

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

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*Formal Hearing*  
*Vol. 8*  
*July 28, 2023*

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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

14

15                                 FORMAL HEARING

16                                 VOLUME VIII

17                                 This matter came on for Formal Hearing

18                                 before Matthew A. Spurgin, Presiding Officer, at

19                                 Hyatt Regency Wichita, Riverview Ballroom, 400

20                                 West Waterman, Wichita, Sedgwick County, Kansas,

21                                 commencing at 9:01 a.m. on the 28th day of

22                                 July, 2023.

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1   A P P E A R A N C E S (Cont.)

2   300, Wichita, Kansas 67206. Also present was

3   Orrin Feril.

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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                                 Groundwater Management District Number 5

24   appears by their attorney, Lynn D. Preheim,

25   Stinson LLP, 1625 North Waterfront Parkway, Suite

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4   D I R E C T   C R O S S   R E D I R E C T   R E C R O S S

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25

1 **PRESIDING OFFICER:** All right.

2 Everybody, we can go on the record and get

3 started for the day.

4 And I guess maybe we should address this

5 first since it looks like we have parties

6 in the room and then looks like Health and

7 Environment counsel is watching online.

8 We've had some discussion previously about

9 what we need to do for some kind of

10 schedule to finish out everything with this

11 proceeding.

12 Under the statute, once the hearing

13 concludes, there is that 90-day window for

14 me to get an order finished out.

15 Commenting agencies have indicated they

16 would like the opportunity to submit

17 comments or at least potentially to submit

18 some comments and also discuss the parties

19 submitting some closing briefs, proposed

20 findings, conclusions of law.

21 And I think Cities had submitted -- I

22 guess I was handed this morning what they

23 submitted to the parties and commenting

24 agencies by email last night. Mr. Buller,

25 Mr. Traster, do you wish to address that

1 HEARING EXHIBITS

2 EXHIBIT

3 NUMBER REFERENCED

4 Exhibit A.....1383

5 Exhibit B.....1383

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1 for the record here?

2 **MR. TRASTER:** Your Honor, I

3 submitted that to the parties listed at

4 the -- listed on the email, which includes

5 Matt Unruh from the Kansas Water Office and

6 Emily Quinn from KDHE but then the usual

7 suspects here. And I had submitted it to

8 Mr. and Ms. Lee before submitting it to

9 everyone else and they concurred. It's

10 just a proposal, but it's what we think

11 might work in terms of having an orderly

12 way to resolve that and still give -- and

13 to give the commenting agencies the ability

14 to weigh in.

15 I will say that Mr. Unruh provided some

16 comments this morning, and I didn't read

17 them all carefully, but he suggested that

18 GMD5 should be a commenting agency. We

19 didn't include them in the list, we --

20 because they have actually intervened as a

21 party, and we -- the main focus here is on

22 getting all the evidence in the record so

23 that we can actually provide findings of

24 fact and conclusions of law based on the

25 evidence in the record and -- and not be

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1 trying to hit a moving target.  
2 So I think that it's pretty important  
3 that -- that all the intervenors and the  
4 applicants be bound by the obligation to  
5 get their evidence in before -- in this --  
6 in this part of the process rather than  
7 being able to submit new evidence after the  
8 fact, or after we conclude this portion of  
9 the proceeding. Otherwise, we think we'd  
10 be prejudiced.  
11 Now, it doesn't mean we're not going to  
12 be flexible about it too, and -- but we  
13 can't really afford to have the responses  
14 to proposed findings of fact, you know, two  
15 days before with no ability to respond to  
16 them. So that's -- that's kind of where we  
17 are.  
18 **PRESIDING OFFICER:** All right.  
19 **MR. TRASTER:** I mean, and I have not  
20 spoken with Mr. Preheim about that, I have  
21 no idea what his position would be.  
22 **PRESIDING OFFICER:** All right.  
23 Mr. Preheim, I guess under the statute,  
24 GMD5 would be a commenting agency, but GMD5  
25 had also filed that request to intervene

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1 even before everything got sent over to me;  
2 and then at my request, then, you  
3 officially filed in the proper way so I  
4 could recognize you and grant you that  
5 intervention status there. What are your  
6 thoughts on Mr. Traster's comments there?  
7 **MR. PREHEIM:** So, Your Honor, I've  
8 discussed with the client, I don't think we  
9 have a position either way, we're fine if  
10 we're treated as a party for purposes of  
11 the findings and conclusions; there's not  
12 going to be that much that we have to  
13 contribute, I don't think. So I think  
14 we're okay if you want to treat us as a  
15 party. Either way is fine, though.  
16 **PRESIDING OFFICER:** All right.  
17 Mr. Cole, any comment on this proposed  
18 schedule?  
19 **MR. COLE:** No, I think that sounds  
20 like a good proposal.  
21 **PRESIDING OFFICER:** Mr. Lee?  
22 **MR. LEE:** Your Honor, as Mr. Traster  
23 indicated, we concurred with the proposed  
24 timetable, I think that's workable, and we  
25 also agree that evidence -- that submission

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1 of evidence ought to conclude with this  
2 hearing and not -- the parties would not be  
3 allowed to submit evidence thereafter.  
4 **PRESIDING OFFICER:** Ms. Langworthy?  
5 **MS. LANGWORTHY:** KDA would agree.  
6 The other items, if we could, and Mr. Unruh  
7 had included in this email -- it in his  
8 email as well, within your order if you  
9 could give some guidance on the method by  
10 which you want commenting agencies to  
11 submit their comments and then how -- well,  
12 we had spoken about how to get notice to  
13 those commenting agencies that have been  
14 listed, and so to the extent that you want  
15 to provide guidance on that as well, we  
16 would request that you do so.  
17 **PRESIDING OFFICER:** Okay.  
18 **MR. TRASTER:** I -- Mr. Unruh had  
19 submitted four different comments, and I  
20 focused on one of them, and I -- maybe he  
21 needs to be heard here but -- or maybe  
22 they're covered, I don't know, but those  
23 other three I'm not -- I didn't see a  
24 problem, but I didn't really focus on them.  
25 **PRESIDING OFFICER:** All right.

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1 Mr. Unruh, did you want to add anything?  
2 And I'm going to also try to un-mute  
3 Ms. Quinn, she's counsel for Health and  
4 Environment, in case she needs to add  
5 anything. Ms. Quinn is on Zoom watching  
6 this proceeding.  
7 **MR. UNRUH:** Thank you, Your Honor.  
8 And I guess I would mention in relation to  
9 the email that is mentioned that I would  
10 have submitted earlier this morning today,  
11 the other three items, in addition to  
12 clarification on my GMD5 related commenting  
13 agency bulleted item, would simply be in  
14 relation to the notice that commenting  
15 agencies would receive to alert commenting  
16 agencies to the opportunity to provide  
17 comment, a date by which comments would  
18 need to be provided by commenting agencies,  
19 as well as that method for providing  
20 comments within the context of this matter.  
21 So really as far as the additional items  
22 for consideration, it would just be that  
23 clarification to be included that would  
24 then be passed along to commenting  
25 agencies. So those -- those were the other

1 three items that would have been mentioned  
2 in my email.

3 **PRESIDING OFFICER:** All right. And  
4 I'm going to see if I can figure out a way  
5 to do this without getting feedback through  
6 this. All right. Ms. Quinn, are you  
7 able --

8 **MS. QUINN:** Good morning, Your  
9 Honor, can you hear me okay?

10 **PRESIDING OFFICER:** Let me -- let me  
11 try the other system here, the main one  
12 that the big camera's on, see if that  
13 avoids some of those issues. I'll try  
14 un-muting this one. Okay. Let's try this  
15 again, Ms. Quinn, can you hear us okay?

16 **MS. QUINN:** Yes, Your Honor, I can  
17 hear you, this is Emily Quinn for Kansas  
18 Department of Health and Environment, am I  
19 coming through okay?

20 **PRESIDING OFFICER:** Is everybody  
21 else able to hear Ms. Quinn okay now?

22 Okay. So, Ms. Quinn, did you have  
23 anything you wanted to add in or comment on  
24 regarding that proposed schedule for  
25 finishing out this proceeding?

1 And then I'll list in there some of this  
2 information. But the commenting agencies,  
3 I think what will be helpful for just  
4 noting those criteria that are to be  
5 considered, set forth in the statute,  
6 anything that the agencies have to comment  
7 on those criteria.

8 Go ahead, Mr. Traster.

9 **MR. TRASTER:** Well, on reflection, I  
10 suppose that some comments from commenting  
11 agencies could come in and we might want to  
12 have some response, and I don't think that  
13 that's included in our -- in our proposal.  
14 So I'm wondering, we put in -- we put in a  
15 provision to say, you know, good cause  
16 shown for extensions, or whatever, but I'm  
17 wondering about moving -- we've got a few  
18 days after the deadline, which I can't  
19 remember, for submission of responses, I  
20 wonder if we shouldn't move that out  
21 maybe -- move that final -- we might -- my  
22 thinking was that we would have a very  
23 cursory hearing to conclude it with  
24 basically you saying, okay, I have it all,  
25 the hearing's over, my 90-day time frame

1 **MS. QUINN:** I -- I received  
2 Mr. Traster's email, thank you for that,  
3 Mr. Traster, and the schedule looked fine  
4 on our end, we would be in agreement with  
5 that. I'll -- I'll echo some of the  
6 requests to have some guidance on how you  
7 would like comments submitted and also if  
8 you have any length cutoffs that you would  
9 like to provide us, page number, word  
10 count, et cetera, so any guidance on that  
11 as well would be welcomed on our end. But  
12 besides that, for KDHE, everything looked  
13 fine.

14 **PRESIDING OFFICER:** All right. So  
15 what I will do, whenever we conclude with  
16 our evidentiary hearing part here in  
17 Wichita, I will issue a scheduling order,  
18 I'll incorporate that schedule that the  
19 parties have agreed to, and I'll indicate  
20 in there that the parties have agreed that  
21 the -- the close of the hearing pursuant to  
22 the statute, that 120-day window, will  
23 conclude with a Zoom -- call by Zoom on  
24 October 30th, and there'll be information  
25 there for everybody to join in to that.

1 starts.  
2 But we could have a comment or two from  
3 an agency that we may want to respond to,  
4 and so I'm suggesting that we move that  
5 last -- the date for the final hearing  
6 maybe ten days after the deadline just for  
7 submission, to give -- you know, if  
8 somebody needs to make a response.

9 **PRESIDING OFFICER:** All right.  
10 Thoughts on that from the other parties?

11 **MS. LANGWORTHY:** That would be  
12 appropriate in our --

13 **PRESIDING OFFICER:** Best if we have  
14 some kind of agreement on this since, as I  
15 kind of indicated before, there's no  
16 template we can look at for how these have  
17 been done before to figure out the process  
18 and, you know, when the hearing officially  
19 concludes. So if we can have something  
20 where the parties have all agreed that this  
21 is everybody's interpretation, everyone's  
22 in agreement on this, then we don't have to  
23 address that as some issue later that  
24 somebody is trying to say this didn't end  
25 at the appropriate date, because

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1 everybody's agreed to it.  
2 **MR. TRASTER:** Sure. I think the  
3 120 days runs on November 16th, or  
4 thereabouts, and so I think there's a  
5 little bit of room. I -- as we did with  
6 our prehearing conference, I don't think we  
7 want to wait -- have it on the last day,  
8 but I think a few days after the deadline  
9 for submission of public comments and  
10 responses to briefing and findings of fact  
11 makes some sense.  
12 **PRESIDING OFFICER:** What if we just  
13 pushed it roughly -- am I looking at the  
14 right month here? What if we just push it  
15 roughly a week to have the -- what you have  
16 there for October 30th, if we just push  
17 that to the end of that week, have it on  
18 Friday, the 3rd, that would be a week for  
19 the parties to have reviewed anything that  
20 the commenting agencies would have  
21 submitted?  
22 Well, I guess I hate to say work over a  
23 weekend, but that's kind of how it is  
24 sometimes; sometimes I get more done on the  
25 weekend when I'm not getting interrupted by

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1 other things, I can just shut the door and  
2 focus for a few hours without the phone  
3 ringing and ...  
4 **MR. TRASTER:** I think that would be  
5 fine, a week or ten days. I guess I'm -- I  
6 do work over the weekends and prefer to  
7 have them because -- for that very reason,  
8 so maybe instead of that Friday the next  
9 Monday.  
10 **PRESIDING OFFICER:** Monday, the 6th?  
11 **MR. TRASTER:** That would be ten days  
12 before the final date.  
13 **MR. LEE:** And we have no objection  
14 to that, Your Honor.  
15 **PRESIDING OFFICER:** Okay. We can do  
16 November 6th, then. That gives us a few  
17 days if there's some emergency that comes  
18 up for somebody, we can push it a few days  
19 and just continue it that way. I guess I  
20 will -- so there's proper notice of  
21 everything, I'll note that we're going to  
22 continue -- we'll continue the hearing to  
23 conclude with the Zoom call on  
24 November 6th, or continued to whatever day  
25 after that as deemed necessary, with notice

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1 posted up on -- we've got a section on our  
2 website, KDA has one also for the water  
3 transfer hearing, and I'll try to draft it  
4 so it includes that.  
5 So anybody out there that might be  
6 concerned about it, if something comes up  
7 and somebody has some emergency, get  
8 something in to let me know, we can push it  
9 back a day or so. But if we just plan on  
10 that being 9:00 a.m. on the 6th, does that  
11 sound acceptable?  
12 **MR. TRASTER:** That works for us.  
13 **PRESIDING OFFICER:** And hopefully  
14 that will not be a very long proceeding,  
15 it'll just be everybody getting together,  
16 if there's some final thing that needs to  
17 be addressed, we can address it. Then,  
18 otherwise, we'll close it out, and that  
19 would start that 90-day window for the  
20 order, so I guess that would put it at  
21 roughly the end of January when that order  
22 would be due, then.  
23 Now, as far as the list of other  
24 potential commenting agencies, now, as  
25 we've kind of already addressed, when that

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1 notice first went out, notice was sent to  
2 those agencies that had identified that  
3 they wanted to be a commenting agency,  
4 because the way the statute is worded was  
5 the appropriate commenting agency.  
6 I don't know that it would be  
7 appropriate for me as the judge and hearing  
8 officer in this matter to contact each of  
9 those potential commenting agencies listed,  
10 to call them up and say, hey, do you want  
11 to be a commenting agency in this matter?  
12 Is that something that maybe some of the  
13 other commenting agencies would want to  
14 talk to some of your contacts at those --  
15 **MS. LANGWORTHY:** We can handle that,  
16 Your Honor.  
17 **PRESIDING OFFICER:** -- other  
18 entities and see if -- and if they want to  
19 become a commenting agency, they just get  
20 something sent in, request to be recognized  
21 as a commenting agency, such as what KDHE  
22 and the Water Office did, and that way they  
23 can be -- everybody has that notice through  
24 the E-file system and everything there that  
25 they know those agencies should be added to

1 the service list?  
2 **MR. PREHEIM:** What if you were just  
3 to set up a, essentially a pleading that's  
4 a notice that says, you are a potential  
5 commenting agency under the following, if  
6 you choose to make comments you have this  
7 deadline to do so, and then just send it  
8 out as sort of a, almost like a pleading  
9 out of this proceeding? That way you're  
10 not actually call -- nobody's calling them  
11 up, you're just sending them the notice,  
12 and it's a formal notice and they can  
13 decide or not whether they want to comment.

14 **MR. TRASTER:** That works for us. I  
15 know that I'm aware that OAH likes to have  
16 it all on its -- on its --

17 **MR. PREHEIM:** On a docket.

18 **MR. TRASTER:** -- on its docket, so  
19 I'm fine either way. Whether they enter  
20 their -- I mean, I guess they're going to  
21 have to sign up in order to be able to file  
22 anything in the OAH system.

23 **PRESIDING OFFICER:** Yeah, the state  
24 agencies would because I think -- I think  
25 almost all those agencies that would be

1 listed there, other than -- I don't think  
2 technically have a contract with GMDs, but  
3 all the other entities, because we have  
4 contracts with them for other matters,  
5 under their contracts one of those  
6 provisions is that all their activities  
7 with us, they need to use the E-file  
8 system.

9 **MR. TRASTER:** Sure.

10 **MR. BULLER:** I suppose if you went  
11 the route of Mr. Preheim's suggestion, you  
12 could advise them that they would need to,  
13 you know, register through the system so  
14 that they -- before they would be able to  
15 submit a comment, if that was the route you  
16 went, yeah.

17 **MR. TRASTER:** They would have to  
18 fill out a form and sign their life away  
19 like the rest of us.

20 **MR. PREHEIM:** And the reason I  
21 suggested that is just so you would have a  
22 docket record that says this contact was  
23 made and they were given the opportunity to  
24 make the comment, that's the reason I  
25 suggested using that.

1 this, to make this a little better.  
2 Hopefully, we've done the best we can to  
3 try to make this process as effective as  
4 possible, but I think that's -- would all  
5 be things that we could do there.

6 **MR. TRASTER:** One -- I guess one  
7 other thing, when I prepared this list of  
8 agencies, I think I made a note in there  
9 that it's the agencies listed in the  
10 statute and it's the agencies that are  
11 ex officio to the Kansas Water Authority.  
12 But there could be some other agency I  
13 missed because I wasn't -- I don't know who  
14 else there might be out there that -- I  
15 mean, I don't think we need the KBI, you  
16 know, I mean, I -- I don't know who else  
17 has a --

18 **PRESIDING OFFICER:** Right.

19 **MR. TRASTER:** You know, what other  
20 agencies there might be and so --

21 **PRESIDING OFFICER:** I think as you  
22 pointed out at one point earlier when we  
23 were discussing some of this too, the  
24 notice of that public hearing -- or the  
25 prehearing to start off this whole process



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1 was published in the Kansas Register, and  
2 so there was officially a notice published  
3 out there that everybody could have  
4 received and received that notice to become  
5 a commenting agency.  
6 **MR. TRASTER:** I guess the other  
7 thing that just occurred to me is that you  
8 may want to include provisions saying this  
9 is limited to the parties and to commenting  
10 agencies. The public has had its  
11 opportunity to comment.  
12 **PRESIDING OFFICER:** Correct. And  
13 we -- as we've already addressed, those  
14 public comments that were received in  
15 writing have been admitted to the record,  
16 as well as the public comment hearing that  
17 was held out in Hays, the recording of that  
18 is admitted to the record, so those are all  
19 part of the record in this matter. So I  
20 think that kind of takes care of those  
21 matters.  
22 The other thing I just want to ask you  
23 about, Mr. Traster, based on this it almost  
24 looks like you think we're going to  
25 conclude everything Monday, do you think

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1 that's a safe bet for wrapping things up?  
2 **MR. TRASTER:** I don't know what  
3 anybody else in the room is going to do.  
4 **PRESIDING OFFICER:** Okay.  
5 **MR. TRASTER:** But I think, you know,  
6 I think we may finish witnesses today,  
7 and -- and Monday we need to, as Your Honor  
8 had said, go through some of the exhibits,  
9 make sure that we have all of the exhibits  
10 marked and understanding. So I think -- I  
11 think we need sometime to do that, and I  
12 doubt that we can get that done today. So  
13 I'm thinking Monday, but, you know, I mean,  
14 maybe there will be a witness Monday, I --  
15 I don't know.  
16 **PRESIDING OFFICER:** Okay. All  
17 right. And I am going to just make a note  
18 here for the scheduling order, I will try  
19 to work something in there that when we  
20 come to our formal closing by Zoom, since  
21 the hearing's not been closed, if during  
22 that process of getting everything together  
23 we discover there's something that we  
24 missed somewhere that -- that was brought  
25 up but then was not -- some exhibit that

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1 was not actually admitted to the record,  
2 then, during the course of it, and by that  
3 point everybody will have had a few months  
4 to gone through the transcript and  
5 double-check, triple-check everything, and  
6 if somebody catches something, then that  
7 gives us that opportunity to kind of  
8 correct that at that point, then.  
9 **MR. TRASTER:** I would suggest that  
10 that be -- that we do that by the deadline  
11 for submitting the findings of fact and  
12 briefings rather than waiting till the last  
13 minute.  
14 **PRESIDING OFFICER:** What do you  
15 suggest, as a motion then?  
16 **MR. TRASTER:** Well, whatever, I  
17 don't know exactly what you're thinking  
18 about, but what I don't want to have is a  
19 lot of surprises.  
20 **PRESIDING OFFICER:** I understand  
21 that.  
22 **MR. TRASTER:** And so -- and I think  
23 I understand what you were referring to  
24 but, yeah, a motion to recognize this  
25 document or that document that was in the

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1 record but didn't get included in some way,  
2 but whatever.  
3 **MR. BULLER:** And, Your Honor, I  
4 would suggest that if it's agreed amongst  
5 all the parties that it can be, you know,  
6 an agreed, you know, type motion to  
7 supplement the record with whatever. If  
8 the parties are not in agreement, then a  
9 motion.  
10 **MR. TRASTER:** Good idea.  
11 **PRESIDING OFFICER:** Okay. I like  
12 that idea, anybody else have any thoughts  
13 on that?  
14 **MR. LEE:** We do not, Your Honor.  
15 **PRESIDING OFFICER:** Okay. So we'll  
16 take up on Monday, we'll try to catch  
17 everything, hopefully we will, but if there  
18 is something that is missed, if the parties  
19 can circulate emails among each other and  
20 get an agreement and then submit just an  
21 agreed motion to admit this exhibit that  
22 was addressed in the hearing but not -- but  
23 not officially admitted into the record,  
24 then we can do so. Otherwise, we have the  
25 motion and then there will be a time to

1 respond to that.  
2 **MR. BULLER:** As a matter of your  
3 personal preference, Your Honor, should we  
4 attach an agreed order to that if there's  
5 no -- no dispute about the admission of  
6 those supplemental documents, or do you  
7 want to do your own order? I mean,  
8 different -- different judges have  
9 different preferences.

10 **PRESIDING OFFICER:** I don't think  
11 you need to submit an agreed upon -- a  
12 proposed order; if you just -- just a  
13 one-page --

14 **MR. BULLER:** Okay.

15 **PRESIDING OFFICER:** -- pleading, say  
16 the attached exhibit was addressed during  
17 the hearing, we discovered when reviewing  
18 the transcript it was not admitted to the  
19 record, and the parties agree it should be  
20 admitted to the record.

21 **MR. BULLER:** Okay.

22 **PRESIDING OFFICER:** And then that's  
23 something that we can just address in  
24 closing for everything, that it's all  
25 admitted and ...

1 was referenced yesterday, WP14890 from your  
2 discovery documents --

3 **MS. LEE:** Right.

4 **PRESIDING OFFICER:** -- your list of  
5 water right holders.

6 **MS. LEE:** Uh-huh. And I actually  
7 didn't upload our exhibits. I had  
8 contacted your office, and they indicated  
9 that -- I contacted your office and they  
10 indicated that I can send them a link. I  
11 didn't know if they would all upload to  
12 the -- but I can upload them all, that's  
13 fine.

14 **PRESIDING OFFICER:** Okay. Well, if  
15 they have a link, then if they're all  
16 available on that link, then I'll make sure  
17 the legal assistant knows to pull those, to  
18 get those on there as long as they're  
19 marked with whatever numbers that they need  
20 to have on there.

21 **MS. LEE:** And I'm happy to upload  
22 them, I just didn't know the bandwidth of  
23 the, you know, of the upload --

24 **PRESIDING OFFICER:** I think right  
25 now with the Cities' exhibits we just kind

1 **MR. BULLER:** Sounds great, thank  
2 you.

3 **PRESIDING OFFICER:** Pretty much  
4 there's an agreed order to admit something  
5 that we missed, I don't see any reason why  
6 I would not grant that.

7 Let's see, I think that's -- oh, the  
8 other thing I did have on the list to  
9 address --

10 I'm going to go ahead and mute  
11 Ms. Quinn.

12 Okay. The other note that I had to  
13 address today, we have the roughly 2800  
14 pages of exhibits -- or roughly 2800  
15 exhibits, I should say, that the City has  
16 offered. For Water PACK, Edwards County,  
17 we have your exhibit list but not all of  
18 those exhibits have been uploaded. Over  
19 the weekend or so, can you check and those  
20 that -- I know exhibits such as the  
21 prefiled testimony were uploaded, but then  
22 some of those additional ones were not that  
23 have been addressed in the hearing, such as  
24 just a couple on my list here, 01863 is a  
25 census map and then the additional one that

1 of have a placeholder on there, we're  
2 trying to --

3 **MS. LEE:** Okay.

