

Exhibit A

ALAN DAY
FAZZINO INVESTMENTS vs BRAZOS VALLEY

July 16, 2025
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FAZZINO INVESTMENTS, LP,)
for itself and all others)
similarly situated,)

Plaintiffs,)

Vs.) CASE NO. 6:25-CV-0001-ADA-DTG

BRAZOS VALLEY GROUNDWATER)
CONSERVATION DISTRICT,)

Defendant.)

* * * * *

VIDEOTAPED DEPOSITION OF

ALAN DAY

Wednesday, JULY 16, 2025

* * * * *

VIDEOTAPED DEPOSITION OF ALAN DAY, having been
duly sworn by Khadijah Holloway, Notary Public in and
for the State of Texas. The witness appeared in person
at Hotel Indigo, 211 Clay Avenue, Waco, Texas, from 9:06
a.m. to 5:38 p.m., pursuant to Texas Rules of Civil
Procedure and any provisions stated on the record or
attached hereto.

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APPEARANCES OF COUNSEL

On behalf of the Plaintiffs, Fazzino Investments, LP,
for itself and all others similarly situated

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On behalf of the Defendant, Brazos Valley Groundwater
Conservation District, and the Witness, Alan Day:

JOSE DE LA FUENTE, ESQ.
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Also present:

Jason Rolen, Videographer

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(Exhibits 1 through 41 retained by counsel.)

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1 (The proceedings commenced at 9:06 a.m.)

2 THE VIDEOGRAPHER: All right. Putting you on
3 the record. Today's date is July 16, 2025. The time is
4 currently 9:06 a.m. Central Time.

5 This is the video-recorded deposition of the
6 corporate representative of Brazos Valley Groundwater
7 Conservation District.

8 Will counsel and all parties present state
9 your appearance and whom you represent, after which the
10 reporter will swear in the witness?

11 MR. JONES: Marty Jones and Richard Coffman,
12 representing the plaintiff and the class.

13 MR. DE LA FUENTE: Joe De La Fuente,
14 representing Defendant District.

15 THE REPORTER: Thank you, Counsel.

16 My name is Khadijah Holloway. I'm a notary
17 public and digital reporter for Esquire Deposition
18 Solutions in the state of Texas. Pursuant to Texas
19 Rules of Civil Procedure, I will be capturing the
20 verbatim record of today's proceeding utilizing
21 electronic audio equipment, a computer, and specialized
22 recording software, which is not a form of stenography.

23 The witness is currently located in Waco,
24 Texas, and has confirmed his identity with his
25 commercial driver's license issued by the Texas

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1 Department of Motor Vehicles.

2 Absent any objection at this time, counsel and
3 the witness agree to my administration of the oath to
4 this witness, and that the final transcript may be used
5 for all purposes by law by the Texas Rules of Federal
6 Law.

7 Hearing no objections, this shall constitute
8 agreement and stipulation of such, and I will now swear
9 in the witness.

10 Mr. Day, can you please raise your hand for
11 me?

12 MR. DAY: Say it again?

13 THE REPORTER: Can you please raise your right
14 hand for me?

15 MR. DAY: Yes, I can.

16 THE REPORTER: Thank you.

17 ALAN DAY

18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JONES:

21 Q. Would you state your full name for the record,
22 please?

23 A. Alan Michael Day.

24 Q. Mr. Day, we have met previously; is that
25 correct?

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1 A. Yes.

2 Q. In fact, I've taken your deposition
3 previously?

4 A. That is correct.

5 Q. All right. So you're familiar with the
6 deposition process, right?

7 A. Yes.

8 Q. All right. And so let me just reach a couple
9 of agreements with you about today's deposition. The
10 first is this: If at any time you don't understand one
11 of my questions, I would appreciate it if you just stop
12 me and tell me that, all right?

13 A. Yes, sir.

14 Q. Because if you answer the question, I'm going
15 to assume you understood it, all right?

16 A. Yep.

17 Q. Is that fair?

18 A. Yes.

19 Q. All right. And, you know, if -- if you wait
20 until I finish my sometimes lengthy questions before you
21 begin your answer, that will -- that will help keep the
22 record straight, all right?

23 A. Yes.

24 Q. And if you need to take a break at any time,
25 let me know and we'll take a break, as long as there's

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1 not a question pending that you haven't answered, all
2 right?

3 A. Very good.

4 Q. And if you'll continue to answer out verbally,
5 instead of saying uh-huh or uh-uh, or merely shaking
6 your head, that will help keep the record straight as
7 well, all right?

8 A. Yes.

9 Q. Now, let me hand you what I've marked as
10 Exhibit 42, which is a copy of the Notice of the
11 Deposition of the Corporate Representative of Brazos
12 Valley Groundwater Conservation District.

13 (Plaintiffs' Exhibit 42 was marked for
14 identification.)

15 BY MR. JONES:

16 Q. Have you seen this before?

17 MR. DE LA FUENTE: Can we pause for just a
18 second?

19 THE WITNESS: Do you have just a napkin or
20 something? Do you mind? I hit my arm.

21 THE VIDEOGRAPHER: Can we go off?

22 MR. JONES: Yes.

23 THE VIDEOGRAPHER: The time is now 9:09 a.m.
24 We are off the record.

25 (Off the record from 9:09 a.m. to 9:11 a.m.)

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1 THE VIDEOGRAPHER: All right. The time is now
2 9:11 a.m. We're back on record.

3 BY MR. JONES:

4 Q. All right. Before we took that break, Mr.
5 Day, I had handed you Exhibit 42, which is a Notice of
6 the Deposition of the Corporate Representative of -- of
7 the Groundwater District. Have you seen this before?

8 A. I've seen one like this, the only difference
9 being the date. I've seen the one that was originally
10 set for June, and -- but I hadn't seen one that was set
11 for today. So --

12 Q. Right. Other than the date, is there a
13 material difference that you can tell with respect to
14 the one you have seen and the one that's marked as
15 Exhibit 42?

16 A. No, sir.

17 Q. All right. And our understanding is that you
18 have been designated by Brazos Valley Groundwater
19 Conservation District to serve as its corporate
20 representative today. Is that your understanding?

21 A. Yes, sir.

22 Q. Do you understand what that means in terms of
23 role here?

24 A. Yes, sir.

25 Q. What does it -- what do you -- what's your

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1 understanding of what that means?

2 A. That would be to represent the District, the
3 Board, and all that we do in this deposition.

4 Q. And in that respect, do you understand that
5 your answers to the questions in this deposition will
6 bind the District, that is Brazos Valley Groundwater
7 Conservation District.

8 A. Yes.

9 Q. These answers are binding on the District?

10 A. Yes, sir.

11 Q. Okay. You understand you're under oath.

12 A. Yes, sir.

13 Q. All right. And therefore, it's truly
14 important -- because your answers bind the District,
15 it's truly important for you to understand my questions;
16 you understand that?

17 A. Yes, sir.

18 Q. All right. Now, tell me what you did to
19 prepare for this deposition as the corporate
20 representative?

21 A. I visited with my attorney, Mr. de la Fuente.
22 We -- we spent some time together. I had went back
23 through the documents that had been sent out to the --
24 such as this Number 42 exhibit, the interrogatories that
25 you sent to the District, things that you needed, the

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1 requests for materials, those kind of things, I went
2 back through those materials, what our answers were,
3 what we provided those kinds of things. I also went
4 back through my previous deposition that -- and read
5 back through that transcript.

6 Q. All right. And that deposition was in a case
7 called Anthony Fazzino versus Brazos Valley Groundwater
8 Conservation District; is that correct?

9 A. Yes, sir, that's correct.

10 Q. Other than Mr. de la Fuente, did you talk with
11 anyone else in preparation for this deposition?

12 A. Not in preparation, no.

13 Q. All right. Your answer causes me to -- to
14 wonder if you talked to someone else for any other
15 reason, other than preparation for this deposition?

16 A. Is that a question?

17 Q. That -- that's a bad question, yes. Why did
18 you quantify your answer by saying in preparation -- no
19 -- no one else in preparation for this deposition?

20 A. There were other attorneys that I would have
21 spoken to, but not in preparation for this. Simply
22 going to be a deposition, those types of things, but it
23 was not preparing to -- to -- for this deposition today.

24 Q. What other attorneys were those?

25 A. They would be Mike Gershon and Monique Norman.

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1 Q. All right. Now, for the record, Mike Gershon
2 would be one of Mr. de la Fuente's partners, correct?

3 A. Yes.

4 Q. And Monique Norman is general counsel to Brazo
5 Valley Conservation District?

6 A. Yes.

7 Q. And I think what you're telling me is that you
8 spoke with them, but not in preparation for the
9 deposition per se?

10 A. That is correct.

11 Q. You merely spoke with them about the fact that
12 there would be a deposition; is that correct?

13 A. That is correct.

14 Q. All right. And outside of these lawyers, did
15 you speak with anyone else in preparation for the
16 deposition today?

17 A. No, sir.

18 Q. Did you speak with any of the Board members?

19 A. No, sir.

20 Q. To your knowledge, do the Board members know
21 about this lawsuit?

22 A. To the best of my knowledge, yes, they do.

23 Q. Have you discussed it with them? The lawsuit?

24 A. It has been discussed in executive sessions.

25 Q. And I don't want to know what your lawyers

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1 have said to you about the deposition. I don't really
2 want to know what goes on in executive sessions. But
3 outside of those two contexts, have you spoken with any
4 of the Board members --

5 A. No, sir.

6 Q. -- about the lawsuit --

7 A. Oh, I'm sorry.

8 Q. -- or the deposition?

9 A. No, sir. I have not.

10 Q. And so you didn't speak with any of the Board
11 members to prepare for the deposition?

12 A. No, sir. I did not.

13 Q. You didn't speak to any -- have you spoken to
14 any of the Board members about the responses to
15 interrogatories, or requests for production, or requests
16 for admissions?

17 A. No, sir.

18 Q. Your position with the District is what?

19 A. I'm the general manager.

20 Q. How long have you been the general manager of
21 the District?

22 A. Approaching 13 years. I started August the
23 27th of 2012.

24 Q. Who is the prior general manager?

25 A. It was Ralph Crum.

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1 Q. And before him, was it Bill Riley?

2 A. Yes, sir. That's correct, Bill Riley.

3 Q. And was he the first general manager of the
4 District when it was formed?

5 A. To the best of my knowledge, yes, that -- that
6 I know.

7 Q. So to your knowledge, you're like the third
8 general manager of the District?

9 A. That sounds correct, yes.

10 Q. Again, you've been in that position since
11 August of 2012?

12 A. Yes, sir.

13 Q. That's 13 years?

14 A. On August 27th, yes, sir.

15 Q. All right. Twelve currently?

16 A. Yeah, that's correct.

17 Q. And can you tell me what your duties are as
18 general manager?

19 A. I'm sorry, I didn't --

20 Q. What are your duties as general manager?

21 A. I take care of the day-to-day activities at --
22 at the District. I have a staff that is direct -- that
23 I direct for various and sundry tasks, gathering water,
24 leveling data for managing the aquifers. I have an
25 educational person that -- we have a vast educational

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1 program. So that's -- that's the basics of it.

2 Q. Describe for me the educational program that
3 you do.

4 A. We have -- we spend a great deal of time in
5 the classroom with fourth grade, fifth grade, and
6 seventh graders, teaching them about water conservation,
7 about how aquifers work, about contamination,
8 watersheds, things of that nature. We're currently
9 teaching between 6,000 and 7,000 kids a year in -- in
10 classroom. Try to do it in one class at a time.

11 Q. Do you also do education in the community?

12 A. Periodically.

13 Q. And what kind of education do you do in the
14 Community?

15 A. It -- it typically depends upon -- it -- it
16 tends to be civic groups that type that have asked for a
17 program to what does the Groundwater District do? Why
18 are we there? How do we go about doing what we do? So
19 that's -- that's the -- the lion's share of -- of that
20 type program.

21 Q. Do you do presentations for Texas A&M
22 University?

23 A. I have done presentations for segments, yes.
24 For different departments.

25 Q. Classroom teaching, if it were?

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1 A. Actually, yes.

2 Q. Okay. And what topics do you cover at Texas
3 A&M?

4 A. There's been a couple. One is -- it's almost
5 the basics of -- of what we're teaching in fourth,
6 fifth, and seventh grades, to some geoscience classes.
7 I have been invited to teach or to present to their
8 class, that would be in the Water Department graduate
9 level. I don't know if it was graduate level, but a
10 level where they had water law.

11 Q. Do you use PowerPoints in these presentations?

12 A. Yes, sir.

13 Q. Do you generate those PowerPoints yourself?

14 A. Yes, sir.

15 Q. Does anyone help you do that?

16 A. No one has so far.

17 Q. Have you ever given the same PowerPoint
18 presentations to your Board of Directors?

19 A. Not the same, no.

20 Q. Now, let's back up a second. Prior to
21 becoming general manager, what did you do?

22 A. Oh, I was a ranch manager in Bosque County for
23 27 years. And then prior to that, I was a county
24 extension agent for about eight and a half years.

25 Q. So which -- was it a specific ranch in Bosque

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1 County?

2 A. It was a specific ranch. Whiskey Canyon Ranch
3 in Bosque County, yes, sir.

4 Q. Okay. And who owns or controls that?

5 A. It was Cyril Wagner, Jr., out of Midland.

6 Q. In connection with your ranch management
7 activities, did you interface with any groundwater
8 conservation districts?

9 A. Yes, sir, I did. We -- it was with the Middle
10 Trinity Groundwater Conservation District, yes.

11 Q. All right. And what was -- what's nature of
12 the interactions you had with that GCD?

13 A. I was asked to be the -- one of the three
14 representatives when Bosque -- to the Board from Bosque
15 County when it was annexed into the Middle Trinity
16 Groundwater Conservation District as a -- to become a
17 part, and I was asked to be a temporary board member.

18 Q. So you actually served as a temporary board
19 member of that ground -- groundwater conservation
20 District?

21 A. Yes, sir.

22 Q. Other than that, in those 27 years, what other
23 interfaces or interactions did you have with groundwater
24 conservation districts?

25 A. That was the extent of it.

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1 Q. Okay. And so that's a 27-year chunk of your
2 life?

3 A. Yes, sir.

4 Q. Prior to that, you were a county extension
5 agent?

6 A. Yes, sir.

7 Q. And prior to that, what did you do?

8 A. I managed a Lubbock Stockyard for six months,
9 right out of college.

10 Q. Where did you go to college?

11 A. Texas A&M University.

12 Q. All right. Degree in what?

13 A. Degrees in animal science, animal --
14 bachelor's, and master's degree in animal science.

15 Q. So you get out of Texas A&M, and would go to
16 work at C Dock (phonetic), Lubbock?

17 A. It's the -- Lubbock Stockyard.

18 Q. Stockyard.

19 A. The auction barn.

20 Q. Oh, I see. I see. What were your duties
21 there?

22 A. It was to manage the everyday activities,
23 meaning receiving cattle, going through the auction
24 barn, shipping cattle back out, just like any auction
25 barn would do.

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1 Q. And you became a county extension agent?

2 A. Yes, sir.

3 Q. What county?

4 A. I started in Navarro County as an assistant
5 agent, was there for just over two years, and then was
6 in Borden County, out in the South Plains, just off
7 Caprock for -- from 1981 -- early 1981 until 1985.

8 Q. And what were your duties as county extension
9 agent?

10 A. In -- in Navarro County, I was the 4-H agent,
11 so I took care of all 4-H activities. And in Borden
12 County, it was everything. Agriculture, 4-H. I did
13 have a farm economist that did that part, but --

14 Q. As the county extension agent, did you have
15 any interaction with groundwater conservation districts?

16 A. No, sir.

17 Q. So your first involvement with a groundwater
18 conservation district was when you were working at the
19 ranch?

20 A. Yes, sir.

21 Q. And as a temporary board member?

22 A. That is correct.

23 Q. How long did you serve in that capacity?

24 A. From the day it annexed, and I'm not certain
25 of that date, but until I left in 2012, so it was either

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1 -- it was probably two years.

2 Q. All right. During that time, did you take any
3 kind of courses or were you provided any kind of study
4 materials on the issues involved with regulation of
5 groundwater?

6 A. Not that I remember.

7 Q. What did they do, or what did anyone do to
8 prepare you to serve as the temporary board member for
9 that district?

10 A. I -- I honestly don't remember anything that
11 was -- was done to prepare me for that position.

12 Q. So going back to your college days at Texas
13 A&M, did you take any kind of course of study that would
14 relate to groundwater conservation?

15 A. No, sir.

16 Q. Did you take any course of study -- you
17 mentioned water law in connection with some of the Texas
18 A&M studies. Did you take any courses in water law?

19 A. No, sir.

20 Q. When you became the general manager of the
21 Brazos Valley Groundwater Conservation District, how did
22 you educate yourself as to the duties and
23 responsibilities you'd be undertaking?

24 A. I availed myself of conferences that dealt
25 with groundwater and water in general, studied materials

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1 that were readily available both at the District and --
2 and online, those kinds of things. So I don't -- can't
3 -- don't know any specifics that I can -- could give
4 you, but it became necessary for me to -- on-the-job
5 training.

6 Q. Were you starting out, kind of, from ground
7 level on the issues involved in groundwater regulation?

8 A. Other than it would -- okay. Other than what
9 I had already began to understand about groundwater as a
10 ranch manager and what the -- the needs of groundwater
11 districts and areas that didn't have groundwater
12 management, and what on-the-ground and on-the-job
13 training I had at Middle Trinity, then it was adding on
14 to that.

15 Q. All right. So it's fair to say you did not
16 come into the general manager's job with no knowledge,
17 right?

18 A. That's correct.

19 Q. But you have since availed yourself of
20 opportunities to go to seminars or to study materials
21 that are written?

22 A. Yes, sir.

23 Q. And you started in 2012, which, as I recall,
24 was the year that Edwards Aquifer Authority versus Day
25 was decided. Is that your recollection?

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1 A. Yes, sir.

2 Q. Did you read or study materials about that
3 case?

4 A. Not in great detail, but certainly the
5 overview of it, yes, sir.

6 Q. Did you attend any seminars in which that case
7 was discussed?

8 A. Yes.

9 Q. Extensively?

10 A. The discussion, you mean?

11 Q. Yes.

12 A. It -- not extensively, no.

13 Q. So as general manager of this groundwater
14 District, you occasionally interface with the Board of
15 Directors?

16 A. Yes, sir.

17 Q. And how many Board members are there?

18 A. We have eight Board members.

19 Q. I have a list in my hand, and I'll just read
20 off the names and see if it's a current Board. Jayson
21 Barfknecht?

22 A. Yes, sir.

23 Q. And he's the Board president?

24 A. Yes, sir.

25 Q. John Elliott?

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1 A. Yes.

2 Q. What is John's job?

3 A. He's the general manager at the Robertson
4 County Water Supply Corporation in Robertson County.

5 Q. And Mark Carrabba?

6 A. Yes, sir. He's an ag representative in Brazos
7 County.

8 Q. And a farmer?

9 A. He farms. He also has a oil and gas company.

10 Q. And what's the name of that company?

11 A. GSI.

12 Q. Do you know what that stands for?

13 A. No, sir. I do not.

14 Q. Stephen Cast, a Board member?

15 A. Yes, sir.

16 Q. And what does he do?

17 A. He was the general manager of Wellborn Special
18 Utility Districts for a very long time.

19 Q. What's he do now?

20 A. He still works for them, doing special
21 projects, and that's about what I know about that.

22 Q. Gary Mechler, a Board member?

23 A. Yes, sir.

24 Q. What does he do?

25 A. He's the director of water utilities for the

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1 City of College Station.

2 Q. Back to Jayson Barfknecht. What is his job?

3 A. He's the director of utilities for the City of
4 Bryan.

5 Q. Including water utilities?

6 A. I -- yeah, I -- yes, correct. Yes, sir.

7 Q. Jeff Kennedy still a Board member?

8 A. Yes, sir.

9 Q. What does he do?

10 A. He's a -- I would classify him as a rancher.

11 He, at one time, for the Texas Department of

12 Transportation, and has since retired and now runs

13 cattle.

14 Q. So the description on the District's website
15 is that Mr. Kennedy represents the municipal interest of
16 Robertson County.

17 A. That is -- that's correct, yes.

18 Q. Do you know if he's ever been employed by a
19 municipality in connection with water utilities?

20 A. Not to my knowledge, but -- no, I don't know.

21 Q. Chris Zeig.

22 A. Zeig.

23 Q. Zeig. Is still a Board member?

24 A. Yes, sir.

25 Q. What does he do?

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1 A. He is, I guess, classified as the general
2 manager or manager of the GATX facility in Hearne. They
3 are a railroad company, and he -- make railroad cars,
4 and he -- they -- not fabricate; they rebuild the cars
5 for them.

6 Q. And finally, Lisa Rolke?

7 A. Rolke.

8 Q. What does she do?

9 A. She is a rancher.

10 Q. And it says that she represents the
11 agricultural interests of Robertson County, along with
12 Mr. Carrabba?

13 A. That is correct, yes.

14 Q. How long has Ms. Rolke served on the Board?

15 A. Okay. Going on two years.

16 Q. Is she the newest Board member?

17 A. She would -- yes. That would be the best of
18 my knowledge, yes. She filled the position. David
19 Stratta was the ag representative and resigned. And so,
20 she was appointed to fill that position and then has
21 been since reappointed. So I believe she's the -- she's
22 the youngest of all.

23 Q. So focusing on the specific date of September
24 14, 2023, are all the folks that I just mentioned were
25 -- were they on the Board of Directors at that date?

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1 A. No, they were not.
2 Q. Who's different?
3 A. Lisa Rolke was not on the Board at that time.
4 Q. And David Stratta was?
5 A. That is correct.
6 Q. Other than Mr. Stratta, has anyone else
7 resigned or terminated their directorship?
8 A. Not that I can remember.
9 Q. So other than Mr. -- Ms. Rolke, the rest of
10 these folks were serving on the Board of Directors of
11 the District as of September 14, 2023?
12 A. To the best of my recollection, that's
13 correct.
14 Q. Have you spoken to Mr. Stratta recently?
15 A. Yes, I have.
16 Q. In what context?
17 A. Friends.
18 Q. Does he drop by the office occasionally?
19 A. He does.
20 Q. That figures.
21 A. I'm sorry?
22 Q. I said that figures. Speaking of office, how
23 many staff folks do you have?
24 A. How many staff --
25 Q. Yes.

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1 A. -- do I have? Let's see. Staff positions, I
2 have five people currently on staff -- or five positions
3 currently. My education person has recently resigned
4 and going to go teach school. And then there's me, a
5 field technician, the office manager, and another
6 secretarial staff.

7 Q. So who recently resigned?

8 A. Megan Lamb.

9 Q. Has she been a long time employee in the
10 District?

11 A. Since June of 2016.

12 Q. And her job is -- was what?

13 A. Educational coordinator and conservation
14 resource. So the primary was the education of what I
15 described earlier, and she also kept up with our website
16 and kept up with Facebook and those kinds of things.

17 Q. So she was in charge of social media?

18 A. Pretty much. There was no -- it wasn't part
19 -- in the job description, but she took that role on.

20 Q. What social media is the District involved in?

21 A. We have a Facebook page. We've got our
22 website. I do a lot of the website materials. I do
23 that more than anyone does. Those are the two main
24 ones. We don't spend any time in -- on anything else
25 particularly, but Facebook was where we felt like we

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1 needed the presence.

2 We also have a -- we have a contract with
3 KBTX, which is a television station there, in -- in
4 Bryan College Station, where we do advertising with --
5 using -- for conservation purposes, we've been doing
6 that for many years now.

7 Q. So Megan Lamb is gone. Who are -- who are the
8 other employees you currently have?

9 A. Cynthia Lopez, that's my office manager; John
10 Crabtree, he's my field technician, he's a -- in a part-
11 time position there; and Taylor Suarez.

12 Q. Can you spell that?

13 A. S-U-A-R-E-Z.

14 Q. Okay. Taylor --

15 A. She is just a secretarial-type staff.

16 Q. Currently, four employees?

17 A. That's correct.

18 Q. How -- I -- I haven't been to your offices
19 yet. How big an office is it?

20 A. About 2,500 square feet.

21 Q. Do each of these folks have a separate office,
22 or are they in cubicles, how's -- how does this
23 arrangement work?

24 A. The answer to the first question is no.

25 Q. No, they don't have separate offices?

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1 A. There's one -- one office within the office,
2 that's where I'm in. Everybody else is in a big open
3 space just outside that office.

4 Q. So they can freely communicate with one
5 another, should they choose to?

6 A. Very much so, yes.

7 Q. And do they?

8 A. They certainly do.

9 Q. Hear a lot of chatter out there?

10 A. Oh -- well, I -- I wouldn't say that, but we
11 certainly can openly communicate, yes.

12 Q. Yes, sir. Were all of the four remaining
13 people employed by the District in September of 2023?

14 A. No.

15 Q. Which ones are they?

16 A. John Crabtree, he came on in October -- no.
17 I've -- I've misstated this. I'm sorry. Let me go
18 back. The -- I believe the answer is going to be yes.
19 John came on, and he's the latest one to come on, and he
20 was hired in October of 2022. So he would have been --
21 Cynthia's been there for a very long time. Taylor would
22 have started around or about that time, certainly. So I
23 would say the answer to that -- your question is yes.

24 Q. Yes, each of these other four people were
25 employed by the District in September of 2023?

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1 A. I would say the answer is yes.

2 Q. Do any of those employees have regular contact
3 with members of the Board of Directors?

4 A. What does regular mean?

5 Q. Well, we'll start with the obvious. Have any
6 contact with the Board of Directors?

7 A. All would have contact with the Board of
8 Directors if they're there on a Board meeting date.

9 Q. Which would be monthly?

10 A. Which is typically monthly, yes.

11 Q. Do other -- do any of the employees have
12 contact with the Board of Directors members more than
13 monthly?

14 A. Yes.

15 Q. Which ones?

16 A. Cynthia would -- would certainly have some
17 more contact than just monthly. John would
18 occasionally, depending on -- but they're -- they would
19 likely be related to his duties of water level
20 measurements.

21 Q. And why would Cynthia Lopez have contact with
22 the members of the Board?

23 A. Being the -- being the office manager, there's
24 information to be sent out by e-mail, there's
25 distribution lists, there are those Board members

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1 calling, and then asking to talk to me, but they've --
2 maybe they can talk to her to get an answer, those kinds
3 of things.

4 Q. What kind of information do you send to the
5 members of the Board?

6 A. They'll get any information about an upcoming
7 Board meeting, just like the public gets, we put it up
8 on the website, we also send it directly to the Board
9 members. I send out every-- every Saturday -- or excuse
10 me, every Thursday, every Board member and the public
11 get -- on a -- on a list, get a -- the drop monitoring
12 maps for the week. Every Saturday, the Board members
13 and any of the public get a -- an e-mail that I put
14 together, water-related news that has been created in
15 the public domain in the last seven days, and send that
16 out, those type things.

17 Q. I'm aware that in some groundwater
18 conservation districts, prior to the board meeting, the
19 Board members will receive a packet that's -- has all
20 the different items that will be discussed, and
21 sometimes a written dialogue that they might engage in
22 in the public meetings. Do you send anything like that
23 to the Board?

24 A. So the Board gets exactly the same thing that
25 the public gets. So I post on our website for the

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1 entire world to see, as well as my Board members, and so
2 the material that they see -- there's no packet. I used
3 to do that and literally hand-deliver a packet, don't do
4 that anymore. That's been a -- it's been a long time
5 since I've done that. I don't know how many years, but
6 a long time.

7 And I want -- want the public to see the same
8 thing that the Board members see. Those descriptions
9 that you're talking about, those dialogues that -- that
10 I create for each of those agenda items, I want the
11 public to see it, I want the Board to see it. And those
12 e-mails that are sent to the Board are links to the
13 public interface, no different than the public gets.

14 Q. All right. So there's no, for example,
15 written scripts that you send to the Board president to
16 follow during a public meeting?

17 A. No, sir.

18 Q. Are you familiar with that practice of some
19 other groundwater conservation districts?

20 A. I am not.

21 Q. Now, you mentioned e-mailing your Board
22 members. Do they have a specific e-mail address, that
23 is -- that -- like a Brazos Valley Conservation District
24 e-mail address?

25 A. No, sir, they do not.

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1 Q. So you use their personal e-mail addresses?

2 A. To the best of my knowledge, yes.

3 Q. And are those published on the website?

4 A. No, sir, they are not.

5 Q. Okay. Something you have?

6 A. Yes, sir.

7 Q. Okay. And do the Board members communicate,
8 to your knowledge, by cell phone?

9 MR. DE LA FUENTE: Object to form.

10 BY MR. JONES:

11 Q. You can answer the question.

12 A. Yes, they do.

13 Q. Okay. And let me be specific. Do they
14 communicate with you by cell phone?

15 A. Yes, they do.

16 Q. Are these district-issued cell phones or
17 personal cell phones?

18 A. They are not district-issued.

19 Q. Do you have a district-issued cell phone?

20 A. I do not.

21 Q. So you use your personal cell phone?

22 A. Yes, sir, I do.

23 Q. What kind of communications do you have with
24 the Board members by cell phone?

25 A. Discussions. Most of the time, regarding some

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1 type of District business, something that's going on,
2 whether -- whatever it might be the topic of the day,
3 whether it's water level measurements or whatever it
4 might be. But it -- it would typically be some type of
5 District business that they -- they might be interested
6 in or that I need them -- feedback or whatever it might
7 be.

8 Q. Have you had the same cell phone number since
9 September of 2023?

10 A. Yes, sir, I have.

11 Q. To your knowledge, had the Board members,
12 other -- that the Board members had the same cell phone
13 numbers since that time?

14 A. To the best I can remember, yes.

15 Q. And are -- are these numbers available to you,
16 so that you could produce them if we request them
17 properly?

18 A. Yes, sir. Absolutely.

19 Q. Same with the e-mail addresses?

20 A. Yes, sir.

21 Q. With respect to your employment by the
22 District, you obviously receive a salary.

23 A. Yes, sir.

24 Q. You also receive bonuses?

25 A. Don't receive bonuses.

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1 Q. You have speak to somebody about that. Do you
2 have any special certifications that relate to your job
3 as general manager?

4 A. Not -- not that I'm aware of.

5 Q. Have you written any specific articles
6 regarding water conservation topics?

7 A. Over the years, I would say the answer is yes,
8 a few.

9 Q. How many, if you can recall?

10 A. Probably -- maybe -- maybe five. They would
11 be for newspapers.

12 Q. For general publication?

13 A. Best of my knowledge, yes. It -- it would be
14 what it would have been for.

15 Q. Do you recall the topics?

16 A. Generally, it was encouraging people to be
17 involved with -- and what a groundwater District does
18 and to be involved. That it's important to understand
19 your water source and what the groundwater District does
20 and why you should be involved. That would have been
21 the basic topic.

22 Q. Any of those articles dealt with decreasing
23 water levels or artesian pressure levels in your
24 District?

25 A. No, sir.

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1 Q. Have you given -- other than your educational
2 speeches that you described earlier, have you given
3 specific speeches about decreasing water levels or
4 artesian head pressure levels in the county or the
5 counties?

6 A. Yes.

7 Q. What kind of speeches have you given?

8 A. That would have been what I would classify as
9 Aquifers 101, that I have invited and asked the public
10 to come to at the District office. And try to inform
11 them of -- of how an aquifer works, importance of an
12 aquifer, artesian head, all those type things. Just a
13 basic of groundwater.

14 Q. These speeches are -- are given at the
15 District office?

16 A. The two that I've done were in our boardroom
17 at the District office.

18 Q. Did you prepare our PowerPoint for them?

19 A. Yes.

20 Q. Were they prepared specifically for those
21 speeches, or do you use parts and pieces of other
22 PowerPoints you've used in the past?

23 A. I have one that is entitled Aquifers 101, that
24 is bits and pieces of other presentations that I've
25 done. So it covers a wider variety of things than what

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1 some of the others do. So the others have -- were
2 incorporated into it.

3 Q. You've done this twice at the District office?

4 A. That I can remember, yes.

5 Q. Any other specific speeches with respect to
6 decreasing water levels or artesian head pressure
7 levels?

8 A. Only those that could have come up and those
9 words -- words in that regard could certainly have been
10 talked about when -- in some of the other -- when you're
11 talking to service, the civic groups, and that kind of
12 thing.

13 Q. Do you ever discuss the difference between --
14 in these speeches that you're giving the difference
15 between a reduction in artesian pressure and a reduction
16 in water and storage?

17 A. That's happened. I don't -- can't say that in
18 -- in any specific one. But, yes, absolutely between a
19 confined aquifer and an unconfined aquifer, certainly.

20 Q. Okay. And let's just talk specifically about
21 the Simsboro Aquifer for a moment, it is, in your
22 District, a confined aquifer?

23 A. It's confirmed.

24 Q. Unconfined at the outcrop area?

25 A. At the outcrop area, yeah.

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1 Q. Where's the outcrop?

2 A. In our area, it's going to be north of
3 Calvert, south of Bremond, and generally in the area
4 where the Major Oak Power Plant is. It's a small
5 outcrop for us, as it -- it comes across in a northeast
6 to southwest angle and just catches one corner, the
7 northwestern corner of Robertson County.

