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TRANSCRIPT OF PROCEEDINGS BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AUSTIN, TEXAS

APPLICATION OF THE TOWN OF	)	SOAH DOCKET NO.
LINDSAY TO AMEND WATER AND	)	582-06-2023
SEWER CERTIFICATES OF	)	
CONVENIENCE AND NECESSITY	)	
(CCN) NOS. 13025 AND 20927 IN	)	
COOKE COUNTY, TEXAS	)	TCEQ DOCKET NO.
APPLICATION NOS. 35096-C & 35097-C)	)	2006-0272-UCR

## HEARING ON THE MERITS

WEDNESDAY, OCTOBER 8, 2008

BE IT REMEMBERED THAT AT approximately  
9:00 a.m., on Wednesday, the 8th day of October 2008,  
the above-entitled matter came on for hearing at the  
State Office of Administrative Hearings, 300 West  
15th Street, Hearing Room 402, Austin, Texas, before  
JAMES W. NORMAN, Administrative Law Judge; and the  
following proceedings were reported by Kim Pence, a  
Certified Shorthand Reporter of:

Volume 2

Pages 274 - 511

RECEIVED  
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CENTRAL FILE ROOM**CONDENSED TRANSCRIPT*****Kennedy Reporting Service, Inc.****1801 Lavaca, Suite 115**Austin, Texas 78701**512.474.2233 - phone**512.474.6704 - fax**Kennedyrpt@aol.com*

October 23, 2008

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1 PROCEEDINGS  
2 WEDNESDAY, OCTOBER 8, 2008  
3 (9:00 a.m.)  
4 JUDGE NORMAN: We're back on the record.  
5 Before we go forward with any further testimony, I  
6 want to ask all the parties -- I want to ask you  
7 questions and get you to bring this out in your  
8 testimony, if you would. I know you're going to have  
9 rebuttal, Mr. Rodriguez.  
10 I note that -- and I'm looking at the  
11 2005 rules. I note that 291.102(c) says "The  
12 Commission may approve applications and grant or amend  
13 a certificate" and so on for a partial exercise of the  
14 right of privilege and so on. And I note that what  
15 you're supposed to look at in determining whether or  
16 not to grant an amended CCN is the need for additional  
17 service in the requested service area and the affect  
18 on any public utility of the same kind already serving  
19 the approximate area.  
20 So what I want -- what I'd like to hear  
21 testimony on would be the need and the effect with  
22 regard to granting the CCN but excluding Mr. Myrick's  
23 CCN; or excluding Mr. Myrick's CCN and a quarter of a  
24 mile in addition from his CCN; or excluding his CCN  
25 and the acreage, the 42 acres that he owns as -- in

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1 terms of those statutory or rule standards. And I'd  
2 like the parties to address that.  
3 I note that Mr. Myrick in his testimony  
4 wants everything excluded south of Highway 82, and so  
5 that might be something that can be addressed as well  
6 in terms of what we're doing here today, but I'm  
7 particularly interested in that.  
8 MR. RODRIGUEZ: You said excluding the  
9 CCN area?  
10 JUDGE NORMAN: Yeah, the alternatives  
11 would be just excluding the present CCN, Pure Water's  
12 CCN area --  
13 MR. RODRIGUEZ: Okay.  
14 JUDGE NORMAN: -- excluding the CCN area  
15 plus a quarter mile from the CCN area, or excluding  
16 his 42 acres. I think it's 42. I read his testimony  
17 again this morning. You-all can correct me if I'm  
18 wrong on that. Or the last alternative is the one he  
19 requests, and that is, excluding everything south of  
20 Highway 82, in terms of the legal standards that I'm  
21 to look at in addressing this. Okay?  
22 Now, his CCN is excluded. I understand  
23 that. That is not an alternative. That is already  
24 excluded. I understand that. So really the  
25 alternatives were the last three that I said.

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1 MR. RODRIGUEZ: Now, do you want me to  
2 recall Mr. Maroney to provide that information, or  
3 would rebuttal be okay?  
4 JUDGE NORMAN: Rebuttal is fine.  
5 MR. RODRIGUEZ: Would rebuttal be okay?  
6 JUDGE NORMAN: Yeah, that's fine.  
7 MR. RODRIGUEZ: Okay. We can do it now  
8 as part of our direct case.  
9 JUDGE NORMAN: I'm going to allow you to  
10 do it. You're going to have some rebuttable, you  
11 believe, anyway, I think.  
12 MR. RODRIGUEZ: Yes.  
13 JUDGE NORMAN: I'm going to allow you to  
14 do it then.  
15 MR. RODRIGUEZ: Okay.  
16 JUDGE NORMAN: Okay? All right.  
17 Then let's go forward then, and  
18 Mr. Stowe is on the stand. Correct?  
19 MR. STOWE: Good morning, sir.  
20 JUDGE NORMAN: And, Mr. Stowe, you have  
21 been sworn?  
22 MR. STOWE: That is correct, sir.  
23 JUDGE NORMAN: And you're under oath.  
24 Okay. Go ahead.  
25

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1 PRESENTATION ON BEHALF OF THE CITY OF LINDSAY  
2 (CONTINUED)  
3 JACK E. STOWE, JR.  
4 having been first duly sworn, testified as follows:  
5 DIRECT EXAMINATION  
6 BY MR. RODRIGUEZ:  
7 Q Mr. Stowe, can you please introduce yourself  
8 to the Judge?  
9 A Yes, my name is Jack E. Stowe, Jr. I am the  
10 president and owner of J. Stowe & Company.  
11 Q Mr. Stowe, can you please detail for the  
12 Judge your educational and -- your educational  
13 background?  
14 A Yes. I received an undergraduate degree from  
15 at the time North Texas State University, now the  
16 University of North Texas, in business with the  
17 emphasis in accounting. I attended postgraduate work  
18 at North Texas towards an MBA. During that period of  
19 time, I passed my CPA examine and was recruited by at  
20 the time Touche Ross, which is now merged with  
21 Deloitte Touche.  
22 Upon joining Touche Ross, I immediately  
23 started off in their tax department. I worked through  
24 June of that year, which would have been 1975, I  
25 believe, and transferred into the consulting division

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of Touche Ross in that year. The Dallas office of Touche Ross at that time was the national regulatory consulting group for the firm.

I spent nine years in the consulting division with Touche Ross handling basically the startup of the Public Utility Commission here in Texas, all the way through all the filings before the PUC and several before the -- at that time Texas Water Commission.

I left, resigned from Touche Ross in 1984 to form a firm called Aries Resource -- actually -- I'm sorry -- 1984 and went as Chief Financial Officer with International Investment Advisers, which was predominantly a land investment development company. And during my tenure there, we started a construction company. I was responsible for all financial aspects and investments of the firm through my tenure there, which was about two years.

In 1986, I formed the firm Aries Resource Management under a professional service contract, which was with Pannel Kerr Forester to establish a municipal consulting practice within their Dallas office.

During that period of time, I recruited a former client, Mr. Keith Reed, who was the chief

at that time. Again, the firm specialized now at that point in water, wastewater, energy, electric and gas consulting as well as the environmental solid waste consulting.

Then in 1990 -- or in the year 2003, R.W. Beck, which is a national engineering consulting firm, acquired Reed, Stowe & Yanke. Under that purchase agreement, I was retained under a five year employment contract which expired on February 29, 2008. And April 1, 2008, I left the firm R.W. Beck and formed J. Stowe & Company. Again, this firm specializes in water, wastewater and electric and gas types of services.

An example would be currently we're involved in the -- representing the Ratepayer Coalition in the Texas-New Mexico Power rate application before the PUC. I'm also retained by the firm King and Spalding in the federal court case involving Jefferson County, Alabama in their default on their water and -- or their wastewater sewer bonds.

We're also doing feasibility and economic studies for water supply, such as out of Toledo Bend for the Dallas/Fort Worth Metroplex or out of Oklahoma is another alternative that we're working on. And we're also looking at the feasibility of

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financial officer for the city of Arlington. He had retired from that position, holding that position from Arlington's population from 25,000 to just over 250,000 at the time of his retirement.

Keith came with me and worked through the remainder of our professional service contract at the Pannel Kerr Forester, at which time we both did not renew our contracts, and we formed the firm Reed & Stowe & Company. Reed & Stowe & Company was primarily a municipal consulting firm specializing in utility matters.

Reed & Stowe & Company in 1984 -- I mean in 1994, 1995 timeframe, I believe, subject to check, was acquired by at that time Metzler & Associates out of Chicago. They were a publicly traded firm on the New York Stock Exchange, later changed their name to Navigant Consulting. While at Navigant Consulting, I've served as one of the national directors of energy and water consulting practices.

In, let's see, 1994 -- about 1997 -- these are subject to check. The dates kind of run together, but somewhere in the latter '90s we were successful in forming a new group called Reed, Stowe & Yanke, LLC that reacquired the firm's practice from Navigant Consulting, and we took the firm back private

joint ownership pipelines coming out of East Texas to the Dallas/Fort Worth Metroplex. This is the type of work I do.

Q Mr. Stowe, with respect to the municipal consulting on water and wastewater issues, it's not limited to just financial consulting, is it?

A No, sir. It would encompass strategic planning, economic feasibility. We also do quite a bit of work in the CCN disputes involving evaluations. We've worked extensively in 13.254 applications. We recently assisted the city -- for a city in its 13.255 application, 13.254 application as well as the expedited release associated with properties.

Q Do you have any experience with respect to analyzing environmental impacts of CCNs on an area?

A My experience in analyzing the environmental impacts is one of the economic impact associated with environmental compliance and/or at times I've been called upon to look at the -- what we would refer to as externalities which encompasses environmental issues associated with specific proposed projects.

I'm not a scientist. I do not testify to be a scientist, but at the same time, I do have, through my 35 years of experience -- having to address environmental issues from a management perspective and

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<p>1 from a cost perspective.</p> <p>2 Q Have you provided any of that type of</p> <p>3 expertise in TCEQ-related matters?</p> <p>4 A The current one that comes to mind right now</p> <p>5 is that I am assisting -- I'm the program manager for</p> <p>6 the WMARSS, which is the Waco Metropolitan Area</p> <p>7 Regional Sanitary Sewer System, in support of its</p> <p>8 permit application for a 1.5 wastewater treatment</p> <p>9 plant. I was involved in getting -- I was responsible</p> <p>10 for obtaining all the environmental assessment studies</p> <p>11 that were required, presenting those in the</p> <p>12 application.</p> <p>13 I'm also working with legal and the</p> <p>14 professionals in the field to make sure that our</p> <p>15 design criteria is in compliance with the pending</p> <p>16 draft permit requirements.</p> <p>17 I have also been called to testify in</p> <p>18 13.254 and 13.255 applications and have provided</p> <p>19 testimony as far as the environmental impact of</p> <p>20 different service providers.</p> <p>21 Q And 13.254 and 13.255, you've mentioned that</p> <p>22 several times. Those are Texas Water Code provisions?</p> <p>23 A That's right, under Chapter 13 of the Texas</p> <p>24 Water Code.</p> <p>25 Q And those all come under the jurisdiction of</p>	<p>1 to Texas Water Code Provision 254 and 255 on water</p> <p>2 CCNs.</p> <p>3 JUDGE NORMAN: Including that study that</p> <p>4 you talked about?</p> <p>5 MR. RODRIGUEZ: No, not specifically the</p> <p>6 OSSF study because we are actually removing that from</p> <p>7 his testimony. This actually went to your --</p> <p>8 JUDGE NORMAN: Okay.</p> <p>9 MR. RODRIGUEZ: -- granting me the</p> <p>10 latitude to prove up his qualifications with respect</p> <p>11 to what's on Page 16 of his testimony, which talks</p> <p>12 about the water environmental impacts --</p> <p>13 JUDGE NORMAN: Right.</p> <p>14 MR. RODRIGUEZ: -- not the wastewater.</p> <p>15 JUDGE NORMAN: Not that study?</p> <p>16 MR. RODRIGUEZ: Although he did provide</p> <p>17 testimony with respect to that, we're not offering the</p> <p>18 wastewater study anymore.</p> <p>19 JUDGE NORMAN: I know, not that study</p> <p>20 anymore.</p> <p>21 MR. RODRIGUEZ: Right.</p> <p>22 JUDGE NORMAN: But did you head up that</p> <p>23 study?</p> <p>24 A I was president of the firm that performed</p> <p>25 that study, and I was headquartered in Austin at the</p>
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<p>1 the Texas Commission on Environmental Quality. Is</p> <p>2 that correct?</p> <p>3 A That's correct.</p> <p>4 Q Okay. Now, Mr. Stowe, you have your</p> <p>5 testimony in front of you, which I believe is</p> <p>6 marked --</p> <p>7 JUDGE NORMAN: Let me ask a question,</p> <p>8 and you may have covered this, Mr. Rodriguez. I was</p> <p>9 looking at some of the legal standards, but I think,</p> <p>10 you know, in our prehearing conference you talked</p> <p>11 about the -- I think it was JES Attachment 8, and that</p> <p>12 may not be needed anymore, the study to determine the</p> <p>13 magnitude of and reasons for chronically</p> <p>14 malfunctioning on-site sewage facility systems in</p> <p>15 Texas. And you said that Mr. Stowe headed up that</p> <p>16 study, I think.</p> <p>17 MR. RODRIGUEZ: Yes, sir.</p> <p>18 JUDGE NORMAN: You said it at a</p> <p>19 prehearing conference. Of course the wastewater</p> <p>20 system is now not part of this case.</p> <p>21 Did you ask him questions about that</p> <p>22 just now? I was looking at some of the legal</p> <p>23 standards.</p> <p>24 MR. RODRIGUEZ: Yeah, he just testified</p> <p>25 regarding what his involvement has been with respect</p>	<p>1 time. The actual project manager on the project was</p> <p>2 Scott Pasternack, but I was responsible for the</p> <p>3 contents of the study, the approach for the study, and</p> <p>4 I had final approval of the report before it went out.</p> <p>5 JUDGE NORMAN: Okay.</p> <p>6 A In fact, it was my input in the study that we</p> <p>7 abandon the statistical approach that originally had</p> <p>8 been considered in performing the study and go to the</p> <p>9 survey, and I approved the survey questions that were</p> <p>10 developed before they were presented to the market.</p> <p>11 JUDGE NORMAN: Okay.</p> <p>12 MR. RODRIGUEZ: Actually, at this point,</p> <p>13 Your Honor, we're going to go through some changes --</p> <p>14 JUDGE NORMAN: Sure.</p> <p>15 MR. RODRIGUEZ: -- to Mr. Stowe's</p> <p>16 testimony. I can either just --</p> <p>17 JUDGE NORMAN: Just do what you did</p> <p>18 yesterday. That's fine.</p> <p>19 MR. RODRIGUEZ: Okay. I just want to go</p> <p>20 through it real quick like here. Many of the changes</p> <p>21 that were made were either to update new information</p> <p>22 or with new information or to delete some of the sewer</p> <p>23 testimony that was provided because of your ruling</p> <p>24 with respect to the severance of the sewer</p> <p>25 application.</p>



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1 Beginning on Page 14 --  
2 JUDGE NORMAN: And it sounds like --  
3 excuse me. I'm interrupting you again.  
4 Mr. MacLeod, I did sever that out, but I  
5 do also need to issue an order remanding that to the  
6 Executive Director. Is that true?  
7 MR. MacLEOD: Yeah, because once that's  
8 done, then we can process it as an uncontested matter.  
9 JUDGE NORMAN: All right. Then I will  
10 do that unless I hear any objections to it.  
11 (No response)  
12 JUDGE NORMAN: Okay. Go ahead.  
13 MR. RODRIGUEZ: Beginning on 14 and  
14 bleeding onto Page 15, there's several deletions that  
15 occur there with respect to the comparison of  
16 wastewater rates utilizing the TML study as well as  
17 the JES-D -- Schedule JES-D, which is referred to  
18 first on Line 23 of Page 14. It's been updated  
19 because the TML has come out with a 2008 study. So he  
20 provides that comparison in JES-D.  
21 On Page 16 you can see some deletion  
22 on 17 and 18 based on Your Honor's previous rulings.  
23 Beginning on 17 and going for many pages  
24 to Page 22, all that testimony was struck or stricken  
25 because it dealt with OSSF, or sewer matters, which is

1 JUDGE NORMAN: Right. Okay. All right.  
2 MR. RODRIGUEZ: So at this point, Your  
3 Honor, we would reurge Mr. Stowe's ability to testify  
4 on the matters that were previously struck on 23. And  
5 you allowed me an opportunity --  
6 JUDGE NORMAN: I did.  
7 MR. RODRIGUEZ: -- to prove up on  
8 Page 16, the testimony beginning at Line 1 through 11,  
9 and I would reurge the allowance of that testimony.  
10 JUDGE NORMAN: And then there's on  
11 Page 16 also --  
12 MR. RODRIGUEZ: Yes.  
13 JUDGE NORMAN: -- there's Lines 17  
14 and 18?  
15 MR. RODRIGUEZ: Yes, sir.  
16 JUDGE NORMAN: An then on Page 23 --  
17 MR. RODRIGUEZ: On Line 23, the Lines 14  
18 through 15, we're comfortable with that remaining  
19 struck or stricken.  
20 JUDGE NORMAN: Okay.  
21 MR. RODRIGUEZ: The question on Line 2  
22 as well as the answer on Line 5 --  
23 JUDGE NORMAN: Right.  
24 MR. RODRIGUEZ: -- we would reurge its  
25 offering.

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1 no longer an issue.  
2 Page 23, the changes that were made  
3 there are basically in compliance with your ruling or  
4 it dealt with OSSF.  
5 I would reurge the allowance of both the  
6 evidence on Page 16 as well as what you previously  
7 struck on 23 based upon the qualifications that  
8 Mr. Stowe has just testified on.  
9 JUDGE NORMAN: Now, you're talking about  
10 Pages 16 and 23. Is that right?  
11 MR. RODRIGUEZ: Yes, sir.  
12 JUDGE NORMAN: Okay.  
13 MR. RODRIGUEZ: Based upon the testimony  
14 that Mr. Stowe just provided.  
15 JUDGE NORMAN: Okay.  
16 MR. RODRIGUEZ: And on Page 24 and 25,  
17 you can see some deletions there.  
18 JUDGE NORMAN: Right.  
19 MR. RODRIGUEZ: So --  
20 JUDGE NORMAN: Okay.  
21 MR. RODRIGUEZ: In addition, we've  
22 removed Schedule JES-E, which dealt with the  
23 comparison of the sewer rates, and also Attachments  
24 JES-8, 9, 10, 11 and 12 have been removed because  
25 those all dealt with on-site septic facilities.