4 **PRESIDING OFFICER:** -- work out  
5 getting those, like, merged into a single  
6 file or just a couple of files instead of  
7 having 2800 separate files on that list  
8 there. So they were working on that and  
9 they just had a placeholder in there for  
10 when those have been submitted.

11 **MR. BULLER:** Your Honor, similarly,  
12 for the Cities, for these documents that we  
13 had added to the record that were beyond --  
14 or that we've discussed and addressed  
15 during this hearing that were beyond those  
16 that we initially sent a USB drive that  
17 were added to the OAH sytem, we'll upload  
18 those or we'll send a link or whatever we  
19 need to do to get those into your system.

20 **PRESIDING OFFICER:** Just so we make  
21 sure any additional documents are all  
22 reflected in that E-file system 'cause  
23 that's our official record of everything  
24 then so ...

25 **MR. BULLER:** That's on the agenda

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1 for this weekend.  
 2 **PRESIDING OFFICER:** Okay, great,  
 3 thank you, everybody. All right. Any  
 4 other matters the parties think we need to  
 5 address before we go back to testimony?  
 6 **MR. LEE:** Your Honor, quickly, and  
 7 it could be that your comments really  
 8 obviate the concern I was going to raise  
 9 with you, this 14890, which is the list of  
 10 right -- water right holders adjacent to  
 11 the R9 Ranch, I think, essentially was  
 12 offered in evidence yesterday, I'm not sure  
 13 it was ruled upon. So we just wanted to  
 14 confirm that, in fact, it is admitted?  
 15 **PRESIDING OFFICER:** Okay. Well, I  
 16 guess we can -- that would have been one of  
 17 those things that we would be taking up on  
 18 Monday or so anyway to make sure we cover  
 19 anyway. So if we're following your  
 20 numbering system, would that be -- I know  
 21 that was your Bates number from when you  
 22 had your discovery documents, would that  
 23 then become 10865, or what would that  
 24 number be from your -- for your exhibit  
 25 list then?

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1 **MS. LEE:** Yeah, it would be -- it  
 2 would be 1865.  
 3 **PRESIDING OFFICER:** All right. So  
 4 is there any objection to that list of  
 5 water right holders from that -- off that  
 6 WP14890 document?  
 7 **MR. TRASTER:** No objection, Your  
 8 Honor.  
 9 **MR. COLE:** No.  
 10 **PRESIDING OFFICER:** All right. That  
 11 will be marked, then, as 1865, or WP01865  
 12 following that numbering system and will be  
 13 admitted to the record then.  
 14 **MS. LEE:** Thank you, Your Honor.  
 15 **MR. LEE:** Thank you, Your Honor.  
 16 **PRESIDING OFFICER:** Any other  
 17 matters, then, from anybody?  
 18 All right. Mr. Traster, when we broke  
 19 for the evening, you were about to start  
 20 your cross-examination of Mr. Wenstrom, but  
 21 there's also some discussion about possibly  
 22 holding and taking his testimony a little  
 23 bit later, if necessary, regarding some  
 24 travel schedules of some other witnesses.  
 25 What are the parties wanting to do for the

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1 next witness to testify today?  
 2 **MR. BULLER:** Your Honor, my  
 3 understanding is that Mr. Lee planned to  
 4 call Ms. Walker right up front, and that's  
 5 fine with us.  
 6 **MR. LEE:** And if so, that's what  
 7 we'd do, Your Honor.  
 8 **PRESIDING OFFICER:** Okay.  
 9 **MR. LEE:** We would call Susan  
 10 Walker, please.  
 11 **PRESIDING OFFICER:** Ms. Walker,  
 12 please come up and take the stand. Please  
 13 raise your right hand.  
 14  
 15 **SUSAN WALKER,**  
 16 having first duly sworn or affirmed, was  
 17 examined and testified as follows:  
 18  
 19 **DIRECT EXAMINATION**  
 20 **BY MR. LEE:**  
 21 Q Ms. Walker, good morning.  
 22 A **Good morning.**  
 23 Q Could you state your full name?  
 24 A **Susan Walker, W-A-L-K-E-R.**  
 25 Q And what is your business address?

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1 A **469 South Cherry Street, Suite 100, Denver,**  
 2 **Colorado 80246.**  
 3 Q And who is your employer?  
 4 A **Harvey Economics.**  
 5 Q What does your work for Harvey Economics entail  
 6 in a general sense?  
 7 A **Well, we're an economics and financial**  
 8 **consulting firm, I'm a director there and part**  
 9 **owner, I've been there for 18 years. And so**  
 10 **we've really sort of run the gamut of economic**  
 11 **and financial analyses related to natural**  
 12 **resource issues, really focusing on water. My**  
 13 **particular role or expertise is demographic**  
 14 **analysis, economic modeling, demographic**  
 15 **projections, socioeconomic impact analysis**  
 16 **related to natural resource topics.**  
 17 Q Okay. And was Harvey Economics retained by  
 18 Water PACK?  
 19 A **Yes.**  
 20 Q The -- for what purpose, again in a general  
 21 sense?  
 22 A **In a general sense, our main purpose was to look**  
 23 **at the water demand projections and water needs**  
 24 **for the Cities of Hays and Russell.**  
 25 Q Okay. So in conjunction with that undertaking,

1 Harvey Economics was asked to prepare a report,  
 2 was it not?  
 3 **A That is correct.**  
 4 **Q** And the report, and we have discussed this  
 5 with -- with the tribunal and with other  
 6 counsel, the testimony related to that report  
 7 and the report itself was signed by your  
 8 colleague, Edward Harvey; is that right?  
 9 **A That is correct.**  
 10 **Q** But we understand that you coauthored the  
 11 report; is that right?  
 12 **A That is correct, and Harvey and I worked closely**  
 13 **together on this -- all of our analyses and the**  
 14 **report.**  
 15 **Q** And the same would be true of the direct  
 16 testimony?  
 17 **A That is correct.**  
 18 **Q** So you are prepared, as I understand, to be  
 19 cross-examined on the testimony that was signed  
 20 by Mr. Harvey and also in the same vein the  
 21 original report that Harvey Economics filed  
 22 along with a rebuttal report; is that right?  
 23 **A Yes.**  
 24 **Q** Okay. As to the testimony and the reports,  
 25 Ms. Walker, do they remain accurate as of today

1 **PRESIDING OFFICER:** Okay. So 1866  
 2 will be admitted as if she gave that  
 3 testimony today.  
 4 And then did you want to address the  
 5 rebuttal that Ms. Walker has filed, then?  
 6 **MR. LEE:** Only in the sense of, I  
 7 think her testimony, Your Honor, was to the  
 8 effect that she coauthored that, it was not  
 9 in need of revision, and she is prepared to  
 10 be cross-examined about it, and so we would  
 11 offer the rebuttal report as well.  
 12 **PRESIDING OFFICER:** So that would be  
 13 1867; is that correct?  
 14 **MS. LEE:** Yes.  
 15 **MR. BULLER:** No objections from the  
 16 City of Hays.  
 17 **PRESIDING OFFICER:** And, I'm sorry,  
 18 I guess I did not check the other parties.  
 19 Mr. Cole, do you have any objection to  
 20 either of those?  
 21 **MR. COLE:** No.  
 22 **PRESIDING OFFICER:** Ms. Langworthy?  
 23 **MS. LANGWORTHY:** No, Your Honor.  
 24 **PRESIDING OFFICER:** Mr. Preheim?  
 25 **MR. PREHEIM:** No, Your Honor.

1 from your perspective?  
 2 **A They do.**  
 3 **Q** Are there any revisions or corrections that are  
 4 needed?  
 5 **A Nope.**  
 6 **MR. LEE:** Your Honor, we would offer  
 7 those documents in evidence.  
 8 **PRESIDING OFFICER:** All right. Pull  
 9 those up here. So this would be in -- I'm  
 10 trying to find the exhibit number here so  
 11 I'm tracking everything. And did that have  
 12 an exhibit number on it yet?  
 13 **MS. LEE:** It does not, Your Honor.  
 14 **PRESIDING OFFICER:** Okay. That's  
 15 why I'm not finding it on the exhibit list.  
 16 **MS. LEE:** It will be 1866.  
 17 **PRESIDING OFFICER:** 1866. And that  
 18 will be on what was filed as Mr. Harvey's  
 19 testimony that she is adopting?  
 20 **MR. LEE:** Correct.  
 21 **PRESIDING OFFICER:** Okay. So  
 22 addressing that one first, then, is there  
 23 any objection?  
 24 **MR. BULLER:** No objection, Your  
 25 Honor.

1 **PRESIDING OFFICER:** So 1866 and 1867  
 2 will both be admitted into the record then.  
 3 **MR. LEE:** Thank you, Your Honor, we  
 4 have nothing else.  
 5 **PRESIDING OFFICER:** Mr. Traster or  
 6 Mr. Buller, who will be --  
 7 **MR. BULLER:** I will be, Your Honor,  
 8 no questions on behalf of the City of Hays.  
 9 **PRESIDING OFFICER:** Okay. Mr. Cole?  
 10 **MR. COLE:** Yes, thank you, I just  
 11 have a couple.  
 12  
 13 **CROSS-EXAMINATION**  
 14 **BY MR. COLE:**  
 15 **Q** Ms. Walker, my name is Ken Cole, I'm -- I  
 16 represent the City of Russell.  
 17 **A Good morning.**  
 18 **Q** And I reviewed your report, and I just ask that  
 19 we kind of look at your conclusions.  
 20 **A Uh-huh.**  
 21 **Q** There's a number of those, but I'm only -- we're  
 22 only going to discuss a couple of them.  
 23 **A Okay.**  
 24 **Q** Are you able to see the screen there?  
 25 **A Yes.**

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1 Q Okay. And the first one I want to look at is  
2 number 4 and it says, if you'll read along with  
3 me, estimates of firm yield water supplies  
4 during the drought periods provided in the  
5 McCormick expert report, as compared to  
6 projected water demands, indicate that Hays and  
7 Russell currently have sufficient water supplies  
8 to meet demands during a moderate drought,  
9 similar to that experienced in 2011 and 2012.  
10 Does that appear correct?  
11 A **It does.**  
12 Q Okay. And I just -- I just want to get some  
13 understanding on this. So in looking at that,  
14 at the water supply that's referred to, and  
15 there's been testimony in this proceeding as to  
16 the Cities' sources not including the R9 Ranch,  
17 so when you refer to the water supplies, you're  
18 referring to those existing sources. Would that  
19 be correct?  
20 A **That's correct.**  
21 Q Yeah. And in this bullet point 4, you're  
22 referring to the drought that occurred in 2011  
23 and 2012?  
24 A **Yes. And just to clarify, in the McCormick**  
25 **report, the moderate drought conditions, you**

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1 **know, that were described as a two-year period,**  
2 **and that's what that sort of reference to '11**  
3 **and '12 came from.**  
4 Q Okay. And I think in your report, you also --  
5 it reflects that more severe droughts are  
6 possible, but this one is being characterized as  
7 a moderate drought?  
8 A **That is correct.**  
9 Q Okay. And your bullet point says that Hays and  
10 Russell, quote, currently have sufficient water  
11 supplies to meet demands during a moderate  
12 drought, end quote. What do you mean by that,  
13 sufficient water supplies to meet those demands?  
14 A **Well, we made projections of water demands for**  
15 **each of the Cities through 2040 using what we've**  
16 **determined to be reasonable annual growth**  
17 **projections, and so we projected out the**  
18 **population and water demands through that period**  
19 **and then compared them to the water supplies**  
20 **stated by Mr. McCormick in the Burns & McDonnell**  
21 **report.**  
22 Q Were you able to listen to testimony with  
23 respect to the type of demands that Cities were  
24 experiencing during that period of time and the  
25 effect that it had on the population?

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1 A **I have been listening through the hearing here**  
2 **and there so I have heard some of that.**  
3 Q So you had heard that the governing bodies of  
4 both Cities imposed some rather strict  
5 restrictions on water use during those times?  
6 A **Yes, I have heard about conservation measures in**  
7 **general and drought period restrictions.**  
8 Q And in some cases, at least for the City of  
9 Russell, not just restrictions but prohibition  
10 of use of water?  
11 A **Correct.**  
12 Q All right. Have you also -- were you also able  
13 to hear testimony with respect to the, what we  
14 call the industries in Russell, PureField, which  
15 is the gluten plant and ethanol plant?  
16 A **Yes.**  
17 Q And the fact that they were required to reduce  
18 their demand for water during this period of  
19 time?  
20 A **I did hear that.**  
21 Q Okay. And so then taking into those  
22 considerations, is it still your opinion that  
23 those Cities were able to meet that demand  
24 during those periods?  
25 A **Well, it is -- it is my opinion that based on**

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1 **the supply information from the Burns &**  
2 **McDonnell report that they will be able to meet**  
3 **the demands going forward in the future under**  
4 **those conditions.**  
5 Q So long as we impose those restrictions and  
6 prohibitions?  
7 A **Well, you know, when we looked at the**  
8 **projections going forward compared to those**  
9 **supplies, there were still, under a moderate**  
10 **drought condition, some excess water supplies.**  
11 Q So your -- your assumption and conclusion may be  
12 that the Cities, while they're on the ground  
13 dealing with their particular situations, they  
14 may have been in error?  
15 A **Well, we had to use the information that we had**  
16 **on the sustainable supplies from the Burns &**  
17 **McDonnell report, and that's what we used.**  
18 Q All right. You're not suggesting that the  
19 Cities should have to live under those  
20 restrictions at all times?  
21 A **No, I -- no, there are certain drought period**  
22 **restrictions that are always imposed during**  
23 **certain periods.**  
24 Q Okay. I want to -- can you scroll down to, I  
25 believe it's 12? And that is really somewhat a

1 the heart of this proceeding here, and I'll read  
 2 that again, bullet point 12, and it says, quote,  
 3 the net costs of the R9 Ranch project will  
 4 likely exceed its benefits to the Cities and the  
 5 State of Kansas, end quote. And -- did I read  
 6 that right?  
 7 **A You did.**  
 8 **Q** Okay. And your report has various elements that  
 9 it looked at in reaching this conclusion, did it  
 10 not?  
 11 **A That is correct.**  
 12 **Q** Okay. As I had indicated, I represent the City  
 13 of Russell and we have -- we have an industry  
 14 there that is real important to us, and there's  
 15 been testimony that that industry is not only  
 16 important to us but is important to farmers  
 17 throughout the county and throughout the state.  
 18 Would you agree with that?  
 19 **A Yes.**  
 20 **Q** There's also testimony that that industry is in  
 21 the planning stages and would like to expand its  
 22 operation. Are you familiar with that?  
 23 **A I have heard that, yes.**  
 24 **Q** Okay. And I want to go to Cities' Exhibit,  
 25 Jami, 1-47.

1 Groundwater Management District showed that the  
 2 direct economic impact of an acre-foot of  
 3 Ogallala water for irrigation has about an \$18;  
 4 whereas, the direct economic impact for an  
 5 acre-foot of municipal use has about \$460. Do  
 6 you see that?  
 7 **A I do.**  
 8 **Q** Okay. Are you familiar with the concept of the  
 9 differing values of economic impact --  
 10 **A Yes.**  
 11 **Q** -- with respect to an acre-foot of water? Okay.  
 12 One of the -- the Cities -- the City of  
 13 Russell's contention is that they need the  
 14 additional source of water from the R9 Ranch for  
 15 a variety of reasons, but one is to deal with  
 16 future industrial prospects as being presented  
 17 to it right now. PureField has indicated and  
 18 the evidence in the case already has shown that  
 19 they have a planned expansion of their plant,  
 20 but in order to do so they -- they require a  
 21 commitment of a firm supply of an additional  
 22 approximately 500,000 gallons of water a day,  
 23 okay? Now, it is not, I don't think, in what  
 24 you've seen and what you've reviewed that in any  
 25 type of drought situation that the City of

1 And I'll represent to you that this is a  
 2 memo written by the president of the Docking  
 3 Institute at Fort Hays State. Are you familiar  
 4 with that --  
 5 **A Yes.**  
 6 **Q** Okay. And can you tell me briefly what that  
 7 entity does?  
 8 **A Oh, am I familiar with the entity? I'm not**  
 9 **familiar with the Docking Institute in**  
 10 **particular, I am familiar with this memo.**  
 11 **Q** With the memo?  
 12 **A Yeah.**  
 13 **Q** And there's really only one purpose that I  
 14 wanted to show, if we could go to, it is, I  
 15 think, on page 2, footnote 4. Can you see that?  
 16 Barely?  
 17 **A I think I can pretty well see it.**  
 18 **Q** Well, you're doing better than me, I'm closer.  
 19 Okay. I'm going to read that for you and it --  
 20 and I'll -- first I should say that this is a  
 21 memo, I think, from 2005, so it is somewhat  
 22 dated.  
 23 **A Yes.**  
 24 **Q** And it says, quote, a recent Docking Institute  
 25 study commissioned by the Southwest Kansas

1 Russell could provide that firm supply to them  
 2 under existing conditions?  
 3 **A You know, I haven't seen any of that**  
 4 **documentation from the plant stating any**  
 5 **particular amount of water that they need. If**  
 6 **that is available, you know, it should be**  
 7 **something that should be considered in those**  
 8 **calculations. I have not seen that information.**  
 9 **Q** And I understand that. And actually in your  
 10 report, you address the fact that you were just  
 11 dealing with the information --  
 12 **A That's correct.**  
 13 **Q** -- that you had been provided, that's all that  
 14 you could deal with in providing your report,  
 15 right?  
 16 **A That's correct.**  
 17 **Q** Okay. And through the testimony and the  
 18 information provided in this hearing, additional  
 19 information is an industry -- an industry that  
 20 is planning and would like to make a  
 21 \$300 million investment in its plant if it  
 22 can -- if it can get a firm commitment to that  
 23 water supply of 500,000 gallons a day?  
 24 **MR. LEE:** Your Honor - Mr. Cole,  
 25 excuse me - Your Honor, I think that

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1 overstates what the testimony was in the  
 2 sense of the PureField issue. I think,  
 3 clearly there was testimony about a  
 4 proposal that the company wants to pursue,  
 5 but the specifics that Mr. Cole is asking  
 6 Ms. Walker about, I think, are not in  
 7 evidence.  
 8 **PRESIDING OFFICER:** Mr. Cole, do you  
 9 have a response to that?  
 10 **MR. COLE:** Well, the specifics, the  
 11 \$300 million investment, that was public  
 12 comment, and I note -- and Mr. Quinday has  
 13 testified as to what their water demand  
 14 was. I don't recall, some of the -- some  
 15 of the portion of public comment was  
 16 inaudible, so I don't know if that was  
 17 actually mentioned at the public comment.  
 18 **PRESIDING OFFICER:** I agree with  
 19 Mr. Lee that at least from what I'm  
 20 recalling, and if you can prove me wrong,  
 21 we'll go back and revisit this and you can  
 22 ask those questions, but I don't think  
 23 the -- there was evidence presented that I  
 24 recall addressing the exact amount of water  
 25 that PureField was wanting before they

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1 would commit that investment for expansion.  
 2 I know it's been stated in the public  
 3 comments that they wanted to expand but  
 4 they needed to know there was that water  
 5 available before that, and if you want to  
 6 take a minute to go check, and if there's  
 7 something in the record there, you can  
 8 certainly question her about --  
 9 **MR. COLE:** I think it would just  
 10 be in testimony.  
 11 **PRESIDING OFFICER:** -- about the  
 12 numbers.  
 13 **MR. COLE:** I don't think we need to  
 14 do that.  
 15 **BY MR. COLE:**  
 16 Q I think for our purposes, I guess my question  
 17 would simply be if that -- if that prospect is  
 18 available and would be affected by whether this  
 19 transfer is approved or not, would that be  
 20 significant in your opinion in considering  
 21 whether there's a benefit to the State or not  
 22 from this transfer?  
 23 A **Well, depending on the language in the proposal**  
 24 **and the water that they needed, it should be**  
 25 **something that is considered, but I have not**

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1 **seen any information about that.**  
 2 Q Right. But you would agree that that type of an  
 3 investment is a substantial investment?  
 4 A **I would.**  
 5 Q And that type of investment would, as a general  
 6 matter, be a benefit to the State?  
 7 A **An investment of an expansion of an existing**  
 8 **industry would be a benefit to the State for**  
 9 **sure, we'd have to look at exactly what that**  
 10 **correct number is.**  
 11 Q Certainly. Thank you.  
 12 **PRESIDING OFFICER:** Ms. Langworthy?  
 13 **MS. LANGWORTHY:** No questions, Your  
 14 Honor.  
 15 **PRESIDING OFFICER:** Mr. Preheim,  
 16 since you are here today?  
 17 **MR. PREHEIM:** No questions, Your  
 18 Honor.  
 19 **PRESIDING OFFICER:** All right.  
 20 Mr. Lee then.  
 21 **MR. LEE:** Thank you, Your Honor,  
 22 quite briefly.  
 23 //  
 24 //  
 25 //

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1 **REDIRECT EXAMINATION**  
 2 **BY MR. LEE:**  
 3 Q Ms. Walker, I just want to clarify what I think  
 4 you have said, but the information that Harvey  
 5 Economics relied upon, in part, was provided to  
 6 you in one form or another on the basis of what  
 7 Burns & McDonnell had analyzed and prepared; is  
 8 that right?  
 9 A **That's correct, we took the supply information,**  
 10 **the sustainable supply information under**  
 11 **different hydrological conditions from that**  
 12 **report.**  
 13 Q Okay. Thank you.  
 14 **MR. LEE:** Nothing else, Your Honor.  
 15 **PRESIDING OFFICER:** All right.  
 16 Anything from Hays?  
 17 **MR. BULLER:** No, Your Honor. Thank  
 18 you.  
 19 **PRESIDING OFFICER:** Mr. Cole?  
 20 **MR. COLE:** No.  
 21 **PRESIDING OFFICER:** Ms. Langworthy?  
 22 **MS. LANGWORTHY:** No, Your Honor.  
 23 **PRESIDING OFFICER:** Mr. Preheim?  
 24 **MR. PREHEIM:** No thank you.  
 25 **PRESIDING OFFICER:** All right.

1 Thank you, Ms. Walker.  
 2 All right. Was there another witness  
 3 that had some travel concerns that we  
 4 needed to take up before going back to  
 5 Mr. Wenstrom, then?  
 6 **MR. LEE:** At least from Water PACK's  
 7 perspective, no.  
 8 **MR. TRASTER:** I'm prepared to go  
 9 with -- finish with Mr. Wenstrom.  
 10 **PRESIDING OFFICER:** All right.  
 11 **MR. TRASTER:** Pat Janssen or  
 12 Mr. Feril, whatever works for anybody else.  
 13 **PRESIDING OFFICER:** Of those  
 14 witnesses, does anybody have any travel  
 15 requirements that should be taken into  
 16 consideration?  
 17 All right. Well, then I guess why don't  
 18 we go ahead and finish with Mr. Wenstrom  
 19 and then he can either feel free to stay  
 20 and observe the remainder or he can enjoy  
 21 the rest of his Friday.  
 22 **MR. LEE:** What's better than this?  
 23 **PRESIDING OFFICER:** I know, it is  
 24 hot outside and it's air conditioned in  
 25 here.

