

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

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*Formal Hearing*  
*Vol. 6*  
*July 26, 2023*

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*Court Reporting Service, Inc.*  
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1                   BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
2                                           STATE OF KANSAS

3

4   IN THE MATTER OF:                    )  
5   THE APPLICATION OF THE             )  
6   CITIES OF HAYS, KANSAS             )  
7   AND RUSSELL, KANSAS                ) OAH No. 23AG0003 AG  
8   FOR APPROVAL TO                    )  
9   TRANSFER WATER FROM               )  
10   EDWARDS COUNTY, KANSAS            )  
11   PURSUANT TO THE KANSAS             )  
12   WATER TRANSFER ACT                 )

13                                           FORMAL HEARING

14                                           VOLUME VI

15                   This matter came on for Formal Hearing

16 before Matthew A. Spurgin, Presiding Officer, at

17 Hyatt Regency Wichita, Riverview Ballroom, 400

18 West Waterman, Wichita, Sedgwick County, Kansas,

19 commencing at 10:13 a.m. on the 26th day of

20 July, 2023.

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1                                           INDEX OF EXAMINATION

2

3   WATER PACK WITNESSES

4   STEVEN LARSON

5                                           DIRECT   CROSS   REDIRECT   RE CROSS

6   By Mr. Lee.....1122

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8

9

10   Certificate of Reporter.....1128

11

12                                           WATER PACK'S EXHIBITS

13   EXHIBIT                                   FIRST

14   NUMBER                                   REFERENCED

15   Number WP01864.....1124

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1                                           A P P E A R A N C E S

2                   City of Hays, Kansas appears by its

3 attorneys, David M. Traster, Foulston Siefkin LLP,

4 1551 North Waterfront Parkway, Suite 100, Wichita,

5 Kansas 67206; Daniel J. Buller, Foulston Siefkin

6 LLP, 7500 College Boulevard, Suite 1400, Overland

7 Park, Kansas 66210; and Donald F. Hoffman and

8 Melvin J. Sauer, Jr., Dreiling, Bieker & Hoffman

9 LLP, 111 West 13th Street, Hays, Kansas 67601.

10 Also present were Toby Dougherty and Jami Buck.

11                   City of Russell, Kansas appears by its

12 attorney, Kenneth L. Cole, P.O. Box 431, Russell,

13 Kansas 67665. Also present was Jon Quinday.

14                   Water PACK and Edwards County appear by

15 their attorneys, Charles D. Lee and Myndee M. Lee,

16 Lee Schwalb LLC, 7381 West 133rd Street - Second

17 Floor, Overland Park, Kansas 66213.

18                   Division of Water Resources appears by

19 their attorney, Kate Langworthy, Kansas Department

20 of Agriculture, 1320 Research Park Drive,

21 Manhattan, Kansas 66502. Also present was Lane

22 Letourneau.

23

24

25

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1                                           **PRESIDING OFFICER:** A little bit

2 before 10:20, we'll go ahead with just some

3 preliminary matters before we move forward

4 with any sort of testimony, anything like

5 that.

6                   So this is July 26th, 2023, it's now

7 10:13 in the morning, and I guess I've been

8 informed there's a few preliminary issues

9 to address.

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

11 Given the nature of this, the City would

12 like the opportunity to provide some

13 information for the Court, may I approach

14 the lectern?

15                   **PRESIDING OFFICER:** Go ahead.

16                   **MR. BULLER:** Permission to approach

17 the bench, Your Honor?

18                   **PRESIDING OFFICER:** Go ahead.

19                   **MR. BULLER:** Good morning, Your

20 Honor, Daniel Buller appearing on behalf of

21 the City of Hays, Kansas. I have just

22 handed you an email sent to us last night

23 by Mr. Lee, counsel for Water PACK, as well

24 as this court's prehearing order entered on

25 April 19th in this matter.

1 We want to bring to the Court's  
2 attention Water PACK's witness schedule,  
3 which we received yesterday evening at 6:30  
4 and to which the Cities strenuously object,  
5 and due to the importance of this issue  
6 we'd like to have the opportunity to be  
7 fully heard on the record, which Your Honor  
8 has gratefully agreed to.

