFICER BARFIELD: Very good.
11 Thank you. Any follow-up? Mr. Oleen?

12 REDIRECT EXAMINATION OF LANE LETOURNEAU
13 BY MR. OLEEN:

14 Q Mr. Letourneau, do you know when the LEMA statute
15 was passed?

16 A I can look it up. 2011, maybe.

17 HEARING OFFICER BARFIELD: '12.

18 A '12? Okay.

19 Q (BY MR. OLEEN) Was it passed after all these -- I
20 think it was Exhibits N through R that Mr. Traster
21 referred to, some old policies and old letters. Was
22 the LEMA statute passed after those exhibits were
23 created?

24 A Yes.

25 MR. OLEEN: No further questions.

GMD4

1 HEARING OFFICER BARFIELD: Very well.

2 Mr. Dees, anything?

3 MR. DEES: No.

4 HEARING OFFICER BARFIELD: Okay.

5 MR. TRASTER: No further questions.

6 HEARING OFFICER BARFIELD: Very good. I
7 just found one correction in your testimony. I
8 don't know when you became program manager, but it
9 was 2007. You were in place when I became Chief
10 Engineer. Maybe it was during 2007. I am not sure.
11 All right. Anything else from the DWR?

12 MR. OLEEN: No further witnesses from DWR.

13 HEARING OFFICER BARFIELD: All right.

14 MR. TRASTER: We call Bert Stramel.

15 HEARING OFFICER BARFIELD: All right.

16 Bert Stramel.

17 THE REPORTER: Did you have an Exhibit Q?
18 Was there a Q?

19 HEARING OFFICER BARFIELD: Yeah. So I
20 guess we didn't deal with the exhibits. Do you want
21 all the exhibits entered?

22 MR. TRASTER: I move for the admission of
23 the exhibits.

24 THE REPORTER: I don't remember Exhibit Q.

25 HEARING OFFICER BARFIELD: Okay. So

GMD4

1 Exhibits N, O, P and R have been requested. Any
2 objections? Aaron?

3 MR. OLEEN: One moment. Let me make sure
4 I --

5 MR. TRASTER: Are there any skips in that?
6 We have got --

7 HEARING OFFICER BARFIELD: There is no Q.

8 MR. TRASTER: No Q, but A through R is --

9 HEARING OFFICER BARFIELD: As far as I
10 know, we have done everything.

11 MR. OLEEN: Mr. Traster, did you
12 redact -- did you say you redacted some information
13 from the letters on Exhibit R?

14 MR. TRASTER: I didn't say that, but I
15 did.

16 MR. OLEEN: Okay. What did you redact?

17 MR. TRASTER: I just redacted any personal
18 information to -- I wanted the forms of the letters
19 that are typical to be in the record. And, by the
20 way, those same letters are attached, and so it
21 is just --

22 MR. OLEEN: No objection to N, O, P and R.

23 HEARING OFFICER BARFIELD: All right. So
24 we will have all those admitted and there will be
25 no Q admitted. All right. Have a seat and tell us

GMD4

1 your name and address.

2 BERT STRAMEL: Bert Stramel, 1267 K25,
3 Colby, Kansas. I live and farm here in Colby.

4 DIRECT EXAMINATION OF BERT STRAMEL

5 BY MR. TRASTER:

6 Q And you are --

7 THE REPORTER: Hold on. I haven't sworn
8 him in yet.

9 MR. TRASTER: Oh, swear him in then.

10 (Mr. Stramel was sworn.)

11 Q (BY MR. TRASTER) You are one of the intervenors in
12 this case?

13 A I am.

14 Q And did you give us an address? You might have.

15 A Yeah. 1267 K25, Colby.

16 Q And just like we have done elsewhere, go ahead and
17 say what you need to say.

18 A I would like to put just a little bit of a personal
19 aspect to this.

20 This has probably been the most
21 informational meeting we have had on this whole
22 process the whole time. I don't know if that is
23 because you are in charge or what the case is.

24 But as a farmer, we start everything with
25 a process and we try and know everything we can

GMD4

1 about that process going forward when we pick out
2 hybrids, when we pick out machinery that we use. We
3 try and get as much knowledge and as much data about
4 everything and we try and max it out to the absolute
5 max that we can in order to be profitable and
6 efficient.