1 Mr. Wenstrom, I don't need to swear you  
 2 in again since you are still under oath  
 3 from yesterday, so I'll just let  
 4 Mr. Traster begin with his questions.  
 5  
 6 **RICHARD J. WENSTROM,**  
 7 having previously sworn or affirmed, was  
 8 examined and testified as follows:  
 9  
 10 **CROSS-EXAMINATION**  
 11 **BY MR. TRASTER:**  
 12 Q Mr. Wenstrom, I see that you have a number of  
 13 documents in front of you, can you please tell  
 14 us what you have.  
 15 A **I have some data on pumping rates, I have some**  
 16 **data on soils, I have a map of the Mid Ark**  
 17 **subbasin, I have a copy of a driller's log from**  
 18 **a well that we have, I have soils information in**  
 19 **relation to the recharge zones 9, 8, and 7, and**  
 20 **a map of the Circle K Ranch, which is now called**  
 21 **the R9.**  
 22 Q You have some documents in your other hand, I  
 23 see, what are those?  
 24 A **I have a listing of well depths on this**  
 25 **R9 Ranch, I have the document that was talked**

1 **about about the water rights that are in the**  
 2 **vicinity of the R9 Ranch, some data on Water**  
 3 **PACK, and my comments that I wrote in advance of**  
 4 **this hearing.**  
 5 Q So -- and yesterday you talked a little bit  
 6 about your qualifications, is that -- is that  
 7 list with you today?  
 8 A **Yes, it is.**  
 9 Q Okay.  
 10 **MR. TRASTER:** Your Honor, I would  
 11 like to have these documents marked as  
 12 exhibits and have an opportunity to review  
 13 them.  
 14 **PRESIDING OFFICER:** Are those  
 15 documents that can be provided, do you have  
 16 copies of those?  
 17 **MR. LEE:** Your Honor, we don't.  
 18 These are not documents that we provided  
 19 directly to Mr. Wenstrom. We probably have  
 20 the documents someplace but not necessarily  
 21 in an order where we have put them together  
 22 for purposes of this hearing so ...  
 23 **MR. TRASTER:** I mean, I -- I don't  
 24 know what they are, I have no idea, and I  
 25 don't know that they need to be admitted, I

1 don't know that they're relevant, but if  
 2 Mr. Wenstrom needs them to testify, I'd  
 3 like to be able to know what they are.  
 4 **MR. LEE:** Your Honor, we don't have  
 5 any -- we may have objections to admission,  
 6 but we don't have any objection to having  
 7 them marked as an exhibit.  
 8 **MR. TRASTER:** And I'm not suggesting  
 9 they be admitted.  
 10 **PRESIDING OFFICER:** Okay.  
 11 Mr. Wenstrom, are those copies that could  
 12 be provided here?  
 13 A **Well, I've noticed other witnesses have papers**  
 14 **up here, so I didn't think it was illegal or**  
 15 **uncalled for.**  
 16 **BY MR. TRASTER:**  
 17 Q There's nothing uncalled for, it's not illegal.  
 18 A **So I thought it was okay for me to have some**  
 19 **documents as well.**  
 20 Q It is perfectly fine and it's perfectly --  
 21 A **Apparently you feel they're sinister documents,**  
 22 **but they are not.**  
 23 Q I'm not worried about -- I've known of you for a  
 24 very long time, and I know that there's nothing  
 25 sinister, I just -- it's information that you



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1 think is important and, therefore, I just would  
2 like to know what it is so that I don't -- you  
3 know, so we can -- I mean, this is an  
4 opportunity to find out what you know about this  
5 situation, and I -- this isn't personal, it's  
6 not -- I'm not trying to argue with you yet, I  
7 just want to know what documents you have so  
8 that I can properly conduct this hearing.  
9 **PRESIDING OFFICER:** Why don't we do  
10 this, why don't we take a short break here,  
11 we'll let Mr. Wenstrom provide those  
12 documents to Mr. Lee and Ms. Lee, and you  
13 can meet with them, look at those and  
14 determine if those are things you want to  
15 make copies of and -- will that work for  
16 you, Mr. Traster?  
17 **MR. TRASTER:** That will be fine.  
18 **PRESIDING OFFICER:** That way we can  
19 just determine here in a short period of  
20 time if those are things that we need to  
21 worry about somebody getting copies of to  
22 get distributed to everybody, if they're  
23 going to be something that's going to be  
24 marked as potential exhibits.  
25 **MR. TRASTER:** Sure, may I approach?

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1 **PRESIDING OFFICER:** Go ahead. And  
2 why don't we take about a ten-minute break  
3 here and we'll extend it if needed.  
4 (Thereupon, a recess was taken,  
5 during which Deposition Exhibits A  
6 and B Marked for Identification.)  
7 **PRESIDING OFFICER:** All right. Back  
8 on the record, then, you can continue with  
9 your questioning, Mr. Traster.  
10 **MR. TRASTER:** Thank you, Your Honor.  
11 **BY MR. TRASTER:**  
12 Q Mr. Wenstrom, just for the record, I want you to  
13 know that nothing that happened during this  
14 little break about your documents is personal, I  
15 just needed to -- wanted to see and needed to  
16 see the documents that you had in front of you.  
17 We've marked two of them --  
18 **PRESIDING OFFICER:** It's frozen.  
19 Oh, okay, I thought you were saying --  
20 we'll try resetting them. You can  
21 continue, the camera on Mr. Wenstrom is  
22 still working. Just the one on you is  
23 frozen.  
24 **MR. TRASTER:** That's probably a good  
25 thing.

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1 **BY MR. TRASTER:**  
2 Q In any event, I meant nothing personal, it's a  
3 routine matter as far as I'm concerned.  
4 Mr. Wenstrom, you testified yesterday that  
5 you're no longer actively farming, that you're  
6 retired from farming; is that correct?  
7 A **As far as operating, that's correct.**  
8 Q What do you mean by as far as operating?  
9 A **I don't drive tractors.**  
10 Q Okay.  
11 A **I manage the assets of the farm, which are**  
12 **considerable.**  
13 Q Sure. And so you make cropping selections  
14 and --  
15 A **No.**  
16 Q Okay. So what does it mean to manage the assets  
17 of the farm?  
18 A **If a pump goes out, I pay for it.**  
19 Q I see, you write the checks.  
20 A **That's right.**  
21 Q What -- who does operate the farm?  
22 A **Ebert Farms.**  
23 Q So that'd be Greg Ebert?  
24 A **That's correct.**  
25 Q You've had a long-term relationship with him, as

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1 I understand it?  
2 A **Yes.**  
3 Q He worked for you back in the -- when you were  
4 pump -- Pumping Plant Testing, didn't he?  
5 A **Yes.**  
6 Q Is he an engineer?  
7 A **Yes, he is.**  
8 Q Is he one of the four engineers that was  
9 involved in Pumping Plant Testing?  
10 A **Yes.**  
11 Q Who were the other two just out of curiosity?  
12 A **There was a Daniel Clarkson, there was a Dan**  
13 **Klassen, there was a Brian Graham, there was a**  
14 **couple three others.**  
15 Q Sure, that's fine. It's just not that big a  
16 deal. Your -- the list of water rights that you  
17 provided yesterday -- well, that was provided to  
18 us yesterday is -- is essentially all of the  
19 water rights in four townships, correct?  
20 A **I'm not so sure it's four. I know that it's the**  
21 **ones that are close to the R9 Ranch.**  
22 Q And because you used the word adjacent, I'm just  
23 trying to understand --  
24 Jami, can you put that list up? And let's  
25 just zoom into a portion, any portion.

1 It looks like to me -- and can you see  
2 that?  
3 **A I can, yes, thank you.**  
4 **Q** Okay. And I think there's a copy of it in  
5 your -- in your folder there, but I'm seeing  
6 just here on -- why don't we scroll up so we  
7 know where we are in the -- so I'm seeing  
8 township 25 south, range 19 west; township 26  
9 south, range 20 west; township 26 south, range  
10 19 west; and I think I've seen township -- yeah,  
11 there's township, on the line Jay Schaller is  
12 township 25, range 20 west. So if I got that --  
13 if my memory's correct, which it sometimes  
14 isn't, I think that's four townships, and you're  
15 aware, are you not, that the R9 Ranch, you know,  
16 straddles the intersection of four townships,  
17 right?  
18 **A Yes.**  
19 **Q** So when you said that the -- this is the list of  
20 water rights that is adjacent to the ranch, that  
21 is kind of a broad term because, for instance,  
22 your well in section 8, township 25 south, range  
23 19 west is directly adjacent to the border of  
24 the ranch, and then there are other water rights  
25 that are far -- much farther away, wouldn't

1 yesterday; when we asked for the document, we  
2 got six pages.  
3 **A Okay. This particular page probably should not**  
4 **have been with that because this is -- this is**  
5 **solely an R9 Ranch document. The others were**  
6 **water rights in the vicinity.**  
7 **Q** And when I was looking at the documents that you  
8 have in front of you, I noticed that it was  
9 separate from the -- the list that you -- that  
10 we just talked about, and that's why I'm asking  
11 you. I mean, had I -- it is a document that I  
12 would have asked to be marked as an exhibit, but  
13 at this point it's -- it is part of the exhibit  
14 that I was provided yesterday.  
15 **A Okay.**  
16 **Q** And can you tell us what it is, please.  
17 **A You mean the document that's on the screen?**  
18 **Q** Yes, sir.  
19 **A Okay. That is a list of all of the circles on**  
20 **the R9 Ranch by number, and it has to do with**  
21 **what their water rights look like; and it also**  
22 **has well depths, and it has the acres that have**  
23 **been authorized by the State of Kansas within**  
24 **those water rights.**  
25 **Q** And when you say by number, you're speaking of

1 you -- you'd agree with that, would you not?  
2 **A I don't agree, you've got the legal wrong. It's**  
3 **in 26-19.**  
4 **Q** It's in -- okay. It's in section 8?  
5 **A 26-19.**  
6 **Q** I -- I thought you said 10, but you said it's  
7 in, okay. Very good. Thank you for the  
8 correction. It's in 26-20?  
9 **A Correct.**  
10 **Q** 26-20 or 26-19?  
11 **A 26-19.**  
12 **Q** Okay. Thank you.  
13 Jami, would you scroll down to the last  
14 page of this document?  
15 I note -- I noted in your documents that  
16 this -- this list of the water rights on the  
17 ranch, it was separate from the list that you  
18 actually testified to, but I'm just telling you  
19 that this is the copy we received. Can you tell  
20 us what that document is, that last page?  
21 **A This is not the same document as the water right**  
22 **holders, this is a different one that you're**  
23 **showing here.**  
24 **Q** And I'm just telling you that it was attached --  
25 we received a -- we received a six-page document

1 the DWR file number, correct?  
2 **A No, it's the -- it's the circle number on the**  
3 **R9 Ranch.**  
4 **Q** But it also does have the DWR water right file  
5 number?  
6 **A It does, it does have that, yes.**  
7 **Q** Okay. Jami, can you scroll to the bottom?  
8 And down at the bottom of the page, you  
9 have the totals, and it says 7,554 acre-feet,  
10 comma, IRR, I assume irrigation. Does that --  
11 do you see that?  
12 **A Yes, I do.**  
13 **Q** Is that in the ballpark of the gross quantity of  
14 water that could be diverted from the ranch?  
15 **A Yes, I think -- I believe it is.**  
16 **Q** For irrigation use?  
17 **A I believe it is, yes.**  
18 **Q** Okay. And I think there's some other numbers  
19 out there, but this is good for what our purpose  
20 is today. These water rights, these water files  
21 that are listed here are for irrigation use, and  
22 the quantity in the change application  
23 proceeding, you are aware, was reduced to 67 --  
24 6,756.8 acre-feet based on the consumptive use  
25 regulations, you've heard that number before,

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1 have you not?  
2 **A Yes.**  
3 Q The Cities agreed to further reduce the annual  
4 quantity to an annual average, rolling average  
5 of 4800 acre-feet, you're aware of that?  
6 **A Yes.**  
7 Q And would you agree with me that that's an  
8 additional 29 percent reduction?  
9 **A Yes.**  
10 Q There were -- there are, according to your  
11 figure here, which I'm not arguing with, there  
12 were 39 circles on the R9 Ranch?  
13 **A Yes, that's pretty close, I think there was a**  
14 **circle zero, and I don't know if it's -- if it's**  
15 **listed on there, but -- and there was another**  
16 **circle that was never irrigated, it was never**  
17 **tested for certification that's listed on there.**  
18 **But other than that, it's -- this is a working**  
19 **document that I prepared; it isn't anything that**  
20 **was prepared by anybody but me, and it was for**  
21 **my own use.**  
22 Q Sure, I understand that and I'm not -- I'm aware  
23 that circle 15 is the one you're talking about  
24 that was -- that was not tested, that's correct,  
25 isn't it?

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1 **A That's correct.**  
2 Q Now, do you know for sure that it was never  
3 irrigated? I mean, there was a well there,  
4 wasn't there?  
5 **A Yes, that's correct.**  
6 Q So -- but in 1987 when you were testing that  
7 particular water right, 21,734, there -- there  
8 was no center pivot system in place and there  
9 was a well with a pad, you couldn't -- you  
10 couldn't determine a rate or quantity from that;  
11 is that correct?  
12 **A It was long gone.**  
13 Q Okay. But it may have been actually irrigated  
14 before then?  
15 **A It may have been.**  
16 Q Thank you. The rate in the list in -- on your  
17 sheet include rates up to 1500 gallons a minute,  
18 correct?  
19 **A Yes, and the 1500 was assigned to the well that**  
20 **was never tested.**  
21 Q Right. So we don't really know how -- whether  
22 it's -- it wasn't tested, you didn't test it  
23 anyway?  
24 **A We did not. We did not.**  
25 Q It may have been tested before that, but

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1 there's -- here in circle 36, we have a  
2 1,000-gallon well that you tested, correct?  
3 **A That's correct.**  
4 Q So --  
5 **A That particular well -- well, scratch.**  
6 Q Sure. So have you ever -- have you totaled the  
7 acre-feet, you didn't total the rate?  
8 **A No, I did not.**  
9 Q If I -- I did and it's -- I have 38,244 gallons  
10 a minute. Is that in a ballpark that you  
11 would -- I mean, I'm not asking you to agree to  
12 it, but, I mean, if you totaled that, it's in  
13 that ballpark, would you agree?  
14 **A I agree that that's probably in the ballpark.**  
15 Q Thank you. So you're aware -- let's put up  
16 Exhibit 1-1.  
17 **A May I make a comment there?**  
18 Q Sure.  
19 **A We tested those wells at a time when there was a**  
20 **lot of rain in the area.**  
21 Q I think we're going to get to that.  
22 **A Okay.**  
23 Q And I'm going to give you all the chance in the  
24 world for you to talk about that but let's  
25 not --

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1 **A All right.**  
2 Q -- get ahead of ourselves, if you don't mind.  
3 **A Okay.**  
4 Q And if I don't give you an opportunity, please  
5 feel free to remind me.  
6 **A Thank you.**  
7 Q Okay. So, Ms. Buck, can you focus in on the  
8 orange area at -- yeah, that. Keep going in.  
9 There you go. Scroll up a little bit.  
10 Mr. Wenstrom, is this circle here just  
11 below -- okay, there's a proposed municipal well  
12 labeled E in Exhibit 1-1, and the circle just  
13 south of that -- of that proposed well in a --  
14 it's a little bit faint but in section 8,  
15 township 26 south, range 19 west that I have my  
16 pointer on, the laser pointer on, that's your  
17 circle, that's your quarter section?  
18 **A That's correct.**  
19 Q And, Jami, can you go to table -- or Exhibit 1-2  
20 and page 173, please. Let's -- let's look at  
21 the page 1 first.  
22 Mr. Wenstrom, I represent to you that this  
23 is the Master Order that was issued by the chief  
24 engineer in March of 2019. You've seen that --  
25 **A Yes.**

1 Q You've seen it before, you're familiar with it?  
2 A **Yes.**

3 Q Let's go to page, back to page 173, and it's, I  
4 believe it's appendix G. And can you zoom in on  
5 that?

6 Now, Mr. Wenstrom, as I mentioned a minute  
7 ago, I was showing you a portion, the southern  
8 portion of the ranch, and we were looking at  
9 proposed municipal well E, and it -- it has a  
10 consolidated rate of 1270 gallons a minute. Do  
11 you see that?

12 A **Not very well, I'm sorry.**

13 Q That's -- no, no problem, Jami, can you -- yeah,  
14 there you go.

15 Is that a little better?

16 A **Yes, thank you.**

17 Q So well E has a -- we need to kind of see the  
18 gallons a minute, the heading there, and  
19 consolidated rate, the gallons per minute in  
20 well E is 1270 gallons a minute. Do you see  
21 that?

22 A **I do. I would note also that it's also in a  
23 different source of supply, it's in the  
24 Rattlesnake subbasin as opposed to the Arkansas  
25 River subbasin.**

1 Q Well -- municipal well E is?

2 A **Yes, it is.**

3 Q Jami, let's go back to Exhibit 1-1.

4 So -- and we can go find the record here  
5 probably, but my recollection is is that the  
6 border between the Rattlesnake and the -- and  
7 the Ark River basin is a little farther east  
8 than well E?

9 A **That's not correct.**

10 Q Okay. Well, we may need to come back to that  
11 after a break. Can you go to -- were you here  
12 for -- or did you -- were you online when  
13 Mr. Heidrick with Burns & Mac testified about  
14 the operation, the potential operation of the  
15 R9 Ranch?

16 A **I can't recall.**

17 Q Okay. That's fine. Jami, can you go to  
18 Exhibit 2832, please. And would you scroll ...

19 This is -- I'll represent to you,  
20 Mr. Wenstrom, that this is a letter written by  
21 Jeff Heidrick who testified here earlier in this  
22 proceeding, which is a -- how they plan to  
23 operate the wells on the R9 Ranch.

24 And, Jami, would you scroll down to, I  
25 think, the third paragraph? Maybe it's the

1 second. Yeah.

2 So there's a heading general operations,  
3 but in the second paragraph under that heading,  
4 it says, the design production rate for each  
5 well is expected to be 350 gallons per minute.  
6 Do you see that?

7 A **I do.**

8 Q Were you aware that the rates were going to be  
9 reduced to 350 gallons a minute?

10 A **I have heard that, yes.**

11 Q You were here when Mr. Clement testified  
12 about -- about that, weren't you?

13 A **I believe I was, yeah.**

14 Q Sure. So if -- assuming that I'm at least close  
15 with my arithmetic that there's 3800 -- strike  
16 that. There are -- there are going to be 14  
17 wells, there are proposed to be 14 new municipal  
18 wells to replace the over 50 wells that are for  
19 irrigation, and if they're operated at  
20 3900 gallons -- or 350 gallons a minute, it's a  
21 little less than 5,000 gallons if they were all  
22 operating at the same time, fair?

23 A **Yes.**

24 Q So we're talking about a reduction in rate from  
25 everything across the ranch from over 38,000 to

1 a little less than 5,000, it's a substantial

2 reduction in rate, would you agree?

3 A **Yes.**

4 Q Let's go back to Exhibit 1-1. Now,  
5 Mr. Wenstrom, you're aware of the separation  
6 distance regulations that say that you can't  
7 move a well closer than a quarter mile in this  
8 area, are you not?

9 A **Yes.**

10 Q And are you aware as well that when the Cities  
11 filed the original change applications we asked  
12 that -- we had some blacked-out areas, or in  
13 this case orange-out areas, where we -- where  
14 the Cities said they would not drill wells  
15 within a half mile of any then existing  
16 irrigation well? Do you -- were you aware of  
17 that?

18 A **Yes.**

19 Q And so the orange areas on Exhibit 1-1, which  
20 are at the south end of the ranch, southeast end  
21 I should say, of the ranch near well E, proposed  
22 municipal well E include a couple of blackout  
23 areas, one of which is just north of your well  
24 in section 8, correct?

25 A **Correct.**

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1 Q There are other areas -- you don't own the well  
2 directly east of your well in section 8, that's  
3 somebody else, right?  
4 A **That's correct.**  
5 Q Nor do you own the well, the circle that is in  
6 section 3, the southwest of section 3 adjacent  
7 to the highway directly east of proposed  
8 municipal well E, that's not yours, is it?  
9 A **It is not.**  
10 Q So those blackout or orange-out areas don't  
11 really apply to you but they apply to somebody  
12 else?  
13 A **Correct.**  
14 Q And, Jami, let's just scroll out just a little  
15 bit.  
16 So there's another orange area on the west  
17 side of the -- of the R9 Ranch in section -- I  
18 can't read it.  
19 **MS. BUCK:** 10.  
20 **BY MR. TRASTER:**  
21 Q In section 10, I can't tell -- let's say in the  
22 section near where municipal well L is located,  
23 there's another blackout, orange-out area  
24 that -- you see that?  
25 A **I do.**

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1 Q And that's not associated with -- that's another  
2 well owned by somebody else?  
3 A **Correct.**  
4 **MR. TRASTER:** Now, did we get -- do  
5 we have -- may I approach?  
6 **PRESIDING OFFICER:** Go ahead.  
7 **BY MR. TRASTER:**  
8 Q Mr. Wenstrom, I'm going to hand you back what  
9 have been marked Exhibits A and B, and as far as  
10 I'm concerned, that's yours to keep.  
11 A **Very kind of you.**  
12 Q Well, I'm not trying to -- thank you but I'm not  
13 sure -- anyway, I'm going to provide the Court  
14 with a copy of A and B, and I -- I was curious  
15 about this because I wanted to get it right.  
16 You have a bachelor of science degree in  
17 agricultural engineering from North Dakota State  
18 University; is that correct?  
19 A **That's correct.**  
20 Q Graduating in 1964?  
21 A **Yes, sir.**  
22 Q Is that where you grew up, in North Dakota?  
23 A **Yes, sir.**  
24 Q Where in North Dakota, just out of curiosity?  
25 A **On a farm 10 miles west of Carrington, North**

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1 **Dakota.**  
2 Q And what part of the state is that in?  
3 A **It's -- it's almost in the middle of the state,**  
4 **a little bit east of the middle of the state.**  
5 Q In relationship to Bismarck, where is --  
6 A **It would be 125 miles east-northeast.**  
7 Q Okay. Then you ended up -- you went -- a couple  
8 years later you got a master's degree in  
9 irrigation engineering from Colorado State  
10 University; is that correct?  
11 A **That's correct.**  
12 Q You indicated that you were a commissioned  
13 officer in the Coast and Geodetic Survey, but  
14 that's now known as NOAA?  
15 A **That's correct.**  
16 Q National Oceanic, what's it stand for, I'm  
17 sorry?  
18 A **National Oceanic and Atmospheric Administration.**  
19 Q Thank you, that's helpful because I'd never  
20 heard of the Coast and Geodetic Survey before  
21 yesterday. So as a ag engineer and an  
22 irrigation engineer, you're familiar probably as  
23 well as anybody, or more familiar than anybody  
24 in the room, certainly more familiar with it  
25 than me, with how a cone of depression around a

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1 irrigation well works, aren't you?  
2 A **Yes.**  
3 Q So when an irrigation well or any well begins  
4 pumping, you start -- you're pumping water out  
5 at the wellbore, right?  
6 A **Yes.**  
7 Q And as that empties out, water hopefully flows  
8 into the wellbore to be pumped? Fair?  
9 A **Correct, yes.**  
10 Q And as you -- as anyone continues to divert  
11 water from the well, the -- the area around that  
12 well, the cone of depression grows larger and  
13 larger, right?  
14 A **Yes.**  
15 Q Because water then is flowing from -- directly  
16 from the portion of the aquifer that's screened,  
17 but it's also pulling the surface of the water  
18 down around the wellbore. Is that a fair way to  
19 say it? I think -- I'm saying, giving you my  
20 understanding and please correct me if I get it  
21 wrong.  
22 A **No, you're pretty close.**  
23 Q Okay. So at some point there reaches an  
24 equilibrium between the quantity that is flowing  
25 into the well and the quantity that's being

1 withdrawn so that they -- the cone of depression  
2 does not grow any larger. Is that fair?  
3 **A It's fair but it can change.**  
4 **Q** Sure. What are the factors that cause it to  
5 change?  
6 **A Well, if the -- as the season goes on, if**  
7 **there's a lot of wells in the area, they -- they**  
8 **tend to affect each other, and so that cone of**  
9 **depression could change; it could lower, it**  
10 **could -- as it's in conflict with other wells,**  
11 **the amount of output could change, in some cases**  
12 **drastically.**  
13 **Q** Sure. So if you're pumping at a very high rate,  
14 that equilibrium doesn't get -- is reached after  
15 the cone of depression is much larger, correct?  
16 **A That's correct.**  
17 **Q** And at a lower rate, the cone of depression is  
18 smaller, correct?  
19 **A Yes.**  
20 **Q** And so that's, at least, part of the reason for  
21 the need or the requirement to have a separation  
22 distance between wells so that you can either  
23 eliminate or minimize the opportunity for cones  
24 of depression to interact with each other,  
25 correct?

