

**IN THE TWENTY-FOURTH JUDICIAL DISTRICT
DISTRICT COURT OF EDWARDS COUNTY, KANSAS**

WATER PROTECTION ASSN. OF
CENTRAL KANSAS,

Plaintiff,

V.

CHRIS BEIGHTEL, P.E., IN HIS
OFFICIAL CAPACITY AS ACTING CHIEF
ENGINEER, DIVISION OF WATER
RESOURCES, KANSAS DEPARTMENT
OF AGRICULTURE,

Defendant,

V.

THE CITY OF HAYS, KANSAS AND
THE CITY OF RUSSELL, KANSAS,

Intervenors.

Case No. 2019-CV-000005

Pursuant to K.S.A. Chapter 77

**ACTING CHIEF ENGINEER'S RESPONSE TO PLAINTIFF'S MOTION
TO CORRECT AND SUPPLEMENT THE ADMINISTRATIVE RECORD**

Defendant Acting Chief Engineer Chris Beightel, by and through counsel of record, opposes Plaintiff's pending Motion to Correct and Supplement the Administrative Record and its related memorandum in support ("Plaintiff's Motion"), except in the limited instances explained herein. The sections of this Response address Plaintiff's requested items in the numerical order listed on page two of Plaintiff's Motion. In general, Plaintiff's requests to add to the filed Agency Record are either moot because the documents are already there or do not exist, or Plaintiff's

requests call for items to be improperly added given the KJRA's statutory provisions or the practicalities of the Courts' e-filing system.

As an initial matter, Defendant points out that Plaintiff's repeated citations to federal law are misplaced and unpersuasive in this state action, based on the particular KJRA statutory provisions at issue regarding the parties' pending motions. Counsel for Defendant is unaware of any federal Administrative Procedure Act statutory counterpart to KJRA provisions K.S.A. 77-619 and 77-620, unlike what can be said to exist in comparison with other KJRA provisions. Accordingly, the federal caselaw that has developed regarding the meaning of the "whole record" for purposes of judicial review under the federal Administrative Procedure Act is unpersuasive given the express definition that the KJRA's unique provision provides for "agency record", to wit: "any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material required by law[.]" K.S.A. 77-620(a) (emphasis added). The KJRA clearly requires two distinct elements to be met before a document must be included in the filed agency record: agency consideration and usage as a basis for action.

Accordingly, every e-mail, letter, or draft document that an agency may have created or received regarding a matter is not properly included in the KJRA agency record—any included documents must also have actually been used as a basis for the agency decision and action. An official comment to the 1981 Model State Administrative Procedure Act, the model act upon which the KJRA was based, supports this important point. *See* Steve Leben, *Challenging and Defending Agency Actions in Kansas*, 64 J.K.B.A. 23 n.58 (noting that "[b]ecause the [1981] Model Act was the basis for the KJRA, pertinent comments from the Model Act are cited as persuasive authority

for construction of these statutory provisions”). The comment to section 5-115 of that model act, which obviously is the section on which K.S.A. 77-620 is based, states that “This section deals with the agency record for judicial review, which is related but not necessarily identical to the record of agency proceedings that is prepared and maintained by the agency.” Model State Admin. Proc. Act § 5-115 cmt. (1981), attached hereto as **Exhibit A**. The comment shows that a document’s mere relevance to an agency decision and resulting action is not enough to justify the document’s inclusion in the “agency record” under K.S.A. 77-620(a). Plaintiff, however, generally takes a similarly improper broad view of “agency record”, which renders defective many of Plaintiff’s requests.

I. Barfield Deposition Exhibits 1, 11, and 13.

Exhibits 11 and 13 to former Chief Engineer Barfield’s limited deposition held on January 28, 2020 (i.e., certain letters from Mr. Barfield) are the subject of and attached to the pending Chief Engineer’s Motion to Submit Additional Evidence Under K.S.A. 77-619 that was filed on February 21, 2020. Accordingly, Defendant does not oppose any similar desire of Plaintiff to submit those documents as additional evidence to the Court under K.S.A. 77-619(a).

Defendant opposes, however, Plaintiff’s request that Exhibit 1 to Mr. Barfield’s deposition (i.e., a January 27, 2020 printout of DWR’s webpage regarding “City of Hays / R9 Ranch Water Right Change Applications”) also be accepted by the Court as additional evidence under K.S.A. 77-619(a). As indicated on its face, Exhibit 1 was printed from DWR’s webpage the day before Mr. Barfield’s deposition and thus Exhibit 1 is not necessarily reflective of the content of the webpage as of any other date. Most importantly, however, Plaintiff has failed to show how Exhibit 1 meets the additional-evidence test of K.S.A. 77-619(a), i.e., how Exhibit 1 “relates to the validity

of the agency action at the time it was taken and is needed to decide disputed issues regarding . . . unlawfulness of procedure or of decision-making process.” K.S.A. 77-619(a)(2). Plaintiff merely notes that requested Exhibit 13 references the webpage that Exhibit 1 reflects and that Exhibit 1 includes references to the Cities’ separate transfer-application documents. (Plf.’s Mot. at 9–10.) But nowhere does Plaintiff explain how a particular day’s snapshot of a DWR webpage created for the public’s general information indicates that DWR engaged in unlawful procedure regarding the consideration of certain evidence. Plaintiff has not made a sufficient effort to warrant the Court’s acceptance of Exhibit 1 as additional evidence under K.S.A. 77-619(a).

II. Consumptive Use Analyses and Dr. Rogers, as Referenced in A.R. 671.

Notwithstanding some apparent confusion at former Chief Engineer Barfield’s deposition, the “Consumptive Use Analyses” referenced at A.R. 671 and that Plaintiff now requests be submitted to the Court as additional evidence are already in the filed Agency Record. Furthermore, Defendant is unaware of any documents that DWR received from Dr. Rogers and therefore Defendant has nothing to potentially submit in that regard.

Plaintiff’s request for “Consumptive Use Analyses” and documents from Dr. Rogers is based on a January 21, 2016 letter from former Chief Engineer Barfield to counsel for Hays, in which Mr. Barfield stated that:

We have completed an initial review of your consumptive use analysis and supporting data under K.A.R. 5-5-3 (change in consumptive use) and K.A.R. 5-5-9 (criteria for the approval of an application for a change in the use made of water from irrigation to any other type of beneficial use of water). Since you have provided documentation that many of the referenced water rights irrigated alfalfa during the perfection period, our consumptive use rules allow the use of the more generous net irrigation requirement (NIR) for alfalfa rather than corn. We have consulted with Danny Rogers of KSU to confirm the reasonableness of these numbers for conditions

in the area. While we have a few specific tracts of land to discuss, it appears the application of our rules could support a conversion of more than 6700 acre-feet to municipal use.

(A.R. 671.) As explained below, the referenced analyses already are in the filed agency record and there are no Dr. Rogers documents to potentially submit.

A. The Cities’ Consumptive Use Analysis Is Already in the Filed Agency Record.

The “consumptive use analysis and supporting data” that was prepared by the Cities as referenced in the letter above at A.R. 671 is already in the filed Agency Record: such analysis and data is comprised of the Cities’ June 25, 2015 cover letter to their original change applications, particularly at Section V.G. on pages 26–27 of the cover letter (*see* A.R. 1567–68), and the attachment (and its referenced exhibits) to each individual, original change application, in response to application-form paragraph number 13 (*see, e.g.,* A.R. 1736, 1739–40 (concerning File No. 21,730 as an example)). Former Chief Engineer Barfield effectively confirmed this at his deposition when he testified as follows:

Q. But that specific initial analysis, is that in the administrative record to your knowledge?

A. Which? The one the applicant provided?

Q. The initial -- correct.

A. Well, if it’s part of the applications, which I think it was, it is.

(Barfield Dep. 95:20–96:1, the complete transcript and errata sheet of which is attached hereto as **Exhibit B.**) Accordingly, Plaintiff’s request as to this issue is moot.

B. DWR’s Consumptive Use Analysis Is Already in the Filed Agency Record, and DWR Received No Documents from Dr. Danny Rogers.

DWR’s “initial review” of the Cities’ initial consumptive use analysis, as that “initial review” is referenced in the letter above at A.R. 671, is also already in the filed Agency Record, except for a filed spreadsheet-document’s back page that inadvertently was excluded because of a

copying error and that Defendant requests be corrected in its concurrently filed Motion to Correct Agency Record Under K.S.A. 77-620(f). Additionally, Defendant is unaware of any documents that DWR received from Dr. Danny Rogers of KSU as a result of the meeting referenced in the letter above at A.R. 671. Accordingly, Plaintiff's requests as to these issues also are moot.

DWR's "initial review" referenced in A.R. 671 consisted of DWR staff members performing the following:

- creating the various "Perfection/Base Acre Review" documents (*see* A.R. 3650–3681) for each of the water rights for which the Cities had filed a change application;
- comparing that data to any supplemental crop records provided by the Cities with their original change applications (*see* the Cities' documents referenced in Section II.A. above);
- performing the appropriate consumptive-use mathematical calculations provided by K.A.R. 5-5-9(a) and (b) (1994 version), in consultation with Table 2.2 of the Kansas Irrigation Guide and Irrigation Planners Handbook regarding the net irrigation requirements for alfalfa or corn, as appropriate (*see* A.R. 3741), and in in-person consultation with Dr. Danny Rogers of KSU; and
- memorializing the results of such determinations and calculations in a working spreadsheet, including the version that Plaintiff's own expert obtained and attached as Appendix B to its R9 Ranch Consumptive Use Analysis report (*see* A.R. 974–976). Another, later iteration of such a DWR working spreadsheet is at A.R. 3648.¹

Notably, the final result of DWR's aforementioned "initial review" of the Cities' consumptive use analysis took the form of Table 1 at Appendix B of the issued Master Order. (*See* A.R. 113–117.)

Also notably, Defendant is unaware of any documents that DWR received from Dr. Danny Rogers at the meeting referenced in the letter above at A.R. 671. In summary, the existing documents that comprise DWR's "initial review" referenced in A.R. 671 are already in the filed Agency Record

¹ As mentioned above, the back page of that filed spreadsheet-document was recently determined to have been inadvertently not copied and included, and so via a concurrently filed motion Defendant is requesting that the Agency Record be corrected to include that back page.

(subject to Defendant’s aforementioned, concurrently filed motion to correct), and so Plaintiff’s requests as to these issues also are moot.

Although former Chief Engineer Barfield did seem to suggest at his deposition that, to his knowledge, DWR’s “initial review” referenced in A.R. 671 is not in the filed Agency Record (*see* Barfield Dep. 95:20–96:6, attached hereto as **Exhibit B**), Defendant posits that any such confusion was likely the result of the questioning of Plaintiff’s counsel and otherwise is not supported by the documents mentioned above that unquestionably are already in the filed Agency Record. Notably, Plaintiff’s counsel did not specifically ask former Chief Engineer Barfield about any of those documents, and given the size of the filed Agency Record, it would be understandable if Mr. Barfield could not remember whether or not those documents had been included in the Agency Record. (*Cf.* Barfield Dep. 94:19–96:11 (line of questioning regarding Cities’ consumptive use analysis and DWR’s review thereof), attached hereto as **Exhibit B**.)

III. Model Input Files.

DWR opposes Plaintiff’s request to add electronic groundwater-model input files (i.e., the so-called “Pre-Greensburg Model Input Files”, “Post-Greensburg Model Input Files”, and “Final Model Input Files”, *see* Plf.’s Mot. at 2) into the filed Agency Record under K.S.A. 77-620(a), as opposed to the resulting written model reports that already are in the Agency Record. Such electronic input files do not meet the test of K.S.A. 77-620(a), and regardless, it would not be practical or useful for the Court to receive those files in evidence, whether in original electronic form or if converted to .pdf form.

Plaintiff overstates things by suggesting that former Chief Engineer Barfield relied upon or otherwise considered and used electronic groundwater-model input files as a basis for the

decisions made and the resulting action taken via the issued Master Order. Although the deposition questions and testimony could have been more clear in their usage of various model-related terms, Mr. Barfield did not testify that he performed any model calculations himself using the electronic model input files, but rather he effectively testified that he considered and used as a basis the various written model reports that others had drafted based on their performed model calculations using the various electronic model input files. For example:

Q. The final model referenced in the September 28th, I think, 2018, revised Burns and McDonnell report, did that serve as an input to the master order?

A. It certainly informed portions of the master order, yes.

Q. The final master order?

A. Yes.

Q. Okay. Did prior versions of the Burns and Mac model inform the draft master order that was initially released to the GMD?

A. Well, **the version that informed it was the model report** -- what was the -- so we posted a model report February 19, 2018, of their earlier work which is essentially the same model, the same model runs except for this minor correction that was done.

(Barfield Dep. 98:2–18 (emphasis added), attached hereto as **Exhibit B**; *see also id.* at 150:20–151:2 (“I’m not an expert at developing groundwater models. . . . Doctor Perkins [of DWR] is the one that’s actually running the model.”).) All of the various model reports based on performing any model calculations using electronic inputs already are in the filed Agency Record, and that should be sufficient under K.S.A. 77-620 for the issues in this lawsuit. (*See, e.g.*, A.R. 637–664 (February 13, 2018 cover letter and original model report from the Cities’ consultant); A.R. 345–375 (September 24, 2018 cover letter and revised model report from the Cities’ consultant); A.R. 306–337 (March 26, 2019 DWR staff review of R9 Ranch pumping and water levels).)

Regardless, even if former Chief Engineer Barfield could be said to have legally “used as a basis” for his decisions in and resulting action via the issued Master Order, the various

groundwater-model input files, by their electronic nature, are not appropriately “documents” as used in K.S.A. 77-620 nor could they practically be converted to such and included in the filed Agency Record. As previously and adequately explained to the Court by Intervenors, electronic model-input files are not plain-English text but essentially are lines of computer code that, if converted to .pdfs listing the code, could be the equivalent of millions of pages. (*See generally* The Cities’ Resp. to WaterPACK’s Mot. for Discovery at 24–30, filed on December 6, 2019.) Plaintiff fails to acknowledge this point or suggest any reasonable solution in Plaintiff’s Motion. And even if there were some reasonable solution, Plaintiff fails to articulate why the various electronic groundwater-model input files should really be in the filed Agency Record or what the Court might be expected to do with them if they were. Certainly, Plaintiff cannot be suggesting that the Court should hire some independent modeling expert to perform modeling calculations for the Court, based on the electronic data. Plaintiff’s lack of full explanation regarding these model issues causes Defendant to believe that Plaintiff is using this request as an end-run discovery attempt to justify a delay and to generate leverage. Plaintiff’s Motion as to electronic groundwater-model input files should be denied.

IV. Master Order Drafts & Related Correspondence.

Defendant strenuously opposes Plaintiff’s request to add to the filed Agency Record the various drafts of the draft proposed Master Order and its exhibits (*see* A.R. 396–632) and the drafts of the issued Master Order and its exhibits (*see* A.R. 58–304), together with related correspondence, which drafts and correspondence were prepared by or exchanged with the Cities before the aforementioned orders were publicly disseminated or issued.

Plaintiff's feigned revelation and shock that such orders were developmentally drafted from an initial and subsequent drafts provided by or exchanged with Hays' counsel (beginning over two years before the Master Order was issued), and Plaintiff's resulting request for such drafts and related correspondence, is a red herring. It is a red herring not connected to anything necessary to advance the arguments in Plaintiff's Petition—actual exchanged draft copies, for example, are not necessary to argue that the fact of exchanging drafts is somehow legally improper.² Ultimately, it is a red-herring designed to create delay and leverage, to allow Plaintiff's counsel to pry open and revisit lengthy developmental proceedings that have long since ended but in which Plaintiff now regrets not participating when it knowingly had the chance. (*Cf.* Barfield Dep. 107:1–25; 121:18–123:24; 128:12–130:5 (testifying to ways in which Plaintiff was made aware that DWR was conferring with the Cities), attached hereto as **Exhibit B.**) Because Plaintiff knowingly and voluntarily chose not to participate in the years-long developmental process by which draft documents were created and exchanged, Plaintiff should be deemed to have waived any argument that such documents and related correspondence have improperly been excluded from the filed Agency Record.

Plaintiff's argument regarding drafts also overstates former Chief Engineer Barfield's deposition testimony and suffers from an unreasonably broad interpretation of the “used as a basis” element of K.S.A. 77-620(a). Mr. Barfield did testify that Hays' counsel wrote and provided the first draft of what eventually became the Master Order and Mr. Barfield did suggest that the Cities

² But regardless, Plaintiff has provided no authority to suggest that it is somehow improper for an applicant—especially one with understandably heightened concerns of efficiency and specificity given a matter's unique expense and complexity—to suggest how a decisionmaker might phrase conclusions that the applicant has requested. Indeed, this Court's own consideration of tendered proposed orders comes to mind as an appropriate analogy that renders hollow Plaintiff's cries of improper drafting procedure.

provided input on and exchanged subsequent drafts with DWR. (Barfield Dep. 99:24–102:16, attached hereto as **Exhibit B**.) But Mr. Barfield also made clear that DWR “took control” of drafting “approximately ten months before the proposed draft master order, and we kept control through the rest of the process.” (*Id.* at 176:2–15.) And Mr. Barfield did not say that any drafts exchanged with the Cities were used as a basis for the decisions rendered and the resulting agency action taken via the issued Master Order, but rather indicated that such drafts were merely “used for drafting the master order.” (*Id.* at 146:6–21 (discussing the Cities’ initial draft provided to DWR).)

Thus although former Chief Engineer Barfield may be said to have considered the initial and subsequent drafts provided by the Cities, it goes too far to say that he also legally “used them as a basis”, under K.S.A. 77-620(a), for the decisions and resulting agency action (i.e., contingently approving the Cities’ change applications) he took in issuing the Master Order. Mr. Barfield’s testimony indicates that he may have used some of the Cities’ suggested phraseology in the developmental process of drafting and revising the language of the draft proposed Master Order and the issued Master Order, but merely considering and using something as a basis for phrasing a decision must be something different and less than using something as a basis for supporting a decision and resulting action. To interpret the K.S.A. 77-620(a) “used as a basis” element otherwise would clutter and crowd agency records for judicial review with documents that do not, to use a quote by Plaintiff, “get to the heart of evidence considered or ignored” by an agency. (Plf.’s Mot. at 10.)

In summary, the linguistic evolution of the particular phrasing of former Chief Engineer Barfield’s conclusions in the draft proposed Master Order and in the issued Master Order,

regardless of any input from the Cities, is not materially relevant for purposes of the KJRA “agency record” and the Court’s review. Plaintiff’s request to add to the filed Agency Record hundreds if not thousands of pages of draft documents and related correspondence exchanged over multiple years should be seen and denied for what it is, a red herring and another belated, end-run attempt to obtain discovery in the hopes of causing delay and generating leverage.

V. Transfer Application.

Defendant also strenuously opposes Plaintiff’s request to add to the filed Agency Record either the Cities’ original water-transfer application that was filed with DWR on or about January 6, 2016, or the Cities’ subsequent first-amended transfer application that was filed with DWR on or about May 20, 2019 (collectively, the “Transfer Application”).

Plaintiff seems to take the untenable position that because a few documents already in (or requested to be in) the filed Agency Record merely reference the Transfer Application, that entire voluminous, separate body of application documents that is subject to separate statutory law automatically should be roped-into the required agency record. (*See* Plf.’s Mot. at 9–10.) Notably, Plaintiff makes no attempt to explain how the Transfer Application meets the additional-evidence test of K.S.A. 77-619(a) and is needed to decide the disputed issue of unlawful procedure, and Plaintiff makes no attempt to explain how the Transfer Application meets the “agency record” definition in K.S.A. 77-620(a) and was both considered by DWR and used as a basis for the issued Master Order.

The Transfer Application is only mentioned in the issued Master Order (and other documents in the filed Agency Record) to provide contextual background of the Cities’ broader goal in filing their change applications, or as a necessary consequence of explaining why the issued

Master Order only contingently approves the Cities' change applications. Obtaining approval of their filed change applications is the Cities' first, separate step towards attempting to realize their ultimate goal of building a pipeline to carry water from the R9 Ranch to the Cities. Applicable regulations provide that regarding that first step, any approved change applications are contingent upon the Cities' second, separate step—obtaining approval of a separate and complete water transfer application. *See, e.g.*, K.A.R. 5-50-7 (a Water Transfer Act regulation generally requiring a change application that is “approved contingent upon receiving a permit to transfer water”, before a water transfer application can be deemed complete); *see also* K.A.R. 5-50-2(x).

So although the Transfer Application is related to the Cities' change applications and thus the issued Master Order, it does not rise to the level of having been both considered and used as a basis for the decisions and resulting action in the Master Order. Indeed, before issuing the Master Order, former Chief Engineer Barfield considered the Cities' change applications and applied the particular statutes and regulations of the Kansas Water Appropriation Act that are applicable to change applications, most notably K.S.A. 82a-708b. (*See* Barfield Dep. 26:13–27:7; 126:17–127:1 (discussing K.S.A. 82a-708b and noting that it is the primary statute governing water-right change applications), attached hereto as **Exhibit B**.) The Transfer Application, however, is subject to an entirely separate body of law—the Water Transfer Act of K.S.A. 82a-1501 et seq.—that has its own set of unique, required determinations before any proposed water-transfer can be approved. Consideration of the Transfer Application is a separate, different process and if that process ever is initiated, Plaintiff will have the opportunity to address the Transfer Application at that time. *See, e.g.*, K.S.A. 82a-1503(b)–(d) (providing for intervention and testimony at a formal public hearing required under the Water Transfer Act).

Finally, Defendant notes that the Transfer Application is comprised of over 6,500 pages of the original application and over 7,800 pages of the amended application. Even if one were to only consider the amended application and remove duplicate documents already in the filed Agency Record, that would still leave several thousand pages of documents to add to the Agency Record—an administrative burden (and likely related delay) that would be especially inappropriate given the fact that the Transfer Application cannot properly be before the Court under either K.S.A. 77-619(a) or 77-620(a). Plaintiff's Motion regarding the Transfer Application should be denied.

VI. Conclusion.

Except for perhaps Exhibits 11 and 13 to former Chief Engineer Barfield's limited deposition, Plaintiff has not shown that there are documents not already in the filed Agency Record that should be there under K.S.A. 77-620(a) or that should be submitted as additional evidence under K.S.A. 77-619(a). Thus not only did the deposition insisted by Plaintiff fail to reveal any evidence of unlawful procedure, but it also failed to reveal evidence of any deficiencies in the Agency Record already filed with the Court. Given the KJRA's scope of review available to Plaintiff under K.S.A. 77-621 and the true nature of Plaintiff's claims thereunder in the Petition, the various items requested in Plaintiff's Motion are unnecessary for the Court's KJRA review and are properly not included in the filed Agency Record. Except to the limited extent acknowledged herein, Plaintiff's Motion should be denied.

Respectfully submitted,

/s/ Aaron B. Oleen

Kenneth B. Titus, S. Ct. #26401

Aaron B. Oleen, S. Ct. #23588

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

TEL: (785) 564-6715

FAX: (785) 564-6777

kenneth.titus@ks.gov

aaron.oleen@ks.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the above *Acting Chief Engineer's Response to Plaintiff's Motion to Correct and Supplement the Administrative Record* was electronically filed with the District Court Clerk using the Court's electronic filing system, which will cause service to be made on the following other counsel of record by the transmission of a notice of electronic filing on the date reflected on the electronic file stamp hereto:

Micah Schwalb, #26501
ROENBAUGH SCHWALB
4450 Arapahoe Avenue
Boulder, CO 80303

Aaron L. Kite, #18765
KITE LAW FIRM LLC
808 McArtor Road, PO Box 22
Dodge City, Kansas 67801
620.255.2673
aaron@kitelawfirm.com

Attorneys for Plaintiff

Kenneth L. Cole, #11003
WOELK & COLE
4 S. Kansas St.
P.O. Box 431
Russell, Kansas 67665-0431
Tel (Direct) (785) 483-3611

Attorneys for the City of Russell, Kansas

David M. Traster, #11062
FOULSTON SIEFKIN LLP
1551 N. Waterfront Parkway, Ste. #100
Wichita, KS 67206-4466

Daniel J. Buller, #25002
FOULSTON SIEFKIN LLP
9225 Indian Creek Parkway, Ste. #600
Overland Park, KS 66210-2000

John T. Bird, #08419
Todd D. Powell, #18723
GLASSMAN BIRD AND POWELL
200 W. Thirteenth St.
Hays, Kansas 67601-0727

Attorneys for the City of Hays, Kansas

/s/ Aaron B. Oleen
Kenneth B. Titus, S. Ct. #26401
Aaron B. Oleen, S. Ct. #23588
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
TEL: (785) 564-6715
FAX: (785) 564-6777
kenneth.titus@ks.gov
aaron.oleen@ks.gov

Attorneys for Defendant

Exhibit A

§ 5-115. [Agency Record for Judicial Review--Contents,...., Model State...

[Uniform Laws Annotated](#)

[Uniform Law Commissioners' Model State Administrative Procedure Act \(1981\) \(Refs & Annos\)](#)

[Article V. Judicial Review and Civil Enforcement](#)

[Chapter I. Judicial Review](#)

Model State Administrative Proc.Act 1981 § 5-115

§ 5-115. [Agency Record for Judicial Review--Contents, Preparation, Transmittal, Cost].

[Currentness](#)

(a) Within [_____] days after service of the petition, or within further time allowed by the court or by other provision of law, the agency shall transmit to the court the original or a certified copy of the agency record for judicial review of the agency action, consisting of any agency documents expressing the agency action, other documents identified by the agency as having been considered by it before its action and used as a basis for its action, and any other material described in this Act as the agency record for the type of agency action at issue, subject to the provisions of this section.

(b) If part of the record has been preserved without a transcript, the agency shall prepare a transcript for inclusion in the record transmitted to the court, except for portions that the parties stipulate to omit in accordance with subsection (d).

(c) The agency shall charge the petitioner with the reasonable cost of preparing any necessary copies and transcripts for transmittal to the court. [A failure by the petitioner to pay any of this cost to the agency does not relieve the agency from the responsibility for timely preparation of the record and transmittal to the court.]