8 Q. It's your understanding that the total outcrop
9 of Simsboro is much larger than that?

10 A. Oh, yes, sir. Absolutely.

11 Q. It extends over many counties?

12 A. Yes, sir.

13 Q. As I understand it, Simsboro dips generally as
14 it goes southward in your District?

15 A. As it goes south and east, yes.

16 Q. In other words, it's deeper as you go south
17 and east?

18 A. That's correct, yes.

19 Q. And other than the outcrop, it's a confined
20 aquifer?

21 A. Yes, sir.

22 Q. And therefore, there's artesian head, correct?

23 A. That's correct.

24 Q. And you -- what you're measuring generally is
25 the artesian head levels in monitoring wells, correct?

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1 A. That's correct. I do have outcrop wells. We
2 want to see what the effect of pumping is, whether it be
3 confined or unconfined. So -- but most of our
4 measurement -- our monitoring wells in the Simsboro,
5 would be under artesian pressure.

6 Q. And what you're measuring is how far up a
7 wellbore the water's being pushed by artesian pressure?

8 A. That's correct, yes.

9 Q. And your DFCs, your desired future conditions,
10 for the confined area of the aquifer are stated in terms
11 of feet of artesian head in those wellbores; is that
12 correct?

13 A. That's correct, with the caveat that it is an
14 average artesian reduction over the period -- over both
15 Districts. So it's not at a particular well --

16 Q. Right.

17 A. -- it is a compilation of -- of measurements.

18 Q. And the DFC, as stated to, what year in time?

19 A. At this point in time, it's to 2070, we're
20 currently in the planning round number four, that's
21 going to take us out to 2080.

22 Q. And for the jury's benefit, what we're talking
23 about is the District's articulation of what it looked
24 -- wants its aquifers to look like, at future points in
25 time?

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1 A. That's correct. And it's on at least a
2 50-year horizon.

3 Q. And these are called desired future conditions
4 because that's what you're desiring, at some point in
5 the future?

6 A. I suppose that's why it's called that way.

7 Q. What do you think they -- why do you think
8 they're called desired future conditions?

9 A. The way that we look at it, the way that I
10 look at it, it is desirable not to exceed that number.
11 Some people can read that as we desire it to be that
12 number.

13 Q. Of course. And do you look at that as a -- as
14 a district-wide average?

15 A. It is a -- our desired future condition that's
16 adopted by GMA 12, our four other members besides BVGCD,
17 it's a -- it's an adopted number that we have to
18 regulate to. So --

19 Q. But my question is: Do you understand it to
20 be in -- with respect to BVGCD itself, an average across
21 the District?

22 A. That is correct, yes.

23 Q. And -- and let me be specific. You don't
24 regard it as a number that applies to specific
25 properties or specific wells?

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1 A. That is correct, yes.

2 THE WITNESS: Can we take a break? I just
3 need to --

4 MR. JONES: Absolutely.

5 THE WITNESS: -- go into the restroom, if
6 that's all right.

7 THE VIDEOGRAPHER: The time is now 9:57 a.m.
8 We're off the record.

9 (Recess from 9:57 a.m. to 10:04 a.m.)

10 THE VIDEOGRAPHER: All right. This is Media
11 Tape Number 2. The time is now 10:04 a.m. We're back
12 on the record.

13 BY MR. JONES:

14 Q. Mr. Day, we talked previously about the fact
15 that I've deposed you before, if you've given any other
16 depositions at all, except that one?

17 A. No, sir.

18 Q. Have you ever testified in court?

19 A. No, sir.

20 Q. Have you ever testified in any other kind of
21 proceeding?

22 A. Not that I recall.

23 Q. Have you testified before the Texas
24 Legislature?

25 A. Yes, sir, I have.

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1 Q. In what circumstance?

2 A. Recently, regarding some legislation. I don't
3 remember exactly, but it was -- it was groundwater
4 legislation in this past session.

5 Q. The most -- the one is still going on,
6 apparently?

7 A. The one that ended the -- the regular session,
8 yes.

9 Q. What did you testify about?

10 A. I'd have to -- I'd have to go back and look at
11 the bills. There's been too many other things happening
12 in my brain to remember exactly what -- what it was on
13 the two bills, but I could certainly be refreshed.

14 Q. Well, there's a bill about the case, Trinity
15 -- and I say about -- there was a bill about being able
16 to use, I think, service territory, is contiguous
17 acreage. Did you testify on that one?

18 A. No, sir. I -- I do recall which of them had
19 to do with brackish water production from areas that had
20 freshwater connection. That was -- that was one of the
21 two that I can remember.

22 Q. Did you testify on that bill about raising the
23 water District's ability to assess penalties from
24 \$10,000 a day to \$25,000 a day?

25 A. No, sir. I did not.

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1 Q. Other than testifying from the -- let me back
2 up. To your knowledge, is there a transcript of your
3 testimony at any time you've testified from the
4 legislature?

5 A. Would you state that one more time, so I can
6 understand?

7 Q. Let me back even further up. Other than this
8 current legislation session, have you testified in front
9 of any other legislative committees or in any other
10 session?

11 A. Yes, sir.

12 Q. How frequently?

13 A. Infrequent. Best I can put it, it's -- best
14 of my knowledge, probably two other times in two other
15 sessions.

16 Q. Was -- was this invited testimony, or were you
17 testifying just on your own?

18 A. One was invited by Senator Perry, and the
19 other was, we -- we needed to go visit with them about
20 legislation pending.

21 Q. With respect to the testimony invited by
22 Senator Perry, do you recall this topic?

23 A. Yes, it was transport projects and effects of
24 transport projects, and the mitigation of such.

25 Q. When was that?

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1 A. I'm sorry. When was that?

2 Q. Yes.

3 A. That would have been in 2023, during that
4 legislative session.

5 Q. The previous one to this one?

6 A. That's correct.

7 Q. Did you listen to the House Natural Resources
8 Committee testimony yesterday?

9 A. I did listen to some of it on the way home,
10 certainly did. Did not get it all.

11 Q. Okay. It seemed to go on forever, so you
12 probably couldn't get it all, right? Did you ever --
13 other than the Texas Legislature, have you testified
14 before any other governmental agencies?

15 A. Not that I recall.

16 Q. Is there anything that would prevent you from
17 giving truthful testimony today? Any kind of medical
18 condition, any medication you're on, other than the easy
19 bruising?

20 A. No, sir. There is nothing.

21 Q. Did you bring any materials with you today?

22 A. No, sir, I did not.

23 Q. Have you described for me all of the documents
24 that you reviewed in preparation for testifying as the
25 corporate representative today?

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1 A. I -- I believe that I have.

2 Q. Looking at Exhibit 42, which is in front of
3 you, you'll see on the back of it, "A." Did you review
4 each of these categories of testimony?

5 A. To the best of my ability, there were some
6 very broad ones in here that to individually look at
7 each and know the -- the date of application for like,
8 Number 3, anything before September the 14th of 2023,
9 that's hundreds and hundreds and hundreds of
10 applications.

11 So any of these I'm capable of doing what it's
12 asking to be done here, if shown that document, I can
13 absolutely. But as far as having some of these -- every
14 one of those in my brain, they're not there.

15 Q. Well, let's start with Number 1. "The
16 District's process for receiving, reviewing, granting,
17 or denying applications for drilling or operating
18 permits." Is that a topic with which you're familiar?

19 A. Yes, sir.

20 Q. Did you do anything specific to prepare for
21 testifying about that topic?

22 A. No, sir.

23 Q. Didn't talk to anybody specifically about it?

24 A. No, sir.

25 Q. Does that fall within the ambit of your job

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1 responsibilities?

2 A. Yes, sir.

3 Q. In that respect, are you the person at the
4 District who reviews applications for drilling or
5 operating permits?

6 A. Yes, sir.

7 Q. Okay. I guess that would include transport
8 permits?

9 A. Yes, sir.

10 Q. Do you have a specific separate export permit,
11 or is that included in the transport permit?

12 A. It is a separate permit.

13 Q. So you have how many different kinds of
14 permits?

15 A. So we -- they're all operating permits, but
16 when you -- if you come in and you have a well that has
17 already been drilled before the District came into
18 inception, was the inception District, then -- and
19 you're wanting to now produce that well, then you're
20 going to get an operating permit. If you come and say I
21 want a new well and I want to produce water, then you're
22 going to get a drilling operating permit. If you say I
23 have wells and I want to transport water, then you're
24 going to apply for a transport permit. That's our three
25 types of non-exempt well permits.

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1 Historic use permits are no longer given
2 because they had a dead -- dead -- drop dead date of
3 being there and -- and making the District aware that
4 you have a well. Here's my historic use on this well by
5 -- and had to make the District aware by December the
6 31st of 2006.

7 Q. So there's historic use permits, correct?

8 A. Yes.

9 Q. Operating permits?

10 A. Yes, sir.

11 Q. Drilling/operating permits?

12 A. Yes, sir.

13 Q. Transport permits?

14 A. Yeah. Yes, sir.

15 Q. And no separate export permit?

16 A. The transport permit is the export permit.

17 Q. Authorization to transport water across the
18 county line?

19 A. Beyond the District bounds, correct.

20 Q. I take it, by what you've said, that you're
21 ready to testify as the District representative on Topic
22 1?

23 A. Yes, sir.

24 Q. Topic 2 is, "The authority that you have in
25 connection with reviewing, approving, or otherwise

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1 disposing of applications for drilling and/or operating
2 permits." Did you do anything separately and apart from
3 your preparation on any other topics to drilling on
4 Topic 2?

5 A. No, sir.

6 Q. Is that something, again, that falls within
7 your responsibilities as general manager?

8 A. Yes, sir.

9 Q. Does anyone else at the District have
10 responsibility for either of these Topics 1 or 2?

11 A. No, sir.

12 Q. When you get a application for a
13 drilling/operating permit, does that come directly to
14 you?

15 A. Yes, sir.

16 Q. Anyone else review it?

17 A. No, sir?

18 Q. So none of your other staff people have
19 responsibilities for that?

20 A. They do not have responsibility. I might have
21 them to look at this or those kinds of things, but
22 they're not responsible for it.

23 Q. Is that on an ad hoc basis?

24 A. Yes.

25 Q. Now, if you review an application and find

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1 that it doesn't contain the necessary information. Does
2 that application -- is it -- do you declare it
3 administratively incomplete?

4 A. I would declare administratively incomplete,
5 yes.

6 Q. Does an administratively incomplete
7 application ever make its way to the Board?

8 A. It has not.

9 Q. So you don't pass them on to the Board unless
10 they are administratively complete?

11 A. Yes, sir.

12 Q. So anytime the Board sees an application, it's
13 because you, as general manager, have declared it to be
14 administratively complete?

15 A. Yes.

16 Q. If the application fails to comply with your
17 rules, will you pass it on to the Board anyway?

18 A. No, sir.

19 Q. For example, if the application fails to
20 comply with the spacing rule under 6.1, will you pass
21 that onto the Board?

22 A. No, sir.

23 Q. So, they'll never see it?

24 A. No, sir.

25 Q. In that respect, you are, in fact, the

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1 gatekeeper for these applications, correct?

2 A. Yes.

3 Q. And if you don't pass on it, they don't get to
4 know about it; is that right?

5 A. Yes, sir.

6 Q. Did you ever have specific discussions with
7 Board members about an application that you have deemed
8 to be incomplete?

9 A. No, sir.

10 Q. Why is that?

11 A. They'll get to see it when it's
12 administratively complete.

13 Q. And not until, right?

14 A. That is correct.

15 Q. So if I submitted an application, we'll say
16 today, and I wanted a well with the spacing of one foot
17 per gallon per minute instead of the current two, would
18 you declare that to be administratively complete?

19 A. I would -- I -- I would not declare to be
20 administratively complete. It would be declared --

21 Q. Incomplete.

22 A. -- incomplete. And then I would work with the
23 applicant and say, here are your alternatives. Because
24 we try to -- I try to get each and every applicant all
25 of the -- they got -- they -- they want water, I'm going

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1 to give them all of the avenues they can do to be able
2 to do that, under the rules.

3 Q. So if I brought you an application today, and
4 I said I want the spacing of this -- I want gallons per
5 minute under the old version of Rule 6.1 prior to
6 September of 2023, you would declare that application to
7 be administratively incomplete?

8 A. It doesn't --

9 MR. DE LA FUENTE: Object to form.

10 THE WITNESS: -- it doesn't have to do with
11 gallons per minute.

12 BY MR. JONES:

13 Q. And that would never get to the Board?

14 MR. DE LA FUENTE: Object to form.

15 THE WITNESS: Would you restate your question
16 so that I can answer it correctly?

17 BY MR. JONES:

18 Q. Certainly. If I -- if I brought you an
19 application that said I want gallons per minute measured
20 at one foot -- let me start the question again, so we
21 understand. Under the rule as it existed prior to
22 September 14, 2023, I needed to own or control an amount
23 of land in a radius around the wellbore, equal to one
24 foot per gallon per minute of that well -- proposed
25 well.

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1 A. Not exactly.

2 Q. Tell me exactly.

3 A. Okay. Production rate that's permitted for
4 the well does not have anything to do with the
5 footprint. It all has to do with the actual permitted
6 amount of water. So when you come in with your
7 application, you're going to ask for the amount of
8 water, and then we're going to annualize that amount of
9 water. How much at what rate?

10 And we're going to have to produce that well
11 running at 24/7, 365 in order to produce the amount of
12 water that you're asking for, average annual gallons per
13 minute. So the radius of the circle, the footprint that
14 you draw on, is based on the average annual gallons per
15 minute. You can pump a well at a higher rate than what
16 your average annual gallons per minute are.

17 Q. And most wells are not produced 24/7, 365?

18 A. Correct. We did that because when you use
19 groundwater modeling, the models look at annual impact.
20 They don't look at instantaneous impact. So that's --
21 that's why we went to that.

22 Q. So back to my question. Prior to September
23 14th of 2023, what was the rule in terms of spacing?

24 A. One foot of average annual gallons per minute
25 was the factor that we -- that we used. You -- so you

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1 would take the permitted amount or the amount that
2 you're asking for, we annualized that by using a
3 factor -- multiplied by a factor of .62 that gets you to
4 an average annual gallons per minute, and then we
5 multiplied by a factor of one to equal the radius of the
6 circle. That was prior to September the 14th of 2023.

7 Q. So if I brought you an application today that
8 utilized the one-foot spacing that you just described,
9 that would not be in compliance with your current rule,
10 correct?

11 A. Correct.

12 Q. And you would say that was administratively
13 incomplete?

14 A. Yes.

15 Q. Every time?

16 A. Yes.

17 Q. No exceptions?

18 A. Correct.

19 Q. And the reason you would do that is if it
20 doesn't comply with your new rule, which is two feet per
21 average annual gallons per minute?

22 A. Yes.

23 Q. Topic 3, you touched on briefly earlier,
24 "Persons holding drilling or operating permits issued
25 before September 14, 2023." What did you do to prepare

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1 to discuss that topic?

2 A. We prepared an incent and provided a
3 spreadsheet that listed any and all of these things for
4 y'all -- for your review, it's available to me. It's
5 something that I can, if -- if given that document -- or
6 given, I can -- I can easily testify on any of that.
7 Would know --

8 Q. All right. And we'll talk about that
9 spreadsheet later. Did -- did you discuss the
10 information that went into that spreadsheet with anyone
11 else?

12 A. No. No, sir.

13 Q. Did your -- anyone on your staff help you put
14 that spreadsheet together?

15 A. No, sir, that was me.

16 Q. All by yourself?

17 A. Yes, sir.

18 Q. Using Excel?

19 A. That and our District database.

20 Q. Okay. How is your database kept?

21 A. Halff Associates is the sponsor. They're out
22 of Irving, I believe, and they do our -- all of our maps
23 and database, and that type of thing. So that when we
24 put data into the database, they house that they house
25 it on site, they house it in the cloud. And we have a

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1 query tool that allows to put in these -- the things
2 that you've listed here, and ask for it to spit it out,
3 and it does, and we can put that in a Excel -- Excel
4 spreadsheet form.

5 Q. So whatever database this is, has the
6 capability of exporting to Excel?

7 A. Yes, sir.

8 Q. On a daily basis, who inputs data at the
9 District level?

10 A. Depending on the data. Some days it's -- it
11 can be me, it could be, formally, Megan. I entrusted
12 that to her to put in data. Taylor Suarez, I've -- I've
13 entrusted her with certain things to -- to put into the
14 database. So it just depends on the -- the categories
15 of data that we're putting in.

16 Q. Is it fair to say that Megan would have been
17 the person who had some knowledge about data that gets
18 put in the database?

19 A. Yes.

20 Q. Did Cynthia Lopez put any information in this
21 database?

22 A. Periodically, she works more with the
23 QuickBooks part of it and with the owner information,
24 that type thing, when it gets down to permits and things
25 of that nature, she typically is not -- I don't -- she's

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1 got enough to do with -- other than that. And so I try
2 to take -- keep that off of her back.

3 Q. Did John Crabtree put any information in the
4 database?

5 A. He does. He puts water level measurements,
6 things of that nature.

7 Q. And Taylor, whose last name I didn't catch --

8 A. Suarez.

9 Q. Suarez?

10 A. Suarez.

11 Q. Okay. Does Taylor put information in the
12 database?

13 A. Yes.

14 Q. So my understanding is that notwithstanding
15 the fact that these folks put the information in the
16 database with respect to Topic 3 here, you're the person
17 who is designated to talk about that?

18 A. Yes, sir.

19 Q. And with respect to the spreadsheet that we'll
20 look at later, you're the only person that generated
21 that spreadsheet?

22 A. Yes, sir.

23 Q. And you did that without talking to the staff?

24 A. Yes, sir.

25 Q. Or any Board members?

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1 A. Yes, sir.

2 Q. Or even counsel?

3 A. I can't say I didn't talk to counsel --

4 Q. Okay.

5 A. -- but otherwise, no. I -- I know that I had
6 a conversation with them, and said, I can make that
7 spreadsheet.

8 Q. Topic 4 has to do with same sort of
9 information, "Drilling or operating permits issued by
10 the District after September 14, 2023." Did you put
11 that information together?

12 A. Yes, sir.

13 Q. Based on what?

14 A. Same parameters as Number 3. Everything's in
15 the database, create the spreadsheet via our query tool,
16 and made sure that it's correct.

17 Q. So on Topics 3 and 4, you have personal
18 information about those topics?

19 A. Yes, sir, I do.

20 Q. And you -- you're the person at the District
21 who is qualified to discuss it?

22 A. Yes, sir.

23 Q. As with Topic 3 or -- or Topic 4, you did not
24 talk to your staff about putting that information
25 together?

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1 A. I did not.

2 Q. You put that information together yourself?

3 A. Yes, sir.

4 Q. Topic 5. "The District's process for changing
5 rules that was in effect in January 2023."

6 MR. DE LA FUENTE: Marty, do you have a copy
7 of the --

8 MR. JONES: You know, I had to get a copy --

9 MR. DE LA FUENTE: -- notice?

10 MR. JONES: -- from Richard last night.

11 MR. DE LA FUENTE: No, you need it. No, you
12 need it.

13 MR. JONES: I assume that you would bring a
14 copy --

15 MR. DE LA FUENTE: (Cross-talk.)

16 MR. COFFMAN: I have an electronic copy of
17 that to share.

18 MR. DE LA FUENTE: No, I got -- I got one in
19 my bag. Go -- go ahead.

20 MR. JONES: Do I need to pause while you find
21 that?

22 MR. DE LA FUENTE: All good.

23 BY MR. JONES:

24 Q. Mr. Day, Topic 5. "The District's process for
25 changing rules in effect in January 2023." What did you

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1 do to prepare to testify about that?

2 A. I went back over things that were done
3 beginning in 2022, leading up to January 1, 2023, and
4 thereafter. Meaning the activities of what refreshed my
5 brain on anything that might have to do with a rule
6 change, or otherwise.

7 Q. What specifically did you look at?

8 A. You know, I went back to permits. I went back
9 to when -- when permits were issued and -- and for what
10 reasons they were issued, and when Rules Committee
11 meetings were held, when work -- rules workshops were
12 held, when Board meetings were held, that type thing.

13 Q. What specific documents did you look at to get
14 that information?

15 A. Well, I've looked at the -- the PowerPoint
16 that I sent to you of our -- our rules workshop. Also,
17 another PowerPoint that I sent to you, that had to do
18 with the -- the rules workshop that was done in July of
19 2023. The Board meeting how -- where we discussed rules
20 and what might need to be changed. That was on the 13th
21 of July of 2023. The -- the -- during the September 14,
22 2023, Board meeting, where we had the rules hearing and
23 then discussed and adopted rule changes.

24 Looked at -- through several permit hearings
25 where the different permits for the Simsboro Aquifer

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1 were being issued, and to whom they were being issued,
2 and the amounts of -- total amounts of water that were
3 being produced that were being permitted. Went back
4 through documents that I had, AGS, Advanced Groundwater
5 Solutions, and James Beach and his gang to -- to create,
6 showing the Board the effects of pumping from wells
7 and/or individual wells on -- the effect on the DFC.

8 That been -- began to be created in May of
9 2023, at -- at each Board meeting. Board members would
10 get an extra document that came from Advanced
11 Groundwater Solutions so that they would understand the
12 impacts of the permits that were being approved, that
13 we're being asked to be approved, and approved, and what
14 is that effect? Do we see that being effect on our
15 desired future conditions?

16 So that's just some of the documents I looked
17 at. I mean, I -- I think that's the -- the lion's share
18 of refreshed.

19 Q. To your knowledge, have all of those documents
20 been produced to us?

21 A. To the best of my knowledge, they have.

22 Q. I think what I heard was that the Board
23 members would have some knowledge of each of these
24 meetings?

25 A. During a Board meeting, they would receive the

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1 same as the public receives. They would receive that --
2 any of those documents that might relate to what I've
3 just talked about, they would then see it. They could
4 see it online at the same time the public could see it.

5 Q. So they would have personal knowledge from
6 being at the Board meeting and looking at the
7 information of, for example, the James Beach
8 presentations?

9 A. I -- restate that, I'm sorry.

10 Q. Yeah. Your Board members would actually have
11 information personally about the reasons the rules were
12 being changed?

13 A. This didn't have to do with rules changes. It
14 was information that they were being provided that any
15 and every one could understand the impacts of -- of
16 permits and the permit issuance. It would be up to them
17 if they wanted to use it as part of their decisions for
18 a rule change.

19 Q. Okay. So my question is simpler than that,
20 actually.

21 A. I'm sorry.

22 Q. My question is, if the individual member of
23 the Board of Directors would receive whatever
24 information was presented during a Board meeting?

25 A. That --

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1 Q. They had information about that?

2 A. Yes, sir.

3 Q. They've had knowledge about?

4 A. Yes, sir. If they avail themselves of it,
5 yes.

6 Q. James Beach, would have knowledge of the
7 information that AGS was providing to you?

8 A. Yes, sir.

9 Q. Pertinent to the condition the aquifer and the
10 permits that were being issued, and the impact those
11 permits had?

12 A. Yes, sir.

13 Q. How about John Seifert?

14 A. Yes, to a degree. John was still on our
15 primary hydrologist in 2022. And then that switched
16 over to AGS in 2023. John took a secondary role, and he
17 still does some work for us, but is -- it's not -- it is
18 primarily James and -- and others.

19 Q. Why was Mr. Seifert's role changed?

20 A. He retired.

21 Q. That's a good reason. There wasn't
22 anything -- any disagreement between him and you or him
23 and the Board?

24 A. No, sir.

25 Q. Or him and James Beach?

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1 A. No, sir.

2 Q. Have you found the Seifert -- Mr. Seifert to
3 be a knowledgeable hydrogeologist?

4 A. Yes.

5 Q. Has the District relied on his advice for
6 years?

7 A. Yes, sir.

8 Q. So my actual beginning question in this
9 discussion was: Looking at Topic 5, the District's
10 process for changing its rules, it was in effect? The
11 process for changing the rules, were you familiar with
12 that?

13 A. Yes, sir.

14 Q. Personally familiar?

15 A. Yes, sir.

16 Q. Other people at the District familiar with
17 that process?

18 A. They should be.

19 Q. Which people?

20 A. Cynthia would be familiar with the process.
21 Megan would have been familiar with the process. That's
22 probably the extent of it. The --

23 Q. Would the Board members be familiar with the
24 process?

25 A. Yes, sir.

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1 Q. So how is it that you're designated as a
2 corporate representative and none of these other folks?

3 A. I probably have the most intimate knowledge,
4 and I -- and I am the person that takes care of the
5 business of the District.

6 Q. Same questions with respect to Topic 6. "The
7 process for changing rules, which are in effect today."

8 A. Okay.

9 Q. Are you also the person in the District with
10 the most knowledge of that?

11 A. Yes, sir.

12 Q. Because you're more -- more intimately
13 involved in it?

14 A. I would say yes.

15 Q. Did you do anything special to prepare for
16 testimony about Topic 6?

17 A. Not any more than what I've just talked about
18 on Number 5.

19 Q. And with respect to five or six, did you speak
20 with any other persons at the District about these two
21 topics?

22 A. No, sir, I did not.

23 Q. Topic 7 is related. It has to do with "The
24 procedure and process by which the District changed
25 Rules 6.1 and 7.1. Including the identities of the

1 individuals involved in the process or knowledge about
2 the procedure. Communications by and between such
3 individuals about the rule changes and the roles they
4 played in procedure and process."

5 You're designated to testify about Topic 7,
6 correct?

7 A. Yes, sir.

8 Q. What did you do to prepare to discuss that
9 with us today?

10 A. Again, that's -- I'll go back to what I said
11 previously because that was -- 6.1 and 7.1 were
12 intimately and integrally, that's the better word,
13 integrally involved in the thought process on five and
14 six. There were other rules that were going to be
15 revised, or at least we're being recommended for --
16 recommended for revision and/or addition. But 6.1 and
17 7.1 were certainly items that were going to be
18 discussed, and there were going to be recommendations
19 for the Board.

20 Q. Did you speak with anyone in preparation for
21 testifying about Item 7?

22 A. None other than my attorney.

23 Q. And is it also fair to say that a couple of
24 members of your staff and the members of the Board of
25 Directors would have knowledge about the information in

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1 Topic 7?

2 A. I would say that my staff would not have
3 intimate knowledge of it. And I would say that the
4 Board is asking for the procedure and process to change.
5 They would have -- they would know the procedure and
6 process for rule changing and rules hearings.

7 Q. Would the Board have information with respect
8 to communications about those changes?

9 MR. DE LA FUENTE: Object to form.

10 THE WITNESS: I would not know the answer to
11 that.

12 BY MR. JONES:

13 Q. You had communications with various people
14 about the rule changes, right, sir?

15 A. Very limited, yes.

16 Q. Who did you have communications with?

17 A. Primarily -- primarily Monique Norman.

18 Q. The attorney?

19 A. That's correct.

20 Q. Who's not a hydrologist?

21 A. That's correct.

22 Q. Or a hydrogeologist, right?

23 A. That is correct.

24 Q. How long has Ms. Norman been the general
25 counsel for the Board?

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1 A. To the best of my knowledge, from the
2 inception of the District, I believe. That's what I've
3 been led to believe. So I -- I -- so either 2002, 3, 4,
4 somewhere in that neighborhood.

5 Q. Consistently?

6 A. Consistently, yes, sir.

7 Q. Topic 8 is somewhat related. "The reason and
8 justification for the purpose and operation of the
9 version of 6.1 in effect prior to September 14, 2023."
10 What do you do to prepare to discuss that?

11 A. Again, availed myself of what was -- began
12 happening, the events that were taking place throughout
13 2022 and 2023.

14 Q. How far back did you look with respect to the
15 purpose of Rule 6.1 prior to September 14, 2023?

16 A. I can say that that date -- the furthest I
17 look back at anything was in October of 2021.

18 Q. What did you look at that was --

19 A. That was the date of -- when the Goodland
20 Farm, Dr. Skiles owned, he sold that to Upwell and --
21 Upwell Water, and there were permits that had been
22 issued to Dr. Skiles. Three large production permits
23 that were not yet drilled, but that were coming up on
24 their three-year date to be completed.

25 And so I wanted to remember exactly when the

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1 transfer of ownership happened and then the movement
2 forward of -- of well. Finishing those three permitted
3 wells, and then asking for new permits, and moving down
4 the road. So that's as far back as I went.

5 Q. All right. So with respect to Topic 8, as far
6 back as you went to prepare to testify about that was
7 sometime in the general vicinity of Dr. Skiles selling
8 that farm to --

9 A. That's correct.

10 Q. -- to Upwell?

11 A. That is correct.

12 Q. Were you aware that Dr. Skiles passed away
13 recently?

14 A. Yes, sir.

15 Q. Topic 9 is, "The reason Rule 6.1 was changed
16 September 14, 2023." Did you -- what did you do to
17 prepare to testify about the reason the rule was
18 changed?

19 A. The -- the very same thing. I availed myself
20 of all of the materials that we talked about from --
21 through five, six, seven, eight, to refresh my memory on
22 all of the events, which then there was no more
23 preparation than that, because that reminded me exactly
24 of the reasons that we were considering changing Rule
25 6.1.

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1 Q. Is it your testimony that the reason you
2 changed Rule 6.1 related to the permits issued to
3 Upwell?

4 MR. DE LA FUENTE: Object to form.

5 THE WITNESS: That -- you need to restate
6 that. It's -- that -- it's not -- it's not the -- let's
7 see -- if -- if you'd ask the question again.

8 BY MR. JONES:

9 Q. I think I understood you to say, a moment ago,
10 that in response to this Topic 9, the reason Rule 6.1
11 was changed back in September 14, 2023, related to, in
12 some way, the fact that Upwell had purchased Dr. Stiles'
13 farm and applied for some other permits.

14 A. No, sir. That's not right.

15 Q. What was the reason?

16 A. That was part of the reason. We had many
17 permits. A landslide of permits that came in from the
18 Simsboro Aquifer. Our job is to make sure and not
19 exceed the desired future condition. And the events
20 beginning in 2021, carrying through 2022 into 2023,
21 became clear that the landslide of permits that we were
22 getting under our then-current rule was -- could in the
23 future affect our ability to follow along our trending
24 DFC line, our flight path to 262 feet in a very
25 detrimental way. And it -- it was something that the

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1 Board needed to consider and understand what could
2 happen down the road.

3 Which was one of the reasons that I had James
4 Beach to begin preparing the documents with each of
5 those applications, when he would review a
6 hydrogeological report that was presented from any of
7 the landowners. And they presented them, but they
8 didn't have to show what is the effect of this well
9 and/or wells on the DFC. It was simply done on a single
10 well basis. How does this pumping affect the aquifer?

11 It didn't show -- we weren't requiring them at
12 that time to have to show what is the effect on the
13 desired future conditions. That's where I had James
14 begin to show that to the Board so they would
15 understand. And so it -- it's about the protection of
16 the aquifer and about doing our very best not to exceed
17 the desired future condition yet allowing for proper
18 property -- private property rights to be used.

19 Q. So you're saying that in part the reason --
20 that the thing that triggered a change in the rule in
21 September 2023, with this landslide of permit
22 applications?

23 A. That was part of it.

24 Q. You also had --

25 A. We also -- we also had on the ground evidence

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1 from the summer of 2022, which was -- rattled the 2011
2 drought, no rain, and extremely hot temperatures. And
3 the Simsboro pumps turned on in the bottom. So we had
4 agricultural pumping, and the pumps weren't being turned
5 off. We had municipal pumping because people were
6 watering their yards and doing all the things they do.
7 We had rural water supply pumping. We had a much higher
8 than normal Simboro pumping during the summer of 2022.

9 And July the 1st, I had wells in the Simsboro
10 becoming inoperable, Calvert livestock auction, Monique
11 -- I mean Monica Otia (phonetic). I can -- I know of
12 five wells in the first week of July that either had to
13 be redrilled or pumps burned up and wells had -- and
14 pumps had to be lowered. So there was something going
15 on that had never gone on before began to go out to our
16 monitoring wells that we had -- we had earlier in the
17 year been to, and now we have a precipitous drop in our
18 artesian head, and it -- and it is much more than it has
19 ever been.

20 So now we -- it -- it became apparent that the
21 effect of the pumping that we now can measure and know
22 exactly what it was was having a larger effect than --
23 or at least having a measurable effect and making wells
24 inoperable and having to be redrilled. So that and the
25 fact that you -- we -- we knew that there was a

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1 transport project coming. We knew those were wells that
2 were going to turn on, and they were going to -- they
3 were going to be used.

4 And then the landslide permits came in. The
5 Board needed to be aware and have the ability to reach
6 into their toolbox and use a -- a way to protect the
7 aquifer and to protect us from trying our best not to
8 exceed a future DFC.

9 Q. So I think you're telling me that there are a
10 number of documents that you looked at in the time
11 period of 2021 to 2023, that caused you to believe you
12 needed to change the rule.

13 A. I've reviewed those.

14 Q. And what documents were they?

15 A. The ones that I've already provided to you
16 that I've just have gone back and I-- I enumerated many
17 of those documents to you.

18 Q. Were there any documents indicating the levels
19 of artesian head in wells that you just referred to?

20 A. That would be in our database based on our
21 monitoring well information. I did not go back and
22 review those. They're in my head. I know what that
23 looked like.

24 Q. But the database contains that information?
25 The monthly --

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1 A. Yes, it certainly does. It contains the
2 actual measurements on dates, on monitoring wells, and
3 then on wells that -- we began to build a subset of
4 wells that we had not measured before that were in the
5 same affected area, and we began to see effects seven
6 miles away from -- from what we call ground zero. So we
7 began to build a subset of wells that we went out and
8 got some baseline measurements on, and still today, go
9 and measure those wells to see what the effect of
10 pumping is.