1 JUDGE NORMAN: Okay. And then on  
2 line -- on Page 24, Line 20 through Line 4 on Page 25.  
3 Correct?  
4 MR. RODRIGUEZ: Yes, sir.  
5 JUDGE NORMAN: All right. And so you're  
6 reurging that testimony on the basis of his foundation  
7 this morning?  
8 MR. RODRIGUEZ: On the basis of the  
9 foundation just laid.  
10 JUDGE NORMAN: Mr. Carlton?  
11 MR. CARLTON: I think we just reurge our  
12 motions.  
13 JUDGE NORMAN: Okay.  
14 MR. CARLTON: I would point out I'm  
15 confused on Page 24 because that answer all relates to  
16 wastewater.  
17 MR. RODRIGUEZ: Yeah, I would agree with  
18 that, Your Honor. That's fine.  
19 MR. CARLTON: It doesn't matter. I  
20 don't care.  
21 MR. RODRIGUEZ: Yeah, I do -- yeah, and  
22 that's fine --  
23 JUDGE NORMAN: So you want to leave that  
24 struck?  
25 MR. RODRIGUEZ: -- if 24 remains,

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<p>1 beginning on Line 17 going on to the next page of 25.  2 I'm fine with that remaining.  3 JUDGE NORMAN: All right. So we're just  4 looking at Page 16 then?  5 MR. CARLTON: And 23. I think the  6 "environmental and" was the language that you struck  7 from the question and the --  8 MR. RODRIGUEZ: Those were the only two,  9 and the answer.  10 JUDGE NORMAN: That's right. So that's  11 what we're looking at. And so you just want to reurge  12 your objections basically?  13 MR. CARLTON: Yes.  14 MR. RODRIGUEZ: So if I can make the  15 record clear, what we're reurging is Page 16, Lines 1  16 through 11, and --  17 JUDGE NORMAN: 17 and 18.  18 MR. RODRIGUEZ: -- Lines 17 and 18 on  19 Page 16.  20 JUDGE NORMAN: Okay.  21 MR. RODRIGUEZ: Line 23, the addition on  22 Line 2 of "environmental and" before the word  23 "economic"; on Line 5 the additions of the word  24 "environmental and" before "economic" --  25 JUDGE NORMAN: Okay.</p>	<p>1 A Yes, sir.  2 Q And you're the same Jack Stowe that filed  3 prefiled testimony on June 9, 2008, which has since  4 been updated today. Is that correct?  5 A That's correct.  6 Q And that's marked as Applicant's Exhibit 4?  7 A That's correct.  8 Q Now, with the changes that we just discussed,  9 Mr. Stowe, if I asked you those questions today, would  10 your answers be the same?  11 A Yes, they would.  12 Q Okay. Pending the changes that were made?  13 A I understand the changes that were made to  14 it.  15 Q Okay. And you're comfortable with them?  16 A I understand the changes that were made.  17 (Laughter)  18 JUDGE NORMAN: All right. And that is  19 your testimony?  20 Q (BY MR. RODRIGUEZ) And that is your  21 testimony?  22 A That is my testimony.  23 JUDGE NORMAN: All right.  24 MR. RODRIGUEZ: At this point, we move  25 for admission of Applicant's Exhibit 4.</p>
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<p>1 MR. RODRIGUEZ: -- on those pages, Your  2 Honor.  3 JUDGE NORMAN: All right. So, okay.  4 And, Mr. MacLeod, what's your position?  5 MR. MacLEOD: We don't believe there's  6 any reason to believe that evidence should be  7 excluded. It seems probative.  8 JUDGE NORMAN: You do not believe it  9 should be excluded, or you do?  10 MR. MacLEOD: We think it should be  11 admitted.  12 JUDGE NORMAN: Okay. Okay. I'm going  13 to admit the evidence.  14 MR. RODRIGUEZ: Thank you, Your Honor.  15 Mr. Stowe -- and we will conform the  16 copies -- in the copies here what's been stricken --  17 by your rulings have been stricken, but we will  18 provide replacement pages for that, Your Honor --  19 JUDGE NORMAN: All right.  20 MR. RODRIGUEZ: -- both in the record  21 set as well as in the appeal set.  22 JUDGE NORMAN: Okay.  23 Q (BY MR. RODRIGUEZ) Mr. Stowe, you've heard  24 all the changes that were made to your testimony this  25 morning.</p>	<p>1 JUDGE NORMAN: Okay. And except for the  2 objections already made and noted, any other  3 objections?  4 MR. MacLEOD: No.  5 JUDGE NORMAN: No?  6 MR. CARLTON: No.  7 JUDGE NORMAN: Okay. Mr. Stowe, you've  8 expressed opinions, I think, in your testimony, have  9 you not?  10 A Yes, sir, I have.  11 JUDGE NORMAN: And they were based on  12 outside sources, were they not?  13 A Yes, sir.  14 JUDGE NORMAN: Okay. Are the bases of  15 your opinion of a type reasonably relied upon by  16 people with your expertise in your field -- in your  17 particular field in forming opinions or inferences  18 upon the subject that you've testified about?  19 A Yes, sir.  20 JUDGE NORMAN: Okay.  21 A The information is commonly used within my  22 field.  23 JUDGE NORMAN: All right. Thank you. I  24 admit it.  25 (Exhibit APP No. 4 admitted)</p>

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MR. RODRIGUEZ: Thank you, Judge.

JUDGE NORMAN: Okay.

Q (BY MR. RODRIGUEZ) Mr. Stowe, at this point, the --

MR. CARLTON: Just a clarification question. I'm sorry. I realize you're admitting it. At the prehearing conference, you had -- there was a number of these you had just said "not for the truth, but for the basis of showing his opinions."

JUDGE NORMAN: Same ruling.

MR. CARLTON: Great.

JUDGE NORMAN: Same ruling, right.

MR. CARLTON: Okay.

Q (BY MR. RODRIGUEZ) Mr. Stowe, at this point, His Honor would like a narrative summary of what your testimony contains.

A Your Honor, I'd be glad to do so, and I will try. With the changes that have been made to the testimony, I've had to make some changes in my summary.

JUDGE NORMAN: Yeah, don't worry about it if you overlap.

A And I hope the continuity is still there, but basically my services were engaged by the City of Lindsay to analyze, under TAC or Texas Administrative

A -- taking a conservative approach to their fiscal responsibilities.

One of the measures that's even -- that's relied upon in my profession is the debt-to-equity ratio to measure the financial risk associated with the utility operation or any business operation for that matter. In fact, that particular measure is so noteworthy that it's even quoted specifically within 291.102 to be looked at.

And for the city operations, I have found that the City of Lindsay has basically zero debt. This is a 100 percent self-funded operation, city government, at this particular time as of December -- I'm sorry -- September 30, 2007. And for a timeframe reference, my analysis occurred from 2004 to 2007 using the audited financial statements of this city.

In the utility operations, the debt-to-equity ratio has ranged from .51 to .28. And to put that in perspective, if we're at 1.0, that means we have 50 percent debt employed and 50 percent equity employed, so that the lower -- the percentage means the less debt that we have. And to put that in maybe a clearer picture is that in this four-year period, the equity of Lindsay's utility operation has

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Code Chapter 30, 291.102, the requirements that must be met by the applicant in filing for an amendment to a CCN.

And in summary -- to summarize those, they can basically be classified in three primary areas: Financial, managerial and technical. Mr. Maroney handled the managerial and technical aspects of that particular rule. I'm here to address the financial aspects as required by the rule and my assessment of the City of Lindsay's financial capability and stability to provide continuous and adequate water service into the area that's being requested.

I am pleased to sit here today in light of the financial crisis that this nation finds itself to have a beacon of light up here in North Texas, Cooke County, such as the City of Lindsay.

JUDGE NORMAN: Oh. I was wondering when you said you're pleased to sit here, I'm a little uncomfortable sitting here myself.

(Laughter)

A I am pleased to report there is a beacon of light, perhaps a lesson we can all learn, from the City of Lindsay --

JUDGE NORMAN: Okay.

ranged from 66 percent to 78 percent.

In fact, the only outstanding debt that they have at this point in time is really not a debt instrument at all. It's a surrogate debt, which is a capital lease for a water well, that was put in place in 1995 and is due to mature in the year 2015. So, therefore, looking at these ratios, we find that there's a very, very, very low financial risk.

But there's other measures that are worthy to be analyzed, and one would be what we call the working capital ratio. It's also referred to as the current ratio. And that ratio is one that says current assets to current liabilities, what's my ability within the next 90 days or so to pay my bills. And what we find at the city level, city operations, they are demonstrating a current ratio of basically nine to one. Utility operations are eleven to one. So in other words, we have eleven times assets what we have current liabilities, and we're talking liquid assets, assets that can be converted to cash quickly.

In my industry, when we find one at two to one, a ratio of two to one, we see that as a strong measure at two to one. So obviously when we're looking at nine and eleven to one, we have a very, very strong financial position.

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<p>1 Another item that I look to is positive 2 cash flow, and this company -- this utility operation 3 and the city, for that matter, has demonstrated annual 4 cash flows in excess of \$100,000. Obviously part of 5 the contribution to your cash flow is the fact that 6 depreciation is constructed within rates. So that is 7 providing some of that cash flow. So if we take the 8 depreciation out of the cash flow, they're still 9 netting something in the neighborhood of 60 to \$70,000 10 annually, generating enough cash not only to replace 11 their assets, as they require replacement, but also 12 positioning itself for future growth. 13 Cash reserves is another one, especially 14 in today's market. The ability to go out and obtain 15 financing is not going to be like it's been. In fact, 16 the City of Arlington had to withdraw a public 17 offering. The City of Corpus Christi has just 18 withdrawn a public offering. The Dallas Water 19 Utilities has just put commercial paper out on the 20 market that was not taken up. So it's not going to be 21 business as usual, and the better you are in a cash 22 reserve basis, the better you're going to be. 23 MR. CARLTON: Your Honor? 24 A To see -- 25 MR. CARLTON: Your Honor, if I could</p>	<p>1 is about 600,000. 2 Final recourses is another item that we 3 look to. I mention in my testimony revenue bonds, 4 certificate of obligations, which is often referred to 5 as a double-barrel bond, general obligation bonds. I 6 talk about the taxing capacity of the city to support 7 debt, developer contributions we talked about. 8 It was mentioned yesterday, I believe, 9 by the TCEQ staff or perhaps Mr. Maroney, grant funds 10 availability through a city. 11 Finally, how do we compare, what do our 12 rates look like? And I've updated the testimony to 13 reflect the 2008 rate increase that was -- that became 14 effective October 1, 2008. And basically the city 15 ranks in the bottom 25 percent of the lowest most 16 affordable rates for cities 2,000 and under, about 17 281. I believe their ranking was in the 60 and 70 18 position based on five and 10,000 gallons. 19 So in my opinion, this city is -- and 20 its utility operations have demonstrated prudent 21 fiscal responsibility for the public funds that 22 they're in charge with and are positioned well to 23 provide continuous and adequate service into the 24 requested area. 25 MR. RODRIGUEZ: I tender the witness for</p>
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<p>1 object? And I apologize, Mr. Stowe, for interrupting 2 you. 3 THE WITNESS: Sure. 4 MR. CARLTON: But I'm not sure that all 5 this is within his testimony. 6 JUDGE NORMAN: Right, right. 7 MR. CARLTON: And I think we're 8 intending to have a summary. 9 JUDGE NORMAN: That's more of a summary 10 of the testimony. 11 MR. CARLTON: Yeah. 12 JUDGE NORMAN: It's interesting, what 13 you're saying. 14 MR. CARLTON: It is very. And I 15 apologize, Mr. Stowe, but in an effort to keep the 16 evidence on direct limited to -- 17 JUDGE NORMAN: Right. Okay. 18 MR. CARLTON: -- what's in the 19 testimony. 20 THE WITNESS: I'll shorten it up a 21 little bit or try to -- 22 JUDGE NORMAN: Okay. 23 THE WITNESS: -- although this is 24 specifically -- the cash reserve of the city is 25 currently at 700,000. The cash reserve of the utility</p>	<p>1 cross-examination. 2 JUDGE NORMAN: Mr. MacLeod? 3 CROSS-EXAMINATION 4 BY MR. MacLEOD: 5 Q Mr. Stowe, as a city, can Lindsay supplement 6 its water budget with funds other than those collected 7 by rates in order to keep water rates down? 8 A In order to keep water rates down? 9 Q Yes. 10 A They could -- they could do it through grant 11 funding. They could do it through a transfer from the 12 general fund from the tax revenues of the city. Those 13 would be primarily the only funding sources that come 14 to mind that would help keep rates down. Obviously if 15 they issued new debt, that potentially, not 16 necessarily, but that would perhaps require an 17 increase in rates to service that debt. 18 But as far as to keep rates down or hold 19 rates down, obviously they have general fund revenues 20 available to them if they chose to use those, and they 21 also have the grant funding applications that they 22 could make. 23 Q So if the city needed to build a new plant 24 for remote areas or had to pay for long extension 25 lines, pump stations, elevated storage and the like,</p>

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1 could it be financed through these other sources  
2 rather than rates?

3 A Actually, the numbers that were talked about  
4 yesterday, they could finance it with -- they wouldn't  
5 have to finance it. They have the cash on hand to pay  
6 for it. So they could pay for that and not have to  
7 increase rates at all.

8 Q Do you know if it would be cheaper -- you  
9 were here when the testimony was given yesterday about  
10 serving the remote areas and potential costs. You  
11 heard that testimony. Is that right?

12 A That's correct.

13 Q Do you have an opinion on whether or not it  
14 would be cheaper to build a local plant to serve those  
15 remote connection areas if the CCN were granted?

16 A No, I have not done a study to that and don't  
17 know. I know the only numbers I've seen were talked  
18 about yesterday and in the deposition of Mr. Myrick.  
19 I hope I'm pronouncing that right. If I'm not,  
20 correct me. But in the deposition of Mr. Myrick, I  
21 think he identified the Lindsay Pure Water Company  
22 would have to expend something like \$350,000 to  
23 service the remote areas.

24 Q Well, if it were cheaper, again, could the  
25 city finance that local plant with these other sources

1 A That's for a private well.

2 Q Okay. So you weren't talking about, for  
3 example, Lindsay Pure Water's well going down and  
4 those folks in that subdivision being out of water?

5 A No. My testimony is addressing the service  
6 area that's been applied for where Lindsay Pure Water,  
7 the investor-owned utility, does not have wells in  
8 that area or service. And that area currently, as my  
9 testimony states, is being serviced by private wells.

10 Q Okay.

11 A So if their well goes down --

12 Q I just want to make the record clear that  
13 this opinion here isn't -- that if Lindsay Pure  
14 Water's well goes down, then those folks would be out  
15 of water?

16 A I don't believe that they're servicing in the  
17 area that we've requested. So, no, that's not --

18 Q All right. So let's turn then to Page 23  
19 because that's the other thing that I wanted to clear  
20 up. Page 23, Lines 21 through 23, at the bottom of  
21 that page. And you say "According to the city's  
22 application, there are no other utilities providing  
23 service in the requested area."

24 Now, when you reached this opinion, did  
25 you do any independent looking or verification to find

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1 of money, including cash reserves?

2 A Yes, uh-huh.

3 Q Now, if the city were awarded the CCN and it  
4 received a request for service from a qualified  
5 applicant, do you know how long the city has before  
6 they can provide service? Do you know how long they  
7 have to respond to a request to provide service?

8 A I know it's covered, but I don't know  
9 specifically off the top of my head.

10 Q If I were to say that Rule 291.85(b) of the  
11 TCEQ rules said you had to provide it within 180 days,  
12 would that seem square with your --

13 A I could go along with that. I mean, I know  
14 it would be -- I knew it was less than a year.

15 MR. MacLEOD: Pass the witness.

16 CROSS-EXAMINATION

17 BY MR. CARLTON:

18 Q I have a couple of questions, Mr. Stowe.  
19 Page 16 of your testimony, Lines 19 through 21, you  
20 state that as an example of reliability of water  
21 service that if a water well malfunction occurs,  
22 somebody could be out of water. And I want to make  
23 sure that I understand that that example you're giving  
24 is purely for a single-family residence, somebody  
25 that's got their own well?

1 out whether or not Lindsay Pure Water Company was  
2 serving outside of its CCN?

3 A No, not when I made this statement.

4 Q Okay. So if, in fact, Lindsay Pure Water is  
5 serving within that quarter mile outside its CCN, this  
6 statement would be inaccurate?

7 A If there's evidence that shows that  
8 obviously. This statement, though, would not be --  
9 the statement is not inaccurate because the statement  
10 reads in the testimony "According to the city's  
11 application."

12 Q Okay. All right. Well, then if you found  
13 out that Lindsay Pure Water was providing service  
14 within that quarter mile, then would your opinion  
15 still be that there's no impact to other retail public  
16 utilities?

17 A My testimony today, as we sit here, there may  
18 or may not be based on the deposition I've read of  
19 Lindsay Pure Water.

20 Q All right. Well, assume with me Lindsay is  
21 providing service within a quarter mile of its CCN and  
22 outside its CCN boundary. Would there be an impact to  
23 Lindsay?

24 A Maybe, maybe not.

25 Q Okay.

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1 JUDGE NORMAN: For granting the CCN?  
2 MR. CARLTON: Right.  
3 JUDGE NORMAN: Okay.  
4 MR. CARLTON: And today I really meant a  
5 couple of questions.  
6 JUDGE NORMAN: Okay. Good deal.  
7 MR. CARLTON: Pass the witness.  
8 JUDGE NORMAN: Anything further?  
9 REDIRECT EXAMINATION  
10 BY MR. RODRIGUEZ:  
11 Q Mr. Stowe, you were here earlier when the  
12 Judge was asking for some testimony regarding one of  
13 the factors that are contained in CCNs. Correct? You  
14 were here when he asked that?  
15 A Yes, sir.  
16 Q Can you please -- and Mr. Carlton hit on  
17 actually the question that I believe the Judge was  
18 going toward or the factor the Judge was requesting  
19 there on Page 23 of your testimony. When you say  
20 "maybe or maybe not" that there might be an impact --  
21 A Right.  
22 Q -- on Lindsay Pure Water --  
23 A Based on the evidence I've reviewed.  
24 Q Can you please explain that?  
25 A Yes. It's my understanding that when Lindsay

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1 Pure Water, the investor-owned utility, when they  
2 filed for their CCN, they were granted a CCN for  
3 basically what is Phase I and Phase II of the -- I  
4 believe it's Lindsay South Ridge.  
5 JUDGE NORMAN: Okay.  
6 A So to the extent that -- and currently within  
7 Phase I and Phase II, it's my understanding that each  
8 of those phases contained 15 lots. So it would be --  
9 if anything is outside the CCN, it would be Phase III  
10 of the development by the IOU.  
11 The Phase III then would have to be  
12 where these connections -- and it's my understanding  
13 Phase III, based on the deposition, was completed in  
14 the year 2006, and it's basically moved along pretty  
15 good as far as the sale of lots.  
16 I also understand by the deposition that  
17 there's 25 to 26 actual water connections. We're not  
18 talking lot sales, but we're actually talking  
19 connected water customers. So to the extent there's  
20 25 or 26, then some of those would have to be in  
21 Phase III to be into the quarter mile, if I understand  
22 from the deposition that the existing CCN covered  
23 Phases I and II.  
24 Now, when I say "maybe and maybe not,"  
25 when I look at the testimony that Lindsay Pure Water,

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1 the investor-owned utility, has operated at a loss  
2 since its inception in the 1997-1998 timeframe and  
3 only recently, according to the deposition, began to  
4 break even was the term used. Well, if we have no  
5 debt on the system, which I believe was also the  
6 deposition, and we're only covering variable costs,  
7 then to the extent that we were to lose a connection,  
8 then -- and if we're losing money or barely breaking  
9 even, there would be no impact financially upon the  
10 system.  
11 JUDGE NORMAN: Okay.  
12 A So basically that's why I say just with what  
13 I have right now, I'm not saying that is the case, but  
14 I have a strong indication that that could be the case  
15 based on the testimony of the president of the IOU.  
16 Q (BY MR. RODRIGUEZ) Now, Mr. Stowe --  
17 JUDGE NORMAN: I want to ask you a  
18 question on that, though. There are fixed costs as  
19 well as variable costs that are spread over each  
20 connection. Is that true?  
21 A To the extent that -- there are some fixed  
22 costs, and that fixed cost right now, according to the  
23 testimony since there's no debt, would only be for the  
24 contract operator. So, yes, his fixed cost, whatever  
25 that may be, unless he's charging his contract by

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1 connections, which a lot of these contractors do. If  
2 he's charging his contract costs by connections, then  
3 if you lose a connection, you lose that associated  
4 cost.  
5 JUDGE NORMAN: Okay.  
6 Q (BY MR. RODRIGUEZ) Now, Mr. Stowe, can you  
7 please describe for the Judge what would be the impact  
8 on Lindsay Pure Water or any other retail public  
9 utility if Mr. Myrick's 42 acres are excluded from the  
10 requested service territory of the City of Lindsay?  
11 A Actually, Mr. Rodriguez, I haven't looked  
12 specifically to that 42 acres. I mean, I can't answer  
13 your question at this time.  
14 Q Okay.  
15 JUDGE NORMAN: Well, I'd like it asked  
16 both in terms of Pure Water and also town of  
17 Lindsay -- City of Lindsay.  
18 Q (BY MR. RODRIGUEZ) Would there be any impact  
19 on Lindsay Pure Water if the 42 acres that Mr. Myrick  
20 owns that's not within Lindsay Pure Water Company's  
21 CCN, would there be any impact on the company Lindsay  
22 Pure Water if that -- if Lindsay's CCN is granted for  
23 that territory?  
24 MR. RODRIGUEZ: I believe that's the  
25 testimony you were seeking. Correct?

# HEARING ON THE MERITS

SOAH DKT. NO. 582-06-2023

TCEQ DKT. NO. 2006-0272-UCR

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1 JUDGE NORMAN: And I think he answered  
2 that question.  
3 MR. RODRIGUEZ: Okay.  
4 JUDGE NORMAN: But I'd like to know the  
5 impact on everyone, also town of Lindsay -- City of  
6 Lindsay.  
7 MR. RODRIGUEZ: All right.  
8 Q (BY MR. RODRIGUEZ) Do you have an opinion  
9 with respect to that area, the 42 acres, Mr. Myrick  
10 owns -- I mean, yes, that if the City of Lindsay seeks  
11 that area, what would happen if we were unable to be  
12 certificated to that area?  
13 A Could I ask --  
14 JUDGE NORMAN: Sure.  
15 A -- a clarifying question? The 42 acres, are  
16 we talking the 42 acres of the original 100 acres --  
17 Q (BY MR. RODRIGUEZ) Yes, sir.  
18 A -- and he thought that he had a CCN, but he  
19 finds out now that he doesn't have a CCN?  
20 Q That's my understanding.  
21 (Simultaneous discussion)  
22 JUDGE NORMAN: I think that's it.  
23 MR. RODRIGUEZ: That's my understanding.  
24 JUDGE NORMAN: Phases I through IV, I  
25 think. Is that right?