(d) By stipulation of all parties to the review proceedings, the record may be shortened, summarized, or organized.

(e) The court may tax the cost of preparing transcripts and copies for the record:

(1) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record;

(2) as provided by Section 5-117; or

(3) in accordance with any other provision of law.

(f) Additions to the record pursuant to Section 5-114 must be made as ordered by the court.

(g) The court may require or permit subsequent corrections or additions to the record.

Editors' Notes

COMMENT

This section deals with the agency record for judicial review, which is related but not necessarily identical to the record of agency proceedings that is prepared and maintained by the agency. Subsection (a) clarifies that the agency record for judicial review consists of (1) any documents expressing the agency action, (2) other documents identified by the agency as having been considered by it and used as a basis for its action, and (3) any other material described in this Act as the record for the type of agency action at issue (Section 3-112 for rule making, Section 4-221 for formal adjudicative hearings and conference adjudicative hearings, Section 4-501(f) for emergency adjudicative proceedings, Section 4-506 for summary adjudicative proceedings), all subject to the provisions of Section 5-115 on shortening, summarizing, or organizing the record.

When the challenged agency action is a rule, Section 3-110(b) must also be considered. That provision requires the court to consider, in support of the validity of the rule, "only those reasons on which the agency relied in its explanatory statement, and only those representations made by the agency that are consistent with its explanatory statement." See Comment on Section 3-110.

Subsection (b) and (c) require the agency to prepare any necessary transcript, and to charge the petitioner with the cost, subject to the power of the court to tax costs ultimately. A bracketed sentence in subsection (c) adds that, even if the petitioner does not pay the cost, the agency must still prepare the transcript on time. This solution requires the agency to bankroll the cost of the transcript, with the possibility of recovering from the petitioner later on.

The 1961 Revised Model Act Section 15(d) prescribed, in less detail than here, the record for judicial review of contested cases.

[Notes of Decisions \(5\)](#)

Copr. (C) Thomson Reuters 2019. All rights reserved. Official Text and Comments Reproduced with Permission of the National Conference of Commissioners on Uniform State Laws. Current through 2018 Annual Meeting of the National Conference of Commissioners on Uniform State Laws

Model State Administrative Proc. Act 1981 § 5-115, ULA ADMIN PROC 1981 § 5-115

DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 1</p> <p>1 .</p> <p>2 IN THE TWENTY-FOURTH JUDICIAL DISTRICT</p> <p>3 DISTRICT COURT, EDWARDS COUNTY, KANSAS</p> <p>4 .</p> <p>5 .</p> <p>6 WATER PROTECTION ASS'N OF</p> <p>7 CENTRAL KANSAS,</p> <p>8 Plaintiff,</p> <p>9 .</p> <p>10 vs. Case No. 2019-CV-000005</p> <p>11 .</p> <p>12 DAVID BARFIELD, PE, in His Official</p> <p>13 Capacity as Chief Engineer, Division</p> <p>14 of Water Resources, Kansas Department</p> <p>15 of Agriculture,</p> <p>16 Defendant,</p> <p>17 .</p> <p>18 vs.</p> <p>19 THE CITY OF HAYS, KANSAS, et al.,</p> <p>20 Intervenor.</p> <p>21 .</p> <p>22 .</p> <p>23 DEPOSITION OF</p> <p>24 DAVID BARFIELD, P.E.</p> <p>25 .</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES</p> <p>2 .</p> <p>3 .</p> <p>4 ON BEHALF OF THE PLAINTIFF:</p> <p>5 .</p> <p>6 Mr. Micah Schwalb</p> <p>7 Roenbaugh Schwalb</p> <p>8 4450 Arapahoe Avenue, Suite 100</p> <p>9 Boulder, Colorado 80303</p> <p>10 720.773.0970</p> <p>11 micah.schwalb@roenbaughschwalb.com</p> <p>12 .</p> <p>13 Mr. Aaron L. Kite</p> <p>14 Kite Law Firm</p> <p>15 PO Box 22</p> <p>16 Dodge City, Kansas 67801</p> <p>17 620.255.2673</p> <p>18 aaron@kitelawfirm.com</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>
<p style="text-align: right;">Page 2</p> <p>1 taken on behalf of the Plaintiff, pursuant to</p> <p>2 Notice to Take Deposition, beginning at 9:03 a.m.</p> <p>3 on the 28th day of January, 2020, at the Kansas</p> <p>4 Department of Agriculture, 1320 Research Park</p> <p>5 Drive, in the City of Manhattan, County of Riley,</p> <p>6 and State of Kansas, before Ksenija M. Zeltkalns,</p> <p>7 RPR, Kansas CCR No. 1461.</p> <p>8 .</p> <p>9 .</p> <p>10 .</p> <p>11 .</p> <p>12 .</p> <p>13 .</p> <p>14 .</p> <p>15 .</p> <p>16 .</p> <p>17 .</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>	<p style="text-align: right;">Page 4</p> <p>1 ON BEHALF OF DEFENDANT</p> <p>2 DAVID BARFIELD, P.E.:</p> <p>3 .</p> <p>4 Mr. Aaron Oleen</p> <p>5 Ms. Kelly Navinsky-Wenzl</p> <p>6 Kansas Department of Agriculture</p> <p>7 1320 Research Park Drive</p> <p>8 Manhattan, Kansas 66502</p> <p>9 785.564.6715</p> <p>10 aaron.oleen@ks.gov</p> <p>11 kelly.navinskywenzl@ks.gov</p> <p>12 .</p> <p>13 .</p> <p>14 ON BEHALF OF DEFENDANT</p> <p>15 CITY OF HAYS, KANSAS:</p> <p>16 .</p> <p>17 Mr. David M. Traster</p> <p>18 Foulston Siefkin, LLP</p> <p>19 1551 North Waterfront Parkway, Suite 100</p> <p>20 Wichita, Kansas 67206</p> <p>21 316.267.6371</p> <p>22 dtraster@foulston.com</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>



DAVID BARFIELD, P.E.

Page 5	Page 7
<p>1 Mr. Daniel J. Buller</p> <p>2 Foulston Siefkin, LLP</p> <p>3 32 Corporate Woods, Suite 600</p> <p>4 9225 Indian Creek Parkway</p> <p>5 Overland Park, Kansas 66210</p> <p>6 913.498.2100</p> <p>7 dbuller@foulston.com</p> <p>8 .</p> <p>9 .</p> <p>10 ON BEHALF OF DEFENDANT</p> <p>11 CITY OF RUSSELL, KANSAS:</p> <p>12 .</p> <p>13 Mr. Kenneth L. Cole</p> <p>14 Woelk & Cole</p> <p>15 PO Box 431</p> <p>16 4 S. Kansas Street</p> <p>17 Russell, Kansas 67665-0431</p> <p>18 785.483.3711</p> <p>19 woelkandcole@hotmail.com</p> <p>20 .</p> <p>21 .</p> <p>22 ALSO PRESENT:</p> <p>23 .</p> <p>24 Mr. Jon Quinday</p> <p>25 .</p>	<p>1 No 4 June 2015 Change of Use Application 38</p> <p>2 No 5 Keller-Bliesner R9 Ranch Consumptive</p> <p>3 Use Analysis Report 44</p> <p>4 No 6 Figure 33 Modeled Recharge Zones 58</p> <p>5 No 7 9/24/2018 Burns and McDowell Report 63</p> <p>6 No 8 K.A.R. 5-5-9 (1994 Version) 77</p> <p>7 No 9 Public Informational Meeting</p> <p>8 PowerPoint Slides 110</p> <p>9 No 10 Hays/Russell Changes - Process</p> <p>10 Ahead PowerPoint Slide 112</p> <p>11 No 11 April 2016 Letters from Kansas</p> <p>12 Department of Agriculture 121</p> <p>13 No 12 February 19, 2018, Letter 128</p> <p>14 No 13 March 9, 2018, Letter 130</p> <p>15 No 14 May 4, 2018, Letter 133</p> <p>16 No 15 Summary of Contingent Approval 135</p> <p>17 No 16 July 11, 2018, Letter 142</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>

Page 6	Page 8
<p>1 INDEX</p> <p>2 .</p> <p>3 .</p> <p>4 Certificate ----- 182</p> <p>5 .</p> <p>6 .</p> <p>7 WITNESS</p> <p>8 ON BEHALF OF PLAINTIFF: PAGE</p> <p>9 DAVID BARFIELD, P.E.</p> <p>10 Direct-Examination by Mr. Schwalb 8</p> <p>11 Cross-Examination by Mr. Oleen 121</p> <p>12 Cross-Examination by Mr. Traster 142</p> <p>13 Cross-Examination by Mr. Cole 154</p> <p>14 Redirect-Examination by Mr. Schwalb 157</p> <p>15 Recross-Examination by Mr. Oleen 173</p> <p>16 Redirect-Examination by Mr. Schwalb 174</p> <p>17 Recross-Examination by Mr. Traster 175</p> <p>18 .</p> <p>19 .</p> <p>20 EXHIBITS</p> <p>21 BARFIELD DEPO EXHIBIT NO.: MARKED</p> <p>22 No 1 Time Line from Kansas Department of</p> <p>23 Agriculture Website 11</p> <p>24 No 2 Articles from Hays Daily News 21</p> <p>25 No 3 Partial Transcript of Public Meeting 32</p>	<p>1 DAVID BARFIELD, P.E.</p> <p>2 called as a witness on behalf of the Plaintiff,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 DIRECT-EXAMINATION</p> <p>5 BY MR. SCHWALB:</p> <p>6 Q. All right. Thank you, Mr. Barfield. If</p> <p>7 you could just tell us what your name is, even</p> <p>8 though I already said it.</p> <p>9 A. David W. Barfield.</p> <p>10 Q. How do you spell your last name, sir?</p> <p>11 A. B as in boy, A-R, field, F-I-E-L-D.</p> <p>12 Q. Okay. What's your current role, sir?</p> <p>13 A. I am chief engineer of the Division of</p> <p>14 Water Resources of the Kansas Department of</p> <p>15 Agriculture.</p> <p>16 Q. And I know even though we're sitting at</p> <p>17 your business address, if you could still let us</p> <p>18 know what it is just for the record.</p> <p>19 A. 1320 Research Park Drive in Manhattan,</p> <p>20 Kansas.</p> <p>21 Q. All right. And have you ever done a</p> <p>22 deposition before?</p> <p>23 A. I have.</p> <p>24 Q. Okay. Tell me about that.</p> <p>25 A. Well, I've done a number of them in</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 9</p> <p>1 connection with our interstate dispute with 2 Nebraska. Most of them have been in connection 3 with trial and/or arbitration trials. 4 Q. Okay. 5 A. I've done at least, I've done one on the 6 Cochran case, sort of an internal matter, and 7 possibly another one or two. 8 Q. Okay. And so I'm guessing you're kind of 9 familiar with the ground rules for depositions? 10 A. I believe I am. 11 Q. No head shakes or anything like that. 12 A. I understand. Yes. 13 Q. All right. 14 A. It has to be on the record. 15 Q. Yep. And let's just make sure we're 16 audible otherwise, you know, the gesticulations 17 won't show up, so grunts, nods, that sort of 18 thing, you know, please just speak for Ksenija 19 here and then we'll kind of cook along here and 20 hopefully we can get out of here early. And if 21 -- I'll try not to interrupt you but I can't make 22 any guarantees, and if you need any breaks, you 23 know, just let us know, or if you need me to 24 restate a question that's okay too. Just stop me 25 and I'll rephrase.</p>	<p style="text-align: right;">Page 11</p> <p>1 you're speaking about. 2 Q. Yes, sir. 3 A. Right. Well -- 4 MR. TRASTER: One thing. I don't have -- 5 I don't know what document you're looking at. 6 Could you identify it before you testify? 7 THE WITNESS: Yes, I certainly can. 8 MR. TRASTER: Just the document you're 9 look at. 10 THE WITNESS: Right. And it's a copy of 11 our web page with respect to the City of Hays R9 12 Water Right Change Applications. At the end of 13 that page is a time line, it's not comprehensive 14 but it has some of the key -- key dates with 15 respect to this process. 16 MR. SCHWALB: Okay. 17 MR. TRASTER: So it's a time line that's 18 posted on the web page? 19 THE WITNESS: That's correct. 20 MR. TRASTER: Thank you very much. 21 Sorry. 22 MR. SCHWALB: Can we mark that one as an 23 exhibit, please. Thank you. We can just get that 24 one marked as Exhibit 1. 25 (THEREUPON, the court reporter marked</p>
<p style="text-align: right;">Page 10</p> <p>1 What did you, just to get started here, what 2 did you do to prepare for the deposition? 3 A. Mostly I attempted to review pertinent 4 parts of the master order. 5 Q. Um-hm. 6 A. A bit of the modeling report, our staff 7 review of water level documents, you know, sort of 8 assembled this notebook that I spoke to you about 9 before we went on the record. 10 Q. Okay. 11 A. Some of the key documents related to the 12 decision. 13 Q. Okay. And so you're talking about the 14 decision a little bit. Can you kind of walk me 15 through maybe a little bit of the time line of 16 maybe from change applications to present date, 17 kind of what the major processes look like from 18 your perspective? 19 A. This is where the web page that I made a 20 copy of -- 21 Q. Um-hm? 22 A. -- in my notebook here gives me a little 23 bit of help with, with respect to the overall. 24 Q. Okay. 25 A. Large time frame, which I assume is what</p>	<p style="text-align: right;">Page 12</p> <p>1 Barfield Deposition Exhibit No 1 for 2 identification.) 3 BY MR. SCHWALB: 4 Q. All right. So if you can just kind of 5 walk me through the time line of events here, 6 maybe from the original applications all the way 7 through present day, kind of major milestones from 8 your perspective? I think that will help. 9 A. Okay. Well, the cities purchased the 10 ranch in the mid 1990's. City of Hays and Russell 11 submitted their applications to change the water 12 rights from irrigation to municipal use in -- on 13 June 26th, 2015. On January 6th, 2016, the cities 14 provided application for the proposed water 15 transfer. We had some back and forth with the 16 city in 2016 and beyond with respect to 17 discussions about necessary conditions for the 18 change applications. The next major event listed 19 is in 2018 the cities provided their modeling 20 report, and that was posted on our website. On 21 May 7th, 2018, we transmitted drafts of the 22 proposed master order with exhibits to GMD5 for 23 review and posted that on our website. On June 24 21st, 2018, we held a public informational meeting 25 to discuss the change applications in Greensburg,</p>



DAVID BARFIELD, P.E.

Page 13

1 Kansas.

2 **Q. Uh-huh.**

3 A. That followed by a period of accepting

4 public input on the proposed changes. We received

5 comments from GMD5 on the change applications on

6 August 30 of 2018 and supplemental comments on the

7 change applications from GMD5 on September 14th of

8 2018. The cities provided an updated modeling

9 report on October 5, 2018. I issued my contingent

10 approvals of the change applications on March 27,

11 2019, then we've had the judicial review process

12 -- well, I guess secretarial review.

13 **Q. Yep.**

14 A. Fairly shortly thereafter he declined and

15 then that started the judicial review process from

16 there.

17 **Q. Okay. And have you been keeping an eye**

18 **on the -- the judicial review since that time?**

19 A. How do you define keeping an eye on?

20 **Q. Is it reflected on this Exhibit 1 in some**

21 **way, shape or form?**

22 A. The judicial -- there's a number of

23 documents. We've attempted to keep the website up

24 to date with the pleadings, at least the major

25 pleadings with respect to that. I have not

Page 14

1 necessarily studied them.

2 **Q. Okay.**

3 A. It's been a fairly wild period of time

4 here on many issues.

5 **Q. Understood. Have you looked at any of**

6 **the -- the recent orders or memos back and forth**

7 **on this deposition in particular?**

8 A. Yes. I mean, I've -- I've not studied

9 them but I'm generally aware of the parameters

10 surrounding this.

11 **Q. Okay. All right. In terms of -- thanks**

12 **for kind of going through all that. In terms of**

13 **these different milestones, as a general matter**

14 **who's been involved in terms of the parties or the**

15 **commentors or folks that have weighed in on this**

16 **proceeding to date?**

17 A. In total?

18 **Q. Yeah.**

19 A. Well, obviously I've been involved in

20 discussions with the city and its consultants,

21 both legal and technical.

22 **Q. Uh-huh.**

23 A. And some of the city, you know, Toby

24 Dougherty and those types in terms of -- so

25 they've been quite involved. G5 obviously has had

Page 15

1 a role. I've mentioned their specific interests.

2 They've not only provided recommendations but

3 comments on -- on the technical work and work by

4 various parties, Water PACK has weighed in,

5 obviously, with comments and its -- its

6 consultants' analysis.

7 **Q. Okay.**

8 A. And other individuals in the area that

9 believe they're being affected by the change,

10 obviously through the public comment period have

11 provided oral comments at the public meeting and

12 written comments as well.

13 **Q. So folks around the ranch?**

14 A. Folks around the ranch, yes.

15 **Q. Okay.**

16 A. Those are the major ones that come to

17 mind.

18 **Q. Any communications with state officials,**

19 **either governor's office or legislators?**

20 A. A limited amount. You know, yes.

21 **Q. Okay.**

22 A. A limited amount. And we can speak to

23 that in more detail if you like.

24 **Q. Yeah. Sure. Go ahead.**

25 A. So what do you want to know specifically?

Page 16

1 **Q. Which legislators have you chatted with**

2 **or members of the governor's staff or what was the**

3 **-- well, let's start with that and then we can dig**

4 **into the conversation.**

5 A. So which one do you want me to start

6 with?

7 **Q. Legislators is fine.**

8 A. Legislators, the only one that has

9 requested a visit specifically, Representative

10 Phelps requested that we come and sort of brief

11 him on the matter early in 2019. So we had a

12 discussion with him and he was -- he was actually

13 a mayor or city commissioner back in when they

14 purchased the ranch.

15 **Q. Um-hm.**

16 A. And he was -- he was essentially wanting

17 a status update, what's the status of the matter.

18 **Q. Okay.**

19 A. Senator Billinger, I don't recall any

20 specific -- I mean I bump into him once in a

21 while. I don't recall him asking specifically

22 about it, but Lane Letourneau, my program manager,

23 is more engaged in legislative matters and sees

24 him from time to time, and he's told me that he's

25 asked for status updates from time to time as



DAVID BARFIELD, P.E.

Page 17

1 well.
 2 **Q. Okay.**
 3 A. Those are the only specific ones that I
 4 recall.
 5 **Q. Okay. In terms of legislators, how about**
 6 **either staff or governor at the time, governor or**
 7 **the executive.**
 8 A. So I believe -- I believe I had a
 9 discussion with Governor Colyer at some point in
 10 his tenure just again, in briefing him on
 11 different water issues, this is one of them.
 12 Again, status of the matter. And then Governor
 13 Kelly in January of '19, I went over and met her
 14 and spoke to her on a sort of the status of
 15 several of the major issues, but this was one of
 16 particular interest to her and gave her
 17 essentially a, again, a status update in terms of
 18 where we were at that time.
 19 **Q. Okay.**
 20 A. With respect to the process.
 21 **Q. Anybody encourage you to push this thing**
 22 **along at the governor's office?**
 23 A. I don't recall specifically but I, you
 24 know, I do believe that that was some of the
 25 sense, yes, that, you know, it wasn't seeking to

Page 18

1 determine my decision but just let's get this
 2 done.
 3 **Q. Um-hm.**
 4 A. I've been encouraged in that way,
 5 certainly.
 6 **Q. Get this done meaning let's get it over**
 7 **and done with and approved or?**
 8 A. Let's, you know, I had made some
 9 commitments to get the decision made in the fall
 10 of 2018.
 11 **Q. Um-hm.**
 12 A. And I did not get that done. Several
 13 other pressing matters, in particular Quivira, but
 14 not just Quivira, Wichita's aqua storage and
 15 recovery issue just got bigger than I expected and
 16 so I wasn't able to meet those commitments.
 17 **Q. Uh-huh.**
 18 A. To work through the record and to make a
 19 decision, and that resulted in some impatience by
 20 elected officials.
 21 **Q. Okay. Mainly the ones you've talked**
 22 **about?**
 23 A. Them and elected officials in Hays.
 24 **Q. Okay.**
 25 A. As well.

Page 19

1 **Q. Tell me about those -- those**
 2 **conversations and what those entailed.**
 3 A. So again, those occurred sort of January-
 4 February of 2019.
 5 **Q. Uh-huh?**
 6 A. And I had made some, you know -- I had
 7 talked to the city early in the year is my
 8 recollection, 2019, about how to get the process
 9 on track to -- to get it done but to give me time
 10 to go through the record and make an informed
 11 decision. We'd sort of agreed upon a schedule
 12 that had me going through March but with some
 13 milestones along the way. Somehow the
 14 communication between Mr. Dougherty and the
 15 mayor/city council, they weren't entirely on board
 16 with that schedule and they just were -- were
 17 wanting to make sure that I was giving this
 18 adequate priority.
 19 **Q. Okay.**
 20 A. In terms of juggling all the
 21 responsibilities that I was still dealing with at
 22 the time, so.
 23 **Q. Okay. But there was sort of an agreed**
 24 **upon date in March?**
 25 A. Yes.

Page 20

1 **Q. Okay. I'll pass this one over here and**
 2 **let me give that to you, Ksenija. What I'm going**
 3 **to put in front of you, and if you don't mind**
 4 **passing a copy of this, here. I've got it marked**
 5 **as Exhibit 19 for Water PACK purposes but I think**
 6 **we can just mark it as Exhibit 2 for depo**
 7 **purposes. That is a series of articles from the**
 8 **Hays Daily News. You'll see at the top there, I**
 9 **think, that pretty much all of these are from the**
 10 **Hays Daily News.**
 11 MR. TRASTER: Aaron, or I'm sorry, Micah?
 12 MR. SCHWALB: Yes, sir.
 13 MR. TRASTER: So you've marked them with
 14 deposition exhibit numbers but you want to change
 15 the numbers?
 16 MR. SCHWALB: Yeah. I think it will just
 17 be easier to have it be sequential as we'll
 18 introduce it. I didn't know what the sequence was
 19 going to be relative to what Mr. Barfield was
 20 talking about.
 21 MR. TRASTER: So this is what?
 22 MR. SCHWALB: That will be Exhibit 2 for
 23 deposition purposes. And I'm sorry if that's
 24 confusing.
 25 MR. TRASTER: All right. Very good.



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 21</p> <p>1 Thank you. 2 (THEREUPON, the court reporter marked 3 Barfield Deposition Exhibit No 2 for 4 identification.) 5 BY MR. SCHWALB: 6 Q. Okay. Just take some time to review that 7 and there's some highlighting in there that you'll 8 see. 9 A. What level of review do you want me to 10 do, here. 11 Q. Oh, just the -- if you just want to look 12 at the titles of the articles, the dates and the 13 highlighted portions. 14 MR. TRASTER: Micah, one of these doesn't 15 seem -- most of these are Hays Daily News but 16 there's one in the middle that I can't tell, Hays 17 Post. Never mind. I see it now. 18 MR. SCHWALB: Yep. That will be on page 19 eight, I believe, of that exhibit. 20 A. All right. I believe I've perused them 21 as you requested. 22 BY MR. SCHWALB: 23 Q. All right. Thank you, sir. If I can 24 summarize what's in here, between February 15th 25 and February 22nd, there's a series of articles</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I don't recall anything specific. You 2 know, these statements here about putting pressure 3 on me to get it done by next Friday are just not 4 -- not the reality of what I got back. Again, I 5 sort of laid out what I needed to get this done. 6 Q. Uh-huh. 7 A. To complete the review, to draft the 8 master order, to be able to push out a product 9 that I could stand behind -- 10 Q. Uh-huh. 11 A. -- early on, and I pretty much stuck with 12 that schedule. 13 Q. Okay. Other than the shift from fall of 14 '18? 15 A. Right. Right. 16 Q. Through March of '19? 17 A. Correct. 18 Q. Okay. Were you aware that Hays had hired 19 a -- or had a lobbyist working on this? 20 A. I don't believe I was until I -- 21 MR. TRASTER: Object to the form of the 22 question. States facts not in evidence. 23 BY MR. SCHWALB: 24 Q. You can go ahead and answer. 25 A. Not that I was aware of before reading</p>
<p style="text-align: right;">Page 22</p> <p>1 within this Exhibit 2 that describe conversations 2 between Hays representatives, governor's office, 3 legislators, as well as I believe there's a 4 reference to a lobbyist in here. Did you have 5 communications with the governor's office after 6 these February dates or in the same time frame, 7 February 15th to February 22? 8 A. I don't recall any communications with 9 the governor's office. Again, I briefed the 10 governor on the issue in later January. My, you 11 know, I -- I have regular updates with the 12 secretary of ag being the current one and previous 13 one, and the secretary updates the governor. 14 Q. Uh-huh. 15 A. So obviously I'm updating, so they're 16 getting updates that way. 17 Q. Through the secretary? 18 A. Through the secretary. 19 Q. And then are you hearing back feedback 20 through the secretary? 21 A. I can at times. 22 Q. Okay. 23 A. Yeah. 24 Q. Was there any feedback in this February 25 period from Secretary Beam regarding the order?</p>	<p style="text-align: right;">Page 24</p> <p>1 the article. 2 Q. Okay. Thank you. All right. So let's 3 -- do you need some water? 4 A. I've got it here. 5 Q. Okay. 6 A. I'm good. 7 Q. Let's -- earlier in your testimony you 8 referenced meetings with the City of Hays, City of 9 Russell, their representatives, engineers, what 10 have you. Were these meetings posted somewhere 11 publicly? 12 A. No. 13 Q. Okay. All right. Other than the 14 Greensburg meeting? 15 A. Correct. 16 Q. Okay. Let's talk about the Greensburg 17 meeting for a little bit. What was the intended 18 purpose of that meeting? 19 A. Well, it was to inform interested, 20 affected water right holders, landowners of the 21 area about this significant package of change 22 applications that were under consideration. 23 Q. Uh-huh 24 A. And to seek to inform them about what was 25 being requested, and by that point we had</p>



DAVID BARFIELD, P.E.