11 Q. And that information was put in the database?

12 A. It is in the database, yes, sir.

13 Q. James Beach performed some kind of study for
14 you?

15 A. No, sir. He did not.

16 Q. Did he --

17 A. Not specifically to what I've just said. The
18 only --

19 Q. -- provide -- I'm sorry. Go ahead.

20 A. The only thing he -- he was asked to do was
21 each time there was a new application to -- how -- what
22 is the effect of this well and/or wells on the DFC.
23 After he reviewed any of those hydrogeological reports
24 that the applicant provided, then this is a supplemental
25 document that I'm asking you to produce for the Board's

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1 information.

2 Q. And did Mr. Beach produce such reports?

3 A. On every single one of them that I asked him
4 to do so, yes.

5 Q. And they were in writing?

6 A. And have been provided to you. And are still
7 up on my website, housed for the public to see.

8 Q. What part of the website?

9 A. It's called -- it's in our web browser. So
10 you would look under documents. And when you
11 highlight -- when you hover over documents, it comes up
12 and says file browser. And you click on file browser,
13 and it gives you every year from 2015 until current of
14 all -- any -- any year. You click on the year that it
15 might have happened, and then there's a plethora of --
16 of folders to be and go into, and it's listed by whether
17 it's a -- a regular Board meeting or a permit hearing,
18 those kinds of things.

19 And a permit hearing, then, when opened, on
20 one of these that I'm talking about, it would have the
21 particular applicant's information. There might be as
22 few as five folders. There may be as many as ten
23 folders, and they would have their hydrogeologic report,
24 and then there would be one from AGS that has evaluated
25 the hydrogeologic report.

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1 Q. Other than Beach's individual evaluations on
2 individual applications, did he tender any kind of
3 overall report concerning the impact on the DFC of the
4 additional pumping you were seeing in 2022?

5 A. Yes.

6 Q. And what did that look like?

7 A. That would have been presented in January of
8 2024 to the Board, to the public of, we're now going to
9 look at all the permits that have been issued, and what
10 does that effect look like?

11 Q. January of 2024?

12 A. I believe it was January of 2024. I might be
13 stating it -- misstating that, but I believe that's
14 correct.

15 Q. Which would have been after the rule change in
16 September of 2023?

17 A. That is correct.

18 Q. Let's look for a moment at Topic 10. "The
19 reason and justification for, and purpose and operation
20 of the version of Rule 6.1 in effect on or after
21 September 14, 2023." Is that the same information we've
22 just discussed?

23 A. Yes, sir.

24 Q. And the same preparation to testify that we've
25 just discussed?

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1 A. Yes, sir.

2 Q. Anything different in that topic?

3 A. No, sir.

4 Q. Topic 11 has to do with the "reason and
5 justification for the purpose of the operation of Rule
6 7.1 prior to September 14, 2023." Did you do anything
7 specific to prepare to testify on that topic?

8 A. Nothing more than what we've discussed.

9 Q. Same with respect to Topic 12?

10 A. Yes, sir.

11 Q. And Topic 13?

12 A. Correct.

13 Q. All right. Topic 14 is "The identity of each
14 person or entity given a variance from either Rule 6.1
15 or 7.1 before September 14, 2023." Have there been any
16 variances granted prior to September 14, 2023?

17 A. No, sir.

18 Q. So there -- and -- and you would know about
19 that?

20 A. I would know from -- absolutely from August
21 27th of 2012 forward. To the best of my knowledge is
22 the answer is no.

23 Q. Did you review any records to verify what you
24 recall?

25 A. No.

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1 Q. Topic 15 has to do with variance -- variances
2 that might have been given after September 14, 2023. I
3 take it you would have recent knowledge of that?

4 A. Yes, I would.

5 Q. And there have been none?

6 A. That is correct.

7 Q. And did you do anything to verify that?

8 A. No, sir.

9 Q. It's hard to verify a negative, I guess,
10 correct?

11 A. I'm sorry. Say that again.

12 Q. It's hard to verify a negative?

13 A. That's --

14 Q. In other words --

15 A. -- that's correct.

16 Q. -- there are no variances, so how do you
17 verify that? You remembered that there were no
18 variances?

19 A. Correct.

20 Q. Would you have been the person at the District
21 to recommend a variance?

22 A. There is no such thing as a variance at the
23 District. So I would be the one that would know that.

24 Q. Are you saying that there's no rule providing
25 for exceptions or variances to your rules?

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1 A. There is no -- there are no variances. We
2 have a waiver that's used in exempt wells. There's a
3 waiver, but there are no variances.

4 Q. So for non-exempt wells, there's no waiver,
5 there's no variance, correct?

6 A. There was a waiver. There is no waiver now.

7 Q. What waiver was there?

8 A. It was the overlapping of -- of moving your
9 wells closer to your other wells.

10 Q. All right. We'll talk about that later.
11 Topic 16, are there -- what did you do to prepare to
12 testify about Topic 16?

13 A. I went back through to -- and -- and looked
14 at, to refresh my memory on the -- the City of Bryan and
15 the City of College Station, the individuals that have
16 served as Board of Directors and of Texas A&M, there has
17 never been one. So I -- I just went back and refreshed
18 on that.

19 Q. What documents did you look at?

20 A. Some of that I believe came from the former
21 transcript of the -- of our deposition before.

22 Q. I asked you about that before?

23 A. Yes, sir, you did.

24 Q. Has anything changed since that testimony?

25 A. In what regard?

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1 Q. The different directors for these two cities?
2 Have you --

3 A. I -- I think the answer to that is no.

4 Q. I think you're right. And we're talking about
5 Jayson Barfknecht, correct?

6 A. Yes, sir. And Gary Mehcler.

7 Q. How long has Gary served on the Board?

8 A. I don't remember when he started, but I
9 believe I saw his name in the transcript.

10 Q. Do you recall who the prior representative on
11 the Board was who represented City of College Station?

12 A. Yes. That would again be Bill Harris, and I
13 believe there was a -- he resigned because of his kidney
14 transplant. And that's when Gary Mehcler was appointed
15 to fill his position. And I believe in the transcript.
16 We even talk about your asking about Bill Harris and --
17 and his transplant.

18 Q. So to talk about Topic 16, you've reviewed, in
19 part, the transcript of your prior deposition and other
20 similar things?

21 A. Yes, that's correct.

22 Q. Seventeen. This has "All the documents and
23 information produced by the District in response to the
24 request for production, interrogatories, and request for
25 admission." Let me just stop there and say, were you

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1 the person at the District who helped prepare the
2 responses to the request for production?

3 A. Yes.

4 Q. Anyone else involved in that?

5 A. No, sir.

6 Q. How about the interrogatories, did -- were you
7 the person at the District who helped prepare the
8 answers to interrogatories?

9 A. Yes, sir.

10 Q. Were you the person at the District who helped
11 prepare the answers to the first request for admission?

12 A. Yes, sir.

13 Q. Anyone else involved in that?

14 A. Not in our -- not at the District. It was
15 only --

16 Q. The lawyers, of course.

17 A. That's correct.

18 Q. So outside of -- of Mr. de la Fuente and his
19 firm, you're the only person at the District who is
20 involved in preparation of the responses to these
21 discoveries' issuance?

22 A. Yes, sir.

23 Q. And what information did you review in order
24 to testify about this topic?

25 A. As I described earlier, I -- I went through

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1 the notebook that you see sitting right here, I went
2 through to refresh my memory of what -- what were our
3 answers? What did we -- what did we provide? Those
4 kinds of things. But going back to each of those
5 documents, I did not go back to.

6 Q. So you pointed at a notebook in front of Mr.
7 de la Fuente. Did you review the information in that
8 notebook?

9 A. Yes, sir.

10 Q. All of it?

11 A. Yes, sir.

12 Q. What's contained in it?

13 A. That is any documents, any -- any of the --
14 anything you -- you would send that says here's -- we're
15 going to depose you. It's going to be -- here's our
16 request for each of these three things you put on here.
17 And it would show whether we admitted something or
18 denied something, and why -- why that was the case. So
19 that's -- that's what's involved in this notebook, as
20 well as the transcript from the first deposition.

21 Q. And so if I were to ask in another request for
22 production for the notebook that's sitting in front of
23 Mr. de la Fuente, how would I describe that best, so
24 that you could produce it?

25 A. I -- I guess in just exactly the same way that

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1 you just described it now.

2 Q. All right. Eighteen is "Information with
3 respect to the District's original answer." All right.
4 Have you reviewed the District's answer in this case?

5 A. Yes, I have.

6 Q. And did you help prepare that?

7 A. I -- how do you describe help?

8 Q. Well, did you provide any information or input
9 as to what's contained in the answer?

10 A. I think the answer is yes.

11 Q. And are you the person at the District who
12 could best testify about that?

13 A. Yes.

14 Q. Was there anyone else involved?

15 A. Not at the District, no.

16 Q. Are you prepared to testify about this topic?

17 A. Yes, sir.

18 Q. And have you discussed this topic with anyone
19 other than counsel?

20 A. No, sir.

21 Q. Nineteen has to do with "The information
22 that's in the District's Rule 26 initial disclosures."
23 Do you know what that is?

24 A. No, sir, do not.

25 Q. We'll get to that in a bit. Did you do

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1 anything to prepare to testify about that?

2 A. I -- I did not.

3 Q. Is there anyone at the District who would be
4 able to talk about the information in these disclosures?

5 A. I don't think so.

6 Q. And why don't you think so?

7 A. If -- if anybody was to prepare it, it would
8 be me.

9 Q. So your testimony is that nobody else at the
10 District is involved in preparation of such things, as
11 answers to request for admission, answers to request for
12 production, answers to interrogatories?

13 A. Correct.

14 Q. Or these initial disclosures?

15 A. Yes, sir. That's correct.

16 Q. Whatever they are?

17 A. Correct.

18 Q. When you looked at Topic 19, did you have any
19 questions about what this means? What -- what's a Rule
20 26 initial disclosure?

21 A. I'll -- I'll be real honest with you. I -- I
22 don't even remember this particular one. So --

23 Q. I assume you read each of these when --

24 A. I did.

25 Q. -- you got them.

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1 A. I did.

2 Q. And read them in preparation to testify as the
3 District's representative in this deposition.

4 A. Yes, sir. That is correct.

5 Q. Okay. So Topic 19, you're -- you're telling
6 me it didn't ring a bell, and you didn't ask anyone what
7 that meant?

8 A. That is correct.

9 Q. Twenty is "The methods or procedures followed
10 by the District to ensure that all groundwater rights
11 owners are treated fairly and the same." Are you
12 prepared to testify about that topic?

13 A. Yes, sir, I am.

14 Q. What did you do to prepare to testify about
15 that topic?

16 A. Everyone at all times is subject to the same
17 set of rules. They're treated equally and fairly at any
18 given time, under whatever set of rules is prevailing at
19 the time. So this was not a difficult one to prepare
20 for.

21 Q. Did you review --

22 A. That's the total preparation.

23 Q. Did you review any specific documents to
24 prepare for Item 20?

25 A. No, sir, not at all.

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1 Q. Did you talk to anyone in particular about
2 this?

3 A. No, sir, not at all.

4 MR. JONES: We've been going another hour; you
5 want to take another break?

6 THE WITNESS: It'd be great.

7 THE VIDEOGRAPHER: Okay. The time is now
8 11:05 a.m. We are off the record.

9 (Recess from 11:05 a.m. to 11:18 a.m.)

10 THE VIDEOGRAPHER: All right. This is going
11 to be Media Tape Number 3. The time is now 11:18 a.m.
12 We're back on the record.

13 BY MR. JONES:

14 Q. Mr. Day, that -- that last topic on the --
15 Exhibit 42, Topic 20 had to do with the procedures the
16 District follows for treating everyone fairly and the
17 same. Do you recall that?

18 A. Yes, sir.

19 Q. Let me hand you what I have marked as Exhibit
20 1 to your deposition.

21 (Plaintiffs' Exhibit 1 was marked for
22 identification.)

23 BY MR. JONES:

24 Q. And I'll represent to you that this is a page
25 from Chapter 36 of the Texas Water Code. Specifically,

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1 the page where you find 36.101. Are you familiar with
2 this?

3 A. I've -- can't say I've ever read it before.

4 Q. Well, let me ask you this, in general. Have
5 you read Chapter 36, the Texas Water Code?

6 A. Parts.

7 Q. Which -- which parts do you recall reading?

8 A. Things to do with DFCs. Spent a good bit of
9 time in there, but most of the time that I spend is in
10 our rules, which are propagated from Chapter 36, and/or
11 if I have a particular question based on GMA planning or
12 whatever it might be, then go in and specifically read.
13 So --

14 Q. Other than the parts of the rules relating to
15 desired future conditions and groundwater management
16 area responsibilities for those, have you read portions
17 relating to management plans?

18 A. Certainly.

19 Q. Is it your testimony that you don't recall
20 looking at 36.101?

21 A. That is correct. I can't say that I
22 specifically have read this.

23 Q. So 36.101 talks about rule rule-making power
24 of the District. "The District may make and enforce
25 rules, including rules limiting groundwater production

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1 based on tract size and spacing the wells," and so
2 forth. You see that?

3 A. Yes, sir.

4 Q. And then under Paragraph A, we see this
5 statement. "In adopting a rule under this chapter, a
6 District shall:" And Paragraph 2 says, "Develop rules
7 that are fair and impartial."

8 A. Yes, sir.

9 Q. Do you understand that to be the obligation of
10 the Groundwater Conservation District and its
11 rule-making?

12 MR. DE LA FUENTE: Object to form.

13 THE WITNESS: That's what I understand, yes.

14 BY MR. JONES:

15 Q. Do you agree that Brazos Valley Groundwater
16 Conservation District should treat everyone fairly and
17 the same?

18 A. Yes, sir.

19 MR. DE LA FUENTE: Object to form.

20 BY MR. JONES:

21 Q. How does the District ensure that groundwater
22 rights owners in the District are treated fairly and the
23 same?

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: Everyone is subject to the rules

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1 that are adopted and applied at any given point in time.
2 And we don't treat anyone -- everyone is treated the
3 same as regards -- with regards to the rules.

4 BY MR. JONES:

5 Q. I think what you're telling me is that
6 everyone who is subject to the rules prior to September
7 14, 2023, is treated the same.

8 MR. DE LA FUENTE: Object to form.

9 THE WITNESS: Under that set of rules,
10 correct. If they're getting a permit, or whatever it
11 might be, correct.

12 BY MR. JONES:

13 Q. Everyone -- everyone who files an application
14 after September 14, 2023, is treated the same?

15 A. That's correct.

16 Q. But they're not necessarily treated the same
17 as between the two groups?

18 MR. DE LA FUENTE: Object to form.

19 THE WITNESS: They're -- between the two
20 groups, if the rules changed, they're subject to the set
21 of rules. At the time that they come in, they -- they
22 were subject to that set of rules, and everyone is
23 subject to those set of rules equally and fairly. If
24 the rules change, then everyone is the same under that
25 new given set of rules. Best I can answer that.

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1 BY MR. JONES:

2 Q. I understand. So let's talk specifically
3 about Rule 6.1, inspection.

4 A. Yes, sir.

5 Q. We know that prior to September 14, 2023, the
6 rule required monthly inspections.

7 A. Yes, sir.

8 Q. We know that after September 14, 2023, the
9 rule requires two inspections.

10 A. Yes, sir.

11 Q. What impact does that have with respect to the
12 amount of property that you have to own or control?

13 MR. DE LA FUENTE: Object to form.

14 THE WITNESS: So are you -- okay. Are you
15 asking if I want the same amount of water? Is that --
16 is that the way -- BY MR. JONES?

17 Q. Yes.

18 A. -- we're going about this?

19 MR. DE LA FUENTE: All right. I'm sorry. I
20 believe Richard's knocking because the door's locked.
21 Don't let him in.

22 THE WITNESS: With regard to before September
23 14, 2023, if you wanted X amount of water, it equaled a
24 certain contiguous amount of acreage in the footprint.
25 After September the 14th of 2023, you would have to have

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1 four times as much land in the contiguous footprint to
2 get the same amount as you had before. BY MR. JONES?

3 Q. Conversely, if you have the same amount of
4 land before and after that date, so let's say you have
5 640 acres of contiguous property before September 14,
6 2023, and you had the same amount of land after that
7 same day. You with me so far?

8 A. Uh-huh.

9 Q. Then you could only get 25 percent as much
10 water.

11 A. That is not correct.

12 Q. Why is that not correct?

13 A. You can get 50 percent of the amount of water
14 off the same property. Because the factor is by two.
15 So it would be four -- let's take a -- let's make an
16 example here. I wanted 1,000 acre-feet off the
17 property. And you go through our formula before
18 September 14th of 2023, and it yields an amount of
19 acreage. And you would multiply 1,000 times .62 times 1,
20 equals the radius of the circle. Radius of the
21 footprint.

22 If I go through now and say I've got the --
23 and it equal a certain amount of acreage, if I then say
24 how much can I get off that acreage today, it will be 50
25 percent because it is the amount of water times .62 times

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1 2. So it's simply the radius. It's not the total
2 acreage because there's an exponential amount of
3 acreage. As the circle gets bigger and bigger, it
4 exponentially adds to the total numbers of acres. So
5 it's 50 percent, not 25 percent.

6 Q. So your testimony is the representative of
7 Brazos Valley Groundwater Conservation District, is
8 that, to your understanding, a person only gets 50
9 percent as much water from the same acreage after
10 September 14, 2023, as he would have been able to get
11 before that date?

12 A. That is correct.

13 Q. But your understanding that -- that the
14 working in the formula is that it requires four times as
15 much land to get the same production amount.

16 A. Same amount of permitted water. That is
17 correct.

18 Q. As before the rule change?

19 A. That is correct.

20 Q. And so when we talk about treating everyone
21 the same, the people who apply for permits after
22 September 15, 2023, cannot get the same amount of
23 production from the same acreage as they could have
24 before?

25 MR. DE LA FUENTE: Object to form.

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1 THE WITNESS: That is correct.

2 BY MR. JONES:

3 Q. Let me hand you what I've marked as Exhibit 2.
4 (Plaintiffs' Exhibit 2 was marked for
5 identification.)

6 BY MR. JONES:

7 Q. This is two pages from a PowerPoint. Do you
8 recognize this?

9 A. Yes, sir.

10 Q. What is it?

11 A. This was a PowerPoint that I gave to the
12 Hydrogeology 410 of Texas A&M University in November of
13 2017.

14 Q. So there's a Hydrogeology 410 class?

15 A. That's what it -- yes. Hydrogeology 410.
16 That's correct.

17 Q. Is that -- is that an advanced class at Texas
18 A&M University?

19 A. It's an undergraduate course.

20 Q. But when I was in college, they used to number
21 the basic courses like 101. And 410 would be something
22 past that.

23 A. That is correct.

24 Q. Okay. And so these were students at your alma
25 mater?

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1 A. Yes.

2 Q. And you respect that alma mater, I assume?

3 A. Yes.

4 Q. And you would have been telling these students
5 at Texas A&M, to the best of your knowledge, truthful
6 information?

7 A. Yes, sir.

8 Q. So the second page of this exhibit says, "What
9 do we do?" This is a description of what the
10 Groundwater Conservation District does?

11 A. Something with what we do, yes. Absolutely.

12 Q. And the fourth bullet point here is, "Treat
13 everyone fairly and the same."

14 A. Correct.

15 Q. And that is a truthful statement that you made
16 to Texas A&M students?

17 A. Yes, sir. Absolutely.

18 Q. So what I'm hearing now is, when you say
19 fairly and the same, you're saying, we'll treat everyone
20 under the set of rules that are in effect on X date the
21 same, but if we change the rules, then we'll treat
22 everyone under the changed rules the same?

23 A. That is exactly correct.

24 Q. Even though they may not be getting the same
25 amount of water from the same land.

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1 A. That's correct.

2 Q. So your definition of fairly and the same has
3 to do with the rules set in effect on a given date?

4 A. That is correct.

5 Q. But not necessarily a change in the rules set.
6 In other words, if I could get 1,000 acre-feet from a
7 certain number of acres before September 14, 2023, I may
8 only get, by your calculation, 500 acre-feet from the
9 same acreage?

10 A. Correct. Yes.

11 Q. And you'll agree that 500 is not the same as
12 1,000?

13 A. That is correct.

14 Q. And if you're irrigating 500 versus 1,000
15 makes a big difference, doesn't it?

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: I -- I suppose if you've got the
18 same crop and you haven't changed crops; there's a lot
19 of variables there. So --

20 BY MR. JONES:

21 Q. After you tried to raise, let's say, soybeans,
22 before the rule changed and after the rule changed, you
23 only have half as much water, by your calculation, to
24 raise that crop, right?

25 A. To supplement, if it doesn't rain. There's a

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1 lot of variables there, but you don't have it available
2 that -- that you have -- you have half as much available
3 if you need it.

4 Q. Okay. So all other things being equal.
5 Rainfall being equal. The crops being equal. The
6 fertilizer being equal. You only have half as much
7 water to water with after the rule change, right?

8 A. If you need it, that's correct, yes.

9 Q. And that's not the same as having a -- twice
10 as much water, is it?

11 A. It is not the same.

12 Q. Did the District do any kind of study or
13 analysis to determine the economic impact of changing
14 this rule?

15 A. No, we did not.

16 Q. Did you personally, as a general manager, ever
17 consider the economic impact of changing the rule?

18 A. No, sir.

19 Q. Let me shorten this up. You've given this
20 same presentation on many occasions?

21 A. Yeah.

22 Q. Correct?

23 A. Yes.

24 Q. And you've used that same slide in many
25 presentations?

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1 A. Yes, sir.

2 Q. And you've told people from the Rotary Club to
3 students at A&M, to people at Bill's Wild Bird,
4 whatever, Company, you've told them that the District
5 treats everybody fairly and the same?

6 A. Yes, sir.

7 Q. Now, did you ever quantify that by saying,
8 now, if we change the rules, we're only going to treat
9 you fairly and the same under the new set, but not
10 necessarily as compared to people under the old set?

11 MR. DE LA FUENTE: Object to form.

12 THE WITNESS: No, sir. This was a 10,000-
13 foot view.

14 BY MR. JONES:

15 Q. Well, at 10,000 feet, half the water doesn't
16 look the same as all the water, does it?

17 A. I don't know what you mean. So restate that,
18 please.

19 Q. Sure. At the 10,000-foot level, if I'm
20 getting a 1,000 acre-feet, that's different from getting
21 a 500 acre-feet.

22 A. Yes, sir.

23 Q. And close up, even that -- at the one foot
24 level, those things look different, don't they?

25 A. Yes, sir.

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1 Q. I mean, they're not the same, right?

2 A. Yes, sir.

3 Q. Yes or no.

4 A. They're not.

5 Q. Not the same?

6 A. They are not.

7 Q. All right. You're agreeing with me, they're
8 not the same.

9 A. They are not the same.

10 Q. I'm handing you what I've marked as Exhibit 8.
11 (Plaintiffs' Exhibit 8 was marked for
12 identification.)

13 BY MR. JONES:

14 Q. And -- and yes, I skipped some exhibits, and
15 we'll get those to some point. Exhibit 8 is a copy of
16 the front page and a couple of pages of the PowerPoint
17 presentation; is that correct?

18 A. Yes, sir.

19 Q. This was presented by you to a graduate water
20 law class at Texas A&M University, right?

21 A. Yes, sir.

22 Q. April 27, 2020?

23 A. Apparently, yes.

24 Q. The height of COVID?

25 A. Certainly, in the midst of COVID.

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1 Q. Did you do this in person or remotely?

2 A. I believe this was done online.

3 Q. Whether it was online or in person, again, you
4 were representing the District in making this
5 presentation?

6 A. Yes, sir.

7 Q. Just like you are today?

8 A. Yes, sir.

9 Q. And you are being truthful to these good
10 graduate --law graduate students at your alma mater?

11 A. Yes, sir.

12 Q. Now, I noticed on the second page of this
13 exhibit that you make the statement, "Treat everyone
14 fairly and the same." Do you see that?

15 A. Yes, sir.

16 Q. And then the next page says at the top, "Why
17 does this matter?" And the first bullet point says,
18 "The District provides landowner protection from
19 encroachment by properly spacing new wells from existing
20 wells." Right?

21 A. Yes, sir.

22 Q. What did --

23 A. It does say that.

24 Q. What did you mean by protecting from
25 encroachment?

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1 A. Meaning the cones of depression overlapping
2 the effects of one well and another well, to properly
3 space and keep enough distance that everyone can still
4 enjoy their property rights and not be in -- what's the
5 proper word -- overly affected by the pumping of their
6 neighbor.

7 Q. Okay. And what do you mean by overly
8 affected?

9 A. The closer you get two wells together, the
10 more effect it's going to have on both wells. And the
11 efficiency of the wells, the ability to -- to pump what
12 you're needing to pump. So distancing them apart then
13 allows for that effect to be lessened, thereby allowing
14 everyone a better opportunity to produce what they need
15 to produce.

16 Q. And I notice in your rules that -- that the
17 spacing is tied to the productive capability of the
18 well.

19 A. It's tied directly to the permitted amount.
20 That doesn't especially mean that the well can produce
21 that.

22 Q. Why is it tied to the permitted amount?

23 A. Our -- when we implemented the formula, we
24 based it upon how a groundwater model sees and
25 calculates the effect of pumping on an annual basis. So

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1 you give it a -- when you put it in the model, you give
2 it a prescribed amount, it annualizes the production,
3 and then it says, here's what that effect is going to
4 look like. And they say it's over a one-year period,
5 over a ten-year period, whatever it might be.

6 And so ours is based on we give it an amount,
7 you're -- you tell me -- applicant tells me how much
8 water they want, we annualize it, and that's why it is
9 tied directly to the permitted amount.

10 Q. Is it -- is it true that a well that produces
11 3,000 gallons a minute will have more impact on the
12 aquifer than a well that produces 500 gallons per
13 minute?

14 MR. DE LA FUENTE: Object to form.

15 THE WITNESS: A -- a well that is running at
16 3,000 gallons a minute and it runs the same length of
17 time that a well that's running at 500 gallons, but it
18 is going to have a wider effect and deeper effect, a --
19 a different cone of depression than what the 500 gallon
20 per minute well is, given that they're in the same
21 aquifer.

22 BY MR. JONES:

23 Q. It's your understanding in all those things
24 being equal, the cone of depression is greater for a
25 well that's producing greater amounts?

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1 A. Generally, that would be correct, yes.

2 Q. Reaches out further?

3 A. That is correct.

4 Q. Now, you use the word here in Exhibit 8,
5 "protection from encroachment." And -- and focusing on
6 the word encroachment. What does that mean?

7 A. As I've described earlier, it is simply
8 allowing for distancing these cones, these effects, from
9 each other so that each well can -- can run as
10 efficiently as possible and produce what needs to be
11 produced.

12 Q. So when we're talking about encroachment as in
13 the context of landowner protection --

14 A. Yes.

15 Q. -- is that referring to neighboring
16 landowners, all landowners?

17 A. All landowners.

18 Q. Are your rules, hopefully, designed to protect
19 as much as they can from your neighbors' impact using
20 their wells?

21 A. Certainly, that's what spacing is about.

22 Q. So spacing from a property line?

23 A. And/or well to well.

24 Q. So how -- if I'm your neighbor, how do you
25 protect me from encroachment from your well?

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1 A. Well, we've done that in our permitting
2 process because by going to the formula and using that
3 now we no longer -- it used to be from just well to
4 well. It had -- had a distance well to well. Now, you
5 -- because of our formula and because of the right to
6 produce -- showing us that you have the right to produce
7 groundwater, now it's to the property line. Because --
8 or -- or that you show us that you have the legal right
9 to produce groundwater.

10 So it -- it automatically keeps you away from
11 any other Simsboro wells or any other wells and whatever
12 aquifer, and it keeps you away from those that have a
13 footprint. You can't get off into that because you
14 don't legally own or control that area. So it -- it
15 actually does a better job of protecting you from the
16 impact of other wells.

17 Q. Can you protect me, as your neighbor, from the
18 impact of your well?

19 MR. DE LA FUENTE: Object to form.

20 THE WITNESS: Ask that one more time.

21 BY MR. JONES:

22 Q. Sure. Would you agree that over time, the
23 cone of depression from your well producing on your
24 property may well reach across your property line to my
25 property?

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1 A. Okay. And so the -- ask the question again,
2 then.

3 Q. Yes.

4 A. Can I protect you?

5 Q. Yes. From encroachment by my neighbor?

6 A. We have the ability for curtailment, because
7 we have abilities from our management zones, there are
8 tools in the toolbox that could be used, if we see it's
9 an inordinate impact.

10 Q. And what's an inordinate impact?

11 A. Something that is unusual, something that is
12 out of the ordinary, something that is more than we
13 would have ever expected to have occurred.

14 Q. Do you expect some encroachment to occur?

15 MR. DE LA FUENTE: Object to form.

16 THE WITNESS: I don't know about encroachment.
17 What you -- you need to define encroachment for me.
18 What --

19 BY MR. JONES:

20 Q. Well, I'm looking at exhibit --

21 A. I -- I gave you my -- I gave you my definition
22 of how I used encroachment in that. I think you're
23 using it as a different manner.

24 Q. Right.

25 A. So I just -- I just need to know what you're

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1 asking.

2 Q. All right. Let's just talk about your words
3 in Exhibit 8. "District provides landowner protection
4 from encroachment by properly spacing new wells from
5 existing wells." What did you mean by that?

6 A. I've already stated exactly what I meant by
7 that, and that is to properly space wells apart so that
8 everyone has a opportunity to produce the water that
9 they need to do in the most efficient way that they can.

10 Q. Would you agree that everyone has a fair
11 opportunity to produce their fair share of the water in
12 the aquifer?

13 MR. DE LA FUENTE: Object to form. Object to
14 the extent it calls for a legal conclusion.

15 BY MR. JONES:

16 Q. I'm just asking if it's the District's
17 understanding that everyone has a fair opportunity to
18 produce a fair share of water in the aquifer.

19 MR. DE LA FUENTE: Object to the extent it
20 calls for a legal conclusion.

21 BY MR. JONES:

22 Q. Can you answer that question?

23 A. As far as I know, yes, we understand that.

24 Q. The second bullet point in Exhibit 8 on Page 3
25 of that exhibit says, "Protection of property rights."

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1 What did you mean by that?

2 A. Our permitting process, our rules, are built
3 and were promulgated to make sure that private property
4 rights are not only recognized, but they were -- that
5 owners of water rights, owners of property, are able to
6 access their water and use it to a beneficial use.

7 Q. Can you tell me, as the representative of the
8 District, what the District does to understand what
9 property rights are?

10 A. There are -- you know, we've attended many
11 conferences, have attorneys on the staff that certainly
12 give guidance. That's where I am on that.

13 Q. In other words, you rely on counsel to tell
14 you what private property rights are?

15 A. Not just that.

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: That's one of the things I may
18 have.

19 BY MR. JONES:

20 Q. Or how do --

21 A. And general knowledge, and reading, and
22 seminars, conferences, otherwise.

23 Q. Do you ever keep materials from these
24 conferences in your files?

25 A. You're asking personally?

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1 Q. Yes.

2 A. I may have kept some. Very few, probably.

3 Q. How do you determine which ones you'll keep
4 and which ones you're trash?

5 A. It's -- early on, keep the things that were
6 meaningful to groundwater and how that's done. It
7 became some repetition as to -- so anytime -- that's --
8 that's basically it. Kept some things early on.
9 Dedicated things to memory.

10 Q. Let me hand you what I've marked as Exhibit 9.
11 It's pages from a PowerPoint dated August 25, 2018.

12 (Plaintiffs' Exhibit 9 was marked for
13 identification.)

14 BY MR. JONES:

15 Q. Do you recognize this?

16 A. I do.

17 Q. Did you prepare this PowerPoint?

18 A. Yes.

19 Q. Yourself?

20 A. Yes.

21 Q. Did anyone help you with it?

22 A. No.

23 Q. All right. This was presented to the Texas
24 Tree Growers Association. Where are they located?

25 A. I don't know where their headquarters are. I

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1 have a -- a couple of individuals in Robertson County
2 that are members, and so they're the ones that have
3 contacted me from time to time.

4 Q. Did you present this in 2018?

5 A. Yes. This would have been in person, yes.

6 Q. All right. The -- the page I've attached
7 says, "Landowner property rights." You see that?

8 A. Yes, sir.

9 Q. It says, in the third bullet point, "To be
10 treated no differently than O/G." What does that mean?

11 A. Oil and gas.

12 Q. And what did you mean by "to be treated no
13 differently than oil and gas"?

14 A. Meaning that water is a -- an interest that is
15 owned by the landowner, and they can sever it, they can
16 take an interest in it, they can do whatever they want
17 to with the water, it is theirs. So that's what that
18 slide means.

19 Q. All right. Are you familiar with any oil and
20 gas law?

21 A. Only at a very high level. I --

22 Q. What is your high level of understanding of
23 the rights of oil and gas owners?

24 MR. DE LA FUENTE: Object to form as that
25 calls for a legal conclusion.

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1 MR. JONES: All right. So I'm just asking for
2 his understanding of it.

3 MR. DE LA FUENTE: Are you asking Alan Day's
4 individual understanding of it?

5 MR. JONES: Yes. And he wrote this slide, I
6 just want to know what he understood about oil and gas
7 rights. To be treated no differently from the land or a
8 gas.

9 THE WITNESS: That -- okay. Asking it that
10 way, then oil and gas is severable from the land. You
11 can do with it what you want to do. And you own it,
12 then you can sever it, you can lease it, you can do it
13 however you want to do. So that was the analogy between
14 water and oil. It's an owned interest.

15 BY MR. JONES:

16 Q. Do you understand that in the -- in a realm of
17 oil and gas that the landowners, mineral rights owners,
18 have the opportunity to produce a fair share of the oil
19 and gas in a reservoir?