9 First, the April 19th prehearing order  
10 specifically set out the requirements  
11 relating to expert testimony stating that  
12 all expert witness testimony shall be  
13 prefiled, with written direct testimony  
14 drafted in a question-and-answer format  
15 with each line of the prefiled testimony  
16 numbered at the time of the hearing. That  
17 expert witness will be permitted to adopt  
18 his or her prefiled testimony, including  
19 any supplemental or rebuttal testimony he  
20 or she has prefiled as the direct testimony  
21 that witness would offer at the hearing,  
22 and such prefiled testimony could be  
23 admitted to the record before that witness  
24 is tendered for cross-examination. The  
25 deadlines for prefilings of expert witness

1 testimony are contained within the  
2 procedural schedule below, which the  
3 parties had circulated, agreed to, and  
4 filed with OAH on March 31st.

5 Pursuant to that order, the deadline for  
6 expert disclosures was on May 29th. The  
7 deadline to prefile expert -- to prefile  
8 written expert witness testimony was also  
9 on May 29th. That was 51 days before the  
10 hearing and 57 days ago from today. The  
11 deadline to disclose rebuttal experts was  
12 June 28th. The deadline to prefile written  
13 supplemental rebuttal witness testimony was  
14 also on June 28th. That was 21 days before  
15 the hearing and 28 days ago from today.

16 Water PACK's proposed witness schedule  
17 completely ignores the prehearing order.  
18 As -- I've handed Your Honor the email from  
19 Mr. Lee, and that email lays out the first  
20 part of Water PACK's plan is to submit  
21 Mr. Larson's prefiled testimony, have him  
22 sit for cross-examination, and then after  
23 he offers his direct testimony and cross,  
24 have him sit for further surrebuttal  
25 testimony responding to Mr. Barfield's

1 rebuttal report, after which counsel for  
2 the Cities can, according to Mr. Lee,  
3 recross. This would be an improper end run  
4 around Your Honor's scheduling order and  
5 would violate the procedural rules that  
6 have been strictly applied to the Cities  
7 throughout this hearing.

8 To date, the Cities have offered the  
9 testimony of six separate experts. For  
10 each one, the Cities have abided by the  
11 prehearing order, and Mr. Lee has objected  
12 on more than one occasion to keep the  
13 questioning strictly within the confines of  
14 their offered testimony and the scope of  
15 cross-examination. And Your Honor has even  
16 sustained one such objection with respect  
17 to my questioning of Dr. Harmony under  
18 redirect.

19 If Water PACK wishes to respond to  
20 Mr. Barfield's expert opinions, it should  
21 do so by cross-examining Mr. Barfield, as  
22 Mr. Lee has had the opportunity to do that  
23 with respect to each of the City's experts.  
24 Water PACK should not be provided (sic) to  
25 provide oral surrebuttal testimony from

1 Mr. Larson.

1 Mr. Larson.

2 There is no prejudice whatsoever to  
3 Water PACK by requiring them to abide by  
4 the prehearing order because Mr. Lee will  
5 be permitted to cross-examine Mr. Barfield  
6 if he wishes to challenge his opinions or  
7 methodology. And because Mr. Barfield's  
8 expert testimony was prefiled on June 28th  
9 Mr. Lee has had ample opportunity to  
10 prepare for that cross-examination and  
11 consult with his own experts in preparation  
12 to do so.

13 The second aspect of Water PACK's plan  
14 is even more problematic. In addition to  
15 Mr. Larson's surrebuttal, Water PACK  
16 apparently intends to call two  
17 previously undisclosed -- I'm sorry,  
18 correction, one previously undisclosed  
19 witness, Dr. Andrew Keller.