1 It obviously has infrastructure in place in Phase III.  
2 Now, regardless of whether there's a  
3 financial impact from continuing operations, there is  
4 an investment, I think, that --  
5 JUDGE NORMAN: Yes.  
6 A -- needs to be recognized. And whether or  
7 not -- if it's not granted, his investment stays in  
8 place. If it is granted, in my opinion, there has to  
9 be accommodations of some sort for that investment --  
10 recognition of the investment that's there.  
11 As for Lindsay, obviously the impact, if  
12 they're granted, that particular area, the service  
13 would have to be extended or the facilities that are  
14 in the ground utilized and -- so there would be an  
15 extension cost out to that area at some point in time.  
16 JUDGE NORMAN: You mean beyond on the  
17 other side -- on the south of --  
18 A Right.  
19 JUDGE NORMAN: -- South Ridge?  
20 A Right. That's my understanding.  
21 JUDGE NORMAN: All right.  
22 A But have I looked at it specifically to  
23 say -- to quantify that impact?  
24 JUDGE NORMAN: Yes.  
25 A No, sir.

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1 A I understand what the 22 acres is now.  
2 MR. CARLTON: Yeah, I think Mr. Myrick's  
3 testimony is there's 42 acres in Phases III and IV.  
4 JUDGE NORMAN: Okay. In addition to the  
5 acreage in I and II?  
6 MR. CARLTON: In addition to Phases I  
7 and II, which are from the maps at TCEQ apparently in  
8 the CCN.  
9 JUDGE NORMAN: All right.  
10 MR. CARLTON: Even though when he filed  
11 the application, he felt like -- he recalls filing for  
12 the whole 96 acres and doesn't know why the map was  
13 issued.  
14 JUDGE NORMAN: Right.  
15 MR. CARLTON: It's been some time ago.  
16 Q (BY MR. RODRIGUEZ) Okay. And I appreciate  
17 the clarification with Mr. Carlton, but with that  
18 being the understanding, can you please detail what  
19 the impacts would be on Lindsay's CCN to both the City  
20 of Lindsay, Lindsay Pure Water Company and for any  
21 other retail public utility in the area?  
22 A Yes. On behalf of -- let me first address  
23 the IOU, the investor-owned. It's my understanding  
24 that the investor-owned utility does have  
25 infrastructure ready to go in place in Phase IV.

1 JUDGE NORMAN: Okay. And, of course,  
2 you know, I want the parties' positions on these  
3 various alternatives, too, at some point.  
4 Q (BY MR. RODRIGUEZ) I'm going to ask you the  
5 final area that we want to cover with respect to the  
6 redirect here based on what the Judge requested  
7 earlier. If the City of Lindsay is not certificated  
8 to its requested service territory south of  
9 Highway 82 -- and you know which area I'm talking  
10 about?  
11 A Yes.  
12 Q Let me ask, do you know what area I'm talking  
13 about?  
14 A Yes.  
15 Q Can you please detail what the impact might  
16 be on both the City of Lindsay, the Lindsay Pure Water  
17 Company and any other retail public utility near that  
18 area?  
19 A Let me look -- could I look at a map?  
20 JUDGE NORMAN: Sure. Please.  
21 (Discussion off the record)  
22 JUDGE NORMAN: And I already know the  
23 parties' positions on cutting out south of 82.  
24 Mr. Myrick is for it, the City of Lindsay is against  
25 it. So we don't need to go into that, but I would

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1 like to know as far as the other two alternatives --  
2 and I'm particularly speaking of impact on Pure Water  
3 and any other public utility, not necessarily on  
4 Mr. Myrick's investment, just looking at the impact on  
5 Pure Water. Okay?

6 A Excuse me, Your Honor?

7 JUDGE NORMAN: You were talking about  
8 honoring Mr. Myrick's investment, and I did not see  
9 that that's a legal standard that I'm supposed to look  
10 at, but there is -- I am supposed to look at the  
11 impact on another retail public utility --

12 A Yes, sir.

13 JUDGE NORMAN: -- and that is Pure  
14 Water. And they may be one and the same, you know.  
15 The investment may be in Pure Water itself, and so  
16 they may be one and the same. I don't know. But  
17 that's what I'm interested in is those legal standards  
18 that I'm supposed to look at. Okay?

19 Q (BY MR. RODRIGUEZ) Do you need me to repeat  
20 my question, Mr. Stowe?

21 A You can repeat it, and then I'll answer it.

22 Q Mr. Stowe, one of the areas that His Honor  
23 this morning had requested some additional testimony  
24 on was related to the effect of Lindsay's application  
25 on other retail public utilities. Can you please

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1 detail what the effect would be on the town of  
2 Lindsay, Lindsay Pure Water Company and any other  
3 retail public utility? First of all, let's go with  
4 what is the effect on the town of Lindsay if it  
5 receives the certificate south of Highway 82?

6 A Well, the effect is going to be -- and this  
7 will be subject to engineering requirements to extend  
8 and provide service, which I'm not an engineer. But  
9 obviously the effect is going to be, number one, on  
10 their available excess capacity right now and how much  
11 they can capitalize on it. That's going to be the  
12 same effect as pure -- the investor-owned utility to  
13 the extent they have excess capacity. It's going to  
14 be the distance of the lines that have to be extended.  
15 So really that's more of an engineering question, I  
16 think.

17 Now, I can answer it from a governmental  
18 standpoint, is that granting the CCN to Lindsay, the  
19 City of Lindsay will put that area under their  
20 regulatory control for the quality of the  
21 infrastructure and the standards to be employed,  
22 assuming -- which we have to assume this city --  
23 currently there's been testimony about and because of  
24 the size of the city -- there's been testimony about  
25 voluntary annexations.

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1 There's a requirement within some of the  
2 ordinances that have been discussed that with service  
3 is a request for annexation. At some point in the  
4 future, maybe not that far away, this town will be at  
5 5,000 people and at that point in time becomes  
6 eligible to annex within -- I believe it's a mile,  
7 mile and a half of their existing city lines --

8 JUDGE NORMAN: Okay.

9 A -- within their ETJ. So one of the things  
10 that -- and in my point of view, a very important  
11 governmental planning standard, because I've been  
12 involved in a lot of these involving cities that have  
13 grown from a rural community to a population above  
14 5,000, when that happens and they take over the WSCs  
15 or other utility operations, they are faced with  
16 substandard systems that don't meet their regulatory  
17 requirements, and so it creates a big problem.

18 So by granting the CCN to Lindsay at  
19 this point in time, we avert this problem in the  
20 future as they continue to annex and the city limits  
21 continues to grow and they provide service to their  
22 citizens. So from that perspective, it has a very  
23 dramatic impact on the City of Lindsay.

24 JUDGE NORMAN: Okay.

25 A That impact is not present for an

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1 investor-owned utility. They don't have that  
2 requirement other than to provide service and try to  
3 make a profit. In fact that's why they're structured  
4 the way they are.

5 The City of Lindsay will not go away.  
6 We don't know whether Lindsay Pure Water will go away  
7 or not.

8 JUDGE NORMAN: Okay.

9 Q (BY MR. RODRIGUEZ) Mr. Stowe, what is your  
10 understanding of an ability for an investor-owned  
11 utility to provide utility service outside of its CCN  
12 territory? Let me ask it this way: Is there a  
13 distance outside of a CCN that an investor-owned  
14 utility can provide service without -- without  
15 expanding its CCN?

16 A The quarter mile has been kicked around, but  
17 I'm not sure, as I stop here and think about it now,  
18 whether or not that's applicable to an IOU or not. It  
19 may be.

20 Q So --

21 A If they do so, they're doing so at extreme  
22 risk to their financial investors.

23 Q And please explain that risk to financial  
24 investors for me, please.

25 A Because they're putting their capital at risk



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1 knowing that they don't have the ability to serve or  
2 the regulatory authorization to provide service in  
3 that area. And to the extent such as we have here  
4 there's an application that encroaches upon that  
5 quarter-mile extension, they may or may not be able to  
6 protect --

7 JUDGE NORMAN: Hold on to it?

8 A -- that investment.

9 JUDGE NORMAN: Okay. And also, you  
10 know, I'm asking questions that are -- you know, I've  
11 thought about since we broke, and anybody can object,  
12 you know, to where I'm going.

13 MR. CARLTON: That's bad form.

14 (Laughter)

15 MR. RODRIGUEZ: I doubt you're going to  
16 get much objection.

17 JUDGE NORMAN: Really, but -- I mean, I  
18 do want to state that.

19 MR. CARLTON: Art, what are the odds on  
20 the chance of getting success with him?

21 (Laughter)

22 JUDGE NORMAN: Just matters that  
23 occurred to me, you know, after listening to the  
24 testimony and looking at the standards again.

25 MR. CARLTON: I appreciate that.

1 Q So you're not indicating in any way that  
2 Lindsay Pure Water is substandard? I just want to  
3 make that clear.

4 A I wouldn't have the pertinent professional  
5 foundation. I'd rely on Mr. Maroney whether it is or  
6 isn't.

7 Q Okay. Also, just one more area, just another  
8 minute maybe, and that is probably less. You  
9 testified something like really the only fixed costs  
10 they have to deal with is their contract with the  
11 operator. Doesn't depreciation somehow weigh in  
12 there, too? Wouldn't that be another consideration?

13 A No, sir.

14 Q So depreciation is not a fixed cost? They've  
15 got to pay regardless of how many customers they have?

16 A Depreciation isn't a cost that you pay.  
17 Depreciation is a recognition of the utilization of an  
18 asset that's already been paid for.

19 Q Won't they have to replace that some time in  
20 the future?

21 A They may have to, yes.

22 Q Where are they going to get the money for  
23 that if they aren't accounting for that depreciation?

24 A According to Lindsay Pure Water, they'll go  
25 borrow the money on a line of credit.

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1 JUDGE NORMAN: All right. I don't want  
2 to mess up your case or direct your case. All right.

3 MR. RODRIGUEZ: Actually, I'm going to  
4 pass the witness based on that.

5 JUDGE NORMAN: Okay. Mr. MacLeod?

6 RE-CROSS-EXAMINATION

7 BY MR. MacLEOD:

8 Q I believe part of your testimony was that the  
9 city would rather have the CCN because sometimes a  
10 city might be able to have to take in a substandard  
11 system -- is that right -- and that can be a problem?

12 A That's happened in the past, yes.

13 Q But in your prefiled testimony, there's no  
14 indication given that Lindsay Pure Water is  
15 substandard. Is that right?

16 A According --

17 Q According to your prefiled, you don't have  
18 any testimony showing that it was substandard, do you?

19 A As stated in my prefiled, based upon the  
20 application, there was no utility -- other utility  
21 operation within the area that we were -- that the  
22 city is requesting.

23 Q Okay.

24 A So there would not be any testimony towards  
25 that point.

1 MR. MacLEOD: All right. That's all.

2 Maybe Lindsay will want to expand on that just a  
3 little bit. I will pass the witness.

4 JUDGE NORMAN: All right. In someplace  
5 then, you know, we brought up the part about, you  
6 know, the standards and so on for a private investor  
7 and for a town like Lindsay. And I'd like some sort  
8 of evidence or briefing on whether or not the  
9 standards are the same or different for, you know, the  
10 town of Lindsay and a private investor-owned water  
11 utility like Pure Water.

12 MR. RODRIGUEZ: Briefing on the  
13 comparative abilities to provide service outside --

14 JUDGE NORMAN: No. I want to know if  
15 the -- you know, Mr. Stowe said sometimes it happens  
16 that when a city expands and it expands into a  
17 previously -- you know, a previous operation by a  
18 private investor, they find that -- sometimes the  
19 cities find that the previous operation is substandard  
20 according to their standards, according to the city's  
21 standards.

22 What I want to know in briefing or in  
23 some fashion is is the city held to higher standards  
24 than an investor-owned utility? Somebody can tell me  
25 that now, if they want to.

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<p>1           MR. CARLTON: In terms of the service,</p> <p>2           the capacity requirements, minimum standards for</p> <p>3           operation?</p> <p>4           MR. RODRIGUEZ: The TCEQ minimum</p> <p>5           standards that are not --</p> <p>6           JUDGE NORMAN: Right, TCEQ.</p> <p>7           MR. CARLTON: 290.45 is essentially what</p> <p>8           you've got there.</p> <p>9           JUDGE NORMAN: Okay.</p> <p>10          MR. RODRIGUEZ: If you're a public water</p> <p>11          system, regardless of the type of entity, you've got</p> <p>12          certain requirements to meet.</p> <p>13          JUDGE NORMAN: Same standards. Is that</p> <p>14          right?</p> <p>15          MR. RODRIGUEZ: As far as minimum</p> <p>16          standards go, that's correct.</p> <p>17          JUDGE NORMAN: Okay. All right.</p> <p>18          MR. CARLTON: It really is dependent</p> <p>19          upon size of the system --</p> <p>20          MR. RODRIGUEZ: Right.</p> <p>21          MR. CARLTON: -- the only adjustment in</p> <p>22          standards.</p> <p>23          JUDGE NORMAN: Okay.</p> <p>24          MR. CARLTON: And I do have a couple of</p> <p>25          questions.</p>	<p>1           A   Yes, sir.</p> <p>2           Q   I want you to assume there are seven</p> <p>3           customers within Phase III.</p> <p>4           A   Yes, sir.</p> <p>5           Q   And if Lindsay Pure Water were to lose seven</p> <p>6           out of its 26 customers in terms of revenue, that</p> <p>7           would be a significant revenue impact to Lindsay Pure</p> <p>8           Water. Correct?</p> <p>9           A   Well, they'd lose the revenues, I agree, but</p> <p>10          they'd also lose the variable expenses being incurred</p> <p>11          in support of those revenues. So it's not a</p> <p>12          one-for-one offset.</p> <p>13          Q   I understand. And when we talk about</p> <p>14          investor-owned utilities, you, I understand -- you</p> <p>15          have the expertise to understand what utility basis</p> <p>16          accounting is as opposed to cash flow basis?</p> <p>17          A   That's correct, sir.</p> <p>18          Q   Okay. So for an investor-owned utility,</p> <p>19          recovering depreciation is an appropriate expense that</p> <p>20          they should be allowed to recover in their rates.</p> <p>21          Correct?</p> <p>22          A   That is correct.</p> <p>23          Q   And to the extent cash flow has been break</p> <p>24          even or negative, then the utility is not recovering</p> <p>25          depreciation. Is that correct? Depreciation is not a</p>
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<p>1           MR. RODRIGUEZ: Tammy can correct us if</p> <p>2           we're wrong on that.</p> <p>3           MS. HOLGUIN-BENTER: No, that's what we</p> <p>4           were just talking about.</p> <p>5           JUDGE NORMAN: Okay.</p> <p>6           THE WITNESS: But the city can invoke</p> <p>7           higher standards.</p> <p>8           MR. RODRIGUEZ: Right.</p> <p>9           JUDGE NORMAN: All right.</p> <p>10          MR. CARLTON: Well, I have a couple of</p> <p>11          questions --</p> <p>12          JUDGE NORMAN: Sure.</p> <p>13          MR. CARLTON: -- based on that.</p> <p>14          JUDGE NORMAN: It's your turn.</p> <p>15          MR. CARLTON: Good.</p> <p>16          JUDGE NORMAN: Well -- yeah,</p> <p>17          Mr. MacLeod --</p> <p>18          MR. CARLTON: I think he passed.</p> <p>19          JUDGE NORMAN: Yeah, yeah.</p> <p>20          REXCROSS-EXAMINATION</p> <p>21          BY MR. CARLTON:</p> <p>22          Q   Mr. Stowe, I want you to assume a couple of</p> <p>23          facts for me, one of which you're already stated.</p> <p>24          There's 26 customers currently on the Lindsay Pure</p> <p>25          Water system?</p>	<p>1           cash expense?</p> <p>2           A   If the utility has not been recovering cash</p> <p>3           on cash requirements --</p> <p>4           Q   Correct.</p> <p>5           A   -- that's correct. They would not be</p> <p>6           recovering the depreciation expense.</p> <p>7           Q   All right. And they're entitled under the</p> <p>8           TCEQ's utility ratemaking standards to recover</p> <p>9           depreciation?</p> <p>10          A   If they're not employing the cash basis,</p> <p>11          which an IOU can employ the cash basis.</p> <p>12          Q   Okay. And they're also entitled to recover a</p> <p>13          return on their investment, which is where the profit</p> <p>14          comes from in an investor-owned utility?</p> <p>15          A   Which obviously they have. That's why I said</p> <p>16          maybe and maybe not.</p> <p>17          Q   Okay.</p> <p>18          A   If I understand this utility -- this private</p> <p>19          utility has been in operation less than ten years --</p> <p>20          Q   Right.</p> <p>21          A   -- or approximately ten years, and it was</p> <p>22          debt financed, and they currently have no debt. So</p> <p>23          obviously the rates generate sufficient funds coming</p> <p>24          through that retired the debt. So if the debt retired</p> <p>25          within ten years and we have assets that are 30 years</p>

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1 long, then obviously either through accelerated  
2 depreciation, which is not allowed by this Commission,  
3 or through some structure they've recovered more cash  
4 than what they had invested in the situation -- in the  
5 utility operations.

6 So they filed a rate application back in  
7 1998 that has not been looked at, has not been  
8 reviewed, and the president of the company doesn't  
9 know how it was formulated. So whether or not the  
10 rates are just and reasonable and how much cash has  
11 been siphoned off or whatever by this investor-owned,  
12 I have no idea.

13 Q Okay. So -- and I appreciate the  
14 explanation.

15 MR. CARLTON: I'll object to the term  
16 "siphoned off" and the connotations it has.

17 Q (BY MR. CARLTON) But your point being if the  
18 cash flow was sufficient to pay off the debt-financed  
19 infrastructure investment and that debt is no longer  
20 out there, there may be cash flow that is now  
21 available to begin recovering that depreciation?

22 A There could be. I have no --

23 Q Okay. I understand.

24 A I have no idea.

25 Q What I'm getting to is the Judge had asked

1 depreciation and return on investment. Now, the  
2 return on investment is determined based upon an  
3 average interest rate, depending upon whether or not  
4 you've invested cash or whether you've financed it.  
5 Right?

6 A It's not an average interest rate, but it is  
7 an average --

8 Q It's a weight --

9 A It's a rate of return, a weighted rate.

10 Q Weighted rate of return. My apologies on the  
11 terminology.

12 So to the extent -- and I'm not  
13 suggesting that there hasn't been depreciation being  
14 recovered, but depreciation on an asset, as you said,  
15 is not allowed to be accelerated under the TCEQ rules.  
16 Correct?

17 A That's right. That doesn't mean it's not  
18 taking place, though.

19 Q Correct. I understand. So these utility  
20 assets, though, have generally a life longer than ten  
21 years?

22 A That's correct.

23 Q Okay. So the utility is going to be in a  
24 mode of recovering that depreciation over a period of  
25 time. And if the utility loses customers and still

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1 you a question about whether Mr. Myrick should be  
2 compensated for his investment or not, and he's not  
3 concerned about Mr. Myrick, and I would agree with  
4 that. But Lindsay Pure Water, from the standpoint  
5 that it debt financed this investment on its own and  
6 that it's got invested assets in the ground that  
7 should be earning depreciation, it is entitled to get  
8 recovery of those costs through its rates. Isn't that  
9 correct?

10 A It's my understanding --

11 Q The utility is entitled to recover those  
12 costs through its rates. Correct?

13 A If it has costs outstanding, which based on  
14 the testimony it has paid for the investment cost  
15 already.

16 Q But depreciation costs or expense it's  
17 entitled to recover through its rates as well.  
18 Correct?

19 A Only to the point that you recover the cost  
20 of the investment. If you've already recovered your  
21 cost of investment, then you're not entitled to  
22 continue to depreciate an item if that item has been  
23 paid for, either through accelerated or excess cash  
24 flow, into paying down the investment.

25 Q But utility basis accounting allows both

1 has assets out there for which it is entitled to  
2 recover depreciation on a continuing basis, then its  
3 rates would have to go up in order to compensate for  
4 the loss of the customers. Is that correct?

5 A To the extent that there is undepreciated  
6 property in comparison with the original investment of  
7 the company, the funding of those investments, if the  
8 rates have not generated enough money to pay off the  
9 funds that were used to make the investment and  
10 there's still invested funds out there associated with  
11 depreciable lives beyond the ten years, yes, they're  
12 still entitled to recover that.

13 Q Okay. And I would disagree with that on the  
14 basis of -- could the utility have chosen to take the  
15 portion of its return on investment and its  
16 depreciation to accelerate the payoff of the debt?