7 And in this case, many of the things we
8 asked for at the very beginning, like increased
9 measuring points or increased data points so that we
10 can actually find out where we can do the most good
11 and do the most good, and to back up some of these
12 maps have been ignored from the beginning.

13 Many of us today have talked about this
14 being a real property right, and I believe it is.
15 It has value. I have had the City of Colby offer to
16 buy some of mine. And they didn't want the land,
17 they wanted the water and access to it. And that
18 shows that it has a cash value.

19 And I have five kids at home and I want
20 them to be able to have all the types of enjoyment
21 and use of the water that we have now. But I also
22 want them to have other rights that have been
23 granted to them. And I don't foresee, just because
24 it is for the greater good, to take away a right or
25 restrict it. I feel that is a slippery slope.

GMD4

1 It is like today, this was the first time
2 the 25 -- no more than 25 percent reduction was
3 actually explained to an extent that it could be
4 understood.

5 We have never had a full explanation of
6 how this appeals process is going to work. I have
7 several of my personal water rights that I know are
8 going to need to go through this appeal, and I am
9 not sure how well I am going be served by it without
10 knowing the process, without knowing who is going to
11 be in charge of it, if it is going to be this
12 current board, if it is going to be the current
13 staff. I mean, who knows what future staff or
14 future boards are going to look like. And to just
15 walk into this without having some of these
16 questions answered is reckless. We wouldn't go into
17 our fields and plant something without having some
18 idea of what to expect.

19 I am closely related to two of the board
20 members. And I don't know how that affects it, but
21 there could be some family issues there and I am not
22 sure how that is going to work out.

23 Also, some of the board members were
24 competitors. We have bid on the same property. We
25 work in the same neighborhoods. We bid on the same

GMD4

1 contracts or same leases. And there is going to be
2 some dynamics in that. And only being able to
3 appeal to staff -- and then how much further you can
4 take it past that, there is no -- there is no third
5 party. There is no jury of your peers. It is just
6 too much to give up without knowing in the beginning
7 what we are getting into.

8 A lot of the people aren't here today, and
9 it is because a lot of people -- this is a big year.
10 We have had two years of declining farm incomes, and
11 there is a lot of people just hanging on. And if
12 you didn't fully understand it, which I think there
13 is a lot of people that don't fully understand, you
14 are going to go home and you are going to take care
15 of your home.

16 So in those regards, that is most of my --
17 my deal. I just -- today was -- I would almost ask
18 you to hold another one of these hearings because of
19 so much information that has come out that never
20 came out in the informational hearings we had before
21 this.

22 MR. TRASTER: Can you mark that as Q?

23 THE REPORTER: Yes.

24 (Marked Exhibit Q.)

25 Q (BY MR. TRASTER) I am going to hand you what has

GMD4

1 been marked as Exhibit Q. Can you identify that?

2 A I believe this is the handout we were given at the
3 informational meeting here in Colby.

4 Q And so when you turn it over and look at the front
5 page down in the lower corner, there is a -- if you
6 will turn it over, there are some dates for
7 meetings. Do you see those?

8 A Yes.

9 Q And those are the same dates that were announced
10 earlier today, when the public meetings were,
11 correct?

12 A That is correct.

13 Q And so what is on the back of that document?

14 A It is just a few highlights. It has a couple of
15 bullet points here of the plan.

16 Q Let me take a look here real quick. So you were
17 here for Mr. Luhman's testimony, right?

18 A I was.

19 Q And he testified that the plan itself with all the
20 detail was published on their website about the time
21 or in the time frame when it was submitted to the
22 DWR for review. Your heard that?

23 A I believe so.

24 Q Okay. And so this document that you are seeing now,
25 is that -- did you receive or were you aware of

GMD4

1 other documents between the Colby meeting and
2 that -- published on the website that gave you the
3 specific details that are in the plan now?