20 A. I -- I certainly --

21 MR. DE LA FUENTE: Are you asking Alan Day
22 individually?

23 MR. JONES: Yes.

24 THE WITNESS: I -- I've heard that, yes. I
25 know of that.

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1 BY MR. JONES:

2 Q. And as the general manager of the Groundwater
3 Conservation District, does that inform your decisions
4 about what your rules should look like?

5 A. No. Oil and gas is not informing me of what
6 our -- our rules should look like, no.

7 Q. I handed you what I've marked as Exhibit 10.
8 (Plaintiffs' Exhibit 10 was marked for
9 identification.)

10 BY MR. JONES:

11 Q. This is another set of documentation from a
12 PowerPoint presentation, which you gave December 13,
13 2023; is that correct?

14 A. Uh-huh.

15 Q. This will be after the rule change of
16 September 14, 2023, correct?

17 A. Yes, sir.

18 Q. This was given to the Texas A&M University
19 Sustainability and Environmental Management Committee,
20 right?

21 A. Yes, sir.

22 Q. And it's entitled, "How GCD's Function."

23 A. Yes, sir.

24 Q. Again, written by you without help?

25 A. Yes, sir.

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1 Q. As we see on the second page, a couple of
2 bullet points at the bottom. One is, "Promulgate rules
3 to" -- "for" -- "to protection the aquifers and private
4 property rights."
5 A. That should have been to protect.
6 Q. Yes. "To protect the aquifers and private
7 property rights?
8 A. Yes, sir.
9 Q. Both, right?
10 A. Yes, sir.
11 Q. Not one or the other, but both?
12 A. That is correct.
13 Q. And then it says, "Treat everyone fairly and
14 the same." Correct?
15 A. Yes, sir.
16 Q. If we go to the next page, it has to do with
17 curtailments, right?
18 A. Yes, sir.
19 Q. Have you ever had curtailments at Brazos
20 Valley Groundwater Conservation District?
21 A. No, sir.
22 Q. Is this just reflective of a plan you might
23 have in case you need to do curtailments?
24 A. Yes, sir. We have a rule about curtailment.
25 Q. And is this rule -- is that rule described in

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1 this slide?

2 A. Number 1 is clearly described in our rule.
3 Number -- the third bullet point with two underneath it
4 are clearly described in our Rule 7.2, I believe it is.
5 It doesn't say exactly the words in Number 2. But that
6 is the -- what you would glean from that if you read the
7 entire rule, yes.

8 Q. So in other words, your Rule 7.2 doesn't use
9 the word haircut [sic]?

10 A. That is correct, it does not.

11 Q. But if you read the rule that's actually
12 happening, people are getting --

13 A. There's going to be a reduction, yes.

14 Q. And this next bullet point says, "Current
15 District will provide for:" and then it says, "Historic
16 use permits at X curtailment, all other operating
17 permits at 2X." What does that mean?

18 A. That's just an example that it says, "As an
19 example." And -- and that means that historic use
20 permits are allowed under Chapter 36 to be -- have some
21 preference given to them. And so it is historic use
22 permits when curtailment is implemented, when it reaches
23 90 percent of the DFC three -- and it's three years in a
24 row, that's what the rule says. It has to be three
25 years in a row.

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1 Once it reaches that, then historic use
2 permits, when the percentage of curtailment is
3 determined, here's how much we need to reduce in order
4 to bring our pumping back to and not exceed the DFC, the
5 corrective measure, then historic use permits would be
6 curtailed X percentage. And all other operating permits
7 in that particular aquifer would be reduced twice as
8 much from the actual production.

9 Q. So historic use permits are not treated the
10 same as operating permits?

11 A. In this respect, yes.

12 Q. And in that same example, would it -- would --
13 when we're looking at the desired future condition,
14 which is targeted at currently 2070, correct?

15 A. Yes, sir.

16 Q. What you're saying is, I think if you reach a
17 certain percentage of -- and it's stated -- an artesian
18 head pressure?

19 A. Yes, sir.

20 Q. Depths to water in a wellbore?

21 A. Correct.

22 Q. Reduction in that depth on average across the
23 District?

24 A. Yes, sir.

25 Q. That is currently set at what?

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1 A. Our current DFC for the Simsboro is a 262 foot
2 -- feet of artesian reduction across -- average across
3 the District and by year 2070.

4 Q. And so what your goal is -- currently is to
5 have no more than that amount of reduction by 2070?

6 A. That is correct.

7 Q. I think what you're telling me is you're
8 looking at various -- in addition, like monitoring wells
9 and so forth, to see what the reduction is today.

10 A. We're constantly looking at that. That is
11 correct.

12 Q. And then projecting out into the future to see
13 if you're going to have, in 2070, no more reduction than
14 that amount, 268 feet or whatever it is?

15 A. Yes. We have a linear line that says it
16 started here in 2000, that's when the DFCs were -- were
17 zeroed back to 2000.

18 Q. Well --

19 A. And a linear line going to 2070 is that if you
20 pump constantly, then here's that linear line, and
21 you've reached the DFC in 2070, and we are continually
22 looking at that line as the baseline. And then we're
23 taking and looking at every single year we go and figure
24 what -- how much artesian head have we -- is -- how much
25 decline has there been in 2021, 2022, right on up that

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1 we've just -- just finished that up. And that makes a
2 -- a different graph. We always want to stay on the
3 better side of the linear line if at all possible.

4 Q. So you'd have a bunch of data points from
5 actual data for each year?

6 A. Yes, sir.

7 Q. And do you do some kind of progressive
8 analysis or correlations using Excel to project out what
9 that curve is going to look like in 2070?

10 A. And that -- yes, we do, but that -- those are
11 just assumptions --

12 Q. Right.

13 A. -- and that -- that's putting in. But if we
14 -- if we pump this much, then this is what it's going to
15 look like. So we -- yes, we've done a lot of that. But
16 again, those are not known things. They're just simply
17 assumptions that we would be pumping this much more
18 water; therefore, where are we going to be based on --
19 according to the DFC, as relative to the DFC.

20 Q. And when we use the expression we, does the
21 Board of Directors help you with that, or James Beach or
22 John Seifert, or do you do that on your own?

23 A. James Beach, now. John can be brought in. He
24 did do it. Now, it's James and -- and his gang. And
25 the Board does not do that.

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1 Q. Did you review Mr. Seifert's deposition from
2 the previous case in preparation for testifying today?

3 A. No, sir.

4 Q. I'm going to hand you what I've marked as
5 Exhibit 11.

6 (Plaintiffs' Exhibit 11 was marked for
7 identification.)

8 BY MR. JONES:

9 Q. Do you recognize this document?

10 A. I've -- I've seen it before.

11 Q. I represent to you that it bears a Bates
12 number at the bottom that would indicate that the
13 District produced it to us. Do you recall producing
14 this?

15 A. I can't say that I do. But I have certainly
16 seen this and would have probably had it in my position
17 at one point in time, early on.

18 Q. And it says at the bottom --

19 A. Not something that I've used in any of my
20 presentations.

21 Q. Okay. I'm sorry. You said, it's not anything
22 you use?

23 A. Not that I am aware of. It's marked Texas
24 Farm Bureau.

25 Q. At the bottom, correct?

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1 A. That's correct.

2 Q. 8/27/2012?

3 A. That's correct. And it was marked the date
4 that I hired on with the District.

5 Q. It is, isn't it?

6 A. So it's likely this came to me from Billy
7 Howell.

8 Q. All right. I'm handing you what I've marked
9 as Exhibit 12.

10 (Plaintiffs' Exhibit 12 was marked for
11 identification.)

12 BY MR. JONES:

13 Q. Do you recognize this document?

14 A. Yes. Without reading through this entire
15 document, yes, I -- I certainly do recognize it.

16 Q. What is it?

17 A. This was a white paper that was created at the
18 time for the legislative session. This says the 85th.
19 That sounds about right, where we had -- there were
20 entities in the state that wanted service areas to be
21 counted as their -- for it to be able to come in and
22 permit water.

23 And our Board is -- was completely adverse to
24 that, that everyone be treated as our rules say, which
25 is if you come in, you got to show us that you have,

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1 own, or control, or have the legal right to use
2 groundwater. And using someone's service area
3 unbeknownst to them was not an appropriate thing. So
4 the Board took a very strong, staunch -- stance against
5 that.

6 Q. So this is a -- a white paper for discussion,
7 right?

8 A. Yes, sir.

9 Q. It's entitled, "The appropriate" -- well, it's
10 entitled, "85th Interim Charge of the House Committee on
11 Natural Resources," which would be 2021, correct?

12 A. Say that again. 2021?

13 Q. What's the current one?

14 A. Eighty-ninth.

15 Q. Oh, gosh. I've lost track. So this --

16 A. This -- this apparently was in for the 2017 --

17 Q. Twenty -- yeah.

18 A. -- session -- session.

19 Q. Because it's dated September 27, 2018.

20 A. That's correct. It was still in the interim
21 charge.

22 Q. Yes.

23 A. And headed up to the 86th.

24 Q. And it's submitted by Brazos Valley GCD and
25 five others?

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1 A. Yes, sir.

2 Q. Including the High Plains, Under --
3 Underground Water Conservation District?

4 A. Correct.

5 Q. And the Panhandle Groundwater Conservation
6 District?

7 A. Yes, sir.

8 Q. And the North Plains Groundwater Conservation
9 District?

10 A. Yes, sir.

11 Q. How are these chosen?

12 A. The best that I can remember is that there
13 were those -- our position had already been made clear
14 through interactions likely through the Texas Alliance
15 Groundwater Districts. There were -- there had been of
16 the legislative session before that, likely dealt with
17 some of this. And we felt it was very important for
18 something like this to be created.

19 There were others, but then reached out and
20 says, "We have the same issues." So people -- Districts
21 were not chosen. They knew of the effort. And they
22 wanted to participate.

23 Q. All right. High Plains District, the North
24 Plains District, Panhandle District all have production
25 allocations that are based on acreage. Do you

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1 understand that?

2 A. Yes, sir, I do understand that.

3 Q. And do you consider the Brazos Valley rules to
4 be production allocations based on acreage?

5 A. Yes and no -- yes, but different than the way
6 that they go about it. They have a straight-up
7 amount --

8 Q. Sure.

9 A. -- per acre. Ours varies based on the size of
10 the footprint.

11 Q. For example, North Plains Groundwater District
12 says, if you -- that the allocation is 1.5 acre- feet
13 per acre, per year, period. So if I have --

14 A. Yes.

15 Q. -- a hundred acres, I get a hundred acre-feet?

16 A. Yes, sir.

17 Q. And it's not necessarily true with respect to
18 the Brazos Valley rules?

19 A. That is definitely not true with our rules.

20 Q. All right. So if I have a hundred acres
21 that's square, I need to be able to fit a circle in it
22 that's less than a hundred acres?

23 A. That is correct.

24 Q. And so, I --

25 A. But at the end of that day, depending on it,

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1 you will likely get far more than one acre-foot per
2 acre.

3 Q. Yes. The -- the way your rules work.

4 A. That's correct.

5 Q. But it's still tied to acreage?

6 A. Yes, sir.

7 Q. Do you recall who actually prepared the text
8 of this white paper?

9 A. I do not. There -- this was a -- a joint
10 effort among -- the actual text was a joint effort, I
11 believe, among attorneys that were involved with all of
12 the districts. They came up with a -- a final language.
13 But I -- I don't know.

14 Q. So in the middle of Page 2, we see the title,
15 "TRWA's Proposed Legislation." Relating to the Texas
16 Rural Water Association, correct?

17 A. Yes, sir.

18 Q. And apparently they wanted a -- an exception
19 for retail water utilities to something in Chapter 36?

20 A. Yes, sir.

21 Q. And it says, "The desired TRWA exception to
22 groundwater permitting would allow utilities to drill
23 wells on a small tract, typically one-third to one acre,
24 and produce large amounts of groundwater without giving
25 the surrounding property right owners compensation for

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1 the water produced and without obtaining the neighboring
2 property owners' permission."

3 Is that the evil that you-all are trying to
4 avoid?

5 A. Our evil was -- that we wanted to avoid was,
6 everyone needed to be treated the same when they're
7 permitted. And they needed to be able to show they had
8 the legal right to produce groundwater under the area
9 from which they were permitted. They got a permit.
10 Here's how much water. Show us that you own or control
11 it. That's -- that's the evil. Everyone needed to be
12 treated the same.

13 Q. Okay. And -- and so, what you mentioned here
14 is some utilities could drill a well on a tract as small
15 as an acre or a third of an acre, produce massive
16 amounts of water?

17 A. In other Districts, they can do that. In our
18 District, they cannot do that.

19 Q. Currently?

20 A. Currently cannot do that. Have not been able
21 to do that since -- no. To my knowledge have not been
22 able to do that under the rules that were promulgated
23 and adopted since December the 2nd of 2004. There were
24 wells that were already in place when the District was
25 formed, and they got historic use permits that were on

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1 smaller tracts of land, that had investment-backed
2 expectations.

3 So therefore, they were -- they were given the
4 historic use permits. To my knowledge, there's not been
5 any wells that have been drilled since that time that
6 didn't have to show that they had some owner -- had
7 ownership of what they were asking for.

8 Q. And so just to use an example, we're familiar
9 with, City of Bryan has its Well Number 18 sitting on
10 2.7 acres producing 3,000 gallons a minute
11 instantaneously, correct?

12 A. Yes.

13 Q. Under today's rules, they would not be able to
14 do that?

15 A. That is correct.

16 Q. So to produce 3,000 gallons a minute, today
17 they would need a radius around the wellbore of 6,000
18 feet?

19 A. No, sir. That is not correct. You can put a
20 pump in a hole, and if it will do 3,000 gallons a
21 minute, you can do that. It doesn't have -- you -- you
22 may be talking about a permitted amount -- permitted
23 amount --

24 Q. Right.

25 A. -- but any well can pump up to 3,300 gallons a



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1 minute, if it's capable. So production rate and
2 permitted amount are simply not the same.

3 Q. You're right. And this -- the average
4 annual --

5 A. It didn't even have to do with the average
6 annual. It simply has to do with the permitted amount.
7 So on a permit -- on a well, that has been permitted for
8 3,000 acre-feet or 4,839 acre-feet, is then the well
9 that will produce 3,000 gallons a minute constantly for
10 a year. It's been permitted for 4,839. It has a
11 prescribed footprint.

12 Q. All right.

13 A. And the prescribed footprint today, looks
14 different than the prescribed footprint that was before
15 September the 14th of 2023.

16 Q. So in your example, the prescribed footprint
17 before September 14th of 2023, for that well would be
18 3,000 feet of radius?

19 A. That is correct.

20 Q. And after September 14, 2023, it would be
21 6,000?

22 A. That is exactly correct.

23 Q. Okay. Was -- was it the position of Brazo's
24 Valley Groundwater Conservation District that these
25 municipalities or rules, these retail water utilities,

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1 should not be allowed to drill large wells on a small
2 tract?

3 MR. DE LA FUENTE: Object to form.

4 THE WITNESS: That -- that's correct, yes.

5 BY MR. JONES:

6 Q. And that was the point of this white paper?

7 MR. DE LA FUENTE: Object to form.

8 THE WITNESS: The point of the white paper is,
9 you need to own or control the property under which you
10 produce water and not use someone else's property
11 rights.

12 BY MR. JONES:

13 Q. Looking at Page 3 of this exhibit, the bottom
14 of the first paragraph, there's a sentence that says,
15 "Groundwater management would be questionable if
16 one-third of the permittees do not have to comply with
17 the same regulations." What does that mean?

18 A. I -- I'd have to have more context. I don't
19 know exactly, I'd have to read this entire paragraph.

20 Q. Well, feel free.

21 A. Okay.

22 MR. DE LA FUENTE: Are you asking Mr. Day
23 individually?

24 MR. JONES: Okay. I'm asking him, as the
25 corporate representative of Brazos Valley Groundwater

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1 Conservation District, what the District meant when it
2 endorsed this sentence in the white paper.

3 MR. DE LA FUENTE: Okay. And which deposition
4 categories does this relate to?

5 MR. JONES: Twenty.

6 THE WITNESS: Okay. This relates back to two
7 sentences above, where it says, "Rural water utilities
8 are the second largest user of groundwater in Texas,
9 using around one-third of all annual groundwater use."
10 So therefore, the sentence of groundwater management
11 would be questionable if a third of the permittees did
12 not have to comply with the same regulation. The answer
13 is yes to your question.

14 BY MR. JONES:

15 Q. What -- what was my question?

16 A. You know, I -- I don't know. Ask your
17 question again.

18 Q. I was just asking what it meant, I think.

19 A. Okay. It -- it means that a third -- if a
20 third of groundwater users in the state of Texas don't
21 have to comply with groundwater management rules that
22 were promulgated by the districts, then what -- why even
23 have groundwater management? And I -- we would agree
24 with that.

25 Q. I understand. The next paragraph down says,

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1 "Potential Lawsuits."

2 A. Okay.

3 Q. And it says, "Any proposed language that
4 allows rural water use suppliers to buy small acreage
5 and produce as much water as needed without securing the
6 groundwater rights from the neighboring property owners,
7 would motivate those landowners to file lawsuits
8 claiming that such a permitting system unreasonably
9 favors retail water utilities, and compromises a fair
10 share allocation." So my question is: What is meant by
11 the expression fair share allocation?

12 A. I -- I really can't speak to that. I can
13 speak to what most of that says, and -- and that is,
14 you've got to protect -- everyone needs to be treated
15 the same under a set of rules. And you don't pick and
16 choose as to this group gets favorable treatment and --
17 and can harm, I guess that's -- can affect the neighbors
18 in a way that's different. So under that set of rules,
19 everyone's to be treated the same.

20 Q. Paragraph 4 talks about "decreases the value
21 of groundwater rights." The sentence says, "Allowing
22 non-contiguous acreage." Let's just stop there. Your
23 rules require contiguous acreage to be owned or
24 controlled around a wellbore?

25 A. Yes, sir.

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1 Q. And that's one -- one of the considerations in
2 an -- in an application.

3 A. Yes, sir.

4 Q. As to whether you, as the general manager,
5 declared administratively complete or not?

6 A. That is correct.

7 Q. And so the first sentence says, "Allowing non-
8 contiguous acreage," would mean I own a -- a hundred
9 acres across the county from the property I want to
10 drill the well on, I can't count that hundred acres as
11 part of my allocation.

12 A. That's correct. Not -- not in our District,
13 you can't do that.

14 Q. And it says, "Where mandating use of the
15 service area as their own groundwater rights would
16 likely decrease the value of groundwater, thereby
17 affecting most landowners' property/groundwater rights."
18 What does that mean?

19 A. You might have to ask the authors. I know
20 what I might mean personally. I don't know about
21 speaking for the District.

22 Q. But does it mean --

23 A. Speaking for the District that don't know.

24 Q. What does it mean to you -- what does it mean
25 to you personally?

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1 A. It means that if I can go up to an area and
2 that -- just out to an area in the aquifer and get some
3 groundwater rights over here, it has diminished any
4 market for those that are around where a well is going
5 to be drilled to have had a marketable product to
6 somebody that wanted to -- to drill a well right there.

7 Q. Why would --

8 A. They did no longer -- so it -- it -- anyway,
9 go ahead. I'm sorry.

10 Q. Why would that be true? How would it impact
11 the market value of the property around you?

12 A. If they needed to drill a well in a certain
13 place, and they have to follow the rules of the District
14 and be able to own or control the well, the -- the water
15 rights around that, then it brings value to those that
16 are around to be able to get those water rights.

17 If they can superimpose other water rights in
18 another place and that diminishes the value of the water
19 rights that were available that needed to be, under our
20 rules, would need to be brought in and brought --
21 brought into play.

22 Q. So -- and -- and in the context of Exhibit 12,
23 Brazos Valley Groundwater Conservation District signed
24 onto this white paper, including this paragraph 4, that
25 we just discussed?

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1 A. Yes.

2 Q. And you would recognize that regulation can
3 impact the market for water?

4 MR. DE LA FUENTE: Object to form.

5 THE WITNESS: I -- I think that's possible,
6 yes.

7 BY MR. JONES:

8 Q. Okay. And in this instance, treating for
9 example, the rural water suppliers differently could
10 impact the market for their groundwater rights around
11 the area where the water was being produced by the
12 retail water producers?

13 A. Certainly in this example, yes.

14 MR. JONES: So, you know, it's like 12:20.
15 We've been going almost another hour now. What's your
16 pleasure with respect to lunch? Because we like to have
17 witnesses that are well fed and well rested.

18 MR. DE LA FUENTE: How long you thinking?

19 MR. JONES: Quite a while.

20 MR. DE LA FUENTE: Well, then we probably need
21 a lunch break.

22 MR. JONES: All right. An hour work?

23 MR. DE LA FUENTE: Hour works.

24 MR. JONES: Let's do that.

25 THE VIDEOGRAPHER: Okay. Time is now 12:20

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1 p.m. We are off the record.

2 (Recess from 12:20 p.m. to 1:27 p.m.)

3 THE VIDEOGRAPHER: All right. This is Media
4 Tape Number 4. The time is now 1:27 p.m. We're back on
5 record.

6 BY MR. JONES:

7 Q. Mr. Day, we just got back from lunch. Did you
8 and your counsel discuss your testimony during lunch?

9 A. Very little. We talked about food mostly.

10 Q. But you did talk about your testimony?

11 A. This -- this much. Very little.

12 Q. Did Counsel suggest that you change any
13 testimony?

14 A. He did not suggest me to do one thing, except
15 keep plowing the row.

16 Q. And no other recommendations or advice?

17 A. No, sir.

18 Q. Keep plowing the row.

19 A. That's correct.

20 Q. It's a farm expression.

21 A. That's correct.

22 Q. Meaning?

23 A. Keep going.

24 Q. This is Exhibit 13.

25 (Plaintiffs' Exhibit 13 was marked for

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1 identification.)

2 BY MR. JONES:

3 Q. Do you recognize this?

4 A. Give me just a second. Yeah, I -- I mean, I
5 recognize it because I --

6 Q. Wrote it?

7 A. Yes.

8 Q. Okay. You're -- it's an email from you to
9 Monique Norman, who's counsel for the District, correct?

10 A. Uh-huh.

11 Q. Who is Heather Harwood -- Harwood?

12 A. She was our lobbyist, our legislative
13 consultant at the time.

14 Q. The District as a lobbyist?

15 A. We had one contracted during that session.

16 Q. Is that typical for legislative sessions that
17 you'll have a lobbyist?

18 A. It just depends on the -- the session and what
19 might well be brought up during that session.

20 Q. The subject is "White Paper on HB 1318
21 Issues." Correct?

22 A. Yes.

23 Q. And I take it HB 1318 was what the Texas Rural
24 Water Association was proposing?

25 A. Yes.

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1 Q. And then it says, "Attachments, clean draft HB
2 1318 white paper January 27th of 2018, AMD."

3 A. Yes, it does.

4 Q. AMD would be your initials?

5 A. That's correct, yes.

6 Q. All right. Does this indicate that you were
7 involved in drafting the white paper?

8 A. This would have been involved in looking at a
9 final draft of it, that kind of draft, and seeing if
10 there were any to go over for, I guess, drafting, but
11 not for major type things. That was left to somebody
12 else.

13 Q. Who principally drafted the white paper?

14 A. I do not remember that. I don't remember.

15 Q. Did you agree with these statements in the
16 white paper?

17 MR. DE LA FUENTE: Object to form.

18 THE WITNESS: The answer was yes.

19 BY MR. JONES:

20 Q. So the e-mail says that you're "attaching a
21 white paper developed over the past two months, with
22 cooperation from other Districts," and it lists them --

23 A. Yes.

24 Q. -- "which used production-based acreage."

25 Just stop there and ask, what does that mean,

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1 production-based acreage?

2 A. Acres or -- or permits that are associated
3 with acreage -- acreage is associated with the
4 production of water at some level.

5 Q. It -- it's another way to say that correlative
6 rights system?

7 MR. DE LA FUENTE: Object to form to the
8 extent it calls for a legal conclusion.

9 THE WITNESS: Correlative rights has a couple
10 of definitions. It's one way in oil and gas. It's one
11 way, and used loosely, in water.

12 BY MR. JONES:

13 Q. All right. Tell --

14 A. They're strict relative rights --

15 Q. Yes.

16 A. -- that -- that the Railroad Commission uses
17 absolute relative rights, and then there are those
18 groundwater Districts that say, and we're going to
19 associate this amount of land with this amount of water,
20 which is not the same correlative right as the Railroad
21 Commission has.

22 Q. What's your understanding is the difference?

23 MR. DE LA FUENTE: Are you asking Alan Day
24 individually?

25 MR. JONES: I think I just asked him

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1 individually what his understanding of the difference
2 was.

3 THE WITNESS: There's a formula that is set
4 within the oil and gas correlative rights that gives you
5 a -- a base amount and it also gives you -- and looks at
6 what else you might have that is different from others
7 that are within the pool or whatever it might be. And
8 you are -- said you can draw X amount from this
9 reservoir, okay? And the reservoir is identified as
10 we're going to take all -- every drop of oil and gas out
11 here.

12 The difference over here is that we have a
13 replenishable resource and it is -- we're -- we're going
14 to use something that's similar over here and say, you
15 can use -- get this much water from that, but it's not
16 determined, that I know, by how much water is there,
17 under your part, under that part, under that part,
18 that's the difference that I see.

19 BY MR. JONES:

20 Q. Okay. So I think -- I think I understand what
21 you're saying. In the oil and gas world, the -- the
22 Railroad Commission might actually make a determination
23 as to the thickness of the formation --

24 A. Yes, sir.

25 Q. -- as part of their analysis --

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1 A. I'm sorry.

2 Q. -- of how much you get.

3 A. That's what I understand, yes.

4 Q. And then essentially assign a certain number
5 of barrels or MCF per acre based on some slightly more
6 sophisticated analysis?

7 A. That's what I understand, yes.

8 Q. And -- and in the water world, when we -- when
9 you're saying production-based acreage, you're
10 essentially saying we take your raw number of acres and
11 make an allocation of water on a per-acre basis?

12 MR. DE LA FUENTE: Object to form.

13 THE WITNESS: That sounds correct, yes.

14 BY MR. JONES:

15 Q. And then in Exhibit 13, in the next paragraph,
16 single sentence paragraph, you say, "As you read the
17 paper, I believe you will clearly see it espouses what
18 our rules require." What does that mean?

19 A. That means and we require that anyone, rural
20 water supply, doesn't matter, have the legal authority,
21 the legal right to produce groundwater in the footprint
22 at where the well is going to be drilled and produced,
23 and not to be able to use a service area as the
24 determinant of I have property rights.

25 Q. I'm handing you Exhibit 14. It is the Initial

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1 Disclosures filed by Defendant Brazos Valley Groundwater
2 Conservation District.

3 (Plaintiffs' Exhibit 14 was marked for
4 identification.)

5 BY MR. JONES:

6 Q. Have you seen this before?

7 A. Yes, I have.

8 Q. Where have you seen it?

9 A. In the documents that my attorney has
10 provided. I have looked over these. I was not aware
11 that this is what is called the Rule 26 Disclosures. So
12 yes, I have looked at these, maybe spent a minute
13 reading through them, and looking at them. And -- yes.

14 Q. Did you help provide any content for these
15 disclosures?

16 A. These are the same. I provided the rules.
17 Provided -- says on the response, we provided the rules
18 to -- for production. And so, there was some, on my
19 part, things that I was asked for that would meet this,
20 that I would have -- I would have done that.

21 Q. So you're referring to Page 4 of the exhibit
22 under -- it's going to sound pretentious, Roman at ii,
23 the -- the little double "i" there, right? "Pertaining
24 to a description, a" -- "a copy or description of
25 documents." Right?

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1 A. Uh-huh.

2 Q. And you're saying that you provided the rules
3 and the applications?

4 A. That would be correct.

5 Q. Now, let's look at the little "i" above it at
6 the top. "The name, and if known, the address and
7 telephone number of each individual likely to have
8 discoverable information. Along with the subject of the
9 information that the disclosing party may use to support
10 its claims or defenses," and so forth. Did you provide
11 any information for that?

12 A. I -- I don't remember.

13 Q. Do you recall reviewing it before it got filed
14 or sent to us?

15 A. I-- I know that I reviewed everything. So
16 yes, I reviewed it.

17 Q. Okay. When you reviewed it prior to it being
18 delivered to us, did you think it was complete?

19 A. Yes. Absolutely.

20 Q. You've told me this morning that some of your
21 staff would be knowledgeable about permits or might
22 communicate with the Board of Directors about certain
23 issues. They're not listed here, are they?

24 A. I -- I did not say to you that they would be
25 correspond -- or -- or talking to the Board members

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1 about anything to do with a permit application.

2 Q. All right.

3 A. I said that I might farm out some of the work
4 that's associated with the permit ad hoc; they would not
5 have been visiting with anyone about it. So they're not
6 going to have knowledge, full knowledge, of any permits.

7 Q. But they would have knowledge of the work done
8 to look at the permits?

9 A. Possibly a small portion of it. But not the
10 entirety of the permit.

11 Q. With that caveat, that -- that qualification
12 that they -- they would have some information, albeit in
13 part -- partial information, about what goes into a
14 permit?

15 A. I would say one person might have some
16 knowledge, and that would be Megan on an extremely
17 limited basis.

18 Q. Okay.

19 A. So as -- so going back to the document and
20 then asking for names that might have discoverable
21 information, I wouldn't have included her on that, so --

22 Q. So in your review of this document before it
23 got sent to us, did you suggest any other names? Yours
24 is the only name listed --

25 A. Not that I remember.

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1 Q. Yours is the only name listed here, correct?

2 A. Yes, sir.

3 Q. Does this mean that the members of the Board
4 of Directors don't have any information about the issues
5 in this case?

6 MR. DE LA FUENTE: Object to form.

7 THE WITNESS: Would not know the answer to
8 that.

9 BY MR. JONES:

10 Q. Would the Board of Directors have any
11 information with respect to the procedures for changing
12 rules?

13 MR. DE LA FUENTE: Object to form. The
14 category does not ask for that information. That's --
15 that's discoverable information.

16 THE WITNESS: They certainly know about how to
17 change the rules.

18 BY MR. JONES:

19 Q. Or why to change the rules?

20 A. They make their own decisions about why.

21 Q. Presumably based on information?

22 A. You'd have to ask them. Because -- or you
23 could go back to documents of -- of hearings and
24 workshops, and we have some transcripts, and we have
25 some videos where you could actually -- might hear

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1 someone speaking about that.

2 Q. Did you review any of those materials before
3 this document, the -- the initial disclosures were sent
4 to us?

5 A. I did not because the -- those -- that -- any
6 of the rule changes and things that went on are
7 decisions by the Board, as a whole. So any thoughts
8 that are within each and every one of those individuals
9 is not something I'm going to go and review. I -- I've
10 got minutes. I have -- I have all of those things that
11 clearly have been provided to you that y'all can look
12 and you can see what the Board made decisions on.
13 You'll see the same documents that they've seen that
14 would have been produced by me and/or James Beach.

15 Q. So you're saying in your opinion, in your
16 personal knowledge, that the Board members might not
17 have information pertaining to the reason the rules were
18 changed?

19 A. I'm not saying --

20 MR. DE LA FUENTE: Object to form.

21 THE WITNESS: I'm sorry. I am not saying
22 that.

23 BY MR. JONES:

24 Q. What --

25 A. I'm saying it's -- it's possible they do. I

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1 don't know.

2 Q. Well, who would --

3 A. Okay.

4 Q. I guess a Board member would know.

5 A. I would -- let me further answer that. If
6 they were at a workshop or a rules hearing, or a Board
7 meeting, they would have heard recommendations, they
8 would have had discussions about changing the rules.
9 And they have an opportunity to have full discussion
10 about that, ask questions, and become aware of why or
11 why not would be we -- we want to be doing that.

12 So if they're listed in any of those Board
13 meetings, workshops, rule committee, rules hearing, or
14 when we adopted the rules, then they would -- they
15 could, they could or had access to all the information,
16 much of the information they needed in order to make a
17 decision.

18 Q. So to summarize, they might have information
19 with respect to some of the issues in this case?

20 A. They certainly might.

21 Q. But they're not listed in the initial
22 disclosures?

23 A. No, they're not listed in there.

24 Q. Do you know why?

25 MR. DE LA FUENTE: Objection to the extent it

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1 calls for legal -- legal position or -- or discussing
2 advice of counsel.

3 MR. JONES: Well --

4 MR. DE LA FUENTE: If you know, you may
5 answer; otherwise.

6 BY MR. JONES:

7 Q. As the corporate representative of Brazos
8 Valley Groundwater Conservation District, do you know
9 why their names are not listed in the initial
10 disclosures?

11 MR. DE LA FUENTE: I'm going to object to the
12 extent that asks for legal reasons why Board members,
13 when only the Board can act as a whole as a matter of
14 law, are not listed as people with discoverable
15 information.

16 THE WITNESS: I don't know if they have
17 information or not.

18 BY MR. JONES:

19 Q. Is it possible they don't?

20 A. They may have been asleep. I do not know the
21 answer to that.

22 Q. I think we could probably stipulate they have
23 been asleep. But --

24 A. I don't --

25 Q. -- you don't know?

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1 A. I don't know.