Page 25

1 developed a draft proposed approval documents.
 2 **Q. Okay.**
 3 A. That we thought would help them to
 4 understand specifically what was being proposed
 5 and to -- to facilitate public feedback on those
 6 documents.
 7 **Q. How'd you get the word out for the**
 8 **meeting?**
 9 A. It was obvious on our web page. I
 10 believe we did a press release, at least that's my
 11 recollection. Obviously informed GMD5 and Water
 12 PACK.
 13 **Q. Any other folks in the vicinity of the**
 14 **ranch?**
 15 A. I don't recall.
 16 **Q. Okay.**
 17 A. Specifically what we did beyond that.
 18 **Q. Okay. Do you recall the general topics**
 19 **that were covered by you at that -- at that**
 20 **meeting?**
 21 A. Well, I'm looking at the copy of my
 22 presentation. So the outline of the meeting was a
 23 welcome and overview by me that provided just a
 24 general overview of the change applications, that
 25 it was a second water transfer in state history

Page 26

1 and the first undercurrent requirements, generally
 2 what they were proposing with respect to the
 3 changes from municipal -- from irrigation use to
 4 municipal. There was a presentation by the city
 5 on -- on what they were seeking to accomplish in
 6 the change and its importance to them.
 7 And then I came back and basically walked
 8 through a summary of the draft proposed approval
 9 documents, again stepping through sort of the
 10 major provisions of those documents and then had a
 11 time of questions and answers, a break, and then
 12 an opportunity for public comment to be received.
 13 **Q. Okay. You mentioned the major topics**
 14 **there. What are the major regulations or statutes**
 15 **here that you might have touched on?**
 16 A. Well, change applications are provided
 17 for in K.S.A. 82a-706b that allows water right
 18 holders to make changes in place of use, point of
 19 diversion, or use made of water or any combination
 20 thereof, so obviously the statutory requirements
 21 that are provided in 708b and then obviously we
 22 have a large body of regulations that are also in
 23 play.
 24 **Q. Okay.**
 25 A. That I'm -- that are also considered that

Page 27

1 govern things like changes in use made of water,
 2 consumptive use requirements, as well as spacing
 3 and then many other attributes.
 4 **Q. Okay. So you referenced I think 708b?**
 5 A. Correct.
 6 **Q. Is that right?**
 7 A. Yeah.
 8 **Q. Can you maybe focus on 708b(a)(2), to the**
 9 **extent that it's in your new presentation, here.**
 10 **Can you read for me just into the record?**
 11 A. Certainly.
 12 MR. OLEEN: I'm going to object, or
 13 actually I will ask for clarification, Micah. Are
 14 you asking him to read his paraphrasing of 708b or
 15 are you asking him to actually read the statute?
 16 MR. SCHWALB: Whatever's in the
 17 presentation.
 18 MR. TRASTER: Whatever's in what?
 19 MR. KITE: The presentation. He's asking
 20 him to read the section of 708b.
 21 MR. TRASTER: Okay.
 22 A. Okay. I'll read what's in the
 23 presentation which is in fact the full statement
 24 of what's in the statute as well, so. K.S.A. 82a-
 25 708b, paragraph (a)(2): Demonstrate to the chief

Page 28

1 engineer that any proposed change is reasonable
 2 and will not impair existing rights.
 3 BY MR. SCHWALB:
 4 **Q. Okay. In the context of the Greensburg**
 5 **meeting, do you recall any sort of conversation or**
 6 **statements around impairment of existing rights**
 7 **that may have occurred?**
 8 MR. TRASTER: I'm going to I guess not
 9 really object but for the record note that the
 10 transcript of the informational meeting on June
 11 21st, 2018, is in the record and so it can -- it
 12 says what it is.
 13 MR. SCHWALB: We'll get there.
 14 A. So can you restate the question.
 15 BY MR. SCHWALB:
 16 **Q. Sure. Do you recall any discussion of**
 17 **impairment of existing rights or any sort of**
 18 **statements you might have made in the Greensburg**
 19 **meeting?**
 20 A. Well, I did state that no decision had
 21 been made and that we were getting public inputs
 22 to ensure that the proposed changes that the draft
 23 proposed documents met statutory requirements, but
 24 there could have been a statement that we believed
 25 that those documents did meet the requirements of



DAVID BARFIELD, P.E.

Page 29

1 82-708b.
 2 **Q. Okay. With respect to impairment?**
 3 A. With respect to impairment.
 4 **Q. Is an impairment viewed, at least by you,**
 5 **on an annualized basis or over some period of time**
 6 **beyond a year?**
 7 A. Repeat the question again.
 8 **Q. Okay. So from your perspective when**
 9 **you're, as chief engineer and you're thinking**
 10 **about impairment, are you looking at it over on an**
 11 **annualized basis or over some longer period of**
 12 **time, like when you have to say an existing right**
 13 **is impaired like what it says here are you looking**
 14 **at it within a one year period or something longer**
 15 **than that?**
 16 A. Well, with respect to the change
 17 evaluation.
 18 **Q. Uh-huh?**
 19 A. Which I assume is the context of which --
 20 **Q. Yes?**
 21 A. Because -- because we have to do -- we
 22 have to deal with impairment with respect to real-
 23 time water administration.
 24 **Q. Uh-huh?**
 25 A. That's a different sense of impairment in

Page 30

1 my view than the impairment requirement here.
 2 **Q. Why is that different?**
 3 A. Well, when I make an application, a
 4 decision with respect to impairment in a new
 5 application or a change, I'm essentially saying am
 6 I -- does -- is my approval ensuring that the
 7 impairment will not occur, and that includes the
 8 ability to administer water rights as needed.
 9 **Q. Um-hm?**
 10 A. You know, we approve, for example,
 11 surface water rights that -- that have conditions
 12 in it so that I can curtail that use when it's
 13 interfering with a senior appropriator.
 14 **Q. Okay.**
 15 A. So my approval includes my ability to
 16 administer that right as needed. But to answer
 17 your initial question, you know, we have to look
 18 at both, but the principal looking at it I guess
 19 with respect to this impairment requirement in
 20 82a-706b, you know, in a -- in this groundwater
 21 decision, the long-term sort of dominates the
 22 considerations.
 23 **Q. Okay. So multi-year?**
 24 A. Multi-year.
 25 **Q. Okay. What do you think a policy is here**

Page 31

1 **with this impairment language in this statute?**
 2 **What is it -- what is it driving towards?**
 3 MR. OLEEN: I object. I think it calls
 4 for a legal conclusion. You may answer.
 5 MR. TRASTER: I object on the -- I don't
 6 understand the question.
 7 BY MR. SCHWALB:
 8 **Q. Why are you looking at impairment for a**
 9 **change application?**
 10 A. Well, people are allowed to change their
 11 water rights, place of use, point of version, use
 12 made of water or any combination thereof. That's
 13 their entitlement under 708b.
 14 **Q. Um-hm?**
 15 A. Subject to change being feasible and not
 16 interfering with existing water rights, so I need
 17 to make sure that as we let people make those
 18 changes.
 19 **Q. Um-hm?**
 20 A. We're not creating a problem for
 21 neighboring existing rights that's not addressed
 22 in the approval.
 23 **Q. Okay. Are you looking at senior rights?**
 24 A. Well, senior rights obviously are the
 25 principal concern but this language says existing

Page 32

1 rights.
 2 **Q. Which refers to who?**
 3 A. Other water rights besides senior.
 4 **Q. So junior?**
 5 A. Junior.
 6 **Q. Okay. Thank you. The consideration of**
 7 **senior and junior rights that you just referred**
 8 **to, was that described at the meeting in**
 9 **Greensburg or discussed at the meeting in**
 10 **Greensburg?**
 11 A. I don't recall specifically.
 12 **Q. Okay. Would it help you if I handed you**
 13 **a transcript of the --**
 14 A. It might.
 15 **Q. All right. Let's get this one in, I**
 16 **think as, are we up to Exhibit 3?**
 17 (THEREUPON, the court reporter marked
 18 Barfield Deposition Exhibit No 3 for
 19 identification.)
 20 BY MR. SCHWALB:
 21 **Q. So I'll ask you to turn to page four,**
 22 **should be highlighted at the bottom.**
 23 A. Page ... the fourth page?
 24 **Q. Sorry. It's the fourth page of the one**
 25 **you've got in front of you. It should be, the**



DAVID BARFIELD, P.E.

Page 33

1 **internal pagination is page 12.**
 2 A. Okay. Okay.
 3 **Q. So in essence what did you say?**
 4 MR. TRASTER: I'm going to object -- no,
 5 I'm not. Withdraw the objection.
 6 MR. SCHWALB: Okay.
 7 A. So I believe the summary is, I mean I'm
 8 speaking about juniors and senior water rights.
 9 Seniors are allowed to interfere with juniors or
 10 juniors cannot interfere with seniors as a general
 11 matter. But with respect to a change in
 12 conditions, I have to consider all water rights.
 13 BY MR. SCHWALB:
 14 **Q. What do you look at when you're**
 15 **considering all water rights? What are the --**
 16 **what are the factors that you -- that you**
 17 **consider?**
 18 A. To -- I mean I'm basically try to ensure
 19 that the change does not expand use.
 20 **Q. What kind of use?**
 21 A. Well, expand use of the water rights.
 22 You know, we speak about consumptive use is a part
 23 of that consideration of impairment.
 24 **Q. Okay.**
 25 A. It's not the whole of it. I mean, we

Page 34

1 consider well spacing is, withdraw rates, just the
 2 actual physical condition and I'll -- I have
 3 reference to that in the master order in my
 4 findings with respect to when considering all of
 5 these factors, I found that these changes do not
 6 -- would not be expected to lead to impairment of
 7 the neighboring water rights.
 8 **Q. The junior water rights?**
 9 A. Well, all.
 10 **Q. All water rights?**
 11 A. All water rights.
 12 **Q. And you mentioned net consumptive use or**
 13 **just consumptive use?**
 14 A. Well, that's one of the pieces that --
 15 one of the sets of conditions that allows me to
 16 get to that conclusion.
 17 **Q. Okay. What are some of the other**
 18 **conditions that you look at?**
 19 A. Well, again, spacing.
 20 **Q. Um-hm?**
 21 A. Is -- maintaining sufficient spacing is
 22 very critical to reducing, ensuring that there's
 23 not inappropriate interference between wells,
 24 pumping rates, again, just the physical -- the
 25 particulars of the physical system.

Page 35

1 **Q. Okay. Did you discuss this consideration**
 2 **of impact on adjacent users with the cities?**
 3 MR. TRASTER: In what time frame?
 4 BY MR. SCHWALB:
 5 **Q. Just in general. I mean, we've talked**
 6 **about meetings.**
 7 A. So are you asking if I discussed my
 8 impairment analysis with the cities?
 9 **Q. Correct, with juniors, seniors, this**
 10 **consumptive use assessment.**
 11 A. You know, I don't recall any detailed
 12 discussions of that evaluation. I'm certainly --
 13 we had some general discussions, I am sure, along
 14 the way. A lot of my evaluation of the potential
 15 for impairment came as I waded through the record
 16 from the public meeting and the various critiques
 17 that were received from -- from Doctor Keller and
 18 Balleau Groundwater so I formulated that
 19 evaluation largely in that setting.
 20 **Q. Okay. But no direct discussions of**
 21 **junior impairment with the cities?**
 22 A. We've had a lot of discussions so I can't
 23 say definitively. I just don't recall any
 24 substantive discussions with them on that subject,
 25 so.

Page 36

1 **Q. What about within the context of the**
 2 **consumptive use?**
 3 A. Again, I'm not recalling any specific
 4 discussion that weighed into my decision here.
 5 **Q. Okay. Let's focus on consumptive use for**
 6 **a little bit. What do you look at when you're**
 7 **considering consumptive use? What are some of the**
 8 **data points?**
 9 A. Well, we have a body of regulations that
 10 lays out specifically what we consider in our
 11 consumptive use evaluations.
 12 **Q. Okay.**
 13 A. Which in the case of changes in use made
 14 to water looks at the maximum acres that were
 15 irrigated under a particular water right.
 16 **Q. Um-hm?**
 17 A. Times the net irrigation requirement for
 18 the crop that's irrigated.
 19 **Q. Okay. Where do you get the data for the**
 20 **crop that was irrigated?**
 21 A. Well, the default is corn in the
 22 regulation.
 23 **Q. Um-hm?**
 24 A. So we'll use corn, but the regulations do
 25 provide for us to consider other crops if a record



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 37</p> <p>1 demonstrates that there was a crop that was 2 irrigated that was other than corn and had a 3 higher consumptive use value. 4 Q. Okay. Was that determined here, that 5 there was something higher? 6 A. In many of the water rights alfalfa was 7 irrigated. 8 Q. Okay. And what was your data point? 9 What was the evidence supporting that? 10 A. So one of my staff in Stafford field 11 office went through the records to determine, you 12 know, what was reported. 13 Q. Um-hm? 14 A. And according to how we do that and she 15 -- she reviewed the records and determined what 16 the crop was in the year of record. 17 Q. Reported by the irrigator? 18 A. Correct. 19 Q. Okay. Did the cities provide any 20 additional data on this? 21 A. I'm not recalling it. 22 Q. Would it be helpful if I could provide 23 you with some of that data? 24 A. You might. 25 Q. All right. This is a federal one. I</p>	<p style="text-align: right;">Page 39</p> <p>1 MR. OLEEN: Does it also have a Hays 2 Bates number, the first page? 3 MR. SCHWALB: It does. It's Hays 4907 4 through 4911. 5 MR. BULLER: Yeah. I believe the bottom 6 of the -- the bottom -- the KBA Bates number might 7 be cut off on some of these pages. 8 MR. SCHWALB: Oh, on the print-out. Oh, 9 my apologies. 10 MR. BULLER: Which is why the Hays Bates 11 number is also helpful. 12 MR. SCHWALB: Okay. Thank you. 13 BY MR. SCHWALB: 14 Q. Have you had a chance to review? 15 A. Generally. 16 Q. Okay. Based on your quick review was 17 there something other than corn and alfalfa grown 18 in program year 1985? 19 MR. TRASTER: Object to the form of the 20 question as what are we talking about when, where 21 and how? I mean, I don't know what we're asking 22 about. 23 BY MR. SCHWALB: 24 Q. Within pages 4907, I'm using the Hays 25 Bates stamps here, through 4911, is there any</p>
<p style="text-align: right;">Page 38</p> <p>1 believe that will be Exhibit 4. Please take a 2 moment to take a look through that. 3 (THEREUPON, the court reporter marked 4 Barfield Deposition Exhibit No 4 for 5 identification.) 6 BY MR. SCHWALB: 7 Q. I will represent to you that that was 8 included as an appendix to one of the change 9 applications -- well, it has the change 10 application that's the front page and then as an 11 exhibit to that we've cut out some interweaving 12 pages but there is an exhibit there that shows FSA 13 cropping records from 1985. 14 MR. OLEEN: Micah, which page did you say 15 we're looking at here? 16 MR. SCHWALB: If you would turn to. 17 MR. BULLER: Might be helpful to refer to 18 the Bates number. 19 MR. SCHWALB: For sure. So if you want 20 to, at the very bottom it's marked KDA2265 and 21 it's a Report of Acreage. And if you look in the 22 upper left hand corner, it shows a program year of 23 1985, and then beneath that you will see different 24 crops identified and the column headers, and that 25 continues through Bates stamp 2269.</p>	<p style="text-align: right;">Page 40</p> <p>1 indication that something other than alfalfa or 2 corn was grown? 3 A. Just generally? 4 Q. Yes, sir? 5 A. Yeah. I mean there's some wheat 6 indicated, possibly, in some rotation, and 7 alfalfa. Am I answering your question? 8 Q. Yes, sir. 9 A. Okay. 10 Q. Thank you. And then on the page with 11 Hays Bates stamp 4907, at the very bottom do you 12 see that Section II Operator's Certification, the 13 bottom left hand corner? 14 A. I believe so. 15 Q. Okay. Would you mind reading that into 16 the record? 17 MR. OLEEN: I object to this line of 18 questioning. I think it's outside the scope of 19 this limited deposition. You may answer. 20 A. Are you asking me to read the -- attempt 21 to read the operator's signature? 22 BY MR. SCHWALB: 23 Q. No, just the certification language there 24 underneath Section II. 25 A. Oh. I certify to the best of my</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 41</p> <p>1 knowledge and belief that the acreage of crops and 2 land uses listed herein are true and correct. 3 Further, my signature constitutes authority for 4 ASCS personnel to enter my farm for making any 5 program determinations. 6 Q. Thank you. Did you review these records 7 in connection with processing the change 8 applications? 9 A. I didn't personally. 10 Q. Do you know if your staff did? 11 A. Well, I've relied on my staff to evaluate 12 the records to make these determinations as is 13 typically done. 14 Q. Um-hm? 15 A. So I relied on that work. 16 Q. Okay. 17 A. I believe their work is -- was provided 18 as part of the agency record. 19 Q. Okay. So I think we talked about how 20 this record refers to wheat. Does wheat use more 21 water or less water to grow than corn? 22 A. Well, it would typically require less. 23 Often wheat is done as part of rotation with other 24 crops. 25 Q. What about milo? Does milo use less</p>	<p style="text-align: right;">Page 43</p> <p>1 MR. OLEEN: Again, renew my objection. 2 This line of questioning is outside the scope as 3 this deposition was limited by the court. You may 4 answer. 5 A. I'm not certain. 6 BY MR. SCHWALB: 7 Q. Okay. Now, in connection with putting 8 together this consumptive use analysis you 9 mentioned the input of Doctor Keller; is that 10 correct? 11 A. Well, he provided his comments and 12 suggestions on consumptive use. 13 Q. Okay. Was that in the form of a report 14 of some kind? 15 A. It was. 16 Q. Did you have a chance to review that 17 report? 18 A. I did. 19 Q. Do you remember if that report showed any 20 discrepancies between the growing crops in the 21 master order and the records that he reviewed? 22 A. He, as I recall, I believe he did believe 23 there were some differences. 24 Q. Okay. Do you recall what those 25 differences were?</p>
<p style="text-align: right;">Page 42</p> <p>1 water or more water than corn or alfalfa? 2 A. My understanding is typically less. 3 Q. Okay. Do you know if the -- these other 4 crops were accounted for in the consumptive use 5 analysis? 6 A. Well, again, I relied on staff to -- to 7 do this determination pursuant to the normal 8 procedures. 9 Q. Okay. You mentioned you have a copy of 10 the master order in front of you. 11 A. Um-hm. 12 Q. Would you turn to, I believe it's table 13 B? 14 A. Table B? As in boy? 15 Q. I think so. Yep? 16 A. Do you know where it is? 17 Q. It has the gray at the top there. Right 18 there. Maybe that's, I'm sorry, Appendix B, Table 19 1. 20 A. Yes. 21 Q. Is there any reference in this table to 22 wheat or milo? 23 A. I don't see any. 24 Q. Okay. So if there's no wheat or milo 25 here, what would be the reason for that?</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I don't recall now. 2 Q. Would it be helpful if I provided that to 3 you? 4 A. It would. 5 Q. All right. This is Exhibit 5. 6 (THEREUPON, the court reporter marked 7 Barfield Deposition Exhibit No 5 for 8 identification.) 9 BY MR. SCHWALB: 10 Q. You're right there on the right page. 11 It's marked KDA 967 is the table I'd like to focus 12 on just for a little bit and I believe that 13 carries over to KDA 968, so it should just be the 14 two pages there, and the highlighted portions in 15 particular that are highlighted in yellow. Please 16 take a moment just to review that. 17 A. Okay. 18 Q. And then I believe, just to be clear, 19 there's a notation at the bottom on the second 20 page of the table, it says values in red were 21 assumed. Have you had a chance to look at that? 22 A. Well, I've just generally perused it. It 23 depends on your question whether I need more time. 24 Q. Okay. So I think you'll see at the top 25 of the columns Doctor Keller has identified</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 45</p> <p>1 different column headers, the circle number, the 2 number of acres for GIS. What does GIS stand for? 3 A. Geographic Information System. 4 Q. Okay. And then the next column I think 5 is chief engineer acres, and as you go through it 6 kind of describes the different data points that 7 Doctor Keller was looking at. As you look at this 8 table are there any differences between what's 9 labeled chief engineer crop, 1984 FSA crop, metric 10 Ks, I don't know what that means, 1985 FSA crop, 11 are there any differences there between what the 12 FSA data showed and what's listed as chief 13 engineer crop? 14 A. There are some differences, yes. 15 Q. Okay. Are they the highlighted rows -- 16 or, yes, highlighted rows? 17 MR. TRASTER: I'm going to object to the 18 form of the question. These -- these all state -- 19 the questions are assuming facts not -- withdraw 20 the objection. 21 A. Yes, there are differences with respect 22 to the highlighted rows. 23 BY MR. SCHWALB: 24 Q. Okay. 25 A. In chief engineer crop versus other</p>	<p style="text-align: right;">Page 47</p> <p>1 MR. SCHWALB: I'm sorry. Table 1, that 2 was in Appendix B to the master order. 3 A. I don't see anything other than a blank 4 for water right 30-44. 5 BY MR. SCHWALB: 6 Q. Okay. Let's focus on that one in 7 particular. If nothing's there in that field, is 8 there a net consumptive use? 9 A. I believe this one may only have 10 additional rate attached to it or -- there's 11 something unique about this water right that I 12 don't remember the details anymore. 13 Q. Okay. 14 A. So. 15 Q. So let's keep going with this consumptive 16 use question. Earlier you testified, if I can 17 rephrase just for a second, that you look at 18 impairment over a multiyear period for a change 19 application with respect to junior users; is that 20 correct? 21 A. Yes. 22 Q. And are you also looking at a multiyear 23 period for impairment of senior users in 24 connection with a change application? 25 A. Yeah. We're looking at is this going to</p>
<p style="text-align: right;">Page 46</p> <p>1 records. 2 Q. Okay. Let's focus just for a second on 3 circle No. 15 which I think is the third 4 highlighted row. If you go off to the right there 5 under 1984 FSA crop, what does that say? 6 A. Not farmed. 7 Q. Okay. And then 1985 FSA crop? 8 A. N/A, which I assume means not available. 9 Q. Okay. So according to this were any 10 fields fallow in 1984? 11 A. That's what would be indicated. 12 Q. Okay. Did you review this table in 13 connection with your consumptive use analysis? 14 A. Again, I don't know to what extent staff 15 reviewed this table. 16 Q. Okay. But earlier you testified that the 17 Table 1, Exhibit B, just shows corn and alfalfa? 18 MR. OLEEN: Objection. Where in the 19 table? Maybe you could say which water right 20 we're talking about. 21 BY MR. SCHWALB: 22 Q. Is there anything other than corn or 23 alfalfa indicated as the growing crop in any of 24 these fields? 25 MR. OLEEN: For which table, please.</p>	<p style="text-align: right;">Page 48</p> <p>1 create a problem in the long-term future. 2 Q. Um-hm. And that ties to the consumptive 3 use? 4 A. Consumptive use is a part of the analysis 5 to essentially reduce the water right to -- as one 6 piece to make sure that impairment will not occur. 7 Q. Okay. Does that consumptive use analysis 8 account for a change in the cropping or movement 9 of water off the point of diversion in the change 10 application? 11 A. No. Repeat the question. I didn't 12 follow. 13 Q. Okay. When you're looking at the change 14 application and you're thinking about the 15 consumptive use over a longer period of time, are 16 you accounting for the change in crops that will 17 be grown after, assuming the change application is 18 approved? 19 A. I'm still not quite sure what you're 20 getting at. So here we're looking at a change 21 from irrigation. 22 Q. Um-hm? 23 A. To something else. 24 Q. And the irrigation accounts for the crop 25 that was grown in the year of perfection?</p>



DAVID BARFIELD, P.E.