4 A I may have been given a handout at a GMD4 monthly
5 meeting. Other than that, no, there was no handout
6 of the actual LEMA plan --

7 Q Okay.

8 A -- prior to that.

9 Q The plan was explained at the these public meetings?

10 A In pretty big generalities.

11 Q Okay. Tell me about that.

12 A Well, after reading the plan now and looking back,
13 there was no discussion as to the meter logging,
14 where you would need to, I believe, keep an accurate
15 log of your -- of all water meters every two weeks.
16 And there was no mention that if that log was
17 incomplete or inaccurate and you have a meter
18 failing, that you could possibly lose an entire
19 year's allocation because of it.

20 Q Okay. And this -- you mentioned the appeal process.
21 I mean, it is to the staff and then the board. But
22 if the board votes against you, there is no further
23 process that you are aware of?

24 A Not to my knowledge. Even reading the LEMA document
25 now, I believe that it is an appeal to staff and

GMD4

1 then an appeal to the board.

2 Q And that is it?

3 A And that is it. I don't know where else you would
4 go after that.

5 Q All right. Very good.

6 MR. TRASTER: No further questions. Is
7 there anything else you need to add? Okay. No
8 further questions.

9 HEARING OFFICER BARFIELD: All right.
10 Mr. Dees?

11 MR. DEES: Real briefly.

12 CROSS EXAMINATION OF BERT STRAMEL

13 BY MR. DEES:

14 Q So is it your testimony that you did attend the
15 Colby public meeting where -- is it Exhibit S --

16 A Q.

17 Q Q. Where Exhibit Q was handed out?

18 A Yes.

19 Q Okay. And is it your testimony today that you have
20 attended multiple board meetings over the last, I
21 don't know, two years?

22 A Yes.

23 Q Okay. And at those board meetings, have there been
24 discussions about the LEMA?

25 A Yes.

GMD4

1 Q Okay. Have there been open forum sessions where you
2 could make personal comments?

3 A Yes, you can make comments.

4 Q Have you made comments?

5 A I have.

6 Q Okay. Have they been about the LEMA?

7 A I have.

8 Q Okay. As well as, I believe -- did you attend the
9 initial hearing in front of Hearing Officer Owen?

10 A I did.

11 Q Okay. And did you make -- did you submit testimony
12 there?

13 A I did. I did oral and written testimony.

14 Q Okay. And then you have come today and you have
15 presented oral testimony in -- I am not sure if you
16 have presented written testimony. Have you --

17 A Not today, I haven't.

18 Q Okay. But you may do that or you may not, depending
19 on what you want to do?

20 A Correct.

21 Q Okay. And you did say that you had thought you had
22 been given a handout at the GMD4 board meeting that
23 had more specifics of the plan; is that correct?

24 A It is -- when -- I think at the meeting that they --
25 the motion was presented to forward it onto the

GMD4

1 Chief Engineer. I believe there was a handout
2 then --

3 Q Okay.

4 A -- that we were able to take a look at.

5 Q Were you at the annual -- excuse me, the 2017 annual
6 GMD4 meeting?

7 A Was that in Goodland at the water -- yeah, I was
8 there.

9 Q Okay. And was the LEMA discussed there, that you
10 know of?

11 A Yeah, I believe it was.

12 Q Okay. Have you ever asked for the plan, outside of
13 being handed the plan at that GMD4 board meeting
14 where it was then approved?

15 A I am not sure what you would have asked for at the
16 time. I think it was still under -- under
17 construction or under --

18 Q Okay. So --

19 A I don't know -- I never had a rough draft or
20 anything, that I know of.

21 Q Okay. Did you ever ask for a rough draft?

22 A No, I didn't.

23 Q Okay.

24 MR. DEES: Thank you.

25 HEARING OFFICER BARFIELD: Mr. Oleen,

GMD4

1 anything?

2 MR. TRASTER: No.

3 MR. TRASTER: Mr. Traster, anything
4 further?

5 MR. TRASTER: No further questions.

6 HEARING OFFICER BARFIELD: All right.
7 Thank you very much.

8 BERT STRAMEL: Thank you.

9 HEARING OFFICER BARFIELD: All right. Do
10 you have anymore witnesses?

11 MR. TRASTER: We are done.

12 HEARING OFFICER BARFIELD: You are done?
13 Okay.

14 I guess we didn't talk about closing
15 remarks. Do you-all want to make any closing
16 remarks? You obviously have the opportunity to
17 provide some written comments.