20 Dr. Keller was on neither their  
21 preliminary nor their final witness list.  
22 Dr. Keller was an expert retained by Water  
23 PACK during their opposition to the City's  
24 change applications. Water PACK now seeks  
25 to inject Dr. Keller as a last second,

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1 undisclosed surrebuttal expert in this  
2 proceeding.  
3 The prehearing required that all expert  
4 testimony shall be in the form of prefiled  
5 written testimony, drafted in a specific  
6 format and admitted as such. This  
7 included, quote, any supplemental or  
8 rebuttal testimony, end quote. Water PACK  
9 provides no basis for permitting it to  
10 violate the terms of the prehearing order,  
11 no newly discovered evidence, no  
12 opportunity for us to undertake discovery,  
13 no opportunity for us to provide a rebuttal  
14 to Dr. Keller's testimony in prefiled  
15 format, no opportunity for us to prepare  
16 for his testimony. They did not overlook  
17 naming Dr. Keller, he was their expert who  
18 provided a report opposing the Cities'  
19 change applications in mid 2018.  
20 In this matter, they made a conscious  
21 decision to not list him in their  
22 preliminary witness list, to not disclose  
23 him as an expert, to not present his  
24 prefiled testimony, to not disclose him as  
25 a rebuttal expert and to not present his

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1 prefiled rebuttal testimony.  
2 Water PACK has been in possession of  
3 Mr. Barfield's prefiled testimony for four  
4 weeks. Surrebuttal in any form should only  
5 be allowed to counter new, unexpected  
6 evidence that is a complete and total  
7 surprise. In this instance, there have  
8 been no surprises. It is -- in the  
9 evidence presented by the Cities.  
10 We have strictly remained within the  
11 scope of our prefiled expert testimony, and  
12 we are merely asking the Court to require  
13 Water PACK to play by the same rules under  
14 which the Cities have been operating and to  
15 follow the prehearing order. This is a  
16 blatant attempt to end-run the Court's  
17 scheduling orders, and the Cities will be  
18 highly prejudiced if Water PACK is  
19 permitted to do so. Thank you.  
20 **PRESIDING OFFICER:** Mr. Lee, does  
21 Water PACK have any response to that?  
22 **MR. LEE:** Yes, as you might expect,  
23 Your Honor, we do. Mr. Buller's comments  
24 present an interesting perspective, but  
25 they proceed from a false premise. If --

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1 if Your Honor would review Water PACK and  
2 Edwards County's final exhibit witness  
3 list, it states on the first page, This  
4 list does not include the names of any  
5 rebuttal witnesses or potential expert  
6 witnesses. That, of course, is standard in  
7 terms of these listings because you don't  
8 know who rebuttal is going to be.  
9 What Mr. Buller is talking about, if one  
10 looks at the revised schedule that was part  
11 of Your Honor's order in this matter, it  
12 provides for filing of direct testimony by  
13 May 29th, and it is -- also provides for  
14 filing of rebuttal testimony at the end of  
15 June. But what we are talking about here  
16 is, with Mr. Barfield, is a rebuttal report  
17 that comes after all of that. In other  
18 words, he is -- he is -- has prepared a  
19 report that is in addition to what is  
20 contemplated by the order.  
21 The suggestion that it is adequate for  
22 us to not be able to present evidence as a  
23 rejoinder to what Mr. Barfield says and  
24 instead rely on cross-examination is an  
25 empty notion because we can argue with

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1 Mr. Barfield, but there is nothing that we  
2 can point to, as we will be able to with  
3 Mr. Larson's testimony, that actually  
4 undermines that testimony, we won't be able  
5 to present evidence as to that issue. And  
6 so to say that somehow this is embraced and  
7 contrary to the order that's entered is  
8 simply not -- not true.  
9 It is the -- it is the case that without  
10 the ability to, in our case, in other words  
11 not as -- not as surrebuttal as it has been  
12 characterized but in our case in chief to  
13 have Mr. Larson testify about an expert  
14 report that was at the end of this entire  
15 process and that we had not seen until the  
16 deadlines that were contemplated by -- by  
17 the order and this case had already past,  
18 there is nothing in the order that requires  
19 or addresses this question of prefiled  
20 testimony in relation to the circumstances  
21 here where this is an additional report  
22 that is not contemplated -- contemplated by  
23 the order.  
24 And so the -- the description of  
25 surrebuttal as something that -- that is