17 JUDGE NORMAN: There's no question to  
18 you.

19 MR. CARLTON: I said could the utility  
20 have taken --

21 JUDGE NORMAN: Oh, okay.

22 MR. CARLTON: -- its return on  
23 investment and its depreciation to accelerate the  
24 payoff of the debt and then still be entitled --  
25 having accelerated the payoff of the debt using funds

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<p>1 that weren't necessarily allocated for that and still</p> <p>2 then be entitled in the future to recover the</p> <p>3 depreciation that's continuing? Because it took its</p> <p>4 cash and instead of taking it as a profit in the</p> <p>5 interim, it plowed it back into the system.</p> <p>6 A To the extent -- and that's what I was</p> <p>7 referring to earlier. To the extent that they have</p> <p>8 developed equity in the system, which would be, as you</p> <p>9 say, paying off -- paying down a note with the return</p> <p>10 money versus the -- and the depreciation and paying</p> <p>11 down the note on the accelerated basis versus that of</p> <p>12 the depreciation, yes, they would still be entitled to</p> <p>13 earn not only return on that surviving equity, but</p> <p>14 also the depreciation associated with that asset at</p> <p>15 that point in time.</p> <p>16 Q And so if the utility, from a cash flow</p> <p>17 standpoint, hasn't paid off any profits to any of the</p> <p>18 investors, wouldn't it be appropriate to assume that</p> <p>19 all of that return on investment has been plowed back</p> <p>20 into the utility --</p> <p>21 A Not all of it.</p> <p>22 Q -- to the extent there was any?</p> <p>23 A Not all of it, I mean because we have some</p> <p>24 tax issues that have to be addressed.</p> <p>25 Q Appreciate all of it apart from what was used</p>	<p>1 JUDGE NORMAN: Okay.</p> <p>2 MR. RODRIGUEZ: -- just not have to</p> <p>3 recall them at this time, Your Honor.</p> <p>4 JUDGE NORMAN: Okay. I think it's your</p> <p>5 turn, Mr. Carlton.</p> <p>6 MR. CARLTON: Can we take a quick</p> <p>7 restroom break before we start with Mr. Myrick?</p> <p>8 JUDGE NORMAN: Sure. Let's be back in</p> <p>9 ten minutes.</p> <p>10 (Recess: 10:10 a.m. to 10:24 a.m.)</p> <p>11 (Exhibit LPWC Nos. 1, 1A, 1B, 2 through</p> <p>12 7 marked)</p> <p>13 JUDGE NORMAN: We're back on the record.</p> <p>14 Mr. Myrick, you have been sworn.</p> <p>15 MR. MYRICK: Yes, sir.</p> <p>16 JUDGE NORMAN: And you're under oath.</p> <p>17 MR. MYRICK: Yes, sir.</p> <p>18 JUDGE NORMAN: Okay.</p> <p>19 PRESENTATION ON BEHALF OF LINDSAY PURE WATER COMPANY</p> <p>20 (CONTINUED)</p> <p>21 JAMES MYRICK,</p> <p>22 having been first duly sworn, testified as follows:</p> <p>23 DIRECT EXAMINATION</p> <p>24 BY MR. CARLTON:</p> <p>25 Q Would you please state your name for the</p>
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<p>1 to pay expenses of the utility has been plowed back</p> <p>2 into the utility?</p> <p>3 A To the extent that they were servicing the</p> <p>4 note faster and developing equity into the system, I</p> <p>5 don't disagree with you, and that's why I said earlier</p> <p>6 maybe, maybe not. We'd have to look at it.</p> <p>7 Q And so to the extent that customers are</p> <p>8 removed from the system, that would exacerbate a</p> <p>9 problem of not being able to continue to recover those</p> <p>10 depreciation and return on investment expenses in the</p> <p>11 future?</p> <p>12 A Maybe, maybe not.</p> <p>13 MR. CARLTON: Okay. Thank you. No</p> <p>14 further questions.</p> <p>15 JUDGE NORMAN: Okay. Mr. Rodriguez,</p> <p>16 anything further?</p> <p>17 MR. RODRIGUEZ: No, sir.</p> <p>18 JUDGE NORMAN: Thank you. Thank you</p> <p>19 very much.</p> <p>20 THE WITNESS: Thank you, Your Honor.</p> <p>21 JUDGE NORMAN: All right.</p> <p>22 MR. RODRIGUEZ: That's our last witness</p> <p>23 in our direct subject to being allowed to question the</p> <p>24 witnesses on these issues that you brought up this</p> <p>25 morning on our rebuttal --</p>	<p>1 record?</p> <p>2 A My name is James Thomas Myrick. I go by Jim.</p> <p>3 Q And, Mr. Myrick, do you have in front of you</p> <p>4 what's been marked LPWC Exhibits 1A, 1B and then 1</p> <p>5 through 7? They should all be in that record copy.</p> <p>6 A Yes, I do.</p> <p>7 Q Okay. And with the exception of 1B, which</p> <p>8 we'll talk about in just a second, is that your</p> <p>9 prefiled testimony that you've submitted in this case?</p> <p>10 A Yes, it is.</p> <p>11 Q And are all -- would your answers be the same</p> <p>12 today as they were when you filed that --</p> <p>13 A Yes, sir.</p> <p>14 Q -- if asked them of you today?</p> <p>15 A Yes, they are.</p> <p>16 Q Okay. Would you take a look at Exhibit 1B?</p> <p>17 JUDGE NORMAN: I'm going to stop you for</p> <p>18 just a moment. Help me again find -- I got to looking</p> <p>19 at something else. Can you help me find what you just</p> <p>20 fixed for me?</p> <p>21 (Discussion off the record)</p> <p>22 JUDGE NORMAN: Okay. Go ahead.</p> <p>23 Q (BY MR. CARLTON) Would you take a look at</p> <p>24 Exhibit 1B and --</p> <p>25 MR. CARLTON: Your Honor, I'll represent</p>

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1 to you that you had asked us to bracket language that  
2 was subject to some --

3 JUDGE NORMAN: Yes.

4 MR. CARLTON: -- rulings or concerns, I  
5 guess, by you.

6 JUDGE NORMAN: Yes.

7 MR. CARLTON: And I believe you had  
8 asked us to lay some additional foundation on Page 8,  
9 Lines 18 through 23.

10 JUDGE NORMAN: I'm giving you that  
11 opportunity.

12 MR. CARLTON: And Page 10 -- excuse  
13 me -- Page 9, Lines 10 through 16. And so there are  
14 brackets --

15 JUDGE NORMAN: I see that.

16 MR. CARLTON: -- on the edges of those  
17 paragraphs. And would you like me to have Mr. Myrick  
18 summarize his testimony first and then lay the  
19 foundation, or vice versa?

20 JUDGE NORMAN: No, lay the foundation  
21 first so that we can get it all in, however it's going  
22 to be in.

23 MR. CARLTON: Okay.

24 JUDGE NORMAN: Okay?

25 MR. CARLTON: All right.

1 right now there's three developments that are  
2 currently going, if you will, from family farms, land.  
3 One happens to be the Nortman, which is called -- it's  
4 not Nortman -- yeah, Nortman Estates, okay, and the  
5 other one is Kupper.

6 JUDGE NORMAN: And that's K-U-P-P-E-R.

7 Is that right?

8 A That's correct.

9 JUDGE NORMAN: Nortman is N-O-R-T-M-A-N,  
10 or two Ns?

11 A One N.

12 JUDGE NORMAN: One N, okay.

13 A And they have, you know, been developed  
14 within one -- within the city and one that is north,  
15 and that's the -- Kupper is north and the Nortman is  
16 within the city now. It was taken in. And the other  
17 one, the third one, is South Ridge. The only other  
18 developments have been within the city, and some of  
19 those have been family that have sold and for exactly  
20 the reason that I said, the family didn't agree to  
21 monetary values, or they didn't have enough land to  
22 sell or to divide.

23 South Ridge, I have been seeking the  
24 hundred acres of South Ridge since 1972 when I arrived  
25 in Lindsay visiting with a bachelor, Joe Sandmann.

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1 Q (BY MR. CARLTCEQON) Mr. Myrick, on Page 8 of  
2 your testimony as shown on Exhibit 1B here, you  
3 indicate that you didn't believe any of the requestors  
4 had plans for developing their property. And can you  
5 explain what forms the basis of your opinion that  
6 there aren't any plans for developing their property?

7 A Yes, sir.

8 Q And would you do that for the Court?

9 A Yes, sir. I was born and raised in Muenster,  
10 Texas in a German community founded by the same people  
11 that founded Lindsay. My father was a doctor, and I  
12 was privy to a lot of information as a child. My  
13 education about the community has been lifelong. The  
14 German community is a little bit different than any  
15 other community and specifically Muenster and Lindsay.  
16 They are thrifty, they are very prudent, and they are  
17 very family oriented. The only way -- well, let me  
18 back up.

19 They do not sell their land unless they  
20 are forced to sell their land. They will it to their  
21 children or pass it down to their children. And if it  
22 doesn't go to children, it goes to brothers or sisters  
23 if they can so afford. That's the nature of Muenster  
24 and Lindsay, and we'll talk specifically about  
25 Lindsay, but Lindsay -- there has been only -- well,

1 JUDGE NORMAN: Joe who?

2 A Joe Sandmann.

3 JUDGE NORMAN: Okay. And that's  
4 S-A-N-D-M-A-N-N?

5 A Yes.

6 JUDGE NORMAN: Okay.

7 A And it greatly surprised me in 1997 when --  
8 let me back up a minute.

9 Joe Sandmann is a little older than I  
10 am. I think he had dementia.

11 JUDGE NORMAN: Okay.

12 A And I'm not sure he had Alzheimer's, but I  
13 think it was something like that. And as a bachelor,  
14 he didn't have any children. He had -- he did have  
15 brothers, and he did have lots of nieces and nephews.

16 The Sandmann property is pretty well  
17 south of Lindsay. If you look at the maps, you can  
18 see everybody around there are Sandmanns. When the  
19 administrator of the will, Julius Sandmann and  
20 Clem Sandmann his brother and Clem's wife, called me  
21 and asked me if I was interested, I jumped at the  
22 case. And it was only because they had to sell the  
23 property to take care of the medical bills for  
24 Joe Sandmann. And they asked me what I would give,  
25 and I told them and I wrote it down -- I wrote a check

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1 immediately and secured the land. And that's the only  
2 way that I got that hundred acres, by someone in that  
3 family having to sell that property to pay a debt.  
4 The rest of the people south of Lindsay  
5 are Sandmanns, Hermeses, they're basically all German,  
6 the major landowners. And I'm not even going to say I  
7 can see into the future because I can't.  
8 JUDGE NORMAN: Right.  
9 A But if they go the way they've normally done,  
10 their land will be given to their families when the  
11 patriarch dies or passes, however you want to say it.  
12 And if the family members either can't or won't raise  
13 the money to buy the property -- and that's how it's  
14 done.  
15 And the only need for water south of  
16 82 -- I won't say south -- south of the city limits of  
17 Lindsay is what I have created with South Ridge. And  
18 again, I'm not -- I can't see into the future, but I  
19 do not see any other land being subdivided.  
20 And I might say the three subdivisions  
21 that came out of the family property was over the  
22 past 20 years. So it's not like it's going to happen  
23 in the next five to ten years. It might, but I don't  
24 think it will, and I will assure you I will watch it.  
25 And if it is, I will try to have someone buy it for

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1 me. And that is the reason why I don't think there is  
2 any need for water south of the Lindsay city limits.  
3 JUDGE NORMAN: Okay. And that has to do  
4 with Page 8 of 12, does it not, Mr. Carlton, or is it  
5 for both of them?  
6 MR. CARLTON: It's really for both  
7 because -- and I do have another question to lay some  
8 additional foundation on it.  
9 JUDGE NORMAN: Okay. All right.  
10 MR. CARLTON: But in terms of the fact  
11 there's not a need for water and there's no  
12 development occurring --  
13 JUDGE NORMAN: Okay.  
14 MR. CARLTON: -- we'll talk a little bit  
15 about some of these other ones, too.  
16 JUDGE NORMAN: All right. I'm inclined  
17 to -- I'm just telling you right now -- to allow this.  
18 I know this testimony is -- so far is based on his  
19 personal knowledge. And if I grant this, permitting  
20 this to come in, I'm allowed to let this testimony  
21 that he's given to come in to show the basis of that  
22 opinion. And so that's what I'm doing right now. I'm  
23 just telling you.  
24 Now, if he gets into hearsay or  
25 something of that nature, then obviously I'm not going

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1 to -- that's going to be based on the way I did it  
2 yesterday. Okay? So that's what I -- you know, I  
3 want in the PFD to talk about his opinion, and I want  
4 to talk about the basis of his opinion.  
5 MR. CARLTON: All right.  
6 JUDGE NORMAN: All right. Go ahead.  
7 Q (BY MR. CARLTCEQON) A follow-up question.  
8 On Page 8, you also talk about that it's your opinion  
9 that the city is trying to secure the CCN in order to  
10 gain an additional layer of control and protect from  
11 Gainesville. And can you describe kind of what gives  
12 you -- what's the basis for your opinion on that  
13 issue?  
14 A Well, it is my opinion that that is the sole  
15 reason for the request for the CCN. And if I wasn't  
16 trying to protect myself and my investments -- and I  
17 have stated in my testimony -- that I would be in  
18 favor. But I can't be in favor to something that is  
19 detrimental to myself and my investors. And,  
20 therefore, I am in a corner and where I have to be.  
21 And in visiting with some of the city  
22 council people, Robin Rose, which is an ex-city  
23 councilman, Robert Fuller, which is an ex-city  
24 councilman, we had visited and I visited with  
25 Don Metzler, and I visited with Danny Nortman, which

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1 both are on the city council. And I have stated  
2 exactly those things, you know, if you didn't have me  
3 in a corner, I'd be with you, but you've got me in a  
4 corner and I can't. And both Rose and Fuller and  
5 Nortman and Metzler, all four of them said "I  
6 understand, Jim, and I understand where you are and  
7 where you have to go."  
8 Now, Lindsay needs what they're asking  
9 for. I do not say they don't, but only to protect  
10 themselves from Gainesville because Gainesville at the  
11 present time, with a sewer CCN east of 3108, which is  
12 my east boundary, Gainesville has at the present time,  
13 and it's not but one more step, and they'll surround  
14 the town of Lindsay. And they need the protection. I  
15 don't disagree with that, but there is no need south  
16 of Lindsay for a CCN, water CCN. And that's my  
17 belief, and that's the reason that I believe the way I  
18 believe.  
19 Q (BY MR. CARLTON) Okay. And then let's talk  
20 a little bit about why you believe that Lindsay and  
21 the members of the council in Lindsay want to be  
22 "protected from Gainesville." Why don't we want to be  
23 part of Gainesville?  
24 MR. RODRIGUEZ: I'll object, Your Honor.  
25 He's asking this witness to speculate on what the city

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1 council wants or doesn't want.

2 MR. CARLTON: I mean, you're taking

3 basically in my understanding inadmissible hearsay

4 evidence of finding the basis for his opinion, but I

5 can also ask him to phrase it in terms of his own

6 experience as well.

7 JUDGE NORMAN: Okay. All right. If you

8 want to.

9 A Repeat the question.

10 Q (BY MR. CARLTON) Why is it important to you

11 as a member of the community of Lindsay to not have

12 Gainesville encroach into this area south of Lindsay?

13 A As I stated before, Lindsay and Muenster --

14 and I'll specifically speak of Lindsay -- is a very

15 frugal, very financially minded community. I'm not an

16 accountant, but I will assure you Gainesville is not.

17 I don't want Gainesville to surround Lindsay. I live

18 in Lindsay because I have four children and my

19 children go to -- went to school and graduated from

20 Lindsay. And I lived in Gainesville for a few months

21 before moving to Lindsay. And I had three city -- my

22 father had three city blocks that were horse pasture

23 and I picked Lindsay for the reason -- because that's

24 where I wanted to raise my family, and I want Lindsay

25 to protect it, but I want them to be good neighbors.

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1 JUDGE NORMAN: Gainesville or the people

2 of Lindsay?

3 A Lindsay.

4 JUDGE NORMAN: All right.

5 A And that's -- that's where I am.

6 JUDGE NORMAN: Okay.

7 Q (BY MR. CARLTON) Let me ask you, on Page 12

8 you talk about there being no actively developing

9 subdivisions.

10 JUDGE NORMAN: Page 12?

11 MR. CARLTON: Excuse me, Page 9.

12 JUDGE NORMAN: All right.

13 MR. CARLTON: I apologize.

14 JUDGE NORMAN: Okay.

15 Q (BY MR. CARLTON) On Page 9, you state

16 there aren't any actively developing subdivisions, and

17 that there aren't, in fact, any pending plat

18 applications before the City of Lindsay or Cooke

19 County. What's the foundation for your opinion on

20 those issues?

21 A Again, I'm going to need to go back a little

22 bit. My service to the community, I spent quite a few

23 years on the school board, quite a few years -- not

24 quite a few -- a short term on the city council, and

25 at the present time I am on the -- I'm the president

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1 of the appraisal -- Cooke County Appraisal District.

2 I am in -- I have firsthand knowledge by

3 going to the courthouse and looking up plats. The

4 restrictions that are on my subdivision, I pulled four

5 plats myself. I had a little girl show me where they

6 were, but I pulled them so I could make copies and

7 get -- I mean restrictions that were good common

8 sense. I didn't dream them up myself. I'm sorry I

9 plagiarized them, but that's the best way I knew to do

10 it.

11 In the Cooke County Appraisal District,

12 obviously I have about as much power as I do on a

13 school board, and that's hire and fire the head. I do

14 not have any other power, but I have firsthand

15 knowledge of when I ask as the president for the chief

16 appraiser to review commercial property that I've had

17 people say that it's not standard. We visit and

18 normally the board of directors and I agree on we want

19 things the way we want them.

20 And in that capacity, I have firsthand

21 knowledge, and it's very -- it's public record. I

22 know when somebody is -- if somebody died, I know what

23 land -- it's very simple to get what land do they own.

24 It is -- like I said, it is public record. Cooke

25 County is very sparsely populated with regard to

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1 almost anyone else around them to the south and to the

2 west. Montague is Montague. It's even worse than

3 Cooke County, only --

4 JUDGE NORMAN: Okay.

5 A -- there's not much there.

6 JUDGE NORMAN: All right.

7 A My experience in knowing almost everyone in

8 the county, I talk to a lot of people, and I know all

9 of them firsthand. I was placed on the appraisal

10 district by the school and the city. I believe the

11 city voted for me every time that I had -- was asked

12 to be on it and the county commissioners and the

13 county judge and know them well and -- as well as

14 everybody else. Did I answer the question you asked?

15 Q (BY MR. CARLTON) I was trying to get you to

16 explain how you know there's nothing being subdivided

17 or developed.

18 A Okay.

19 Q And you started there in terms of your review

20 of the county's plat records.

21 A I apologize.

22 Q But if you could, describe what sort of

23 review of the county's plat records and what's going

24 on with respect to subdivisions?