Page 49

1 A. Correct.
 2 **Q. Okay. If the crop will change at --**
 3 MR. TRASTER: I'm going to object to the
 4 form of the question. Misstates the statute. Go
 5 ahead.
 6 BY MR. SCHWALB:
 7 **Q. If the crop will change, does the**
 8 **consumptive use analysis account for that changed**
 9 **crop post approval?**
 10 A. Again, I'm just not following what you're
 11 asking.
 12 **Q. Okay. We've looked at corn. We've**
 13 **looked at alfalfa. We've looked at wheat. We've**
 14 **looked at milo. You testified that crops have**
 15 **different consumptive uses; is that correct?**
 16 A. Yes.
 17 **Q. Okay.**
 18 A. That's right.
 19 **Q. For lands that are converted to**
 20 **grassland, would that have a different consumptive**
 21 **use, depending upon what's grown there? The type**
 22 **of grassland?**
 23 A. Well, we do not consider the post change
 24 use, if that's what you're asking. So our
 25 consumptive use is designed to -- to provide water

Page 50

1 usage for making a change, the ability to change a
 2 reasonable quantity of water. This is a property
 3 right.
 4 **Q. Um-hm?**
 5 A. And so -- and we look at, you know,
 6 certificate represents the maximum they can divert
 7 in any calendar year. We look at the maximum
 8 acres that was irrigated during the perfection
 9 period.
 10 **Q. Um-hm?**
 11 A. And apply the NIR to it to determine
 12 what's reasonable to change with respect to
 13 consumptive use, so.
 14 **Q. Is that referred to as the net**
 15 **consumptive use?**
 16 A. I believe so.
 17 **Q. Okay. And so earlier you testified that**
 18 **you don't look at what happens after.**
 19 A. Yeah. We never have.
 20 **Q. Okay. But your -- you testified earlier**
 21 **that you're considering impairment on junior users**
 22 **over some period of time?**
 23 A. As we do the evaluation I must find that
 24 it does not impair. That's right.
 25 **Q. Okay. And you said that it's a property**

Page 51

1 **right relative to the change application. What**
 2 **about the property rights of the adjacent users?**
 3 MR. OLEEN: Object to the form of the
 4 question.
 5 A. And again? Ask it again.
 6 BY MR. SCHWALB:
 7 **Q. Okay. You testified earlier that the**
 8 **water right is a property right and you're looking**
 9 **at the change application?**
 10 A. Um-hm.
 11 **Q. As a property right?**
 12 A. Um-hm.
 13 **Q. When you're considering the change**
 14 **application and its impact on junior users, they**
 15 **have a property right as well?**
 16 A. Um-hm.
 17 **Q. What is that property right relative to**
 18 **the changed application?**
 19 MR. OLEEN: I again object to the form of
 20 the question. You may answer.
 21 A. Okay. Well again, the senior can
 22 interfere with the junior's use as a general
 23 matter.
 24 BY MR. SCHWALB:
 25 **Q. Um-hm?**

Page 52

1 A. That's what our law provides, but I do
 2 need to ensure that the change does not impair
 3 that junior use.
 4 **Q. The existing use.**
 5 A. The existing use.
 6 **Q. Okay. By engaging in a consumptive use**
 7 **analysis?**
 8 A. Yeah. By the overall terms and
 9 conditions that are applied, that includes the
 10 reduction of consumptive use. That's certainly
 11 not the only consideration.
 12 **Q. Okay. So if they're growing alfalfa**
 13 **before, there's one consumptive use before the**
 14 **change application?**
 15 A. Um-hm.
 16 **Q. And if they're growing alfalfa after,**
 17 **it's probably the same consumptive use?**
 18 A. After a change from irrigation to some
 19 other use?
 20 **Q. Say you have a partial change in the**
 21 **water right on -- on a given -- on a given ranch.**
 22 **You're growing alfalfa but you're permitting some**
 23 **portion of the water to be taken away and moved**
 24 **somewhere else, the consumptive use for the**
 25 **alfalfa there on the ground would be the same?**



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 53</p> <p>1 A. For the part that remains? 2 Q. Correct. 3 A. I presume so. 4 Q. Okay. What if they convert it to 5 grassland? Is that a different consumptive use? 6 A. We -- I don't follow. We don't do 7 changes of that nature. 8 Q. Okay. Does the model account for any 9 sort of change, all this modeling work that was 10 done, a change from irrigation to a grassland use? 11 A. Well, the modeling work, you're talking 12 about the modeling work to support the long 13 term -- 14 Q. The net consumptive use. 15 A. Now what modeling work -- the modeling 16 work that was done was to determine the long-term 17 yield of the ranch. 18 Q. Um-hm? 19 A. As a ten-year average constraint. 20 Q. Um-hm? 21 A. That wasn't directly a consumptive use 22 analysis. 23 Q. But you did a consumptive use analysis 24 using the model? 25 A. We did. Our consumptive use analysis was</p>	<p style="text-align: right;">Page 55</p> <p>1 other models to develop his specific model? 2 A. He looked at past modeling work that had 3 been done in the -- in the area as he developed 4 the model, but that -- the firm developed, I mean, 5 it's its own model. They obviously looked at all 6 the previous work as part of their process to 7 develop the model. 8 Q. Previous work within GMD 5? 9 A. Yeah. Really a broader area than that. 10 The model goes well beyond GMD 5 in terms of 11 geographic extent, so. 12 Q. What else does it cover? 13 A. It goes to the west a considerable 14 distance to areas that contribute. 15 Q. So -- 16 A. As -- 17 Q. How far west are we talking? To the 18 extent you know. 19 A. Not to the state line but well into GMD 20 3. I mean, 50 to 100 miles, I suppose. 21 Q. So you've reviewed this model? 22 A. Yeah. I was part of the -- there's a 23 modeling committee that was established to sort of 24 provide input to Balleau as he built the model, 25 and I was on that modeling committee.</p>
<p style="text-align: right;">Page 54</p> <p>1 pursuant to our rules. 2 Q. Okay. What about the model? Was the 3 model -- use of the model pursuant to your rules? 4 A. The groundwater model? 5 Q. Yes. 6 A. The use of the groundwater model was done 7 to determine the reasonable long-term yield for 8 the ranch that I used as a limitation on our 9 approvals. 10 Q. Okay. Who helped prepare that model? 11 A. Well, Burns and McDonnell's, the cities' 12 consultants. 13 Q. Um-hm? 14 A. Did the modeling work. 15 Q. Okay. And where did they get the inputs 16 for the model, for their modeling work? 17 A. Well, they used the GMD 5 groundwater 18 model that was developed by Balleau Groundwater. 19 Q. Okay. And that -- sorry. Just have to 20 get through who's -- where all this comes from. 21 Where did Balleau's -- what is the genesis of 22 Balleau's model? What's the basis for it? 23 A. Balleau Groundwater developed the model 24 for GMD 5's use. 25 Q. Did he rely upon any, to your knowledge,</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Who else was on that modeling committee? 2 A. I'm pretty sure Jeff Lanterman of our 3 field office was. I don't recall whether Doctor 4 Perkins was on staff at that point. I was also 5 part of a modeling committee for a precursor 6 model, the Min Ark model that the Kansas Geologic 7 Survey did for part of the area, so. 8 Q. Okay. Has this model ever been approved 9 for use in connection with a change application? 10 A. What do you mean by approved for use? 11 Q. Is there any regulation that says that 12 this, this model is the standard that's used to 13 determine groundwater flows in connection with a 14 change application? 15 A. We don't -- we don't do that, I guess. 16 Q. Okay. So the answer is no? 17 A. Well, we don't do it one way or the 18 other. 19 Q. Okay. 20 A. I mean. 21 Q. Okay. 22 A. We don't have an approved list of tools. 23 Q. Okay. And there's not an approved list 24 of tools for change applications? 25 A. Correct.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 57</p> <p>1 Q. Okay. Is there any sort of -- let me 2 rephrase. 3 What form does this model take? Is it a 4 written report, is it software? 5 A. It is software. It's a model built on a 6 U.S. Geological Survey, has a modeling platform 7 called MODFLOW that is used extensively in 8 groundwater model development, so it is an 9 application of the U.S.G.S. MODFLOW program to 10 this specific hydrogeologic setting. 11 Q. Okay. And Balleau, in consultation with 12 the modeling committee, modified it for this 13 setting? 14 A. Right. Or built it for this setting. 15 Yeah. 16 Q. Is there any description of how he did 17 that? 18 A. Certainly. 19 Q. Okay. 20 A. He has a modeling report. 21 Q. Okay. Have you reviewed this modeling 22 report? 23 A. I have. 24 Q. Do you recall if this modeling report 25 accounts for soil recharge rates?</p>	<p style="text-align: right;">Page 59</p> <p>1 identification.) 2 BY MR. SCHWALB: 3 Q. Please take a second to review that. 4 MR. TRASTER: Okay. What are we 5 numbering this one? 6 MR. SCHWALB: Six. 7 MR. TRASTER: Six? 8 MR. KITE: Yes, sir. 9 A. Okay. 10 BY MR. SCHWALB: 11 Q. All right. If you would turn to page two 12 of Exhibit 6 marked KDA3402. Do you see the two 13 lines for Region 9? 14 A. Yes. 15 Q. Okay. Now, along the Y axis there, I 16 think that says inches per month recharge; is that 17 correct? 18 A. Yes. 19 Q. And then along the X axis, that says 20 inches per month precipitation; is that correct? 21 A. That's correct. 22 Q. And then we see the two Region 9 lines, 23 one of them says post 1970; is that correct? 24 A. Yes. 25 Q. And then another one does not; is that</p>
<p style="text-align: right;">Page 58</p> <p>1 A. It does. Yeah. It has recharge 2 functions that are functions of soils. 3 Q. Okay. Does it account for soil recharge 4 rates predevelopment? 5 A. How do you define predevelopment? 6 Q. Before 1970. 7 A. I believe so. 8 Q. Okay. What about post development? 9 A. Well, as I recall he does. In that 10 change there's these recharge functions that are 11 sort of curves, amount of precipitation versus 12 recharge, and there are changes that he 13 implemented over time based on land use practice 14 changes, for example. 15 Q. Okay. So are there differences between 16 pre and post development for recharge rates? 17 A. Well, there's changes over time, so I -- 18 I guess the answer is yes. 19 Q. Okay. Do you recall seeing, you 20 mentioned this graph would it be helpful to have a 21 copy of it? 22 A. Certainly. 23 Q. All right. 24 (THEREUPON, the court reporter marked 25 Barfield Deposition Exhibit No 6 for</p>	<p style="text-align: right;">Page 60</p> <p>1 correct? 2 A. That is correct. 3 Q. The one that doesn't have post 1970 on 4 it, does that show a lower or a higher rate of 5 recharge based on this graph? 6 A. So it would have for the same precip a 7 lower recharge value. 8 Q. Okay. So for predevelopment it's showing 9 a lower recharge value. Is that -- 10 A. That's right. 11 Q. Okay. 12 A. Than post development. 13 Q. Okay. 14 A. So these conservation practices tend to 15 hold water and create more recharge. 16 Q. The conservation practices or the -- what 17 they're -- sorry. Conservation practices post 18 development or pre? 19 A. Post development. 20 Q. Okay. They hold more water? 21 A. They -- 22 Q. In the crop? 23 A. They hold more water in the soil and 24 create more recharge. 25 Q. But predevelopment what sort of crops</p>



DAVID BARFIELD, P.E.

Page 61

1 would be there?
 2 A. Well, as I understand it, a lot of this
 3 happens to do with land treatment practices on
 4 nonirrigated land. Again, terraces and whatnot
 5 are put in place to reduce soil erosion.
 6 **Q. Um-hm?**
 7 A. But they tend to also retain more
 8 moisture on the land and enhance recharge.
 9 **Q. Okay. But earlier you said that these**
 10 **conservation practices post change are not**
 11 **accounted for; is that correct?**
 12 A. We weren't talking about conservation
 13 practices earlier.
 14 **Q. I'm sorry. Grassland is not accounted**
 15 **for, conversion to grassland?**
 16 MR. OLEEN: Object to the form of the
 17 question.
 18 A. And I guess I'm lost with respect to the
 19 context of your earlier discussion but what's your
 20 question right now?
 21 BY MR. SCHWALB:
 22 **Q. I guess the question is this graph is**
 23 **showing predevelopment lower recharge rates. The**
 24 **-- and post development, I guess, higher recharge**
 25 **rates. Is it your testimony that the conservation**

Page 62

1 **practices are going to result in higher net water**
 2 **in the soils?**
 3 MR. TRASTER: I'm going to object to the
 4 form of the question and to the line of inquiry
 5 because there's -- there are a lot of factors that
 6 go into this that may or may not be accounted for
 7 in the question or on the document, for example,
 8 recharge post development, you know, there's more
 9 water, it's not just inches of rain, it's that the
 10 irrigation water that's being placed on it so --
 11 on there. So you can't really -- I would suggest
 12 that it's possible that you can't really correlate
 13 the two and I -- and there's no evidence in the
 14 record that nine is the region or the, what do we
 15 call it here? That nine is has anything to do
 16 with the ranch or anything else for that matter,
 17 but go ahead.
 18 MR. SCHWALB: I'll withdraw the question.
 19 BY MR. SCHWALB:
 20 **Q. Do you know if this graph was considered**
 21 **in any of the modeling work that was done by your**
 22 **staff?**
 23 A. Well, this modeling work is part of the
 24 model. I mean, this is -- the model uses these
 25 recharge curves.

Page 63

1 **Q. Um-hm?**
 2 A. To estimate how much recharge gets into
 3 the groundwater system.
 4 **Q. Okay. Do you know if it was used by**
 5 **Burns and McDonnell?**
 6 A. Yes.
 7 **Q. Okay. Let's turn to the Burns and**
 8 **McDonnell report real quick. Did you have a**
 9 **chance to review that in advance of this**
 10 **deposition?**
 11 A. Very briefly.
 12 **Q. Okay. Do you recall if the Burns and**
 13 **McDonnell report says anything about native**
 14 **grassland?**
 15 A. I don't recall that it does.
 16 **Q. I'm sorry?**
 17 A. It do not recall that it does.
 18 **Q. Would it be helpful to review it real**
 19 **quick?**
 20 A. Apparently.
 21 **Q. Okay. And can we have your copy marked**
 22 **as an exhibit, please?**
 23 A. Sure.
 24 (THEREUPON, the court reporter marked
 25 Barfield Deposition Exhibit No 7 for

Page 64

1 identification.)
 2 MR. TRASTER: Are you going to provide
 3 copies?
 4 MR. SCHWALB: Yep.
 5 MR. TRASTER: I wanted a copy of the
 6 exhibit that you're going to use.
 7 MR. SCHWALB: Let's use the exhibit that
 8 I'm going to use then.
 9 MR. TRASTER: I mean I'm not -- it may be
 10 the same, I don't know.
 11 MR. SCHWALB: Mine has highlighting on
 12 it.
 13 MR. TRASTER: Okay. I'd like to have a
 14 copy of the version that you're going to ask
 15 about.
 16 BY MR. SCHWALB:
 17 **Q. All right. Please take a moment to**
 18 **review that exhibit which is marked as Exhibit 7.**
 19 MR. TRASTER: This going to be 7?
 20 MR. SCHWALB: 7.
 21 A. What do you want me to review?
 22 BY MR. SCHWALB:
 23 **Q. Just the highlighted portions within the**
 24 **text and then the charts at the end.**
 25 MR. TRASTER: While you're doing that,



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 65</p> <p>1 just for the record, many, in fact most of these 2 exhibits are just excerpts and portions; they're 3 not complete documents but they are in the record. 4 MR. SCHWALB: Correct. 5 MR. TRASTER: And so the full document is 6 in the record, but just so we know that. 7 THE WITNESS: Okay. 8 BY MR. SCHWALB: 9 Q. All right. Please refer to KDA 345, the 10 first page of that exhibit and the highlighted 11 portion. Do you see there where it says that the 12 revised groundwater model report does not address 13 the alternative approaches to groundwater 14 modeling? 15 A. Yes. 16 Q. Okay. What does that generally refer to 17 in your view, the alternative approaches? 18 A. I would guess it principally addresses 19 not reducing recharge. 20 Q. Not reducing recharge based on what? 21 A. Based on Doctor Keller's analysis that 22 said recharge would be reduced under native grass. 23 Q. Thank you. Let's jump to Figure 6, which 24 I believe is KDA 368 at the bottom. Are you 25 familiar with this graphic?</p>	<p style="text-align: right;">Page 67</p> <p>1 depict? 2 A. Those are irrigation wells in the region. 3 Q. Okay. Any distinction between senior or 4 junior relative to the ranch depicted here? 5 A. No. 6 Q. Okay. Towards the middle of the graph 7 you'll see that there are some changes in color. 8 What do those changes depict? 9 A. So are you talking about the green dots 10 being the proposed municipal well, or something 11 different? 12 Q. No. I'm referring to the gradations in, 13 I guess it's purple or royal blue. What does that 14 depict? 15 A. Well, they're contours that depict the 16 differences between the two runs. 17 Q. Okay. 18 A. Right. So for example, there's a 19 generally at the boundary of the ranch -- the 20 ranch is depicted with the irregular shape, looks 21 like a green boundary. 22 Q. Okay. 23 A. So, you know, they vary but, you know, on 24 the order at the ranch, you know, three tenths of 25 a foot, some places half of a foot difference.</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Yes. 2 Q. Okay. What does this graphic depict? 3 A. So it depicts the difference in 4 groundwater levels in the aquifer, as modeled, 5 between Scenario 1, which was sort of the historic 6 pumping, irrigation pumping, and Scenario 2 which 7 was the irrigation pumping at 4,800 acre foot per 8 year. 9 Q. Which is the proposed pumping rate for 10 the city's change application? 11 A. That's the -- 12 Q. Or the TYRA limitation. 13 MR. TRASTER: Object to the form of the 14 question. 15 A. Right. That's the limitation that we've 16 -- the ten-year limitation that would be placed on 17 diversions. 18 MR. TRASTER: That's the quantity, not 19 the rate. 20 THE WITNESS: The quantity, yes. 21 BY MR. SCHWALB: 22 Q. All right. On this graphic are there 23 little blue dots there? 24 A. There are little blue dots, yes. 25 Q. Okay. What do those little blue dots</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay. 2 A. Some places less. 3 Q. A difference in what? 4 A. Difference in the water levels between 5 the two runs. 6 Q. Okay. 7 A. Irrigation, baseline and the municipal 8 maximum. 9 Q. So less water based on municipal use? 10 A. The water levels are, you know, three 11 tenths of a foot less at the end of the 17-year 12 simulation. 13 Q. Okay. 14 A. Or however -- yes. At the end of the 15 simulation. 16 Q. All right. Let's jump to the next page. 17 That would be KDA 371 depicted as Figure 9. What 18 is this graphic describing or depicting? 19 A. Again, it's similar but at different 20 runs, so it's subtracting the water level contours 21 at the end of 51 years in this case, between a 22 historic baseline that repeated the '91 to 2007 23 record for irrigation three times, versus the 24 irrigation -- I mean versus the municipal 4,800 25 maximum as well. Again showing the difference in</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 69</p> <p>1 head between -- that exists between those two 2 model runs at the end of the 51 year simulation. 3 THE REPORTER: 51 year? 4 THE WITNESS: 51 year simulation. 5 BY MR. SCHWALB: 6 Q. With respect to the blue dots that also 7 appear on this graphic. 8 A. Um-hm. 9 Q. Are they being shown as getting less 10 water or is it stable with no change? 11 A. Well, it shows the difference in head, 12 the difference in level being, again, on the order 13 of four tenths of a foot or less different at the 14 end of the 51 year simulation, so it's a -- it's 15 how deep is the water. It's not getting to how 16 much water they can take. 17 Q. Okay. 18 A. But it's a very small difference. 19 Q. But there is a difference between 20 historic pumping versus proposed pumping depicted 21 here? 22 A. By these very small amounts. 23 Q. Okay. 24 A. My characterization. 25 Q. That's fine. Let's jump down to Figure</p>	<p style="text-align: right;">Page 71</p> <p>1 you the overall trend for the light blue, the 2 modeled recharge? 3 A. There is no line. 4 Q. Okay. But the lines that are depicted, 5 are these anchored to years along the X axis? 6 A. They are. 7 Q. Okay. Did you discuss this with Burns 8 and Mac? 9 MR. TRASTER: Discuss what? 10 BY MR. SCHWALB: 11 Q. This graph. 12 A. Well, I don't remember specifically 13 discussing this graphic with them. We had a 14 number of discussions with respect to what model 15 run should be done as part of the overall 16 evaluation, including the drought scenario. 17 Q. Okay. Let's talk about the drought 18 scenario just for a minute. During droughts, in 19 your experience do farmers pump more or less? 20 A. They pump more when it's dry. 21 Q. Okay. What about -- 22 A. In a general matter. As a general 23 matter. 24 Q. What about municipalities? 25 A. They would as well.</p>
<p style="text-align: right;">Page 70</p> <p>1 12 which is labeled KDA 374. What does this 2 depict? 3 A. So again, similar overall graphic. This 4 is looking at a difference in runs. 5 Q. And there's a dark blue line. What does 6 that depict? 7 A. I think the dark blue line is the Ark 8 River. Is that the one you're talking about? 9 Q. Oh, I'm sorry. We're looking at 10 different things, 374 at the very bottom, Figure 11 12. 12 A. Right. Okay. So strike what I was 13 saying a moment ago. I was looking at the wrong 14 graphic. So Figure 12 is again from the Burns and 15 Mac model and it's depicting the amount of pumping 16 in the two different runs. No, I'm sorry. It's 17 depicting recharge in light blue and then the 18 pumping for this drought simulation run, Scenario 19 6. 20 Q. Does the light blue line ever fall 21 underneath the dark blue line? 22 A. Certainly at -- it does once in a while 23 but during the drought simulation throughout most 24 of the period. 25 Q. Is there any averaging line that shows</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay. Thank you. 2 A. As a general matter. 3 Q. Okay. All right. 4 THE REPORTER: Are you at a good spot for 5 a break? 6 MR. SCHWALB: I sure am. Why don't we 7 take a break and everybody can tend to their 8 business or take cough medicine or anything along 9 those lines. 10 (THEREUPON, a recess was taken.) 11 BY MR. SCHWALB: 12 Q. All right. We are -- everybody ready? 13 Okay. We are back on the record in Water PACK 14 vs. the deponent. I'd like to come back to the 15 exhibit that we were just reviewing which I 16 believe is Exhibit 7, the Burns and McDonnell 17 report, and I'd like to call your attention, Mr. 18 Barfield, to, again, that highlighting on the 19 first page, but just beneath it there's a list of 20 numbered paragraphs here. The first one refers to 21 4,800 acre feet of municipal pumping does it not? 22 A. Yes. 23 Q. Okay. Can you describe the -- why that 24 number is used here in this report? 25 A. Well, 4,800 acre feet is the -- is the</p>



DAVID BARFIELD, P.E.

Page 73

1 average use that's allowed pursuant to the ten-
 2 year limitation of 48,000 acre feet in a ten year
 3 period.
 4 **Q. Okay. Can you expound upon that ten-year**
 5 **rolling average I think is how it's referred to in**
 6 **the master order?**
 7 A. What do you want to know about it
 8 specifically?
 9 **Q. What's the -- what is the rationale for**
 10 **including that in the order?**
 11 MR. TRASTER: Let's go off the record for
 12 a second.
 13 (THEREUPON, an off the record discussion
 14 was held.)
 15 BY MR. SCHWALB:
 16 **Q. All right. We're back on the record and**
 17 **I was just asking about the rationale behind the**
 18 **4,800 acre foot ten year rolling average that's in**
 19 **the master order.**
 20 A. Right. So, and again, there's a
 21 significant section in the master order with
 22 respect to the TYRA limitation, ten year rolling
 23 average, rolling aggregate limitation and what it
 24 is and why it is. It's unique to these change
 25 approvals. Due to the unique nature of the change

Page 74

1 approvals I required the cities to use the model
 2 to determine the long-term yield of the ranch and
 3 to limit it, their use, to that long-term amount.
 4 **Q. Initially they wanted a higher amount; is**
 5 **that correct?**
 6 A. Well, they would have chosen not to have
 7 this limitation, but to only be constrained by the
 8 consumptive use determination.
 9 **Q. Did they initially ask for something**
 10 **above 7,000 acre feet though?**
 11 MR. OLEEN: Sorry to interrupt. Could
 12 you -- do you mean as a -- as a TYRA limitation
 13 figure or a maximum annual authorized quantity
 14 figure.
 15 MR. SCHWALB: Maximum authorized annual
 16 quantity.
 17 A. I'm looking to this summary document that
 18 we used for the public meeting. So the cities
 19 originally asked for 7,640 seven acre feet of
 20 water to be changed from municipal use to
 21 irrigation use, so they later amended their
 22 request and now asked for 6,756.3 acre feet.
 23 BY MR. SCHWALB:
 24 **Q. Okay. That's on an annual basis?**
 25 A. On an annual basis, yes.