1 completely fantastic and new, that's not  
2 it. If one were to read cases, that's not  
3 what they say. Surrebuttal addresses  
4 something that occurs after rebuttal and  
5 simply addresses new issues that were  
6 raised.  
7 We're not asking for surrebuttal here,  
8 this is improperly characterized as  
9 surrebuttal. It is testimony in our case  
10 in chief that responds to a late filed  
11 expert report by Mr. Barfield that is  
12 different from any of these other -- other  
13 reports. There wasn't a provision that  
14 said if there is a rebuttal report, then  
15 there is also a direction to provide yet  
16 another written report in direct testimony,  
17 that simply is not in the order.  
18 So we are in our case in chief - or at  
19 least it will be treated as being in our  
20 case in chief if he testifies - today and  
21 not as -- not as something that is  
22 surrebuttal. And this is the only evidence  
23 in terms of expert testimony that will be  
24 available to Water PACK and Edwards County  
25 to address Mr. Barfield's opinions.

1 To suggest, again, that somehow that can  
2 be accomplished through cross-examination  
3 when we then are left in a situation we  
4 can't point to something and say, well,  
5 isn't it true, Mr. Barfield, that it's A,  
6 B, or C because we would not have that  
7 evidence in the record. So if there's any  
8 prejudice, of which there is lots from the  
9 perspective of Water PACK and Edwards  
10 County, that is what I think that Your  
11 Honor needs to consider.  
12 **PRESIDING OFFICER:** All right.  
13 **MR. BULLER:** Your Honor, if you  
14 permit me just two points?  
15 **PRESIDING OFFICER:** Go ahead.  
16 **MR. BULLER:** Relating to Mr. Lee's  
17 characterization of surrebuttal evidence,  
18 75 Anders 2d Trial Section 287, as a  
19 general rule a party does not have a right  
20 to reply to evidence given on rebuttal or  
21 to introduce evidence by way of surrebuttal  
22 unless new matter has been introduced in  
23 the rebuttal.  
24 Mr. Barfield provided his -- his  
25 rebuttal report on June 28th, no new

1 evidence has been submitted since then.  
2 Mr. Barfield will -- we will be kept within  
3 the confines of Mr. Barfield's rebuttal  
4 report, and he should -- and Water PACK  
5 should be kept within the confines of that  
6 report, just like those rules have been  
7 applied to us during our expert  
8 presentation so far in this matter.  
9 The second thing is relating to  
10 Mr. Lee's characterization of the  
11 prehearing order and its not addressing  
12 this situation. Your Honor provided clear  
13 instructions to the parties, all expert  
14 testimony must be in the form of prefiled  
15 testimony. Thank you.  
16 **PRESIDING OFFICER:** All right. We  
17 set those procedural schedules and have  
18 those ground rules so there's, again, a  
19 fair playing field for everybody to work  
20 from, everybody knows what's expected of  
21 them, what they need to do. This does  
22 create a situation, where while we're not  
23 tied to those strict rules of evidence, we  
24 don't want -- we still don't want to get in  
25 a situation where there's back and forth,

1 back and forth, or this matter may never  
2 end, we may never get to the end of the  
3 hearing if we went down that path, that's  
4 kind of a slippery slope to start down.  
5 What I think is a fair thing to do with  
6 this, when you have Mr. Larson testify, he  
7 can come up to address his expert report,  
8 any cross-examination of that expert  
9 report, and then any redirect would just be  
10 based on that cross-examination, kind of a  
11 standard process there.  
12 After Mr. Barfield has appeared to  
13 testify, if you need to recall Mr. Larson  
14 at that point, you could recall him as a  
15 witness and question him solely in response  
16 to what was asked -- questions that were  
17 asked of Mr. Barfield or what was in that  
18 report. But that would only be after he  
19 was called to testify and has adopted his  
20 testimony and his report.  
21 At this point, I think it would be  
22 premature to have any kind of response or  
23 reply, surrebuttal, whatever you want to  
24 characterize it, of Mr. Barfield's  
25 testimony when we still don't know if