25 A All plats outside of the city have to go

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<p>1 through the Commissioners' Court. I know all of the</p> <p>2 commissioners that are in the west end and the</p> <p>3 southwest end and the county judge very well, first</p> <p>4 name basis. If I go in and look at -- ask for any</p> <p>5 records, "Are there any records on subdivisions," "has</p> <p>6 anybody filed a subdivision" -- Laura Blanton happens</p> <p>7 to be the -- I won't say health officer. She is</p> <p>8 the -- she oversees septic systems and that kind of</p> <p>9 thing. And it's very easy to find out, you know, has</p> <p>10 anyone filed any plats because it's going to be a</p> <p>11 court record. And there aren't any, and there haven't</p> <p>12 been any.</p> <p>13 Now, I think the last one was probably</p> <p>14 Michael Hermes, which is a Nortman addition extension,</p> <p>15 but that's now in the city. So I don't know that it</p> <p>16 went through the -- I believe it went through the</p> <p>17 city, but everything else is -- there isn't any south</p> <p>18 of Lindsay.</p> <p>19 JUDGE NORMAN: Okay.</p> <p>20 MR. CARLTON: And at this point in time,</p> <p>21 I'll offer --</p> <p>22 JUDGE NORMAN: That testimony?</p> <p>23 MR. CARLTON: -- all Mr. Myrick's</p> <p>24 prefled testimony and exhibits.</p> <p>25 JUDGE NORMAN: Okay. And with regard --</p>	<p>1 1A?</p> <p>2 JUDGE NORMAN: His testimony.</p> <p>3 MR. CARLTON: 1A and Exhibits 1</p> <p>4 through 7.</p> <p>5 JUDGE NORMAN: 1A and 1 through 7. I'm</p> <p>6 just going to -- she can come up and just take --</p> <p>7 remove the bracketing in 1A.</p> <p>8 MR. CARLTON: 1A has no bracketing in</p> <p>9 it.</p> <p>10 JUDGE NORMAN: Oh, 1A has no bracketing.</p> <p>11 MR. CARLTON: It's clean. It's the copy</p> <p>12 that was submitted.</p> <p>13 JUDGE NORMAN: Okay.</p> <p>14 MR. CARLTON: And based on your rulings</p> <p>15 at the prehearing conference, there was no other</p> <p>16 testimony to be redacted.</p> <p>17 JUDGE NORMAN: Okay. And so you tender</p> <p>18 his testimony now?</p> <p>19 MR. CARLTON: I tender his testimony.</p> <p>20 JUDGE NORMAN: Okay.</p> <p>21 MR. CARLTON: And pass the witness.</p> <p>22 JUDGE NORMAN: Okay.</p> <p>23 MR. MacLEOD: Judge, in order of</p> <p>24 questioning --</p> <p>25 JUDGE NORMAN: I'm sorry?</p>
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<p>1 MR. CARLTON: And then the supplemental</p> <p>2 is really only important to the extent that you are</p> <p>3 going to -- which is 1B -- that you are going to take</p> <p>4 some action in terms of striking it or not.</p> <p>5 JUDGE NORMAN: I'm going to.</p> <p>6 MR. CARLTON: Okay.</p> <p>7 JUDGE NORMAN: And do you still have an</p> <p>8 objection to that testimony?</p> <p>9 MR. RODRIGUEZ: I do, Your Honor; same</p> <p>10 objection.</p> <p>11 JUDGE NORMAN: Same objection. And,</p> <p>12 Mr. MacLeod?</p> <p>13 MR. MacLEOD: No objections.</p> <p>14 JUDGE NORMAN: You didn't have any</p> <p>15 objections.</p> <p>16 I'm going to permit it, but also permit,</p> <p>17 to the extent that it was admissible -- I'm not</p> <p>18 talking about hearsay -- particularly the first part</p> <p>19 of your testimony I'm going to permit -- I'm going to</p> <p>20 permit that also as part of the evidence.</p> <p>21 MR. CARLTON: And so I would say based</p> <p>22 on your ruling, there's no need for 1B to go into the</p> <p>23 record.</p> <p>24 JUDGE NORMAN: Okay.</p> <p>25 THE REPORTER: So what is in the record,</p>	<p>1 MR. MacLEOD: In order of questioning,</p> <p>2 am I the next person to question this witness?</p> <p>3 JUDGE NORMAN: Yes. Excuse me. I'm</p> <p>4 sorry.</p> <p>5 MR. MacLEOD: Okay. I didn't want to</p> <p>6 just jump in there.</p> <p>7 JUDGE NORMAN: No, I was ignoring you.</p> <p>8 MR. MacLEOD: Okay. I'm sorry. I'll</p> <p>9 speak up. That's all right.</p> <p>10 JUDGE NORMAN: Keep me from doing that.</p> <p>11 I'm sorry.</p> <p>12 MR. MacLEOD: That's all right.</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MR. MacLEOD:</p> <p>15 Q Mr. Myrick?</p> <p>16 A Yes, sir?</p> <p>17 Q You developed some property -- I think your</p> <p>18 testimony was you developed some property in the area</p> <p>19 of Lindsay at Lindsay's request. It's kind of in the</p> <p>20 middle of Lindsay's requested area, the area you</p> <p>21 developed. Is that right?</p> <p>22 A Yes, sir, I did.</p> <p>23 Q And who did you buy that property from again?</p> <p>24 A Joe -- well, I bought it from Joe Sandmann's</p> <p>25 estate, and the administrator would be Julius</p>



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1 Sandmann, and I would say that's who it was purchased  
2 from.  
3 Q And you bought it with the intent of  
4 developing that property. Is that right?  
5 A Yes, sir, 100 acres.  
6 Q And how many houses have you sold on that  
7 property over what period of time?  
8 A I have sold one house because I have built  
9 one spec house in that property.  
10 Q And you sold --  
11 A I bought a lot.  
12 Q How many houses have been sold by any entity  
13 in that area?  
14 A There's 26 built at the present time.  
15 Q Twenty-six built. Have they all been sold?  
16 A Oh, yes.  
17 Q Okay. And after you started building these  
18 houses or even before you started building these  
19 houses, you asked the city for water service. Is that  
20 right?  
21 A That is correct.  
22 Q And they refused?  
23 A That is correct.  
24 Q That made developing the area a little  
25 harder, didn't it?

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1 A Tremendously.  
2 Q Because you had to form your own company -- I  
3 mean a company had to be formed?  
4 A I had to form Lindsay Pure Water Company to  
5 supply water for South Ridge and design the entire  
6 system for the hundred acres that I requested my  
7 consultant to get.  
8 JUDGE NORMAN: And I'm going to -- hold  
9 on for just a second. I think what we were doing just  
10 now was testimony with regard to whether or not to  
11 admit that portion of his prefiled testimony.  
12 MR. CARLTON: Oh, I thought we had moved  
13 on.  
14 MR. RODRIGUEZ: Yeah.  
15 JUDGE NORMAN: No, we have not quite  
16 moved on yet.  
17 MR. RODRIGUEZ: Oh, okay. My  
18 understanding was we were just doing cross-examination  
19 at this point as well.  
20 JUDGE NORMAN: Not yet; not yet.  
21 MR. MacLEOD: Oh, sorry.  
22 JUDGE NORMAN: Did you say you didn't  
23 have any cross-examination?  
24 MR. RODRIGUEZ: No. Oh, definitely not.  
25 JUDGE NORMAN: I didn't think so. Okay.

1 MR. CARLTON: I thought I had offered  
2 all the evidence.  
3 JUDGE NORMAN: It's not admitted yet.  
4 I'm just going to ask you a question, Mr. Myrick.  
5 A Yes, sir.  
6 JUDGE NORMAN: You have some opinions in  
7 your testimony, I think.  
8 A Yes, sir.  
9 JUDGE NORMAN: And are they rationally  
10 based on your perceptions?  
11 A Yes, sir.  
12 JUDGE NORMAN: Okay. I'm going to admit  
13 it.  
14 (Exhibit LPWC Nos. 1, 1A, 2 through 7  
15 admitted)  
16 MR. CARLTON: So then I think the  
17 question was should Mr. MacLeod go ahead and go first  
18 since --  
19 JUDGE NORMAN: Since he started, I'm  
20 going to let him.  
21 MR. CARLTON: And since Mr. Rodriguez  
22 carries the burden.  
23 JUDGE NORMAN: Right.  
24 Q (BY MR. MacLEOD) All right. I'm going to  
25 bring you an exhibit and have you take a look at it.

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1 A Yes, sir.  
2 THE REPORTER: Which exhibits did you  
3 just admit, Judge?  
4 MR. CARLTON: And, Your Honor, the ones  
5 you just admitted were his prefiled testimony 1A --  
6 JUDGE NORMAN: Yes.  
7 MR. CARLTON: -- and the Exhibits 1  
8 through 7.  
9 JUDGE NORMAN: Yes.  
10 MR. RODRIGUEZ: Now, Your Honor, I just  
11 want the record to be clear. The questions and the  
12 answers that Mr. MacLeod and Mr. Myrick exchanged is  
13 used for all purposes. Right?  
14 JUDGE NORMAN: It is.  
15 MR. RODRIGUEZ: Not just for the limited  
16 purpose of --  
17 JUDGE NORMAN: For all purposes.  
18 MR. RODRIGUEZ: Okay.  
19 (Exhibit ED No. 2 marked)  
20 Q (BY MR. MacLEOD) Mr. Myrick, I'm handing you  
21 what's been marked as ED exhibit -- this should be  
22 Exhibit 2. I've got my numbering in order -- and ask  
23 you to identify it.  
24 A That is -- this is the plat for Phase I. The  
25 second page is the plat for Phase II, and the third is

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1 the plat for Phase III.  
2 Q And there's some highlighting on there. Can  
3 you tell me what that highlighting represents?  
4 A Yes, sir, that is the six-inch PVC C-900 line  
5 with all of the valves, fire hydrants that are  
6 associated with those three phases. And it also stubs  
7 out and shows where each of the phases are -- how they  
8 are stubbed II to I, I to II, II to III, and it also  
9 has --  
10 JUDGE NORMAN: I'm not sure what you  
11 mean by "stubbed."  
12 A Loop the systems, make the system a looped  
13 system, I to II, II to III, and III will be looped to  
14 IV, and IV will be looped to the well back to the main  
15 line so you have a complete --  
16 JUDGE NORMAN: In terms of piping? Is  
17 that what you mean?  
18 A C-900 -- six-inch C-900 piping, yes, ma'am --  
19 yes, sir.  
20 JUDGE NORMAN: Okay. All right.  
21 Q (BY MR. MacLEOD) So does ED-2 represent all  
22 the areas where you currently have lines and are  
23 prepared to offer water service?  
24 A At the present time, yes.  
25 MR. MacLEOD: I go ahead and offer ED-2.

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1 JUDGE NORMAN: Any objection?  
2 (No response)  
3 JUDGE NORMAN: Mr. Carlton, any  
4 objection?  
5 MR. CARLTON: No.  
6 JUDGE NORMAN: It's admitted.  
7 (Exhibit ED No. 2 admitted)  
8 (Exhibit ED No. 3 marked)  
9 Q (BY MR. MacLEOD) I'm going ahead and handing  
10 you what's been marked ED-3. This is previously --  
11 JUDGE NORMAN: And do you have copies  
12 for the rest of us --  
13 MR. MacLEOD: Yes.  
14 JUDGE NORMAN: -- of what you've just  
15 gotten into evidence? Thank you.  
16 MR. MacLEOD: Sure. And ED-3 has  
17 already been admitted into evidence as -- excuse me --  
18 I've got to find that number here. I've got it  
19 somewhere -- DLM-11.  
20 JUDGE NORMAN: Okay.  
21 Q (BY MR. MacLEOD) Do you recognize what this  
22 is?  
23 A Yes, sir, I do.  
24 Q And could you remind the Court what it is?  
25 A This is -- if I unfold it all the way, this

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1 is a map of the proposed application for the City of  
2 Lindsay to get a CCN, and it also has South Ridge in  
3 green.  
4 Q Yeah, and is that green area -- is that where  
5 your current CCN is, or is that all the property you  
6 own? Can you tell from looking at that map?  
7 A That is the -- no, I can't tell, but that is  
8 the area that shows that South Ridge has a CCN in  
9 Phase I and the top portion of Phase II.  
10 JUDGE NORMAN: The top portion? You  
11 mean the north portion?  
12 A The north -- well, yes, sir, the north  
13 portion of Phase II.  
14 JUDGE NORMAN: Okay.  
15 Q (BY MR. MacLEOD) Now, the property legend  
16 does indicate that that's Lindsay Pure Water's CCN  
17 area. Does that look like that's appropriate --  
18 appropriately marked where your CCN area is? I know  
19 you thought you had applied for more and had more, but  
20 do you have any opinion on that?  
21 A Yes, sir, I do. Number one, I know I applied  
22 for the hundred acres, which ended up -- four of those  
23 acres ended up being half of 30 -- well, all of 3108  
24 on the east side. And my opinion was or my thought  
25 was that I had CCN on Phase I and Phase II, but this

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1 shows the bottom half of Phase II not in my CCN.  
2 Q So as far as you -- as far as you know,  
3 though, this green area is the CCN that the TCEQ is  
4 recognizing as you having right now?  
5 A Yes, sir.  
6 Q I'm going to hand you --  
7 JUDGE NORMAN: Do you want to tender  
8 that even though it's already in evidence?  
9 MR. MacLEOD: I was going to go and have  
10 him make some indications on this.  
11 JUDGE NORMAN: Okay, sure.  
12 MR. MacLEOD: And then I'm going to  
13 tender it.  
14 JUDGE NORMAN: All right.  
15 Q (BY MR. MacLEOD) Could you mark on this  
16 map -- and unfortunately I guess the other parties can  
17 come copy the mark.  
18 Could you mark the area where your  
19 lines -- generally where your lines are that might be  
20 outside of that CCN area?  
21 A Okay.  
22 Q Just, you know, I guess if you mark it with a  
23 circle or --  
24 A I'll try to do it with --  
25 Q And this is with an orange marker.

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1 JUDGE NORMAN: Okay.  
2 A Should I put II or --  
3 Q (BY MR. MacLEOD) Let's just start with where  
4 your lines are, and just kind of circle the whole area  
5 the way you currently have lines with the orange  
6 marker, if you could, or just bound it, not  
7 necessarily a circle, just bound it; so where you  
8 currently have lines, where the lines exist.  
9 A Oh, where the lines exist?  
10 Q Yeah.  
11 A I'm sorry. (Complied)  
12 Q You want to take that blue pen and mark  
13 out --  
14 A I'm sorry.  
15 Q -- where you put the wrong thing?  
16 MR. CARLTON: Can we go off the record?  
17 JUDGE NORMAN: Sure.  
18 (Recess: 11:01 a.m. to 11:14 a.m.)  
19 JUDGE NORMAN: Okay. We're back on the  
20 record. Go ahead, Mr. MacLeod.  
21 Q (BY MR. MacLEOD) Mr. Myrick, while we were  
22 off the record, you went ahead -- we marked some areas  
23 on this ED-3. And could you tell me what you marked  
24 with the dark blue pen?  
25 A Those are the waterlines as they exist today.

1 obviously we don't have any grounds for --  
2 JUDGE NORMAN: Right.  
3 MR. CARLTON: -- those.  
4 MR. MacLEOD: It appears the map is  
5 going right along with 82, what he's marked.  
6 JUDGE NORMAN: Okay.  
7 THE WITNESS: 82 comes straight over  
8 here.  
9 MR. MacLEOD: Right, right, except for  
10 the area that's already been granted, that's already  
11 Lindsay's CCN.  
12 JUDGE NORMAN: All right. Oh, I see.  
13 Okay.  
14 MR. MacLEOD: That's why it goes down  
15 and jogs down.  
16 JUDGE NORMAN: That's why it jogs, okay.  
17 So Lindsay itself is south of Highway 82?  
18 MR. CARLTON: Right.  
19 JUDGE NORMAN: Okay.  
20 MR. MacLEOD: So I would offer ED-3.  
21 JUDGE NORMAN: Any objection?  
22 (No response)  
23 JUDGE NORMAN: It's admitted.  
24 (Exhibit ED No. 3 admitted)  
25 Q (BY MR. MacLEOD) Now, Mr. Myrick, you're an

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1 Q And you made a square with a red marker.  
2 What does that square indicate?  
3 A That indicates the hundred acres that I  
4 purchased from Joe Sandmann.  
5 Q And you do own all of that land. Right?  
6 A Yes, sir, I do.  
7 Q And you also put a blue line following --  
8 going across the CCN application area, and what does  
9 that line indicate?  
10 A That is the area that I am protesting.  
11 Q So you want to exclude everything south of  
12 that line?  
13 A Everything south of that line, yes.  
14 JUDGE NORMAN: There's Highway 82. Is  
15 that right?  
16 A No, it's not.  
17 JUDGE NORMAN: Oh, okay.  
18 A That's -- well, some of it is Highway 82.  
19 JUDGE NORMAN: Although your testimony  
20 says differently. Your testimony says you're  
21 protesting everything south of Highway 82.  
22 MR. CARLTON: And I think, Your Honor,  
23 just to argue it, if we put it in context, it's all of  
24 the CCN amendment that's been applied for that's south  
25 of 82. There is existing CCN south of 82 that

1 experienced developer. Is that right?  
2 A Yes, sir.  
3 Q And I'm guessing you've seen, as we all have  
4 seen, that regardless of liking pristine family farms  
5 sometimes they do get sold?  
6 A Yes, sir. I bought one.  
7 Q And you bought one, that's right. Now, the  
8 developer could sell the property more easily if there  
9 was somebody required to provide water and sewer  
10 service, couldn't they?  
11 A Most definitely. That's the reason I asked  
12 the City of Lindsay to bring an eight-inch line to me  
13 so I would not be required to do so.  
14 MR. MacLEOD: That's all the questions I  
15 have.  
16 JUDGE NORMAN: Mr. Rodriguez?  
17 MR. MacLEOD: Oh, excuse me. I have one  
18 more question.  
19 JUDGE NORMAN: All right.  
20 Q (BY MR. MacLEOD) Are you familiar with the  
21 term "point of use" and how that relates to CCN  
22 applications?  
23 A "Point of use"?  
24 Q Right.  
25 A No, sir.

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1 Q If I indicated to you that "point of use" is  
2 where the primary use of water is on a piece of  
3 property, would that -- does that make sense to you?  
4 A Yes, sir, that would make sense.  
5 Q Could you tell me if the point of ultimate  
6 use for the customers you're currently giving service  
7 to are within a quarter mile of your current CCN  
8 boundary?  
9 A Yes, they are.  
10 MR. MacLEOD: Pass the witness.  
11 JUDGE NORMAN: All right.  
12 CROSS-EXAMINATION  
13 BY MR. RODRIGUEZ:  
14 Q Good morning, Mr. Myrick.  
15 A Good morning.  
16 Q You and I have met before?  
17 A Yes, sir.  
18 Q You understand I'm the city attorney for  
19 Lindsay in this matter?  
20 A Yes, sir.  
21 Q And, Mr. Myrick, I'm going to ask you to go  
22 back to ED No. 3 that was just recently admitted into  
23 evidence. Let's open that up again because I want the  
24 record to be perfectly clear on this.  
25 A Yes, sir.

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1 Q The area that you protest is the area south  
2 of the existing Lindsay water CCN service territory.  
3 Is that right?  
4 A That is correct.  
5 Q And any area -- flip to the north side. Any  
6 area to the north of the city's existing water CCN  
7 that it seeks to certificate you're not protesting?  
8 A That is correct.  
9 Q Okay. So if the -- so at a minimum, if the  
10 Commission granted this area, the north area, to the  
11 city, you would not have any problem with that?  
12 A No, sir.  
13 Q Okay.  
14 A I would applaud that.  
15 Q Now, Mr. Myrick --  
16 MR. RODRIGUEZ: Is this close enough,  
17 guys?  
18 MR. MacLEOD: I can hear you.  
19 MR. RODRIGUEZ: Okay.  
20 Q (BY MR. RODRIGUEZ) Mr. Myrick, you are the  
21 president of Lindsay Pure Water Company. Is that  
22 correct?  
23 A Yes, I am.  
24 Q Is that a corporation?  
25 A Yes, sir, it is.

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1 Q In good standing with the state of Texas?  
2 A I hope so. Yes, sir, it is.  
3 Q You hope so, or is it?  
4 A Yes, it is.  
5 Q Okay. Is it a C-corporation or an  
6 S-corporation for federal income tax purposes?  
7 A It's an S-corporation.  
8 Q Okay. Now, you're also the president of an  
9 entity called Myrick Development Company. Is that  
10 correct?  
11 A Yes, I am.  
12 Q Is that a corporation?  
13 A Yes, it is.  
14 Q Is that a C-corp or an S-Corp?  
15 A That's an S-Corp.  
16 Q How about -- there's another entity that  
17 you're president of as it relates to the South Ridge  
18 development, and you're going to have to help me with  
19 the name here. Is it South Ridge --  
20 A South Ridge of Lindsay, or are you talking  
21 about Lindsay Pure Water Company?  
22 Q South Ridge of Lindsay.  
23 A South Ridge of Lindsay.  
24 Q Is that a company, a corporation?  
25 A It is a corporation.

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1 Q Okay. And you're president of that  
2 corporation as well?  
3 A Yes, I am.  
4 Q And is that a C-corp or an S-Corp?  
5 A S-Corp.  
6 Q You file income taxes for all three  
7 corporations. Is that correct?  
8 A Yes, I do. My accountant does.  
9 Q Now, Mr. Myrick, on the -- I believe your  
10 direct testimony provides that you serve 26 homes --  
11 or Lindsay Pure Water -- excuse me -- serves 26 homes.  
12 Is that correct?  
13 A That is correct, at the present time.  
14 Q And those homes all are within an area called  
15 the South Ridge of Lindsay. Is that correct?  
16 A That is correct.  
17 Q Now, the South Ridge of Lindsay subdivision  
18 is a 100-acre parcel of property that's owned by  
19 Myrick Development Corporation. Is that correct?  
20 A That is correct.  
21 Q Now, the --  
22 JUDGE NORMAN: Now, the 100 acres, is  
23 that phases -- are all of Phases I, II, III and IV in  
24 that 100 acres?  
25 A Yes, sir, but realize one thing, that there

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24 (Pages 363 to 366)

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1 are four acres east and is 3108. I bought a hundred  
2 acres. I've only got 96.

3 JUDGE NORMAN: Okay. So it's  
4 96 acres -- is that right -- that you own?

5 A Yes.

6 MR. RODRIGUEZ: Okay. Let me see if I  
7 can clear that up.

8 Q (BY MR. RODRIGUEZ) There's 96 acres in a  
9 development that you call South Ridge of Lindsay?

10 A Yes, it is.

11 Q Okay. And four acres that is what, on the  
12 east side of 3108?

13 A It is 3108.

14 Q Oh, it's the actual street, the right of way?

15 A Exactly. Yes, sir.

16 Q Okay. That is 3108?

17 A Yes, sir.

18 Q And that is not part of the development known  
19 as South Ridge of Lindsay?

20 A No, sir.

21 Q Okay. Now, let me -- and just to make it  
22 clear, Myrick Development Corporation purchased the  
23 area that became known as South Ridge of Lindsay.

24 Correct?

25 A Yes, they did.

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1 Q But today you don't own it all because you've  
2 sold some lots?

3 A That is correct.

4 Q Okay. Now, let's talk about some of the  
5 sales of those lots. As I understand it and if I read  
6 your testimony and your deposition correctly, Phase I  
7 contains 17 homes. Is that correct?