1 here in the southeast corner of whatever section  
2 this is that well K is in, there are three wells  
3 there clustered together and they have labeled  
4 2 -- 27,760, which is the file number, right?  
5 **A Yes.**  
6 **Q** And in this situation where you got three wells,  
7 and maybe that's a battery, I don't know, but  
8 you're going to have conflicting cones of  
9 depression in that case, are you not?  
10 **A Yes.**  
11 **Q** There are other locations here where you've got,  
12 you know, wells fairly close together, like  
13 directly southwest of that where there are two  
14 wells labeled 22,342 and 30,083, wells basically  
15 too close together?  
16 **A Well, they were -- they were drilled in response**  
17 **to the -- the saturated thickness of the aquifer**  
18 **there was so weak that one well would not**  
19 **provide enough water to make the center pivot**  
20 **work so they drilled another well.**  
21 **Q** I see, okay. So you've talked about -- I mean,  
22 the cone of depression that -- the length of  
23 pumping, the -- how long a well is pumped, when  
24 it reaches -- when a cone of depression reaches  
25 equilibrium, it doesn't really matter how long

1 **A That's correct. But the -- but the part that**  
2 **you're missing is it isn't just the flow rate**  
3 **that you're concerned about, it is how many**  
4 **hours a particular well is operated, because the**  
5 **more hours that particular well is operated, the**  
6 **more chance there is for interference with other**  
7 **wells or the aquifer itself may start lowering**  
8 **if you have enough pumping.**  
9 **Q** So --  
10 **A So the part you've left off is that it isn't**  
11 **just the flow rate we're concerned about, which**  
12 **is what you're stating, we're also concerned**  
13 **about how long those wells are operated, and**  
14 **that's where the acre-feet comes in. That's**  
15 **what this whole hearing is about is acre-feet.**  
16 **Q** Sure.  
17 **A The pumping rates are incidental.**  
18 **Q** Okay. So I wasn't intending to leave anything  
19 out and I'm -- thank you for the correction  
20 here, but let's get back -- I want to come back  
21 to this.  
22 **A Okay.**  
23 **Q** But we're looking now, this is still Exhibit 1-1  
24 and we're looking at a zoomed-in area that shows  
25 the proposed municipal well L and K, and down

1 you pump it, the cone of depression doesn't get  
2 bigger, you're just concerned that -- of the  
3 effect of lowering the aquifer with your  
4 correction. Is that fair?  
5 **A That's fair.**  
6 **Q** Okay. So the inter -- the idea of interference  
7 between two wells is really focused on distance  
8 apart and rate, direct interference,  
9 well-to-well interference, correct?  
10 **A Yes.**  
11 **Q** I think you were here the other day, let's look  
12 at --  
13 Well, let's go back over, Jami, to the  
14 well -- to Mr. Wenstrom's water rights on the --  
15 still in Exhibit 1-1, yes, and let's zoom in on  
16 that area right -- there you go. And scroll up  
17 so we can see Mr. Wenstrom's well in section 8,  
18 please. There you go.  
19 So, Mr. Wenstrom, you were here when I was  
20 asking Mr. Clement questions, and I was asking  
21 him questions about -- the wells that I'm  
22 pointing to with my pointer, one of them is --  
23 is that well in -- on circle 15, authorized by  
24 file number 21,734; then there was one right  
25 near the proposed municipal well E, and I will

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1 represent to you that it's hard to read but it's  
2 also authorized by 21,734. And then there's a  
3 well to the east of that in the southwest corner  
4 of section 4, township 26 south, range 19 west  
5 and it's authorized by file number 21,842.  
6 You -- you're familiar with those three wells?  
7 **A Yes, those are all wells that are in the**  
8 **Rattlesnake Creek as assigned by the State of**  
9 **Kansas.**  
10 **Q** Okay. And I'm -- I will just say that's not my  
11 understanding, but I'm not going to argue with  
12 you about that right now. My point is that you  
13 heard the testimony about those wells being  
14 authorized for, in one case 1500 but you've  
15 already testified that that well wasn't actually  
16 tested or at least you didn't test it, that's  
17 the well in the southwest quarter of section 5  
18 that's east of the proposed municipal well E.  
19 Then the well nearest well E is authorized for a  
20 rate -- a rate of 1,035 gallons a minute and the  
21 well in the southwest quarter of section 4 for  
22 900. And I can show you the rates if you  
23 prefer, but the point is that there's a combined  
24 rate of 3400 acre-feet -- or 3400 gallons a  
25 minute. You -- you agree?

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1 **A Yes.**  
2 **Q** And those wells are going to be replaced with --  
3 two of those three wells will be replaced with  
4 well E, which is going to substantially reduce  
5 the rate of diversion if their -- if the  
6 municipal well is operated at 350 gallons a  
7 minute, correct?  
8 **A That is correct.**  
9 **Q** So that the chances of actually any sort of  
10 direct interference, well-to-well interference  
11 with your well is -- is very small, correct?  
12 **A That is correct. In practical usage, though,**  
13 **since that's the best saturated thickness on the**  
14 **whole farm there, with that well E and the one**  
15 **just to the northeast of it, the City of Hays**  
16 **could elect to pump -- I know they said they're**  
17 **going to rotate their pumping, but they could**  
18 **take all of the water from a certain year out of**  
19 **well E if they wanted to, it's the best -- those**  
20 **are the best wells on the whole farm by far, and**  
21 **they have the most saturated thickness and**  
22 **they're also classed by the State of Kansas as**  
23 **being in the Rattlesnake, not in the Arkansas**  
24 **River.**  
25 **Q** And I understand that's your position, you may

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1 be right, I'm not arguing with you about the --  
2 about which basin they're in right now, but what  
3 is the saturated thickness in that area, if you  
4 know?  
5 **A Well, I can tell you that my well right south of**  
6 **the R9 Ranch, just had it redrilled so I'm**  
7 **pretty familiar with close up on what that one**  
8 **is like. And the well was 103 feet deep, that**  
9 **was down to blue shale, and the water-bearing**  
10 **gravel is what you're concerned with.**  
11 **So when you talk about saturated thickness,**  
12 **it technically is the -- is the level of the**  
13 **static water level down to the bottom of the**  
14 **well. However, the only workable saturated**  
15 **thickness is where the -- where the sand and**  
16 **gravel is because all the other lenses of clay**  
17 **and so on, you can't get the water out of there**  
18 **into the screen.**  
19 **So in my case, I had a pretty good well, I**  
20 **was really pleased with it because I had**  
21 **actually 88 feet of sand and gravel that would**  
22 **release water into my well screen and the well**  
23 **was 103 feet deep. Of course, there were some**  
24 **other lenses that would be counted as saturated**  
25 **thickness, but as effectively they don't release**

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1 **any water into the screen.**  
2 **Q** Okay. Well, that's fine but you did replace  
3 that well here recently?  
4 **A I did, the corrosion was so great that the --**  
5 **Q** You testified to that yesterday --  
6 **A Yes.**  
7 **Q** -- and we understand why you did. You moved it  
8 about 40 feet closer to the border of the ranch,  
9 didn't you?  
10 **A I don't think it was 40 feet, it was a short**  
11 **move.**  
12 **Q** Well, I can show you the well locations, and I  
13 did the math and it's 40.4 feet. Well, let's  
14 just -- the difference east and west was 6 feet  
15 and the distance north-south was 40 feet so --  
16 but it was a short move, right?  
17 **A Correct. Correct.**  
18 **Q** You could have -- you could have had a long move  
19 and moved it -- the well's in the center of the  
20 section, right? Or quarter section?  
21 **A We moved it closer to the center pivot so we**  
22 **didn't have to have as much supply pipe.**  
23 **Q** Sure. I take it that you could have moved it a  
24 quarter mile and it would have cost you more,  
25 but why would you do that, right, because you're

1 not really concerned about direct well-to-well  
2 impairment, are you?  
3 **A Well, there's no -- there's no need to even**  
4 **think about that because we want to have the**  
5 **well in the center of the quarter where the**  
6 **center pivot center is, and that's where it's**  
7 **always been, and so that's where it continues to**  
8 **be.**

9 Q Sure. Now, you're aware, Mr. Wenstrom, of the  
10 relative priority of your rights on the ranch  
11 versus the -- your rights versus the water  
12 rights on the ranch, are you not?

13 **A Yes.**

14 Q So you have basically four rights that are  
15 senior to everything on the ranch, and you have  
16 three rights that are junior to everything on  
17 the ranch and then a smattering of water rights  
18 that are sort of intermixed with the priorities  
19 of water rights on the ranch, do you not?

20 **A Yes.**

21 Q And with respect to that, the -- the bulk of the  
22 water rights on the ranch are -- I mean, you  
23 have basically one water right, 22,125, file  
24 22,125 that's in the middle, but the bulk of  
25 those -- of the water rights on the ranch are

1 senior to just four water rights, correct?

2 **A Are senior to what?**

3 Q Jami, can you put up that -- that list of water  
4 rights? Not -- the one that I sent you this  
5 morning.

6 Sorry, Mr. Wenstrom, it wasn't a very good  
7 question. Bear with me a little bit here,  
8 sorry --

9 **A No problem.**

10 Q -- technical difficulties. Mr. Wenstrom, Jami  
11 has put this little table that I put together up  
12 on the screen, and it has what I think are your  
13 water rights in black and the water rights on  
14 the ranch in red. Do you see that?

15 **A Yes.**

16 Q I'm guessing that you actually do know quite a  
17 bit about each one of those red -- water rights  
18 in red but that you're much more familiar with  
19 the water right numbers in black?

20 **A Yes.**

21 Q And are those your numbers, your -- your files?

22 **A As far as I know. I mean, I -- I would have to**  
23 **look at -- I'm familiar with our numbers but**  
24 **those look -- those look pretty close.**

25 Q And I can't tell you where I got those numbers,

1 I think I got them from the DWR website, but, I  
2 mean, I'm -- but that's -- these show -- the  
3 water rights in this document called Wenstrom  
4 and R9 water right file numbers are in numerical  
5 order based on priority. And they show that you  
6 have four water rights that are senior to all  
7 the water rights on the ranch, three that are  
8 junior to all the water rights on the ranch,  
9 assuming that the list is accurate. The bulk of  
10 the water rights on the ranch start with 21,729  
11 and go down to 22,346, and in that series you  
12 have one water right, 22,125. Is that one of  
13 your water rights, 22,125?

14 **A You're pretty close, there's an R9 Ranch water**  
15 **right that's 30,083 that's not shown on there.**

16 Q Well, it's over here.

17 **A Oh, there it is, I'm sorry, I couldn't see it.**

18 Q No, that's fine. There are -- there are four  
19 water rights on the ranch that are -- that are  
20 junior to the -- that were applied for later,  
21 fair to say?

22 **A Correct.**

23 Q And so you have some -- some of your water  
24 rights were applied for after file 22,346 and --  
25 and there were a couple -- there were four other

1 water rights, so this is just the way it lays

2 out in terms of relative priority the ranch and  
3 your water rights in general terms, correct?

4 **A Correct.**

5 Q Now, Jami, can you put up 2873?

6 Mr. Wenstrom, I'm going to -- were you here  
7 when we've shown this exhibit before, if you  
8 recall?

9 **A I do not recall.**

10 Q Okay. So in a similar fashion what I have done  
11 here is listed, and I guess I missed one maybe,  
12 it appears that I did not get 22,125. Oh, I  
13 know what it is, okay. So what I was showing  
14 you before was all of your water rights that I'm  
15 aware of. This is a list of water rights that  
16 are on the ranch and within -- the well is  
17 within 3 miles of the outside border of the  
18 ranch. And so, again, there is one water right  
19 sort of sandwiched in with the -- with the bulk  
20 of the water rights on the ranch in this first  
21 column; in the second column, there are a series  
22 of water rights that are senior to that -- to  
23 the bulk of them, with the four water rights in  
24 red interspersed there. But the third column,  
25 all of those rights are junior to the water



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1 rights on the ranch, if it's accurate and the  
2 numerical order is correct. Do you see that?  
3 **A I'm sorry, my bifocals are not good enough to**  
4 **see that.**  
5 Q All right. Well, I'll just represent to you  
6 there are a lot of water rights on the -- within  
7 3 miles of the ranch owned by your neighbors who  
8 are -- that are junior to many and most of the  
9 water rights on the ranch. That's a general  
10 principle that you would agree with, correct?  
11 **A I believe in the priority system, yes.**  
12 Q So a lot of your neighbors in that area, I mean,  
13 you -- if there were a priority battle over  
14 water rights in this area, if there were anybody  
15 that gets curtailed, it would be the junior  
16 rights first, correct?  
17 **A Yes, according to the priority system, that**  
18 **would be correct.**  
19 Q Thank you. Jami, why don't you put up 2462,  
20 please, and go to page, get my bifocals on,  
21 88021. Exhibit 2462, page 88021. I'm sorry,  
22 that's -- yeah, I'm looking at the Bates number,  
23 sorry.  
24 So, Mr. Wenstrom, this is a letter that you  
25 wrote -- yeah, a letter you wrote --

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1 I need to see a date, Jami, can you scroll  
2 up a little more? Oh, yeah, there it is.  
3 Okay. This is a letter you wrote on  
4 July 11th, 2018, received with the Department of  
5 Agriculture on July 16th, 2018, addressed to  
6 David Barfield, who was then the chief engineer,  
7 and this was written in -- at the time that you  
8 had -- were provided with an opportunity to  
9 comment on the change applications, correct?  
10 **A I think so. Again, I can't see that, I'm sorry.**  
11 Q I'm sorry.  
12 Let's scroll up so he can see the heading  
13 and then let's scroll down to the signature page  
14 so that he can --  
15 That looks like your signature, does it  
16 not?  
17 **A Yes, it is.**  
18 Q And I think maybe you got a copy of that in  
19 front of you?  
20 **A I do. And that's one of the reasons I have**  
21 **these copies.**  
22 Q Which is completely understandable. So in  
23 the -- let's go back to page 1, there's a very  
24 long paragraph in the middle there.  
25 And, Jami, if you'd scroll down.

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1 And I want to point to you -- point out to  
2 you, it says toward the -- I think it's the  
3 fourth line, All we are left with is -- you  
4 start off discussing the fact that there's not  
5 much flow -- there's no flow in the Ark River  
6 for a couple reasons, it's the Colorado issue  
7 and irrigation to the west, so there's not a lot  
8 of flow by 2018 in Ark, and you say, All we are  
9 left with is base flow, and it appears that base  
10 flow is not keeping up with irrigation demand in  
11 the area. You see that?  
12 **A Yes, I do.**  
13 Q And that was information you wanted the chief  
14 engineer to be aware of? To remind him of, he  
15 probably already knew, right?  
16 **A I guess so, I don't know.**  
17 Q Well, you don't know what he knew or you guess  
18 so that you wanted to tell him about that  
19 information?  
20 **A Well, that's what I stated is what's on the**  
21 **screen.**  
22 Q Okay. So down lower in that same document, you  
23 say -- let's find it again. Starts with our  
24 closest wells, I'm having trouble seeing -- oh,  
25 yeah, about the middle. Our closest wells to

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1 the R9 Ranch, and you're reading along with me,  
2 I want to make sure that I'm reading it  
3 accurately, read from yours or mine, I don't  
4 care. But our closest wells to the R9 Ranch are  
5 declining and have been for some time because of  
6 the lack of recharge in the Ark River. And you  
7 then go on to say, It's obvious to me the only  
8 way to curtail this trend is to have some sort  
9 of voluntary plan to reduce pumping such as a  
10 WCA. Do you see that?  
11 **A I do.**  
12 Q And what's a WCA?  
13 **A Well, that is a plan that's available to any**  
14 **water right holder where you can make a**  
15 **voluntary plan to reduce pumping. And that is**  
16 **voluntary, and it's for anybody who has a water**  
17 **right. And I assume that that would apply to**  
18 **the R9 Ranch as well, although I don't know**  
19 **that.**  
20 Q Sure. So it's a voluntary program that  
21 irrigators can enter into and in which they  
22 agree to make some reductions for conservation  
23 purposes, right?  
24 **A That is correct.**  
25 Q All right. So the last sentence of -- well, the

1 last -- not the last sentence. So the next  
2 sentence in that is -- reads, after WCA, Only  
3 now -- only now, we are willing to -- we are  
4 having to consider whether the Cities of Hays  
5 and Russell will also be considered as a part of  
6 the solution or a huge part of the problem. Do  
7 you see that?

8 **A I do, yes.**

9 **Q** And you've already testified that you know that  
10 the City of Hays and Russell have made a  
11 29 percent reduction over and above the quantity  
12 that they are authorized to divert for municipal  
13 purposes, correct?

14 **A Yes. Excuse me.**

15 **Q** And are you aware of anybody in the -- in the --  
16 within 3 miles of the ranch who has also made a  
17 29 percent -- agreed to make a voluntary  
18 29 percent reduction in the quantity that they  
19 are willing to -- that they are authorized to  
20 divert from their property?

21 **A No, I have not and for good reason.**

22 **Q** Thank you.

23 **A You want to know the reason? Would you care to**  
24 **hear that?**

25 **Q** If -- if I don't ask you, I'm sure Mr. Lee will,

1 **Q** So, Ms. Buck, would you put up the graph that  
2 we -- we saw a little earlier?

3 **Mr. Wenstrom, I'm going to show you a graph**  
4 **that -- I can't make a graph like this, but this**  
5 **is -- I took the data that you provided in your**  
6 **letter to the -- to the panel, your well data,**  
7 **and I put it in a spreadsheet, and you -- that**  
8 **document, I think you have in front of you,**  
9 **but --**

10 **A Somewhere I do. I'm sorry, go ahead.**

11 **Q** No, take your time.

12 **A Yes, I do have it.**

13 **Q** Okay. And what I -- if you -- I don't know what  
14 page it is, second or third page of that letter  
15 is your -- you provided some data and a graph,  
16 correct?

17 **A That is correct.**

18 **Q** And I'd like for you to just take a look at your  
19 graph that you have and the dotted lines that --  
20 unfortunately, the yellow is a little bit light,  
21 but do these -- do these graphs or these lines  
22 here correspond roughly -- they should  
23 correspond exactly, but they correspond roughly  
24 to your --

25 **A Yes, they do.**

1 so why don't you tell me.

2 **A Okay. Because an agricultural water right is**  
3 **very different from a municipal water right. An**  
4 **agricultural water right, we have 18 inches that**  
5 **we can pump most of the time. Now, when we go**  
6 **out and buy inputs and plant corn, for example,**  
7 **we don't know if we're going to need 10 inches**  
8 **or 12 inches or 14 or 18 or what we're going to**  
9 **need.**

10 **All we know is that we've got corn and**  
11 **we're going to do whatever it takes to get**  
12 **production, but we don't know what the weather's**  
13 **going to do either, so we have to be ready to**  
14 **pump the whole water right if -- if need be, but**  
15 **quite often we don't need to. The average use**  
16 **of -- of all of the water rights in the**  
17 **Rattlesnake Creek basin, for example, is**  
18 **16 inches.**

19 **So that means that over time people haven't**  
20 **used their whole water right, but on an**  
21 **agricultural water right, if somebody says that**  
22 **we're limited to 14, for example, then corn is**  
23 **out, we can't plant corn anymore.**

24 **Q** Sure. Thank you for that.

25 **A** You're welcome.

1 **Q** Okay. To the point that 2013, there's no --  
2 there's no lines -- or no dots on those lines  
3 because you didn't provide the well depths for  
4 that year for whatever reason; I'm just -- want  
5 to make sure that we're looking at the same  
6 thing?

7 **A Yes.**

8 **Q** And what I did here or what somebody did for me  
9 here is included on this graph the Edwards  
10 County annual departure from normal  
11 precipitation.

12 **And, Jami, let's scroll down and zoom in on**  
13 **the -- the notes at the bottom so we can see**  
14 **those.**

15 **So I'm just showing you this, Mr. Wenstrom,**  
16 **because I want you to know that as much as I**  
17 **could, I faithfully repeated your data. I'm not**  
18 **telling you that it's perfect, but I think it**  
19 **is, and then we compared it to the Edwards**  
20 **County annual departure which is 25.29 inches of**  
21 **rain annually.**

22 **So let's scroll back up to the body of the**  
23 **document, and you have indicated in this -- in**  
24 **this letter that we were looking at, dated July**  
25 **11th, to Mr. Barfield, that the -- that the**

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1 reason that you have declines in your wells is  
2 because of the lack of flow in the Ark River?  
3 **A Yeah, the recharge is really --**  
4 **Q Yeah.**  
5 **A -- is really bad and it's going to continue to**  
6 **be bad --**  
7 **Q Because there's no flow --**  
8 **A -- in the foreseeable future.**  
9 **Q Because there's no flow in the river?**  
10 **A That's correct. And they get to pump more water**  
11 **7 miles away, they can pump 24 inches, so that's**  
12 **an additional draw on the Arkansas River.**  
13 **Q And that's what you -- that's one of the factors**  
14 **that you pointed out in -- you're right on the**  
15 **dividing line between 1.5 inches -- 1.5 feet for**  
16 **irrigation as reasonable and 2 acre-feet per**  
17 **acre on to the west, is that the point you're**  
18 **making?**  
19 **A Yes, sir.**  
20 **Q But in that letter, you said that -- that water**  
21 **is declining, it's not keeping up with**  
22 **irrigation, and -- and partly because of the**  
23 **lack of recharge from the Ark River, those were**  
24 **a couple of things that you -- you indicated in**  
25 **that letter to Mr. Wenstrom in July of 2018,**

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1 correct?  
2 **A To Mr. Barfield.**  
3 **Q Yes, that's what I meant.**  
4 **A Yes, that's correct.**  
5 **Q Thank you. That wasn't a trick question, I'm**  
6 **not -- so what I want to point out to you,**  
7 **though, is that in this graph what we're seeing**  
8 **is when there's a departure from normal, water**  
9 **rights -- your elevation in your wells go up,**  
10 **and when it's relatively normal, like in 2007, I**  
11 **guess, I'm not sure where those hash marks --**  
12 **but 2007 to 2010, a little bit above, a little**  
13 **bit below, and the water levels in your wells**  
14 **are fairly stable. Do you see that?**  
15 **A I do, yes.**  
16 **Q And then in 2011 and '12, we've all heard about**  
17 **how dry it was in Hays and Russell, it was dry**  
18 **in Edwards County that year too, wasn't it?**  
19 **A Yes.**  
20 **Q And when that happened water levels dropped in**  
21 **your wells, correct?**  
22 **A Yes. There is a lag but -- but they did drop.**  
23 **Q Okay. And so then after it started raining**  
24 **again, it didn't really rain very much, but it**  
25 **rained in the next few years, and water levels**

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1 remained fairly stable at this lower rate,  
2 correct?  
3 **A Yes.**  
4 **Q Then in 2018, it rained quite a lot, it was**  
5 **maybe, I'm just looking over here, maybe**  
6 **6 inches more than -- than the average, and**  
7 **water levels started to rise again?**  
8 **A I don't know that.**  
9 **Q Well, I'm just looking at the fact that it**  
10 **rained a lot in this column here that's pretty**  
11 **tall, and I tried to hold this steady and go**  
12 **across, and it looks like 5 or 6 inches but, I**  
13 **mean, just more, there's more rain?**  
14 **A Okay, I'm sorry, are those block -- blocks, is**  
15 **that precipitation?**  
16 **Q Yes.**  
17 **A I'm sorry, I didn't understand that.**  
18 **Q I'm sorry. This is -- those blocks are**  
19 **deviations from normal. So at the zero line**  
20 **would be normal and the block on the far**  
21 **right -- or far left, excuse me, shows that it**  
22 **was -- there was about 6 inches more rain in**  
23 **that first year of this drought -- and by the**  
24 **way, I didn't put in all of the data from**  
25 **your -- from your letter because there -- it was**

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1 a little spotty, I mean, you didn't have all of  
2 the information -- all of the well depths, so I  
3 just started where you had all of the well  
4 depths.  
5 In any event, it rained a lot more in that  
6 year, 2006, 2007, depending on how you read the  
7 graph, than -- than the baseline, which is  
8 normal; then in 2011 and '12, it rained a lot  
9 less than normal. This is deviation from  
10 normal. And -- and then it rained quite a lot  
11 in 2018, '19, and not so much in the three years  
12 after that, but water rights were -- the water  
13 levels were increasing during that period.  
14 Until 2020 when they started to decline again  
15 because it rained less. So wouldn't you agree  
16 with me that rainfall on your property has a  
17 great deal to do with the water level in the  
18 wells on your property? In the wells that  
19 you've shown?  
20 **A That is correct, depending on the depth of the**  
21 **water and where the aquifer is, there could be a**  
22 **lag, but I'm also suggesting that part of the**  
23 **reason is that a whole bunch of wells just to**  
24 **the northeast of our farm were shut off. And I**  
25 **would maintain to you or anybody that if you**

1 **shut off enough wells in the vicinity of your**  
2 **farm, the water -- the water table is going to**  
3 **rise and you're going to have more water.**

4 Q Well, I'm not arguing that point, I'm just  
5 trying to point out that there's a -- as you  
6 point out, there's a lag, because it takes  
7 awhile for rain that falls on the surface to get  
8 to the aquifer and to affect the static water  
9 level. But rainfall, there's a fairly direct  
10 correlation between how much it rains and the  
11 water levels in the wells on your ranch, would  
12 you agree with me?

13 A **I would and I would also say that it's 50 feet**  
14 **to water on that bottom set of dots. Static**  
15 **water level is 50 feet deep.**

16 Q And this shows, in fact, more like 60 at that --  
17 at the low end?

18 A **Could have been, yes.**

19 Q And it was more like 55 on that -- so, yeah, but  
20 it's also, you know, up here around 42 or 3,  
21 varying down to almost 50, I mean, I get it that  
22 water rights -- water levels fluctuate, but it's  
23 very closely related to how much it rains,  
24 correct?