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1 Mr. Barfield is going to get up there and  
2 adopt it exactly as it was prefiled or if  
3 he has corrections to be made. But then at  
4 that point, then, if there are any things  
5 that are -- that are addressed with that, I  
6 will allow the Cities then to recall  
7 Mr. Barfield as a witness then after that.  
8 But then that will be the end of that  
9 there.  
10 Do the parties want to address a little  
11 more the issue of Dr. Keller? It seemed  
12 like most of what you were addressing  
13 there, Mr. Lee, was in response -- was  
14 regarding Mr. Larson and responding to  
15 Mr. Barfield's rebuttal testimony.  
16 **MR. LEE:** Yes, Your Honor, that's  
17 correct. We would essentially make the  
18 same argument in relation to Mr. --  
19 Mr. Keller, simply because he would be  
20 responding only to the Barfield critique  
21 and not to anything else, so that would be  
22 in the nature of rebuttal and would be, I  
23 think, subject to the same standards that  
24 Your Honor has just addressed with  
25 Mr. Larson.

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1 **PRESIDING OFFICER:** All right.  
2 Mr. Buller, anything you want to address  
3 there then?  
4 **MR. BULLER:** Your Honor, I believe I  
5 agree with Mr. Lee to the extent that Your  
6 Honor's decision on this matter would apply  
7 to Mr. Larson, it would certainly apply to  
8 Dr. Keller. However, in addition to that,  
9 we -- the Cities' position would be that  
10 Dr. Keller should not be permitted to  
11 testify under any circumstances because he  
12 was not -- he was not -- he has not  
13 provided prefiled testimony, we have no  
14 idea what Dr. Keller's expert opinions  
15 might be in response to Mr. Barfield, and  
16 so we would lodge that additional objection  
17 to -- to Dr. Keller's testimony. But, yes,  
18 I think Your Honor's decision with respect  
19 to Mr. Larson would apply with equal force  
20 and then some to Dr. Keller.  
21 **PRESIDING OFFICER:** Okay. Well, I  
22 won't make a ruling yet as to Dr. Keller.  
23 If you want to take a little time, Mr. Lee,  
24 to get some arguments together as to -- if  
25 there's some authority that would support

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1 why he should be allowed as an expert  
2 witness on rebuttal and not just a rebuttal  
3 witness and not qualified as an expert.  
4 And, Mr. Buller, if you want to get some  
5 authorities to support your position there  
6 and present those to me, we can address  
7 that later today, tomorrow, whenever that  
8 may come about.  
9 **MR. LEE:** We're happy to do that,  
10 Your Honor. What is Your Honor's  
11 preference about scheduling of that,  
12 getting that information to you?  
13 **PRESIDING OFFICER:** Let's see when  
14 we end up today. I don't think we're going  
15 to end up going long today, but if we end  
16 up going till 8:00 o'clock tonight, or  
17 whatever, I'm not going to say have that to  
18 me by 9:00 a.m., I don't think that's fair  
19 to either of you or your law clerk,  
20 associates, whoever you may be assigning  
21 that out to. So let's take that up at the  
22 end of the day, we'll kind of see where we  
23 are, and what the -- what the schedule  
24 looks like moving forward so we can see  
25 when that would be an appropriate time to

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1 let you get something out there.  
2 Again, as I've said before, you know,  
3 I'm trying to move forward with this with  
4 the anticipation there's going to be some  
5 sort of appeal from one side or the other,  
6 maybe even both, who knows, just given  
7 what's at stake here is the first case like  
8 this to come along. I don't want something  
9 to get sent back to say we need to do it  
10 over again, so I want to make sure we have  
11 everything supported fully, we have a good  
12 record that whatever -- whatever body is  
13 reviewing my decision at the end, if they  
14 disagree with me, fine, I just don't want  
15 to have it come back because we didn't do  
16 something correctly.  
17 **MR. LEE:** Thank you, Your Honor.  
18 **PRESIDING OFFICER:** All right.  
19 **MR. BULLER:** Thank you, Your Honor.  
20 In light of this development, could we have  
21 just a few minutes before presentation of  
22 Mr. Larson's testimony to consult with my  
23 colleague and the City's attorney? But  
24 since Mr. Larson is the only witness today,  
25 I would hope that we have enough time to do

1 that.