8 A That is correct.

9 Q And to be clear, South Ridge of Lindsay is  
10 being developed in four phases. Is that correct?

11 A That is correct.

12 Q So Phase I began in 1997. Is that right?

13 A That is correct.

14 Q And that had approximately 17 homes?

15 A Had exactly 17 homes.

16 Q Okay. How many of those lots have actually  
17 been sold?

18 A Sixteen.

19 Q Okay. Now, how many -- so that means that  
20 Myrick Development Company still owns one of those  
21 lots?

22 A Lot 3.

23 Q Now, on the 17 lots in Phase I, how many of  
24 those lots actually have homes constructed on them?

25 A Ten.

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1 Q Okay. Ten homes?

2 A Yes, sir.

3 Q Now, of the other 17 -- I mean, of the other  
4 seven that are in Lot 1 that don't have homes on  
5 them -- in Phase I, excuse me -- that don't have homes  
6 on them, how many of them receive service from Lindsay  
7 Pure Water?

8 A None of them.

9 Q I'm going to ask you to move to ED Exhibit  
10 No. 2. I believe you testified earlier that Lindsay  
11 Exhibit No. 2 contained the -- or was the plat for  
12 Phase I of the South Ridge of Lindsay subdivision.  
13 Correct?

14 A That is correct.

15 Q And that was the subdivision that was owned  
16 by -- developed by Myrick Development Company?

17 A Owned by Myrick Development Company,  
18 developed by South Ridge of Lindsay.

19 Q Okay. Corporation?

20 A Corporation.

21 Q Okay. Now, tell me of the -- and I see that  
22 on ED Exhibit 2 it appears to me to be a plat map. Is  
23 that correct?

24 A That's correct.

25 Q Can you tell me of these lots that appear in

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1 Phase I which are the -- it may be easiest for you to  
2 tell me which of the seven don't have homes on them.

3 A Okay. 1, 2 and 3 do not have homes, Lot 11  
4 does not have a home, and Lot 16 does not have a home.

5 Q So far that's five.

6 A 1, 2 and 3, Lot 11 and Lot 16.

7 Q And where are the other two lots that don't  
8 have homes?

9 A It would be easier for me to tell you how  
10 many have a home.

11 Q Okay. Let's do that.

12 A Pardon me. Lot 4, Lot 5, Lot 6, Lot 7,  
13 Lot 8, Lot 9, Lot 10, Lot 12, Lot 13, Lot 14, Lot 15  
14 and Lot 17. I stand corrected.

15 JUDGE NORMAN: And how do you stand  
16 corrected?

17 A Obviously I've miscounted here.

18 JUDGE NORMAN: So it's just five that  
19 don't have --

20 A It's just five that do not have it.

21 JUDGE NORMAN: Okay.

22 A 1, 2, 3, 4, 5, there's only five.

23 JUDGE NORMAN: All right.

24 Q (BY MR. RODRIGUEZ) Five that do not receive  
25 service?

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1	A That is correct.	1	and east, of course, is to the right?
2	Q So the other 12 actually are customers of	2	A To the left.
3	Lindsay Pure Water?	3	MR. RODRIGUEZ: There's a direction on
4	A That's correct.	4	the map here.
5	Q Now, let's go through the second page of	5	JUDGE NORMAN: Oh, I see. Okay.
6	that, which is Bates -- ED Exhibit No. 2. It's Bates	6	Q (BY MR. RODRIGUEZ) So, Mr. Myrick, as I
7	Page No. LPWC00303. And this also appears to be a	7	understand it, your testimony was that there were --
8	plat map.	8	that there are 15 lots in Phase II. Is that correct?
9	A That is correct.	9	A I said 15, and I omitted the three that were
10	Q And that is of Phase II of South Ridge?	10	floodplain, which will never be serviced with any
11	A That is correct.	11	water. Well, I say that. It might be a sprinkler
12	Q Now, the areas that are marked 1 through 17	12	system over there. It will probably end up being a
13	in the north part --	13	park.
14	A Yes.	14	Q So how many lots are in Phase II?
15	Q -- those are not part of Phase II. Is that	15	A Eighteen.
16	correct?	16	Q Now, how many in Phase II -- how many lots in
17	A That is correct.	17	Phase II have been sold? Let me ask that first.
18	Q Okay. So Phase II only is what is south	18	A Today? Lots that have been sold today, as of
19	of -- what is that county road name?	19	today?
20	A 3108 -- no. I don't know.	20	Q Yes, sir.
21	Q You don't know what the name of this street	21	A Right now, okay. Eleven. You have to count
22	is?	22	the one on the far left-hand side that has the lake in
23	A I don't have a clue.	23	it.
24	Q Okay.	24	Q Of those eleven lots that have been sold, how
25	A It's a farm-to-market road. I didn't get to	25	many of them have actually had houses constructed on
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1	name it. The county did.	1	them?
2	Q Okay. So basically what's south of Lot 15	2	A Eight.
3	through 17 and south of Lot 1 is what's Phase II?	3	Q And of those eight, how many of those are
4	A With three exceptions.	4	Lindsay Pure Water Company customers?
5	Q Okay.	5	A All eight.
6	A The three lots on the west side of Phase I,	6	Q And of the seven lots that are -- I'm
7	if you look over here, these are -- it appears to	7	sorry -- of the ten lots that are vacant lots, how
8	be 33, 34 and 35 are part of Phase II.	8	many of those are Lindsay Pure Water customers?
9	Q Okay.	9	A The ten vacant lots?
10	JUDGE NORMAN: Are you looking at the	10	Q Yes, sir.
11	first page or the second page?	11	A None.
12	A Second page, sir.	12	Q So it's accurate to say that in Phase II you
13	JUDGE NORMAN: All right.	13	only have eight customers. Is that correct?
14	A Those are floodplain lots.	14	A Yes.
15	JUDGE NORMAN: Okay.	15	Q If we flip to page -- to the last page of
16	A I only platted them because the gentleman	16	Exhibit ED-2, which is Bates Page No. LPWC00304, I
17	that bought Lot 9 bought the lot due west of him --	17	also understand that to be a plat map. Is that
18	JUDGE NORMAN: Okay.	18	correct?
19	A -- and we built a lake.	19	A That is correct. That's Phase III.
20	JUDGE NORMAN: All right. So west is to	20	Q Phase III of the South Ridge of Lindsay?
21	the left when you're looking?	21	A Yes, sir.
22	A That is correct.	22	Q Now, if my counting is correct, there are 12
23	JUDGE NORMAN: North is to the top?	23	lots in Phase III. Is that correct?
24	A Yes.	24	A That is correct.
25	JUDGE NORMAN: South is to the bottom,	25	Q How many of those 12 lots have been sold?

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<p>1      A    Nine.</p> <p>2      Q    So of the nine lots sold in Phase III of the</p> <p>3    South Ridge of Lindsay, how many of them have had</p> <p>4    homed constructed on them?</p> <p>5      A    Five have either been constructed or in</p> <p>6    construction at the present time. There are two of</p> <p>7    those five in construction.</p> <p>8      Q    So three have been constructed?</p> <p>9      A    Yes, sir.</p> <p>10     Q    Two are in the process of being constructed?</p> <p>11     A    That is correct.</p> <p>12     Q    Now, the three that have been constructed,</p> <p>13    how many of them are customers of the South Ridge --</p> <p>14    I'm sorry -- Lindsay Pure Water Company?</p> <p>15     A    The three that have been constructed, all</p> <p>16    three of them are.</p> <p>17     Q    Now --</p> <p>18     A    May I say something else? The two that are</p> <p>19    in construction have to have water also.</p> <p>20     Q    Okay. And that's my next question.</p> <p>21     A    Yes, sir.</p> <p>22     Q    Of the two that are in the process of being</p> <p>23    constructed, how many of them have applied for service</p> <p>24    from Lindsay Pure Water Company?</p> <p>25     A    Both of them.</p>	<p>1      A    I truthfully cannot be certain, but I will</p> <p>2    offer what I think. If I look at ED-3, which is the</p> <p>3    map that says South Ridge in green, it would appear to</p> <p>4    me that -- it would appear to me that at the present</p> <p>5    time there are -- Lots 30, 31 and 32 probably are in</p> <p>6    the CCN of Lindsay.</p> <p>7      Q    Lindsay Pure Water?</p> <p>8      A    Lindsay Pure Water, yes.</p> <p>9      Q    Okay. And which portions of Phase II are</p> <p>10    outside of Lindsay Pure Water's CCN?</p> <p>11     A    The balance, which would be -- I'm sorry. I</p> <p>12    can't read the numbers, but there are three in the</p> <p>13    middle of the plat and the ones to the far left of the</p> <p>14    cul de sac on the bottom of the subdivision.</p> <p>15           JUDGE NORMAN: Looks like 8, 9, 10</p> <p>16    and 11 to the west and everything else to the east or</p> <p>17    southeast of that.</p> <p>18     A    Well, Judge, those --</p> <p>19           JUDGE NORMAN: You can't read those?</p> <p>20     A    I would think that would be 30.</p> <p>21           JUDGE NORMAN: Well, to the very far</p> <p>22    left, that is the very west, those you believe are</p> <p>23    included in your present CCN, and that's --</p> <p>24     A    But the way the map is drawn here in this</p> <p>25    ED-3 --</p>
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<p>1      Q    They've applied for service?</p> <p>2      A    Yes, sir.</p> <p>3      Q    Okay. And when did they make application for</p> <p>4    service?</p> <p>5      A    Sixty days ago.</p> <p>6      Q    And did you have a form for them to fill out</p> <p>7    in order to make application for service?</p> <p>8      A    No.</p> <p>9      Q    Have they paid \$600 for the tap fee?</p> <p>10     A    Yes.</p> <p>11     Q    When did they do that?</p> <p>12     A    When I installed the meter.</p> <p>13     Q    And when was that?</p> <p>14     A    Sixty days ago.</p> <p>15     Q    Okay. So, Mr. Myrick, we'll go through this.</p> <p>16    If you've got 12 customers in Phase I -- well, let me</p> <p>17    go back.</p> <p>18           Can you point to me on Exhibit ED-2</p> <p>19    which part of the South Ridge of Lindsay subdivision</p> <p>20    of Phase I is included in Lindsay Pure Water Company's</p> <p>21    CCN? Is the entirety of it?</p> <p>22     A    The entirety.</p> <p>23     Q    Okay. Now, which portions of Phase II of the</p> <p>24    South Ridge of Lindsay -- which portions are included</p> <p>25    in Lindsay Pure Water Company's CCN?</p>	<p>1           JUDGE NORMAN: All right.</p> <p>2      Q    (BY MR. RODRIGUEZ) Okay. I'll look at ED-3</p> <p>3    then. Let's take a look at what's been marked and</p> <p>4    entered into evidence from Applicant's Exhibit No. 2</p> <p>5    Attachment DLM-17. Would you understand that to be a</p> <p>6    map from the TCEQ for the CCN for Cooke County?</p> <p>7           JUDGE NORMAN: And that's map number --</p> <p>8    that's No. 17. Is that right?</p> <p>9           MR. RODRIGUEZ: DLM-17.</p> <p>10     A    Judge, it's the same drawing, only smaller.</p> <p>11           JUDGE NORMAN: Okay.</p> <p>12     Q    (BY MR. RODRIGUEZ) Do you understand that to</p> <p>13    be the TCEQ map?</p> <p>14     A    I understand it to be TECQ (sic), but --</p> <p>15     Q    So, Mr. Myrick, then does that help you</p> <p>16    determine which lots are inside or outside of the</p> <p>17    South Ridge of Lindsay's CCN?</p> <p>18     A    It would appear to me --</p> <p>19     Q    Lindsay Pure Water. Excuse me.</p> <p>20     A    -- looking at what this map says that I have</p> <p>21    a CCN on Phase I and not on Phase II.</p> <p>22     Q    Okay.</p> <p>23     A    That's what it looks like to me.</p> <p>24     Q    Okay. Now, Phase I, if you will indulge me</p> <p>25    here, appears to be somewhat rectangular in shape.</p>

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1 Would you agree with me?  
2 A Yes, sir.  
3 Q Okay. Is the CCN that's actually granted to  
4 you that's shown in Applicant's Exhibit No. 2,  
5 Attachment DLM-17, rectangular in shape?  
6 A Did you say Phase II or Phase I?  
7 Q No, I'm asking you whether this CCN --  
8 A Well, this has got a dog leg to the south.  
9 Q Okay.  
10 A And that is in Phase II.  
11 Q Okay. Now, explain to me which lots in  
12 Phase II then would be included in that dog leg that's  
13 in Lindsay Pure Water's CCN.  
14 A It would appear that 18, 19, 20, 21, 22 are  
15 in Phase II.  
16 Q 18 through 22 are in Phase II?  
17 A Those are the ones up against 3108 on the  
18 east side.  
19 Q So it appears to you that in Phase II,  
20 Lots 18 through 22 are within Lindsay Pure Water  
21 Company's CCN?  
22 A That's what it appears.  
23 Q Okay. Now, of Lots 18 through 22 in Phase II  
24 of Lindsay Pure Water, which of those lots actually  
25 have houses on them -- constructed on them?

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1 A Eighteen; eighteen.  
2 Q Lot 18?  
3 A Lot 18.  
4 Q Okay. And if I understood your testimony  
5 earlier, there were a total of seven customers in  
6 the -- in Phase II, seven Lindsay Pure Water Company  
7 customers in Phase II. Is that correct? I'm sorry,  
8 eight.  
9 A I would agree with eight.  
10 Q Okay. So of the remaining seven -- well,  
11 seven customers are outside of Lindsay Pure Water  
12 Company's CCN?  
13 A It would appear from the map that I am  
14 looking at that is ED-3, that's the way it's drawn. I  
15 might mention that I do not agree with that, but  
16 that's -- that's okay.  
17 Q You don't agree with your own testimony?  
18 A No, I don't agree that the map is drawn  
19 right, nor can you tell what is or what is not in  
20 Phase I and II and has a CCN.  
21 Q Okay. But you were the -- you were the  
22 person responsible for receiving the CCN from the  
23 TCEQ. Is that correct?  
24 A Yes, sir.  
25 Q Now, Mr. Myrick, if we've got seven that

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1 appear to be outside of the Lindsay Pure Water  
2 Company's CCN in Phase II and we have five customers  
3 of Lindsay Pure Water in Phase III, then as far as you  
4 know, there's only -- there's only 12 customers that  
5 are outside of Lindsay Pure Water Company's current  
6 CCN. Is that correct?  
7 A If I interpolate the map that I have before  
8 me and the way I have just said it, that's -- you are  
9 correct.  
10 Q Now, has Phase IV been developed?  
11 A It is in the process.  
12 Q Okay. Have any lots been sold?  
13 A No, sir.  
14 Q Has a plat been approved?  
15 A It is being laid out and will go to --  
16 Q So the answer is no, it's not been approved?  
17 A The answer is no, it has not.  
18 Q Now, Mr. Myrick, when did you begin first  
19 selling lots in Phase II of the South Ridge of Lindsay  
20 development?  
21 A Late of 1998.  
22 Q When did you first begin selling lots in  
23 Phase III of the South Ridge of Lindsay subdivision?  
24 A Early of 2007.  
25 Q Now, you would agree with me, Mr. Myrick,

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1 wouldn't you, that you first determined that your CCN  
2 was -- of Lindsay Pure Water Company's was not what  
3 you thought it was in approximately the year 2005. Is  
4 that correct?  
5 A That is correct.  
6 Q Okay. You discovered that, didn't you, when  
7 Lindsay Pure Water sent notice of what -- sent notice  
8 of its application for a CCN?  
9 A Shortly thereafter, yes, sir.  
10 Q Around that timeframe?  
11 A As soon as I visited with my attorney.  
12 MR. CARLTON: Just for clarification,  
13 Art, you meant when the town of Lindsay sent notice of  
14 its application? You said Lindsay Pure Water.  
15 MR. RODRIGUEZ: I'm sorry. I make the  
16 correction.  
17 Q (BY MR. RODRIGUEZ) And would that still be  
18 your testimony?  
19 A Yes, sir.  
20 MR. RODRIGUEZ: Thank you, Mr. Carlton.  
21 Q (BY MR. RODRIGUEZ) Do you recall --  
22 Mr. Myrick, when was the date that you sent -- that  
23 Lindsay Pure Water Company started serving its first  
24 customer in Phase III?  
25 A Probably September of 2007.

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1 Q Now, when were the lines constructed to be  
2 able to provide service to that first customer in  
3 September of 2007?  
4 A Lines were constructed probably in June  
5 of 2007. It would have been earlier than that -- I'm  
6 sorry -- because the rest of the infrastructure had to  
7 be put in after the waterlines. Early May 2007.  
8 Q Did you provide a map to the TCEQ showing  
9 that extension of service beyond your ETJ?  
10 A No, I did not, but I have --  
11 Q Did you provide -- beyond your CCN -- excuse  
12 me -- did you provide a map to the TCEQ showing the  
13 extension beyond Lindsay Pure Water Company's CCN?  
14 A No, I did not, but I have corrected that --  
15 Q Did you provide the TCEQ --  
16 A -- as of yesterday.  
17 Q Did you provide the TCEQ a written  
18 explanation of that extension beyond your CCN?  
19 A No, I did not.  
20 Q Did you get any construction plans approved  
21 by the TCEQ --  
22 A No, I --  
23 Q -- for distribution facilities outside of  
24 your CCN?  
25 A No, I did not.

1 Q Do you understand those to be the responses  
2 from Lindsay Pure Water Company to the City of  
3 Lindsay's interrogatories?  
4 A Yes, sir.  
5 Q Okay. And specifically Interrogatories 1  
6 through 5?  
7 A Yes, sir.  
8 Q Okay. And those were served on the City of  
9 Lindsay approximately March 14, 2008?  
10 A That's correct.  
11 MR. RODRIGUEZ: Okay. I move admission  
12 of Applicant's Exhibit No. 6, Your Honor.  
13 JUDGE NORMAN: Mr. MacLeod, any  
14 objection?  
15 MR. MacLEOD: No objection.  
16 JUDGE NORMAN: It's admitted.  
17 (Exhibit APP No. 6 admitted)  
18 Q (BY MR. RODRIGUEZ) Mr. Myrick, please tell  
19 me what the ground elevation is of -- well, let me ask  
20 this: You have a standpipe that -- Lindsay Pure Water  
21 Company has a standpipe. Is that correct?  
22 A That's correct.  
23 Q Can you please tell me what the ground  
24 elevation of the standpipe is?  
25 A No, sir, I cannot, but if I had a topo, I

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1 Q Okay. And you would have been the person  
2 responsible at Lindsay Pure Water to ensure that that  
3 would have happened. Is that correct?  
4 A That is correct. The total burden would be  
5 mine.  
6 Q Now, Mr. Myrick, my understanding is that  
7 Lindsay Pure Water Company provides water service  
8 solely to the South Ridge of Lindsay subdivision. Is  
9 that correct?  
10 A That is correct.  
11 (Exhibit APP No. 6 marked)  
12 Q (BY MR. RODRIGUEZ) Mr. Myrick, I'm handing  
13 you --  
14 A Just a minute, if you would. I just need a  
15 second. I need to make myself a note.  
16 JUDGE NORMAN: Okay.  
17 (Brief pause)  
18 THE WITNESS: Thank you. I'm sorry.  
19 Q (BY MR. RODRIGUEZ) Mr. Myrick, I've handed  
20 you what's been marked as Applicant's Exhibit No. 6.  
21 A Yes, sir.  
22 Q Do you recognize that document?  
23 A That is my tariff -- or Lindsay Pure Water  
24 Company's tariff -- no, it's not either. Sorry about  
25 that. Yes, sir.

1 could tell you, a topographical map of the area.  
2 Q Okay. Actually, I believe that's already in  
3 evidence, Mr. Myrick.  
4 MR. CARLTON: LPWC-11 is going to be  
5 where it is.  
6 MS. WRIGHT: 10 and 11.  
7 A Thank you. I would say it's approximately  
8 900 feet.  
9 Q (BY MR. RODRIGUEZ) That's the ground  
10 elevation?  
11 A Yes.  
12 Q What document are you looking at?  
13 A That's wrong.  
14 Q Are you looking at Lindsay Pure Water Company  
15 Exhibit No. 11?  
16 A Yes.  
17 Q Okay.  
18 A Approximately 860.  
19 Q And that 860 feet is based on your review of  
20 Lindsay Pure Water Company Exhibit No. 11. Correct?  
21 A That's correct.  
22 Q Mr. Myrick, can you please tell me what the  
23 ground elevation of Lindsay Pure Water Company's  
24 highest connection is?  
25 JUDGE NORMAN: Its what connection?