25 A **It's somewhat related, yes, it's one of the**

1 **factors.**

2 Q One of the factors, thank you.  
3 And let's go back to 1-1 and scroll out so  
4 we can kind of see.

5 Okay. So, Mr. Wenstrom, your wells in  
6 section 8 are in the northeast -- in the east  
7 half, correct, of section 8?

8 A **That is correct.**

9 Q And so there is between -- there is 1, 2, 3 --  
10 there are 3 miles, at least, between the river  
11 and your closest well, correct?

12 A **Yes.**

13 Q The other factor that is happening, as you  
14 alluded to, is that when your neighbors are  
15 pumping, that affects you too, right?

16 A **That's correct.**

17 Q And so there are -- we saw earlier that list  
18 of -- there are a lot of water rights that are  
19 senior to the ranch, but at the end of the day,  
20 it's the combination of all the water rights on  
21 the -- in that area that affect the water level,  
22 right?

23 A **Absolutely.**

24 Q Have you or any of your neighbors proposed a  
25 water conservation area?

1 A **We have not to date. That I know of.**

2 Q You're aware, I think -- oh, well, I should ask,  
3 are you aware of testimony by Mr. Letourneau  
4 about K.S.A. 82a-744 earlier in this hearing  
5 where he said that DWR went to the legislature,  
6 I think he said that -- in any event, the  
7 statute, the Water Appropriation Act was amended  
8 to require the chief engineer to give due  
9 consideration to water management and  
10 conservation measures by -- when administering  
11 water rights and imposing limitations like in a  
12 LEMA or an IGUCA, you're aware of that  
13 legislation?

14 A **I did not hear Mr. Letourneau's testimony, I'm**  
15 **sorry, but I -- I am familiar with what you're**  
16 **talking about.**

17 Q And that's -- in your role as a officer and a  
18 member of Water PACK, that's a significant issue  
19 for them, isn't it?

20 A **Water conservation is a significant issue.**

21 Q And they don't want people who have conserved,  
22 it's their position that con -- you shouldn't  
23 have to be punished for conserving water, if you  
24 know? If you know?

25 A **Yes.**

1 Q Thank you.

2 Jami, let's take a look at 2462 and go to  
3 page 8802, Bates number 8802.

4 This is my -- where we're going to -- this  
5 is a letter -- yeah, let's scroll -- let's get  
6 the details here. Can you scroll -- zoom in at  
7 the top of the letter, please. What's that?

8 **MS. BUCK:** It's 88021.

9 **BY MR. TRASTER:**

10 Q Oh, sorry. For the record, well -- okay, I see.  
11 I wrote down 8802 but it's 8802 hyphen -- 88021  
12 and thank you for that correction, Jami.

13 So this is another letter -- well, that's  
14 not the letter I was thinking about.

15 Let's go to page -- let's go down a page.  
16 This is the same letter -- give me just a minute  
17 here. Scroll down. Down. Actually, this --  
18 yeah, keep going down. I may need to come back  
19 to this but maybe it's the next page. Just do a  
20 search for 1980, that's what I'm looking for, if  
21 you can. 1980 in that document. Okay, now I  
22 know where I am, one page up, please. At the  
23 bottom of that page. So -- okay, I need a  
24 little higher up, please. There you go. There  
25 you go. Now zoom in, please.

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1 So at the bottom of page Bates number  
2 88021, in your letter to Mr. Barfield, you say,  
3 I've seen good water flow in the Ark River in  
4 the area adjacent to the R9 Ranch only three  
5 times in 42 years, once in the '80s. Do you see  
6 that?  
7 **A Yes.**  
8 **Q** Now let's go to the next page. And in the  
9 next -- and continuing that paragraph, you said,  
10 And in the '80s, during one of those periods of  
11 high rainfall events and recharge, the Circle K  
12 Ranch wells were tested for certification.  
13 Because of the strong recharge at that time,  
14 good flow rate tests were obtained, the pumps  
15 were actually providing the water the nozzle  
16 packages on the center pivots called for. Do  
17 you see that?  
18 **A I do, thank you.**  
19 **Q** Yeah.  
20 And let's take a look, now, Jami, at  
21 Exhibit 2242 and Bates page 79473.  
22 Mr. Wenstrom, this is a graph done by the  
23 Kansas Geological Survey showing the -- the  
24 annual flow in cubic feet -- mean annual flow in  
25 cubic feet per second at three gages, one near

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1 Kinsley, one near Great Bend, and in the Pawnee  
2 River at Rozel. And the blue line on that graph  
3 is the Ark River near Kinsley. Do you see that?  
4 **A Just barely but, yes, I see the color.**  
5 **Q** Okay. Now, Jami, I'd like for you to zoom in to  
6 this area here in the 19 -- in the mid 1980s.  
7 And so you testi -- your letter, you didn't  
8 testify. In your letter to the panel, you said  
9 that you've seen good flow in Ark River once in  
10 the '80s and it was during the time that you  
11 were certifying those water rights on the ranch.  
12 But when I look at this, I see each one of these  
13 hash marks appears to be a year, so that the  
14 annual flow in the Ark River at Kinsley was --  
15 that annual flow had occurred in 1987?  
16 **A Yeah, that's when I tested the wells on the  
17 R9 Ranch.**  
18 **Q** Okay. So you didn't test them in '83, '84, '85?  
19 **A That's correct. But I will offer an anecdote,  
20 our scout troop was camping a lot on the Ark  
21 River at that time in the '80s, and I can  
22 remember the kids jumping out of trees into the  
23 river --**  
24 **Q** Sure.  
25 **A -- and diving in and there was water -- there**

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1 **was considerable amount of water in the Arkansas  
2 River then.**  
3 **Q** In that -- in '87?  
4 **A Yes, and before.**  
5 **Q** Okay. So -- but the water -- the flow in the  
6 river in '83, '84, and '85 and even in '86 was  
7 pretty low, would you agree?  
8 **A Yes.**  
9 **Q** Now, I can take you to each of your field  
10 inspection reports if we need to do that, but  
11 I'm going to represent to you that most of them  
12 were done in '84 and '85. Is that not in  
13 keeping with your recollection?  
14 **A It is not.**  
15 **Q** So -- but if I were to show you that it was done  
16 in '84 and '85, would you agree that it -- that  
17 this one period of high flow in -- in the Ark  
18 River likely happened in 1987?  
19 **MR. LEE:** Your Honor, the question  
20 is premised on something that Mr. Wenstrom  
21 has just denied, so if we need to look at  
22 some documents that Mr. Traster seems to  
23 have, we can do that but --  
24 **MR. TRASTER:** It was a hypothetical,  
25 if, in fact, I can show that. But I'd be

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1 glad to walk through it, it'll just take us  
2 awhile.  
3 **A Well, I know we did most of the tests in '87.**  
4 **PRESIDING OFFICER:** Hold on,  
5 Mr. Wenstrom, let me rule on this first.  
6 So I will sustain the objection, I'll just  
7 ask you to rephrase that because in this  
8 case here we've got --  
9 **MR. TRASTER:** Sure.  
10 **PRESIDING OFFICER:** -- Mr. Wenstrom  
11 who is not an expert and you're --  
12 **MR. TRASTER:** No, that's fine.  
13 **PRESIDING OFFICER:** -- asking him to  
14 speculate on things and make assumptions,  
15 so let's try rephrasing that based on what  
16 his observations would have been.  
17 **MR. TRASTER:** Sure, sure, could I --  
18 could I just have a moment to consult with  
19 Mr. Buller?  
20 **PRESIDING OFFICER:** Sure.  
21 **MR. TRASTER:** I think I'm just going  
22 to move on, the water -- the field  
23 inspection reports are in the record, we  
24 can look at them, we can see what year each  
25 of them were done, and I will -- I agree

1 with you that at least one of them that  
2 I've seen was in '87, but we can -- we'll  
3 just sort that out on a break.  
4 **BY MR. TRASTER:**  
5 Q Let's go back to 2462, which is the letter, and  
6 I think it's on page 87931, and I think it's  
7 the -- that last full paragraph. Actually, it's  
8 on -- it's on the next page, sorry. I have all  
9 this in my notes here. Our farm, we have a --  
10 on your farm, you have a wide range of soil  
11 types, don't you?  
12 A **Yes.**  
13 Q And mainly the Pratt -- on the ranch there's a  
14 Pratt series, correct?  
15 A **Yes.**  
16 Q And then on to the west -- or to the east where  
17 the bulk of your farm is different soils,  
18 typically Tabler clay loam, does that ring a  
19 bell?  
20 A **Yes.**  
21 Q And that this Tabler clay loam has at least in  
22 the range of three times as much water capacity,  
23 water-holding capacity as the soils on the  
24 ranch?  
25 A **Yes.**

1 you had the water --  
2 Let's put that graph back up, Jami.  
3 Well, that's your graph, this is fine.  
4 This is the actual graph that you prepared, is  
5 it not?  
6 A **Yes, it is.**  
7 Q And it -- it reports well depth through 2022,  
8 right?  
9 A **Yes.**  
10 Q And it skips 2013, as we said earlier, which is  
11 not an issue but -- and it goes back, and as I  
12 said, when I prepared my graph, I started with  
13 2007 because there were a few years where you  
14 didn't have as much data and that -- by using  
15 those years, it was more consistent.  
16 A **Uh-huh.**  
17 Q But I think in your letter you said that you  
18 collect well depth -- depth of water every year  
19 in January, right?  
20 A **That's correct.**  
21 Q But you didn't collect the well depth in 2000 --  
22 this year?  
23 A **Well, we collected it in January of 2023, but**  
24 **that's reported as 2022. That's the way**  
25 **everybody does it.**

1 Q Let's look at Exhibit 1656. So, Mr. Wenstrom --  
2 actually, let's look at 1679, we may come back  
3 to this, they're very similar. Mr. Wenstrom,  
4 this is just an image from Google Earth, and you  
5 can see the highway here and where there's a  
6 dogleg and the ranch is sort of in this area  
7 where I'm pointing with my laser pointer and  
8 Kinsley is at the top. That -- you recognize  
9 that?  
10 A **Yes.**  
11 Q And there is -- there's just a line along --  
12 running parallel, roughly parallel to the Ark  
13 River, a few miles east but parallel to the Ark  
14 River where the soil type changes pretty  
15 dramatically, doesn't it?  
16 A **Yes.**  
17 Q And that's why there are so many center pivots  
18 coming right up to that, it's not a -- it's not  
19 a line -- a straight line but there's -- the  
20 soil type changes at -- in this area on the east  
21 side of the sand dune area east of the Ark  
22 River, doesn't it?  
23 A **Yes.**  
24 Q Thank you. Earlier we talked a little bit about  
25 the letter you wrote to the -- to the panel and

1 Q Okay. So this data in 2022 is data collected in  
2 January of 2023?  
3 A **That's correct.**  
4 Q I see, okay. That's helpful, thank you so much.  
5 And it's collected in January 2003 (sic),  
6 reported in 2022 because that's the year --  
7 that's the well depth at the end of that year,  
8 if that make sense. Okay. So you don't always  
9 use the entire quantity that you're allocated?  
10 A **We use the least amount we can to make the crop**  
11 **grow.**  
12 Q And you testified about your, you know, kind of  
13 just in time, in my words, not yours, but, you  
14 know, just in time and just the right amount,  
15 but -- but in 2023 -- in 2022 you made  
16 substantial withdrawals from the water bank,  
17 didn't you?  
18 A **I didn't. I own the water rights, our tenant**  
19 **made -- he's managing the irrigation, that's**  
20 **correct.**  
21 Q And so basically what's happening here is that  
22 when you -- deposits in the water bank were made  
23 while you were operating the ranch, weren't  
24 they?  
25 A **No, I -- I quit active farming in 2007.**

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1 Q I see. So you never made deposits to the water  
2 bank?  
3 A **Back in those years, the formula was so --**  
4 Q It's just a simple question, you made deposits  
5 or you didn't, I'm not trying to argue with you  
6 but --  
7 A **I think we -- very little. Very little.**  
8 Q Okay, sure. But your tenant is making those --  
9 has made those deposits and then withdrew them,  
10 right?  
11 A **That's correct.**  
12 Q And your -- so the water rights that you own,  
13 they weren't -- there was certainly some  
14 conservation, I'm not arguing with that -- about  
15 that, but there was also just some saving, I  
16 mean, you or your tenant saved a lot -- some of  
17 the water that they didn't use, correct?  
18 A **That's correct. That's how you get --**  
19 Q And that's not conservation, that's -- that's  
20 setting it aside for future use, right?  
21 A **I would -- I would argue that it's conservation.**  
22 Q Well, there is a conservation element to it, you  
23 don't get to save every drop that you don't use,  
24 but nevertheless you used everything -- you used  
25 what you needed in each of those years and then

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1 you saved the rest? Saved what you could of the  
2 rest, I should --  
3 A **That's correct.**  
4 Q And in 2022, 300 acre-feet roughly were  
5 withdrawn, correct?  
6 A **How much?**  
7 Q I have -- I'm showing 270 but I also show  
8 300 acre-feet more than you used -- than you --  
9 than you're authorized?  
10 A **That doesn't sound right, but I -- I don't know.**  
11 Q Okay. So switching gears here, you were a  
12 member of the Edwards County Planning Commission  
13 back in 2000 -- back in the 1990s, were you not?  
14 A **I don't recall that I was a part of the planning  
15 commission.**  
16 Q Okay. Do you turn your water off when you brush  
17 your teeth?  
18 A **Frankly, I do.**  
19 Q Do you? Good. You know, when you -- when  
20 you -- when you've been working outside, maybe  
21 you don't do it anymore, but in a hot -- do you  
22 have the luxury of taking a long hot shower, a  
23 luxurious shower at your house?  
24 A **I take the same shower that I always take.**  
25 Q That you always do. And you have water rights

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1 that total something like almost 3500 acre-feet  
2 for irrigation use, right?  
3 A **I don't have -- I can't say if that's true or  
4 not. I have a lot of water rights and each one  
5 has a acre-foot quantity.**  
6 Q So how many center pivots are operated on your  
7 farm for you and your family?  
8 A **Right now, it's 21.**  
9 Q Okay.  
10 A **It was 31 when I was actively farming.**  
11 Q All right. But in 2020, according to your water  
12 use reports, you used just over 2500 acre-feet,  
13 so you had 30 -- you have almost 3500 acre-feet,  
14 but you used a little over 2500 in 2020, or your  
15 tenant did. Is that --  
16 A **Yeah, that's right, the tenant is managing the  
17 irrigation.**  
18 Q So earlier in this proceeding, it's been  
19 suggested that -- that Hays and Russell should  
20 be limited to or their usage should be based on  
21 the quantity they used in 2020. Have you heard  
22 that in this proceeding?  
23 A **I don't recall that I have, no.**  
24 Q Well, I'll just tell you that that -- well, they  
25 only used this much in 2020. So would you be

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1 willing to live by that same standard that  
2 instead of having the full amount that you're  
3 authorized, would you be willing to have your  
4 water rights judged by the quantity that you  
5 used in -- or your tenant used in 2020?  
6 **MR. LEE:** Your Honor --  
7 A **The two have no relation whatsoever.**  
8 **MR. LEE:** This has no relevance,  
9 Your Honor.  
10 **MR. TRASTER:** I think it has direct  
11 relevance, Your Honor, I mean, he's a  
12 witness that -- I'll withdraw the question.  
13 **PRESIDING OFFICER:** Okay.  
14 **BY MR. TRASTER:**  
15 Q You don't need -- you don't need the water  
16 you're diverting, do you, Mr. Wenstrom?  
17 A **I don't need?**  
18 Q You don't need -- you've got water rights, but  
19 you don't need them, do you?  
20 A **Well, if you're going to raise irrigated crops,  
21 I would argue that we do need them.**  
22 Q Right, if you're going to raise irrigated crops,  
23 but you don't need to raise irrigated crops?  
24 A **Yeah, I could be a banker or a lawyer but I'm a  
25 farmer so I do need them.**

1 Q So what I guess I'm getting to is that we've  
2 been told that you can grow -- you can grow milo  
3 or wheat instead of corn, couldn't you, and use  
4 even less than you use, right?

5 A **We could, yes.**

6 Q But you choose to grow corn and soybeans and  
7 irrigate them fully, correct?

8 A **That is an economic decision.**

9 Q Right. And so why is it that you get to make  
10 those economic decisions and Hays and Russell  
11 don't get to make them?

12 A **It has no relevance.**

13 **MR. LEE:** Your Honor, it has no  
14 relevance.

15 **MR. TRASTER:** It's directly  
16 relevant. Water PACK is suggesting that  
17 Hays and Russell don't need water and --  
18 and that they can continue to live with the  
19 restrictions that they're living with now,  
20 and I'm just suggesting that any water  
21 right owner ought to be subject to that  
22 same standard.

23 **MR. LEE:** Your Honor, as you well  
24 know, we've never said that Hays and  
25 Russell don't need any water. The issue

1 Q And the Cities of Hays and Russell have a water  
2 right as well, don't they?

3 A **Yes, they do.**

4 Q And they -- and the statute says that -- that a  
5 water right is subject to the control of the  
6 owner, doesn't it?

7 A **That's correct.**

8 Q And so the idea that Hays and Russell cannot use  
9 the water right that they purchased and own is  
10 no different than your right to use your water  
11 within the confines of the terms and conditions  
12 of your permit, isn't it?

13 **MR. LEE:** Your Honor, objection, of  
14 course it's different. If it's not  
15 different, there's no reason to have a  
16 Water Transfer Act. We're not talking  
17 about them using their water right on the  
18 R9 Ranch, we're talking about them moving  
19 it to Hays and Russell, that's the reason  
20 we're here. That question assumes that  
21 there is no difference between ownership of  
22 a water right and the right to transfer it  
23 more than 35 miles.

24 **MR. TRASTER:** Your Honor, I will  
25 limit the question to what the Cities'

1 here is how much water do they need, and  
2 whether an individual engaged in farming  
3 who's irrigating, is using the water that  
4 is available to him at some reduced level  
5 or equal to his water right has nothing to  
6 do with the issue that Your Honor is  
7 charged with deciding.

8 **MR. TRASTER:** And it has everything  
9 to do with it, Your Honor.

10 **PRESIDING OFFICER:** One of the  
11 factors at issue here is the benefit to the  
12 State of approving this versus the benefit  
13 of not approving it. I think there is some  
14 relevance there in weighing all the  
15 interests, so I'm going to overrule the  
16 objection, I'll allow the question. Go  
17 ahead.

18 **MR. TRASTER:** Thank you.

19 **BY MR. TRASTER:**

20 Q My question is that there is no compelling need  
21 for you to grow corn or any other high-water-use  
22 crop in Edwards County other than an economic  
23 benefit to you and your family?

24 A **I have a water right, I can grow whatever I  
25 want, I think.**

1 rights are under the Kansas Water  
2 Appropriation Act and whether a quantity of  
3 the water, a quantity that can be  
4 transferred as we have discussed is not at  
5 issue here. The issue is benefits to the  
6 State. And compliance with the law and  
7 certainty in the ownership, in water rights  
8 and property rights in general is certainly  
9 something that's of interest to the State  
10 of Kansas.

11 **MR. PREHEIM:** Your Honor, I'm going  
12 to make an objection as well. This is  
13 calling for a legal conclusion from this  
14 witness, and he's not here to testify as to  
15 what the act allows or doesn't allow. He's  
16 just simply here testifying as a fact  
17 witness, and I don't believe that any of  
18 his testimony relates to any issue with the  
19 transfer.

20 **MR. TRASTER:** And, Your Honor, I  
21 think the point is made one way or the  
22 other so I will withdraw the question --

23 **PRESIDING OFFICER:** All right.

24 **MR. TRASTER:** -- and take you off  
25 the hook.



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1           **PRESIDING OFFICER:** All right.  
2 **BY MR. TRASTER:**  
3 Q Mr. Wenstrom, thank you for your testimony, I do  
4 appreciate it.  
5           **PRESIDING OFFICER:** Okay. Mr. Cole?  
6           **MR. COLE:** I don't have any  
7 questions.  
8           **PRESIDING OFFICER:** Ms. Langworthy?  
9           **MS. LANGWORTHY:** No questions, Your  
10 Honor.  
11           **PRESIDING OFFICER:** Mr. Preheim, do  
12 you have any questions you want to ask him?  
13           **MR. PREHEIM:** I do not.  
14           **PRESIDING OFFICER:** Mr. Lee, any  
15 redirect?  
16           **MR. LEE:** I do, Your Honor, which  
17 probably will take a little while, I don't  
18 know if you are inclined to do lunch or not  
19 so ...  
20           **PRESIDING OFFICER:** Okay. Well, I  
21 guess we can certainly take a lunch break.  
22 I guess so we kind of know how much of a  
23 break we should take, what's the expected  
24 with where everybody is now, what are you  
25 expecting -- I know Mr. Feril will be

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1 testifying.  
2           **MR. LEE:** And Mr. Janssen.  
3           **MR. TRASTER:** I don't know how long  
4 Mr. Lee is going to take, but I -- I don't  
5 think that Mr. Feril or Mr. Janssen will  
6 take a great deal of time. I would think  
7 within -- we could get both of them done in  
8 a couple of hours but maybe substantially  
9 less.  
10           **PRESIDING OFFICER:** And I know  
11 Mr. Feril already said he didn't have any  
12 travel arrangements to worry about, how  
13 about Mr. Janssen, is he in here now?  
14 Okay.  
15           **MR. JANSSEN:** I'm good.  
16           **PRESIDING OFFICER:** So should we  
17 just take an hour break, then, to allow  
18 everyone to get a bite to eat and then  
19 we'll come back at 1:00 o'clock and -- all  
20 right. We'll take a recess till 1:00 p.m.  
21 then. Thank you, everybody.  
22           (Thereupon, a lunch recess was  
23 taken; whereupon the following was  
24 had.)  
25           **PRESIDING OFFICER:** Are we ready to

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1 proceed?  
2           **MR. LEE:** I think so, Your Honor.  
3           **PRESIDING OFFICER:** Okay. Go ahead.  
4           **MR. LEE:** Okay. Thank you.  
5  
6                           **REDIRECT EXAMINATION**  
7 **BY MR. LEE:**  
8 Q Mr. Wenstrom, during your examination by  
9 Mr. Traster, he paid you a compliment, he said  
10 words to the effect that you know more about  
11 irrigation practices than anyone in the room,  
12 and it is true you are knowledgeable about those  
13 things, is it not?  
14 A **Your words.**  
15 Q Well, I realize that you're a humble man, but  
16 you do know a lot about irrigation and  
17 irrigation practices, correct?  
18 A **I've farmed a long time.**  
19 Q Okay. So you were asked during the examination  
20 about soil permeability, do you recall?  
21 A **Yes.**  
22 Q And you were asked questions and talked about  
23 saturated thickness issues, correct?  
24 A **Yes.**  
25 Q And you were asked and talked about static water

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1 levels, correct?  
2 A **Yes.**  
3 Q So let's talk about some of the technical issues  
4 associated with irrigation practices and the  
5 aquifer where you live. The -- one of the  
6 things that has the potential to affect  
7 sustainability issues, as I understand, would be  
8 the concept of net consumptive use. Would you  
9 agree with that?  
10 A **Yes.**  
11 Q And how would you describe that relationship?  
12 A **Well, it's the use of water by a certain crop.**  
13           **MR. TRASTER:** Your Honor, I object  
14 as this is beyond the scope, it's opinion.  
15 Net consumptive use was decided in the  
16 first -- the prior proceeding.  
17           **PRESIDING OFFICER:** Do you have a  
18 response, Mr. Lee?  
19           **MR. LEE:** I do, Your Honor. The  
20 question or a question, at least, is what  
21 happens to aquifer levels at the R9 Ranch  
22 if this process moves forward. The  
23 testimony that will be presented by  
24 Mr. Wenstrom is that there is a  
25 relationship between the determination and

1 analysis of net consumptive use and aquifer  
2 levels and so that's the question and the  
3 expected response.

4 **PRESIDING OFFICER:** I'm going to  
5 overrule the objection, I'll allow the  
6 question, just make sure you're not trying  
7 to stretch that to the point of addressing  
8 issues that I don't have any authority to  
9 address in the proceeding.

10 **MR. LEE:** We'll confine it to this  
11 issue really of irrigation practices and  
12 effects on the aquifer.

13 **PRESIDING OFFICER:** All right.

14 **BY MR. LEE:**

15 Q So, Mr. Wenstrom, back to that question, so  
16 you're stating or know that there's a  
17 relationship between what is determined about  
18 net consumptive use and what is a sustainable  
19 level of withdrawal from the aquifer, as I  
20 understand?