2 Q. So you don't know whether Jayson Barfknecht
3 Bartnick has information relating to the change of
4 rules?

5 MR. DE LA FUENTE: Object to the extent it
6 asks about information, as opposed to discoverable
7 information.

8 THE WITNESS: I don't know.

9 MR. DE LA FUENTE: It still requires
10 disclosure as to discoverable information.

11 THE WITNESS: I don't know.

12 BY MR. JONES:

13 Q. Or John Elliott?

14 A. I do not know.

15 MR. DE LA FUENTE: Same objection.

16 BY MR. JONES:

17 Q. Or Mr. Carrabba?

18 MR. DE LA FUENTE: Same objection.

19 THE WITNESS: I do not know.

20 BY MR. JONES:

21 Q. Or Mr. Cast?

22 MR. DE LA FUENTE: Same objection.

23 THE WITNESS: Don't know.

24 BY MR. JONES:

25 Q. Mr. Mechler?

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1 MR. DE LA FUENTE: Same objection.

2 THE WITNESS: I don't know.

3 BY MR. JONES:

4 Q. Mr. Kennedy?

5 MR. DE LA FUENTE: Same objection.

6 THE WITNESS: I don't know.

7 BY MR. JONES:

8 Q. Chris Zeek?

9 MR. DE LA FUENTE: Same objection.

10 THE WITNESS: Zeig.

11 BY MR. JONES:

12 Q. Zeig?

13 A. Zeig.

14 Q. Do --

15 MR. DE LA FUENTE: Same objection.

16 THE WITNESS: I do not know.

17 BY MR. JONES:

18 Q. Or Ms. Rolke?

19 MR. DE LA FUENTE: Same objection.

20 THE WITNESS: Do not know.

21 BY MR. JONES:

22 Q. Does anyone outside the Board of Directors or
23 yourself, to your knowledge, have information relating
24 to the reasons for changing Rules 6.1 and 7.1?

25 A. Me or anyone outside of?

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1 Q. Yes. The Board or yourself?

2 A. I certainly know the reasons that I
3 recommended certain things, whether it's 6.1 or 7.1. I
4 really can't speak for anyone else. I can speak for
5 myself on that.

6 Q. James Beach?

7 A. I don't know about James Beach.

8 Q. You don't know whether --

9 A. I would say -- I say that Monique Norman, but
10 I can't speak to James Beach.

11 Q. You don't know --

12 A. James Beach and -- we were not speaking -- we
13 --I was not speaking to him about changing Rule 6.1 and
14 7.1. That was not his job. It's not his charge. His
15 charge is to do the things that I'm asking him to do,
16 and that the Board's asking to be done. And that was to
17 perform modeling that we asked him to do.

18 Q. So it would be fair to say that Mr. Beach does
19 have some knowledge about the modeling that he did in
20 connection with the changes in Rules 6.1 and 7.1?

21 A. No, sir. They didn't have anything to do with
22 that. There was no modeling done to change Rules 6.1
23 and 7.1. It was all done on the modeling we had him to
24 do, that I instructed him to do, dealt with permits that
25 were coming to the Board, that had hydrogeological

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1 reports. They would evaluate the reports and I had him
2 produce a supplemental document. What is the effect on
3 the DFCs? And make that available to me and make it
4 available to the Board. Which he did. And it's
5 available to the public. It's online for everyone to
6 see. It was not done to change Rule.6.1 [sic], nor 7.1.
7 It was not -- that -- there was no -- that was never the
8 charge.

9 Q. Let me see if I can be clear here. Were any
10 studies done at your direction or the direction Board of
11 Directors to determine whether Rule 6.1 or Rule 7.1
12 needed to be altered?

13 MR. DE LA FUENTE: Object to form.

14 THE WITNESS: No.

15 BY MR. JONES:

16 Q. Was any new scientific information relied upon
17 by you in recommending changes to the rules?

18 A. Data collected during the summer -- starting
19 in the summer of '22, July of '22, and moving forward,
20 all and up until the time that the rule has changed, so
21 that's during the Rules Committee hearing, Rules
22 Committee meeting, I mean, the workshop, all of those
23 things that data figured into a reason to recommend to
24 the Board that they should consider a change to both
25 Rules.6.1 and 7.1.

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1 Q. Have you previously, in this deposition,
2 described to me that data?

3 A. Yes. Absolutely.

4 Q. Is there any other data that you haven't told
5 me about?

6 A. Not that's already been created. It was
7 created in the hydrogeologic in the -- in the James
8 Beach, making sure the hydrogeological reports were
9 complete and the -- and the VFC supplement was done.
10 Those are the only documents. There were no other
11 studies done.

12 Q. Was any modeling done in connection with the
13 changes of these rules?

14 A. No, sir.

15 Q. Do you know, by the way, whether an insurance
16 company is paying the attorneys' fees in this case?

17 A. I certainly do know the answer to that.

18 Q. What is the answer to that?

19 A. No, sir. They are not.

20 Q. So the District's bearing the attorneys' fees?

21 A. Yes, sir, we are.

22 Q. Have you been made aware that we've offered a
23 settlement that would cost the District no money and no
24 attorneys' fees?

25 A. Yes, sir. I've been made aware of that.

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1 Q. Has that been conveyed to the Board?

2 MR. DE LA FUENTE: I -- I'm going to instruct
3 the witness not to discuss any internal discussions of
4 settlement offers.

5 BY MR. JONES:

6 Q. Do you expect the Board members to read this
7 deposition?

8 A. I just wouldn't know. I actually would not
9 know.

10 Q. If they ask you for a copy, you'll provide it?

11 A. Yes, sir.

12 Q. You're aware that Charles Fazzion was granted
13 some permits on September 14, 2023?

14 A. Yes, sir.

15 Q. And all tracts of land are not involved in
16 this litigation?

17 A. That are involved, you said?

18 Q. That are not involved.

19 MR. DE LA FUENTE: Object to form.

20 BY MR. JONES:

21 Q. He was granted permits on some tracts of land
22 that are not involved here. Do you understand that?

23 MR. DE LA FUENTE: Object to form. Plaintiff
24 does not disclose exactly what tracts of land might or
25 might not be involved.

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1 MR. JONES: We haven't sent you a deed?

2 MR. DE LA FUENTE: You sent me a deed, but
3 your responses say it includes this 69-acre tract, but
4 you have not said that's the only tract.

5 BY MR. JONES:

6 Q. Have you seen the deed to this 69-acre tract
7 that Mr. de la Fuente just referred to?

8 A. Not that I remember.

9 Q. Are you aware that Fazzino Investments owns a
10 69-acre tract that has no current permit on it?

11 A. Yes.

12 Q. Do you know where that tract is?

13 A. Yes.

14 Q. How do you know that?

15 A. I knew that he owned a 69-acre tract that was
16 -- basically surrounded the wrecking yard, that sits
17 between Highway 6 and Old Hearne Road. I have spoken
18 directly with Charles Fazzino about that tract.

19 Q. Okay. What has that conversation been like?

20 A. What has it been like?

21 Q. Yeah. What -- what did Mr. Fazzino say to
22 you, you say to him?

23 A. He -- he needed to know what was the largest
24 footprint that he could draw on the property and how
25 much water he could get under today's rules?

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1 Q. Under today's rules?

2 A. Under today's rules.

3 Q. So if he presented to you as a general manager
4 of the Groundwater District with an application that
5 asked for allocation under the old rules, you would
6 consider that administratively incomplete, correct?

7 A. That is correct.

8 Q. And you would not submit to the Board?

9 A. That is correct.

10 Q. And no permit would be issued?

11 A. It would not. Not under that -- those
12 circumstances, that's correct.

13 Q. And as you told me earlier, there are no
14 exceptions?

15 A. There are no exceptions.

16 Q. Did you make a calculation as to what kind of
17 well he could put on that 69-acre tract under the new
18 rules?

19 A. Yes, I did.

20 Q. Do you remember what that calculation showed?

21 A. Five hundred and eighty-five acre-feet. That
22 was roughly -- it's in the ballpark.

23 Q. And that was just running the numbers through
24 the formula?

25 A. That was drawing the footprint in the most --

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1 most advantageous place on the property, measuring the
2 diameter of that circle, and then running the radius
3 through, or running that backwards from -- to come up
4 with acre-feet.

5 Q. Okay. Do you have a spreadsheet that helps
6 you with that calculation?

7 A. No, sir. I do not. It's in my head.

8 Q. Do you do it by hand?

9 A. I do it by hand.

10 Q. Okay.

11 MR. DE LA FUENTE: Don't talk about how old we
12 are, Marvin.

13 MR. JONES: Would you like a spreadsheet that
14 does the calculation? I can make a donation.

15 BY MR. JONES:

16 Q. So a 585 acre-feet?

17 A. Yes, sir. And that's going to be in the
18 ballpark. It's not the exact number. It's going to be
19 in the ball park.

20 Q. And of course, that would be in a circle?

21 A. Yes, sir.

22 Q. Is the property shaped in a circle?

23 A. No, sir, it is not.

24 Q. What is the shape of that property?

25 A. It has a leg that comes in this way, and

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1 that's off there on -- on Old Hearne Road, comes back
2 up, it encircles the wrecking yard, which is a little
3 piece. It's a -- it's a U-shape that doesn't quite come
4 all the way back to Highway 6 on one side and does come
5 all the way to Highway 6 on the south side.

6 Q. So if it's a U-shape, how do you fit a circle
7 in it?

8 A. You put a circle in the place where he owns or
9 controls the water, and it does not exceed his
10 boundaries, his property lines.

11 Q. The circle cannot exceed the boundary lines?

12 A. That is correct.

13 Q. All right. So --

14 A. Which is the same we've been doing since --
15 for a long time.

16 Q. Did you put multiple circles?

17 A. I did not. He asked me -- one well. He said,
18 "I want" -- "what's the biggest circle for one well on
19 that property?"

20 Q. Now --

21 A. He could have put more.

22 Q. By drawing smaller circles?

23 A. Yes, sir.

24 Q. On the circle that you drew, did you --
25 concluded he could have 585 acre-feet. Within that same

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1 spot on the property, if the -- he had applied under the
2 old rules, how many acre-feet would he have been able to
3 get?

4 A. It would have been 585 times 2.

5 Q. Which would be something under 1,200 acre-
6 feet?

7 A. Correct.

8 Q. Mathematically. So under the new rules, he
9 could get half?

10 A. That's correct.

11 Q. Does he have the neighbors out there?

12 A. Yes.

13 Q. Are you familiar with the neighbors?

14 A. I think there's a sub -- a trailer subdivision
15 -- trailer park subdivision to his south and back to the
16 north, I'm just not certain.

17 Q. Do you know whether any of his neighbors have
18 wells? By that, I mean non-exempt wells.

19 A. They do not.

20 Q. What's the closest non-exempt well to Mr.
21 Fazzino's property?

22 A. Currently, it would likely be the Wellborn
23 Specialty Utility District Blackjack Well out on 2549,
24 as the crow flies. That's likely to be -- there's a lot
25 of wells that have been permitted, but that would be the

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1 party and production.

2 Q. And what size well is that?

3 A. Size being?

4 Q. What's its capacity in gallons per minute?

5 MR. DE LA FUENTE: Are you asking the maximum
6 pumping rate or its permitted average annual GPM?

7 MR. JONES: Asking for the maximum pumping
8 rate (cross-talk) --

9 THE WITNESS: I -- I believe it's 2,000
10 gallons a minute.

11 BY MR. JONES:

12 Q. Do you know what the --

13 A. I'd -- I'd have to go back and look at the
14 specifics on it, but --

15 Q. Do you know what the --

16 A. -- I think that's ballpark, right?

17 Q. Do you know what the allocation is for that
18 Wellborn side of the property?

19 A. Not off the top of my head, I certainly don't.

20 Q. Let me show you what I've marked as Exhibit
21 15.

22 (Plaintiffs' Exhibit 15 was marked for
23 identification.)

24 BY MR. JONES:

25 Q. Are you familiar with that document?

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1 A. Yes.

2 Q. What is it?

3 A. This is a listing of wells -- permits, excuse
4 me, they were issued on/or before September the 14th of
5 2023.

6 Q. And for the record, this relates to Topic 3 on
7 the corporate representative deposition list.

8 A. Okay. Yes.

9 Q. Well, permits that were issued prior to
10 September 14, 2023, correct?

11 A. Yes.

12 Q. Do you know how many wells are listed here?

13 A. I do not.

14 Q. Would it -- would it sound about right if I
15 said, just over 1,000?

16 A. That sounds plausible.

17 Q. So help me out with the columns here. So I
18 think I understand. Company means the -- a company that
19 might own or control the property?

20 A. Yes. Correct.

21 Q. Okay. First name, last name, is if it's
22 different from the company name, is -- is what?

23 A. Is the person that we would -- in our database
24 that we would contact.

25 Q. The number is what?

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1 A. That's the permit number. So if it's a BVHU,
2 that's a historic use permit, DO is a drilling operating
3 permit, and OP is an operating permit, which would be
4 the -- the permit that already had the well before the
5 District was formed. So they came in and said we want
6 permit.

7 Okay. So this is a designation within our
8 District so that we can look at an OP go that well, was
9 already in place. And a DO is, this has happened since
10 the inception of the rules.

11 Q. In the -- in the vernacular of the rules,
12 what's an existing well?

13 A. And existing well, in our definition, is a
14 well that was in the process of being drilled when the
15 rules were being promulgated and -- and it had already
16 had significant development that had been -- that had
17 occurred on the well prior to December the 2nd of 2004.
18 And there ended up being nine wells that were existing
19 wells.

20 Q. One of which was Bryan's Well Number 18?

21 A. Well Number 18 was one of them, that's
22 correct.

23 Q. Are there any allocation rules that apply to
24 existing wells?

25 A. Existing wells did not have to have -- any of

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1 those wells, they had already started their process of
2 getting the well in place. They did not have to have a
3 footprint drawn in order to say an allocation of acreage
4 to it, but they still have to come back to the District
5 and get -- get that -- an approved amount put on the
6 well.

7 Q. Historic use wells, as I understand it, have
8 an allocation based on historic use?

9 A. That's correct. They -- they prove that up,
10 here's how much we -- the highest amount we've ever used
11 on this particular well in any given year, and that
12 became the permitted amount on the well.

13 Q. So the spacing rule in Rule 6.1 doesn't really
14 apply to them?

15 A. It -- it doesn't apply to them.

16 Q. That's not, right?

17 A. It does not apply.

18 Q. Okay. You said the contraction doesn't and I
19 was afraid I misunderstood it.

20 A. Okay. I'm sorry.

21 Q. Do you know how many historic use wells there
22 are in the District?

23 A. I do not. I don't know the answer to that.
24 There's six -- there's probably 600 plus that are
25 alluvial wells, and from there on the rest, I just don't

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1 know. But it's certainly north of 600.

2 Q. So prototype is what you just said, historic
3 drilling/operating or operating rules?

4 A. That's correct.

5 Q. The column "Original" stands for what?

6 A. The original date of issue.

7 Q. So they should go back to 2004?

8 A. This -- no. There's no there weren't any --
9 our permits issued, and they're probably -- I think the
10 earliest was in 2005.

11 Q. All right. What does the column "Amount by
12 Acres" mean?

13 A. This is this -- golly. Let me think minute.
14 Let me look. Okay. This is the number of acre-feet
15 that are associated with the permit. So if I got a
16 permit and I went and found the hard copy of the permit,
17 the -- the DVHU 300 would list 95.24 acre-feet on the
18 permit. It would be literally listed there. And the
19 next thing, the next column says pump rate, and at a --
20 600 gallons per minute, that would be what would
21 physically be on the permit. Our permits are listed in
22 acre-feet not in gallons.

23 Q. Yeah.

24 A. Okay?

25 Q. So the -- I'm sorry, the pump rate is the

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1 acre- feet?

2 A. No, sir.

3 Q. No. It's -- it's the actual rating in the
4 pump, right?

5 A. That's right. What can you -- at what rate --
6 what maximum rate can you pump the well so that a permit
7 applicant gives us that number?

8 Q. Actually, could be a difference between the
9 rated capacity of the pump and -- and what it will pump
10 out of a given hole?

11 A. Yes, sir.

12 Q. All right. But this is the rated capacity of
13 the pump just in the --

14 A. That is the -- that is the permitted -- the
15 maximum gallons per minute that they can set a pump to
16 pump.

17 Q. All right. So it might be 1,000 gallon in a
18 pump, but you're telling them you got a limit, in this
19 instance, to 600 GPM?

20 A. And we just don't allow that. We don't allow
21 that because it's too easy for them to just, there you
22 go, just notch it up. So you're going to set the pump,
23 and that's the right you're going to pump it at, and
24 they set their pump to do that. Now, do we go out and
25 make them pump it and show us that that's what -- we

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1 don't do that.

2 Q. So in terms of sequence, they'll first come
3 and ask you, I need a permit. You'll say how many
4 gallon -- how many acre-feet do you need?

5 A. That's my first question.

6 Q. How many acre-feet do you need? Then you kind
7 of run that through the formula, and say, okay, you can
8 put a 600 gallon per minute pump in that hole.

9 A. I don't tell them anything about how -- what
10 size pump they can put in there. They could put a 3,000
11 gallon per minute pump in there, they just couldn't pump
12 it as long in order to reach their --

13 Q. I see.

14 A. -- permitted amount. If the well is capable
15 of it, they can go to 3,300 gallons per minute, that's
16 our maximum instantaneous pumping rate.

17 Q. They just can pump fewer hours.

18 A. That's correct.

19 Q. And I assume you have meters on these wells?

20 A. Meters on any wells that are not in the Brazos
21 River alluvium. A non-exempt well that is in a confined
22 aquifer must have a meter.

23 Q. And to be specific, a -- non-exempt well in
24 the Simsboro must have a meter?

25 A. That is correct.

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1 Q. And what is the final column here, "Contiguous
2 Area"?

3 A. That -- it -- it was asked for so some of
4 these we have actually figured -- when I -- when I do a
5 permit worksheet, one of the things -- I go through the
6 formula. We'll go here's -- they're wanting this, x, y,
7 and z. And then I go through the formula of they want
8 this many acre-feet, I'm going to annualize the
9 production, it equals this amount. That's the gallons
10 per minute that it takes annually to produce it.

11 I take that number and I go times two. That's
12 the factor for all aquifers now, is times two. I just
13 doubled the radius. Now, I take pi r-squared divided by
14 43,560 square feet in an acre, and that equals
15 contiguous acreage. That's what this column is. And in
16 each of the permits that I now do, and I can't say -- I
17 guess I started doing it in about 2014, pretty sure
18 maybe 2013, that on the worksheet it shows the
19 calculations, it gives the contiguous acres. In our
20 database, we now have only as of two years ago, a
21 column, a data field, that allows us to put in
22 contiguous acres.

23 Q. Okay. So --

24 A. So now I have Taylor Suarez going back, and
25 we're going through and slowly getting those numbers put

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1 into the database one at a time.

2 Q. Which explains why there's blanks in the
3 spreadsheet?

4 A. That is correct. Plus, another reason for
5 that is those historic use -- anything that's a historic
6 use well is never going to have anything filled in there
7 because they don't have to have a certain amount of
8 property associated with the well. Only the OPs and the
9 DOs.

10 Q. So just looking down the contiguous area
11 column, the first the number I come across on the first
12 page that's filled in is zero.

13 A. Yes. I can tell you why that is, is because
14 that is a secondary well for Sanderson Farms, and they
15 aggregated their primary well and their secondary well
16 together. So when they permitted Well Number 2, they
17 permitted it for zero acre-feet but aggregated it with
18 the other well. So that if this well goes down, they
19 can turn that well on.

20 Q. All right. Then it's not contemplated that
21 both wells produce all the time?

22 A. It is -- it is not. They're so close
23 together, they're -- they are really close together, it
24 wouldn't make any sense to even try to do that, because
25 now they're fighting for the same water.

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1 Q. Okay.

2 A. It complicates their situation.

3 Q. So next property down in the contiguous area
4 of column is 0.03. Explain to me what that means.

5 A. Okay. That means they have to have that --
6 that footprint that we drove for that well, which used
7 Sanderson Farm well, that's adjacent to the one just
8 above it, and the amount of water that they're getting
9 from that well is, it's permitted for 32.05 acre-feet.
10 When you run 32.05 through the formula that we have at
11 the time, which was times one, you had to have three
12 hundredths of an acre to produce 32.05 acre-feet.

13 I drew a circle around the well, 32.05
14 times.62 equals, and whatever that number came out to
15 be, became pi r-squared. That number, that number times
16 pi divided by 43,560, and it came up to.03 acres that
17 are associated with that well in order to produce 32.05
18 acres -- acre-feet in a year.

19 Q. So let me get straight in my own mind, the --
20 the column that says "Amount by Acres" is an expression
21 acre-feet?

22 A. That's the actual permitted amount of water in
23 acre-feet that they can produce from that well --

24 Q. All right.

25 A. -- 32.05.

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1 Q. Is there anywhere on the chart that -- that
2 you reflect how many total acres they have?

3 A. No. No, not at all. That wasn't asked for.

4 Q. I got you. So we see down here, "Milberger,
5 Josie."

6 A. Okay. Let me -- is this one same, same page?

7 Q. Same page.

8 A. Okay. I'm good.

9 Q. Found it? It's number BVHU historic use --

10 A. Yes. 0076?

11 Q. Yes. It's got a 2007 date on it, originally.

12 A. Correct.

13 Q. 108 --

14 A. Acre-feet per year.

15 Q. -- per -- permitted.

16 A. Permitted. At a 800 gallons per minute
17 maximum pumping rate. And no number to the right of
18 that --

19 Q. Because it's historic use?

20 A. That is correct.

21 Q. I -- I think I know the answer to this, but
22 the -- the chart that we've marked as Exhibit 15, the
23 spreadsheet, was created specially for this case to
24 respond to the question we had?

25 A. Yes, sir.

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1 Q. This is not a typical document that you
2 maintain?

3 A. No, sir.

4 Q. Do you maintain something like this?

5 A. Only the database. I mean, the database has
6 it all there, and if I have a specific need, I go to a
7 specific permit.

8 Q. So it's -- I guess the answer is yes, the data
9 is there, but if you don't have a report to look like
10 this?

11 A. That is correct.

12 Q. Do you happen to know what the greatest amount
13 of groundwater per acre per year is permitted under any
14 given historic use permit?

15 MR. DE LA FUENTE: Object to form.

16 THE WITNESS: Under any historic use permit?

17 BY MR. JONES:

18 Q. Yes.

19 A. I would make a stab at it, and I believe that
20 it's going to be -- well, no, that's not true. You said
21 historic use permit. I don't know, because those
22 numbers -- those numbers all depended upon those -- each
23 -- each entity coming in with a pumping amount, how much
24 I pump in my highest year? I -- I don't have that, I --
25 I just don't have it in my brain.

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1 Q. Is that information in the database?

2 A. It could be found. It's not -- I mean it --
3 it certainly could be found very easily queried.

4 Q. What would the query look like?

5 A. It would ask for historic use permits, and
6 then it would ask for a permitted amount, and the name,
7 and -- or the company name. And then when that queried
8 that -- and you -- you would specific -- you'd query
9 that out, and then you just take your Excel spreadsheet
10 and turn it to where you can go, I want to see the
11 largest permitted amount at the top. And it's going to
12 give you exactly one that that is.

13 Q. Will it show the permitted amount based on the
14 acreage?

15 A. No. Historic use permits --

16 Q. Do you know --

17 A. -- have nothing to do with acreage.

18 Q. Do you have a record of acreages --

19 A. I do not.

20 Q. -- with the other permits?

21 A. I do not.

22 Q. So let me make sure --

23 A. I'm sorry. I apologize.

24 Q. -- so we don't step on each other. Does the
25 District maintain a record of the number of total acres

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1 in a tract within which there is a well that you have
2 permitted?

3 A. We are attempting to get that into the
4 database. Again, that's a field that we hadn't had in
5 our database until it got updated a couple of years ago.

6 Q. Where would you get the information to fill in
7 that field?

8 A. When I -- when I permit -- you -- you would
9 get that from the -- from the Appraisal District map.

10 Q. So if I understand what you said. You would
11 take, for example, an issued permit on a DO well,
12 drilling operating well, or an operating well. Where
13 you take the name and the tract information off the
14 application, and look at the Appraisal District's
15 information, map information.

16 A. I could do it that way, but if it's already a
17 permitted well, then I'm going to go to my District map.
18 I'm going to turn on the layer of the CAD layer.

19 Q. Okay.

20 A. Okay. I'm going to turn that on. I'm going
21 to see there -- there's the permit right there, and I'm
22 going to click on, and up is going to pop the box that's
23 going to say -- and here's how many acres are in that
24 tract.

25 Q. So if I understand you correctly, you have in

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1 your own map, your District map, which is available on
2 the website, the CAD layer that will show you acreage
3 associated with the name and a permit?

4 A. That is correct. Not with the permit, with
5 the name -- the name --

6 Q. With the name.

7 A. -- we simply know there is a permit on that --
8 associated with that property, therefore, we can use the
9 value they have assigned to that tract in acreage, and
10 then we can put that into our -- our database. We just
11 haven't gotten there yet.

12 Q. Now, now let's assume that you've got a new
13 application for an operating permit, same thing as
14 before. Where would you get the information concerning
15 the acreage that that person has?

16 A. I'm still using the same map, my map, that
17 person -- I've -- I've asked that -- they've -- they've
18 turned it in. I'm using their information. Here's
19 where we're going to put the well. Here's how many
20 acre-feet we want. This is assuming they actually know
21 what they're doing. And I make sure that that all fits
22 or doesn't fit, or whatever it might be.

23 If it all works out, then that -- I can see
24 the number of acres that are associated on that tract.
25 I will have drawn the -- the footprint, make sure it

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1 fits. I know now how many contiguous acres out of that
2 total tract that's going to be associated with that.
3 There are those that come in and say they don't know
4 those things. So here's my property. Here's where I
5 want to put the well. Here's how much I want. Well,
6 that fits, or it doesn't fit. Maybe you need to move
7 this. Whether we -- we work with each individual.

8 Q. So on your map, you can see the shape of the
9 property?

10 A. Yes, sir.

11 Q. And --

12 A. It's exactly the same shape as you see on the
13 Appraisal District maps.

14 Q. Did the information come from the Appraisal
15 District?

16 A. Yes, sir. Absolutely.

17 Q. So in -- in order to fully understand your
18 map, but what you're telling me is the information in
19 your map originally came from the Appraisal District?

20 A. That's correct. And is updated. As they
21 update then we -- we update.

22 Q. I see. So you should -- either dynamically
23 linked or manually --

24 A. It's manual.

25 Q. -- go update your home database as the

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1 Appraisal District updates it, basically?

2 A. That's correct. Most of that update has to do
3 with new owners. That's where it ends up being the
4 lion's share of the update.

5 Q. Of course.

6 A. But occasionally we have tracts that are cut
7 up in pieces, and so that -- that will show up.

8 Q. Do you find the Appraisal District's
9 information to be accurate?

10 A. It's accurate. One -- Brazos County does
11 theirs often. Robertson County is not as often. So --

12 Q. But it is -- is accurate?

13 A. And -- and when we get them, it's accurate.

14 Q. And you feel like you can rely on it as an
15 appraisal -- as a groundwater conservation District?

16 A. Yes, sir. I -- I will say that sometimes we
17 -- we might click on a property, and it comes up and --
18 and doesn't show us anything, or it says no, or some
19 name like that. We call the Appraisal District and say
20 we need to know the owner. We need to know the tract
21 size. Whatever it may be. And we can get -- we make
22 sure that we get it that way.

23 Q. Do you have confidence that your map is
24 accurate?

25 A. Yes.

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1 Q. With respect to Topic 4 on the corporate
2 deposition notice, how many applications for permits
3 have been made after you changed the rules?

4 A. I don't know. You can show me a document, but
5 it's -- it's not a whole lot.

6 Q. Is it a hundred?

7 A. No, it's far less than that.

8 Q. Fifty?

9 A. It's less than that.

10 Q. Ten?

11 A. Thereabouts. Not many more than that.

12 Q. A lot less per year than you were getting
13 prior to the rule change?

14 A. Yes, sir.

15 Q. Do you know why that's true?

16 A. I -- I can speculate.

17 Q. Okay. What's your speculation?

18 A. In the Simsboro, we have less because the
19 rules changed, and it required more land in order to get
20 the properties. Also, most of the people, if not all
21 the people that wanted permits, got their permits under
22 the old rule.

23 Q. In the minutes of a permit hearing of
24 September 14, 2023.

25 A. Okay.

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1 Q. I see a lot of different permits being
2 approved.

3 A. Yes, sir.

4 Q. Okay. Under the old rule, I assume?

5 A. Yes, sir.

6 Q. And time-wise, the next thing that happened
7 was -- on that date, was the Board convened a rules
8 meeting and adopted the new rules?

9 A. Yes, sir.

10 Q. Same meeting?

11 A. Yes, sir.

12 Q. A fortunate thing about the unfortunate way my
13 mind works is that I've covered a lot of the questions I
14 have written down here already, so --

15 A. Okay. Good.

16 Q. -- I will go through some of them without
17 further ado.

18 A. Take your time.

19 MR. DE LA FUENTE: Let's take a break.

20 MR. JONES: Break?

21 MR. DE LA FUENTE: Yeah. Let's take a break.

22 MR. JONES: Okay. Break.

23 THE VIDEOGRAPHER: All right. The time is now
24 2:25 p.m. We are off the record.

25 (Recess from 2:25 p.m. to 2:43 p.m.)

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1 THE VIDEOGRAPHER: All right. The time is now
2 2:43 p.m. We are back on the record.

3 BY MR. JONES:

4 Q. Mr. Day, we're discussing Exhibit 15, which is
5 this spreadsheet showing the wells in the District. The
6 spreadsheet does not reflect which aquifers these wells
7 are in; is that correct?

8 A. That is correct.

9 Q. And do you have that information in the
10 database?

11 A. Yes.

12 Q. And so you could run a spreadsheet like this
13 that would show me which aquifer --

14 A. Yes.

15 Q. -- wells are in?

16 A. Yes.

17 Q. Or if I ask you to just give me ones, that's
18 just only Simsboro?

19 A. Yes.

20 Q. All right. Now, I asked you a moment ago
21 about permits that were issued on September 14, 2023.
22 Were those permits for any other aquifer than the
23 Simsboro?

24 A. Not that I remember.

25 Q. So what your recollection is that those

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1 permits were all for Simsboro wells?

2 A. I believe so.

3 Q. Applications have been made subsequent to
4 September 14, 2023. Have those applications been for
5 Simsboro wells?

6 A. I've had one that -- that turned in, that
7 would have been a Board-issued permit for Simsboro.
8 There's been one that was a less -- 158 acre-feet or
9 less, it was a GM-issued permit, by rule. And there's
10 been one that's still pending that was turned,
11 contested, now it's not contested. It will be taken up
12 at the next Board meeting.

13 Q. Is that the application by Texas A&M?

14 A. That's correct.

15 Q. And so it's taken out of the pending category
16 now, and it will be taken up by the Board at the next
17 meeting?

18 A. That's correct. Because it's already had its
19 hearing. So now it'll be taken up on the Board meeting.

20 Q. Was that application the subject of a
21 settlement agreement recently?

22 A. Yes.

23 Q. And that settlement agreement involved the
24 District, Texas A&M, and Upwell?

25 A. Upwell joined, Cities joined, but it was Texas

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1 A&M suing the District.

2 Q. Right. That settlement agreement that recites
3 that David Lynch would not voluntarily testify in the
4 case that we're on today?

5 A. I don't know exactly what it says, but that
6 was certainly discussed. I don't know how that ended up
7 wording was.

8 Q. Do you know why that's true?

9 A. I -- I don't know the answer to that.

10 Q. Do you know, David?

11 A. I know David quite well.

12 Q. Okay. He's there a lot, isn't he?

13 A. I see him a lot. We -- we talk a good bit.

14 Q. Okay. For the record, he works for Core
15 Capital and Upwell Brazos Valley Farms or --

16 A. Yeah. I -- I know that he works for Core
17 Capital and that he's the boots on the ground manager of
18 the Upwell Brazos Family Farm assets.

19 Q. So he would have the personal factual
20 information about those assets?

21 MR. DE LA FUENTE: Object to form.

22 THE WITNESS: Possible.

23 BY MR. JONES:

24 Q. Well, you would hope so.

25 A. I --

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1 Q. He's the manager, wouldn't he?

2 A. You would have to assume that they would.

3 Q. Do you personally know whether he has been
4 involved in trying to piece together tracts of land for
5 a water project?

6 A. Yes.

7 Q. And the answer is yes; he has been?

8 A. You -- you asked me if I have the knowledge of
9 him, and I -- the answer is yes.

10 Q. Okay.

11 A. I do have that knowledge.

12 Q. And -- and the next question is, what is that
13 knowledge?

14 A. From him telling me, it sounds like he had a
15 good bit to do with piecing together and -- and putting
16 the partners together for the -- for the project.

17 Q. So turning to Topic 7. I -- I believe we
18 discussed the changes that led up to -- or the things
19 that led up to changes in Rules 6 and 7 in 2023.

20 A. Yes.

21 Q. I believe you told me who was involved in that
22 terms of information that -- that was reliable upon.

23 A. Yes.

24 Q. And would -- would that include James Beach?

25 A. Reading on Number 7; is that correct?

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1 Q. Yes.

2 A. Okay.

3 Q. At the end --

4 A. I --

5 Q. -- "Identities of individuals involved in the
6 process or knowledge of the procedure and process."

7 A. He would know -- so yes, James Beach would --
8 would know the -- the procedures in the process, and he
9 was not part of the process to -- of the changing of the
10 Rules of 6.1 and 7.1.