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<p>1 MR. RODRIGUEZ: Its highest connection.</p> <p>2 JUDGE NORMAN: Oh, okay.</p> <p>3 A Approximately 850.</p> <p>4 Q (BY MR. RODRIGUEZ) After Phase IV of the</p> <p>5 South Ridge of Lindsay is developed or platted, can</p> <p>6 you tell me what the highest connection would be if</p> <p>7 all lots are built upon?</p> <p>8 A Just a minute. Approximately 870.</p> <p>9 Q What's the height of the standpipe that</p> <p>10 Lindsay Pure Water Company owns?</p> <p>11 A It's 99 feet tall.</p> <p>12 Q What's the diameter of the standpipe?</p> <p>13 A Fifteen feet.</p> <p>14 Q Can you tell me what the height of the well</p> <p>15 discharge line into the standpipe is?</p> <p>16 A The height of the line -- of the discharge</p> <p>17 line?</p> <p>18 Q Yes.</p> <p>19 A It's discharged from the bottom.</p> <p>20 Q Okay. From the -- into the bottom of the</p> <p>21 standpipe?</p> <p>22 A Yes, sir.</p> <p>23 Q Within five feet or less?</p> <p>24 A Yes, sir.</p> <p>25 Q Mr. Myrick, I also understand that you've got</p>	<p>1 direct testimony -- actually, I'm sorry. It's on</p> <p>2 Page 5.</p> <p>3 A LPWC-1A?</p> <p>4 Q Yes, sir. On actually Page 5, Lines 16</p> <p>5 through 18 there, you determined that the</p> <p>6 ten-horsepower pump -- I'm sorry. On Line 13 you</p> <p>7 determined that you have a ten-horsepower service pump</p> <p>8 that has a 210 gallon per minute capacity. Is that</p> <p>9 correct?</p> <p>10 A Yes, sir.</p> <p>11 Q Can you please tell me how you went about</p> <p>12 calculating that 210 gallons per minute?</p> <p>13 A I asked my service provider, which has a</p> <p>14 water well license, to replace that ten-horse -- the</p> <p>15 five-horsepower pump with a ten-horsepower pump</p> <p>16 because the five-horsepower pump didn't sound -- it</p> <p>17 sounded like it needed to be replaced, so I replaced</p> <p>18 it. And when I did, I asked him what was the -- what</p> <p>19 was its capabilities, and that is what he told me.</p> <p>20 Q For the ten-horsepower pump?</p> <p>21 A Yes, sir.</p> <p>22 Q It's 210 gallons per minute?</p> <p>23 A Yes, sir.</p> <p>24 JUDGE NORMAN: Actually, I don't see</p> <p>25 that. I see 420 per minute on Page 5.</p>
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<p>1 one groundwater well. Is that correct?</p> <p>2 A That is correct.</p> <p>3 Q And the entirety of the customers of Lindsay</p> <p>4 Pure Water Company are served by that one well. Is</p> <p>5 that correct?</p> <p>6 A That is correct.</p> <p>7 Q Now, do you have a meter on that well?</p> <p>8 A Yes, sir, I do.</p> <p>9 Q Okay. How often do you read that meter?</p> <p>10 A Except when I'm in Austin or other places,</p> <p>11 between daily and every other day.</p> <p>12 Q Can you tell me what the lowest gallons per</p> <p>13 minute that you can recall reading from that meter</p> <p>14 were?</p> <p>15 A When I check it, which is almost every time</p> <p>16 that I'm there, it registers anywhere from 100</p> <p>17 to 105 gallons per minute, according to my stopwatch.</p> <p>18 Q Okay. How much water is in the standpipe</p> <p>19 when you make those readings?</p> <p>20 A That will vary by about 30,000 gallons. At</p> <p>21 the present time, I have the standpipe where it is --</p> <p>22 the maximum is 65,000 gallons, and I drop down</p> <p>23 to 40,000 gallons before I start the pump again,</p> <p>24 before it automatically starts again.</p> <p>25 Q Mr. Myrick, on Page 6 of your testimony --</p>	<p>1 MR. RODRIGUEZ: Ten-horsepower pump is</p> <p>2 220 gallons per minute, Lines 13 through 14.</p> <p>3 A Judge, may I answer that question?</p> <p>4 MR. CARLTON: Hand on just a second</p> <p>5 because I'm concerned about what the Judge is looking</p> <p>6 at.</p> <p>7 We submitted revised prefiled testimony</p> <p>8 that struck the 420 and replaced it with 210.</p> <p>9 JUDGE NORMAN: Okay. Well, we need to</p> <p>10 make sure --</p> <p>11 MR. CARLTON: We need to make sure that</p> <p>12 you have that.</p> <p>13 JUDGE NORMAN: That I have the right --</p> <p>14 MR. CARLTON: Right.</p> <p>15 JUDGE NORMAN: Before we leave today.</p> <p>16 MR. CARLTON: Okay.</p> <p>17 JUDGE NORMAN: Okay?</p> <p>18 MR. RODRIGUEZ: Actually, if you want to</p> <p>19 go through all these numbers now, John, I don't mind.</p> <p>20 (Recess: 12:03 p.m. to 1:04 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 AFTERNOON SESSION  
2 WEDNESDAY, OCTOBER 8, 2008  
3 (1:04 p.m.)  
4 JUDGE NORMAN: Okay. I think we'll go  
5 back on the record.  
6 PRESENTATION ON BEHALF OF LINDSAY PURE WATER COMPANY  
7 (CONTINUED)  
8 JAMES MYRICK,  
9 having been previously sworn, continued to testify as  
10 follows:  
11 CROSS-EXAMINATION (CONTINUED)  
12 BY MR. RODRIGUEZ:  
13 Q I hope you enjoyed your lunch, Mr. Myrick.  
14 A Excellent.  
15 Q Before we broke for lunch, I asked you some  
16 questions regarding the pump capacity of your booster  
17 pumps. Do you recall that and how you were able to  
18 calculate 210 gallons per minute?  
19 A Yes, and you were asking me which -- or I  
20 would ask you which exhibit was that?  
21 Q That was your prefiled testimony.  
22 A I think someone straightened my desk up.  
23 Okay.  
24 Q Can you tell me how you calculated the 210  
25 gallons per minute? Well, actually, let me -- I

1 or is that the actual capacity?  
2 A I think -- I truthfully don't know. Okay?  
3 Q Mr. Myrick, do you know what a pump curve is?  
4 A Yes, sir.  
5 Q What is it?  
6 A It will pump so much against a particular  
7 head pressure. And then after it pumps for a little  
8 while after you pump the -- bump the head pressure up,  
9 it goes less and less, I believe, at least that's my  
10 understanding.  
11 Q And where do you get that understanding from?  
12 A Common sense, sir.  
13 Q You think it's common sense to know what a  
14 pump curve is?  
15 A I would think so.  
16 Q Okay. Did you utilize a pump curve to come  
17 to your 210 gallons per minute capacity for your  
18 ten-horsepower service pump?  
19 A As I stated previously, and I asked  
20 Mr. Neusch and gave me that number.  
21 Q Okay. Do you know if Mr. Neusch utilized the  
22 pump curve?  
23 A No, sir, I do not.  
24 Q Do you know what the impeller size is of your  
25 booster pump?

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1 believe your testimony was that you relied on somebody  
2 to tell you that it was 210 gallons per minute. Isn't  
3 that correct?  
4 A That is correct.  
5 Q And was that Mr. Young, Charles Young, that  
6 you relied on?  
7 A No.  
8 Q Who was it?  
9 A James Neusch.  
10 Q And is he the one that sold you the booster  
11 bump?  
12 A Yes. She's going to have a problem with  
13 Neusch, N-E-U-S-C-H.  
14 Q Now, Mr. Myrick, are you familiar with the  
15 term "rated capacity" of a pump?  
16 A I suppose.  
17 Q Okay. What's your understanding of that  
18 term?  
19 A It gives you a -- what it basically will do.  
20 Q Now, is the 210 gallons per minute that you  
21 testified to on Lines 13 through 14 of Page 5 of your  
22 testimony, which is I believe --  
23 A 210 gallons.  
24 Q -- Lindsay Pure Water 1A, yes, that  
25 210 gallons, is that the rated capacity of the pump,

1 A No, sir, I do not.  
2 Q Okay. Now, Mr. Myrick, on Lines 13 and 14 of  
3 Page 5 of your prefiled testimony, which I believe is  
4 LPWC-1A, when I use the term "booster pump," is it  
5 synonymous with "service pump"?  
6 A Yes, sir.  
7 Q Okay.  
8 A Well, yes. I also testified that I had a  
9 down-hole pump, which was -- the down-hole pump went  
10 out, and I had to replace it. Now, if you're talking  
11 about Page 5, Line 13, that is a booster pump, and  
12 it's a service pump.  
13 Q "Booster pump" and "service pump" are  
14 synonymous terms. Right?  
15 A I would think so.  
16 Q Mr. Myrick, can you please explain for me how  
17 you calculated your well capacity for the system?  
18 A I gave -- you're talking about the 100 to  
19 105 gallons a minute?  
20 Q Yes, sir.  
21 A I gave that number to my lawyer, John  
22 Carlton, and he told me how much it would be.  
23 Q Do you know if Mr. Carlton relied on any  
24 engineering data to come up with that?  
25 A I don't know what -- where John Carlton came

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<p>1 up with that data.</p> <p>2 Q Okay. Can you tell me, Mr. Myrick, isn't it</p> <p>3 also true that you relied on your attorney to</p> <p>4 determine what the pump capacity is or the capacity of</p> <p>5 what your booster pumps are?</p> <p>6 A No, sir.</p> <p>7 Q Okay. Who did you rely on for that?</p> <p>8 A James Neusch, as I stated previously, sir.</p> <p>9 Q Okay. So on Page 6 of your prefiled</p> <p>10 testimony, Line 5, beginning with "The currently pump</p> <p>11 capacity is sufficient for 155 connections," that came</p> <p>12 from Mr. Neusch?</p> <p>13 A No, that did not. That came from</p> <p>14 John Carlton.</p> <p>15 Q So my question was the pump capacity</p> <p>16 information came from Mr. Carlton. Is that correct?</p> <p>17 A I apologize. I didn't quite understand what</p> <p>18 you were saying.</p> <p>19 Q So who provided you that information?</p> <p>20 A John Carlton.</p> <p>21 Q Okay. With respect to "The distribution</p> <p>22 lines are sufficient for up to 250 connections," which</p> <p>23 is on Line 7, isn't it true that Mr. Carlton provided</p> <p>24 you that information?</p> <p>25 A That is correct.</p>	<p>1 minute that you relied on from Mr. Neusch, I believe?</p> <p>2 A That's correct. Neusch.</p> <p>3 Q Now, Mr. Myrick, do you know whether</p> <p>4 Mr. Carlton has any type of engineering background?</p> <p>5 A I do not know, sir.</p> <p>6 Q Did you ever ask him that question?</p> <p>7 A No, I did not.</p> <p>8 Q So it's fair to say that with respect to all</p> <p>9 the connection counts that are contained on -- within</p> <p>10 your testimony, you relied solely on your attorney for</p> <p>11 that information?</p> <p>12 A Yes, sir.</p> <p>13 Q Mr. Myrick, can you please tell me what the</p> <p>14 dimensions are for your pressure tank?</p> <p>15 A No, I can't. It's a 2,000-gallon pressure</p> <p>16 tank bought by Bulldog Tank -- bought from Bulldog</p> <p>17 Tank.</p> <p>18 Q Now, when your booster pumps are on --</p> <p>19 A Yes, sir.</p> <p>20 Q -- can you tell me what the discharge</p> <p>21 pressure is?</p> <p>22 A The booster pumps range from 38 pounds</p> <p>23 to 60 -- 60 pounds.</p> <p>24 Q Okay. Can you tell me what the booster pump</p> <p>25 discharge pressure is when the pumps are off?</p>
Page 396	Page 398
<p>1 Q As far as the -- as far as the capacity for</p> <p>2 your 100 gallon per well minute equaling 168</p> <p>3 connections, Mr. Carlton was the one who performed</p> <p>4 those calculations for you?</p> <p>5 A Yes, he helped me.</p> <p>6 Q Helped you, or he performed the calculations</p> <p>7 for you?</p> <p>8 A When he calculated, he helped me, yes, sir.</p> <p>9 Q What was your role then in determining</p> <p>10 what -- how to arrive at the 168 connections?</p> <p>11 A I gave him the capacity of the booster pump,</p> <p>12 the capacity of the well and the size of the pressure</p> <p>13 tank and the pressure that the pressure tank operated</p> <p>14 in and the size of my standpipe. I gave him the data.</p> <p>15 Q Okay. And that was the limit of your</p> <p>16 calculations. Right? You just provided the raw data.</p> <p>17 A With the exception of the booster pump.</p> <p>18 Q Okay. The booster pump --</p> <p>19 A Being the service pump, if that's what you're</p> <p>20 going to ask.</p> <p>21 Q With respect to the booster pump, Mr. Carlton</p> <p>22 provided the connection count, the equivalent</p> <p>23 connection counts?</p> <p>24 A That's correct.</p> <p>25 Q Okay. And you just provided the gallons per</p>	<p>1 A No, I cannot. Well, when they turn off, they</p> <p>2 should be at 60 pounds. That's -- no, sir, I cannot</p> <p>3 tell you that.</p> <p>4 Q I just want to go back and clarify some</p> <p>5 testimony that you provided before lunch regarding the</p> <p>6 water level in the standpipe.</p> <p>7 A Yes, sir.</p> <p>8 Q At what point does your water well turn on?</p> <p>9 At what level in that standpipe does your water well</p> <p>10 turn on and begin to pump?</p> <p>11 A I believe it's 35 feet.</p> <p>12 Q At what point does your water well pump turn</p> <p>13 off?</p> <p>14 A Between 60 and 65 feet, somewhere in there.</p> <p>15 Q I'm sorry?</p> <p>16 A Sixty-five feet.</p> <p>17 Q Okay. So when the water level in the</p> <p>18 standpipe gets up to 65 feet, your water well pump</p> <p>19 shuts off?</p> <p>20 A Yes, sir.</p> <p>21 Q Mr. Myrick, has anyone ever approached</p> <p>22 Lindsay Pure Water Company for the provision of</p> <p>23 nonstandard water service?</p> <p>24 A Are you talking about the fire department?</p> <p>25 Q No, sir.</p>

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32 (Pages 395 to 398)

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<p>1 A Sale?</p> <p>2 Q I'm talking about a retail customer.</p> <p>3 A No. Nonstandard -- describe "nonstandard"</p> <p>4 for me, please.</p> <p>5 Q What's your understanding of a standard</p> <p>6 service?</p> <p>7 A Standard service is what I sell at retail</p> <p>8 through a meter at -- I can't remember the point of</p> <p>9 origin, I think is what you used.</p> <p>10 Q Okay. Now, with respect to the 2005</p> <p>11 discovery that your CCN is not what you thought it</p> <p>12 was, am I correct in my understanding that you</p> <p>13 directed someone to go and get that CCN for the</p> <p>14 Lindsay Pure Water Company? Is that correct?</p> <p>15 A Yes, sir.</p> <p>16 Q Okay.</p> <p>17 A I do not know who it was. I think -- I don't</p> <p>18 know if it was John. I don't know. 2005 was a long</p> <p>19 time ago.</p> <p>20 Q But you don't recall if -- what area was</p> <p>21 actually applied for in 2000 -- or 1997 when you</p> <p>22 applied for it?</p> <p>23 A Say that again.</p> <p>24 Q And I'm going back to the deposition that you</p> <p>25 and I had. My understanding is based upon what we</p>	<p>1 between 20 and 30,000.</p> <p>2 Q Now, do you recall whether your application</p> <p>3 for your CCN that you've been granted -- do you recall</p> <p>4 whether that was protested at all by any entities?</p> <p>5 A Entities? There was one protest, and that</p> <p>6 was the resident to the south, Alfred Hess.</p> <p>7 Q Did you have to go through a contested case</p> <p>8 hearing on that application?</p> <p>9 A I believe we did. I did not personally.</p> <p>10 JUDGE NORMAN: A hearing like this one?</p> <p>11 A I didn't -- I wasn't --</p> <p>12 JUDGE NORMAN: But you believe that you</p> <p>13 had to go --</p> <p>14 A I'm pretty sure it was, yes. My mistake.</p> <p>15 JUDGE NORMAN: I'm sorry?</p> <p>16 A My mistake. I should have been here.</p> <p>17 Q (BY MR. RODRIGUEZ) Do you have any estimates</p> <p>18 or thoughts on how much it would cost Lindsay Pure</p> <p>19 Water to seek a CCN for the South Ridge of Lindsay</p> <p>20 property?</p> <p>21 A Ask that question again, please.</p> <p>22 Q Okay. If Lindsay Pure Water seeks to square</p> <p>23 up its CCN --</p> <p>24 A Yes.</p> <p>25 Q -- with the South Ridge of Lindsay</p>
Page 400	Page 402
<p>1 discussed in our deposition.</p> <p>2 A Yes, sir, but ask it again, please.</p> <p>3 Q I will. What you actually received in your</p> <p>4 CCN --</p> <p>5 A Yes, sir.</p> <p>6 Q -- was different than what your memory is of</p> <p>7 what you -- or what you thought you were getting. Is</p> <p>8 that correct?</p> <p>9 A That is correct.</p> <p>10 Q Now, but you also don't recall what was</p> <p>11 actually sought in 1997?</p> <p>12 A Oh, I most definitely do.</p> <p>13 Q Okay. Do you recall then why there is a</p> <p>14 difference between what was actually issued and what</p> <p>15 you believed to be the CCN that you applied for?</p> <p>16 A Well, I know what I was given was Phase I</p> <p>17 and II, and what I applied for was the 96 acres of the</p> <p>18 entire -- well, 96 acres of South Ridge of Lindsay.</p> <p>19 That's what I bought it for.</p> <p>20 Q And since 2005, you've not sought to go back</p> <p>21 and correct that CCN. Is that correct?</p> <p>22 A That is correct.</p> <p>23 Q Do you recall, Mr. Myrick, how much it cost</p> <p>24 you to obtain the CCN for Lindsay Pure Water?</p> <p>25 A Exact numbers, no, but it was somewhere</p>	<p>1 subdivision, how much do you think it would cost</p> <p>2 Lindsay Pure Water to get the application prepared?</p> <p>3 A I don't know.</p> <p>4 Q How much would you estimate it would cost to</p> <p>5 actually -- from the application process to actual</p> <p>6 receipt of the CCN?</p> <p>7 A In today's money, I don't know.</p> <p>8 Q Okay. Do you think it would be more or less</p> <p>9 than the 20 to \$30,000 that it cost you in 1997?</p> <p>10 A I'm quite certain it would be more. That's</p> <p>11 the reason I don't have a clue how much it would be.</p> <p>12 Q Mr. Myrick, in 1997, the 20 to \$30,000 that</p> <p>13 it cost to get the CCN, did Lindsay Pure Water Company</p> <p>14 pay the cost for that proceeding?</p> <p>15 A Yes, I'm sure we did, but was it Lindsay Pure</p> <p>16 Water that wrote the check? Is that your question?</p> <p>17 Q Yes, yes, it is.</p> <p>18 A I doubt very seriously if Lindsay Pure Water</p> <p>19 would have wrote the check.</p> <p>20 Q Who would have done that?</p> <p>21 A Who would have known?</p> <p>22 Q Who would have paid it?</p> <p>23 A Myrick Development Company.</p> <p>24 Q If Lindsay Pure Water Company today sought to</p> <p>25 make application to square up its CCN with the South</p>