Page 75

1 **Q. And then there's an additional**
 2 **requirement, the TYRA, that's dropping it to**
 3 **4,800?**
 4 A. That's -- that's a limitation that's
 5 imposed by the -- by what I approved.
 6 **Q. Okay.**
 7 A. Yes.
 8 **Q. So there's -- you approved, or you**
 9 **contingently approved?**
 10 A. Contingently approved, yes.
 11 **Q. Okay. So you went from 7,600 acres feet**
 12 **on an annualized basis to a rolling average of**
 13 **4,800?**
 14 A. Well, right.
 15 MR. TRASTER: Object to the form of the
 16 question.
 17 A. On an annual basis they can use the
 18 consumptive use determination, the 6,756.
 19 BY MR. SCHWALB:
 20 **Q. Okay.**
 21 A. In any year or sequence of years, but
 22 it's further limited by the 48,000 acre feet
 23 limitation over ten years.
 24 **Q. Okay. Why a limitation of 4,800 acre**
 25 **feet per year, the rolling average?**

Page 76

1 A. Well, the rationale I used to require
 2 this is that the change must be reasonable and so
 3 -- and again the city didn't -- cities didn't
 4 completely agree with this but were willing to
 5 agree to it, that it wasn't reasonable to approve
 6 more than they could take out of the ranch long
 7 term.
 8 **Q. Okay. So does the 4,800 result from the**
 9 **model?**
 10 A. It is from the modeling analysis, yes.
 11 **Q. Okay. And so the initial request, just**
 12 **to be clear, was for 7,600 acre feet, the 4,800 is**
 13 **written by the model. Is that a big difference,**
 14 **the 7,600 to 4,800?**
 15 MR. TRASTER: Object to the form of the
 16 question.
 17 A. I'd say it's significant, yes.
 18 BY MR. SCHWALB:
 19 **Q. Okay. Is it almost half of the original**
 20 **amount?**
 21 A. Well, it's somewhat more than half.
 22 **Q. It's two-thirds maybe?**
 23 A. That would be closer.
 24 **Q. Okay. The original 7,600 number, was**
 25 **that driven off of the model?**



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 77</p> <p>1 A. That's essentially the authorized 2 quantity. 3 Q. Okay. 4 A. The sum of the authorized quantity. 5 Q. Okay. But still it's a pretty big 6 difference? 7 A. Yes. 8 Q. Okay. So why no site specific analysis 9 with that big of a difference? 10 MR. TRASTER: Object to the form of the 11 question. Misstates facts not in evidence. 12 BY MR. SCHWALB: 13 Q. I think the master order is part of the 14 record so let's just refer to that. 15 A. Well, I think the modeling analysis was 16 site specific in terms of what does the model say 17 about the terms and conditions under which this 18 approval was granted and how would that affect the 19 ranch and its immediate vicinity. 20 Q. But your regulations contemplate a site 21 specific analysis, do they not, for change 22 applications? If there's -- if you get 23 unreasonable numbers? 24 A. So you're speaking, I mean you're 25 speaking to specifically to the consumptive use</p>	<p style="text-align: right;">Page 79</p> <p>1 subparagraph. It refers to methods set forth in 2 subsection (A) and it says if the methods set 3 forth in subsection (A) produce an authorized 4 annual quantity of water which appears to be 5 unrealistic, and could result in impairment of 6 other water rights, the chief engineer shall make 7 a site specific net consumptive use analysis to 8 determine the quantity of water which was actually 9 beneficially consumed under the water right. Is 10 that an accurate restatement? 11 A. I think you read it well. 12 Q. Thank you. So let's focus on the word 13 unrealistic here. The initial request from the 14 cities was for 7,600 per year? 15 MR. TRASTER: Objection. States facts 16 not in evidence. 17 BY MR. SCHWALB: 18 Q. Over 7,600 acre feet which is referenced 19 in the master order is it not? 20 A. Their original request? It may be. 21 Q. Okay. And the TYRA limitation, also 22 defined in the master order, limits withdrawals to 23 a rolling average of 4,800 acre feet per year does 24 it not? 25 A. It does.</p>
<p style="text-align: right;">Page 78</p> <p>1 piece of this analysis, right? 2 Q. Yep. 3 A. And it allows for a site specific 4 determination under certain conditions. 5 Q. Okay. And what are those conditions? 6 A. Well, I wonder if we can go to the 7 regulation. I've got a copy of it here if you 8 don't already have it as an exhibit. 9 Q. I don't think we've entered it into the 10 record here, but let me see if I've got a couple 11 here. 12 MR. OLEEN: Off the record. 13 (THEREUPON, an off the record discussion 14 was held; WHEREUPON, the court reporter marked 15 Barfield Deposition Exhibit No 8 for 16 identification.) 17 BY MR. SCHWALB: 18 Q. And I believe it's 5-5-9(c) that gets 19 into the authorized annual quantity. Does that 20 section use the word unrealistic? 21 A. Just give me a moment to review. 22 Q. Sure. 23 A. Okay. Okay. So what was your question? 24 Q. All right. Within 5-5-9(c), and I think 25 it's subparagraph -- no, it doesn't have a</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. Is that -- and you testified 2 earlier that the, I believe the initial request 3 was based on modeling of net consumptive use; is 4 that correct? 5 A. The initial request of 7,600? I don't -- 6 Q. Is that wrong? 7 A. I don't have any knowledge it was based 8 on modeling? 9 Q. Okay. What about the 4,800 acre feet? 10 Is that based on modeling? 11 A. It is. 12 Q. Okay. And that's substantially lower 13 than 7,600 acre feet? 14 A. It is lower. 15 Q. Is that an unrealistic difference? 16 A. I don't -- I don't know what you're 17 asking. 18 Q. Is it a huge difference? 19 A. We've said it's a significant difference. 20 Q. Okay. In terms of, let's jump to the 21 next part of this regulation where it says: And 22 could result in impairment of other water rights. 23 You testified earlier that you're assessing 24 impairment of seniors and juniors, correct? 25 A. With respect to the change in -- with</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 81</p> <p>1 respect to the change, yes. 2 Q. With respect to the change. Okay. 3 Referring back to the Burns and Mac report which I 4 believe is Exhibit 7? 5 A. That's correct. 6 Q. Figure 6, I believe. That figure shows 7 surrounding water users outside the boundaries of 8 the ranch getting less water over time does it 9 not? 10 A. No. It shows that there's on the order 11 of a tenth of a foot to a third of -- to three 12 tenths of a foot of difference in elevation in the 13 aquifer. I wouldn't expect that small difference 14 to produce anything but a de minimus reduction in 15 what they can pump. 16 Q. Over that period of time? 17 A. Yes. 18 Q. Okay. Jumping back down to Figure 12 in 19 that same report, this is the simulated recharge 20 rate. Those light blue lines there show reduced 21 recharge relative to operations do they not? 22 A. Yes. And throughout there's reduced 23 recharge. 24 Q. Okay. So if there's reduced recharge 25 during drought. What about the years prior to</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Thank you. 2 A. But that doesn't follow to a reduced 3 ability to pump. I mean, that's what an aquifer, 4 that's the benefit of an aquifer versus a surface 5 water system. There's significant storage by 6 which they can continue to operate. 7 Q. Did you make any specific findings of 8 fact as to specific junior users in that regard? 9 A. Not to specific junior users but 10 certainly they're findings with respect to this 11 modeling demonstrating that the neighboring water 12 rights are not impaired. 13 Q. With respect to the junior users? 14 A. Well, with respect to all users. 15 Q. Okay. And your staff specifically 16 examined whether or not this proposed change 17 application would impact junior users? 18 A. Well, the modeling work assesses the 19 degree to which, you know, the -- what are the 20 impacts of the change. 21 Q. Right. 22 A. To the area. 23 Q. Okay. 24 A. That's what these maps demonstrate in my 25 view. There is -- the change does not have any</p>
<p style="text-align: right;">Page 82</p> <p>1 that? Are you seeing reduced recharge there? 2 A. No. 3 Q. What does the light blue line show then? 4 A. Well, it goes up and down with the normal 5 variation in precip. 6 Q. Okay. Are there any drops below the dark 7 blue line of that light blue line? 8 A. There are some minor ones, but yes. 9 Q. Okay. So there's modeled recharge 10 falling below, based on modeled precip and 11 operation of the well field? 12 A. Yes. And many, many years of 13 significantly more. 14 Q. Um-hm. So in those years where it's 15 dropping, are junior users seeing more return 16 flows or fewer? 17 A. Say that again. 18 Q. In the years below the dark blue line -- 19 A. Um-hm. 20 Q. -- do the junior users, based on this 21 model, or this figure, I should say, see more 22 recharge or less? 23 A. Less. 24 Q. More return flows or less? 25 A. Less return flows.</p>	<p style="text-align: right;">Page 84</p> <p>1 appreciable effect on the neighboring water 2 rights. 3 Q. Okay. 4 A. Which is what we're after. 5 Q. Was that modeling work provided to the 6 public, the actual model, after that report is 7 based upon for Exhibit 7, I believe, the November 8 28 Burns and McDonnell report? 9 A. The modeling report was posted on our 10 website, the modeling files were provided to GMD 5 11 and Water PACK. 12 Q. When were those provided to GMD 5 and 13 Water PACK? 14 A. I don't have that date in front of me but 15 there is a transmittal letter that we found. 16 Before -- well, actually it may be on our website 17 here. Just a second. Well, we posted the model 18 report in February of 2018. I guess I don't see, 19 but I know we found in our records when we sent a 20 thumb drive with the model data files to both GMD 21 5 and to Water PACK. It was certainly well before 22 the public meeting that we had to allow them to 23 review those, and in fact Balleau did that review 24 and found some minor -- minor problems with the 25 model as a result of their review.</p>



DAVID BARFIELD, P.E.

Page 85

1 **Q. Okay. So there's a thumb drive provided**
 2 **to the district, GMD 5?**
 3 A. Correct.
 4 **Q. Prior to the Greensburg meeting?**
 5 A. Yes.
 6 **Q. The Greensburg meeting occurs on June**
 7 **21st, 2018, correct?**
 8 A. Correct.
 9 **Q. And then there is input from the GMD**
 10 **received, I believe you testified earlier, August**
 11 **30th of '18?**
 12 A. Correct.
 13 **Q. And then revised input from the GMD on**
 14 **September 14th of 2018?**
 15 A. I believe that's what I said, yes.
 16 **Q. Okay. Did that revised input result to**
 17 **in any changes to the modeling work?**
 18 A. It did.
 19 **Q. Okay. And did that -- did those changes**
 20 **to the modeling work result in this report from**
 21 **Burns and McDonnell?**
 22 A. The revised report, yes.
 23 **Q. What's the date of that revised report,**
 24 **if you don't mind me asking?**
 25 A. September 24, 2018.

Page 86

1 **Q. Okay. Was there any provision of their**
 2 **adjustments to the model to the public, to the GMD**
 3 **or to -- well, let's just focus on the public**
 4 **first.**
 5 A. So what was the question?
 6 **Q. They do the analysis and reproduce the**
 7 **report on September 28th you said?**
 8 A. Yes.
 9 **Q. And then they do that based upon**
 10 **modifications to the model. Were the**
 11 **modifications to the model provided to the public?**
 12 A. Not to my knowledge. We would have if it
 13 had been requested.
 14 **Q. Okay. Were they provided to the GMD?**
 15 A. I believe they were. Again, I didn't go
 16 back to the records but I'm fairly sure that we
 17 provided it both before the public meeting and the
 18 final model as well.
 19 **Q. Okay. Were they provided to Water PACK?**
 20 A. They were offered to Water PACK. Again,
 21 I remember sending the thumb drive to both.
 22 **Q. Before the Greensburg meeting?**
 23 A. You know, my recollection may not be
 24 right. It may have been after and the before
 25 might have been from Burns and Mac straight to

Page 87

1 those two entities.
 2 MR. TRASTER: For the record, attached to
 3 the Hays response, one of the Hays briefs, is a
 4 March 9, 2018, letter addressed to the GMD signed
 5 -- which you signed, it's Exhibit 7, and it says
 6 with this letter I'm also sending one USB drive to
 7 Richard Wenstrom. There were two sent to the GMD.
 8 That's March 9th, 2018.
 9 THE WITNESS: Okay. So that was the
 10 model?
 11 MR. TRASTER: And that's the original
 12 model, not the revised model, but that's in the
 13 court file.
 14 A. Okay. So the USB was before the public
 15 meeting.
 16 BY MR. SCHWALB:
 17 **Q. Does what Mr. Traster just said conform**
 18 **to your recollection of what happened more or**
 19 **less?**
 20 A. It helps my recollection of what
 21 happened, so yes, we sent a thumb drive before the
 22 meeting with the model.
 23 **Q. Okay.**
 24 A. I guess I would have expected we would
 25 have sent the final model to them as well in the

Page 88

1 same way but I don't -- I may be remembering
 2 wrong, so.
 3 **Q. All right. So does all modifications to**
 4 **the model appear in the administrative record?**
 5 A. I'm not certain.
 6 **Q. What about the model runs? Do those**
 7 **appear in the administrative record?**
 8 MR. OLEEN: I would object to the form.
 9 What do you mean by appear?
 10 BY MR. SCHWALB:
 11 **Q. Are the model runs in the administrative**
 12 **record post the Greensburg meeting?**
 13 MR. OLEEN: Like actual model
 14 mathematical equations, reports about such, which?
 15 BY MR. SCHWALB:
 16 **Q. And adjustments to the model that were**
 17 **made after the Greensburg meeting. Do those**
 18 **appear in the administrative record outside of the**
 19 **Burns and McDonnell report?**
 20 MR. TRASTER: I didn't hear the response.
 21 What -- you asked about model runs or reports. I
 22 mean but what are you asking about?
 23 MR. SCHWALB: I want to know if the model
 24 runs, the adjusted model runs undertaken by Burns
 25 and Mac, not the report, but the model runs appear



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 89</p> <p>1 in the administrative record?</p> <p>2 MR. TRASTER: What form do the model runs</p> <p>3 take? I mean what is it that you're asking? I</p> <p>4 mean that's -- I don't know what you mean by model</p> <p>5 runs. Are you asking about the software itself or</p> <p>6 are you talking about, I mean, what is a model</p> <p>7 run? That's, I guess I'm having a little problem</p> <p>8 understanding what you're asking about.</p> <p>9 MR. SCHWALB: Sure. Let me clarify.</p> <p>10 BY MR. SCHWALB:</p> <p>11 Q. The specific adjustments to the model</p> <p>12 that were made within the software and the</p> <p>13 specific results therefrom, not the reports, but</p> <p>14 the results, do those modifications and results</p> <p>15 appear in the record outside of the Burns and Mac</p> <p>16 report?</p> <p>17 MR. TRASTER: But what form? I mean</p> <p>18 results. What -- what are you asking about? Are</p> <p>19 you asking about the model document itself? Are</p> <p>20 you -- I mean the results, how are results</p> <p>21 reported other than in the report. And I'm really</p> <p>22 asking. I'm not trying to play games, here.</p> <p>23 MR. SCHWALB: Sure.</p> <p>24 MR. TRASTER: Because I don't -- I'm not</p> <p>25 sure what the, you know, what their answer is to</p>	<p style="text-align: right;">Page 91</p> <p>1 related files that would allow you to see what</p> <p>2 changes they made to the model?</p> <p>3 A. So I'm sorry. Repeat that question</p> <p>4 again. Sorry.</p> <p>5 Q. Is there anything on that thumb drive</p> <p>6 that shows how they produce those results, either</p> <p>7 in the form of changes to the model or any other</p> <p>8 forms of instruction, that describe adjustments</p> <p>9 made to the model to yield those results?</p> <p>10 A. Right. So there's -- that thumb drive</p> <p>11 had everything that somebody who had MODFLOW, a</p> <p>12 modeler who has MODFLOW, needs to replicate the</p> <p>13 runs that the cities did to support the</p> <p>14 application. So, you know, there's a set of data</p> <p>15 files and they include -- they include data files,</p> <p>16 they include configuration files that specify what</p> <p>17 model runs and what boundary conditions,</p> <p>18 everything it takes to take MODFLOW and produce</p> <p>19 the model runs, that's what's on that USB drive</p> <p>20 that I caused to be delivered to GMD 5 and Water</p> <p>21 PACK.</p> <p>22 Q. Okay. So configuration files are on</p> <p>23 that?</p> <p>24 A. That's right.</p> <p>25 Q. Okay. After that is delivered there are</p>
<p style="text-align: right;">Page 90</p> <p>1 that question but I -- we need to get -- have a</p> <p>2 clear question on the table so that he can -- he</p> <p>3 probably knows a hell of a lot more, excuse me, he</p> <p>4 probably knows a little bit more about the</p> <p>5 modeling than we do.</p> <p>6 MR. SCHWALB: Fair enough. Let me</p> <p>7 rephrase.</p> <p>8 BY MR. SCHWALB:</p> <p>9 Q. We have a thumb drive, according to Mr.</p> <p>10 Traster, from March that has a data set?</p> <p>11 MR. TRASTER: Object to the form of the</p> <p>12 question. It's not according to me, it's</p> <p>13 according to the document that's attached to the</p> <p>14 -- to a -- I mean it's the document. I'm not --</p> <p>15 I didn't sign the document, I just provided it.</p> <p>16 BY MR. SCHWALB:</p> <p>17 Q. We have a thumb drive that goes out from</p> <p>18 you in March of '18, correct?</p> <p>19 A. Yes.</p> <p>20 Q. That thumb drive has what on it?</p> <p>21 A. So it has the model data files, the input</p> <p>22 files that are necessary to run the MODFLOW model</p> <p>23 to produce the outputs of the model runs that</p> <p>24 Burns and Mac developed.</p> <p>25 Q. Okay. And a configuration or other</p>	<p style="text-align: right;">Page 92</p> <p>1 adjustments made to the model by Burns and Mac,</p> <p>2 correct?</p> <p>3 A. There were some minor adjustments that</p> <p>4 were made as a result of the Balleau Groundwater's</p> <p>5 review. They found some minor errors in the</p> <p>6 model.</p> <p>7 Q. Okay.</p> <p>8 A. That were made that actually benefitted</p> <p>9 the cities. It actually made their case a little</p> <p>10 stronger, but right, there was a -- there were</p> <p>11 some errors that were corrected subsequent.</p> <p>12 Q. So when you correct errors within MODFLOW</p> <p>13 does that require changing the configuration</p> <p>14 files?</p> <p>15 A. It did require changing some of those</p> <p>16 files.</p> <p>17 Q. Were those change configuration files</p> <p>18 provided to Water PACK or any of the surrounding</p> <p>19 users?</p> <p>20 A. And I'm not certain. I can't -- I would</p> <p>21 think we would have -- we would have certainly</p> <p>22 made them available. I'm not certain if we did or</p> <p>23 didn't.</p> <p>24 Q. Okay. Are there any rules that you're</p> <p>25 aware of that govern adjustments to this model</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 93</p> <p>1 that are promulgated by DWR? 2 A. We don't have any such rules. 3 Q. Okay. 4 A. We certainly would have provided the 5 model runs to anyone requesting them. 6 Q. Okay. I want to come back to some of the 7 original modeling work. Just give me one second, 8 here. Earlier you referred to a series of 9 meetings that occurred between you and the cities 10 and their representatives; is that correct? 11 A. That's correct. 12 Q. Okay. Is there any documentation of 13 these meetings? 14 A. A couple of the meetings resulted in 15 letters from me to the cities summarizing some of 16 the issues that were raised and sort of a path 17 forward with respect to those issues. 18 Q. Okay. Was there any correspondence 19 relating to the documents that were exchanged by 20 the cities and DWR? Change applications, models? 21 A. Well, there's certainly some as they 22 transmitted a new set of change applications, 23 those are documented in the records. 24 Q. Okay. 25 A. But.</p>	<p style="text-align: right;">Page 95</p> <p>1 consumptive use analysis. Again, staff reviewed 2 that and determined the consumptive use 3 appropriate from our rules. 4 Q. So they did an initial review? 5 A. I'm sure they did. I'm not sure to what 6 extent they relied on that information submitted 7 as opposed to just applying the rules. 8 Q. Okay. Does that initial review appear in 9 the administrative record to your knowledge? 10 A. Our administrative review of their -- 11 Q. Did your internal review of the 12 consumptive, the initial consumptive use analysis, 13 does that appear in the administrative record for 14 this case? 15 A. Well, they're -- the work of Elizabeth 16 Fitch to sort of determine the acres and cropping 17 is in the administrative record. The result of 18 the consumptive use determination by water right 19 is also in the record. 20 Q. But that specific initial analysis, is 21 that in the administrative record to your 22 knowledge? 23 A. Which? The one the applicant provided? 24 Q. The initial -- correct. 25 A. Well, if it's part of the applications,</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. As those change applications came in, 2 what'd you do with them? 3 A. Physically? 4 Q. No, just what's your process for handling 5 them? 6 A. Well, the attorney who is head of our 7 change application unit keeps, keeps a box of 8 them. There's a box of the various ones that he's 9 sort of the custodian of those records as it's 10 shepherded through the processes. 11 Q. Okay. 12 A. So we also -- again, we developed, at a 13 stage when the public was getting interested and 14 we had a -- we were moving forward a decision, we 15 developed a website where we scanned pertinent 16 information and made them available to the public, 17 so those three sets of applications are posted 18 there. 19 Q. Okay. Within those applications was 20 there a consumptive use analysis? The initial 21 applications? 22 A. I believe there was. 23 Q. Okay. Did anyone complete a review of 24 that consumptive use analysis? 25 A. We -- I didn't personally do the</p>	<p style="text-align: right;">Page 96</p> <p>1 which I think it was, it is. 2 Q. Your internal review though? 3 A. Oh, I'm sorry. Our internal review of 4 what they provided. 5 Q. Initially? 6 A. Not to my knowledge. 7 Q. Okay. Did you rely on that while 8 processing the applications? 9 A. I don't think we did. Again, I think we 10 did the determination of acres, appropriated 11 cropping, and then applied the rule. 12 Q. Okay. Did the initial consumptive use 13 analysis require any -- did that translate into 14 the model in any way or any of the modeling work? 15 A. Not to my knowledge. 16 Q. Okay. Did Burns and Mac change the 17 modeling analysis during the course of this 18 proceeding more than once? 19 A. Well, we met with them multiple times, as 20 is in the record, to frame the modeling analysis, 21 so certainly it developed over time. 22 Q. Okay. Does the modeling analysis account 23 for the specific soil types and conditions at the 24 ranch? 25 A. Soil types and what?</p>



DAVID BARFIELD, P.E.

Page 97

1 **Q. Soil types and conditions.**
 2 A. Soil types?
 3 **Q. Yeah.**
 4 A. Well, I mean Burns and Mac used Balleau's
 5 modeling which has the soil types that are
 6 indicated on that map we looked at a little bit
 7 ago.
 8 **Q. Does it get down to specific -- well, let**
 9 **me rephrase. What is the level of detail that it**
 10 **gets down to in terms of feet or acres? What's**
 11 **the cell level?**
 12 A. I believe they're a mile square.
 13 **Q. They're a mile square?**
 14 A. I believe.
 15 **Q. Okay. And that would account for the**
 16 **soil types?**
 17 A. That's the level at which they determined
 18 it.
 19 **Q. Okay. Let's switch gears just a little**
 20 **bit here. This -- this model feeds the master**
 21 **order and helps you reach conclusions in that**
 22 **master order, correct?**
 23 MR. OLEEN: Object. Could you please
 24 clarify which model perhaps?
 25 MR. SCHWALB: I'm sorry. Sure.

Page 98

1 BY MR. SCHWALB:
 2 **Q. The final model referenced in the**
 3 **September 28th, I think, 2018, revised Burns and**
 4 **McDonnell report, did that serve as an input to**
 5 **the master order?**
 6 A. It certainly informed portions of the
 7 master order, yes.
 8 **Q. The final master order?**
 9 A. Yes.
 10 **Q. Okay. Did prior versions of the Burns**
 11 **and Mac model inform the draft master order that**
 12 **was initially released to the GMD?**
 13 A. Well, the version that informed it was
 14 the model report -- what was the -- so we posted
 15 a model report February 19, 2018, of their earlier
 16 work which is essentially the same model, the same
 17 model runs except for this minor correction that
 18 was done.
 19 **Q. Um-hm?**
 20 A. So that's the version of the model that
 21 -- that's reported on February 2018 that informed
 22 the draft proposed master order, and really the
 23 final order as well.
 24 **Q. Okay.**
 25 A. The resort -- the difference in results

Page 99

1 did not change.
 2 **Q. Okay.**
 3 A. In an appreciable way so it didn't affect
 4 the final version. The revised modeling didn't
 5 change the results in the final order.
 6 **Q. Understood. So thus far we have the**
 7 **draft order and the final order. Were there other**
 8 **versions of the order that were worked on by your**
 9 **office?**
 10 MR. TRASTER: Worked on by what?
 11 MR. SCHWALB: By his office.
 12 A. Yes. There were other versions.
 13 BY MR. SCHWALB:
 14 **Q. Do you have a sense of how many?**
 15 A. No. I mean -- no, I don't know.
 16 **Q. Okay. Who drafted the first version of**
 17 **the master order?**
 18 MR. BULLER: Counsel, can you identify
 19 which topic under the court's order that you're
 20 currently covering?
 21 MR. SCHWALB: I am on topics E and F, E
 22 as in echo, F as in foxtrot.
 23 BY MR. SCHWALB:
 24 **Q. Who drafted the first version of the**
 25 **order?**

Page 100

1 A. Mr. Traster.
 2 **Q. Can you tell me about the -- why did Mr.**
 3 **Traster draft the first version of the order?**
 4 A. Well, he offered at a point in time to --
 5 to provide a draft for us to review, so it was
 6 partially just economy of state resources for him
 7 to provide initial draft. This is a pretty unique
 8 set of circumstances and the city needed some
 9 unique things. It's preparing the way for a water
 10 transfer process later on where the city has a
 11 burden so, you know, they wanted to help sort of
 12 shape the document in terms of what -- what they
 13 needed to meet their client's needs and all the
 14 processes that they would have to go through. So
 15 some very unique circumstances.
 16 **Q. Is the version that Mr. Traster drafted**
 17 **in the administrative record?**
 18 A. No.
 19 **Q. Okay. Would you be able to provide that**
 20 **to us -- is it in your records?**
 21 A. I'm sure it's in an e-mail somewhere.
 22 **Q. Okay.**
 23 A. Or in some form.
 24 **Q. All right. Did Mr. Traster provide input**
 25 **on any of the versions, multiple versions, of this**