21 A Well --

22 **MR. TRASTER:** Object, Your Honor,  
23 it's vague as to what is sustainable. It's  
24 defined -- objection as to vague as to  
25 sustainable, I don't know what he means by

1 sustainable. It's defined in GMD regs as  
2 allowing for a reasonable lowering of the  
3 aquifer, and I don't know what sustainable  
4 means.

5 **MR. LEE:** Well, that's what  
6 sustainable means, we accept that.

7 **PRESIDING OFFICER:** All right. Is  
8 that the question that you were -- or the  
9 response you were trying to get from  
10 Mr. Wenstrom then?

11 **MR. LEE:** Yes, that the reasonable  
12 lowering of the aquifer, of course, Your  
13 Honor, is a fact question, and Mr. Wenstrom  
14 can testify about that, but we're not  
15 fighting about whether there is some other  
16 definition for our purposes of  
17 sustainability.

18 **PRESIDING OFFICER:** You look like  
19 you're about to say something, Mr. Traster.

20 **MR. TRASTER:** I am. You know,  
21 reasonable lowering of the aquifer, if  
22 that's the definition, then we're done  
23 because this -- the idea of -- I don't know  
24 how net consumptive use -- well, the whole  
25 line of questioning is confusing and vague.

1 **PRESIDING OFFICER:** All right. I'll  
2 overrule the objection, I will allow the  
3 questioning, again keep in mind what my  
4 limitations are for this proceeding and  
5 also taking into consideration that  
6 although Mr. Wenstrom is -- provides that  
7 testimony, with his years of experience and  
8 background with irrigation and how that  
9 affects the water levels and everything  
10 that may be involved, he has not been  
11 qualified as an expert in this matter so  
12 make sure that you're keeping everything to  
13 factual questions, not getting into any  
14 kind of expert opinion that he wouldn't be  
15 qualified to offer.

16 **MR. LEE:** Well -- thank you, Your  
17 Honor.

18 **BY MR. LEE:**

19 Q So, Mr. Wenstrom, I guess back to the question  
20 of what in your view, based on your experience,  
21 is the relationship between the analysis of net  
22 consumptive use and aquifer levels?

23 A **Well, they're somewhat disconnected, frankly,  
24 because what you pump from how many hours you  
25 run your pump in trying to irrigate and how much**

1 **of that is consumptively used aren't always  
2 connected. I mean, sometimes there's -- when a  
3 plant gets in distress, for example, just to  
4 give you a quick example, what it's actually  
5 trying to use that day is consumptive use. But  
6 if you're pumping and pumping and pumping and  
7 the plant can't take that because it's under  
8 stress, for example, then you're going to pump a  
9 lot of water which won't be consumptively -- a  
10 lot of it will not be consumptively used. So  
11 there's a little bit of a disconnect in what  
12 you're asking me.**

13 Q Well, so let's back up and then say how would  
14 you define consumptive use?

15 A **Well, it's -- frankly, it's the water that's  
16 consumed by the plant, and it's -- it's  
17 dependent on so many factors. It's dependent on  
18 whether the -- whether the plant is healthy and  
19 receiving adequate moisture or whether it's  
20 under stress, what crop it is, for sure, and --  
21 but there is a little bit of a disconnect  
22 because water pumped and consumptive use are not  
23 the same.**

24 Q Do different crops and different plants result  
25 in different levels of consumptive use?

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1 **A Absolutely. I mean, anybody that grows anything**  
2 **knows that, I mean, it's -- certain plants take**  
3 **more water than others, and that's -- that's**  
4 **just the way it is.**  
5 **Q** So where does native grass fall on that  
6 spectrum?  
7 **A Native grass is --**  
8 **MR. TRASTER:** Objection, Your Honor,  
9 we're not talking about irrigating native  
10 grass, nobody has ever suggested that  
11 native grass will be irrigated. Therefore,  
12 consumptive use doesn't even come into  
13 the -- into the picture.  
14 **PRESIDING OFFICER:** Okay. Response,  
15 Mr. Lee?  
16 **MR. LEE:** Your Honor, the issue of  
17 how much water is used by a particular  
18 species of plant, whether it be a crop or  
19 whether it be native grass, has a whole  
20 bunch to do with how much recharge there is  
21 to the aquifer, and aquifer recharge is  
22 something that is very important that was  
23 the subject, as Your Honor knows, of  
24 Mr. Larson's testimony, and there's been  
25 lots and lots of discussion about it, and

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1 the -- the question of how much recharge  
2 there is is -- cannot be more relevant.  
3 **MR. TRASTER:** It -- I don't know  
4 that we're talking about reasonable  
5 lowering of the aquifer or consumptive use  
6 by irrigation, application of irrigation  
7 water, and now we're going into, I guess,  
8 rainfall, in which we've been over and over  
9 again about irrigation return flows, and I  
10 just don't understand this line of  
11 questioning, I think it's irrelevant, it  
12 goes -- if it's going to -- well, if it's  
13 going to reducing the quantity, you've  
14 already indicated that that's not a  
15 relevant area for inquiry in previous  
16 objections, and I just don't think that  
17 this is helpful and it's taking time we  
18 don't need to spend. It's not relevant.  
19 And there's -- Mr. Lee is asking  
20 Mr. Wenstrom for his opinions based on the  
21 science -- science in agronomics --  
22 agronomy, excuse me.  
23 **PRESIDING OFFICER:** Do you have a  
24 response, Mr. Lee?  
25 **MR. LEE:** Well, Your Honor, the --

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1 Mr. Wenstrom's responses to Mr. Traster's  
2 earlier questions talk about, or part of it  
3 was a discussion about flow rates, as Your  
4 Honor would recall, as they are affected by  
5 aquifer recharge, and the question of  
6 whether the aquifer will recharge at rate A  
7 or rate B has been the subject of a lot of  
8 testimony in this case and for good reason  
9 because it's relevant to the decision to be  
10 made here.  
11 **PRESIDING OFFICER:** I'll overrule  
12 the objection, I'll allow the question but  
13 make sure it's getting to something here  
14 shortly that is really within my scope of  
15 authority in this matter 'cause it sounds  
16 like you're still trying to kind of focus  
17 on that whole aspect of the quantity of  
18 water that was approved in the change  
19 application, which I don't have that  
20 authority to address that. So if you want  
21 to ask those questions, I'll let you but  
22 just make sure you're getting somewhere  
23 without dragging out too long and going  
24 down too long of a line that appears to be  
25 outside of what I have any ability to

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1 address.  
2 **MR. LEE:** Thank you, Your Honor.  
3 Well, what -- which I'm glad that she did,  
4 Your Honor, what Ms. Lee has just handed me  
5 is from K.S.A. 82a-1502(b) which states  
6 that No water transfer shall be approved  
7 under the provisions of this act, (1), if  
8 such transfer would impair water  
9 reservation rights, vested rights,  
10 appropriation rights, or prior applications  
11 for permits to appropriate water. So  
12 that's more artfully than I probably have  
13 expressed it.  
14 **MR. TRASTER:** I can't hear you.  
15 **MR. LEE:** I said perhaps more  
16 artfully than I have expressed it. This  
17 issue of the effect on Water PACK users and  
18 other -- other appurtenant users in this  
19 area is directly relevant to the decision  
20 to be made here.  
21 **MR. TRASTER:** Your Honor, I am aware  
22 of the issue of impairment, which is what  
23 I -- the focus of many of my questions this  
24 morning about the rates of flow from --  
25 from these wells. The testimony so far has

1 been that, from Mr. Larson, that 2 1/2 or  
2 2.8 acre -- 2.8 linear feet additional  
3 drawdown over and above the amount of  
4 drawdown set out in the Burns & Mac  
5 original model report is -- is not  
6 significant compared to the 45- to 150-foot  
7 saturated thickness in the aquifer.

8 The point being, and we've already  
9 established a few moments ago that to show  
10 impairment you have to show an unreasonable  
11 decline in the aquifer, and the evidence  
12 in -- before you now is that -- that both  
13 from the chief engineer in the original  
14 Master Order saying that the declines that  
15 will be caused are within reasonable  
16 limitations and only increase at most  
17 2.8 feet in one well and that further  
18 the -- this idea that -- that there's going  
19 to be regional decline is -- is dealt with  
20 in the statute.

21 K.S.A. 82a-711(c) allows for reasonable  
22 declines, it enforces the priority which  
23 clearly established that the water rights  
24 on the ranch are senior to a huge number of  
25 water rights, including some of

1 Mr. Wenstrom's and others. This is just --  
2 this inquiry is just -- it need not go  
3 forward. He cannot meet your standard of  
4 providing testimony in this area, at least,  
5 that -- that goes to anything that you're  
6 entitled to, under the statute, to rule on.

7 **MR. LEE:** Well, Your Honor, I  
8 appreciate Mr. Traster's final argument  
9 here, but the fact that he thinks that he  
10 understands the facts or knows the facts or  
11 knows the law doesn't act as a limitation  
12 on what is appropriate to ask Mr. Wenstrom.  
13 In fact, it makes it even more compelling  
14 that he be allowed to respond to questions  
15 about what have been posited as facts,  
16 which we have a different perspective  
17 about.

18 **PRESIDING OFFICER:** I'm going to  
19 allow the questioning if it gets to a point  
20 here shortly and doesn't drag out.  
21 Otherwise, I think, as the last five or  
22 ten minutes will probably show going back  
23 and read through the transcript, more time  
24 has been spent objecting and arguing about  
25 those questions than what may have been

1 spent just to get those answered. Just,  
2 again, Mr. Lee, keep in mind the  
3 limitations that I have for this and try to  
4 keep everything relevant to what's within  
5 my scope that I have the ability to rule on  
6 in this matter.

7 **MR. LEE:** We are cognizant of  
8 that --

9 **PRESIDING OFFICER:** All right.

10 **MR. LEE:** -- and I think are trying  
11 to abide by that.

12 **PRESIDING OFFICER:** All right. And  
13 other arguments as to why it matters are  
14 all things that can be addressed in your  
15 closing briefs at the end of this.

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

17 **BY MR. LEE:**

18 Q So, Mr. Wenstrom, ultimately, the question, I  
19 think, would be is the -- is the type of plant  
20 that is present on the R9 property, does that  
21 affect recharge rates?

22 A Yes.

23 Q And to go back to the question, I think, where  
24 we were before we dealt with an objection, where  
25 does native grass fall on that spectrum?

1 A **Well, it's extremely deep rooted, and so it  
2 intercepts a large amount of precipitation  
3 when -- when and if there is precipitation. And  
4 so the water, the precipitation has to saturate  
5 that root zone clear down to the bottom, then --  
6 and whatever it takes to do that fills the --  
7 the root zone. Then if you have additional rain  
8 over and above that, that rain will find its way  
9 to the aquifer. But it has to fill that  
10 15-foot, 20-foot root profile before you get any  
11 recharge.**

12 Q So is the -- is the root system for native grass  
13 deeper or more extensive than for production of  
14 agriculture crops?

15 A **Yes, corn is about 3 feet for a practical  
16 number; alfalfa can be deeper, but deeper  
17 meaning maybe 4 or 5 feet.**

18 Q So then to the question of saturated thickness  
19 that you were asked about, to testify about,  
20 does the level of saturated thickness ultimately  
21 have an impact on well productivity?

22 A Yes.

23 Q And in what sense?

24 A **Well, the more -- the more effective saturated  
25 thickness, meaning water-bearing sand and**

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1 gravel, that's where -- that's the mother lode,  
2 that's the money, and that water can get into  
3 the well screen and be pumped. So when you talk  
4 about sat -- saturated thickness, it's normally  
5 described as the level of the -- where the  
6 static water level is down to the bottom of the  
7 aquifer, and usually that's rock or blue shale  
8 or something like that. But not all of that  
9 dimension is water-bearing sand and gravel. So  
10 I want to make that distinction.  
11 I heard earlier testimony from  
12 knowledgeable individuals that the saturated  
13 thickness on the R9 Ranch was a certain number,  
14 and that number was larger than the well depth  
15 on two-thirds of the wells on the -- on the  
16 R9 Ranch, so I was confused about how you could  
17 have saturated thickness on the average  
18 that's -- that's more than what the well depth  
19 is on most of the ranch. And so I had a  
20 disconnect in my mind about that.  
21 I'm trying to tell you what saturated  
22 thickness is and how it -- the more  
23 water-bearing sand and gravel you have in the  
24 well, the higher value and the higher volume of  
25 water you can pump from that well. And whenever

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1 you drill a well, I don't care if it's here or  
2 anywhere, that's what you look at.  
3 And if you're lucky, when you spend your  
4 money, you have a lot of that water-bearing sand  
5 and gravel. If you're unlucky, we've had  
6 several wells on our farm where we tried to  
7 improve the well by moving it. And one instance  
8 right close to our home, we paid for five test  
9 wells trying to get more saturated sand and  
10 gravel. We were unsuccessful, so we ended up  
11 going back to the original location.  
12 And all of those places had lots of total  
13 depth of saturated thickness, but the effective  
14 was not very good at all. And I don't think --  
15 there's individuals in this room that know as  
16 much about that as I do, they do. So I don't  
17 know how much time I should spend on that.  
18 Q Well, let's do this. Based on your experience,  
19 would it be your sense or understanding that  
20 Mr. McCormick's analysis of what the saturated  
21 thickness is at the R9 Ranch is overstated?  
22 A I think it is, yes.  
23 Q Thank you.  
24 MR. LEE: Nothing else, Your Honor.  
25 PRESIDING OFFICER: Mr. Traster?

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1 MR. TRASTER: No questions.  
2 PRESIDING OFFICER: Mr. Cole?  
3 MR. COLE: No questions, thanks.  
4 PRESIDING OFFICER: Ms. Langworthy?  
5 MS. LANGWORTHY: No questions, Your  
6 Honor.  
7 PRESIDING OFFICER: And,  
8 Mr. Preheim?  
9 MR. PREHEIM: No questions, Your  
10 Honor.  
11 PRESIDING OFFICER: All right.  
12 Thank you, Mr. Wenstrom.  
13 THE WITNESS: Thank you.  
14 MR. TRASTER: Call Orrin Feril.  
15 PRESIDING OFFICER: Mr. Feril, come  
16 on up and take the stand. Mr. Feril, would  
17 you please raise your right hand.  
18  
19 ORRIN FERIL,  
20 having first duly sworn or affirmed, was  
21 examined and testified as follows:  
22  
23 PRESIDING OFFICER: All right.  
24 Mr. Traster, you may proceed.  
25 //

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1 DIRECT EXAMINATION  
2 BY MR. TRASTER:  
3 Q Mr. Feril, thank you for coming, we know each  
4 other so I don't think introductions are  
5 necessary. Please state your name.  
6 A My name is Orrin Feril, that's O-R-R-I-N, last  
7 name Feril, F-E-R-I-L.  
8 Q And what's your business address, Mr. Feril?  
9 A Business address is 125 South Main Street in  
10 Stafford, Kansas.  
11 Q And what are -- tell us a little bit about your  
12 employment and how long you've been there and  
13 what you do.  
14 A I'm the district manager for Big Bend GMD  
15 Number 5 in Stafford, I've been with the  
16 district since April 2006, and employed as  
17 manager since August of 2012.  
18 Q And what was -- what were your duties before you  
19 were employed as manager?  
20 A My title was GIS specialist and data manager for  
21 those some six years.  
22 Q Okay. So you're an IT person?  
23 A I have -- yes.  
24 Q Okay. I didn't know.  
25 A It's -- it's one of my skill sets.

1 Q I see. Are you a geologist, hydrologist, any of  
2 that?  
3 A **No, sir.**  
4 Q What's your educational background?  
5 A **I have a bachelor's degree in biology.**  
6 Q So you have testified before the legislature  
7 before?  
8 A **Yes, sir.**  
9 Q Jami, do you have a short video you can show us?  
10 We're going to show you a YouTube video and  
11 it's really short of some testimony you gave.  
12 **PRESIDING OFFICER:** Zoom kicked  
13 me off here, I think, or kicked that  
14 computer off. We're still going on this  
15 one, let's -- give me a second, I'll get  
16 that one reconnected here.  
17 **MR. TRASTER:** We're off the record,  
18 aren't we?  
19 **PRESIDING OFFICER:** Yeah, let's go  
20 off the record here while I get this  
21 figured out.  
22 (Discussion held off the record.)  
23 **PRESIDING OFFICER:** Okay. Looks  
24 like everything is connected so we can go  
25 back on the record. And then, Mr. Traster,

1 before you start, would you just identify  
2 what exhibit that is so we make sure that's  
3 clear for the record?  
4 **MR. TRASTER:** I would if I could,  
5 but I don't know that we have an exhibit  
6 number. We don't have an exhibit number.  
7 It's a video that we will identify but ...  
8 **PRESIDING OFFICER:** Okay. All  
9 right. You want to, I guess, while you're  
10 playing it, you want to have Ms. Buck  
11 figure out which exhibit number that should  
12 go under to keep in line with that and  
13 we'll address that after you ask Mr. Feril  
14 about it?  
15 **MR. TRASTER:** Do you know what  
16 exhibit number it will be? It will be  
17 2875.  
18 **PRESIDING OFFICER:** And is there any  
19 objection to 2875, then?  
20 **MR. LEE:** I don't know, Your Honor,  
21 I have not seen it.  
22 **MR. PREHEIM:** Your Honor, I don't  
23 know what it is, I don't know where it's  
24 from, what the testimony concerns, so I  
25 need some information about that in order

1 to lodge an objection.  
2 **PRESIDING OFFICER:** All right.  
3 We'll let you play it, and then we'll  
4 address whether it will be admitted then.  
5 So let him play it and question the witness  
6 about it.  
7 **MR. TRASTER:** Play it.  
8 (Video playing.)  
9 **MR. TRASTER:** You can stop there.  
10 **BY MR. TRASTER:**  
11 Q Mr. Feril, you've testified before the house  
12 committee by Zoom, and you were just describing  
13 the characteristics or the -- of the aquifer in  
14 GMD5 in general, fair?  
15 **MR. PREHEIM:** Objection to form,  
16 what aquifer?  
17 **MR. TRASTER:** I'm sorry, the aquifer  
18 that is in GMD5.  
19 **MR. PREHEIM:** Are we just talking  
20 about the basin, or you're talking about  
21 the whole area?  
22 **MR. TRASTER:** Well, I don't know,  
23 what -- that's a good question, I mean --  
24 **PRESIDING OFFICER:** All right. I  
25 will sustain that objection just so we have

1 things clear on the record. So,  
2 Mr. Traster, will you -- I think the  
3 information you're trying to get is  
4 information we can still get at but please  
5 just try to phrase that so it's asking  
6 Mr. Feril to clarify that so there's no  
7 confusion for anybody or whoever may be  
8 reviewing the transcript of this at a later  
9 time.  
10 **MR. TRASTER:** Sure.  
11 **BY MR. TRASTER:**  
12 Q Mr. Feril, you -- in that video, you said that  
13 you closed the entire district to new  
14 appropriations, correct?  
15 A **Yes, I made that statement.**  
16 Q And, in fact, you did close the entire district,  
17 I mean, that was a true statement?  
18 A **Yes, we closed the district, yes.**  
19 Q And when you were talking about the aquifer, you  
20 told us two things, and really only two things  
21 that I'm interested here, one is that the water  
22 levels are very, very stable, and that is a  
23 district-wide statement? You said something  
24 about, well, we have some sustainability issues,  
25 but district wide the aquifer or aquifers are

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1 very, very stable. Is that a true statement?  
2 **A** **If I could, clarification on the purpose of that**  
3 **testimony presented to the house water committee**  
4 **was not on district-wide sustainability.**  
5 **Q** Okay.  
6 **A** **It was on an update on the Quivira issue.**  
7 **Q** All right. Well, okay. So then I'll withdraw  
8 the question and I'll withdraw the use of the --  
9 I won't ask for admission of that video if it  
10 doesn't apply district wide as I thought. My  
11 apologies.  
12 May we see the PowerPoint, Mr. Feril's  
13 PowerPoint?  
14 Mr. Feril, do you recognize this  
15 PowerPoint? And I'll represent to you that it  
16 was -- it's the one you gave at the June 20th,  
17 2023 meeting in Hays on this issue?  
18 **A** **If that is -- it's hard for me to see the dates**  
19 **on that so it's --**  
20 **Q** Okay. Well, I don't see a date on it at all  
21 but -- and let's skip down to slide 4.  
22 **MR. PREHEIM:** Does this have an  
23 exhibit number, Counsel?  
24 **MR. TRASTER:** Not yet.  
25 **MR. BULLER:** This document was

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1 provided by counsel for GMD5 in response to  
2 our request following the June 20, 2023  
3 public comments.  
4 **MR. PREHEIM:** I'm not arguing about  
5 its authenticity, I just wanted to know  
6 whether it had an exhibit number so I could  
7 reference it.  
8 **MR. TRASTER:** Jami, what's the next  
9 exhibit number?  
10 **MR. PREHEIM:** I'm sorry, did you  
11 give me the number?  
12 **MR. TRASTER:** 2875.  
13 **MR. PREHEIM:** Okay, 2875?  
14 **PRESIDING OFFICER:** Let's mark this  
15 as 2876 since the other one was brought up,  
16 even though it wasn't offered then. That  
17 way everything is clear. So this will be  
18 2876.  
19 **MR. TRASTER:** Jami, let's --  
20 **BY MR. TRASTER:**  
21 **Q** I think I can maybe short-circuit this and we  
22 don't need it. Do you recall that -- the gist  
23 of the PowerPoint presentation and your  
24 presentation that you made in Hays in general?  
25 **A** **I remember the general idea of it.**

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1 **Q** Sure.  
2 **A** **If you're looking for specifics, I'd have to**  
3 **take a look at the document.**  
4 **Q** Don't let me -- don't let me get away with  
5 anything here, I want you to -- but on slide 4,  
6 I'll represent to you that you said on slide 4  
7 that the district had engaged Balleau  
8 Groundwater to review the Burns & Mac modeling  
9 report that was done in -- in the change  
10 application proceeding. You did that, right?  
11 **A** **Yes, we did.**  
12 **Q** And in the course of --  
13 **PRESIDING OFFICER:** All right. I'll  
14 stop you just for a second, Mr. Traster.  
15 **MR. TRASTER:** Sure.  
16 **PRESIDING OFFICER:** Ms. Buck, is  
17 your screen flickering, or is it just --  
18 **MS. BUCK:** It's the equipment, I  
19 don't know. It's not my screen.  
20 **MR. TRASTER:** Just take it off, we  
21 don't need it.  
22 **MS. BUCK:** I'm trying.  
23 **MR. TRASTER:** I know.  
24 **PRESIDING OFFICER:** Okay. If we  
25 were having some issue with the connection,

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1 I was going to say we'll take a short break  
2 and get the AV guy in here to try to adjust  
3 it so we don't have any issue with a  
4 witness not being able to see an exhibit.  
5 **MR. TRASTER:** Yeah, I think that  
6 most of this is things that we don't --  
7 **PRESIDING OFFICER:** Okay.  
8 **MR. TRASTER:** You know, it's handy  
9 to show an exhibit.  
10 **PRESIDING OFFICER:** Sorry to  
11 interrupt you there, Mr. Traster.  
12 **MR. TRASTER:** No, no, interrupt  
13 away, Your Honor.  
14 **BY MR. TRASTER:**  
15 **Q** So in that slide presentation, I think you  
16 said -- or I will represent to you you said that  
17 they identified three issues that were never  
18 corrected. Did you -- do you recall that?  
19 **A** **I did make that statement, that was the best of**  
20 **my knowledge, yes.**  
21 **Q** And do you know that -- I can show you the  
22 report that Burns & Mac did where they corrected  
23 two of those errors. Have you not received  
24 that?  
25 **A** **We likely did. I will say that in preparation**

1 for that presentation, I did not consult with  
 2 Balleau on if that was addressed or not.  
 3 Q No, no, I understand, I'm just trying to -- I'm  
 4 not suggesting you should have known, I'm  
 5 just -- Exhibit 1-3 at page 352 is a report --  
 6 beginning 352 is a letter from Burns & McDonnell  
 7 saying that we fixed the streamflow issues that  
 8 were raised by Mr. Balleau or his -- his company  
 9 and reran the model, and that was the final  
 10 model report that was actually submitted. And I  
 11 noted that you weren't copied on that letter so  
 12 maybe you haven't seen it?  
 13 A It is possible we did not receive it.  
 14 Q All right. In your slide presentation, you  
 15 stated that the long-term limitation of  
 16 48,000 acre-feet on a ten-year average  
 17 results -- doesn't result in no decline, there  
 18 is -- it results in some decline in the aquifer,  
 19 is that -- do you remember that?  
 20 A Yes, that is -- that is what we did find.  
 21 Q Okay. You then went on to say that the  
 22 limitations should be set at 40,000 acre-feet  
 23 per -- acre-feet over a ten-year period. Do you  
 24 recall that?  
 25 A I do recall that, and that's based on the

1 whereupon, the following was had.)  
 2 **PRESIDING OFFICER:** Okay. It looks  
 3 like we're back with everything working  
 4 now, so fingers crossed that it will stay  
 5 that way, so we can go ahead and go back on  
 6 the record now. Mr. Traster, whenever you  
 7 are ready.  
 8 **MR. TRASTER:** Yes, Your Honor, be  
 9 right there.  
 10 **BY MR. TRASTER:**  
 11 Q Frankly, thank you for your testimony, I really  
 12 didn't have any more questions.  
 13 A Thank you.  
 14 **PRESIDING OFFICER:** Okay. Now, the  
 15 PowerPoint was marked as 2876, is that  
 16 anything that's going to be offered as an  
 17 exhibit then?  
 18 **MR. TRASTER:** The PowerPoint? Yeah,  
 19 we offer it for what it's worth, yes.  
 20 **MR. BULLER:** That will be part of  
 21 our weekend review, Your Honor, as far as  
 22 all of the exhibits that we plan to offer  
 23 on Monday at the end of this matter. We do  
 24 anticipate offering it with our other  
 25 exhibits at that time.