11 Q. And when you say he's not part of the process,
12 what do you mean by that?

13 A. Meaning he wasn't relied upon, what is your
14 thoughts? And give us your input? And see where -- we
15 need to know from you? What do you think about this?
16 That's -- it was nothing like that.

17 Q. And the District did not ask him to do any
18 additional modeling?

19 A. That is correct. No additional modeling.

20 Q. Did John Seifert provide any information to
21 you in connection with the changes of these rules?

22 A. No, sir.

23 Q. And did he do any additional modeling?

24 A. No, sir.

25 Q. Does -- Does Mr. Seifert actually do modeling?

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1 A. No, sir.

2 Q. I think you told me; he absolutely did not.

3 A. That is correct.

4 Q. Now, Topic 8, "That the reason justification
5 for and the purpose operation of old Rule 6.1 in effect
6 prior to September 14, 2023." Do you know how long the
7 spacing rule under 6.1 was in effect before 2023?

8 A. Well, it was -- best of my knowledge, it was
9 in the rules when they were promulgated in 2004. And I
10 don't know about revisions to it until I do know that
11 it -- it was revised and at this -- at the time of
12 September the 14th, 2023.

13 Q. Let me hand you Exhibit 16.

14 (Plaintiffs' Exhibit 16 was marked for
15 identification.)

16 BY MR. JONES:

17 Q. This is a copy of the 2004 Rules.

18 A. Okay.

19 Q. Because everyone should have a copy. Now, you
20 were not the general manager or associated with the
21 Water District in 2004?

22 A. Correct.

23 Q. And looking -- and these pages unfortunately
24 are not numbered, but have you found Rule 6.1?

25 A. Yes, I have it here in front of me.

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1 Q. In 2004, Rule 6.1 provided the spacing for
2 Simsboro wells of one foot per gallon per minute as
3 production capacity?

4 A. That's correct.

5 Q. Okay. That remained the same until September
6 14th of 2023?

7 A. No, sir. That did not.

8 Q. No?

9 A. It changed. It changed in either 2013 or
10 2014, to where it changed to the average annual gallons
11 per minute.

12 Q. Oh, okay. I'm sorry.

13 A. And I don't know if it was 2013 or 2014. I --
14 I believe it was 2014.

15 Q. So it's just expressed differently here?

16 A. Right. Before you, literally -- if you have a
17 three -- you had a pump, you permitted your well at
18 3,000 gallons per minute, then you have to have a
19 3,000-foot radius from the well. And now, when that
20 changed, you had to have -- if you had the -- it -- it
21 changed to what we have now, other than now it's times
22 two rather than times one, we annualized it.

23 Q. So looking at that same set of rules in
24 Exhibit 16, Rule 7.2. Contained a formula; is that
25 right?

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1 A. 7.1.

2 Q. I'm always confused about whether it's one or
3 two.

4 A. 7.2 wasn't in the -- wasn't here then. That
5 -- that is curtailment today.

6 Q. Okay. 7.1, Subparagraph 2.

7 A. Okay.

8 Q. "Production Based Acreage." Correct?

9 A. Yes. Correct.

10 Q. Who came up with this formula, if you know?

11 A. Do not know.

12 Q. It was in place when you got there?

13 A. Yes, sir.

14 Q. And the formula itself has not been changed?

15 A. No, sir. That has not been changed.

16 Q. So the formula is well production capacity in
17 gallons per minute.

18 A. I -- I stand corrected. It has changed. It
19 now is average annual gallons per minute here.

20 Q. All right. So we -- we plug in a number
21 representing gallons per minute?

22 A. Yes.

23 Q. Times District's spacing requirement?

24 A. Yes. The multiplication factor.

25 Q. So that's, for example, if it -- if the

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1 gallons per minute was 1,000, then prior to the rule
2 change in September 2023, the next thing would be times
3 the District's spacing requirement would be times one?

4 A. If it were a Simsboro well, yes.

5 Q. All right.

6 A. Correct.

7 Q. And then that number is squared?

8 A. That's correct.

9 Q. And then that result is times pi?

10 A. That's correct.

11 Q. And you divide all that mess by the number of
12 square feet in an acre?

13 A. That's correct.

14 Q. The rule did not -- Rule 7.1 did not contain
15 any reference to whether circles could overlap in 2004?

16 A. That is correct.

17 Q. But looking at 2004 rules, but I think this is
18 true throughout time, there's a sentence that says, "A
19 majority of the contiguous acreage assigned to the well,
20 shall bear a reasonable reflection of the cone of
21 depression impact near the pumped well as based on the
22 best available science."

23 A. That's what it said then. The word majority,
24 I don't think, is in there anymore. But --

25 Q. Right.

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1 A. -- the basic statement is correct.

2 Q. Do you know what it means when it says a
3 reasonable reflection of the cone of depression impact?

4 A. So when the well turns on, you're going to
5 have a cone of depression that's going to be created,
6 and it -- in theory, it would radiate in all directions.
7 And a reasonable reflection of that is circle and at
8 this time, you didn't have to have -- you just had to
9 have a majority of the contiguous acres that -- so
10 something over 50 that said that here's the reasonable
11 reflection the rest -- the rest of the acreage that
12 would be assigned to -- just had to be contiguous.
13 That's -- that's no longer the case; it is the entire
14 footprint; it should reflect the reason or mirror what
15 we would hope to be the impact.

16 Q. And so I guess to start with, this formula
17 assumes some margin entity to the aquifer in the area of
18 the wellbore?

19 A. And -- and that's -- that's for us because it
20 takes the guesswork out of things. And it -- there --
21 there wouldn't be much of a way to be able to -- for
22 anyone to ascribe something other than likely it's more
23 this than it's a rectangle or it's a triangle, whatever
24 it might be. So it gives us the surety that everyone is
25 treated in that same manner.

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1 Q. In other words, you don't have to go do a lot
2 of exotic test holes and -- and other experiments, as it
3 were, to figure out the actual nature of the aquifer
4 below a particular square foot of the property?

5 A. That's correct. We weren't -- aren't
6 requiring a test hole to be -- and it would take more
7 than one test. I'm -- I'm going to drill the well, and
8 then I'm going to have to go around and do -- it -- it
9 would -- that would be quite an exercise.

10 Q. It'd be expensive too, wouldn't it?

11 A. Yes.

12 Q. And it -- it says, "the impact near the pumped
13 well." And I'm wondering what the word near means here.

14 A. I -- I take it to be, and the District --
15 representative of the District is at the wellhead. It's
16 the mere well impact. So I've got -- I've got this -- a
17 cone of depression is going to be deeper and -- and more
18 significant directly where the well is. And then it
19 radiates outward, and it radiates less and less and
20 less, at a lower depth. So we try to capture that near
21 well impact that is that -- that real cone of
22 depression. What does -- what is that going to look
23 like when it turns on?

24 Q. Is there a time component to that?

25 A. There is not in this case, no.

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1 Q. So you're not really looking at cone of
2 depression at one day versus one year?

3 A. Absolutely not looking at that.

4 Q. You do understand it would be different?

5 A. Yes, sir.

6 Q. In an artesian aquifer, the cone of depression
7 might extend out rapidly?

8 MR. DE LA FUENTE: Object to form.

9 THE WITNESS: I don't know that. I think it
10 would all depend upon the aquifer and the
11 transmissivity. There's just a lot of variables there.
12 So it would be -- BY MR. JONES?

13 Q. But you're not considering the formula?

14 A. -- that are considered in the formula.

15 Q. Do you know why there was a -- at -- at that
16 time, a 3,000 gallon per minute production limit?

17 A. I do not know that.

18 Q. Okay. Is there still a production limit?

19 A. Thirty-three hundred.

20 Q. Do you know why that's true?

21 A. I just know that it was changed before I came
22 -- shortly before I came. I don't know the reasoning
23 behind that.

24 Q. Did you ask anyone?

25 A. I have not.

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1 Q. So back to Topic 8. Do you know in -- in 1964
2 what the reasons, justification, or either the spacing
3 rule, or the formula was?

4 A. For Rule 6.1 was to space wells enough apart
5 to try and lessen the impact between wells.

6 Q. Was there modeling or other expert input as to
7 how far these wells needed to be in terms of spacing?

8 A. I do not know that.

9 Q. Who would know that?

10 A. I don't know who would know that. It's --
11 it's -- I don't know.

12 Q. Would Pete Brien know that?

13 A. Possible.

14 Q. Well, Pete was one of the original Board of
15 Directors?

16 A. That's correct.

17 Q. And served until a couple of years ago?

18 A. Yes.

19 Q. Anyone else that you know of that has that
20 longevity of -- of contact with the District?

21 A. The only other person would be John Seifert,
22 that I can think of that might know.

23 Q. John is old, isn't he?

24 A. Sir?

25 Q. John is old, isn't he? You don't need to

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1 answer that, it's just a cheap shot at John Seifert.
2 Hoping he will read the deposition, so -- but for the
3 record, I like John.

4 I'm going to hand you what I've marked as
5 Exhibit 17.

6 (Plaintiffs' Exhibit 17 was marked for
7 identification.)

8 BY MR. JONES:

9 Q. Do you recognize that document?

10 A. (Non-verbal response.)

11 Q. Yes, you recognize it? I'm -- I'm sorry.

12 A. I -- I'm sorry. I didn't hear it. Yes, I
13 recognize this.

14 Q. And what is it?

15 A. This was a document presentation that was done
16 for Post Oak Savannah Groundwater Conservation District
17 by INTERA to simulate a steady-state drawdowns, looking
18 out, I believe, 500 years on pumping from an aquifer.

19 Q. Page 2 of this document shows us -- it's
20 entitled, "Sustainable Pumping for GMA 12, WDB 2012."
21 And then below that, "GMA 12 drawdown through time for a
22 500-year run." Correct?

23 A. Uh-huh.

24 Q. Now, the third page is entitled, "Sustainable
25 Pumping for GMA 12." Do you know what the word

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1 sustainable means in the context of this chart?

2 A. I do not.

3 Q. The chart has columns and lists the counties
4 of GMA 12, correct?

5 A. Uh-huh?

6 Q. And it has a column called "Model Available
7 Groundwater 2060." And I assume you understand what the
8 model available groundwater means?

9 A. Yes.

10 Q. Next to that is, "2007 State Water Planning
11 Groundwater Availability 2060." And those numbers
12 differ from the model available groundwater?

13 A. Yes.

14 Q. Next to that is 2011, "Regional Water Plan
15 2060." And again, a set of numbers that differ from the
16 first two columns?

17 A. Yes.

18 Q. Do you know why these three columns have
19 differing numbers?

20 A. I don't know for sure, but the conjecture is
21 there are different people doing different modeling, and
22 two modelers don't do the same -- exactly the same way,
23 and they don't use the same amount of pumping in a
24 particular cell or whatever it might be. And so, you
25 end up with differences.

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1 Q. Then there's a number in a column -- column
2 called "Storage."

3 A. Yes, sir.

4 Q. Is that, to your knowledge, the TWDB's
5 estimate of total estimated recovery storage?

6 A. I -- I don't know the answer. It's not marked
7 whether it's acre-feet. It's not marked what it is. I
8 do not know the answer. I can only guess that the
9 answer is yes, but I don't know.

10 Q. So were you familiar with -- and -- and we
11 just refer to that as TERS, right?

12 A. That would -- if -- if that were the case,
13 it'd be TERS, yes.

14 Q. All right. Are you familiar with the TERS
15 numbers for the two counties that the Brazos Valley
16 County -- Conservation District has under its
17 jurisdiction?

18 A. I -- as far as our numbers are concerned?

19 Q. Yes.

20 A. I do not have those in my head at all.

21 Q. Did you review --

22 A. They're big numbers.

23 Q. Okay. Did you review them when it came out?

24 A. Long ago. Yes.

25 Q. So this chart, if that's the number under

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1 storage, would say that Brazos County has 136,726,259
2 acre-feet of water storage.

3 A. If that's in acre-feet, then yes, that's
4 correct.

5 Q. Now, does that ring a bell with your memory
6 about what you saw on the TERS report?

7 A. It does not ring any bell at all. It's been
8 too long.

9 Q. And you see the columns "25 Percent" and "75
10 Percent"?

11 A. Yes.

12 Q. Do you recall the --

13 A. I do see that.

14 Q. Do you recall the TW --

15 A. Oh, I didn't see that earlier. So let's -- so
16 I'm going to say that storage is TERS, and 25 percent is
17 the low end of TERS that we have to look at. And 75
18 percent is the upper end of TERS that we have to look
19 at. So --

20 Q. That was legislatively mandated, correct?

21 A. That's correct, yes.

22 Q. And so it probably is expressed in acre-feet?

23 A. That's correct, yes.

24 Q. Is it your understanding that if you reduce
25 the artesian pressure in the Simsboro to zero, that

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1 you'll then the into the storage column --

2 A. You will be at the storage.

3 Q. Okay.

4 A. You'll be -- let me rephrase that. You'd be
5 at the aquifer.

6 Q. Right. Initially, you'd be at the top of the
7 aquifer?

8 A. Correct.

9 Q. Which is bounded by the permeable layers, top
10 and bottom?

11 A. Yes.

12 Q. Which is why it's called confined, right?

13 A. Correct.

14 Q. As the general manager of the Groundwater
15 District, do you know whether the TERS numbers are used
16 in any of the planning processes of the District?

17 A. Yes, I know.

18 Q. Are they?

19 A. We do not use TERS as a permitting tool.

20 Q. We need to make sure the court reporter goes
21 home with lots of paper. So I'm going to hand you
22 Exhibit 18.

23 (Plaintiffs' Exhibit 18 was marked for
24 identification.)

25 BY MR. JONES:

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1 Q. This is a copy of the Rules of the District
2 that went into effect in 2017; is that correct?

3 A. Yes, sir.

4 Q. And you would have been there when these were
5 discussed and voted on?

6 A. Yes, sir.

7 Q. Looking at Page 3 of that exhibit, there's a
8 definition of contiguous acreage?

9 A. Yes, sir.

10 Q. And its definition contains that sentence, "A
11 majority of the contiguous acreage assigned to a well
12 shall bear a reasonable reflection of cone depression
13 impact near the pumped well, is based on the best
14 available science." You -- you see that?

15 A. Yes, I do.

16 Q. And I believe if you'll compare that to the
17 2004 rules, that the definition of contiguous acreage
18 was the same? Do you know whether that was changed
19 subsequently?

20 A. I do not know now. I -- I was thinking that
21 it had been, as I stated earlier, but it may not have
22 been. So I do not know.

23 Q. If we turn to Page 17, we find Rule 6.1. And
24 on Page 18, I -- I think where you refer to earlier, we
25 see that the spacing is now stated in average annual

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1 production rate or capacity?

2 A. Yes, sir.

3 Q. And do you know if 2017 was the first time
4 that change was made, or did you think that was earlier?

5 A. I think that it was changed in 2014, but
6 that's just the best of my memory.

7 Q. So if we look at Rule 7.1, on Page 20, we see
8 that same expression used, or it used to be based
9 strictly on the --

10 A. Yes, I see that.

11 Q. All right. So whether it changed in 2014 or
12 2017, that was the major change in the -- in the spacing
13 rules, the wording, between 2004 and 2023?

14 A. I'm sorry. You --

15 Q. Yeah.

16 A. Repeat that. I'm sorry.

17 Q. It's a bad question. And thank you for
18 pointing it out.

19 A. No.

20 Q. No, I'm serious. I don't want to ask bad
21 questions to get bad answers.

22 To your knowledge, other than changing Rule
23 6.1 to talk about the productive capacity of a well,
24 you're talking about average annual production rates?

25 A. Yes. Right.

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1 Q. To your knowledge, that was the only real
2 change made between 2004 and 2023, with respect to Rule
3 6.1, the spacing rules?

4 A. Yes. That would be true.

5 Q. I'm handing you Exhibit 19.

6 (Plaintiffs' Exhibit 19 was marked for
7 identification.)

8 BY MR. JONES:

9 Q. This is a copy of the rules as they existed in
10 2020; is that correct?

11 A. Yes, sir.

12 Q. Page 3, we see the definition of contiguous
13 acreage adds the phrase, "And the production-based
14 acreage required by District Rule 7.1(c)."

15 A. That's correct. And removes the word -- I'm
16 sorry. Go ahead.

17 Q. Go ahead. What -- what else --

18 A. No, no. I was -- is this not where we were
19 using the majority? Is this the majority?

20 Q. Yes.

21 A. And it's no longer there.

22 Q. So those two changes were made. Do you know
23 why they were made?

24 A. To better define -- okay. Hang on just a
25 second. This was to -- to better define, more precisely

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1 define what contiguous acres are. It -- it didn't
2 change anything as to what we were already doing. It
3 just matched what we were doing.

4 Q. So we see in all instances, 2004, 2017, 2020,
5 the expression, "as based on the best available
6 science." Do you see that?

7 A. Yes.

8 Q. Now, was there any additional modeling or
9 other scientific data considered by the District at that
10 time to remove the word majority and to add this other
11 expression, "production-based acreage required by
12 District Rule 7.1(c)"?

13 A. No.

14 Q. Well, earlier I had asked you about properties
15 that are in the shape of a circle or square and let me
16 ask you this. Do you know of any properties in your
17 District that are -- the ownership is in a circle?

18 A. No, sir. I do not.

19 Q. There are some up in the North Plains
20 Groundwater Conservation District, actually, ownership
21 of a circle, and the corners are owned differently or
22 separately. Are you aware of that?

23 A. I was not aware of that.

24 Q. So if I have a 640-acre purely square section
25 of land, do you know what maximum size of circle I can

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1 get in that thing?

2 A. I do not know.

3 Q. Would it be defined by a radius equal to half
4 a mile?

5 A. That would be correct. It would be a radius
6 of half a mile.

7 Q. And if that comes up to 500 acres in a circle,
8 would that mean that the other 140 were outside circle?

9 A. That's correct.

10 Q. Under your rules, would those 140 acres be
11 considered contiguous acres for purposes of the
12 production allocation?

13 A. No. But you could drill wells in those
14 corners.

15 Q. Small wells?

16 A. Yes.

17 Q. Small circles?

18 A. Small circles.

19 Q. Which would also leave corners?

20 A. Sure. Yes.

21 Q. Then on Topic 9, "The Reason to Change Rule
22 6.1." Do you recall any specific discussions outside of
23 executive sessions about why the District needed to
24 change Rule 6.1 spacing?

25 A. The only discussions that -- that I -- I would

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1 know that would be in the Rules Committee -- open Rules
2 Committee meeting. It would have been in the July 2023
3 -- July the 10th workshop, with all the Board members
4 that wanted to come, could come.

5 It would have happened July the 13th, at a
6 regular Board meeting went over all the rule changes,
7 and it certainly would have happened on the day of the
8 rules, hearing and date of -- and date of adoption, that
9 those would -- so that would be -- that would -- those
10 would be dates and times and places, where I'd -- I'd
11 say certainly if there was any discussion to be had it
12 was -- happened then.

13 Q. So were there transcripts made of those
14 discussions?

15 A. There would have been for the -- July 13th
16 Board meeting, certainly would have a transcript. And
17 the rules hearing would have a transcript that would
18 also be associated with that September the 14th, 2023,
19 Board meeting. There's not going to be a transcript for
20 the Rules Committee and that open meeting. And there --
21 I don't think there's minutes or a transcript of -- of
22 the workshop. If there was that's -- that was
23 information I would have sent to you. That's just off
24 the top of my head.

25 Q. Are audio recordings made at these meetings?

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1 A. They are now. They are now, they would not
2 have been -- committee meetings and workshops, depending
3 upon if it's a separate workshop, the -- we have not
4 regularly done any type of recordings.

5 Q. Do you know who attended the July 10, 2023,
6 workshop?

7 A. I do not off the top of my head. And I -- I'd
8 have to -- I don't know that I have that information. I
9 don't know if there was a roll kept or anything like
10 that. I -- I don't know.

11 Q. Does the District have a specifically
12 designated Rules Committee?

13 A. Yes, we do.

14 Q. In 2023, did it have such a committee?

15 A. Yes.

16 Q. Do you know who was on it?

17 A. Not off the top of my head, but I can go back
18 and look. But I don't have it in front of me, but
19 certainly.

20 Q. Did you recall whether John Seifert attended
21 the rules workshop?

22 A. I do not.

23 Q. Or James Beach?

24 A. Doubtful that James did. John, that being
25 2023, probably did not. But --

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1 Q. I think --

2 A. -- don't know.

3 Q. -- you told me already that there was no new
4 specific study or modeling done in connection with the
5 rules change.

6 A. That's correct.

7 Q. Let me hand you Exhibit 20.

8 (Plaintiffs' Exhibit 20 was marked for
9 identification.)

10 BY MR. JONES:

11 Q. This is an agenda for a meeting in -- of the
12 Board of Directors, March 22, 2023.

13 A. No, sir.

14 Q. I'm sorry. You're right. It's the agenda for
15 the Rules Committee open meeting --

16 A. Correct.

17 Q. -- of March 22, 2023, reflect your signature
18 on the bottom?

19 A. Yes, sir.

20 Q. And notice the two last bullet points,
21 "Permitting of wells using the current formula
22 considering it increases spacing between wells."

23 A. Yes.

24 Q. What does that mean?

25 A. For the Board to consider different a -- a

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1 different spacing formula for wells.

2 Q. We're talking about Rule 6.1?

3 A. This would have everything do Rule 6.1.

4 Q. Now, I'm assuming this is just a typo where it
5 says "increases," should be "increased."

6 A. Should be, "an increase in spacing."

7 Q. Spacing. And then the last bullet point is,
8 "Disallow overlapping footprints to calculating the
9 impacted area." What does that mean?

10 A. That means that when you draw footprints that
11 those footprints would not -- could touch but not
12 overlap.

13 Q. Why was that important?

14 A. It's another one of the reasons if we were
15 looking at distancing wells between each other, then
16 this was -- and this is a very much of a rarity that we
17 have. Let me -- let me go back. When we went to using
18 the formula, the circle, and you had to own or control
19 everything under that footprint, and it had to be on
20 what you control, what you have, your legal right.

21 That negated made obsolete the need to worry
22 about an adjacent well, being too close to an adjacent
23 well, somebody else's property. Because we also have
24 the rule that allows you to use your full property
25 rights, your total, to your boundaries, whether or not

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1 there's another Simsboro well, that's sitting right --
2 or whatever the aquifer is, sitting right across the
3 fence, that happened to be a historic use well, or an
4 existing well. Wells that would have not required a
5 footprint. So it made that part of the spacing
6 obsolete.

7 Now, the only spacing that we have that we
8 allowed for was you being closer to yourself. And
9 that's a rarity that we have individuals that are asking
10 to be closer. Because, as we talked about earlier, the
11 closer you are, the more impact you would have on
12 yourself. So as right here as it is, we said this would
13 be one more place since -- if we're going to consider
14 moving wells apart at a -- at a greater distance,
15 whether that be one and a half feet, or one and a
16 quarter feet, whatever it might be, then this small
17 change here would at least get a little bit more and
18 simply move a well a hundred feet or move it 200 feet,
19 just so that you're not overlapping those -- those
20 footprints.

21 Q. On your own property?

22 A. On your own property.

23 Q. Now, was there a point in time in the history
24 of the District, since you've been there, where an owner
25 was allowed to overlap circles on his own property?

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1 A. Yes.

2 Q. And do you know how many owners that involved?

3 A. I'm not going to say not over -- I think
4 three.

5 Q. Do you know who they were?

6 A. One would be -- again, I believe this to be
7 the case, I think, and I can be wrong on this one,
8 Wickson Special Utility District may have slightly
9 overlapped two of their footprints on Simsboro wells.
10 No, not on Simsboro wells, on -- anyway, they may have.
11 I don't know that one for sure. Wellborn Specially
12 Utility District did it on two of their wells on a
13 property. Charles Fazzino did it on one of his
14 properties recently.

15 Q. Wellborn, so that would be Stephen Cast?

16 A. That's --

17 MR. DE LA FUENTE: Object to form.

18 THE WITNESS: Ask -- just ask the question
19 again, if you don't mind.

20 BY MR. JONES:

21 Q. Okay. Stephen Cast is associated with what
22 Wellborn's done?

23 A. Yes.

24 Q. I'm going to hand you Exhibit 21.

25 (Plaintiffs' Exhibit 21 was marked for

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1 identification.)

2 BY MR. JONES:

3 Q. And ask if you recognize that document? Do
4 you recognize the document?

5 A. Yes. Absolutely.

6 Q. What is it?

7 A. It is a document that I created. This was
8 likely presented during a Board meeting and followed a
9 -- the Rules Committee meeting we had on March 22nd as a
10 follow-up of how we could go about what other
11 groundwater Districts that have changed their spacing
12 rules, how they've gone about doing it.

13 Q. So we see in Exhibit 20, this topic about
14 permitting of wells.

15 A. Yes.

16 Q. And that's the meeting that's referred to in
17 Exhibit 21 at the top, during the Rules Committee
18 meeting held March 22, 2023, correct?

19 A. That's correct, yes.

20 Q. And then in the best of -- of passive voice,
21 it says there was a request made --

22 A. Yes.

23 Q. -- to survey the method. Who made that
24 request?

25 A. I would not. Someone on the committee, or a

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1 Board member that was there because when they have an
2 open meeting, it can be the Rules Committee members and
3 any of the other Board members. So we've posted it for
4 an open meeting, so if the Board members want to come,
5 they can. They're allowed to talk. So I -- I don't
6 know the answer to that.

7 Q. Is it your recollection that a Board member
8 made the request?

9 A. A Board member would have made the request
10 because if it were the public I'm not going to just go
11 do it because the public says. I'm going to be directed
12 by a Board member or a Rules Committee member.

13 Q. So if somebody on the Rules Committee or
14 somebody who was a member of the Board of Directors
15 asked you to survey other Districts?

16 A. Yes, that is correct.

17 Q. And according to the memo, they ask you to
18 survey other Districts, what methods they used to slow
19 down the amount of groundwater being permitted?

20 A. That is correct.

21 Q. In -- in those words?

22 A. I -- I can't say that's exactly, but that was
23 the essence of it.

24 Q. That's why you wrote it that way?

25 A. That is correct.

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1 Q. So they're -- what they're asking you to do is
2 find out what other groundwater conservation Districts
3 have done to slow down the amount of water that's being
4 permitted?

5 A. That's correct.

6 Q. And the idea was they were seeing too many
7 permits being applied for and they wanted to slow that
8 process down?

9 A. I don't know about the other Districts. I
10 know that it's -- in our District it's about the desired
11 future condition and the number -- looking at the total
12 totality of how many permits are -- are being issued
13 and/or have been issued and what that effect could
14 possibly have on our DFC.

15 Q. So someone on the Board wanted to slow down
16 the number of applications being made for permits?

17 A. That's -- I -- I can't say that's true. No, I
18 can't say that's true.

19 Q. Wasn't that your charge?

20 MR. DE LA FUENTE: Object to form.

21 BY MR. JONES:

22 Q. Figure out how to slow down the groundwater
23 being permitted?

24 A. The way you phrased the question it was a no.
25 They wanted to increase -- look at, how do we go about

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1 making it a larger area to be able to obtain a permit,
2 not to slow down the permitting process. It is, now you
3 have to have this much. There's a difference.

4 Q. Well, let me ask you this question: Did the
5 number of applications for permits in the Simsboro
6 Aquifer slow down after September 14, 2023?

7 A. As I said earlier, yes, it has.

8 Q. Dramatically?

9 A. It has dramatically. But the other thing is
10 when everyone knew that the -- because we were already
11 talking about -- had begun to talk about in early 2023,
12 that we're going to start, we're looking at changing --
13 there's going to be some thought of changing the spacing
14 rule and that's when we had a landslide of 150 plus
15 1,000 acre-feet permits.

16 And they left open the entire period so that
17 -- and let everybody know likely a rule change coming.
18 So it was -- it was a known thing. So we had very much
19 of an avalanche, which was quite abnormal. If we hadn't
20 been possibly changing, if it -- if that weren't the
21 case, we may not have gotten that much. So everybody
22 that wanted a permit came and got a permit.

23 Q. How do you know that?

24 A. Okay. I don't.

25 Q. All right.

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1 A. I'll take that back. I don't know that for
2 sure. Many people that have expressed to me over time
3 that they may need -- may want to get a sense for a
4 permit or should they -- that we've had a -- came and got
5 permits.

6 Q. Okay.

7 A. It was well known in the area, and Robert --
8 Robertson County, especially that the rules may be
9 changing, and that if you think you want a permit in the
10 Simsboro, you should go.

11 Q. So District is a fee District and not a taxing
12 District?

13 A. That's correct.

14 Q. And so your revenue is based on fees
15 associated with production?

16 A. They were until this year.

17 Q. And now, what are they based on?

18 A. Total permitted amounts.

19 Q. So if I understand correctly, if I don't have
20 a well today, and I want a operating permit, I could
21 come apply for whatever my contiguous property would
22 support. And if the District gave me that permit,
23 whether I drilled a well or not, you're going to charge
24 me a fee based on the permitted amount?

25 A. No, sir. Not true.

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1 Q. What is true?

2 A. You have -- you get a permit, you have three
3 well -- years to drill the permit at no charge, no
4 nothing. You got three years to complete the well,
5 based on our -- what completion is, which is a drilled
6 well that has a driller's report has been reported to
7 the TDLR, and you've done a pump test.

8 When those two things are done, you have a
9 completed well, that's when you would now be placed on
10 fees, if at three years you have not completed the well
11 you now can over the next two years, have an extension,
12 paying the full fee rate at the highest beneficial use
13 that you have on your permit and will be done on a
14 monthly basis, until you complete the well. At five
15 years, if you have not completed the well the permit
16 goes away, and you have to start over.

17 Q. So if it was within the three years I drill a
18 well, am I charged fees thereafter?

19 A. From there forward, until you complete the
20 well. So you have 24 months to continue moving forward
21 with your well, and each month, you'll be charged 1/24
22 of the two-year period.

23 Q. Whether I actually water out of it or not?

24 A. Whether you produce -- you -- you don't have a
25 completed well. You're not going to be producing any

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1 water. You're going to -- not -- you don't even have a
2 completed well. That just changed this year.

3 Q. Right. Do you know what the purpose of that
4 change was?

5 A. A certainty on fees. And the -- there were --
6 were -- there was the thought that if you're going to
7 have a permit and you're going to tie up water with a
8 permit, then you need to be part of the solution as far
9 as fees are concerned. All those type things. Sitting
10 -- sitting on the books, not paying any fees for 20
11 years, and tying up water that we know could affect the
12 DFC, and otherwise, they said, everybody gets to pay
13 now.

14 Q. Did you consider whether the change in the fee
15 structure would slow down people getting permits without
16 a real intent to produce water?

17 A. That was never a consideration.

18 Q. So Exhibit 21 reflects that you talked to four
19 groundwater Districts?

20 A. That's correct.

21 Q. Gonzales reported using two acre-feet per
22 acre, which is just a straight like North Plains or the
23 Panhandle District or High Plains District would use.

24 A. Yes.

25 Q. Panhandle Water District reported one for the

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1 acre-foot per acre. Every acre that's contiguous, I
2 assume, correct?

3 A. Yes.

4 Q. Evergreen apparently has a -- well, it says in
5 the sentence that Evergreen chose to triple the spacing
6 requirement between wells from one foot per GPM to three
7 feet per GPM.

8 A. Yes.

9 Q. Following a study performed by the District?

10 A. Yes.

11 Q. Did -- did Russell Lahman (phonetic) provide
12 you with a copy of that study?

13 A. No, he did not.

14 Q. Do you know who did the study?

15 A. He told me at the time, but I do not know.

16 Q. Okay. What he told you, was it a name you
17 could recognize?

18 A. It was. It was.

19 Q. That was involved in the business?

20 A. It was someone that I knew, but I couldn't
21 tell you this today.

22 Q. There's not a whole lot often out there; are
23 there?

24 A. Do not know.

25 Q. And then Post Oak Savannah, talked about a

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1 curtailment if the need arises, correct?

2 A. Yes.

3 Q. Apparently, they have a current two acre-foot
4 breaker rule.

5 A. That's correct. For all aquifers combined.
6 We see each aquifer separately.

7 Q. Did any of these Districts use a formula like
8 the one we see in 7.1?

9 A. No, sir.

10 Q. Do you know other Districts that do use that
11 formula?

12 A. Yes.

13 Q. Can -- can you name off the --

14 A. Rusk County.

15 Q. Who?

16 A. Rusk --

17 Q. Rusk?

18 A. -- County GCD.

19 Q. Anyone else?

20 A. Not what I'm aware of.

21 Q. Exhibit 22 seems to lack anything attached to
22 it. That is what we call unhelpful. In connection with
23 your job as general manager, do you have input on the
24 budget?

25 A. Do I help with the budget?

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1 Q. Yes.

2 A. Yes, sir.

3 Q. Okay. And what input do you have with respect
4 to the budget?

5 A. I come up with what I consider budgeting needs
6 for each of the line items that we have, and then I will
7 visit with the budget finance committee, given my
8 justifications of where -- where I think we need to be
9 going in the next budget year, why, with all the -- the
10 real details. And then we will work on that and make
11 adjustments up and down and -- and then take it to the
12 Board for discussions. And then final adoption at some
13 point.

14 MR. DE LA FUENTE: By the way, are we
15 transitioning to individual Alan Day questions here?

16 MR. JONES: I'm not quite sure. I don't
17 believe I was still thinking about Topic 11, but I'm not
18 -- I wouldn't, you know, swear to certainly on that.
19 Topic -- we're still talking about Topic 11 or 9.