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 101</p> <p>1 draft order between the version that was reviewed 2 by the GMD and the final order? 3 A. What was your question? 4 Q. Sorry. 5 A. That's all right. 6 Q. So earlier you testified we have, I'll 7 refer to these as versions A, B and C. 8 A. Okay. 9 Q. For purposes of the deposition. Version 10 A is the version that Mr. Traster provided? 11 A. Um-hm. 12 Q. Version B would be the version that was 13 put forth as the draft master order and reviewed 14 by the GMD 15 A. Right. 16 Q. Version C is the final order. 17 A. Right. 18 Q. The contingent order that was published 19 on this website, did Mr. Traster have input on 20 revisions to the order between versions B and C? 21 A. So. 22 MR. BULLER: And I'm going to object. 23 This is beyond the scope of the order relating to 24 the scope of this discovery. 25 MR. SCHWALB: I'll get there.</p>	<p style="text-align: right;">Page 103</p> <p>1 reject it? 2 Q. Correct. 3 A. No. 4 Q. Okay. 5 A. Not to my knowledge. 6 Q. And so version B stated that it complied 7 with applicable laws and regulations prior to the 8 publication of version C? 9 A. I believe it probably did. I wouldn't 10 have proposed an order that I didn't think -- 11 was compliant with state law. 12 Q. Okay. 13 A. And requirements. 14 Q. But it presumed that it would be approved 15 in version B? 16 MR. OLEEN: Object to the form of the 17 question. 18 BY MR. SCHWALB: 19 Q. Go ahead. 20 A. It didn't presume it would be approved 21 without any further changes or additional terms 22 and conditions, but I attempted to draft an order 23 that I thought could be approved. But again, the 24 whole purpose of the public process was to see if 25 I got it right, to see if it could be, or it</p>
<p style="text-align: right;">Page 102</p> <p>1 MR. BULLER: So I'm not clear about how 2 the different drafts of the master order relates 3 to the chief engineer's decision to permit the 4 cities to prepare the initial draft of the draft 5 master order, or how it could conceivably be 6 related to that topic. 7 MR. SCHWALB: We'll get there. Go ahead. 8 A. So, you know, we took full control of the 9 drafting of the document somewhere in the summer 10 of 2017, well before even the proposed draft 11 master order. 12 BY MR. SCHWALB: 13 Q. Um-hm? 14 A. But Mr. Traster did have an opportunity 15 to review what we were doing and had input into 16 it. 17 Q. Okay. Were there conclusions within the 18 version B, shall we say, that the master order 19 complied with all laws and regulations? 20 A. That's right. There were. 21 Q. Were there any conclusions indicating 22 that you were going to reject the order, or the 23 application, I should say? 24 A. Did the proposed draft master order have 25 any conclusions that I might -- that was going to</p>	<p style="text-align: right;">Page 104</p> <p>1 should only be under certain modifications to 2 those terms and conditions, but. 3 Q. Was that also the purpose of version A? 4 A. Well, version A was just a starting 5 point, sort of a framework for the discussion, so 6 it wasn't a full draft of the document by any 7 means. 8 Q. Is it common to let counsel for a water 9 -- in a water transfer act proceeding draft the 10 order? 11 A. Well, I've never been offered before. 12 Q. Okay. 13 A. So it's not common. 14 Q. Okay. 15 A. So nothing about this set of -- of change 16 applications and subsequent processes is common. 17 Q. It's common for the lawyer for the 18 applicant to draft the order? 19 A. No. I said. 20 Q. It's not? 21 A. It's not. 22 Q. Okay. 23 A. I said it's not. I've never been 24 offered. 25 Q. Okay.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 105</p> <p>1 A. Number one, so, and it's not common. 2 Q. Okay. 3 A. There's nothing common about this set of 4 change applications. 5 Q. What about outside of the context of a 6 water transfer act proceeding? Is it -- has it -- 7 is it common for counsel for the applicant to 8 draft the order? 9 A. Not to my experience. 10 Q. Has it happened a few times? 11 MR. BULLER: Objection. Beyond the 12 scope. 13 BY MR. SCHWALB: 14 Q. Go ahead. 15 A. Well, I don't know if in my experience of 16 -- in my limited experience as a chief engineer, I 17 don't know that I've had an attorney offer or 18 draft an order. I mean we've -- we've engaged the 19 applicants on particular conditions that were 20 important to them to determine how those 21 conditions should be drafted. I mean that's -- 22 that's happened before. 23 Q. Okay. These conversations around 24 drafting of the order, were any of -- these 25 happened in meetings or telephone calls? What</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Okay. Were these meetings announced to 2 the public? 3 MR. BULLER: Objection. Beyond the 4 scope. 5 A. No. The meetings were not announced. 6 BY MR. SCHWALB: 7 Q. Okay. So let's -- 8 A. Although Water PACK was privy to at least 9 one of the meetings because they showed up on my 10 doorstep, so. 11 Q. So somehow they got word of it. 12 A. Somehow they got word of it. I mean we 13 -- we certainly didn't keep it a secret that we 14 were working with the cities on this matter. 15 Q. Um-hm? 16 A. You know, I, you know, I met with Water 17 PACK on one occasion and updated them on the 18 process, so. 19 Q. And they were part of this proceeding in 20 I guess maybe a disjointed fashion? 21 A. They were certainly interested in what 22 was going on. So again, I attended one of their 23 annual meetings in, I don't remember exactly when 24 it was in this process, to provide them an update, 25 so we certainly weren't secretly meeting.</p>
<p style="text-align: right;">Page 106</p> <p>1 form did these conversations take to the extent 2 you had them? 3 MR. BULLER: Objection. Beyond the 4 scope. 5 MR. SCHWALB: Okay. 6 A. So again? Repeat the question. 7 BY MR. SCHWALB: 8 Q. Sorry. So we're talking about the 9 decision to permit the cities to draft version A. 10 A. Um-hm. 11 Q. And you referenced the fact that this is 12 a unique proceeding; is that correct? 13 A. I did. 14 Q. And that there was an offer made it 15 sounds like -- 16 A. Um-hm. 17 Q. -- from the cities to draft it. What was 18 the setting for that offer? Was it a meeting? 19 Was it e-mails? 20 MR. BULLER: Objection. Beyond the 21 scope. 22 A. As I recall it was at the end of one of 23 our meetings, face-to-face meetings, Mr. Traster 24 offered to do an initial draft. 25 BY MR. SCHWALB:</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Fair enough. And so this leads into 2 version B, I think you coined it, and version B 3 was finalized prior to the Greensburg meeting or? 4 A. Yes. 5 MR. BULLER: Objection. Beyond the 6 scope. 7 BY MR. SCHWALB: 8 Q. Okay. 9 A. Version B being -- 10 Q. The draft master order -- 11 A. -- the draft proposed master order. 12 Q. Correct. 13 A. We provided that to GMD and the public, 14 put it on our website on February 7, 2018, about 15 six weeks ahead of the public meeting. 16 Q. Okay. And did the draft proposed master 17 order serve as -- did you use it for the 18 Greensburg meeting? 19 MR. BULLER: Objection. Beyond the 20 scope. 21 MR. SCHWALB: Item C in the order for 22 discovery. 23 A. We provided at the annual meeting a 24 summary -- 25 BY MR. SCHWALB:</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 109</p> <p>1 Q. Not the annual meeting, the Greensburg 2 meeting. 3 A. Sorry. Yeah, I misspoke. At the public 4 meeting we provided a summary of the draft 5 proposed master order to the public. 6 Q. Okay. 7 A. To explain to them what this -- what was 8 being proposed, yes. 9 Q. All right. Can we jump into your slides 10 from -- from that meeting? 11 A. Sure. 12 Q. And I forget exactly what exhibit we had 13 those marked for. 14 MR. BULLER: Is that the entire set of 15 slides presented at the meeting or just an excerpt 16 selected by counsel? 17 MR. SCHWALB: It is an excerpt. It 18 appears in the administrative record at KDA 850. 19 MR. BULLER: And when you say it appears 20 in the administrative record, you mean the entire 21 slide show or just the excerpt? 22 MR. SCHWALB: Just the excerpts. 23 MR. BULLER: Let me interpose a running 24 objection to the use of all exhibits that are 25 excerpts and not complete copies of documents as</p>	<p style="text-align: right;">Page 111</p> <p>1 deposition, it would be helpful to have a copy. 2 MR. SCHWALB: Okay. Well, let's mark 3 those as Exhibit 10 then and it will just be the 4 first page, here. 5 MR. TRASTER: So 9 is what? 6 MR. SCHWALB: 9 is Mr. Barfield's version 7 that has all of the slides and No. 10 I guess 8 would be the version that Mr. Buller has objected 9 to that's marked as Depo Exhibit 16 by Water PACK 10 but for purposes of this depo for this deposition 11 would be marked as Exhibit 10. 12 MR. BULLER: And will you be using 13 Exhibit 10 during this deposition? Is that what 14 you're going to be discussing with Mr. Barfield 15 here? 16 MR. SCHWALB: Just that one slide, yes. 17 MR. BULLER: And just to clarify for the 18 record, I'm not objecting to Exhibit 10 for 19 purposes of this deposition. 20 MR. SCHWALB: Okay. 21 MR. BULLER: My objection is really just 22 I want to make sure that we're looking at the 23 documents as they exist in the administrative 24 record and not counsel's hand selected excerpts. 25 MR. SCHWALB: Fair enough. I will just</p>
<p style="text-align: right;">Page 110</p> <p>1 they exist in the administrative record. 2 MR. SCHWALB: All right. 3 MR. BULLER: If counsel will accept that 4 running objection I won't have to re-make it 5 whenever we refer to or were to use a document 6 excerpt. 7 MR. SCHWALB: Let's deal with it this 8 way. Would it be okay if we just marked his 9 presentation from that, from the Greensburg 10 meeting, as an exhibit? 11 MR. BULLER: That would be better, but 12 the objection also applies to other exhibits used 13 during this deposition that are excerpts and not 14 complete copies. 15 MR. SCHWALB: Fair enough. If we can get 16 that one marked as, I think as Exhibit 9. 17 (THEREUPON, the court reporter marked 18 Barfield Deposition Exhibit No 9 for 19 identification.) 20 THE WITNESS: Would you like me to have 21 copies made? 22 MR. SCHWALB: The whole presentation is 23 in the administrative record, I believe. 24 MR. BULLER: But to the extent you're 25 referring to portions of that slide show in this</p>	<p style="text-align: right;">Page 112</p> <p>1 represent that this is an accurate extract of Mr. 2 Barfield's presentation as it appears within the 3 administrative record and marked KDA 850. 4 THE REPORTER: Can we pause? 5 MR. SCHWALB: Sure. 6 (THEREUPON, the court reporter marked 7 Barfield Deposition Exhibit No 10 for 8 identification.) 9 MR. OLEEN: May I speak off the record. 10 (THEREUPON, an off the record discussion 11 was held.) 12 MR. BULLER: We want a copy of Exhibit 9, 13 a full copy. 14 MS. NAVINSKY-WENZL: We can work on that 15 over the lunch hour or next break. 16 MR. TRASTER: That's fine. I don't need 17 it today even, but it will come with the record. 18 MR. SCHWALB: Sorry. I was trying to 19 save some trees and be more sustainable. 20 THE WITNESS: Okay. 21 BY MR. SCHWALB: 22 Q. Okay. All right. So we're back on the 23 record. We were talking about the meeting in 24 Greensburg. Mr. Barfield, I'll refer you to the 25 slide in your presentation marked as KDA 850 and</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 113</p> <p>1 for purposes of the Deposition Exhibit 10. The 2 third bullet there refers, I'm sorry, the fourth 3 bullet refers to contingent approval of the change 4 applications does it not? 5 A. Yes, it does. 6 Q. It does not refer to a rejection does it? 7 A. It does not. This is -- this is sort of 8 my closing slide of the presentation that 9 basically informs the public of how we anticipated 10 moving forward. Earlier in the presentation I 11 make a statement that no decision has been made. 12 Worked hard to develop a set of terms that meets 13 the city needs and statutory requirements but -- 14 but so this was -- this was just a statement of 15 the anticipated process ahead, so. 16 Q. But the word rejection does not appear on 17 the slide? 18 A. That is true. 19 Q. Okay. You mentioned some earlier 20 statements that you made and I'm sorry, I can't 21 remember which one of these exhibits it refers to, 22 there's a transcript from -- from the Greensburg 23 meeting that I'd like to jump back to, I think it 24 was marked Depo Exhibit 17. Mr. Barfield's 25 jumping through the pages here. There it is. And</p>	<p style="text-align: right;">Page 115</p> <p>1 A. It is -- I have to -- not that I can 2 object here but it is a little difficult to get 3 the full context of what's going on here with 4 this. 5 BY MR. SCHWALB: 6 Q. Well, the first sentence says do you 7 agree with or concur with Mr. Meier's definition 8 of sustainability? 9 MR. BULLER: Objection. Asked and 10 answered. 11 A. So this is an unidentified speaker 12 raising a question speaking about sustainability. 13 I'm not sure the word sustainability appears in 14 any of our documents. 15 BY MR. SCHWALB: 16 Q. Okay. 17 A. I mean that was not the basis of, you 18 know, the ten- year rolling average limitation, 19 so. 20 Q. Okay. But the following sentence says we 21 have come to an agreement on what it means. Does 22 it not? 23 MR. BULLER: Objection. Lack of 24 foundation. Asked and answered. 25 A. So again, that are the -- that's the</p>
<p style="text-align: right;">Page 114</p> <p>1 which exhibit is that, Mr. Barfield? 2 A. 3. 3 Q. Exhibit 3. Okay. I'd like to draw your 4 attention to the first page of that. That refers 5 to -- and specifically the highlighted portion, 6 maybe even the sentence above that. That asks, 7 and I'm not sure who it was, it's labeled 8 unidentified speaker, it asks whether or not you 9 concurred with Mr. Meier's definition of 10 sustainability; is that correct? 11 A. It does. 12 Q. Okay. Whose Mr. Meier? 13 A. There's more than one Meier around. It's 14 probably Brian Meier with Burns and Mac. 15 Q. Okay. And then in the following sentence 16 it says that for purposes of this process we have 17 -- we have come to an agreement on what it means. 18 What's the "it" in that sentence? Is it 19 sustainability? 20 A. There's a lot of unintelligibles in my 21 articulation of my response. 22 MR. BULLER: And I'm going to interpose 23 an objection to the use of this partial 24 transcript. It really lacks foundation for use in 25 this line of questioning.</p>	<p style="text-align: right;">Page 116</p> <p>1 words on the page, here. I'm not quite sure 2 without more context what I was trying to 3 communicate here. 4 BY MR. SCHWALB: 5 Q. Okay. Was there any agreement on what 6 sustainability means with Burns and Mac? 7 A. No. Again, we did modeling work to 8 determine the long-term yield. 9 Q. Um-hm? 10 A. Which is of the area. 11 Q. So does yield equate to sustainability? 12 A. No. 13 Q. Okay. What does sustainability equate 14 to? 15 A. Well, sustainability means the use that 16 can be sustained indefinitely. 17 Q. The use sustained by whom? 18 A. Well, whatever water user you're 19 determining. 20 Q. The cities? 21 A. You're asking about a general definition 22 of what does sustainability mean, right? 23 Q. Within the context of this order. If 24 we're talking about sustainability, subject to his 25 objection, what does sustainability mean?</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 117</p> <p>1 A. The order doesn't talk about 2 sustainability, this question, or ask the 3 question. 4 Q. Okay. And do you have a personal 5 definition of sustainability? 6 MR. BULLER: Objection. Lack of 7 foundation. Calls for speculation. 8 MR. OLEEN: Objection. Outside the scope 9 of the deposition. 10 MR. BULLER: I join in that objection. 11 A. Well, sustainable use is that use that 12 can be sustained indefinitely. 13 MR. SCHWALB: All right. Could we take a 14 quick break. All right? Maybe ten minutes if 15 that works? 16 THE WITNESS: Do you want a lunch break? 17 It's ten to noon. 18 MR. BULLER: Yeah, I'd be fine with that. 19 I'm fine with working through lunch, I'm fine with 20 taking a lunch break. Whatever everybody else 21 wants to do is fine with me. Mr. Traster, just 22 for the record, is grasping his midsection. 23 MR. TRASTER: Let's take at least a short 24 lunch break. 25 MR. SCHWALB: Maybe 40 minutes?</p>	<p style="text-align: right;">Page 119</p> <p>1 engineering firms other than Burns and McDonnell 2 relating to the R9 ranch? 3 MR. BULLER: Same objection. And vague 4 and ambiguous. 5 A. And besides Doctor Keller's? 6 BY MR. SCHWALB: 7 Q. Correct. Any of the parties not -- 8 beyond those that you've already referred to. 9 MR. BULLER: Same objection. 10 A. So again, repeat the question just to 11 make sure. 12 BY MR. SCHWALB: 13 Q. Sorry. 14 A. No, that's all right. That's fine. 15 Q. So I asked you whether or not there were 16 other engineering firms -- 17 A. Um-hm. 18 Q. -- that might have been involved here. 19 Were there any? 20 MR. BULLER: Same objection. 21 A. Again, I'm not aware of it. 22 BY MR. SCHWALB: 23 Q. Okay. So there would not be any reports 24 to your knowledge, other than those provided by 25 Burns and McDonnell, relating to the change</p>
<p style="text-align: right;">Page 118</p> <p>1 Reconvene at 12:30? 2 MR. TRASTER: That'd be fine. Can we go 3 -- we can go off the record for this discussion. 4 (THEREUPON, an off the record discussion 5 was held.) 6 BY MR. SCHWALB: 7 Q. Are we back on the record? All right. I 8 want to come back to this notion of information 9 made available to you that was part of the 10 administrative record. You said earlier that the 11 ranch was -- was acquired, I believe in the early 12 1990's, was it not? 13 A. I believe 1995. 14 Q. Okay. So mid-'90s? 15 A. Right. 16 Q. All right. Do you know whether the 17 cities employed any engineers between acquisition 18 of the ranch and the initial change application to 19 assess how much water could be moved? 20 MR. BULLER: Objection. Beyond the 21 scope. 22 MR. OLEEN: I join that. 23 A. I don't have any knowledge. 24 BY MR. SCHWALB: 25 Q. Did you review any information from any</p>	<p style="text-align: right;">Page 120</p> <p>1 application? 2 MR. BULLER: Same objection. 3 A. Related to the changes or the ranch 4 itself? 5 BY MR. SCHWALB: 6 Q. The change applications as they relate to 7 the ranch. 8 A. Yeah. I'm not aware. I mean, there was 9 a reference, I mean one of, I don't remember if 10 it's Balleau or Keller, referenced some earlier 11 assessment of the yield of the ranch. 12 Q. Okay. 13 A. I can't remember who did that. 14 Q. Was that assessment provided to you? 15 A. Some summary of it was. I don't recall 16 beyond that, so. 17 Q. Okay. Does that summary appear in the 18 record? 19 A. Again, there's a reference to that work 20 and its conclusion. I don't know if -- I don't 21 recall the details of the assessment was in the 22 record. 23 Q. Okay. 24 A. I'm not sure. 25 Q. And did you -- so you would not have</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 121</p> <p>1 reviewed that work in connection with the master 2 order? 3 A. No. 4 MR. SCHWALB: Okay. I think I'm done. 5 THE WITNESS: All right. 6 MR. SCHWALB: Thank you. 7 MR. OLEEN: Off the record for a lunch 8 break. 9 (THEREUPON, a recess was taken.) 10 CROSS-EXAMINATION 11 BY MR. OLEEN: 12 Q. Okay. Go back on the record. Mr. 13 Barfield, we're back on the record after a lunch 14 break and you understand that you're still under 15 oath like you were earlier in the day of this 16 deposition? 17 A. I understand. 18 Q. I want to hand you what I will mark as 19 depo Exhibit 11. 20 (THEREUPON, the court reporter marked 21 Barfield Deposition Exhibit No 11 for 22 identification.) 23 BY MR. OLEEN: 24 Q. And Mr. Barfield, please take your time 25 to review the first couple pages of Depo Exhibit</p>	<p style="text-align: right;">Page 123</p> <p>1 it contains some references to DWR having had some 2 discussions with the cities about the proposed R9 3 Ranch change applications doesn't it? 4 A. It does, yes. 5 Q. In response to this letter, do you recall 6 either Mr. or Mrs. Wenstrom or anybody else with 7 Water PACK objecting to the meetings that were 8 referenced in here? 9 A. No, I don't recall any objection or -- of 10 theirs to the meetings, no. 11 Q. In response to this letter do you recall 12 them asking to be involved in future meetings? 13 A. No, they did not make such a request to 14 my recollection. 15 Q. Did they ask to be put on some sort of e- 16 mail list? 17 A. You know, I think they -- they wanted to 18 be informed, and as I reference in the letter this 19 is one reason we created the website. Their open 20 record request I think initiated this phase of 21 interest and so we built the website as a way to 22 keep -- keep them and other water users informed 23 of, you know, the most pertinent things going on, 24 so. 25 Q. I'm going to hand you another document</p>
<p style="text-align: right;">Page 122</p> <p>1 11 which appears to be a letter dated April 18, 2 2016, and let me know when you've had a chance to 3 review that, please. 4 A. Okay. I think I've reviewed it 5 sufficiently. 6 Q. What's the date of this letter and who 7 purported to sign it? 8 A. So the date is April 18th, 2016, it's 9 written by me to Richard and Jane Wenstrom who are 10 members of Water PACK but also neighbors to the 11 ranch. 12 Q. Does this -- well, do you recall sending 13 this letter to the Wenstroms? 14 A. I do. 15 Q. Does this letter include some 16 attachments? 17 A. Yes. It includes a letter of April 6th, 18 2016, to Mr. Traster that responds to one of our 19 meetings that we had and the issues raised. 20 Q. And does it also have an -- a water 21 transfer act procedure overview document at the 22 end? 23 A. It does. 24 Q. Okay. So this package of documents that 25 was sent to the Wenstroms by you in April of 2016,</p>	<p style="text-align: right;">Page 124</p> <p>1 which I would like to be marked as Deposition 2 Exhibit 12, please. 3 (THEREUPON, the court reporter marked 4 Barfield Deposition Exhibit No. 12 for 5 identification.) 6 MR. SCHWALB: And I'm sorry. Aaron, 7 before you continue, I just want to object to the 8 admission of this Exhibit 11 on the basis that 9 it's outside the scope of the discovery order. 10 MR. OLEEN: Okay. 11 MR. KITE: Just to clarify, this is 12, 12 the one you just handed me? 13 MR. OLEEN: Yes. We just talked about 11 14 which was April, the April 16, 2016, letter and 15 now a new one circulating has been marked as 16 Deposition Exhibit 12. And for the record I 17 believe it's relevant to Mr. Schwalb's line of 18 questioning about Water PACK's notice of this or 19 that with respect to this matter. 20 MR. TRASTER: I have a question about 12. 21 The first page is on Department of -- I'm -- but 22 my signature is on the back and I'm not sure 23 that -- 24 THE WITNESS: That doesn't sound right. 25 MR. TRASTER: I'm happy to speak for --</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 125</p> <p>1 MR. OLEEN: Okay. I see what happened. 2 MR. KITE: David, I thought you worked 3 for DWR. Isn't that right? 4 MR. OLEEN: Let's go off the record for a 5 minute. 6 (THEREUPON, an off the record discussion 7 was held.) 8 MR. OLEEN: Okay. So for the record, I 9 realized that what I had asked to be marked as 10 Deposition Exhibit 12, I don't think it has 11 actually been marked yet. 12 THE REPORTER: It does have a sticker on 13 it. 14 MR. OLEEN: Does it? Okay. Is not the 15 correct document that I wanted to mark, so we are 16 going to get that complete document corrected and 17 come back to it. In the meantime I'll ask you 18 some other questions, Mr. Barfield. 19 BY MR. OLEEN: 20 Q. Earlier Mr. Schwab asked you a line of 21 questioning about elected officials and what they 22 may have said to you regarding the cities' 23 proposed change -- changes regarding the R9 water 24 rights. Do you recall that line of questioning? 25 A. I do.</p>	<p style="text-align: right;">Page 127</p> <p>1 A. That is correct. 2 Q. Okay. And so if someone submits a change 3 application purportedly along -- let me rephrase. 4 If someone submits a change application to 5 change a water right, do you view it as DWR's job 6 to consider that application? 7 A. Certainly. Yes. 8 Q. And render some decision about it? 9 A. Yes. 10 Q. You -- you -- isn't it true that DWL 11 processes change applications all the time? 12 A. Yes. 13 Q. Has there ever been a set of change 14 application requests as extensive or complex as 15 the ones that the cities requested regarding the 16 R9 Ranch to your experience here, or knowledge? 17 A. Well, not in my tenure as chief engineer 18 that I can think of. 19 MR. OLEEN: Okay. Now back to -- I guess 20 I'm not -- I'm probably not allowed to delete a 21 deposition exhibit so we will -- I would ask that 22 this be marked as Deposition Exhibit 13, please. 23 MR. BULLER: I think you can withdraw and 24 replace. 25 MR. KITE: You can withdraw it.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. To your recollection were you ever told 2 by any state elected official to reach a 3 particular decision with respect to the cities' 4 pending change application regarding the R9 water 5 rights? 6 A. I was not. 7 Q. In your opinion are any of the 8 conclusions that you reached -- any of the 9 findings or conclusions that you put in the final 10 issued master order, were they impacted as far as 11 content by any sort of political pressure? 12 A. They were not. 13 Q. But the timing was certainly something 14 that was encouraged to you as far as something 15 that needed to progress, correct? 16 A. That is correct. 17 Q. You also earlier made a reference to 18 statute 82a-708b. Do you recall that? 19 A. Um. 20 Q. If not, that's -- 21 A. Well, I mean, we've talked about the 22 statute multiple times, so. 23 Q. Okay. 708b, statute 708b, that is the 24 statute that primarily governs chain (sic) 25 applications -- change applications, correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. BULLER: Just withdraw and replace 2 it. 3 MR. OLEEN: I want to withdraw what you 4 had originally marked as Deposition Exhibit 12 and 5 ask that you re-mark this document instead. 6 MR. KITE: No objection. 7 MR. TRASTER: No objection. 8 (THEREUPON, the court reporter marked 9 Barfield Deposition Exhibit No 12 was re-marked 10 for identification.) 11 BY MR. OLEEN: 12 Q. Regarding what -- regarding the replaced 13 document that's been marked as Deposition Exhibit 14 12, Mr. Barfield, if you'd please review that 15 letter and let me know when you're done. 16 A. Okay. 17 Q. Mr. Barfield, what is the date of this 18 letter and who apparently signed it? 19 A. Well, it's dated February 19, 2018, and I 20 signed it. 21 Q. And is this a letter that you wrote or 22 approved? 23 A. It's a letter I wrote and approved. 24 Q. And to whom did you send this letter? 25 A. It's sent to GMD 5 and Water PACK.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 129</p> <p>1 Q. And did I ask you the date? 2 A. You did. 3 Q. Okay. Would you please read for the 4 record the first two sentences of the first 5 paragraph of this letter? 6 A. All right. As you're aware we have been 7 in discussions with the cities of Russell, Hays 8 and Russell, regarding their proposed change 9 applications submitted in anticipation of their 10 desired water transfer from the R9 Ranch for 11 municipal use in their region. Our discussions 12 will culminate in a DWR -- in DWR completing a 13 draft master order and draft individual approvals 14 for the proposed changes, which final drafts will 15 be provided to GMD 5 for review and input and 16 posting on our website for the general public. 17 Q. Thank you. In response to this letter 18 did you ever hear from Water PACK, some Water PACK 19 representative complaining about these referenced 20 discussions for the referenced draft documents in 21 this first paragraph? 22 A. Not to my recollection. 23 Q. Did they ever ask -- did anyone from 24 Water PACK, in apparent response to this letter, 25 ever ask to be involved in these referenced</p>	<p style="text-align: right;">Page 131</p> <p>1 if so, how or how not? 2 A. Well, this is the letter that accompanied 3 the flash drive that I spoke about, the USB drive 4 I spoke about. 5 Q. Okay. And this USB drive contained what 6 again? 7 A. Well, as the letter indicated, it says 8 backup files. Again, it's the files that are 9 necessary to run the model scenarios that were 10 used, that the city did for their modeling report. 11 Q. And this letter, does it indicate whether 12 a copy of the USB drive was sent to Richard 13 Wenstrom with Water PACK or not? 14 A. It does say that, that it is, was. 15 Q. Earlier there was -- earlier this morning 16 I believe there was a discussion about some 17 corrections to the model that's referenced in this 18 letter. Do you recall that line of discussion? 19 A. I do. 20 Q. So this document here, Deposition Exhibit 21 13, which version of the -- well, let me make sure 22 I understand it correctly. This letter refers to 23 a model that was created by whom? 24 A. By Burns and McDonnell -- well, right. 25 Burns and McDonnell based on GMD 5's model.</p>