1 board's decision in August of whatever year that  
 2 was.  
 3 Q 2018.  
 4 A '18.  
 5 Q And the basis of that was what?  
 6 A So that was an evaluation done by Balleau  
 7 Groundwater looking at scenario three against --  
 8 oh, I didn't consult my notes on which other  
 9 scenario they were looking at.  
 10 Q Sure.  
 11 A But the evaluation of the 4800 average use,  
 12 again the 48,000 on a ten-year rolling average.  
 13 Q Sure.  
 14 A And the total declines in that comparison.  
 15 Q At this point, I'm going to need, Jami,  
 16 Exhibit 2462 on page 86880. Strike that. I  
 17 need -- I need -- well, if you get to the  
 18 exhibit, I can give you the page number. 2462.  
 19 **MR. TRASTER:** All right. We're  
 20 having some technical issues, Your Honor, I  
 21 guess we need to take a little break.  
 22 **PRESIDING OFFICER:** Okay. Do we  
 23 need to track down the AV guy? We'll go  
 24 off the record here for a break.  
 25 (Thereupon, a recess was taken;

1 **PRESIDING OFFICER:** Okay. All  
 2 right.  
 3 **MR. PREHEIM:** You know, 'cause of  
 4 the flickering, I couldn't see exactly what  
 5 it is, but it's the one that was connected  
 6 to the water transfer proceeding, right,  
 7 that you put together? Then we don't have  
 8 any objection.  
 9 **PRESIDING OFFICER:** Are there any  
 10 other objections that anyone wants to note  
 11 for the record for 2876?  
 12 **MR. LEE:** Your Honor, I guess we  
 13 would object on the basis that it's  
 14 duplicative of what is already in the  
 15 record and what was testified about here.  
 16 **PRESIDING OFFICER:** Any response?  
 17 **MR. TRASTER:** It's a -- it was  
 18 submitted as an exhibit by the -- is that  
 19 me?  
 20 **MS. BUCK:** No.  
 21 **MR. TRASTER:** It was submitted by  
 22 GMD as an exhibit, it simply sets out GMD's  
 23 process or procedure with respect to  
 24 several things that we wanted to ask some  
 25 questions about but have determined that



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1 the questions aren't -- we wanted to ask  
 2 some questions about how they tied -- I  
 3 don't see why it's a problem.  
 4 **PRESIDING OFFICER:** Okay.  
 5 Ms. Langworthy, anything you wanted to  
 6 weigh in on with that?  
 7 **MS. LANGWORTHY:** No objection, Your  
 8 Honor.  
 9 **PRESIDING OFFICER:** Now, the public  
 10 comment hearing is part of the record, we  
 11 were on the record for that hearing, that  
 12 presentation was given there. Since that  
 13 PowerPoint -- although I know the parties  
 14 have indicated the audio from that public  
 15 comment hearing was a little bit hard to  
 16 hear given the setup that we were in,  
 17 whatever Mr. Feril had presented on that in  
 18 theory could all be heard on that, and  
 19 since that was presented at that, I will  
 20 admit that to the record.  
 21 And then the same with the other parties  
 22 and KDA also presented some PowerPoints at  
 23 that public comment hearing. If those are  
 24 things that you would like to have, those  
 25 presentations submitted to the record as

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1 well, just make sure those are provided as  
 2 well, and we can get all those marked and  
 3 identified, and that will just, I think,  
 4 help complete that record from the public  
 5 comment hearing as to what all has been  
 6 presented there to receive those comments  
 7 from the public.  
 8 **MR. PREHEIM:** Your Honor, with  
 9 regard to the video, the record's going to  
 10 reflect that it's not been offered, it was  
 11 withdrawn, right?  
 12 **PRESIDING OFFICER:** Correct.  
 13 **MR. PREHEIM:** Just you're keeping it  
 14 in the record for purposes of the fact that  
 15 it's already been played and all that?  
 16 **PRESIDING OFFICER:** Right, I don't  
 17 want to confuse things by having something  
 18 have the same number as that. Since that  
 19 was given the 2875 number, I don't want  
 20 something else then to have 2875 and then  
 21 at some point later someone's confused as  
 22 to what is Exhibit 2875.  
 23 **MR. PREHEIM:** You bet.  
 24 **PRESIDING OFFICER:** All right. So  
 25 2876 will be admitted, and then I believe

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1 you had a presentation as well to -- at the  
 2 public comment hearing, same with KDA, I  
 3 can't remember if Russell had one as well  
 4 or if you just piggybacked off of Hays and  
 5 then had your -- your individuals give  
 6 some --  
 7 **MR. COLE:** Public comment.  
 8 **PRESIDING OFFICER:** -- comment. But  
 9 if you want to submit those as well, I will  
 10 admit all of those to the record, we can  
 11 get those filed and uploaded so those  
 12 copies are in the official record.  
 13 **MR. TRASTER:** Thank you, Your Honor.  
 14 **PRESIDING OFFICER:** All right.  
 15 Mr. Cole, did you have any questions for  
 16 Mr. Feril?  
 17 **MR. COLE:** I do not.  
 18 **PRESIDING OFFICER:** All right.  
 19 Mr. Lee?  
 20 **MR. LEE:** Thank you, Your Honor.  
 21 May it please the Court, which is what I  
 22 always say but you know what I mean.  
 23 //  
 24 //  
 25 //

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1 **CROSS-EXAMINATION**  
 2 **BY MR. LEE:**  
 3 Q Good afternoon, Mr. Feril. Probably be apparent  
 4 to you, I'm Charles Lee, I represent, along with  
 5 others lawyers, Water PACK and Edwards County.  
 6 So I'd like to have a bit of a conversation with  
 7 you this afternoon about the GMD5 and how it's  
 8 governed and how it interacts with folks within  
 9 its boundaries. So let's -- let's talk about a  
 10 few of those things. It would be the case, I'm  
 11 sure, that you're familiar with the rules and  
 12 regulations of the management district. Is that  
 13 a fair statement?  
 14 A **I am familiar.**  
 15 Q Okay. Let's look at a few slides so that I can  
 16 kind of facilitate our discussion. So,  
 17 Mr. Feril, what you are looking at there is a  
 18 excerpt from K.S.A. 82a-1502, and you had talked  
 19 a bit about the fact that there is some  
 20 responsibility for the -- by the groundwater  
 21 management district in relation to water  
 22 transfers, correct?  
 23 A **It's my understanding the statute does allow for**  
 24 **that, yes.**  
 25 Q Okay. So 82a-1502 says in part, and I'll quote

1 for you, To determine whether the benefits to  
2 the State for approving the transfer outweigh  
3 the benefits to the State for not approving the  
4 transfer, the presiding officer shall consider  
5 all matters pertaining thereto, including  
6 specifically, and this is item 9 which says, any  
7 applicable management program, standards,  
8 policies, and rules and regulations of a  
9 groundwater management district. You're aware  
10 of that, I suspect?  
11 **A Yes, sir.**  
12 **Q** Okay. And the R9 Ranch is within the boundaries  
13 of GMD5; is that right?  
14 **A Yes, sir.**  
15 **Q** Okay. So if we look at the next slide, all that  
16 is is the cover page to the rules and  
17 regulations of the management district, just to  
18 orient you. So if we -- which the November 2019  
19 rules and regulations are the most current, are  
20 they not?  
21 **A It's my understanding that is the most recent**  
22 **revision, yes.**  
23 **Q** Okay. So as part of that, the -- in the  
24 management district document, it cites to Kansas  
25 Administrative Regulation 5-25-1, and it defines

1 management district document, correct?  
2 **A They are part of the regulation, yes.**  
3 **Q** So then if we move on, that is in the document  
4 that we are referring to here, that is a map  
5 that is shown as part of the document. Does  
6 that appear to be taken from the document?  
7 **A From which document are you referring to?**  
8 **Q** From the groundwater management district  
9 regulations and the management plan?  
10 **A It is not from the regulations, the regulations**  
11 **do not have a map in them. However, it is in**  
12 **our management program.**  
13 **Q** Okay. The -- well, and forgive me because these  
14 bleed together, so this is part of the  
15 management plan, correct?  
16 **A This meaning?**  
17 **Q** The map?  
18 **A This map is -- figure will -- I can't remember**  
19 **the figure exactly, but it is in GMD's**  
20 **management program, yes.**  
21 **Q** And within the boundaries shown on that map is  
22 the R9 Ranch --  
23 **A Yes, sir.**  
24 **Q** -- is my question, correct?  
25 **A Yes, sir.**

1 sustainable yield as Sustainable yield means the  
2 long-term yield of the source of supply,  
3 including hydraulically connected surface water  
4 or groundwater, allowing for the reasonable  
5 raising and lowering of the water table. So  
6 that's part of that document, is it not?  
7 **A It is part of the rules and regulations, yes.**  
8 **Q** Okay. So Kansas Administrative Regulation  
9 5-25-3, which is part of this document, states  
10 that For all uses of water, the quantity of  
11 water requested shall be reasonable for the  
12 proposed beneficial use, and the approval shall  
13 neither impair an existing right nor  
14 prejudicially and unreasonably affect the public  
15 interest. So, again, that's part of the  
16 regulations that are in the groundwater  
17 management district's document, correct?  
18 **A Yes, that is that regulation.**  
19 **Q** Okay. So also in that same document is a  
20 citation to Kansas Administrative Regulation  
21 5-25-8 which talks about waste of water, and it  
22 says, A person shall not commit or allow a waste  
23 of water as defined in K.A.R. 5-1-1. So a  
24 prohibition on waste of water is a part of the  
25 regulations that are part of the groundwater

1 **Q** So if you look, then, at the next document,  
2 that's the cover page to the Revised Management  
3 Program?  
4 **A Yeah, I was waiting for the scroll to get the**  
5 **revision date, yes.**  
6 **Q** Okay. So -- and this is the most current, dated  
7 October 11, 2018?  
8 **A Yes, sir.**  
9 **Q** Okay. So within that document and specifically  
10 at page 13, and it's Water PACK's Exhibit  
11 Number 62 -- or page number 621, it states that  
12 The availability of plentiful and renewable  
13 sources -- I'm sorry, supplies of good quality  
14 water has helped to make an irrigated  
15 agricultural economy a reality in the district.  
16 The spin-off from this has bolstered the well  
17 drilling industry, irrigation service groups,  
18 and irrigation equipment dealers, thus  
19 establishing off-farm jobs that help establish a  
20 healthy economic base supporting the local  
21 communities within the area. So that is  
22 essentially part of what one might call a  
23 mission statement for the district. Is that  
24 fair?  
25 **A That is not part of our -- what we would**

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1 **consider our mission statement, but that is in**  
2 **our management program.**  
3 Q Okay. At least included in the management  
4 program?  
5 A **It is within the management program, yes.**  
6 Q Okay. And also in the management program at  
7 page 14 is this quote, The use of water for  
8 irrigation purposes is by far the largest with  
9 roughly 90 percent of all water withdrawn  
10 applied to irrigated crops. Indeed the greatest  
11 increase in development has been for irrigated  
12 agriculture; that's supposed to be agriculture.  
13 This increased development has helped to support  
14 the economy of the region but this economy can  
15 only be maintained if the water resource is  
16 sustained. And, again, that's part of the  
17 management program, correct?  
18 A **With exception of the few grammatical errors in**  
19 **there, yes.**  
20 Q Yeah, I will take -- I will take responsibility  
21 for that?  
22 A **Yes, that is part of the management program.**  
23 Q Okay, thank you. This is from the revised  
24 management program, pages 14 and 15, and a  
25 little longer quote so forgive me, but In 2007,

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1 the district board decided it was time to have a  
2 comprehensive hydrologic model developed that  
3 encompassed the entire district area, including  
4 the upland watershed areas of the Arkansas  
5 River, Pawnee River, and Walnut Creek. The  
6 model work began in late 2008 and throughout the  
7 following year; the technical review committee  
8 provided meaningful refinements to the model.  
9 And then it talks about, The model development  
10 was led by Balleau Groundwater, Inc. with  
11 technical contributions and review by Kansas  
12 Department of Agriculture Division of Water  
13 Resources staff and consultant S.S. Papadopoulos  
14 & Associates and goes on. So S.S. Papadopoulos  
15 is Steve Larson; is that right?  
16 A **It's my understanding it is, yes.**  
17 Q Okay. And do you know Mr. Larson?  
18 A **I have never met the man.**  
19 Q Okay. So in the management program at page 16,  
20 it talks about the Water Transfer Act and it  
21 says specifically, Water transfers that could  
22 potentially export water out of the district  
23 should be addressed as they arise. The Kansas  
24 Water Transfer Act was developed to address such  
25 issues while allowing for district input. The

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1 district should assess the local economic impact  
2 when reviewing water transfers. Transfers of  
3 water from within the district may become more  
4 common in the future. And really two questions,  
5 Mr. Feril, about that. One is that's part of  
6 the management program, correct?  
7 A **Yes, it is.**  
8 Q Did the district assess the local economic  
9 impact?  
10 A **That information has not been presented --**  
11 **presented to the board for review at this point.**  
12 Q So it's an ongoing process; is that right?  
13 A **The information has not been presented to the**  
14 **board for review at this point.**  
15 Q Okay. I guess I don't know exactly what that  
16 means?  
17 A **The board has not been presented with any kind**  
18 **of economic input, pro or con, for their review**  
19 **or recommendation in this matter.**  
20 Q Okay. So if we then look at the next screen,  
21 that talks about the quality of the groundwater,  
22 and it says, and this is at page 17, The quality  
23 of the groundwater resource is certainly as  
24 important, if not more important, than the  
25 quantity issue. If the quality of the resource

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1 is allowed to deteriorate, then there is no  
2 reason for restricting development from a  
3 quantity standpoint because the water will be of  
4 little value once polluted. It is extremely  
5 difficult and costly to reverse pollution once  
6 it has occurred, thus the basic objective of the  
7 district is to take a preventive posture. So,  
8 again, part of the management program, right?  
9 A **Yes, sir.**  
10 Q Okay. Let's look at the graph. It may be  
11 difficult for you to see this, and if it is, we  
12 can see if we can fix it, but what -- that's  
13 better. These show a couple of graphs. Are you  
14 familiar with those?  
15 **MR. TRASTER:** Objection, Your Honor,  
16 these are graphs from a PowerPoint  
17 presentation, at least I believe they are  
18 based on what I've seen, made by Balleau to  
19 the board, and it's a -- they're very  
20 preliminary, there's no -- there's no  
21 indication that they have applied to  
22 anyplace even near the ranch. It's -- it's  
23 very preliminary, very speculative, we've  
24 studied it, we don't understand it, it's --  
25 it's incomprehensible, really not

1 because -- without some explanation from  
2 the person who prepared it and he's not  
3 here to testify.  
4 **PRESIDING OFFICER:** Okay. Now, that  
5 may be something I can sustain in a moment,  
6 but I think you jumped the gun a little  
7 bit, Mr. Traster, so I'm going to overrule  
8 it. He's -- right now he's just asked  
9 Mr. Feril --

10 **MR. TRASTER:** Fine.  
11 **PRESIDING OFFICER:** -- basically  
12 what this is so let's -- let's address that  
13 first.

14 **MR. TRASTER:** Sure.  
15 **PRESIDING OFFICER:** And then if you  
16 need to object, I'll take that up.

17 **MR. TRASTER:** You're right, I jumped  
18 the gun; when I saw it, I thought, here it  
19 comes. So go ahead.

20 **PRESIDING OFFICER:** So let Mr. Feril  
21 answer the question, if he can identify  
22 that first, and then we'll go from there.

23 **BY MR. LEE:**  
24 Q So, Mr. Feril, back to the question, there's two  
25 graphs here, do you recognize those?

1 **A Yes, it would be the same.**  
2 Q If you'll bear with us for a moment, Mr. Feril,  
3 we can display something else that maybe  
4 clarifies this a little bit for you.

5 **A Thank you.**  
6 Q So that is a -- I guess one of the graphs is the  
7 same. So perhaps we can just walk through these  
8 one by one, but the -- the image on the left,  
9 you would recognize, I assume, would you not?

10 **A The one on the left?**  
11 Q Yes.

12 **A Yes, I recognize that.**  
13 Q What's called the Mid Ark/Rattlesnake, zone 9?

14 **A Yes.**  
15 Q So what is that depicting?

16 **A It's my understanding it depicts the zone of  
17 model recharge rates, precipitation.**

18 Q And what do the -- the colors depict?  
19 **A I would have to take a closer look at the legend**

20 **to be able to distinguish that.**  
21 Q And the -- the box to and scale to the right on  
22 the top of that which says Zenith gage, what is  
23 that?

24 **A I'm sorry, I didn't catch the question?**  
25 Q Yeah, the question is do you know what that is

1 **A It's very difficult to see from this distance.  
2 They look vaguely familiar, but I couldn't say  
3 what they pertain to from this distance.**

4 Q We'll see if we can make it easier to see. Does  
5 that help?

6 **A Some. Okay. That's better.**  
7 Q Okay. So is it the case that what you're

8 looking at is a graph that maps recharge, as  
9 indicated in the caption, from 1970 to  
10 approximately, at least, 2008?

11 **A Again, it's really difficult for me to see what  
12 the legends say, and I've not reviewed the --  
13 that document for quite a few years.**

14 Q Okay. So it's something you recognize, you  
15 simply haven't reviewed recently?

16 **A Correct.**  
17 Q Okay. Can you interpret it by spending a moment  
18 looking at it now?

19 **A If I had some time to take a good look at it,  
20 and I'd probably need to discuss it with my  
21 consultant to fully understand the relation --  
22 the intention behind it but doubtful, to be  
23 frank.**

24 Q So would your answer be the same as to the  
25 second graph that's here?

1 representing?  
2 **A I have an understanding of it, but, again, I'm  
3 not a hydrologist to interpret it probably as  
4 accurate as they could.**

5 Q I understand that and so what is -- what is --  
6 based on your level of knowledge, how do you --

7 **MR. TRASTER:** Objection, objection,  
8 Your Honor, I think now we're into, you  
9 know, attempting to -- this is a -- if you  
10 scroll down a little bit, at the top you'll  
11 see this is still a draft document, it's an  
12 incomplete PowerPoint presentation that we  
13 have studied and cannot figure; there are  
14 many more questions than there are answers  
15 about what this is. The initial  
16 relationship in zone 9, that graph at the  
17 bottom doesn't match, I don't believe that  
18 it matches the initial precip/recharge  
19 relationship from the -- from the  
20 groundwater original report that Mr. Larson  
21 testified to. This is about the Zenith  
22 gage which is miles away from the ranch,  
23 it -- it's not relevant to anything, and  
24 more importantly, it is not -- it  
25 doesn't -- it's incomplete and there are

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1 more questions than answers and so it  
2 doesn't help anything that we've got  
3 throughout the course.  
4 **MR. LEE:** Your Honor, that -- that  
5 sounds like cross-examination to me and not  
6 an objection, quite frankly. If he thinks  
7 it is in draft form or it's inaccurate or  
8 it's incomplete, that's something that he  
9 can ask Mr. Feril, and we don't know what  
10 Mr. Feril's answers are going to be about  
11 this anyhow. But the fact that it is  
12 confusing to Mr. Traster is not the  
13 polestar here.  
14 **MR. TRASTER:** And, Your Honor, it  
15 appears to be confusing to Mr. Feril, he  
16 has said he doesn't -- without his  
17 consultant, he can't testify about it and  
18 doesn't know for sure; he has some  
19 understanding but it's based on  
20 conversations evidently with his  
21 consultant, which is admissible as hearsay  
22 but -- but he's already said that he's not  
23 conversant with it. And I don't want to  
24 characterize -- mischaracterize what his  
25 testimony was, but he's been reluctant to

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1 answer Mr. Lee's questions about what this  
2 says and what it does.  
3 **PRESIDING OFFICER:** Okay. Now, I  
4 have some leeway with evidence, but  
5 especially given the fact that Mr. Traster  
6 pointed out it has draft on there, Mr. Lee,  
7 can you give me a little more foundational  
8 information regarding this document so that  
9 it is clear on the record?  
10 **MR. LEE:** Yeah, as you know, Your  
11 Honor, we're not -- not trying to hide the  
12 fact that it's draft, and to the extent  
13 that Mr. Feril responds to say, well,  
14 either I don't know what this is or it's in  
15 draft form and so it's not meaningful to  
16 him, we get that, but the -- the idea that  
17 we can't ask the question because somebody  
18 on the other side is confused about it,  
19 that's not really an objection.  
20 **PRESIDING OFFICER:** All right. I'm  
21 going to overrule the objection, I'll allow  
22 you to ask those questions but make sure  
23 there's some clarifying information to  
24 those questions so that the record is  
25 clear. And then, Mr. Traster, you can

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1 address your concerns on redirect, if  
2 necessary. But, Mr. Lee, if you can  
3 address kind of some of those --  
4 **MR. LEE:** Sure.  
5 **PRESIDING OFFICER:** -- foundational  
6 issues first --  
7 **MR. LEE:** Sure, happy to do that.  
8 **PRESIDING OFFICER:** -- so it's clear  
9 if Mr. Traster does go back to question  
10 some of that.  
11 **MR. LEE:** Happy to do that, Your  
12 Honor.  
13 **BY MR. LEE:**  
14 Q So, Mr. Feril, this document, which is shown as  
15 draft, do you know who produced this document?  
16 A **Yes, our consultant, Dave Romero with Balleau**  
17 **Groundwater, Inc., produced that document for**  
18 **board's initial review as they were updating the**  
19 **model.**  
20 Q Okay. And so what's the process, I know that  
21 the district has worked historically with  
22 Balleau Groundwater, correct?  
23 A **Correct.**  
24 Q So when you're updating the model, then I'm  
25 assuming that you get from Balleau draft

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1 documents like this; is that right?  
2 A **From time to time I'll receive draft documents**  
3 **for review.**  
4 Q And so when you as the -- when you as, I assume,  
5 the manager receive these draft documents, what  
6 is your practice in dealing with them?  
7 A **Typically, I will schedule a call with our**  
8 **consultants to further explain them because I'm**  
9 **not -- I don't have the education background to**  
10 **fully understand them. So then we'll have a**  
11 **conversation about what they're seeing in their**  
12 **update, in their evaluation, and just keep me**  
13 **apprised of how it's going really.**  
14 Q Okay.  
15 A **It's not -- not something that I drive how the**  
16 **model is updated or calibrated; it's more of an**  
17 **update to me on how -- how the process is going.**  
18 Q And so when you receive the drafts and you have  
19 the consultation with Balleau and Mr. Romero, I  
20 presume?  
21 A **Uh-huh, yes.**  
22 Q What do you do with a draft after that?  
23 A **What we do with the draft document?**  
24 Q Yes.  
25 A **Typically, it becomes part of our file system,**