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<p>1 Ridge of Lindsay development, does Lindsay Pure Water</p> <p>2 Company have present funds to be able to spend 20 to</p> <p>3 \$30,000 on a CCN case?</p> <p>4 A In the bank right now, I doubt it seriously,</p> <p>5 but Myrick Development Company does.</p> <p>6 Q So would Lindsay Pure Water require Myrick</p> <p>7 Development Company to pay the costs for amendment of</p> <p>8 Lindsay Pure Water's CCN?</p> <p>9 A I would anticipate that happening, yes.</p> <p>10 Q Now, would that be a payment requirement of</p> <p>11 Myrick Development, or would that be a loan from</p> <p>12 Myrick Development to Lindsay Pure Water?</p> <p>13 A I do not know because I'm not an accountant.</p> <p>14 I would have to ask my accountant how he would handle</p> <p>15 that, sir.</p> <p>16 Q So whatever would be the most tax</p> <p>17 advantageous might be the way you would handle that?</p> <p>18 A I would surely hope so.</p> <p>19 Q Now, Mr. Myrick, isn't it true that you</p> <p>20 recently changed one of your booster pumps from a</p> <p>21 three-horsepower to a ten?</p> <p>22 A Well, three, five -- yes, I changed it to a</p> <p>23 ten.</p> <p>24 Q Okay.</p> <p>25 JUDGE NORMAN: And he was wondering</p>	<p>1 A Yes, sir.</p> <p>2 Q I ask if you can identify that document for</p> <p>3 me.</p> <p>4 A That is 2007 S-Corp return --</p> <p>5 Q Okay.</p> <p>6 A -- from Michael Kendall, my accountant.</p> <p>7 Q Do you recognize this to be the actual return</p> <p>8 for Lindsay Pure Water for the 2007 tax year?</p> <p>9 A I'm sure it is, but I haven't seen my</p> <p>10 signature yet. I'm sure it is.</p> <p>11 MR. RODRIGUEZ: I move admission of</p> <p>12 Applicant's Exhibit No. 7, Your Honor.</p> <p>13 MR. MacLEOD: No objection.</p> <p>14 MR. CARLTON: No objection.</p> <p>15 JUDGE NORMAN: It's admitted.</p> <p>16 (Exhibit APP No. 7 admitted)</p> <p>17 Q (BY MR. RODRIGUEZ) Mr. Myrick, isn't it true</p> <p>18 that from the inception of Lindsay Pure Water Company</p> <p>19 to now, Lindsay Pure Water Company has never made a</p> <p>20 profit?</p> <p>21 A I don't believe they have.</p> <p>22 Q Okay. And it's not only been until recently</p> <p>23 that they've actually broken even. Isn't that true?</p> <p>24 A That was my understanding from my accountant.</p> <p>25 Q Okay. Now, when is it that they first</p>
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<p>1 whether you changed it from three to ten or five to</p> <p>2 ten. Isn't that true, Mr. Myrick? But you did change</p> <p>3 it?</p> <p>4 A Yes. I don't know if it was a three or a</p> <p>5 five, but I can look and see, but we've changed it.</p> <p>6 It says three, so it was a three to a ten.</p> <p>7 Q (BY MR. RODRIGUEZ) And, Mr. Myrick, that</p> <p>8 pump cost about \$1,000 to replace. Is that right?</p> <p>9 A The number that strikes me was 1400 and some</p> <p>10 odd dollars, sir.</p> <p>11 Q And Lindsay Pure Water Company paid for that,</p> <p>12 is that correct?</p> <p>13 A I am quite certain that they paid for it with</p> <p>14 a Lindsay Pure Water Company check.</p> <p>15 Q Okay. But Lindsay Pure Water Company needed</p> <p>16 to borrow funds in order to make that payment. Is</p> <p>17 that right?</p> <p>18 A I'm also quite certain that we transferred</p> <p>19 money from Myrick Development Company to Lindsay Pure</p> <p>20 Water Company.</p> <p>21 Q Okay.</p> <p>22 (Exhibit APP No. 7 marked)</p> <p>23 Q (BY MR. RODRIGUEZ) Mr. Myrick, I've just</p> <p>24 handed you what's been marked as Applicant's Exhibit</p> <p>25 No. 7.</p>	<p>1 started breaking even?</p> <p>2 A This year.</p> <p>3 Q 2008?</p> <p>4 A Yes.</p> <p>5 Q And isn't it also true, Mr. Myrick, that</p> <p>6 whatever deficits that occurred within Lindsay Pure</p> <p>7 Water Company was made up by Myrick Development</p> <p>8 Company?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay. Mr. Myrick, isn't it true that Lindsay</p> <p>11 Pure Water Company has no emergency reserve fund for</p> <p>12 emergency repairs of the like?</p> <p>13 A You're right, yes, sir.</p> <p>14 Q Do you know what the cash reserves are as of</p> <p>15 today or maybe at the end of -- let's just say</p> <p>16 September 30, 2008, what the cash reserves are for</p> <p>17 Lindsay Pure Water Company?</p> <p>18 A I do not know the exact number, but it's --</p> <p>19 no, I don't know the exact number.</p> <p>20 Q And you're the president of the company.</p> <p>21 Right?</p> <p>22 A Yes, sir.</p> <p>23 Q How often do you review that financial</p> <p>24 information?</p> <p>25 A I pass that financial information to my</p>

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<p>1 secretary/treasurer.</p> <p>2 Q Okay. I wasn't asking what you did with it.</p> <p>3 I asked you how often do you review it?</p> <p>4 A Three or four times a year.</p> <p>5 Q When was the last time you reviewed it in</p> <p>6 2008?</p> <p>7 A Two weeks ago.</p> <p>8 Q And as of -- from two weeks ago to today, you</p> <p>9 can't tell me what the cash reserves are for Lindsay</p> <p>10 Pure Water Company?</p> <p>11 A No, sir, I can't.</p> <p>12 Q Okay. What's the fiscal year for Lindsay</p> <p>13 Pure Water Company?</p> <p>14 A January to December.</p> <p>15 Q So a calendar year?</p> <p>16 A Yes, sir.</p> <p>17 Q Mr. Myrick, can you please tell me what it</p> <p>18 costs Lindsay Pure Water Company to produce a thousand</p> <p>19 gallons of water?</p> <p>20 A No, sir, I can't.</p> <p>21 Q Can you tell me what Lindsay Pure Water</p> <p>22 Company's annual revenue requirement is?</p> <p>23 A No, sir, I can't.</p> <p>24 Q Can you tell me what Lindsay Pure Water's</p> <p>25 annual cost to provide service is?</p>	<p>1 MR. RODRIGUEZ: -- their solvency is an</p> <p>2 issue.</p> <p>3 A Exact dollars?</p> <p>4 Q (BY MR. RODRIGUEZ) Yes, sir.</p> <p>5 A No, I cannot. I do not have a bank statement</p> <p>6 with me, sir.</p> <p>7 Q Okay. Can you tell me what Myrick</p> <p>8 Development Company's operating reserve fund is?</p> <p>9 A No, I cannot.</p> <p>10 Q You would be the one to make that decision as</p> <p>11 to what their operating reserve fund would be, though.</p> <p>12 Right?</p> <p>13 A Yes, sir.</p> <p>14 Q Do you generally keep a certain amount of</p> <p>15 money in reserves?</p> <p>16 A That is correct.</p> <p>17 Q And what would that be?</p> <p>18 A Normally 30 to \$50,000.</p> <p>19 Q Now, is that reserve fund maintained -- to</p> <p>20 maintain the solvency of Myrick Development Company,</p> <p>21 or is that reserve fund there to maintain the solvency</p> <p>22 of Lindsay Pure Water Company?</p> <p>23 MR. CARLTON: I'm going to object to the</p> <p>24 form of the question. It's kind of like when did you</p> <p>25 last beat your wife.</p>
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<p>1 A Not without looking at a report.</p> <p>2 Q Now, any deficit that's been -- let me strike</p> <p>3 that.</p> <p>4 I believe your previous testimony was</p> <p>5 that Myrick Development Company makes up for deficits</p> <p>6 for Lindsay Pure Water Company. Is that true?</p> <p>7 A That's true.</p> <p>8 Q Okay. When Myrick Development Company makes</p> <p>9 up for those deficits, does it gain an equity interest</p> <p>10 in Lindsay Pure Water Company?</p> <p>11 A You'd have to ask my accountant that</p> <p>12 question. I do not know.</p> <p>13 Q Okay. Or is it just loans that are made from</p> <p>14 Myrick Development to Lindsay Pure Water?</p> <p>15 A I do not know.</p> <p>16 Q Are you also involved in the operations of</p> <p>17 Myrick Development Company?</p> <p>18 A Yes, sir.</p> <p>19 Q Okay. Can you tell me what Myrick</p> <p>20 Development Company's current cash balance is?</p> <p>21 MR. CARLTON: Objection; relevance.</p> <p>22 MR. RODRIGUEZ: Your Honor, if the</p> <p>23 Myrick Development Company is the one who funds</p> <p>24 Lindsay Pure Water Company --</p> <p>25 JUDGE NORMAN: Overruled.</p>	<p>1 JUDGE NORMAN: Okay. And if -- let me</p> <p>2 just ask you this, Mr. Myrick. Was it to maintain the</p> <p>3 solvency of Myrick Development or Lindsay Pure Water</p> <p>4 Company? And if you could say --</p> <p>5 MR. CARLTON: Or some other reason.</p> <p>6 JUDGE NORMAN: Right. You can say</p> <p>7 neither, or you can answer the question, or you can</p> <p>8 say you can't answer the question.</p> <p>9 A I can't answer the question.</p> <p>10 Q (BY MR. RODRIGUEZ) Okay. How much of Myrick</p> <p>11 Development Company's operating reserves go toward</p> <p>12 maintaining the solvency of Lindsay Pure Water</p> <p>13 Company?</p> <p>14 JUDGE NORMAN: If any.</p> <p>15 A None.</p> <p>16 Q (BY MR. RODRIGUEZ) Now, isn't it true that</p> <p>17 Lindsay Pure Water Company maintains a \$310,000 line</p> <p>18 of credit?</p> <p>19 A No, it does not. Myrick Development Company</p> <p>20 carries or has a \$310,000 line of credit.</p> <p>21 Q Does Lindsay Pure Water Company maintain a</p> <p>22 line of credit?</p> <p>23 A No, it does not.</p> <p>24 Q When is the \$310,000 line of credit that</p> <p>25 Myrick Development Company maintains -- when does that</p>

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<p>1 renew? 2 A I believe it's three years from now. So it 3 would be 2011. 4 Q Do you know what the interest rate is on that 5 line of credit? 6 A 7 percent. 7 Q Is the line of credit that Myrick Development 8 has like most other lines of credit in that it's 9 callable at any time? 10 A I do not know that, but I would -- I do not 11 know. 12 Q Other than Myrick Development Company's line 13 of credit, are you familiar with any other lines of 14 credit that you either personally have or through all 15 your other companies? 16 A I don't have any other lines of credit. 17 Q Okay. My understanding also, Mr. Myrick, is 18 that Lindsay Pure Water Company's tariff was approved 19 in 1998 approximately. Is that correct? 20 A That is correct. 21 Q And from 1998 through 2007, Lindsay Pure 22 Water Company had a negative balance at the end of 23 each year. Is that correct? 24 A I believe you're right. 25 Q And between 1997 or 1998 -- excuse me --</p>	<p>1 Lindsay Pure Water? 2 A No, there is not. 3 Q Okay. Is there a dedicated customer service 4 line for Lindsay Pure Water Company? 5 A I designated my home phone number. 6 Q Okay. Which you utilize for home -- 7 A Yes, I do. 8 Q -- for home calls as well. Isn't that right? 9 A Yes, I do. 10 Q All right. Mr. Myrick, you would agree with 11 me, wouldn't you, that the typical water usage for 12 Lindsay Pure Water Company is approximately 13 8,000 gallons? 14 A I believe that's the number that I gave in my 15 deposition. 16 Q Okay. And do you agree with that? 17 A Yes, I would agree with that. 18 JUDGE NORMAN: And that's the typical 19 usage? 20 MR. RODRIGUEZ: The average usage for a 21 Lindsay Pure Water customer. 22 JUDGE NORMAN: For what? 23 MR. RODRIGUEZ: On a monthly basis. 24 THE WITNESS: Yes. 25 JUDGE NORMAN: Okay.</p>
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<p>1 and 2007, Lindsay Pure Water Company never went to 2 seek a rate increase from the TCEQ. Is that correct? 3 A That is correct. 4 Q Other than Myrick Development Company, are 5 there other companies that are available for Lindsay 6 Pure Water to seek loans or cost recovery from? 7 A Not to my knowledge. 8 Q Is Myrick Development Company in some way 9 obligated to provide funds to Lindsay Pure Water to 10 maintain the solvency of the company? 11 A Repeat that. 12 Q Is Myrick Development Company in some way 13 obligated to maintain the solvency of Lindsay Pure 14 Water Company? 15 A No, they are not. 16 Q Now, isn't it true, Mr. Myrick, that you 17 operate Lindsay Pure Water Company out of your home? 18 A That is correct. 19 Q Okay. There's no formal business office for 20 Lindsay Pure Water Company, is there? 21 A No, there is not. 22 Q Okay. You also utilize your home phone 23 number for Lindsay Pure Water Company? 24 A Yes, I do. 25 Q Okay. There's no dedicated phone line for</p>	<p>1 MR. RODRIGUEZ: My apologies. Thank 2 you, Judge. 3 JUDGE NORMAN: All right. 4 Q (BY MR. RODRIGUEZ) Now, Mr. Myrick, based on 5 the proof tariff for Lindsay Pure Water, how much 6 would a customer that had 8,000 gallons pay on a 7 monthly basis? 8 A \$30.50 plus 1 percent to the -- \$30.81. 9 Q Mr. Myrick, I'm going to ask you to turn to 10 Applicant's Exhibit APP-2 and turn to Attachment 11 DLM-7, which is the schedule fees for the City of 12 Lindsay. 13 JUDGE NORMAN: That's a schedule -- 14 DLM-7 is the schedule? Is that what you said? 15 MR. RODRIGUEZ: DLM-16 is an ordinance, 16 Your Honor. I'm sorry, did I say DLM-7? 17 JUDGE NORMAN: I thought so. 18 MR. RODRIGUEZ: I'm sorry. I meant 16. 19 JUDGE NORMAN: What do you mean, 16? 20 Okay. 21 Q (BY MR. RODRIGUEZ) Actually, Mr. Myrick, I 22 think we're going to come back to that. I don't think 23 we're going to do that right now. 24 A I figured you would. Okay. 25 Q We'll do that in just a second. But before</p>

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1 we get away from some of this other, I want to get  
2 something else first. I'm sorry.  
3 Lindsay Pure Water's operator --  
4 licensed operator is Charles Young. Is that correct?  
5 A That is correct.  
6 Q Okay. And you're aware that Lindsay Pure --  
7 that the City of Lindsay utilizes Mr. Young's services  
8 as well?  
9 A I believe in a sewer capacity, yes, sir.  
10 Q Okay. And do you believe that Mr. Young is  
11 capable of doing his services well, performing his  
12 services well?  
13 A Yes, he is.  
14 Q How often does the Lindsay Pure Water Company  
15 board meet?  
16 A Once or twice a year. And let me -- let me  
17 back up on that -- formally meet, eyeball to eyeball.  
18 We visit quite frequently by phone.  
19 Q Now -- I'm sorry. I've got Applicant's  
20 Exhibit No. 2 already here for you, but I'm going to  
21 ask you to turn to Attachment DLM-14. And do you  
22 recall the document that's in Attachment DLM-14?  
23 A Yes, I do.  
24 Q What do you understand that to be?  
25 A That is an agreement in 2002 between Mayor

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1 Norbert Mages, myself, and it has a signature on the  
2 back of myself, Mayor Mages and Walter Lutkenhaus.  
3 Myself and Norbert Mages have signed it.  
4 Q Now, it's not an agreement between you and  
5 Mayor Mages. It's between --  
6 A Lindsay Pure Water Company and the City of  
7 Lindsay.  
8 Q Okay. Now, this was a settlement agreement  
9 between the City of Lindsay and Lindsay Pure Water  
10 Company. Is that correct?  
11 A That is correct.  
12 Q Okay. Now, if you turn to the second page of  
13 the agreement, which is Bates Page No. APP0457, I'm  
14 going to direct you to the second paragraph under  
15 Agreement. Do you see that?  
16 A Yes, sir.  
17 Q Now, that provision required the Lindsay Pure  
18 Water Company to file a CCN application to amend its  
19 CCN to incorporate certain areas that are contained in  
20 Exhibit A to that agreement. Is that right?  
21 A That's correct.  
22 Q Okay. And in fact, there's an obligation to  
23 do that within ten days from the execution date. Is  
24 that right?  
25 A That is correct.

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1 Q And Lindsay Pure Water Company also never did  
2 make that application, did it?  
3 A That's correct.  
4 Q To this date, they've still not made that  
5 application?  
6 A That's correct.  
7 JUDGE NORMAN: What was the area that  
8 you were going -- you were obligated to make an  
9 application for?  
10 A Judge, basically it's south of the City of  
11 Lindsay.  
12 JUDGE NORMAN: South of the City of  
13 Lindsay?  
14 A Yes, in the -- basically in the area that  
15 they are now --  
16 JUDGE NORMAN: Wanting a CCN?  
17 A -- wanting to seek, yes.  
18 JUDGE NORMAN: Okay.  
19 A It might be a little smaller.  
20 JUDGE NORMAN: Okay. Approximately?  
21 A Give or take.  
22 JUDGE NORMAN: Okay.  
23 Q (BY MR. RODRIGUEZ) Mr. Myrick, you're  
24 familiar with the \$310,000 line of credit that Myrick  
25 Development Company has. Correct?

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1 A Yes.  
2 Q How much of that line of credit is available  
3 for -- available to Myrick Development currently?  
4 A 310,000.  
5 Q Okay. None of the -- none of that --  
6 A Wait a minute. Let me back up.  
7 Q -- has been borrowed?  
8 A 305,000.  
9 Q So currently you have outstanding \$5,000 --  
10 Myrick Development has \$5,000 outstanding from that  
11 line of credit. Is that correct?  
12 A That is correct.  
13 Q Now, with respect to the development of the  
14 South Ridge of Lindsay, did your development -- or I  
15 guess Myrick Development's development of the South  
16 Ridge of Lindsay was limited to basically the sale of  
17 lots. Is that correct? You weren't -- you're not in  
18 the business of building homes?  
19 A I am in the business of building homes.  
20 Myrick Development is not in the business of building  
21 homes.  
22 Q Okay.  
23 A I personally.  
24 Q Okay. Did you have a builder designated for  
25 the South Ridge of Lindsay?

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1 A No, unlike most, we don't do that.	1 A That's Fuhrmann.
2 Q Anyone could utilize any builder they want?	2 Q Okay.
3 A Anyone who wishes to buy a lot can pick any	3 A Michael Fuhrmann.
4 builder they wish.	4 Q The Michael Fuhrmann tract that is located
5 Q Okay. Mr. Myrick, on the lines that are --	5 right at that just south of 82 and -- well, just south
6 the distribution lines that are within the South Ridge	6 of 82. Can you tell me what the estimated costs would
7 of Lindsay, can you tell me who paid for that	7 be for Lindsay Pure Water Company to provide service
8 infrastructure?	8 there?
9 A Myrick Development did in the end, but I	9 A If you were to take Mr. Maroney's \$350,000
10 believe the accountability was through Lindsay Pure	10 for a well and you were to take storage that was
11 Water Company.	11 30,000 gallons -- I believe 30,000 was the dollar --
12 Q Okay. The payment for that infrastructure	12 and if you were to have a six-inch C-900 pipe at \$18 a
13 and the costs associated with that infrastructure, was	13 foot and you went -- can I say \$20 a foot? \$20 a foot
14 that in any manner imputed into the cost of any of the	14 is easier for me to figure -- and you went 1,000 feet,
15 lots in the South Ridge of Lindsay subdivision?	15 that would be \$20,000; 400,000.
16 A Well, I'm quite certain that it and any and	16 Q Excuse me?
17 all of the rest of the expenses would have had a great	17 A \$400,000.
18 part in pricing lots.	18 Q And that would be -- that would be Lindsay
19 Q Okay. And that would -- that would go for	19 Pure Water's cost to extend service?
20 both the standpipe and your booster pumps and your	20 A Yes, sir.
21 pressure tank, if I understand just your last	21 Q Can you tell me what the cost would be for
22 statement?	22 the City of Lindsay to extend service to
23 A Yes, sir.	23 Mr. Fuhrmann's property?
24 Q Can you tell me how much of -- how much was	24 A No, sir, I can't, but it wouldn't be very
25 designated for each lot with respect to the capital	25 much.
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1 costs for the water improvements?	1 Q Okay. Now --
2 A No, sir, I cannot.	2 A Well, I take that wouldn't be very much back.
3 Q You've already got Applicant's Exhibit No. 2	3 Q Mr. Myrick, can you please tell me how many
4 in front of you. I'm going to ask you to open up	4 creeks it would take for you to cross in order to
5 Attachment DLM-13.	5 serve Mr. Fuhrmann's property?
6 A Yes, sir.	6 A I would not cross a creek.
7 Q Okay. And I'm going to -- and while you've	7 Q You would create a standalone system?
8 got that out, I'm going to ask you to also likewise	8 A That's the only way I would be able to do so.
9 look at ED Exhibit No. 3.	9 Q Would it be your opinion that the City of
10 A Yes, sir.	10 Lindsay would need to create a standalone system in
11 Q Okay. And you understand that both of these	11 order to serve Mr. Fuhrmann's property?
12 maps show the requested water service territory for	12 A Let me see if I can get there in my head
13 the City of Lindsay in this docket?	13 first. No, they would not need a standalone system.
14 A Yes, sir.	14 JUDGE NORMAN: And by "standalone
15 Q Okay. You can agree with me on that?	15 system," you just mean -- I assume you mean just put a
16 A Yes, sir.	16 new system up there rather than trying to run it all
17 Q Okay.	17 the way from Pure Water?
18 JUDGE NORMAN: Okay. Now, what's the	18 A I could not take a six-inch line from South
19 other map you're having him look at?	19 Ridge of Lindsay to Michael Fuhrmann's without -- I
20 MR. RODRIGUEZ: ED-3; ED-3.	20 could not service him without a standalone system. I
21 JUDGE NORMAN: Okay.	21 could not cross Elm Creek.
22 Q (BY MR. RODRIGUEZ) Mr. Myrick, can you	22 JUDGE NORMAN: Right. Okay. For the
23 please tell me what the cost would be for Lindsay Pure	23 record, it looks like that Mr. -- looks like his name
24 Water Company to serve the -- how do you pronounce	24 is spelled F-U --
25 that last name Fuhrmann?	25 A F-U-H-R-M-A-N-N.

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