18 MR. DEES: We have a --

19 HEARING OFFICER BARFIELD: Yeah, I was
20 going to see if anybody else wanted to make any
21 public comments, if that is what you are getting to
22 there.

23 So that concludes our formal process. I
24 will, before we sort of move to conclusion, ask if
25 there is any public that would like to make any

GMD4

1 additional statements. Yes. Come on forward,
2 please.

3 All right. I would ask if you could state
4 your name for the record.

5 MIKE SCHULTZ: My name is Mike Schultz. I
6 live in Brewster, Kansas, 118 6th Street,
7 S-C-H-U-L-T-Z.

8 (Mr. Schultz was sworn.)

9 MIKE SCHULTZ: I thank you for having me
10 here today. I want to thank GMD4 for this work. I
11 have been serving on the [inaudible] River Basin
12 Advisory Board for the governor of Kansas, I guess,
13 or the Groundwater Management District. So I have
14 been involved in the water industry for years and
15 years. I have been a past irrigator, a
16 farmer/rancher. I own land here in Thomas County.
17 My family homesteaded in the 1890s. By the way, we
18 have never had an irrigation well on our own land.
19 We have rented irrigation land before. I have done
20 that.

21 I would ask that, has anybody here ever
22 not had water? Go turn the spigot on some day and
23 find out. I am a stock guy. I own a cattle
24 operation. And I am really concerned about the
25 impairment clause in the water law because I have

GMD4

1 been impaired by irrigation. I have not taken it to
2 task yet. I have got a neighbor that I seriously
3 think about doing that with. But to drill a well is
4 6 to \$8,000. I have been through that. So we have
5 spent some money dealing with those things.

6 The one thing I want to do is ask the
7 question to people about water quality versus water
8 quantity. The reason I bring that up is I am also a
9 city administrator for a city superintendent for the
10 City of Brewster. We are getting ready to spend
11 \$1.5 million, possibly, on a water treatment plant,
12 if we can't find an alternative source. And that
13 comes into the issue of agriculture, because it is a
14 nitrate contamination problem.

15 So I would tell some of you that less than
16 three percent of the world's water is potable, is
17 good to use, and that the Ogallala Aquifer is some
18 of the best in the world. We found out that in the
19 1940s, I believe it was, there was an article that
20 came out when they kind of discovered the Ogallala
21 Aquifer and they thought it was an inexhaustible
22 supply of water. It was designed for people to put
23 back and maybe go home tonight and just Google a
24 search "Kansas" and then scroll up and look at the
25 pivots. And Nebraska is a unique place. They

GMD4

1 actually increased the water there versus us --
2 declining usage here in the Untied -- in Kansas. So
3 that is a big concern to me of what's going on.

4 But if you look at the problem, it is
5 overproduction. We have people that have abused the
6 water rights. I know in the '70s, we had ditch
7 irrigation and we wasted tons of water. Everybody
8 thought it was never going to end. Well, guess
9 what? The days are here. We have got to pay
10 attention.

11 I think, too, also back in the early days
12 irrigation was developed to help with the livestock
13 needs in these counties out here in Northwest
14 Kansas. One of the biggest reasons the irrigation
15 took off was for livestock. It wasn't so much it
16 produced \$2.90 corn, but that is what we have got to
17 deal with. Border [inaudible] does that.

18 You know, I see the biggest problem in the
19 water deal -- and, you know, I have made the
20 statement several times. We are getting into a
21 position of trying to curb water use when we have
22 got people that think they are going to farm every
23 acre in the county and they are going to feed the
24 world. And 80 percent of the world's population
25 makes less than \$1,200, and we are not going to do

GMD4

1 that.

2 So my deal with the water concern is --
3 and I know because I -- but at \$8 a thousand for --
4 even Eastern Kansas towards the Hays/Wilson area,
5 you do the math on a simple 120-acre pivot. At \$8 a
6 thousand -- and come tell me what your corn is worth
7 at \$8 a thousand. And it takes up to 3,000 gallons
8 of water to produce a bushel of corn today. And at
9 \$8, you do the math.

10 So I guess that we are all coming at it
11 with a little different deal and a pretty
12 conservative deal. And I think the LEMA even needs
13 to be more strict. If we don't see a decline
14 stopping, we have got to go to the next level. And
15 so I want to lay that out there.