1 **and that's about it until we get a more updated**  
 2 **draft or final document that replaces it.**  
 3 Q And at what point does one of these documents go  
 4 to the board for review?  
 5 A **Typically, there's not a big procedure about**  
 6 **when they go to the board for review or not.**  
 7 **Usually if it's an item like this presentation,**  
 8 **there's an item that Peter -- that Dave Romero,**  
 9 **excuse me, requested to have brought to the**  
 10 **board's attention about the progress updating**  
 11 **the model.**  
 12 Q And so does that mean that in general that what  
 13 is presented to the board, I presume, for  
 14 approval finally?  
 15 A **No, it is not something for approval of the**  
 16 **board; it is for informational purposes**  
 17 **informing the board.**  
 18 Q Okay. So it's not -- the board does not have a  
 19 direct role in approving an update to the model;  
 20 is that right?  
 21 A **That is accurate.**  
 22 Q So Balleau did the document that we're looking  
 23 at here, correct?  
 24 A **Yes.**  
 25 Q And we were talking about the -- the document --

1 has Balleau indicated to you at any point that  
 2 the recharge rate for the aquifer from 1970 to  
 3 2008 was at a higher rate than thereafter?  
 4 **MR. TRASTER:** Objection, Your Honor,  
 5 misstates the content of the document, this  
 6 is a document that is dated 2008 to 2018,  
 7 not the time frame that Mr. Lee just asked  
 8 the witness about.  
 9 **MR. LEE:** Your Honor, actually, I  
 10 didn't ask him about the document, I just  
 11 asked him whether Balleau had told him  
 12 that.  
 13 **PRESIDING OFFICER:** That's what I  
 14 was thinking, I didn't think the question  
 15 was tied to the document. So I'll overrule  
 16 that.  
 17 **MR. LEE:** Thank you, Your Honor.  
 18 A **Can you restate the question, please.**  
 19 **BY MR. LEE:**  
 20 Q I think. Has Balleau told you that the recharge  
 21 rate for the aquifer that we're talking about  
 22 here was higher, at a higher rate before 2008  
 23 than it is thereafter?  
 24 A **Clarification, are we talking modeled recharge**  
 25 **or observed recharge?**

1 the part of the document that's in the upper  
 2 right-hand corner that is captioned the Zenith  
 3 gage, and I believe that your response was you  
 4 had some understanding of that; is that right?  
 5 A **I have some understanding of that figure, yes.**  
 6 Q Okay. And what is that understanding?  
 7 A **It's my understanding is that with more recent**  
 8 **information, more recent data going into the**  
 9 **model is that they discovered an overshoot of**  
 10 **flow in the streams than what was previously**  
 11 **discovered in the model report previously.**  
 12 Q And when you say or Balleau says an overshoot,  
 13 what are they talking about?  
 14 A **More streamflow than what was observed in actual**  
 15 **datasets.**  
 16 Q Okay. And if you then go to the box on the  
 17 left, do you know what that draft is?  
 18 A **That's one I'm less familiar with.**  
 19 Q Okay. Is it something that you can interpret  
 20 from looking at?  
 21 A **I cannot. Again, it's -- that figure there is**  
 22 **one that we did not spend very much time on at**  
 23 **all in conversation, it's more talking about the**  
 24 **overshoot on the top right.**  
 25 Q So let me ask you a more generalized question,

1 Q Modeled recharge?  
 2 A **My understanding is, yes, they -- they stated**  
 3 **that the modeled recharge was greater than what**  
 4 **was observed, and it's being updated now.**  
 5 Q Okay, thank you, Mr. Feril, I don't have  
 6 anything else.  
 7 **PRESIDING OFFICER:** Ms. Langworthy?  
 8 **MS. LANGWORTHY:** No questions, Your  
 9 Honor.  
 10 **PRESIDING OFFICER:** Mr. Preheim?  
 11 **MR. PREHEIM:** No questions for me.  
 12 **PRESIDING OFFICER:** All right.  
 13 Mr. Traster?  
 14 **MR. TRASTER:** Yeah, I don't have any  
 15 questions.  
 16 **MR. COLE:** No questions.  
 17 **PRESIDING OFFICER:** All right.  
 18 Thank you, then, Mr. Feril.  
 19 **THE WITNESS:** Thank you.  
 20 **MR. TRASTER:** Can we have a short  
 21 break, Your Honor?  
 22 **PRESIDING OFFICER:** That would be  
 23 fine. I believe we just have the one  
 24 witness left today; is that correct?  
 25 **MR. TRASTER:** I hope.

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1           **PRESIDING OFFICER:** All right.  
 2           Let's go ahead and take 15 minutes.  
 3           **MR. TRASTER:** Thank you.  
 4           **PRESIDING OFFICER:** We'll start up  
 5           again at 2:45.  
 6           (Thereupon, a recess was taken;  
 7           whereupon, the following was had.)  
 8           **PRESIDING OFFICER:** Okay. I think  
 9           we have everybody back now so we can go  
 10          ahead and go back on the record. I believe  
 11          we have one more witness, then?  
 12          **MR. TRASTER:** We don't have any more  
 13          witnesses at this time. I think Mr. Lee  
 14          may but ...  
 15          **MR. LEE:** So, Your Honor, do the  
 16          Cities rest?  
 17          **MR. TRASTER:** No.  
 18          **MR. LEE:** Well, that's a bit of a  
 19          conundrum.  
 20          **MR. TRASTER:** I don't know -- why is  
 21          it a conundrum?  
 22          **MR. LEE:** Well, if you don't have  
 23          any more witnesses, I'm assuming that  
 24          you're resting?  
 25          **MR. TRASTER:** Why would you assume

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1           that?  
 2           **MR. LEE:** Well, address the judge.  
 3           It seems to us, Your Honor, that if there  
 4           are no more witnesses by the Cities, they  
 5           have effectively rested and that's my  
 6           question.  
 7           **MR. TRASTER:** My recollection is  
 8           that we've had a long discussion about  
 9           getting together on Monday and going  
 10          through, making sure all the evidence is  
 11          marked and then admitted or not admitted.  
 12          So my understanding was that's what we were  
 13          going to do on Monday.  
 14          **PRESIDING OFFICER:** Yes, we will do  
 15          that on Monday, and at that time, we'll  
 16          make sure that we can go through and if  
 17          somebody has identified some document that  
 18          was referred to in this matter but they've  
 19          not been able to find that we for sure  
 20          admitted that or just out of abundance of  
 21          caution to make sure we do, we'll go  
 22          through that whole process.  
 23          **MR. TRASTER:** Correct, that's -- so  
 24          we'll wait and rest until after we've done  
 25          that.

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1           **PRESIDING OFFICER:** You have no  
 2           other witnesses to call?  
 3           **MR. TRASTER:** No other witnesses at  
 4           this time.  
 5           **PRESIDING OFFICER:** Okay. Mr. Lee,  
 6           then.  
 7           **MR. LEE:** Patrick Janssen, please.  
 8           **PRESIDING OFFICER:** Please raise  
 9           your right hand, Mr. Janssen.  
 10            
 11          PATRICK MILAN JANSSEN,  
 12          having first duly sworn or affirmed, was  
 13          examined and testified as follows:  
 14            
 15          **PRESIDING OFFICER:** You may proceed,  
 16          Mr. Lee.  
 17          **MR. LEE:** Thank you, Your Honor.  
 18            
 19          **DIRECT EXAMINATION**  
 20          **BY MR. LEE:**  
 21          Q Afternoon, Mr. Janssen.  
 22          A Hello, sir.  
 23          Q The -- state for the record your full name and  
 24          business address.  
 25          A Patrick Milan Janssen, P-A-T-R-I-C-K, M-I-L-A-N,

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1           **J-A-N-S-S-E-N. And my residence is at 998 U**  
 2           **Road, Kinsley, Kansas 67547.**  
 3           Q And that's in Edwards County, is it not?  
 4           A Yes, sir.  
 5           Q Okay. The -- tell me about your work and  
 6           business background.  
 7           A My work, primarily I play in the dirt and chase  
 8           cows. My business background, I came back to  
 9           the -- came back to the farm in 1993, started  
 10          farming on my own and taking care of property  
 11          owned by my parents at that time and have been  
 12          engaged in production ag ever since.  
 13          Q And continuing to this day, correct?  
 14          A Yes, sir.  
 15          Q Okay. So you have been, I think, relatively  
 16          active in the -- in the community at large,  
 17          Edwards County environment. Is that a fair  
 18          statement?  
 19          A Yes, sir, I've served on more boards than my  
 20          wife would like.  
 21          Q Okay. Well, tell me about a few of them.  
 22          A Okay. Currently serve on the Kiowa County Fair  
 23          board, South Brown Township board, Pawnee,  
 24          Edwards, and Kiowa County Natural Gas Pipeline  
 25          board. I'm the president of the board of

1 Alliance Ag and Grain, and then I'm also serving  
2 as president of the Water PACK board.

3 Q Okay. And so either because of your experience  
4 generally or because of your work with Water  
5 PACK, are you familiar with the R9 Ranch?

6 A Yes, sir.

7 Q And how is that, how are you familiar?

8 A My residence is approximately a mile as the crow  
9 flies from the R9 Ranch, we've -- you know,  
10 it's -- it's always been up there, it's always  
11 been kind of interesting, so we've paid  
12 attention to what was going on. And then when  
13 the Cities bought it, we started following that  
14 project as well.

15 Q Okay. And do you have irrigation wells in the  
16 vicinity of the R9 Ranch?

17 A Yes, sir.

18 Q How many?

19 A There would be -- well, within -- within 2 miles  
20 of the southwest corner of the ranch, we would  
21 have seven.

22 Q So with Water PACK and serving as the president,  
23 are you aware of any conservation initiatives  
24 that Water PACK has been involved in or has  
25 pursued?

1 A As far as water conservation?

2 Q Yes.

3 A There are several of them. Water PACK started  
4 one of the original tech farms in the State of  
5 Kansas, partnering with the Kansas Water Office,  
6 Kansas Corn, who --

7 Q And let's stop for a second so that for the  
8 uninitiated we can describe what a tech farm is.

9 A Okay. A water tech farm is basically a place to  
10 test-drive technology associated with trying to  
11 make a more efficient use of water, technology  
12 such as remote moisture sensing probes, we've  
13 had ground-penetrating radar out there, we --  
14 the initial water tech farm used mobile drip  
15 irrigation because we were trying to prove or  
16 disprove the efficiencies to be gained through  
17 its utilization. We're in our seventh or eighth  
18 year of that program now, it has transitioned  
19 into the Kansas Water Office's new WISE program.

20 After our third year with the Dragon-Line  
21 project, we -- we had proved through that  
22 project that water savings of 20 to 25 percent  
23 were attainable while maintaining comparable  
24 yields. But we felt that in our area the  
25 widespread adoption of Dragon-Line Mobile Drip

1 Irrigation was unlikely because of some  
2 management issues that come with the product.

3 So we backed away from that, went to a  
4 conventional application equipment, tested all  
5 the equipment, made sure things were operating  
6 within the proper parameters, and we've been --  
7 we have two fields in our tech farm, one that we  
8 manage, do the irrigation scheduling, et cetera.  
9 We have the second one that ILS Farms, one of  
10 our partners, their agronomist and their farm  
11 manager schedule irrigation on it. We've  
12 consistently used 15 -- 15 to 20 percent less  
13 water on the tech farm field when compared to  
14 the check field. And from that --

15 Q And I'm sorry to interrupt, but the check field  
16 is essentially the control --

17 A Yes.

18 Q Okay.

19 A Yep.

20 Q Sorry to interrupt.

21 A Okay. From that project, we sprawled into a  
22 conservation innovation grant that we partnered  
23 with K-State, The Nature Conservancy of Kansas,  
24 who we've worked with several projects on, and,  
25 oh, two or three other groups; and through that

1 project, we're going out doing irrigation  
2 testing on cooperator farms.

3 We've got 35 fields enrolled in the  
4 program, we've made upgrades to their irrigation  
5 equipment, we do outreach with them every two  
6 weeks to monitor how they're doing with their  
7 irrigation scheduling, trying to -- trying to  
8 teach the discipline of a light - oh, what would  
9 the word be - deficit irrigation practices so  
10 you can make better use of available rainfall  
11 and just generally kind of run on the razor's  
12 edge in terms of water scheduling.

13 Q Okay. Any other water conservation initiatives  
14 that come to mind?

15 A We're involved -- I think that one may have  
16 sunset, but one of the big ones and one of our  
17 first projects with The Nature Conservancy of  
18 Kansas was we partnered with them to do invasive  
19 tree removal in the Rattlesnake Creek upstream  
20 of the refuge to try and increase streamflow. I  
21 think at this point we've cleared approximately  
22 30 miles of streambed of brush, brush and all  
23 other invasive species in an effort to reduce  
24 water consumption there.

25 Q Okay. Is the overall takeaway in terms of the



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1 conservation practices that Water PACK has  
2 championed the better yields with less water?  
3 **A I wouldn't say better yields, I'm going to say**  
4 **our goal is to produce the same yield using less**  
5 **water.**  
6 **Q** Okay, okay. Thank you.  
7 **MR. LEE:** Your Honor, I have nothing  
8 else.  
9 **PRESIDING OFFICER:** All right.  
10 Mr. Traster? Or I guess, Mr. Buller,  
11 whichever of you would be in --  
12 **MR. TRASTER:** It's me, I'll be right  
13 there.  
14  
15 **CROSS-EXAMINATION**  
16 **BY MR. TRASTER:**  
17 **Q** Mr. Janssen.  
18 **A How are you, sir?**  
19 **Q** I'm well. And you?  
20 **A I'm wonderful, everyone says so.**  
21 **Q** Yeah. I'm not going to argue with you about  
22 that.  
23 **A Okay.**  
24 **MR. TRASTER:** Ms. Buck, would you  
25 put that graph up that we were talking

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1 about this morning?  
2 **BY MR. TRASTER:**  
3 **Q** Mr. Janssen, I'm going to --  
4 **MR. LEE:** Objection, Your Honor,  
5 beyond the scope.  
6 **MR. TRASTER:** How do you know? I'm  
7 sorry. Your Honor, this is about -- this  
8 is a graph that shows the water use by  
9 Water PACK members within 3 miles of the  
10 ranch, he testified that they've got  
11 conservation programs, this is directly  
12 responsive.  
13 **PRESIDING OFFICER:** All right. I'll  
14 overrule that objection and you can  
15 proceed.  
16 **BY MR. TRASTER:**  
17 **Q** Mr. Janssen, I'm going to show you on the screen  
18 a graph, and it shows the deviation from normal  
19 precipitation in the gray boxes that are above  
20 the -- if a gray box is above the line, it shows  
21 the extent of precipitation over normal; if  
22 there's a gray box below, it shows the amount of  
23 precipitation below normal. But what I really  
24 want you to see is that jagged line which is the  
25 water use, and we will provide the backup data

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1 for this, but shows water use by Water PACK  
2 members within 3 miles of the ranch starting in  
3 '76 through 2000 and whatever the last date is  
4 available. And based on that graph, assuming --  
5 you don't know -- I mean, I'm not asking you to  
6 agree with it, but assuming that it's accurate,  
7 can you tell from that graph that water use has  
8 increased during that period?  
9 **MR. LEE:** Objection, Your Honor,  
10 it's not relevant if you look at the last  
11 date on the graph.  
12 **MR. TRASTER:** It's not what?  
13 **MR. LEE:** It's not relevant if you  
14 look at the last date on the graph.  
15 **MR. TRASTER:** I'm looking at the  
16 last date on the graph and it's 2022. I  
17 don't understand the objection.  
18 **MR. LEE:** I don't either if that's  
19 what it is. It looks like 2014 to me.  
20 However, it is what it is so ...  
21 **A No, '24.**  
22 **PRESIDING OFFICER:** I guess when I'm  
23 looking at that, it looks like the last  
24 date there is input for is 2002.  
25 **MR. LEE:** Then my apologies.

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1 **PRESIDING OFFICER:** Okay. Go ahead  
2 and proceed, Mr. Traster.  
3 **A Is it legal for me to get up to where I can see**  
4 **that?**  
5 **BY MR. TRASTER:**  
6 **Q** No, you have to sit -- of course you can.  
7 **MR. TRASTER:** Your Honor, we've  
8 been -- we've seen each other around, we  
9 don't drink beer together but --  
10 **A 'Cause you're cheap.**  
11 **BY MR. TRASTER:**  
12 **Q** You weren't supposed to say that out loud.  
13 **A Without a trend line on that map, the only thing**  
14 **I can say conclusively from it is we water more**  
15 **when it rains less.**  
16 **Q** And it does show that?  
17 **A Yes, no, it illustrates that very well.**  
18 **MR. TRASTER:** Okay. That's fine,  
19 thank you, Your Honor. No further  
20 questions.  
21 **PRESIDING OFFICER:** Okay. Mr. Cole?  
22 **MR. COLE:** No questions.  
23 **MR. PREHEIM:** Is that -- hold on, I  
24 might have a issue here. Is that document  
25 something that is already an exhibit?

1           **MR. TRASTER:** No, not yet.  
2           **MR. PREHEIM:** Are you offering it?  
3           **MR. TRASTER:** Yes. Lynn, you  
4 weren't here -- this is an administrative  
5 proceeding, and we haven't -- we're not --  
6 all of the exhibits that are testified to  
7 are -- are being admitted unless they're  
8 objected to is my understanding; and so I  
9 don't need to offer it, but if that would  
10 help, I'm offering it. And I also am  
11 suggesting that the underlying data on  
12 which it relies should be admitted, and I  
13 will submit that to the parties.  
14           **PRESIDING OFFICER:** All right.  
15           **MR. PREHEIM:** And I understand the  
16 difference in administrative proceedings  
17 versus a regular one, but this witness has  
18 no foundation to talk about this document  
19 at all, he's never seen it before, he  
20 wasn't involved in producing it. I  
21 understand it's produced by Mr. Traster's  
22 office, and none of the underlying  
23 foundation for any of the material in it is  
24 in, as I understand it, so what I -- all  
25 I'm concerned about is I hate to see a

1 document like this being placed in the  
2 record and relied on as legitimate evidence  
3 when there's no foundation laid for it at  
4 all.  
5           **PRESIDING OFFICER:** Okay. Now --  
6 okay. So the record is clear, then, I  
7 think the next exhibit number, and I'll let  
8 you and Ms. Buck correct me if I'm off on  
9 that, 2877 would be the next on your list?  
10 We'll mark that as 2877, and then when we  
11 get back on Monday, if you want to present  
12 that with the additional underlying data,  
13 it can be addressed there so we can address  
14 admitting 27 -- 2877.  
15           **MR. TRASTER:** Thank you, Your Honor.  
16           **PRESIDING OFFICER:** All right, then,  
17 Ms. Langworthy?  
18           **MS. LANGWORTHY:** No questions, Your  
19 Honor.  
20           **PRESIDING OFFICER:** Okay. And,  
21 Mr. Preheim?  
22           **MR. PREHEIM:** No questions.  
23           **PRESIDING OFFICER:** Did you have  
24 questions about that exhibit then?  
25           **MR. PREHEIM:** Not unless you want me

1 to lay the foundation to establish that he  
2 has no foundation to talk about it, but I  
3 don't think that's necessary.  
4           **PRESIDING OFFICER:** I think that's  
5 understood that it was not his data.  
6           **MR. PREHEIM:** Thank you.  
7           **PRESIDING OFFICER:** He just  
8 testified as to what he saw it represented  
9 there.  
10           **MR. PREHEIM:** No questions.  
11           **PRESIDING OFFICER:** Okay. Mr. Cole,  
12 I think I skipped you?  
13           **MR. COLE:** Yeah, nothing further.  
14           **PRESIDING OFFICER:** Okay. Mr. Lee,  
15 then?  
16           **MR. LEE:** Nothing else, Your Honor.  
17           **PRESIDING OFFICER:** Okay. Well,  
18 thank you, then, Mr. Janssen.  
19           **THE WITNESS:** Thank you.  
20           **PRESIDING OFFICER:** I guess would  
21 that be correct that is the end of the  
22 witnesses that we will have in this matter?  
23           **MR. TRASTER:** I believe it is, Your  
24 Honor.  
25           **PRESIDING OFFICER:** Okay. So what

1 we will just have, then, coming back on  
2 Monday after the parties have had the  
3 weekend to put in their extra work, sorry  
4 to ruin everybody's weekend, verify  
5 whatever exhibits you have on your list.  
6 Those that have not yet been submitted to  
7 OAH through the E-file system, please get  
8 those uploaded then so we know those are  
9 all in there, and we'll come back and just  
10 address all of that. I am not thinking  
11 that's going to take a whole lot of time on  
12 Monday. Does anybody have any thoughts to  
13 the contrary?  
14           **MR. LEE:** I don't have any thoughts  
15 to the contrary, Your Honor, I'm wondering  
16 if this is something that could be  
17 facilitated by Zoom as opposed to a  
18 personal appearance?  
19           **PRESIDING OFFICER:** Parties have any  
20 thoughts on that?  
21           **MR. TRASTER:** We'll be here, Your  
22 Honor, in person and -- but I am not going  
23 to suggest how anybody else ought to  
24 proceed.  
25           **PRESIDING OFFICER:** And I'll -- I

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1 think I probably have to be here in person  
2 because of how things have been set up with  
3 the statute for where the hearing is to be  
4 conducted, I think I need to conduct it  
5 from here. I guess if -- if you want to  
6 participate by Zoom, we can do that.  
7 **MR. LEE:** We'll -- under those  
8 circumstances, we'll be here, Your Honor.  
9 **PRESIDING OFFICER:** Since this looks  
10 like it's going to be a short matter, what  
11 if we just started this, like, maybe 10:30  
12 or 11:00, and then I think given the  
13 distance that the parties are traveling  
14 from, either Kansas City, Topeka,  
15 Manhattan, Hays, I think that kind of gets  
16 it to where nobody's going to have to drive  
17 down Sunday night and spend the night  
18 Sunday night, everyone can sleep in their  
19 own bed and, knock on wood, everything  
20 finishes up then on Monday and everybody  
21 can go ahead and drive on back home. Even  
22 though it's going to be a lot of windshield  
23 time on Monday, that way we kind of avoid  
24 having to do it that way. I don't want to  
25 make everybody have to stay and work over

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1 the weekend, or we could just stay and do  
2 it but --  
3 **MR. LEE:** No, 11:00 o'clock is  
4 perfect, Your Honor, we can do that.  
5 **PRESIDING OFFICER:** Is that  
6 agreeable with everybody?  
7 **MR. TRASTER:** That's fine with the  
8 City of Hays, Your Honor.  
9 **PRESIDING OFFICER:** All right. So  
10 we will just be back in here at 11:00 a.m.  
11 on Monday, and we'll make sure all the  
12 exhibits are in place.  
13 And then, as we've discussed, at some  
14 point, I don't know how quickly it'll get  
15 done after we wrap all this up, I'll get  
16 that scheduling order out, I'll have our  
17 clerk send a letter out to those entities  
18 that you advise you think might be  
19 interested in being a commenting agency.  
20 If anybody has contacts for any of those  
21 entities before they get any kind of letter  
22 and they want to go ahead and just send a  
23 notice to OAH they want to be recognized as  
24 a commenting agency - hope nobody got  
25 electrocuted - they're welcome to do so,

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1 and then if we get that and catch that,  
2 then they won't get that letter and they  
3 can just go ahead and get on that list  
4 there to receive the notice of everything.  
5 Are there any questions for anybody?  
6 **MR. TRASTER:** No questions, Your  
7 Honor.  
8 **PRESIDING OFFICER:** All right. So  
9 we will adjourn till 11:00 a.m. on Monday,  
10 we'll have our court reporter, then, back  
11 on Monday just so we can continue with the  
12 transcribed record of clarifying all those  
13 exhibits, then.  
14 **MR. TRASTER:** Will we be on Zoom?  
15 **PRESIDING OFFICER:** Yes, I'll get  
16 that turned back on because I know there  
17 are parties that may want to, and if there  
18 are things that -- I know you got  
19 Mr. Hoffman, Mr. Sauer, everybody here. If  
20 you don't want to have everybody here, I'm  
21 not telling you you can't, but you can  
22 always have -- some can join in that way if  
23 they choose to.  
24 **MR. TRASTER:** Okay.  
25 **PRESIDING OFFICER:** Leave it to

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1 everybody's own discretion. Thank you,  
2 everyone, we're adjourned for the weekend.  
3 (Whereupon, the proceedings were  
4 adjourned at 3:11 p.m.)  
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	<b>across (2)</b> 1396:25;1424:12	1430:4	1416:23;1423:24; 1424:7;1425:14; 1452:3;1455:9;1460:2; 1475:12;1483:15; 1486:16;1489:8; 1491:11;1493:2; 1499:21;1502:5	1383:1;1393:2;1399:6; 1420:10;1443:17; 1448:3;1476:5; 1490:19;1502:2,10; 1513:1;1518:21; 1519:22;1520:3
<b>\$</b>	<b>Act (8)</b> 1428:7;1444:16; 1445:2,15;1457:7; 1459:11;1487:20,24	<b>adjourn (1)</b> 1520:9		
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