2 **PRESIDING OFFICER:** I think that's

3 fair. Why don't we just take a ten-minute

4 recess, would that be good?

5 **MR. BULLER:** Thank you, that's

6 plenty.

7 **PRESIDING OFFICER:** Okay.

8 (Thereupon, a recess was taken;

9 whereupon, the following was had.)

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

11 have everybody back now, we'll go ahead and

12 go back on the record, get started with

13 witnesses for today.

14 **MR. LEE:** Thank you, Your Honor, we

15 would call Steve Larson in our case. Good

16 morning, Mr. Larson.

17 **MR. LARSON:** Good morning.

18 **PRESIDING OFFICER:** Mr. Larson, I do

19 need to swear you in, would you please

20 raise your right hand.

21

22 STEVEN P. LARSON,

23 having first duly sworn or affirmed, was

24 examined and testified as follows:

25

1 over the last 40 plus years, it's been two

2 primary areas, one is environmental issues

3 related to groundwater, groundwater

4 contamination and that sort of thing, and the

5 other part is related to water resources issues,

6 primarily issues in the western United States,

7 not exclusively but primarily.

8 Q And you were retained by Water PACK in this

9 matter, were you not?

10 A Yes, I was.

11 Q And for what purpose generally speaking?

12 A To use -- to evaluate the work that Burns &

13 McDonnell had done in calculating potential

14 impacts.

15 Q And in conjunction with that undertaking, you

16 prepared written testimony and a report, did you

17 not?

18 A I did.

19 Q And does that testimony and report that we have

20 filed with the Court remain accurate as of

21 today?

22 A Yes, it is.

23 Q And no need for revisions?

24 A No.

25 **MR. LEE:** Your Honor, we would offer

1 **PRESIDING OFFICER:** All right.

2 Thank you, you may proceed, Mr. Lee.

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

4

5 **DIRECT EXAMINATION**

6 **BY MR. LEE:**

7 Q Mr. Larson, could you state your full name,

8 please.

9 A Steven P. Larson, L-A-R-S-O-N.

10 Q And what's your business address?

11 A It's 1801 Rockville Pike in Rockville, Maryland.

12 Q And who are you employed by?

13 A S.S. Papadopoulos & Associates, that's

14 P-A-P-A-D-O-P-U-L-O-S.

15 Q Sounds like perhaps you've had to spell that

16 before?

17 A Sounds like what?

18 Q Sounds like you may have spelled that before?

19 A Yeah, a few times.

20 Q What does your work entail?

21 A Well, over my career, I began with doing water

22 resources work with the U.S. Geological Survey

23 with their water resources division, I did that

24 for about nine years. Then I went into the

25 consulting business with Dr. Papadopoulos, and

1 his testimony and report in evidence as

2 WP01864. And he is available for

3 cross-examination.

4 **PRESIDING OFFICER:** All right. Any

5 objection to the admission of that?

6 **MR. BULLER:** No objection, Your

7 Honor.

8 **PRESIDING OFFICER:** All right. It's

9 already been preliminarily admitted, and it

10 will be admitted then. So we can then move

11 to any questions?

12 **MR. BULLER:** And I believe

13 Ms. Langworthy is ...

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

15 Honor.

16 **MR. BULLER:** I'm sorry, that's my

17 fault. Your Honor, no questions from City

18 of Hays, thank you.

19 **PRESIDING OFFICER:** Okay.

20 **MR. COLE:** Nor from the City of

21 Russell, thank you.

22 **PRESIDING OFFICER:** All right.

23 **MR. LEE:** I don't think there's much

24 redirect about that, Your Honor.