16 I heard a comment made today that, you
17 know, maybe people are being treated worse. And I
18 would like to say this. You think about treated
19 worse. What happens when the public runs out of
20 water? And, you know, a public vote on this
21 issue -- right now, we can control our own destiny.
22 I don't think people realize what is going to happen
23 if it goes to a vote.

24 I deal with the city municipal side and I
25 talk to people every day about it. It is a big

GMD4

1 concern and you want to be careful what you wish
2 for.

3 We have about -- I think they said the
4 people in the world, you know -- water abuse and
5 that is what you get into when you [inaudible]
6 quality water versus non-potable water. And I can't
7 stress enough the importance of taking care of what
8 we have got here.

9 I hope we continue. My kids -- I would
10 like to have people come back. I have people that
11 work for me. I am just like everybody else. I know
12 that these rents are going to get us in trouble. We
13 have got \$2.90 corn and people have got to pay their
14 bills. I know what they are fighting. It is not a
15 big deal. It is financially. I know. I have been
16 in the deal. I have been in the stock market in the
17 '80s. We lost a lot of money. You make decisions
18 that sometimes don't work out.

19 So if you are going to over-produce and
20 waste the good water, I just can try to warn people,
21 pay attention. It is worth more than the oil or
22 anything underground, what you produce on top. But
23 I think water is very important.

24 So with that, I just wanted to make sure
25 people understood how important water is.

GMD4

1 HEARING OFFICER BARFIELD: Thank you very
2 much. Any questions from either side?

3 MR. TRASTER: No questions.

4 MR. DEES: No.

5 HEARING OFFICER BARFIELD: All right.
6 Thank you. Last call. Any public comments out
7 there? Yes.

8 JACE MOSBARGER: Jace Mosbarger again. Do
9 you need --

10 THE REPORTER: You have been sworn.

11 HEARING OFFICER BARFIELD: Yeah. I will
12 just remind you, you are under oath.

13 JACE MOSBARGER: Okay. So a lot of people
14 are really struggling with when some of this
15 information came out to the public. I still state
16 my recollection of the information and actual
17 language of the LEMA.

18 So the first time I had open access to the
19 actual language of what the fleshed-out LEMA plan
20 was going to appear to be was the day of the annual
21 meeting -- the morning of the day of the annual
22 meeting in a back room behind closed doors with some
23 coffee and donuts at the Northwest Kansas Technical
24 College Union.

25 This was also the day of -- after handing

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1 it out, 15 minutes later we had a public session and
2 then went back behind the doors and approved it to
3 be sent off to the Chief Engineer. So that is my
4 public knowledge of how -- what I was exposed to
5 to actually see the language and protest the -- the
6 public meetings just were not very detailed. Like
7 everybody said, they were so vague. Nobody really
8 even knew how to find it or how to approach it
9 because we didn't understand it.

10 Today, like Bert said, was the first day
11 we have ever understood that 25 percent and how that
12 plays into our water right. And for a lot of these
13 water rights, that is a very important issue of the
14 issue.

15 HEARING OFFICER BARFIELD: And what was
16 the date of that annual meeting; do you know?

17 JACE MOSBARGER: Ray would -- somebody
18 else would know the actual date.

19 RAY LUHMAN: It was in February, but I
20 couldn't tell you the date without looking at it.

21 MR. TRASTER: If it was the day it was
22 approved, it was June 8th.

23 HEARING OFFICER BARFIELD: Well, there
24 were two -- there was a version sent -- they sent a
25 version in February, and so it was approved to send.

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1 So that is probably the version.

2 JACE MOSBARGER: I think it was in
3 February of 2017, the day of the annual meeting.

4 HEARING OFFICER BARFIELD: Right.

5 JACE MOSBARGER: It was predate -- or the
6 top of the page said June 8th, or it was, you know,
7 forward-dated to when it was going to kind of be
8 sent off.

9 HEARING OFFICER BARFIELD: Okay. Sure.

10 UNKNOWN SPEAKER: When you said "behind
11 closed doors", did you mean like in executive
12 session or just --

13 JACE MOSBARGER: No. The door was open to
14 the public, but it wasn't easily accessible? As a
15 person -- the public, you kind of needed to know
16 where you were heading; you didn't stumble upon it.