20 MR. DE LA FUENTE: Questioning about budgeting
21 is there, but okay.

22 BY MR. JONES:

23 Q. Even 13, kind of interrelated. In your
24 rationale behind changing the rule, and what -- what the
25 real purpose of that was. You would agree that

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1 permitting has slowed down to a crawl?

2 MR. DE LA FUENTE: Object to form.

3 BY MR. JONES:

4 Q. After September 14, 2023.

5 A. I saw that it slowed down.

6 Q. And in connection with that slowdown, did you
7 make a -- a change in the budget for hydrogeological
8 services?

9 A. Not because of that. My -- my changes for
10 hydrogeologic services, a great amount of that was
11 because of a lawsuit. The case A&M brought in our GMA
12 12 planning process.

13 Q. I want to ask the question differently. In
14 September 2020 three, would you've been budgeting for
15 2024?

16 A. For 2024, that is correct.

17 Q. Was the budget for hydrological services
18 reduced for 2024 as compared to 2023?

19 A. I -- I doubt that it was reduced. I don't
20 have the numbers in front of me we were still looking at
21 GMA 12, so all of that work to be done, we -- we not
22 budging for a lawsuit, certainly. But there's always
23 hydrogeologic work to be done. So I know that we -- we
24 figured in a good bit of -- of dollars into the budget
25 for the GMA process. There wasn't a reduction because

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1 of thinking that we were going to have less permit
2 and -- and less hydrogeological reports.

3 Q. So your -- your -- so your -- your testimony
4 is that you did not reduce the budget item for
5 hydrogeological services because you thought you would
6 have fewer permits after September 14 --

7 A. That is correct.

8 Q. -- 2023?

9 A. We did not do that.

10 Q. Okay. Have you seen any analysis from John
11 Seifert concerning the original selection of one foot --
12 foot of spacing versus two feet of spacing?

13 A. No, sir.

14 Q. I handed you Exhibit 24.

15 (Plaintiffs' Exhibit 24 was marked for
16 identification.)

17 BY MR. JONES:

18 Q. And ask if you recognize what this is?

19 A. I do not know what this is.

20 Q. I'm going to represent to you that it was part
21 of a 130,000 pages of documents produced by the District
22 in connection with the Anthony Pazzino --

23 A. Okay.

24 Q. -- lawsuit. It's -- it starts with Page
25 Number 108,268.

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1 A. Okay.

2 Q. It reflects on the face of it, draft rules
3 OH/M2.

4 A. I see that.

5 Q. Ring any bells with you?

6 A. This was prior to the promulgation of the
7 first set of rules. That would be all I know about it.

8 Q. The second page here is a chart showing, "Well
9 production capacity in GPM times spacing requirements
10 squared times pi divided by 43,560 equals total acreage
11 encumbered spacing." Do you see that?

12 A. Yes, sir, I do.

13 Q. And then there's some calculations about well,
14 capacities and acres required based on two-foot spacing
15 acres required based on one-foot spacing.

16 A. Yes, sir.

17 Q. And then acres required just a half-foot
18 spacing, right?

19 A. I see that.

20 Q. And I think you told me earlier that under the
21 new rule, you need basically four times as much
22 contiguous property to support the same everyday normal
23 production?

24 A. Ask that one more time?

25 Q. Oh, yeah.

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1 A. Repeat that, please?

2 Q. I think you told me earlier that -- that you
3 recognized that under the new Rule 6.1 after September
4 14th of 2023, you really need four times as much
5 contiguous property to support the same production.

6 A. That's correct.

7 Q. Is -- is that reflected on the second page of
8 the Exhibit 24?

9 A. It apparently is, yes.

10 Q. And so would it appear that somebody at some
11 point in time made these same calculations that -- that
12 you can make today?

13 A. Yes, sir.

14 Q. But again, it's your testimony you don't
15 recognize what this is or when it was generated?

16 A. No, sir. I do not.

17 Q. Or by whom -- by whom it was generated?

18 A. And by whom, I do not know.

19 THE VIDEOGRAPHER: Counsel, when we get to a
20 stopping point, can we take a break, so I can switch the
21 medias?

22 MR. JONES: We can take a break now.

23 THE VIDEOGRAPHER: All right. All right. The
24 time is now 3:50 p.m. We are off the record.

25 (Recess from 3:50 p.m. to 4:00 p.m.)

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1 THE VIDEOGRAPHER: All right. This is the
2 beginning of Media Intake Number 5. The time is now
3 4:00 p.m. We're back on the record.

4 BY MR. JONES:

5 Q. Mr. Day, I'm going to hand you Exhibit 27.
6 (Plaintiffs' Exhibit 27 was marked for
7 identification.)

8 BY MR. JONES:

9 Q. This is another chart similar to the one we
10 looked at earlier, showing the difference between
11 contiguous acres needed at spacings of one, two, and
12 one-half foot. Did you create this chart?

13 A. No, sir.

14 Q. Did you ever create anything similar to this
15 as you were contemplating this rule change in September
16 of 2023?

17 A. I did create something much less detailed that
18 we're showing -- and provide that in a PowerPoint, I
19 believe. And there was also a piece of paper. I think
20 at one of my -- either the Rules Committee meeting or at
21 the workshops that showed how many acres that you would
22 have to have under the current rule and then it showed
23 it, if you were to change the rule to 1.1 acre -- 1.5
24 acre-feet -- excuse me, 1.5 feet per average annual
25 gallon per minute, and then it showed it for two, with

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1 the thought that it could -- that was just here are some
2 distances, and you need to look. And they -- do we want
3 to change it? Do we want to go to 1.5? Do we want
4 1.25? Whatever it might be. So something similar to
5 this, yes.

6 Q. And your testimony is, you presented to the
7 Rules Committee?

8 A. I believe I did. I think it was at the Rules
9 Committee. Yes, pretty certain of that.

10 Q. Hand you Exhibit 29.

11 (Plaintiffs' Exhibit 29 was marked for
12 identification.)

13 BY MR. JONES:

14 Q. And this would be a copy of Defendant's
15 Amended Objections and Responses to Plaintiff's First
16 Request for Production. Did you help produce the
17 information that's contained in this document?

18 A. Yes. Absolutely.

19 Q. And did you review it before it was sent --

20 A. Yes.

21 Q. -- by the lawyers to us?

22 A. Yes.

23 Q. With respect to -- to documents that have been
24 requested, and this is by the way, Topic 17 --

25 A. Okay.

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1 Q. -- on the deposition notice. Does the
2 District have a written document, retention, and
3 destruction policy?

4 A. Yes.

5 Q. And what is that policy?

6 A. It's about that thick. I couldn't tell you
7 exactly. I don't have that committed to memory. You
8 hand me a copy, and I can read it, but we do have one.

9 Q. I were to ask your lawyer to provide us with a
10 copy, how would I describe that policy in such a way
11 that you would know what I was talking about?

12 A. I -- I would certainly put in there a document
13 kept by the District, retained under the District
14 document retention plan, something of that nature. But
15 we -- we haven't destroyed anything in a very long time.
16 So we -- we keep most every single thing that we get
17 some way.

18 Q. And you began working there on August 27th of
19 2012?

20 A. Yes, sir. That's correct.

21 Q. Have you destroyed any documents since that
22 time?

23 A. There have been some that when we updated our
24 retention plan, I don't know what date that was, but
25 again, I'm guessing that's about 2014-ish, and we had

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1 some documents that just needed to go away. Had
2 outlived their time. So we did do some, but we were
3 very cognizant of -- of certain documents, even that
4 could have gone away at that time, that we felt were, we
5 need to keep these. They're important. This is
6 something in the history that we should keep hold of.

7 So we looked at everything and put -- I put my
8 eyes on everything before we did say, okay, yeah, that
9 -- that can go, that's -- that's long out of date, and
10 go -- a lot of that was invoices, payments, stuff like
11 that, they only had to have, I believe, a three year --
12 when it was back in the back. So if it -- if it seemed
13 to be of any importance, it would have been kept.

14 Q. Did you -- in -- in that document sweep, did
15 you destroy any applications?

16 A. On, no, sir. Absolutely not.

17 Q. Or owners permits?

18 A. No, sir.

19 Q. No minutes of meetings?

20 A. No, sir. Not to my knowledge.

21 Q. No transcripts of meetings?

22 A. Not to my knowledge.

23 Q. Now, how general or documents maintained --

24 A. Let me -- let me give you more information on
25 that.

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1 Q. Sure.

2 A. There were no transcripts at all prior to
3 about 2009. There are CDs that were used to record.
4 There were tapes used to record. That's all been kept.
5 If we were to ever get a transcript we had -- we'd pull
6 one of those out and those out and send it off to have
7 it transcribed. So -- but anyway, that's just to give
8 you more detail.

9 Q. All right. For example, if there was a
10 discussion about John Seifter prior to 2009, about the
11 justification for a spacing rule, that might be on
12 audio?

13 A. It's possible.

14 Q. And it could be retrieved if it exists?

15 A. I would say that's -- yes.

16 Q. Now, you say CDs and tapes, what kind of tapes
17 are you talking about?

18 A. And I say that, I -- I believe there are just
19 on cassette tapes. There's a -- I know there's a good
20 many compact discs, and I think there's some that are on
21 cassette.

22 Q. Is the District concerned at all about the
23 deterioration of the tape on those cassettes?

24 A. I'm not doing anything to extraordinary to put
25 them in an area where they can't deteriorate. They're

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1 -- they're right where they were, up off the ground, on
2 one of my shelves back there. I haven't given thought
3 to, oh my goodness, I need to put them someplace where
4 they could never deteriorate.

5 Q. Where the District has hard copies of agendas
6 or reports from John Seifert, or that sort of thing, how
7 are they physically kept?

8 A. Those are in boxes.

9 Q. Mica (phonetic) boxes?

10 A. And they have -- they should -- yes. And they
11 should -- many of the -- most -- some of that, if not
12 all of it, has been scanned and then put into one of our
13 scan files in our -- in our database. So in our back-
14 drive. So --

15 Q. Okay. This gets us into a whole different
16 topic. Do -- do you store electronic data on some kind
17 of media?

18 A. Yes. It all goes in. Anything of that nature
19 goes into our back-drive, into our hard drive.

20 Q. All right. So it's just --

21 A. And then hard drives are backed up to a
22 portable -- portable drives. And we switch those out
23 about every two weeks. We'll put on in, it backs
24 everything up. We'll pull that one, take it to the
25 bank, pull it out, and then the bank we have the one

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1 that we put in there two weeks ago we bring it back
2 over, plug it in so we're -- we're all -- we're -- right
3 now we're about -- we're within two -- probably two
4 weeks of having everything that's been created that's
5 still on -- is, is in some form of a -- of a drive, a
6 hard drive.

7 Q. Obviously, you have a computer systems some
8 kind?

9 A. That's correct.

10 Q. Networked?

11 A. Our own, yes, sir.

12 Q. And that network includes, I guess, backup
13 drives?

14 A. The backup drive comes from -- is at the hard
15 drive and is supplemental to it, so it can be removed,
16 taken out, take it to the bank, get the other one and
17 bring it back, just for another backup.

18 Q. Are these things backed up to a cloud
19 anywhere?

20 A. We do not back up to a Cloud, no.

21 Q. Don't use Cloud storage of any kind?

22 A. We -- Halff does. Halff Associates that does
23 all of our data for any of our files, and that type of
24 thing, any of the permits, that's all backed up on their
25 hard drives and backed up in the Cloud.

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1 Q. Is it backed up locally?

2 A. It is not backed up locally.

3 Q. Is there a -- a specific programming used to
4 access the database?

5 A. The Halff Associates. Yes, we -- we have a --
6 we have the application. You have to sign in to it.
7 You got to give the password. And then we're in, to be
8 able to do any work that we can. The public sees the
9 same thing; except they don't see all of the information
10 behind the curtain. So they see some that we provide
11 for the -- for them on -- on our website where they can
12 go look, but they don't get it all.

13 Q. What is it that the public doesn't get?

14 A. All the names and phone numbers and -- and
15 those kinds of things. There's a lot of detail in every
16 well file that there's really no need for them to see.
17 It is more; they can see a driller's well log. They can
18 see the location. They can see specifics of what
19 aquifers and those kinds of things, but their -- their
20 need otherwise is really -- I mean, if they want it, all
21 they got to do is ask us.

22 Q. Can the public see the CAD layer on your
23 mapping --

24 A. Yes.

25 Q. -- system.

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1 A. Yes.

2 Q. Other than boxes where you store things, are
3 there filing cabinets for them?

4 A. Yes. We have multiple filing cabinets for all
5 the current permits. Anything that is alive and has a
6 good permit, has a hard file that stays active and never
7 gets put in a box, it's available under the cabinet.

8 Q. Do you store information related to cell phone
9 calls?

10 MR. DE LA FUENTE: Object to form.

11 THE WITNESS: No.

12 BY MR. JONES:

13 Q. Do you store information from text messages?

14 A. Let me ask you this. What do you mean? Where
15 is the storing? Who stores what?

16 Q. Well --

17 A. I need more detail.

18 Q. Let me ask it more generically. As between
19 you and the Board of Directors, do you do any business
20 by text message?

21 A. We do some. Not -- we do some not about we do
22 some communications, yes.

23 Q. Are those preserved in any way?

24 A. Only -- I -- I don't get rid of texts. I just
25 don't get rid of them. So I store them myself. And

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1 communications that I've had with them, I've taken
2 snapshots, and I've said that to you guys. Otherwise, I
3 don't know if anybody else is doing that. My wife's
4 certainly not keeping all of hers. They're deleted and
5 gone. Now -- go ahead, I'm sorry.

6 Q. I mean, I appreciate that your wife does that,
7 but I was wondering if you know whether the members of
8 Board of Directors communicate with one another by text?

9 A. I have -- do not know the answer to that.

10 Q. Or by e-mail?

11 A. I do not know.

12 Q. You mentioned using Facebook. Do you use
13 other communication applications like WhatsApp or
14 GroupMe, or any of those applications?

15 A. No, sir. And I don't use Facebook. We have a
16 Facebook page for the District, so that people can come
17 and get to our web page, and that kind of thing.

18 Q. And did you assist in gathering the documents
19 that are responsive to our request for production?

20 A. Yes, I did.

21 Q. How did you -- how did you go about getting
22 those documents?

23 A. So whichever request it was, you needed
24 something physically, we would -- I would physically go,
25 put my hands on it, whether it was in a -- in a cabinet,

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1 in a file, whether it was electronic, in an electronic
2 form, whatever it might have been, I -- I personally put
3 those together.

4 Q. So in response to Request for Production
5 Number 7, on Page 10 of Exhibit 29.

6 A. Okay.

7 Q. I see links to files apparently maintained by
8 the District in electronic form available on the
9 website.

10 A. That's correct. As I explained earlier, when
11 you go to the file browser that I spoke of and then you
12 go to the particular year that you need, then you would
13 scroll through all of the folders that are there and
14 it'll -- they'll be listed by -- there'll be one that
15 will say rules hearing, permit hearing, September the
16 14th of 2023.

17 And when you click on that, it's going to show
18 you the agenda, and it's going to show you any documents
19 that we provided to the Board and provided to the public
20 for them to view as to what rules are we going to --
21 what rules are we looking at changing? And here's the
22 old format, or here's the current wording. Here's what
23 we're suggesting changing. It's likely to have some
24 explanation.

25 It could, I don't know if this particular one,

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1 but maybe in the Rules Committee would have some
2 explanations as to here's what we're -- it -- I know
3 that it would have the document alluded to earlier that
4 said, okay, well, here's our current acreage and here's
5 if you change it to 1.5. And here's what's needed if
6 you change it to two. So there could be some of those
7 documents in there also, in that same folder.

8 Q. So if there were originally hard copy
9 documents, you scanned them; is that correct? Scanned
10 them and put them in electronic format up on your
11 website?

12 A. That's correct. When -- when you make a
13 document on the computer, it's saved to the back-drive,
14 so you don't have to copy it, it already makes its own
15 copy. We just turn that into a PDF. I make a complete
16 PDF folder for whatever the agenda item might be,
17 anything that's related to that, and I put that up on
18 the website for everybody to find.

19 Q. I'm going to hand you Exhibit 30.
20 (Plaintiffs' Exhibit 30 was marked for
21 identification.)

22 BY MR. JONES:

23 Q. Did you prepare this document?

24 A. Yes.

25 Q. Were you asked to prepare it?

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1 A. No, sir.

2 Q. Why did you prepare it?

3 A. To try and inform -- no. To inform the Board
4 members here -- here are the radiuses. Here are the
5 different distances. Here's the effect of going from 1x
6 to y or y to z, and -- so that they could understand
7 the -- what was being recommended, and what was to be
8 considered.

9 Q. And you provided that to the Board?

10 A. Yes, sir.

11 Q. So the first column there says 10, 100, 1,000,
12 2,000, and so forth. What does that represent?

13 A. Acre-feet.

14 Q. Request --

15 A. You see what happened here was that this is
16 the heading of the column is "Acre-feet Requested."
17 This just wasn't centered so --

18 Q. Pretty wide column.

19 A. Correct.

20 Q. And then the rest of it's just spreadsheet
21 calculations of the radius and the resulting acres?

22 A. That's correct.

23 Q. Do you know when you provided -- when you
24 generated this?

25 A. This would have been for that Rules Committee

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1 -- ahead of that Rules Committee meeting, which was on
2 March the 22nd of 2023. This was one of those documents
3 that -- that they saw it either at that meeting or at
4 the July workshop -- the July the 10th workshop. Or
5 both.

6 Q. So at least with respect to the March
7 workshop, March 2023 workshop --

8 A. Rules Committee.

9 Q. Rules Committee.

10 A. Yeah.

11 Q. The members of that committee would have been
12 aware that changing from one foot to two feet would mean
13 that four times as much contiguous acreage is going to
14 be required to get the same requirement?

15 A. They should.

16 Q. If they were looking at what you wrote?

17 A. Correct.

18 Q. I'm going to hand you Exhibit 31.

19 (Plaintiffs' Exhibit 31 was marked for
20 identification.)

21 BY MR. JONES:

22 Q. Can you tell us what that is?

23 A. This is that.

24 Q. The same measurements?

25 A. It is a document that was produced in hard

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1 form to be given to Board members and Rules Committee
2 members, and the public. This was likely in a
3 PowerPoint form.

4 Q. Presented to the Board?

5 A. And the public.

6 Q. Prettied up from Exhibit 30?

7 A. It's what?

8 Q. Made more attractive than Exhibit 30.

9 A. I -- I'm not sure that that's the reason that
10 was created, but -- that way, but it -- it seemed to me
11 to be more readable, as far as there's two gray columns,
12 here's two green columns, here's two yellow columns,
13 those go together, this equals that.

14 Q. And you've added at the bottom of the chart
15 2.25 times more acreage and four times more acreage.

16 A. So that was just simply saying that if you are
17 going to 1.5 then you end up using -- having to have
18 2.25 more acres in order to get the same amount, and if
19 you use a 2-foot average annual gallons per minute,
20 you'll have to have four times as much land for the same
21 amount of water.

22 Q. And that's a result of the fact that the first
23 two numbers in the formula the well capacity of the
24 average annual GPM times spacing --

25 A. Times the factor times the --

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1 Q. Yeah. Times the --

2 A. That's going to equal spacing.

3 Q. -- one or two --

4 A. That's correct.

5 Q. -- that thing between the parentheses gets
6 squared?

7 A. That's correct.

8 Q. Okay. One times one is --

9 A. One.

10 Q. Okay. Two times two is --

11 A. Four.

12 Q. Which gives us the resulting four times as
13 much acreage as you would need at a one-foot spacing,
14 correct?

15 A. Sounds correct.

16 Q. It's just the way the formula works. If you
17 expand it at the three feet, then you get a result of
18 nine.

19 A. I believe that would be correct.

20 Q. Let's talk about Request for Production 11 for
21 just a second. We had asked for "studies, analysis
22 reports, white papers, memoranda or the documents that
23 defendant consultant, reviewed, or relied on, in
24 promulgating, Revised Rule 6.1, effective September 14,
25 2023." And the response, gives us links to documents

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1 and a YouTube -- couple of YouTube videos, correct?

2 A. What page you on that? I'm sorry.

3 Q. Fourteen. Page 14 of the Exhibit, at the
4 bottom, 29.

5 A. Number 11, correct?

6 Q. Yes. Correct.

7 A. So it is -- yes, the -- the YouTube videos
8 would be the live stream recordings of our meetings,
9 that's correct.

10 Q. And the other things that are referred to
11 here, "documents and comments from outside parties are
12 available at," and it describes a link, correct?

13 A. Yes, sir. That's correct.

14 Q. It says, "minutes of the meetings for the rule
15 change was discussed or available at," and describes the
16 PDF document that can be accessed through your web
17 browser?

18 A. Correct.

19 Q. And then the videos you just talked about on
20 YouTube, you can access through YouTube?

21 A. You can do that, or you can go to our website,
22 you can go into that year, and then at the very bottom
23 of that year, it has all of the videos. You go in and
24 get the -- and find every month that we were doing
25 videos, we didn't start videos until 20 -- I think early

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1 2024. I'm not real certain of that, but I -- I think
2 that's right. At that point, you can -- you can find
3 and now you can find videos for every single meeting.

4 Q. So I -- I see -- now I'm looking at the
5 Response to Request for Production Number 11. Is that
6 your -- the videos you refer to are August 2024 and
7 September 2024?

8 A. Yes.

9 Q. All right. After the rule change?

10 A. Before the rule change, but this is -- this is
11 before the rule change, which was September the 13th, 20
12 -- we had -- excuse me. This was -- these are the
13 videos ahead of our second rule change, where we had to
14 validate and redo because of the quorum issues.

15 Q. All right. And I understand that. And I
16 don't want to get into it.

17 A. Okay.

18 Q. Is it fair to say that the rules you ratified
19 in September of 2024 are the same rules we see today as
20 6.1 and 7.1?

21 A. That's correct.

22 Q. Those weren't changed, they were --

23 A. No, sir.

24 Q. -- they were just ratified?

25 A. They were readopted.

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1 Q. All right.

2 A. Okay. But yes. There's -- there are no
3 changes to those.

4 Q. And you consider them to be in effect as of
5 September 24, 2023?

6 A. That is correct.

7 Q. Now, the request called for "studies,
8 analyses, reports, white papers, memoranda, or other
9 documents that the District consulted, reviewed, or
10 relied on in promulgating the revised Rule 6.1." Is it
11 your testimony that the response, in fact, lists all of
12 the studies, analyses, reports, white papers, memoranda,
13 or other documents that the District consulted,
14 reviewed, or relied on in making the change to Rule 6.1?

15 A. Yes.

16 Q. Request 12 asks for "all studies, analyses,
17 reports, white papers, memoranda, or other documents
18 concerning the proposed or projected impact of
19 promulgating revised Rule 6.1, effective September 14,
20 2023." And your response again, lists specific items
21 accessible through your website.

22 A. That is correct.

23 Q. And is this a complete list of the studies,
24 analyses, reports, white papers, memoranda, or other
25 documents concerning the proposed projected impact of

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1 promulgating revised Rule 6.1?

2 A. To the best of my knowledge, yes.

3 Q. Is there anyone who would have more knowledge
4 than you about that topic?

5 A. I don't believe so.

6 Q. All right. So Request for Production 14,
7 similarly asked for "all studies, reports white papers,
8 memoranda, or other documents that defendant consulted,
9 reviewed, or relied on in promulgating Revised Rule 7.1,
10 September 14, 2023." And again we have a listing of
11 things, the links to your website, and to YouTube
12 videos. Is it your testimony that this is a complete
13 list of the studies, reports, white papers, memoranda,
14 or other documents that you -- that the District
15 consulted with you or relied on in promulgating Revised
16 Rule 7.1?

17 A. Yes, sir.

18 Q. And you see Request for Production Number 15,
19 referring to documents that concern the proposed or
20 projected impact of promulgating your revised rule?

21 A. Uh-huh.

22 Q. Is that -- is your testimony that this
23 response is a full and complete list of the documents
24 requested in Request For Production Number 15?

25 A. Yes.



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1 Q. Is it your testimony that the Response Request
2 Production Number 16 is a complete list -- I'm sorry.
3 There's no list of documents there. Here's the response
4 -- here's the Request for Production Number 16, "All
5 studies, reports, white papers, memoranda, or other
6 documents concerning the actual impact of promulgating
7 Revised Rule 7.1, effective September 14, 2023." And
8 the response is, "Subject to and without waiving the
9 foregoing objections, after a diligent search, defendant
10 is not aware of any responsive documents." Is that
11 correct?

12 A. That's correct.

13 Q. So Rule 7.1 -- let me just -- we've been
14 talking about your current rules. Exhibit 41 is a copy
15 of the current rules; is that right?

16 (Plaintiffs' Exhibit 41 was marked for
17 identification.)

18 THE WITNESS: Yes, sir. Well, I'm -- I'm
19 going to go back. The answer is no; this is not the
20 latest because there's -- we've -- we had a rule change
21 recently. It's not on 6.1 and not 7.1.

22 BY MR. JONES:

23 Q. All right.

24 A. But -- so this is the next to the last one.

25 Q. Does Exhibit 41 reflect current Rules 6.1 and

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1 7.1.

2 A. Let me make sure, but --

3 Q. On, sorry, pages --

4 A. Yes.

5 Q. -- 20.

6 A. The answer is yes.

7 Q. Okay. So for our purposes today, for talking
8 about rules 6.1 and 7.1, I am looking at the current
9 versions of those two rules.

10 A. Yes, sir.

11 Q. With respect to Rule 7.1, and we discussed
12 earlier, the overlapping circles idea.

13 A. Yes, sir.

14 Q. Well, 7.1 now says on Page 22, "The assigned
15 contiguous acreage circle footprints under this formula
16 for a new well registered or permitted by the District
17 after September 14, 2023, shall not overlap between
18 wells and the same aquifer."

19 A. Yes.

20 Q. When was the language for a new well
21 registered or permitted by the District after September
22 14, 2023, added?

23 A. At this meeting on September -- I mean it was
24 adopted on September 14th of 2023.

25 Q. So earlier drafts didn't have that language;

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1 is that correct?

2 A. Earlier drafts?

3 Q. Of 7 -- revised 7.1? And the run up to
4 September 14, 2023, where there's some drafts of Rule
5 7.1 that did not contain the words "for a new, well
6 registered or permitted after September 14, 2023."

7 A. I -- there -- there could have been because
8 Monique and District staff may have gone, we need to be
9 more precise about this and put a time stamp on it. So
10 that's very possible. And that could have come from a
11 -- the July Board meeting and -- and/or the workshop
12 where somebody says you need to be clearer about that.
13 We need to make sure everybody understands that after
14 this date. So that -- that doesn't materially change
15 anything here as to not overlapping it just puts the
16 timestamp that -- from this date forward. So I -- it's
17 very possible.

18 Q. So if a -- if a landowner had an existing well
19 in place before September 14, 2023, and after that date,
20 after this will change, wanted to drill another well on
21 his property, could the new well overlap his existing
22 well?

23 A. No.

24 Q. All right. For those few circumstances where
25 you know of, well, circles that overlap, would you agree

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1 that allowing those circles to overlap would allow the
2 owner to produce more water than if the circles didn't
3 overlap?

4 A. Yes. It's -- that's certainly possible, yes.

5 Q. Request for Production 17 says, "All documents
6 concerning the fair market value of groundwater in place
7 within defendant's geographic territory from January 1,
8 2022, to the present."

9 MR. DE LA FUENTE: Which number?

10 MR. JONES: Twenty -- I'm sorry. Request for
11 Production 17.

12 BY MR. JONES:

13 Q. Are you aware of any responsive documents to
14 that request?

15 A. No, sir.

16 Q. Is there anything about the request that is
17 ambiguous to you?

18 A. Seems to be fairly straightforward what you
19 might be looking for.

20 Q. Do -- do you understand the expression of fair
21 market value?

22 A. I do.

23 Q. And the expression groundwater in place?

24 A. I understand that.

25 Q. All right. And of course, you know what the

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1 territory of the District is?

2 A. Yes.

3 Q. Has the District, at any time, undertaken to
4 do any analysis of fair market value of groundwater in
5 your District?

6 A. No. It's not one of our jobs.

7 Q. Okay. And the same question in Request for
8 Production Number 18, having do a fair market value of
9 groundwater actually produced to the surface. And
10 again, your response is you're not aware of responsive
11 documents that would reflect that fair market. Is that
12 still correct?

13 A. That's correct.

14 Q. Request 19 asked for "documents reflecting all
15 studies, analyses, reports, white papers, memoranda,
16 correspondence, written documents concerning the sale
17 and/or transport of water" -- "groundwater produced
18 within defendant's geographic territory to destinations
19 outside defendant's geographic territory." Have there
20 been any such studies or analyses done?

21 A. Now, sir.

22 Q. With respect to Upwell, for example, do you
23 know, does -- does the District have any kind of study
24 or analysis, or documentation concerning where Upwell
25 intends to take water?

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1 A. We only have what they've told us, that it
2 could go to Georgetown. It is not an absolute thing
3 that -- that's going to happen. They do not have a -- a
4 water treatment in place. So it's possible that it
5 could go to -- to Georgetown or other places.

6 Q. Are you familiar with EPCOR?

7 A. I know the name. I've heard a lot of it used
8 in conjunction with the transport of the water.

9 Q. Have you ever met or had communications with
10 Michael Irlbeck?

11 A. I've met him on two occasions at different
12 meetings. And -- but it's been very congenial
13 conversations, but nothing in detail.

14 Q. Did he ever describe his intent in connection
15 with moving water from your jurisdiction to other
16 places?

17 A. He did not.

18 Q. I guess you'd agree that Georgetown, Texas, is
19 outside Brazos Valley Groundwater Conservation District?

20 A. I definitely agree with that.

21 Q. Has the District performed any studies or
22 analyses with respect to how to set transport fees?

23 A. No. We've not done any studies to determine
24 that, no.

25 Q. You have determined what transport fees will

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1 be; have you not?

2 A. Yes, we have.

3 Q. And on what basis?

4 A. Well, it starts off with the basis of our
5 Enabling Act, which -- which provides for one method of
6 collecting transport fees, and then legislation that
7 came from the 88th Legislative Session, which provides
8 for a different method. A method that's different from
9 our Enabling Act that allows for collection of export
10 fees, transport fees to -- for the use on -- to keep
11 wells operable, and we're currently using both.

12 Q. Do the transport fees or export fees that you
13 currently are using relate to the cost of the service
14 you're providing to the people who are theoretically
15 transporting or exporting water?

16 A. Ask that one more time.

17 Q. Sure.

18 A. Please.

19 Q. Do the transport fees that you have set relate
20 in some way to the cost of service that you're providing
21 to the producers who are going to transport water?

22 MR. DE LA FUENTE: Object to form. You can
23 answer.

24 THE WITNESS: I -- I don't know how to answer
25 it that way. It -- it was related to -- our transport

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1 fees are currently related to the need to collect fees
2 for mitigation of wells that will become inoperable and
3 the effects of transporting water -- certain amounts of
4 water on a ramp up schedule that's been provided to us
5 and the need to be able to do that two and two and a
6 half years before the pumping ever starts.

7 So we're doing a proactive well mitigation
8 program. We're going to redrill wells. We're going to
9 lower pumps. We're going to upsize pumps. We're going
10 to do all the wiring on anything that needs to be done
11 at no cost to the -- to the property owner -- to the
12 well owner, via the export fees that are collected.

13 Q. So it would be fair to say that you anticipate
14 the production and export of this water to have impacts
15 on wells within the District?

16 A. Yes, sir.

17 Q. And those impacts relate to the fact that the
18 cones of depression from those wells will spread out and
19 cause migration of water away from those existing wells.

20 MR. DE LA FUENTE: Object to form.

21 THE WITNESS: It will cause the artesian
22 pressure at the wells to be lowered, and there will be
23 impact, yes.

24 BY MR. JONES:

25 Q. As we discussed earlier, reducing the artesian

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1 head to a certain point, we'll finally get to the top of
2 the aquifer?

3 A. Yes, it could.

4 Q. But until you reduced it to that point, you
5 really haven't gotten the water and storage correct?

6 A. That's correct.

7 Q. It's still there?

8 A. That's correct.

9 Q. You may have to drill deeper for it?

10 A. That's correct.

11 Q. And it cost more to pump it to the surface?

12 A. Yes, sir.

13 Q. So your mitigation program anticipates that
14 kind of mitigation, putting in deeper wells or larger
15 pumps or, I guess, reimbursing electricity costs?

16 A. No reimbursement -- the answer to the first
17 part of the question is yes, not reimbursing electrical
18 cost, no.

19 Q. Which would be higher, correct?

20 A. I --

21 MR. DE LA FUENTE: Object to form.

22 THE WITNESS: -- don't know.

23 BY MR. JONES:

24 Q. All right. You haven't really studied that
25 aspect of it?

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1 A. So, sir.

2 Q. Getting down to the bottom of the barrel.

3 A. I see that.

4 Q. Are you encouraged?

5 A. I am. I'm encouraged.

6 Q. You shouldn't be.

7 A. Oh, my. You -- wow.

8 Q. Topic 17 has to do with information in these
9 Responses to Request for Admissions. You see that?

10 A. Okay. Let me look. Yes.

11 Q. All right. Let me just address a couple of
12 these with you. Request for Production -- I'm sorry.
13 Request For Admission Number 6, it -- I take it you
14 participated in formulating these answers?

15 A. Yes.

16 Q. Request 6 says, "Admit that Rule 7.1(c) limits
17 groundwater production per the following formula." And
18 the response is, "Deny that the information above is an
19 accurate statement of the information and current Rule
20 7.1(c)." Why is that true?