<p style="text-align: right;">Page 130</p> <p>1 discussions or drafts? 2 MR. KITE: Object as outside the scope. 3 BY MR. TRASTER: 4 Q. You may answer. 5 A. Not to my recollection. 6 Q. I will now hand you what I will ask be 7 marked as Deposition Exhibit 13. 8 (THEREUPON, the court reporter marked 9 Barfield Deposition Exhibit No 13 for 10 identification.) 11 BY MR. SCHWALB: 12 Q. Mr. Barfield, if you would please review 13 what's been marked as Deposition Exhibit 13 and 14 let me know when you're done. 15 A. Okay. 16 Q. Do you recall -- did you send out this 17 letter, Mr. Barfield? 18 A. Yes, I did. 19 Q. Earlier this morning there was a 20 discussion about sending some USB drives 21 containing some modeling files. Do you recall 22 that line of questioning? 23 A. I do. 24 Q. Given your recollection of that line of 25 questioning, is this letter related to that? And</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Okay. And so at some point Burns and 2 McDonnell made some corrections to the model; is 3 that right? 4 A. They did, later. 5 Q. After -- after this letter was sent? 6 A. After the letter was sent. After the 7 public comment was reviewed, after the error was 8 found by Balleau Groundwater. 9 Q. Okay. And I thought you said earlier 10 something about the corrected model favored the 11 cities. Did you say something like that? 12 A. Yes, I did say something like that. 13 Q. Can you explain what you meant by that? 14 A. So the fix of the model produced outputs, 15 results, that had reduced impacts from the change. 16 Let me try again. 17 I said they favored the city, I meant they 18 supported the cities' contention that the limits 19 that they found in their original work were 20 reasonable. Is that any -- any clearer? 21 Q. I think so. 22 A. The city did not -- and again there's a 23 -- I could go to the master order. There is a 24 discussion about this in the master order that 25 maybe is more thoughtful than my articulation</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 133</p> <p>1 here. It could have supported a slightly higher 2 limits if the city wanted to go back but the city 3 didn't change their limits based on the modeling 4 work, so it supported the cities' contention that 5 the results were reasonable. If you want a clear 6 articulation of that I can find the paragraph in 7 the order that says that better than I just did. 8 Q. That's not necessary. I will hand you 9 what I would now like marked as Deposition Exhibit 10 14, please. 11 A. I would note, I'm sorry, there's a word, 12 evolution in this letter here that I think should 13 be evaluation but it's probably not important. 14 Q. And which letter are you referring to? 15 Which deposition exhibit? 16 A. Exhibit 13, the first sentence says per 17 your request, please find enclosed two copies of a 18 USB drive each containing the MODFLOW modeling 19 files associated with the R9 Ranch evolution 20 regarding the pending application. I think it 21 should be evaluation. 22 (THEREUPON, the court reporter marked 23 Barfield Deposition Exhibit No 14 for 24 identification.) 25 BY MR. OLEEN:</p>	<p style="text-align: right;">Page 135</p> <p>1 were you open to changing any terms in that draft 2 proposed master order? 3 A. Well, that's what the review process is 4 about, was to provide GMD 5 specifically, as well 5 as the public, an opportunity to review and 6 comment on the sufficiency of that proposed draft 7 master order. 8 Q. At the time you transmitted the proposed 9 draft master order that this was a cover letter 10 for, you did your -- well, did you think it 11 complied with applicable laws? 12 A. Yes, I did. 13 Q. Do you think it would be reasonable to 14 transmit something otherwise? 15 A. I do not think it would be reasonable to 16 transmit something otherwise. 17 Q. I'll hand you what I will ask be marked 18 as Deposition Exhibit 15. 19 (THEREUPON, the court reporter marked 20 Barfield Deposition Exhibit No 15 for 21 identification.) 22 BY MR. TRASTER: 23 Q. Please briefly review that document, Mr. 24 Barfield, and let me know when you're done. 25 MR. TRASTER: So this is?</p>
<p style="text-align: right;">Page 134</p> <p>1 Q. Mr. Barfield, please review what has been 2 marked as Deposition Exhibit 14 and let me know 3 when you're done. 4 A. Okay. 5 Q. Tell me what this document is, Mr. 6 Barfield, who signed it, when it was sent out and 7 to whom it was sent? 8 A. All right. It was a letter by me dated 9 May 4, 2018, to GMD 5 and cc'd to Water PACK and 10 city officials essentially transmitting the draft 11 proposed master order and individual approvals 12 related to the Hays-Russell R9 Ranch change 13 applications. 14 Q. So is this the transmittal letter that 15 you sent out that enclosed what we've referred to 16 as the, quote, draft proposed master order? 17 A. It is, yes. 18 Q. And would you read to me the last 19 sentence of the third paragraph of this Deposition 20 Exhibit 14? 21 A. Nevertheless, these are only draft 22 proposed documents and I have made no official 23 decision about any of these issues. 24 Q. At the time you disseminated the draft 25 proposed master order that this letter enclosed,</p>	<p style="text-align: right;">Page 136</p> <p>1 MR. OLEEN: 15. 2 MR. TRASTER: 15? 3 A. Okay. 4 BY MR. OLEEN: 5 Q. So as a result of -- well, let me 6 rephrase. The draft proposed master order was 7 transmitted at least to the entities listed on 8 Deposition Exhibit 14, it was transmitted on May 9 4th, 2018, correct? 10 A. Yes. And then posted on our website as 11 well. 12 Q. Okay. And after that there was this 13 public informational meeting that we talked about 14 this morning, correct? 15 A. That's correct. 16 Q. And at that public informational meeting 17 you essentially heard input on the cities' 18 requested changes and the draft proposed master 19 order; is that right? 20 A. That's correct. And then a lot of 21 written comments following, during the period 22 assigned for comments to be received. 23 Q. As a result of the comments either oral 24 or written that you received, after disseminating 25 the draft proposed master order, did you make any</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 137</p> <p>1 changes that -- that were shown in the final 2 master order that you issued on or about March 3 27th of 2019? 4 A. Yes. The third to the last bullet is a 5 list of, you know, key revisions from the proposed 6 draft master order to the contingent approval. 7 Q. So this Deposition Exhibit 15, what is 8 this document, I should ask? 9 A. Yeah. So this is a summary of the 10 contingent approval, somewhat similar to the 11 version that I provided at the public meeting, 12 here is sort of an update that -- that this is 13 the document we put on our website at the time of 14 the contingent approval just to update the public 15 in terms of what had happened and what -- what 16 that approval meant and where the process was 17 going from there. 18 Q. And so does the third bullet point from 19 the bottom of Deposition Exhibit 15, does that 20 summarize key revisions that were made as a result 21 of the public input that you had received? 22 A. Yeah. That's its intent. 23 Q. And what were some of those key 24 revisions? 25 A. So the ten-year rolling aggregate</p>	<p style="text-align: right;">Page 139</p> <p>1 opportunity for -- an expanded opportunity for 2 comments from -- from the public. You know, we do 3 provide notice to the neighborhood, you know, to 4 neighboring water rights and obviously to GMD to 5 get their comments, as is normal part of our 6 process. So this is just an expanded opportunity 7 to understand this complex set of change 8 applications and, you know, some complexity in 9 terms of some of the unique terms and conditions 10 so they could provide meaningful feedback. 11 Q. Would you say that you were open to 12 changing any provisions of the draft proposed 13 master order, depending on what information you 14 received as a result of the public informational 15 meeting process? 16 A. Any is a pretty strong word there. You 17 know, we had done a lot of work on the document 18 and I mean, I was open to input and carefully 19 evaluated that input to ensure that the pack sent 20 still complied with state law and requirements. 21 Q. And the final master order that was 22 issued around March 27, 2019, how much involvement 23 -- well, let me rephrase that. 24 After the public informational meeting, who 25 -- who drafted the -- the changes to the master</p>
<p style="text-align: right;">Page 138</p> <p>1 limitation, there was a provision in the draft 2 proposed master order that would allow that to be 3 dropped in the future under certain conditions. 4 That was not part of the approval I did in March 5 of 2019. I added a provision that required a 6 public hearing before there could be any increase 7 to the ten-year rolling aggregate limitation. 8 That was not explicitly required in the draft 9 proposed. We added a water quality component to 10 the cities' monitoring plan and then we corrected 11 errors in the cities' groundwater modeling that 12 were identified in the process. 13 Q. This public informational meeting, is it 14 typical to hold a public informational meeting 15 before DWR approves any change application? 16 A. It is not typical, but these were not 17 typical applications, as we already said. 18 Q. So is it your understanding that DWR 19 would have just issued the final master order 20 without holding such a public information meeting? 21 A. There's no explicit requirement. 22 Q. And so why -- why did you want to hold 23 this public information meeting? 24 A. Well, again, to ensure that what we were 25 proposing, you know, just to provide an</p>	<p style="text-align: right;">Page 140</p> <p>1 order that -- these changes that you indicated 2 followed the public informational meeting, how 3 were they drafted? How and who drafted those? 4 A. Well again, as I referenced earlier 5 today, we took control of the drafting process 6 well before this, but much of the material added 7 to the order was added by myself that included an 8 overview of the public review process, the places 9 and the input we got from that process generally 10 in the review of the specific pertinent comments 11 that were provided, and then several sections that 12 provide our evaluation, my evaluation, of that. 13 So virtually all of the significant additions to 14 the order that were done were authored by myself. 15 Q. Have you read every word of the -- of the 16 issued master order? 17 A. I have. Of the master order itself 18 multiple times. I have not read every word of the 19 attached approval documents. 20 Q. Did you rely on staff to draft some of 21 those attached approval documents? 22 A. The attorney was largely responsible for 23 implementing the individual approval documents 24 that were attached to the master order. But yes, 25 I take full responsibility for the master order.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 141</p> <p>1 Q. To this day do you believe that it's 2 correctly issued, as it was issued on -- on or 3 about March 27 of 2019? 4 A. I do. 5 Q. This entire application consideration 6 process, it's gone on since some point in 2015, 7 correct? 8 A. June of 2015, yes. 9 Q. So, what, about four years or so, say 10 it's about four years from the time that the 11 applications were submitted to the time the master 12 order was -- the final master order was issued? 13 A. Most of that, yes. 14 Q. Okay. And so a lot of documents can be 15 generated in that amount of time; is that right? 16 A. Certainly. 17 Q. And were a lot of documents generated as 18 a result of this process? 19 A. They were. 20 Q. Do you believe that the documents 21 contained in the agency record include the salient 22 -- let me rephrase that. 23 Do you believe that the documents currently 24 in the filed agency record are the primary 25 documents upon which your decision was based, the</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Mr. Barfield, my name is David Traster. 2 I'm a lawyer with Foulston Siefkin. I represent 3 the City of Hays. Daniel Buller is here with me, 4 he also represents the City of Hays. As you know, 5 Ken Cole represents the City of Russell, and the 6 city manager for the city of Russell, Jon Quinday, 7 is here as well representing Russell. 8 I've handed you what's been marked as Exhibit 9 16 and I'll represent to you that this is a 10 document that is included in the agency record and 11 it is a letter dated -- undated but received by 12 DWR, according to this stamp, on July 16th of 2018 13 signed by Richard Wenstrom. Do you know Mr. 14 Wenstrom? 15 A. Yes, I do. 16 Q. He -- now, you received a number of 17 written and oral comments at the Greensburg 18 meeting and thereafter, correct? 19 A. Correct. 20 Q. Do you recognize this as being one of the 21 written comments that you received? 22 A. Yes. And it is dated July 11. There is 23 a date there. 24 Q. It is. Okay. Mr. Wenstrom has a PE 25 after his name. You're aware that he's an</p>
<p style="text-align: right;">Page 142</p> <p>1 decisions that you made in this master order? 2 MR. KITE: Object. Outside the scope. 3 BY MR. TRASTER: 4 Q. You may answer. 5 A. Well, that was certainly the intent was 6 to build -- you know, that was our intent was to 7 always provide that, yes. 8 MR. OLEEN: I don't have any further 9 questions. 10 MR. TRASTER: I have a few. So what 11 exhibit number are we on? 12 MR. OLEEN: 16. 13 MR. KITE: 16 is the next exhibit, 14 correct? 15 MR. OLEEN: That's right. 16 will be the 16 next. 17 MR. TRASTER: Will you mark this 16? 18 It's just one, yeah. 19 THE REPORTER: The top? 20 MR. TRASTER: Yeah. I guess we can ... 21 (THEREUPON, the court reporter marked 22 Barfield Deposition Exhibit No 16 for 23 identification.) 24 CROSS-EXAMINATION 25 BY MR. TRASTER:</p>	<p style="text-align: right;">Page 144</p> <p>1 engineer? 2 A. I am, yes. 3 Q. You've had dealings with him over the 4 years on water rights issues on his farm? Or not? 5 A. I actually first came to know him, he had 6 a firm called Pumping Plant Testing that we used 7 to do field inspections of water rights under a 8 program that I managed on behalf of the division, 9 so I got acquainted with him back in 1985, I 10 believe. 11 Q. Okay. 12 A. I don't know if I've had any specific 13 dealings with his water rights. 14 Q. But he's also a member of Water PACK and 15 he's been -- has he been on the board at the GMD, 16 if you know? 17 A. Not to my knowledge. 18 Q. Okay. You've had but -- he wrote you a 19 two and a quarter, two and a third page letter 20 expressing concern about the master order, the 21 draft master order did he not? 22 A. Yes, he did. 23 Q. And during your direct examination you 24 were asked about an engineering report for the 25 City of Hays done by the city -- for the city and</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 145</p> <p>1 you said that there was a summary and I'm -- my 2 guess is, is that that -- that summary that you 3 were asked about is in the middle of the second 4 page. But that's my question, is this the summary 5 that you were referring to? 6 A. Well, I didn't refer to it. I was trying 7 to be responsive to a question and I was 8 speculating a bit. 9 Q. Okay. I understood you to say that 10 somebody raised the issue and you thought maybe 11 there was a summary and I'm just asking you if 12 this is the summary that -- do you recall 13 receiving or reading this -- that second -- that 14 second paragraph on the second page of the letter 15 where it talks about Bob Vincent's report? 16 A. Correct. Yeah. This was my 17 recollection. This might not be the only 18 manifestation of it, but yes. 19 Q. Okay. 20 A. I think that's correct. 21 Q. So did you have a copy of Mr. Vincent's 22 report? 23 A. Not to my knowledge. 24 Q. Well, when you were considering this 25 master order, it may be someplace buried in files,</p>	<p style="text-align: right;">Page 147</p> <p>1 you. 2 THE WITNESS: The draft proposed master 3 order. 4 BY MR. TRASTER: 5 Q. After you received all the public 6 comments you closed the record for -- you closed 7 the record and said okay, I'm not taking any more 8 comments. Now I'm going to think about this and 9 I'm going to review all this. Recall that? 10 A. That is correct. I did. 11 Q. In the process of thinking about all of 12 that and reviewing Deposition Exhibit 16 and other 13 documents, the Keller report and other documents, 14 did you go back and look at the initial order that 15 I sent to you back in 2016 or '17? 16 A. No, I did not. 17 Q. Thank you. The changes that were made to 18 the -- so as I understand it, Berns and Mac 19 prepared a -- the model, it was sent to GMD and 20 Water PACK for review, both the report and the 21 actual model files. Mr. Balleau identified some 22 minor problems with the -- with the model that 23 Burns and Mac had reconstructed, I don't know 24 exactly the right word to use, but had -- that's 25 reflected in the report. Burns and Mac then</p>
<p style="text-align: right;">Page 146</p> <p>1 but my question really is when you were deciding 2 whether or not to issue, finally issue this master 3 order, did you review Bob Vincent's 1984 or '94 4 report, if you recall? 5 A. I don't recall having a copy to review. 6 Q. Okay. There were some questions about 7 the draft initial order that was prepared by my 8 law firm and sent to you. Was it -- was it 9 considered -- did you consider it and use it as a 10 basis for your -- the action of approving the 11 master order? 12 A. Repeat that again. 13 Q. The question is whether the document that 14 was sent to you in 2016 or '17, that initial 15 draft? 16 A. Um-hm. 17 Q. Was that something you considered and 18 used as a basis for the decision to issue the 19 master order? 20 A. Well, it was a starting point that was 21 used for drafting the master order. 22 Q. When you were -- 23 A. The draft proposed master order. 24 Q. When you were -- 25 THE REPORTER: Hang on. I didn't hear</p>	<p style="text-align: right;">Page 148</p> <p>1 corrected those errors. That resulted, and I'm 2 asking, that resulted in a little more water maybe 3 being available to the cities. Are the changes 4 that were made, you understood -- you understood 5 what -- let me back up. 6 You've dealt with models quite a bit as a 7 chief engineer, correct? 8 A. Yes, I have. 9 Q. What models are the -- what are the 10 significant models you've had to deal with? 11 A. Well, yeah. I've had quite a bit of 12 experience not in developing models, but in using 13 models to make water management decisions. The 14 first significant one was in 2001-2002 where I was 15 part of a modeling committee for the Republican 16 River Compact Administration as we were working to 17 settle our dispute with Nebraska and part of that 18 was the states collaboratively building a 19 groundwater model to quantify depletions to stream 20 flow from groundwater pumping. I was on that 21 modeling committee and worked with our modeling 22 experts and our data experts to make it something 23 that was credible and usable and worked for 24 Kansas. 25 Q. Let me ask you, I don't want to -- I want</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 149</p> <p>1 to get your answer. Did Nebraska think it was 2 usable and workable for them too? 3 A. All three states, all three states hired 4 expert modelers and data experts to fight one 5 another, and when we went to settle the lawsuit we 6 put them -- put us all in a room and said make 7 one model that's going to work for us and so 8 that's what we did and I was a part of that 9 process. 10 Q. Okay. 11 A. And actually from that collaborative 12 model development process, I sort of spearheaded 13 bringing those concepts to our intrastate model 14 development, and that actually began with the Mid 15 Ark model that was a precursor to the GMD 5 model, 16 so we formed a modeling committee and had not only 17 a committee, as the model was being developed, 18 comment on it and make it a better model including 19 a peer review modeler, Steve Larson, our expert in 20 the interstate litigations both the Republican and 21 the Ark River, was on that committee as well. 22 Q. And Steve Larson is with? 23 A. He's with a firm called Papadopoulos and 24 Associates but he's -- he's the state of Kansas 25 sort of expert in these interstate conflicts in</p>	<p style="text-align: right;">Page 151</p> <p>1 to our resource problems so Sam -- Doctor Perkins 2 is the one that's actually running the model. 3 Q. Other than it takes a lot of time and 4 effort that you don't have, but I mean isn't it 5 true that somebody -- that it takes a particular 6 and significant training and understanding to 7 actually develop those -- a model from -- from 8 either a starting point with somebody else's or 9 from ground up? That would be fair wouldn't it? 10 A. Yes. 11 Q. Are you qualified to do that? 12 A. To build a groundwater model? 13 Q. Right. 14 A. No. 15 Q. Okay. So are the changes that were made 16 to the Burns and Mac model adequately documented 17 in the report so that you as a consumer of 18 groundwater models can understand what happened 19 and what changes were made? 20 A. I believe so. 21 Q. Okay. 22 A. Again, you'd have to have some modeling 23 expertise and background. 24 Q. To? 25 A. To understand it. I mean it's -- the</p>
<p style="text-align: right;">Page 150</p> <p>1 both cases. I've also worked with -- we have an 2 expert modeler on staff, Dr. Sam Perkins, and I've 3 worked with him to take two USGS models, one of 4 the Ozark aquifer and one of the lower Ark, and 5 use it to determine the safe yields of those 6 particular aquifers. I've worked with GMD 4 in 7 northwest Kansas, GMD 4 on adapting the Republican 8 River model to help guide water management 9 decisions such as local enhanced management areas 10 in that GMD. You know, I've worked with GMD 3 11 has a groundwater model and applications of that 12 model to -- to water management decisions in GMD 13 3. So yes, I've had extensive experience with 14 using groundwater models. 15 Q. So you've hired Mr. Perkins, Doctor 16 Perkins, was he on staff when you became chief 17 engineer? 18 A. He -- he joined staff since I became 19 chief engineer and he remains on staff. 20 Q. So if you know so much about models, why 21 did you hire somebody else? I mean, aren't you an 22 expert modeler? 23 A. I'm not an expert at developing 24 groundwater models. I consider myself more an 25 expert in the application of groundwater modeling</p>	<p style="text-align: right;">Page 152</p> <p>1 layperson is not going to understand it. 2 Q. They're not going to understand the 3 report or they're not going to understand how the 4 model got -- 5 A. Well, the changes. I mean, you know. 6 Q. Okay. 7 A. Again, they were not significant changes 8 really. The foundation that the master order and 9 the ten-year limitation is built on and was the -- 10 remains as it was, in essence. 11 Q. Are you aware of any documents that you 12 considered and used as a basis for your decision 13 to issue the master order that are not in the 14 agency record? 15 MR. KITE: Object to form. Outside the 16 scope. 17 A. So as I said before in response to Mr. 18 Oleen's question, you know, we did our best to 19 create a complete record of what we relied upon 20 and what I relied upon to make this decision so 21 again, that doesn't mean there's not a document 22 out there. 23 BY MR. TRASTER: 24 Q. Right. 25 A. That got overlooked.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 153</p> <p>1 Q. Well, the definition of the agency record 2 is narrow and it's -- you have to actually have 3 considered it and relied on it. And are the 4 documents that you actually relied on in the 5 record as far as you know? 6 A. To the best of my knowledge. 7 Q. Have we asked you, has anybody today 8 asked you any questions about documents other than 9 the draft initial order that I prepared and sent 10 to you, and this -- this -- there were questions 11 about the Hays engineer who evaluated the area 12 back in '94 or -5. Other than those two 13 documents, have you been asked about any documents 14 that are not in the record that you recall? I 15 don't know of any other documents that you were 16 asked about other than those two. 17 A. At today's deposition? 18 Q. At today's deposition. 19 A. That aren't in the record? 20 Q. This isn't a trick question. 21 A. That's not in the record. Yeah. 22 Q. Yeah. Just make sure that if there's 23 something that you've been asked about that oh, 24 yeah, I remember that document now. 25 A. No. Nothing's been triggered here like</p>	<p style="text-align: right;">Page 155</p> <p>1 issuance of the -- of the master order. Would 2 that be correct? 3 A. Sounds right. 4 Q. Okay. And one of the things that 5 interests me is the last paragraph, first sentence 6 of the last paragraph. Could you read that for 7 the record, please? 8 A. The first sentence of the last paragraph? 9 Q. Yes. 10 A. We look forward to working with you on 11 the significant set of applications and the 12 related draft proposed orders. 13 Q. And when you referred to you, who are you 14 referring to? 15 A. Well, GMD 5 specifically. 16 Q. Right. And a copy of this letter, it 17 seems -- it seems a copy of the letter was sent 18 to Water PACK as well. Would that be true? 19 A. Yes. 20 Q. And by extension were you offering the 21 same invitation to Water PACK? 22 MR. KITE: Object to form. Speculation. 23 Assumes facts not in evidence. 24 MR. TRASTER: Is somebody saying 25 something?</p>
<p style="text-align: right;">Page 154</p> <p>1 oh, I forgot to include this. 2 Q. Okay. 3 A. If that's your question. 4 Q. I'm just trying to -- 5 A. Okay. 6 Q. We want to make sure that the record is 7 complete. 8 A. Right. 9 Q. And that the documents that you've 10 referred to that aren't in the record, aren't -- 11 by definition shouldn't have been in the record, 12 so. All right. 13 MR. TRASTER: No further questions. 14 Okay. 15 MR. COLE: I may have just one, and I 16 know you've heard that before. 17 CROSS-EXAMINATION 18 BY MR. COLE: 19 Q. But I was interested in Deposition 14 20 which is your letter to Big Bend Groundwater 21 Management District No. 5. You have that in front 22 of you? 23 A. Yes, I do. 24 Q. And that's dated May 4, 2018, which was 25 -- is approximately 11 months prior to the</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. KITE: I am. I'm just making 2 objections for the record. 3 MR. TRASTER: I'm not hearing them. 4 MR. KITE: Okay. 5 THE WITNESS: Did you hear him? Talking 6 to the court reporter. She apparently got it. 7 A. Well, certainly the GMD has a unique role 8 in these matters, so in particular it was -- that 9 statement was targeted to GMD 5 in the role they'd 10 been given, but certainly I also welcomed input 11 from Water PACK. 12 BY MR. COLE: 13 Q. So would it be reasonable to say that you 14 were not only open to input, you were inviting 15 input on the matter? 16 A. Yeah. Again the public meetings was -- 17 was a even greater, I think, expression of that. 18 Q. And during those 11 months that passed, 19 was there any information provided, by either of 20 these entities, to you with respect to the 21 issuance of the final order that you didn't 22 consider and resolve in making your final order? 23 A. Well, carefully -- I read all the input 24 that I received and considered it all as 25 appropriate.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 157</p> <p>1 MR. COLE: Okay. Thank you. No other 2 questions. 3 MR. BULLER: That was eleven questions. 4 Tenfold. That's not bad. 5 MR. SCHWALB: But who's counting. Could 6 we take a break? 7 THE WITNESS: Yeah. 8 MR. SCHWALB: All right. 9 (THEREUPON, a recess was taken.) 10 REDIRECT-EXAMINATION 11 BY MR. SCHWALB: 12 Q. All right. We're back on the record. 13 Mr. Barfield, earlier we -- Mr. Oleen was asking 14 you about some of these exhibits, in particular 15 Exhibit 12. Do you recall that line of 16 questioning? 17 A. Yes. 18 Q. Okay. And then in the discussion of item 19 12, I think Mr. Oleen focused on this line about 20 awareness of discussions with the cities of Hays 21 and Russell on line one. Do you recall that -- 22 A. Yes. 23 Q. -- conversation? 24 A. Yes. 25 Q. Okay. In terms of discussions with the</p>	<p style="text-align: right;">Page 159</p> <p>1 these letters -- to this letter in response to 2 this letter. 3 MR. SCHWALB: Fair enough. 4 MR. BULLER: I may be misremembering 5 that, but that's my recollection of his testimony. 6 MR. SCHWALB: You can go ahead. 7 A. So what was the question again? Sorry. 8 I got sidetracked. 9 MR. SCHWALB: So did I. Would you mind 10 reading back what I asked? 11 THE REPORTER: Question: Okay. What 12 about at the Greensburg meeting? Did anyone 13 complain about the meeting -- the prior meetings? 14 MR. SCHWALB: Okay. 15 BY MR. SCHWALB: 16 Q. Within the context of the Greensburg 17 meeting, do you recall anyone objecting to the 18 process surrounding the change application? 19 A. I don't recall anybody complaining about 20 the process. 21 Q. Okay. Were there representatives of 22 Water PACK at that meeting? 23 A. Certainly. 24 Q. Okay. Do you recall who they were? 25 A. Well, it's listed in the master order if</p>
<p style="text-align: right;">Page 158</p> <p>1 cities of Hays and Russell in particular, I think 2 you also testified that those meetings were not 3 posted on the DWR website; is that correct? 4 Earlier in the day? 5 A. Yeah. That's correct. 6 Q. Okay. You also testified that there was 7 no objection to any of those meetings? 8 A. Yeah. Nobody ever objected in fact that 9 we were meeting or asked explicitly to be a part 10 of it. The only exception to that that I did 11 have two gentlemen from Water PACK that showed up 12 at a particular meeting. 13 Q. Okay. 14 A. Fairly early in the process. 15 Q. Do you recall who they were? 16 A. I don't recall the names -- 17 Q. Okay. 18 A. -- of the individuals. 19 Q. Okay. What about at the Greensburg 20 meeting? Did anyone complain about the meeting -- 21 the prior meetings? 22 MR. BULLER: And if I may interpose an 23 objection here. My recollection of his testimony 24 is not that he testified that nobody objected to 25 the meetings, it was whether anybody objected to</p>	<p style="text-align: right;">Page 160</p> <p>1 you want me to look at that. 2 Q. Sure. Go ahead. 3 A. I think I can find that fairly 4 efficiently. Let's see, at the public meeting 5 oral public comments were received from the 6 following: Richard Wenstrom, Kent Wetzel, Pat 7 Wetzel, John Janssen, Pat Janssen, George Hetzel 8 and Kim Gamble. 9 Q. Okay. Let's unpack those just a little 10 bit. What's Richard's role with Water PACK? 11 A. He's -- I think he's on the board. I 12 think he's been president. He may be the current 13 -- no, he's not the current president. He's on 14 the -- I think he's on the board. 15 Q. Okay. 16 A. He's one of the principals. 17 Q. Okay. And does he own water rights in 18 the vicinity of the ranch? 19 A. He does, yes. 20 Q. Does he own senior water rights? 21 A. He does. 22 Q. How about junior water rights? 23 A. I'm not certain of the suite of them but 24 he does have water rights that are adjacent to the 25 ranch, to the southeast.</p>