17 HEARING OFFICER BARFIELD: Right.

18 JACE MOSBARGER: And I just wanted to go
19 on record lastly to say that I am a third generation
20 farmer in Sherman County with two young boys that
21 have already expressed a high interest in farming
22 and that there are many people like me that would
23 oppose this current LEMA, but have a long-vested
24 interest in this community and this water.

25 HEARING OFFICER BARFIELD: Thank you. Any

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1 questions?

2 MR. TRASTER: No questions.

3 HEARING OFFICER BARFIELD: Very good.

4 MR. TRASTER: One thing. I just want to
5 be -- make the record clear that we have had an
6 interesting hearing and it has been helpful, but
7 there are a lot of unanswered questions still. We
8 need more documents. And I believe that both Aaron
9 and Adam are working real hard to get those
10 documents to us.

11 But in terms of -- I mean, there are going
12 to be more questions. And you have given us the
13 opportunity to submit additional -- make additional
14 submissions and we understand that and appreciate
15 it. But I don't think the record can be closed at
16 this time. There are a lot of questions and maybe
17 not an opportunity to answer them, but I just want
18 to be clear that there is still more to come, I
19 think.

20 HEARING OFFICER BARFIELD: Mr. Dees?

21 MR. DEES: Just a real quick response to
22 that.

23 I don't think the record is going to be
24 closed until December 12th for submission of written
25 testimony. If I --

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1 HEARING OFFICER BARFIELD: Yeah. I will
2 get to the record in a minute. That is correct.

3 MR. DEES: Thanks.

4 HEARING OFFICER BARFIELD: Very good.

5 Well, I appreciate everybody attending
6 today. It has been a long day and I appreciate the
7 group here that has participated in the hearing. So
8 let me go ahead and move us toward conclusion.

9 Again, as we just alluded to, you will be
10 free to provide written testimony, whether you
11 provided oral testimony here or not. Again, back on
12 the back table there is a little card that sort of
13 indicates how you can go about providing that
14 testimony.

15 Written comments must be submitted or
16 postmarked by December 12th. Anyone may submit
17 written testimony before that date and your comments
18 will be made part of the record of this hearing.
19 Information is available -- well, those instructions
20 are back there. I already referred to that.

21 As we receive written testimony, it will
22 be posted on our website. We will also post a
23 transcript of this hearing on our website as soon as
24 it becomes available. The record will close on
25 December 12th, 2017.

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1 After it is closed, I will review the
2 record and make a decision on how to proceed
3 pursuant to the GMD's request. Just as in statute,
4 there are two separate hearings for a successful
5 LEMA process. And actually the statute requires two
6 separate orders. First, pursuant to statute, I have
7 180 days to issue my order of decision. In this
8 order of decision -- 120 days. Yeah, I have 120
9 days to issue my order of decision.

10 In that order, I have the following
11 choices. I can accept the LEMA plan as proposed. I
12 can reject the LEMA plan as insufficient to address
13 the conditions. I can return the plan, if it is
14 determined to be deficient with reasons and options
15 for the GMD to revise and resubmit the plan. Or,
16 fourthly, I can return the plan with specific
17 suggestions or improvements, which the GMD can
18 accept or reject.

19 If the order of decision accepts the plan,
20 then I will subsequently issue an order of
21 designation, designating the area of the LEMA and
22 ordering the specific corrective controls within the
23 plan.

24 Since the GMD has already proposed changes
25 to the proposed plan, it is likely that the order of

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decision will return the plan to the GMD for further consideration, proposed changes, and any other matters that I determine necessary.

I appreciate your appearance and your comments today. And, again, with that we will close the oral testimony in this matter. Thank you.

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STATE OF KANSAS,
THOMAS COUNTY, SS

C E R T I F I C A T E

I, Elaine Shogren, a Certified Court Reporter of Kansas, certify that the foregoing is a full and correct transcript of all the oral proceedings had in this matter at the aforementioned time and place.

IN WITNESS WHEREOF I have hereunto set my hand and official seal at Holcomb, Kansas this 11th day of December, 2017.

ELAINE SHOGREN, CCR