21 A. I need to see 7.1(c) in the current rules.

22 Q. Which is Exhibit 41.

23 THE REPORTER: Counsel, what exhibit number
24 are we on?

25 MR. JONES: I'm sorry?

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1 THE REPORTER: What exhibit number are we on?

2 MR. JONES: This is --

3 THE REPORTER: What exhibit number are we on?

4 MR. JONES: Thirty-seven.

5 (Plaintiffs' Exhibit 37 was marked for
6 identification.)

7 THE REPORTER: Thank you.

8 MR. JONES: I'm sorry.

9 THE WITNESS: I'm not certain why it's denied
10 other than it may have been denied because of making
11 sure that it's based on average annual gallons per
12 minute and not the production from the -- the actual
13 rate from the well. I don't see that here. I -- I
14 don't know. I just simply don't know about this.
15 That's a -- that's really the only thing that I can see
16 that would be the reason for that.

17 BY MR. JONES:

18 Q. So you agree with me that this formula that is
19 stated here, average annual production rate in gallons
20 per minute times District's spacing requirements between
21 wells squared times pi divided by 40,000 -- 43,560 is
22 the current formula?

23 A. That is the current formula, and it does
24 calculate contiguous acreage.

25 Q. All right. And it does, in effect, limit

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1 groundwater production?

2 A. Not on --

3 MR. DE LA FUENTE: Object to form.

4 THE WITNESS: -- the entirety of the tract.
5 It limits it at that spot on that tract of land.

6 BY MR. JONES:

7 Q. In the circle?

8 A. In that circle. That doesn't mean that there
9 can't be other limit -- other circles drawn.

10 Q. Each of which would be subject to this
11 formula?

12 A. That is correct.

13 Q. All right. With respect to Request for
14 Admission Number 7, would you agree that the spacing
15 requirement in Rule 6.1 is the part of 7.1 called
16 "District Spacing Requirement Between Wells."

17 A. You're going to state that one more time.

18 Q. Sure. You -- you see in the formula the --
19 the component District spacing requirement between
20 wells?

21 A. Yes, sir.

22 Q. So you agree that that refers to the spacing
23 requirement in Rule 6.1?

24 A. That is correct, yes.

25 Q. And you agree that Rule 7.1 applies to the

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1 Simsboro?

2 A. Yes, sir.

3 Q. And 6.1 applies to various aquifers, but the
4 one-foot and two foot differences we've talked about
5 today apply to the Simsboro?

6 A. Have applied in the past. And --

7 Q. And the two-foot applies in the future?

8 A. No.

9 Q. All right.

10 A. And it also -- this formula does apply to all
11 aquifers except the Brazos River Alluvium.

12 Q. Right.

13 A. Not just the Simsboro.

14 Q. Request for Admission 10. Do you know why
15 that was denied?

16 A. Because it says one gallon per minute
17 produced. It's not -- it's the average annual gallon
18 per minute.

19 Q. So --

20 A. So it just wasn't accurately -- the question
21 for me was not accurately posed.

22 Q. With that revise of -- if we say that under
23 old Rule 6.1, that one-foot spacing requirement will
24 apply to the average annual production rate in gallons
25 per minute, instead of --

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1 A. Yes, as it says in the formula.

2 Q. Right.

3 A. Correct.

4 Q. All right. Do you know why Request for
5 Admission Number 11 was denied?

6 A. Let me go back to -- it says "Admit that under
7 old Rule 6.1 that the landowner had a 3,000 gallon a
8 minute well that he had to own or control 649 acres.
9 That's not correct. He can have a 3,000 gallon per
10 minute well and only have some -- but a much smaller
11 total permitted amount.

12 This apparently is assuming that this well is
13 permitted at 3,000 acres -- or at 4,839 acre-feet in
14 order to be 3,000 gallons per minute and have to have
15 649.

16 Q. Okay.

17 A. That's why it's denied.

18 Q. You would admit that if the owner has an
19 average annual production rate in gallons per minute of
20 3,000, that he would need to own or control a radius
21 around the wellbore of 3,000 feet?

22 A. That would be correct. Because if he -- he
23 was operating it at 3,000 gallons per minute average
24 annual, then he would have to have 649 acres to do that,
25 under the old rule.

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1 Q. And with respect to Request 12, if we make
2 that same change, you -- you admit that under the new
3 formula, that same owner would have to own or control
4 2,569 acres?

5 A. That would be correct, making that same change
6 to -- that we just talked about in 11.

7 Q. Right. Request for Admission 14 was denied.
8 I -- I believe, based on the earlier conversation, that
9 you think the effect of new Rule 6.1 is to reduce the
10 amount of groundwater by 50 percent instead of 75
11 percent?

12 A. That's correct.

13 Q. And this is just a matter of mathematics?

14 A. Correct.

15 Q. Request for Admission 15 is denied in part. I
16 assume it's because of the use of the expression that
17 rates up to four times the rates allowed by plaintiff
18 and class members. You would think it was two times.

19 A. Let me read it.

20 Q. Please do.

21 A. No. This would be -- it says that they are
22 producing groundwater at a rate up to four times, and
23 maybe, maybe not.

24 Q. But depends on whether they're actually
25 producing?

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1 A. That's correct.

2 Q. They have the potential to produce --

3 A. That would be correct.

4 Q. -- groundwater up to four times or two times?

5 A. Let me read the -- it again --

6 Q. Sure.

7 A. -- just to make sure. No, it would be up to
8 two times the rate. They can produce up to two times
9 the rate.

10 Q. All right. So you would admit that landowners
11 with a pre-September 14, 2023, permit in close proximity
12 to plaintiffs from class members' properties without
13 groundwater wells have the potential of producing
14 groundwater rates up to two times the rates allowed to
15 plaintiffs and class members under the new rules?

16 A. Correct. That's correct.

17 Q. Sixteen. Would you agree that the District is
18 aware that there are folks out there wanting to supply
19 water to municipalities and industries in other parts of
20 Texas from the Simsboro Aquifer in your District?

21 A. There are those that have -- have said they
22 want to do that, yes. And we now have a project that
23 says that very thing.

24 Q. All right. Request for Admission Number 17
25 asks you to admit that the proposed class, as defined in

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1 our complaint, consists of more than 100 landowners.

2 And you have denied that. Why is that?

3 A. You're -- I think you're assuming that every
4 property is the same. And every property is not the
5 same. And they are shaped differently. So there's
6 certain amounts of things that can and cannot be done.
7 So there is no continuity in what these supposed class
8 members are going to be. There's -- it's not that --
9 that you -- we don't know who and who's not going to
10 come for a permit. Don't have a clue. Does -- is
11 everyone with 35 acres or whatever the number, are they
12 all going to come in for a permit? We don't know
13 anything until they actually come in for a permit. We
14 don't know anything.

15 Q. So let's break this down. The request asked
16 you to admit the proposed class, that is, say,
17 landowners within your District who owned more than 35
18 acres, consist of more than 100 landowners.

19 My question is, are there more than 100
20 landowners in your District who have more than 35 acres
21 and don't have a permit yet?

22 A. I don't know the exact answer to that. I can
23 personally go -- I assume that there are, but I have not
24 gone through and trying to find every property that's 35
25 acres and/or more and doesn't have a permit. And there

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1 is a layer on my map that will allow anyone, if they
2 would like to go do that, they're more than happy to go
3 do that.

4 Q. You could have done that in responding to this
5 request?

6 MR. DE LA FUENTE: Object to form.

7 BY MR. JONES:

8 Q. Correct?

9 MR. DE LA FUENTE: Object to form.

10 THE WITNESS: I could have.

11 BY MR. JONES:

12 Q. But you didn't?

13 A. I did not do that.

14 Q. If you had done that, you'd know whether the
15 proposed class consists of more than 100 landowners or
16 not.

17 MR. DE LA FUENTE: Object to form.

18 THE WITNESS: And as I'm saying, I would
19 assume that there are. It seemed logical that there is,
20 but I did not perform that task.

21 BY MR. JONES:

22 Q. Why would you assume that they're more than
23 100 such landowners?

24 A. Just from the knowledge that I have of the
25 District. And as many times as I've been on the map,

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1 just personal knowledge.

2 MR. JONES: There's a gnat in here.

3 MR. DE LA FUENTE: Has been all day.

4 BY MR. JONES:

5 Q. Could you determine the precise number of
6 people in the District who own more than 35 unpermitted
7 acres by looking at the information the District has?

8 A. By looking at the map and someone taking the
9 time to go through every property, and by going --likely
10 having to go to the Appraisal District and get them to
11 give us a listing of anything 35 acres or more, and then
12 taking that document and going to our permit list and
13 go, how many of these don't have permits, it's possible
14 to be done.

15 Q. Right. See in a prior exhibit, about 1,000
16 permits. Is that the right number?

17 A. I -- I -- yes, at least that.

18 Q. All right. The information you can get from
19 the Appraisal District, you can put in a spreadsheet,
20 correct?

21 A. I'm sure you can -- I feel like you could get
22 in a spreadsheet form.

23 Q. If you put it in a spreadsheet, you know how
24 to sort the spreadsheet according to information that in
25 your columns, right?

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1 A. Sure. Yes, I do.

2 Q. And so if the Appraisal District gives you a
3 number for legal acres of each tract that they have
4 information on, you could put that in a spreadsheet and
5 then sort it by the number of acres, correct?

6 A. That sounds correct.

7 Q. And if you were clever with Excel, you could
8 say I want to know only the acreages with more than 35
9 acres, right?

10 A. I -- sounds correct, yes.

11 Q. You probably done things like that with Excel,
12 haven't you?

13 A. I have with Excel, sure.

14 Q. And so it's ascertainable, isn't it, how many
15 actual tracts out there are more than 35 acres?

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: Yes, it is absolutely
18 ascertainable.

19 BY MR. JONES:

20 Q. And you can absolutely cross-tabulate that
21 with the tracts that you have permits existing on
22 already, you couldn't you?

23 MR. DE LA FUENTE: Object to form.

24 THE WITNESS: It certainly could be done.

25 BY MR. JONES:

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1 Q. And by doing that, you can ascertain the
2 identities and number of tracts over 35 acres where
3 there's no permit existing today, correct?

4 A. Again, that could be done.

5 Q. You could do that, can't you?

6 MR. DE LA FUENTE: Object to form.

7 THE WITNESS: I could. That's not something
8 we house or keep.

9 BY MR. JONES:

10 Q. I understand. But if, for example, you had a
11 lawsuit and wanted to know how many class members were
12 out there and who they were you have the tools and the
13 information available to ascertain that, don't you?

14 MR. DE LA FUENTE: Object to form.

15 THE WITNESS: I have some of the tools. And
16 then there's -- others have tools. So it -- it would be
17 an endeavor.

18 BY MR. JONES:

19 Q. But doable?

20 A. It -- it's a doable thing.

21 Q. All right. Request 20, has to do with your
22 familiarity with a couple of cases. Have you read
23 Stratta versus Row?

24 A. No, I have not.

25 Q. Really? That has to do with this District,

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1 yes?

2 A. You asked me if I've read it.

3 Q. Yes.

4 A. The answer is no.

5 Q. Have you read Edwards Aquifer Authority versus
6 Day?

7 A. I have not.

8 Q. I'm handing you Exhibit 38. This is a copy of
9 Plaintiff's original Class Action Complaint filed in
10 this case.

11 (Plaintiffs' Exhibit 38 was marked for
12 identification.)

13 BY MR. JONES:

14 Q. Have you read this document?

15 A. I have.

16 Q. And from reading this complaint, did you come
17 to an understanding of what this lawsuit's about?

18 A. Yes.

19 Q. What's your understanding of what this
20 lawsuit's about?

21 MR. DE LA FUENTE: I'm going to object to the
22 extent that it calls or any legal characterization.
23 Witness may testify as to his understanding of the
24 factual basis for the lawsuit and the facts alleged.

25 BY MR. JONES:

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1 Q. Do you understand the factual basis of the
2 lawsuit?

3 A. I do.

4 Q. What do you understand it to be?

5 A. That the District changed the spacing rules.
6 And that Mr. Fazzino chose to sue the District for a
7 takings. That others that had permits already in place,
8 will -- I believe used was, would drain his property,
9 not allowing him to offset pump at -- at the rate that
10 others were able to pump, therefore, it was a taking.

11 Q. Here's what I'd like for you to do. I'm going
12 to hand you two markers. And I'd like you to look at
13 Page 3, starting with Paragraph 9, and then going
14 through Paragraph 21. I'd like for you to mark the
15 sentences that you agree with in yellow. And mark the
16 sentences you disagree with in the other color.

17 MR. DE LA FUENTE: I'm going to object to the
18 exercise. The answer -- the District has filed an
19 answer. And if you would like hold the answer up
20 against the petition, and have the witness connect the
21 answer to the petition instead of a memory exercise, he
22 can do that. He's not going to an exercise -- a gotcha
23 exercise thing. I'm not going to let him do that,
24 Marty.

25 MR. JONES: I don't want to engage in a gotcha

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1 exercise. But when you deny all the allegations, but
2 when you deny all the allegations in a particular
3 paragraph, I don't really know why they're denied.

4 MR. DE LA FUENTE: Well, then let him do it
5 with the answer -- answer side by side. If you want to
6 walk through the petition and the answer side by side as
7 opposed to a memory test, no, I'm not going to do that,
8 Marty. Come on. You know better than that.

9 MR. JONES: No. I actually don't know better
10 than that.

11 MR. DE LA FUENTE: Sure you do.

12 MR. JONES: But since you mentioned it, here's
13 Exhibit 39, which is the Answer.

14 (Plaintiffs' Exhibit 39 was marked for
15 identification.)

16 MR. DE LA FUENTE: And if you'd like to ask
17 him about a particular paragraph in the petition and
18 that particular answer denial, you can do that, but I'm
19 not going to -- I'm not going to let you say go through
20 the entire petition, go through the entire answer, and
21 match up what you agree and don't.

22 MR. JONES: Counsel, I didn't ask him to go
23 through the entire --

24 MR. DE LA FUENTE: Yes, you did. You asked
25 him to through the petition. The entire petition,

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1 starting in Paragraph 9 and highlight every sentence he
2 agreed with or disagreed with, Marty. It's on the
3 record.

4 MR. JONES: There's a lot more paragraphs in
5 this complaint than 9 through 21.

6 MR. DE LA FUENTE: Okay.

7 MR. JONES: Those are the factual allegations
8 I asked him about. Those --

9 MR. DE LA FUENTE: I'm still not going to let
10 you say go through the whole dang thing. If you want to
11 ask him about specific individual sections, you may do
12 so.

13 BY MR. JONES:

14 Q. Well, let's just go down through the answer,
15 Mr. Day, starting on Page 3. It looks like you admitted
16 everything you said in Paragraph 9; is that correct?

17 A. You're -- you're on page?

18 Q. Three of your answer and Page 3 of the
19 complaint.

20 A. Okay. And we're on Number 9, under facts?

21 Q. Yes.

22 A. Correct.

23 Q. It looks like you admit those? Did you help
24 prepare the answer?

25 A. I helped on everything in this -- in -- in the

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1 -- what's been turned in at some level.

2 Q. Including the answer?

3 A. I'm not -- I am not an attorney --

4 Q. Oh, I understand that.

5 A. -- so, therefore, there's a lot of this that
6 goes on that -- that is somewhat gray to me. So the
7 answer is yes, I helped prepare for what we've done
8 today. And to what level that I've actually helped with
9 this, I can't say. I don't know. But I know that my
10 answers and my questions, and the things that we've
11 dealt with are involved in these things.

12 Q. All right. And so --

13 A. Okay?

14 Q. -- all I'm going to ask you about, just for
15 the record, is the factual allegations with which you
16 are personally familiar? If there are factual
17 allegations with which you are not personally familiar,
18 just tell me that. If there are factual allegations
19 which you're -- which you're familiar with, I want to
20 know whether you agree or disagree with those.

21 A. I understand.

22 Q. All right.

23 A. Okay. Number 9, is that --

24 Q. Yeah. We -- we started there. Defendant
25 admits the allegations in nine and ten.

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1 A. Yes, and ten.

2 Q. And I understand the answer on 11 and 12. Oh,
3 one at a time. So let's back up to 11.

4 A. Okay.

5 Q. That last sentence in your answer says, "To
6 the extent plaintiff's characterizations of the rules
7 are inconsistent with the rules themselves, those
8 allegations are denied." Now, looking at Paragraph 11
9 of the complaint, can you tell me in -- in your
10 estimation, your knowledge, which of these allegations
11 are inconsistent with the rules themselves?

12 MR. DE LA FUENTE: You may answer to the
13 extent you know, Mr. Day.

14 THE WITNESS: I'm sorry. Say it again, Joe.

15 MR. DE LA FUENTE: You may answer to the
16 extent you know.

17 THE WITNESS: No.

18 BY MR. JONES:

19 Q. What's the answer?

20 A. I -- I -- at this moment, I -- I don't know
21 the answer.

22 Q. Okay. Your answer was, among the
23 inconsistencies, your answer is, no, I don't know what
24 inconsistencies are there?

25 A. Let me go back and read again, please.

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1 Q. Sure.

2 A. What I would say is, I -- I'm not going to be
3 able to pick out exactly what it is, but what I will say
4 is that if these are the words that are directly out of
5 rules, and there's not any couching, there's any
6 characterization other than what the rules say because
7 the rules speak for themselves. Then if -- if it's
8 nothing but the rule, then we would admit to that.

9 Q. Okay. Do you see anywhere in Paragraph 11
10 that we have mischaracterized what the rules say?

11 A. Not at this moment.

12 Q. Okay. And the same question with respect to
13 Paragraph 12 of the complaint?

14 A. In 12, you've mischaracterized it.

15 Q. How did we --

16 A. It says it has to be surrounded by one foot of
17 land per gallon per minute. Okay? One foot of land,
18 it's not one foot of land. It's a radius of one foot,
19 or in the old rules, of one foot on a radius, because
20 each foot is a different amount of land. It just gets
21 bigger and bigger and bigger. So you've
22 mischaracterized that and stated them improperly.

23 Q. I see. You would agree with it if we had said
24 under old Rule 6.1, it would be two. All new wells
25 drilled on District were required to be -- required to

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1 have a radius of one foot.

2 A. Per average annual gallon per minute.

3 Q. That's right. Fair enough.

4 A. Because at the end of the day, contiguous
5 acres is just a result of the formula. It's just a
6 result.

7 Q. Okay. They have to be contiguous to be inside
8 the circle?

9 A. That's correct.

10 Q. How about Paragraph 13? We have it somehow
11 mischaracterized Rule 7.1 in Paragraph 13?

12 A. Again, you have the same -- you have the same
13 issue in -- under the formula. In that three -- in the
14 second sentence, you have the same thing, one foot of
15 the land, and then two feet of land --

16 Q. I see -- I see --

17 A. -- that's a radius.

18 Q. It's a radius of what?

19 A. It's a radius --

20 Q. Or a radius of two feet?

21 A. That's correct.

22 Q. And with that amendment, you would agree --

23 A. Yes, sir.

24 Q. All right. Now, Paragraph 14, now I'll admit
25 has some editorializing in it -- or characterization as

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1 you put it, starting with your wrongful amendment of
2 6.1, and so forth. And let me ask you this question:
3 Would you agree that under the new spacing rule that
4 people who get new permits requiring a two-foot radius
5 around the wellbore are not treated the same as people
6 under the old version of the rule that only had to have
7 a one-foot radius around the wellbore?

8 A. I will not --

9 MR. DE LA FUENTE: Object to form.

10 THE WITNESS: -- I will not admit to that
11 because they could have come in, and they could have
12 been under that set of rules. They chose not to come in
13 and get a permit. They would have been under the same
14 rules at that point. They're now -- didn't choose to do
15 that, they're now under a different set of rules. And
16 everyone that chose not to come in over there is under
17 this set of rules and treated the same.

18 BY MR. JONES:

19 Q. Okay.

20 A. So it's not from -- time to time, rules
21 change.

22 Q. So you're saying shame on them for not getting
23 a permit earlier?

24 A. I'm not saying shame on anybody. I'm stating
25 a fact.

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1 Q. Did they --

2 A. On simply, that --

3 Q. Did they --

4 A. -- I'm simply -- that they did not come in to
5 get a permit.

6 Q. Right.

7 A. It's not, shame on you. It is, they did not
8 come in and get a permit.

9 Q. If they --

10 A. They chose to come in now to get a permit,
11 you're under this set of rules. You don't get to be
12 under that set of rules, it changed.

13 Q. And the people who are under the new set of
14 rules are not treated the same as those under the old
15 set of rules.

16 MR. DE LA FUENTE: Object to form.

17 BY MR. JONES:

18 Q. Right?

19 A. Anyone that was under the set of rules before
20 were treated the same, anyone. Some chose to get
21 permits, some did not choose to get permits. They were
22 treated the same. Rules changed. They have their
23 permits. They get to go on about life. Now, we've
24 another set of rules that have been changed. Here's
25 what you have to do. You're going to be treated the

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1 same as everybody else that has not gotten a permit.

2 Q. So you've got two buckets of rules, right?

3 A. We have many versions --

4 Q. You have a bucket of rules --

5 A. -- of the rules.

6 Q. Spacing.

7 A. And over time, they've changed.

8 Q. You got two buckets of spacing rule people.

9 People who have permits under the one-foot radius rule,
10 right?

11 A. Yes.

12 Q. And then you're saying to me that they're all
13 treated the same?

14 A. That is correct.

15 Q. And then you got this other bucket of people
16 who didn't have permits under the old rule, who, if they
17 desire now to come in and get a permit are going to be
18 under the new rule?

19 A. That is correct.

20 Q. And that's, in your mind, a whole separate
21 bucket?

22 A. Yes, sir.

23 Q. And those people you're saying will be treated
24 the same as other people in that second bucket?

25 A. Yes, sir.

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1 Q. The people in the second bucket are going to
2 have to have four times as much contiguous property to
3 support the same production as those in the first
4 bucket?

5 MR. DE LA FUENTE: Object to form.

6 THE WITNESS: Yes, sir.

7 BY MR. ANDERSON:

8 Q. And four times as much contiguous property is
9 not the same as one times as much, right?

10 MR. DE LA FUENTE: Object to form.

11 THE WITNESS: No, sir. It's not.

12 BY MR. JONES:

13 Q. All right. And by the way, the aquifer is not
14 divided into these buckets, is it?

15 A. No, sir. But it needs someone to manage it.

16 Q. And --

17 A. And that's why my eight guys, my Board
18 members, are tasked with managing that aquifer.

19 Q. And what they chose to do to manage it is
20 treat it like it has little buckets that are discrete --

21 MR. DE LA FUENTE: Object to form.

22 BY MR. JONES:

23 Q. -- from each other.

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: I disagree with that.

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1 BY MR. JONES:

2 Q. How do you disagree with that?

3 MR. DE LA FUENTE: Object to form.

4 THE WITNESS: They chose to manage it to make
5 sure that at some point they don't -- they do their very
6 best not to exceed the DFC. A regulatory number that
7 they're charged with doing, and also to do their very
8 best not to get to a curtailment, which affects
9 everyone's property rights.

10 BY MR. JONES:

11 Q. The people in -- in the new permit bucket, the
12 after September 14, 2023, bucket, who have to have four
13 times as much contiguous property as their neighbors,
14 are not, in your book, being treated anything other than
15 just regulatory oversight?

16 MR. DE LA FUENTE: Object to form.

17 THE WITNESS: Everyone is under regulatory
18 oversight.

19 BY MR. JONES:

20 Q. These got --

21 A. Bucket one and bucket two both have regulatory
22 oversight.

23 Q. Different regulatory oversight?

24 MR. DE LA FUENTE: Object to form.

25 THE WITNESS: Only that they chose to get

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1 their permit at a particular time and space.

2 BY MR. JONES:

3 Q. That's the difference?

4 A. That's one of the differences, certainly.

5 Q. Now, I see a disagreement you will have with
6 Paragraphs 16 --

7 A. Did we finish 14?

8 Q. I finished 14.

9 A. Okay. Move on.

10 Q. Paragraph 16, we stated, "as a reduction of
11 the amount that the plaintiff and class members can
12 produce post September 14, 2023, as being 75 percent."
13 And you disagree with that, you think it's 50 percent?

14 A. That's correct. I've given you the example.

15 Q. All right. And the same would be true with
16 any of the recitations in these factual allegations that
17 refer to 75 percent. And you're -- you're convinced
18 it's 50 percent?

19 A. I know that it's 50 percent. I've shown you
20 the formula. I've shown you the example.

21 Q. Well, the formula is in 7.1.

22 A. I'm sorry. I've shown you the example --

23 Q. Okay.

24 A. -- that it is due to the radius of a
25 multiplier -- multiplication of one or two.

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1 Q. Right.

2 A. Because it doesn't have to do with land, it
3 has to do with how much water -- you've asked how much
4 water can be produced on the same amount of land, 50
5 percent.

6 Q. Whichever it is, people have been reduced
7 either by half or by three-quarters?

8 A. No, sir. They've been reduced by half.

9 Q. And that's undisputed, right?

10 A. In my mind, that's undisputed.

11 Q. And we find that same number, 75 percent, in
12 Paragraph 20. Do you see that?

13 A. Twenty?

14 Q. Yes.

15 A. Yes, sir.

16 Q. Okay. And I think what you've told me earlier
17 on several occasions is that the reason that the Board
18 changed the spacing rule was in order to, among other
19 things, to comply with the DFC?

20 A. It was one of the reasons that I brought it to
21 the Board for them to consider the spacing rules, and a
22 change in the spacing rule, because of advancing towards
23 a -- the DFC, the number of permits that were being
24 issued, the amount of water that was being permitted,
25 the possibility of -- of exceeding a DFC.

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1 And they made their own decisions that you can
2 look through the minutes, and you can look through the
3 video tapes, and you can look through the transcripts,
4 that will give you any thoughts of what they may have
5 thought, and what they decided to make their decisions
6 upon. I brought those recommendations to them.

7 Q. Okay. So speaking as the corporate
8 representative of the District, is it true that part of
9 the rationale for changing the spacing rules was in
10 order to ensure that you can comply with the DFC?

11 A. That and to protect the aquifer. And to
12 protect the property rights of every single person that
13 has water under their property.

14 Q. All of the public?

15 A. All the public that own -- own land and they
16 decide to drill a well, and they're going to -- we're
17 going -- yes.

18 Q. So regulation spacing rules have changed for a
19 public purpose as compared to a private purpose?

20 A. For a public -- I don't understand what --

21 Q. You just told me that you -- it's -- for the
22 benefit of the public to have the aquifer protected?

23 A. Yes.

24 MR. JONES: Let's take a quick break.

25 THE VIDEOGRAPHER: Okay. The time is now 5:28

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1 p.m. We are off the record.

2 (Recess from 5:28 p.m. to 5:35 p.m.)

3 THE VIDEOGRAPHER: All right. The time is now
4 5:35 p.m. We're back on the record.

5 MR. JONES: Mr. Day, that's all the questions
6 I have for you today. I appreciate your time and
7 patience.

8 THE WITNESS: You're more than welcome.

9 MR. JONES: Mr. De La Fuente, let me ask you
10 this question: With respect to these documents that
11 bear Bates numbers from BVGCD that you-all produced,
12 will you stipulate that these are authentic?

13 MR. DE LA FUENTE: Yes.

14 MR. COFFMAN: And business records.

15 MR. JONES: And their business records, the
16 District?

17 MR. DE LA FUENTE: I can't necessarily do that
18 without looking back at each one coming there. Sorry, I
19 know you pulled some out and I just can't remember
20 whether they were Brazos Valley documents or not but
21 ended up in Brazos Valley files are something that may
22 not have been that.

23 It's hard for me to say blanket. If you -- if
24 -- maybe if we get the depo back, you can ask, and I can
25 look at and I can look at the exhibits and list, if you

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1 want to ask me that question again. I -- I'm betting
2 the answers yes. I just can't give you a blanket, yes.

3 There -- there -- everything is -- everything
4 we produced is what it is. So I'm not going to argue
5 about authentication, but I just -- I can't promise that
6 everything that ends up in the Brazos Valley file --

7 MR. JONES: It's okay.

8 MR. DE LA FUENTE: -- is Brazos Valley.

9 MR. JONES: And if -- if you'll review the
10 exhibits that we covered in the deposition and determine
11 whether those with your Bates numbers on them are, in
12 fact, records regularly kept in the course of business
13 of the District, and -- and let me know, I'd appreciate
14 that.

15 MR. DE LA FUENTE: I -- and again, I -- I
16 presume they are. I can't -- I can't think of one off
17 the top of my head that wouldn't be. I just -- without
18 me sitting here and looking at each one, I can't say for
19 sure.

20 MR. COFFMAN: Yeah, I -- I think there are a
21 couple in there that arrived from other sources.

22 MR. JONES: That, too.

23 MR. DE LA FUENTE: Well, and that's -- but
24 that's my concern, is I -- I dimly recall a couple that
25 came from --

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1 MR. COFFMAN: Agree. Agree.

2 THE WITNESS: I -- I think there are too.

3 MR. JONES: Yeah, I mean, there's one from
4 Texas Farm Bureau.

5 MR. DE LA FUENTE: Yeah.

6 THE WITNESS: Yeah.

7 MR. JONES: There's one from INTERA.

8 MR. DE LA FUENTE: Okay. I know those -- I
9 mean those are --

10 THE WITNESS: Yeah.

11 MR. JONES: Right.

12 MR. DE LA FUENTE: I -- I don't even know why
13 they ended up in our files.

14 MR. COFFMAN: Well, INTERA I know how it wound
15 up in your file.

16 MR. DE LA FUENTE: Right.

17 MR. COFFMAN: Because I remember GMA 12.

18 MR. DE LA FUENTE: Right.

19 THE WITNESS: Yeah.

20 MR. COFFMAN: And I would assume that the
21 District keeps materials from (cross-talk) --

22 MR. DE LA FUENTE: And that one -- that's why
23 -- see that's why -- I mean, that one may -- may legit
24 be the Farm Bureau ones from way back in the day. No
25 idea how it ended up --

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1 MR. COFFMAN: And again, I'm just for the --
2 MR. JONES: We'll work it out.
3 MR. DE LA FUENTE: Sure.
4 MR. JONES: All right. Thank you.
5 THE WITNESS: Good enough. Yeah.
6 MR. DE LA FUENTE: Other than that, defendants
7 reserve.
8 THE REPORTER: Okay. Counsel, I'm just going
9 to ask for transcript orders before we go off the
10 record. Mr. Jones, would you like a transcript order?
11 MR. JONES: Yes.
12 THE REPORTER: Are you okay with the standard
13 ten business days?
14 MR. JONES: Say it again?
15 THE REPORTER: Are you okay with the standard
16 ten business days?
17 MR. JONES: Yes.
18 THE REPORTER: Thank you, and --
19 MR. JONES: Can you send that to me as a PTX?
20 THE REPORTER: You said, PDF?
21 MR. DE LA FUENTE: PTX.
22 MR. JONES: PTX.
23 THE REPORTER: PTX. Thank you.
24 And Mr. De La Fuente, would you like a
25 transcript order?

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MR. DE LA FUENTE: Yes. And we'll do the same.

THE REPORTER: Thank you.

THE VIDEOGRAPHER: All right. The time is now 5:38 p.m. We are off the record.

(The proceedings concluded at 5:38 p.m.)

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I, ALAN DAY, have read the foregoing transcript and hereby affix my signature that same is true and correct, except as noted on the previous page.

ALAN DAY

THE STATE OF TEXAS
COUNTY OF _____

Before me, _____, on this day personally appeared ALAN DAY, known to me (or proved to me under oath through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2025.

Notary Public in
and for The State of Texas

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FAZZINO INVESTMENTS, LP,)
for itself and all others))
similarly situated,)

Plaintiffs,)

Vs.)

CASE NO. 6:25-CV-0001-ADA-DTG

BRAZOS VALLEY GROUNDWATER))
CONSERVATION DISTRICT,)

Defendant.)

* * * * *

REPORTER'S CERTIFICATE
VIDEOTAPED DEPOSITION OF ALAN DAY
JULY 16, 2025

I, Khadijah Holloway, Digital Reporter and
Notary Public for the State of Texas, hereby certify to
the following:

That the witness, ALAN DAY, was duly sworn by
me and that the testimony was accurately captured with
annotations by me during the proceeding,

That the transcript was submitted on
_____ 2025, to the witness or to the attorney
for the witness for examination, signature, and returned
to me by _____, 2025.

That the amount of time used by each party at
the proceeding was as follows:

- Marvin W. Jones, Esq. - 6:28
- Richard L. Coffman, Esq. - 0:00
- Jose De La Fuente, Esq. - 0:00

That pursuant to information give to the
deposition officer at the time said testimony was taken,
the following includes counsel for all parties of
record:



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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefore;

If returned, the original deposition was delivered to _____, Esq., Custodial Attorney;

That \$_____ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 29th day of July 2025.



KHADIJAH HOLLOWAY, DIGITAL REPORTER
Notary Commission Texas 134484958
Commission Expires: August 1, 2027

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CERTIFICATE OF TRANSCRIPTIONIST

I, NANCY KRAKOWER, Legal Transcriptionist, do hereby certify:

That the foregoing is a complete and true transcription of the original digital audio recording of the testimony and proceedings captured in the above-entitled matter. As the transcriptionist, I have reviewed and transcribed the entirety of the original digital audio recording of the proceeding to ensure a verbatim record to the best of my ability.

I further certify that I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this matter.

IN WITNESS THEREOF, I have hereunto set my hand this 29th day of July 2025.

Nancy E. Krakower

Nancy Krakower, Transcriptionist