DAVID BARFIELD, P.E.

Page 161

1 **Q. Is there any specific analysis of the**
 2 **impact of the change applications on his water**
 3 **rights, junior or senior?**
 4 A. Well, again, the modeling output shows
 5 the effect of the change on the whole area
 6 including, I mean he's some of those dots that are
 7 on the southeast side.
 8 **Q. Any specific findings on a well-by-well**
 9 **basis for his water rights?**
 10 MR. BULLER: Asked and answered.
 11 A. So, well, the report doesn't cite the
 12 effect that this particular water right, according
 13 to Figure 6 of the model run is Y feet, but the
 14 map shows the effect on the neighbor water rights.
 15 BY MR. SCHWALB:
 16 **Q. Okay. Let's stick with other Water PACK**
 17 **members. You mentioned the Wetzels?**
 18 THE REPORTER: Can I get the spelling on
 19 that name?
 20 MR. SCHWALB: W-E-T-Z-E-L, I believe.
 21 MR. TRASTER: Say it again?
 22 MR. SCHWALB: W-E-T-Z-E-L.
 23 MR. TRASTER: Thank you.
 24 BY MR. SCHWALB:
 25 **Q. Do they own water rights adjacent to the**

Page 162

1 **ranch?**
 2 A. I --
 3 MR. BULLER: I'm going to interpose an
 4 objection on the basis of vagueness and the fact
 5 that -- and adjoining or adjacent is a legal term
 6 so calls for a legal conclusion.
 7 MR. SCHWALB: Let me rephrase.
 8 MR. BULLER: Under Kansas law adjoining
 9 is a legal term.
 10 MR. SCHWALB: Okay. Let me rephrase.
 11 BY MR. SCHWALB:
 12 **Q. Do the Wetzles have water rights next to**
 13 **the R9 Ranch?**
 14 MR. BULLER: Same objection.
 15 A. I believe they have water rights on the
 16 north side just on the other side of the river, if
 17 I'm remembering correctly.
 18 BY MR. SCHWALB:
 19 **Q. Do you know if those water rights are**
 20 **senior or junior?**
 21 A. I'm not certain.
 22 **Q. Were there any specific findings of fact**
 23 **in the master order regarding their water rights**
 24 **and the impact of the change application?**
 25 A. My answer is the same as before.

Page 163

1 **Q. Okay. Are the Wetzels, do you know what**
 2 **their role is with Water PACK?**
 3 A. I don't know.
 4 **Q. Okay. Let's come back to Richard just**
 5 **for a second. You mentioned you've known him**
 6 **since 1985 give or take?**
 7 A. Yes.
 8 **Q. And you also mentioned that he worked for**
 9 **or he had a company called?**
 10 A. Pumping Plant Testing.
 11 **Q. Let's just call it PPT.**
 12 A. PPT. Okay.
 13 **Q. What did Richard do in the context of PPT**
 14 **on behalf of DWR?**
 15 A. Well, his firm -- so at the time we were
 16 very behind in issuing certificates and one of the
 17 workload challenges we had at the time was not
 18 having enough field staff to -- to inspect -- to
 19 do the inspection that's part of issuing the
 20 certificate. We will go out and actually
 21 physically go to the water right and inspect the
 22 facility, review the records and prepare what's
 23 called a field inspection report and then that is
 24 one significant piece of the process of issuing
 25 certificates. So we contracted with several

Page 164

1 engineering firms to actually do that work on our
 2 behalf, and his firm was one that did that.
 3 **Q. And you have to be a professional**
 4 **engineer to do that work or no?**
 5 MR. BULLER: So after having heard the
 6 chief engineer's response I'm going to object.
 7 This is far outside the scope of the topics of
 8 examination today.
 9 MR. SCHWALB: Okay. I will respond to
 10 that objection just by pointing to letter A. of
 11 the judge's order with regard to information made
 12 available to the chief engineer and I'll get
 13 there.
 14 BY MR. SCHWALB:
 15 **Q. So do you have to be a professional**
 16 **engineer to do that work?**
 17 MR. BULLER: Object to form. Same
 18 objection.
 19 A. No, but we did -- we use engineering
 20 firms to do that but our own people that do these
 21 inspections are not engineers.
 22 BY MR. SCHWALB:
 23 **Q. Okay. And earlier, I forget who, I'm**
 24 **going to say Mr. Traster, introduced this letter**
 25 **from Mr. Wenstrom designated Exhibit 16. Do you**



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 165</p> <p>1 recall that? 2 A. Yes, I do. 3 Q. Okay. And within Exhibit 16, on page two 4 there was a discussion regarding this report from, 5 I believe it's Bob Vincent. Do you recall that? 6 A. Yes. 7 Q. And just to confirm, that report was 8 never provided to you by the cities? 9 MR. BULLER: Object to form. Misstates 10 the testimony. 11 BY MR. SCHWALB: 12 Q. Was that report ever provided to you by 13 the cities? 14 A. I don't recall it being provided. 15 Q. Okay. With respect, coming back to 16 Richard just for a minute. He's a professional 17 engineer. Does he have the expertise to -- well, 18 let me back up. 19 You said you don't have the expertise to 20 develop a model independently? 21 A. Yes. That's true. 22 Q. Okay. I think you also said that a 23 layperson wouldn't understand it? 24 MR. BULLER: Object to form. Ambiguous. 25 A. Well, I was speaking specifically to the</p>	<p style="text-align: right;">Page 167</p> <p>1 drive to Mr. Wenstrom; is that correct? 2 A. Well, to Water PACK via Mr. Wenstrom, 3 yes. Well, I believe it was to Richard -- yes. 4 Q. And then Exhibit 13, it says in line, 5 sorry, paragraph three: I am also sending one USB 6 drive to Richard Wenstrom; is that correct? 7 A. Yes. 8 Q. Okay. And earlier you testified Richard 9 Wenstrom would not have the capacity to understand 10 the changes to that model? 11 MR. BULLER: Object to form. That 12 misstates his testimony. 13 MR. OLEEN: I join that objection. 14 A. I didn't say Richard -- I didn't 15 speculate about Richard in my statements. 16 BY MR. SCHWALB: 17 Q. Okay. 18 A. I was speaking about the -- I thought you 19 were talking about the general public, but. 20 Q. Okay. 21 A. So what's your question? 22 Q. Why'd you only give it to Richard? 23 A. I gave it to Water PACK via Richard who 24 was, I believe, the president at the time. 25 Q. Okay. What about the Wetzels? Did you</p>
<p style="text-align: right;">Page 166</p> <p>1 change that was made to the model. 2 BY MR. SCHWALB: 3 Q. Okay. So a layperson would not 4 understand the changes to the model? 5 A. Well, the particular changes that were 6 done to the model. 7 Q. Okay. 8 A. Yeah. It's a pretty in-the-weeds kind of 9 change. 10 Q. Okay. 11 A. I'm not -- I guess my hesitation was I'm 12 not saying that the general public can't 13 understand groundwater models at all and 14 understand their basic function and what they do. 15 Q. But the specific changes a layperson 16 would not understand? 17 A. I think it would take -- my opinion is it 18 would take some expertise to understand. 19 Q. Okay. 20 A. That particular change. 21 Q. Does Richard have that expertise? 22 MR. BULLER: Object to form. Lack of 23 foundation. Calls for speculation. 24 BY MR. SCHWALB: 25 Q. Let me back up. You provided this USB</p>	<p style="text-align: right;">Page 168</p> <p>1 provide them with a copy of it? 2 A. No. I provided a copy to Water PACK via 3 Richard Wenstrom. 4 Q. Okay. And you did that, I believe this 5 letter says, on March 9th of 2018? 6 A. Yes. That's right. 7 Q. Okay. And then subsequent to that the 8 draft order was posted May 4th; is that correct? 9 A. That sounds right. 10 Q. Okay. Was it provided to the public 11 before May 4th? 12 A. No. That's when we provided it on our 13 website. 14 Q. Okay. But the cities had it before then, 15 correct? 16 A. Well, it sort of became final right about 17 that time. I mean we were -- they had a form of 18 it. 19 Q. Okay. And then earlier you testified 20 that, coming back to the order, you took control 21 of the draft after this Greensburg meeting? 22 A. I said it was like -- 23 Q. The bulk of it. 24 A. Ten months before Greensburg. 25 Q. Okay.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 169</p> <p>1 A. Well, ten months before we issued -- the 2 summer of '17 we took control of it. 3 Q. Okay. 4 A. So. 5 Q. And then coming out of the Greensburg 6 meeting, I think you testified earlier that the 7 maybe not the overwhelming bulk, but you made 8 substantial revisions to the order yourself? 9 A. Correct. Substantial additions. Again, 10 that summary of what the public provided and sort 11 of the evaluation of that, including some work I 12 commissioned staff to do and, yes, that's correct. 13 Q. Did you make any additions or changes to 14 the appendices? 15 A. I'm sure there were some changes, maybe 16 even additions, but I'd have to -- I could take a 17 look if you want me to. 18 Q. Do you recall making any of those 19 changes? 20 A. I mean there was a -- I'd have to have 21 you take me specifically to what you're asking 22 about. 23 Q. I'm just asking if you made any changes 24 to the appendices. 25 MR. BULLER: I'm going to interpose an</p>	<p style="text-align: right;">Page 171</p> <p>1 MR. BULLER: Object to form. Outside the 2 scope of the topics identified. 3 MR. OLEEN: I'll join that objection. 4 Sorry to interrupt. You may continue. 5 A. I'm not aware of any one way or the 6 other. 7 BY MR. SCHWALB: 8 Q. Okay. 9 A. As I understand the question anyway. 10 Q. Okay. All right. And then last two, 11 here, earlier you testified that you had closed 12 the record at some point after the Greensburg 13 meeting; is that right? 14 A. Yes. 15 Q. Okay. Did the Burns and McDonnell 16 revisions come in before you closed that record or 17 after? 18 A. Well, I didn't start evaluating the 19 record -- the Burns and Mac model came after a 20 date I announced as closing the record. You know, 21 I basically told the public I'll take -- take 22 comment through this period, and I think it was 23 the end of September, if memory serves me 24 correctly. 25 Q. Okay.</p>
<p style="text-align: right;">Page 170</p> <p>1 objection. This is starting to feel like a 2 fishing expedition. 3 MR. SCHWALB: What's the specific 4 objection? 5 MR. BULLER: The objection is is none of 6 this is inside the scope of the court's order. 7 The court specifically limited the questions that 8 are allowed at this deposition to the topics 9 pertaining to his order, the issues identified in 10 that order, and this is far beyond the scope of 11 those issues. 12 MR. SCHWALB: Okay. Let's see. 13 BY MR. SCHWALB: 14 Q. Okay. Was there any back and forth -- 15 well, I think you already touched on this. I'm 16 sorry. Let's come back to the initial draft that 17 Mr. Traster provided, which I think you touched on 18 when Mr. Traster was asking you a few questions. 19 Are there any regulations that you're aware of 20 that provide for an applicant providing the 21 initial draft and getting feedback? 22 A. There's -- no regulation speaks for or 23 against that. 24 Q. What about in other regulatory contexts 25 that you're responsible for, LIMAs, for example?</p>	<p style="text-align: right;">Page 172</p> <p>1 A. And it may not be. 2 Q. And the Burns and Mac report is dated, I 3 think? 4 A. Early October. 5 Q. I think September 28th? 6 A. Was it? Okay. Well, maybe. 7 Q. Well, is it or is it not? 8 A. Well, maybe I'm not -- well, we know that 9 answer. I'd have to dig around to find out when 10 I asked for public comment. 11 Q. Okay. 12 A. One thing at a time, here. Let me -- so 13 the Burns and Mac report was September 24, 2018. 14 Q. Okay. 15 A. I guess I'm -- I don't have a document in 16 front of me, it seems like there was a document 17 that said when I wanted comments by. 18 Q. Okay. But those comments were required 19 prior to receipt of the revised Burns and Mac 20 report? 21 A. Again, I don't have the document in front 22 of me but that's my recollection. 23 MR. SCHWALB: Okay. Anybody want? 24 MR. TRASTER: Are you done? 25 MR. SCHWALB: I'm done.</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 173</p> <p>1 MR. TRASTER: I didn't hear no further 2 questions. 3 MR. SCHWALB: No further questions. 4 MR. TRASTER: I have another question or 5 two but it's not my turn. 6 MR. OLEEN: Just a minute. 7 RECROSS-EXAMINATION 8 BY MR. OLEEN: 9 Q. I do have another question or two. Since 10 -- because we're talking about this updated 11 modeling report, I want to ask you to look at your 12 time line which I think has been marked as 13 Deposition Exhibit 1; is that correct? Time line? 14 Is the time line Deposition Exhibit 1? 15 A. Yes. Which is included in the web page. 16 Q. Okay. So you just testified that the 17 date of the updated Burns and Mac modeling report 18 is what, to your knowledge? 19 A. So, well, it's dated -- yeah. Just a 20 second, here. September 24th, 2018. 21 Q. Okay. And this is the same revised 22 modeling report that we talked about earlier -- 23 well, let me phrase it as a question. Sorry. 24 Is this the same revised modeling report that 25 you referred to earlier when you said that the</p>	<p style="text-align: right;">Page 175</p> <p>1 this exhibit as they're posted online? 2 A. No. 3 Q. Okay. 4 A. I mean, do I have a list of every change 5 we made to it? I don't. There may be a -- there 6 may be a log. I don't -- but no. 7 Q. So this is the edition of the website as 8 it exists today or? 9 A. Yes. 10 Q. Okay. 11 A. Yes. 12 MR. SCHWALB: Thank you. No further 13 questions. 14 MR. TRASTER: So -- 15 THE WITNESS: I'm sorry. Well, the 16 website, there is a date posted that's included so 17 we know when particular documents were posted. 18 MR. SCHWALB: Fair enough. Okay. 19 THE WITNESS: And this is today's version 20 of it, or. 21 MR. SCHWALB: Yesterday's. 22 THE WITNESS: Yesterday's when I printed 23 it out, yes. 24 MR. SCHWALB: All right. Thank you. 25 RECROSS-EXAMINATION</p>
<p style="text-align: right;">Page 174</p> <p>1 change did not materially affect the conclusions 2 that you reached in the final master order that 3 you issued? 4 A. That is correct. 5 Q. So Mr. Schwalb had asked a line of 6 questioning about the timing of when this document 7 came out versus the timing of when you may have 8 closed the record to public comment, right? He 9 asked you -- he was asking you some timing 10 questions? 11 A. He was, yes. 12 Q. But -- but is it your testimony that the 13 errors corrected by this revised report were minor 14 and did not impact materially the final master 15 order that you issued? 16 A. That is correct. 17 MR. OLEEN: No further questions. 18 MR. SCHWALB: Just have one follow up 19 here unless you-all want to go. 20 MR. BULLER: Go ahead. 21 MR. SCHWALB: All right. 22 REDIRECT-EXAMINATION 23 BY MR. SCHWALB: 24 Q. Mr. Oleen was referring to this 25 Exhibit 1. Does DWR keep track of versions of</p>	<p style="text-align: right;">Page 176</p> <p>1 BY MR. TRASTER: 2 Q. So Mr. Schwalb asked you a question about 3 taking control of the document that ended up being 4 the master order and in the course of that 5 question said something about it taking control a 6 few months before the master order was issued, as 7 I heard it. Maybe I'm mistaken. But my 8 understanding is that your testimony is that DWR 9 took control in the summer of 2017, which was 10 months before the draft proposed master order was 11 issued, correct? 12 A. That is correct. The summer of '17 we 13 took control, approximately ten months before the 14 proposed draft master order, and we kept control 15 through the rest of the process. 16 Q. I'm curious about how you remember it was 17 the summer of 2017 that you took control. I mean, 18 do you have a specific recollection of it being 19 the summer as opposed to the spring of 2017? 20 A. Well, Mr. Oleen provided me with that 21 date. He was the one that was really -- I made 22 those additions we talked about from the proposed 23 master order on, but he was really shepherding the 24 document through that period of time, so. 25 Q. Very good. So it was certainly at least</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 177</p> <p>1 ten months before the draft proposed master order 2 was released to the public that DWR was in full 3 and complete control? 4 A. That's my understanding. 5 Q. Do you recall -- never mind. 6 MR. TRASTER: No further questions. 7 MR. COLE: No questions. 8 MR. TRASTER: We done? 9 MR. KITE: I would ask that you review 10 and sign your transcript. 11 THE WITNESS: I'll do that when she gets 12 it to me. 13 MR. SCHWALB: All right. Well, I guess 14 we didn't need the full eight hours, thank you 15 everybody. 16 THE WITNESS: Thank you. 17 (THEREUPON, the deposition concluded at 18 2:47 p.m.) 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>	<p style="text-align: right;">Page 179</p> <p>1 AFFIDAVIT 2 . 3 STATE OF _____: 4 COUNTRY/CITY OF _____: 5 . 6 Before me, this day, personally appeared, 7 DAVID BARFIELD, P.E., who, being duly sworn, 8 states that the foregoing transcript of his/her 9 Deposition, taken in the matter, on the date, and 10 at the time and place set out on the title page 11 hereof, constitutes a true and accurate transcript 12 of said deposition, along with the attached Errata 13 Sheet, if changes or corrections were made. 14 . 15 _____ 16 DAVID BARFIELD, P.E. 17 . 18 SUBSCRIBED and SWORN to before me this 19 _____ day of _____, 2020 in the 20 jurisdiction aforesaid. 21 . 22 _____ 23 My Commission Expires _____ Notary Public 24 . 25 .</p>
<p style="text-align: right;">Page 178</p> <p>1 SIGNATURE 2 . 3 The deposition of DAVID BARFIELD, P.E. 4 was taken in the matter, on the date, and at the 5 time and place set out on the title page hereof. 6 . 7 It was requested that the deposition be 8 taken by the reporter and that same be reduced to 9 typewritten form. 10 . 11 It was agreed by and between counsel and 12 the parties that the deponent will read and sign 13 the transcript of said deposition. 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>	<p style="text-align: right;">Page 180</p> <p>1 DEPOSITION ERRATA SHEET 2 . 3 RE: APPINO & BIGGS REPORTING SERVICE, INC. 4 . 5 FILE NO.: 56894 6 . 7 CASE: WATER PROTECTION ASSN. OF CENTRAL KANSAS 8 vs. DAVID BARFIELD, P.E., ET AL. 9 . 10 DEPONENT: DAVID BARFIELD, P.E. 11 . 12 DEPOSITION DATE: 1/28/20 13 . 14 To the Reporter: 15 I have read the entire transcript of my Deposition 16 taken in the captioned matter or the same has been 17 read to me. I request that the following changes 18 be entered upon the record for the reasons 19 indicated. I have signed my name to the Errata 20 Sheet and the appropriate Certificate and 21 authorize you to attach both to the original 22 transcript. 23 . 24 . 25 .</p>



DAVID BARFIELD, P.E.

<p style="text-align: right;">Page 181</p> <p>1 PAGE:LINE FROM TO REASON</p> <p>2 .</p> <p>3 .</p> <p>4 .</p> <p>5 .</p> <p>6 .</p> <p>7 .</p> <p>8 .</p> <p>9 .</p> <p>10 .</p> <p>11 .</p> <p>12 .</p> <p>13 .</p> <p>14 .</p> <p>15 .</p> <p>16 .</p> <p>17 .</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 DAVID BARFIELD, P.E.</p>	
--	--

<p style="text-align: right;">Page 182</p> <p>1 CERTIFICATE</p> <p>2 STATE OF KANSAS</p> <p>3 COUNTY OF SHAWNEE</p> <p>4 I, Ksenija M. Zeltkalns, a Certified</p> <p>5 Court Reporter, Commissioned as such by</p> <p>6 the Supreme Court of the State of</p> <p>7 Kansas, and authorized to take</p> <p>8 depositions and administer oaths within</p> <p>9 said State pursuant to K.S.A 60-228,</p> <p>10 certify that the foregoing was reported</p> <p>11 by stenographic means, which matter was</p> <p>12 held on the date, and the time and place</p> <p>13 set out on the title page hereof and</p> <p>14 that the foregoing constitutes a true</p> <p>15 and accurate transcript of the same.</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties, nor am I</p> <p>18 an employee of or related to any of the</p> <p>19 attorneys representing the parties, and</p> <p>20 I have no financial interest in the</p> <p>21 outcome of this matter.</p> <p>22 Given under my hand and seal this</p> <p>23 12th day of February, 2020.</p> <p>24 _____</p> <p>25 Ksenija M. Zeltkalns, C.C.R. No. 1461</p>	
---	--



DAVID BARFIELD, P.E.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFFIDAVIT

STATE OF Kansas :
COUNTRY/CITY OF Manhattan :

Before me, this day, personally appeared,
DAVID BARFIELD, P.E., who, being duly sworn,
states that the foregoing transcript of his/her
Deposition, taken in the matter, on the date, and
at the time and place set out on the title page
hereof, constitutes a true and accurate transcript
of said deposition, along with the attached Errata
Sheet, if changes or corrections were made.

David Barfield
DAVID BARFIELD, P.E.

SUBSCRIBED and SWORN to before me this
25th day of February, 2020 in the
jurisdiction aforesaid.



Katie Anderson
Notary Public



DAVID BARFIELD, P.E.

1 DEPOSITION ERRATA SHEET

2 .

3 RE: APPINO & BIGGS REPORTING SERVICE, INC.

4 .

5 FILE NO.: 56894

6 .

7 CASE: WATER PROTECTION ASSN. OF CENTRAL KANSAS

8 vs. DAVID BARFIELD, P.E., ET AL.

9 .

10 DEPONENT: DAVID BARFIELD, P.E.

11 .

12 DEPOSITION DATE: 1/28/20

13 .

14 To the Reporter:

15 I have read the entire transcript of my Deposition
16 taken in the captioned matter or the same has been
17 read to me. I request that the following changes
18 be entered upon the record for the reasons
19 indicated. I have signed my name to the Errata
20 Sheet and the appropriate Certificate and
21 authorize you to attach both to the original
22 transcript.

23 .

24 .

25 .



TECHNOLOGY SPECIALISTS IN TODAY'S LITIGATION

800 E. 1st Street N.
Suite 305
Wichita, KS 67202
316-201-1612

5111 SW 21st Street
Topeka, KS 66604
785-273-3063
www.appinobiggs.com

6420 W 95th Street
Suite 101
Overland Park, KS 66212
913-383-1131

DAVID BARFIELD, P.E.

1	PAGE:LINE	FROM	TO	REASON
2	. 14:25	"G5"	"GMD5"	typo
3	. 18:14	"aqua"	"aquifer"	typo
4	. 26:1	"undercurrent"	"under current"	typo
5	. 26:17	"82a-706b"	"82a-708b"	misstatement of legal citation
6	. 54:11	"McDonnell's"	"McDonnell"	typo
7	. 56:6	"Min"	"Mid"	typo
8	. 63:17	"It"	"I"	typo
9	. 94:6	"the attorney"	"Brent Turney"	typo
10	. 98:25	"resort"	"report"	typo
11	. 127:10	"DWL"	"DWR"	typo
12	. 130:11	"BY MR. SCHWALB"	"BY MR. OLEEN"	typo re questioner identity
13	. 135:22	"BY MR. TRASTER"	"BY MR. OLEEN"	typo re questioner identity
14	. 139:19	"pack"	"package"	typo
15	. 140:22	"The attorney"	"Brent Turney"	typo
16	. 147:18	"Berns"	"Burns"	typo
17	. 170:25	"LIMAs"	"LEMAs"	typo
18	.			
19	.			
20	.			
21	.			
22	.			
23	.			

24 SIGNATURE: David Barfield DATE: 2/25/2020

25 DAVID BARFIELD, P.E.



800 E. 1st Street N.
Suite 305
Wichita, KS 67202
316-201-1612

5111 SW 21st Street
Topeka, KS 66604
785-273-3063
www.appinobiggs.com

6420 W 95th Street
Suite 101
Overland Park, KS 66212
913-383-1131