25 **PRESIDING OFFICER:** All right. All



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1 right. Well, then that will conclude with  
2 Mr. Larson for now, then. Thank you,  
3 Mr. Larson.  
4 All right. Anything else from the  
5 parties?  
6 **MR. BULLER:** Nothing else from the  
7 City of Hays. My understanding was  
8 Mr. Larson was the only witness today.  
9 **MR. LEE:** That is correct, Your  
10 Honor, so that may portend when you'd like  
11 to have our brief.  
12 **PRESIDING OFFICER:** All right, then.  
13 Well, given that, do the parties think they  
14 could have some authorities available to  
15 provide to me when we start up in the  
16 morning, then?  
17 **MR. LEE:** Yes.  
18 **PRESIDING OFFICER:** Okay.  
19 **MR. TRASTER:** Yes, Your Honor.  
20 **PRESIDING OFFICER:** And then what is  
21 the planned schedule for witnesses for  
22 tomorrow then?  
23 **MR. BULLER:** Your Honor, the Cities  
24 intend to resume their case in chief in the  
25 morning beginning with the testimonies of

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1 two additional experts, Dr. Stephen  
2 Hamilton and Mr. David Barfield. Those are  
3 our only two witnesses scheduled for  
4 tomorrow. My understanding is that there  
5 may be, if there's time, some flexibility  
6 on Water PACK's side to present certain  
7 witnesses.  
8 **MR. LEE:** That's correct, Your  
9 Honor, actually which is set out in the  
10 email, I think, that you have, but that  
11 would be -- sounds as if those -- if those  
12 are the two witnesses, that we can present  
13 them tomorrow, and then Ms. Walker, who is  
14 the second expert for us, would be  
15 available on Friday.  
16 **PRESIDING OFFICER:** Okay.  
17 **MR. BULLER:** And then on Friday, our  
18 sole witness that I think we anticipate  
19 calling is Mr. Orrin Feril from GMD5, and  
20 my understanding is he's planning to be  
21 here on that day.  
22 **PRESIDING OFFICER:** Okay.  
23 **MR. TRASTER:** That's the plan.  
24 **PRESIDING OFFICER:** And then if  
25 there is time after Dr. Hamilton and

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1 Mr. Barfield tomorrow, if that's the time  
2 that you want to recall Mr. Larson, we can  
3 move to that at that point, then, if you  
4 want to recall him to be the -- the  
5 rebuttal witness as we discussed earlier.  
6 **MR. BULLER:** Consistent with Your  
7 Honor's decision earlier, yes.  
8 **MR. LEE:** And Mr. Larson will  
9 certainly be available tomorrow, and then  
10 depending on what the tribunal decides  
11 about Dr. Keller, then he may be available  
12 and certainly will be available on Friday  
13 if -- depending on logistics.  
14 **PRESIDING OFFICER:** Okay. All  
15 right. Sounds good, then. All right.  
16 Well, I guess we will adjourn, everybody  
17 gets a decent day to get some work done to  
18 prepare for Thursday and Friday, then. So  
19 thank you, everybody, so we are adjourned  
20 until tomorrow morning at 9:00 a.m., then.  
21 **MR. LEE:** Thank you, Your Honor.  
22 **MR. BULLER:** Thank you, Your Honor.  
23 **PRESIDING OFFICER:** Thank you.  
24 (Whereupon, the proceedings were  
25 adjourned at 10:50 a.m.)

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C E R T I F I C A T E

2 STATE OF KANSAS )  
3 SEDGWICK COUNTY ) ss:

4 I, Nancy L. Rambo, a Certified Shorthand  
5 Reporter, within and for the State of Kansas, do  
6 hereby certify that the foregoing is a true and  
7 correct transcript of the proceedings had at the  
8 time and place hereinbefore set forth.

9 I further certify that I am not a relative  
10 or employee or attorney or counsel of any of the  
11 parties, nor am I a relative or employee of such  
12 attorney or counsel, nor am I financially  
13 interested in the action.

14 WITNESS my hand and official seal at  
15 Wichita, Sedgwick County, Kansas, this 4th day of  
16 August, 2023.

\_\_\_\_\_  
NANCY L. RAMBO, R.P.R., C.S.R.  
Registered Professional Reporter  
Certified Shorthand Reporter

20 Costs:

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