

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Hearing

JUNE 9, 2009  
Jefferson City, Missouri  
Volume 3

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Rob Lee, )  
 )  
Complainant, ) File No. WC-2009-0277  
 )  
v. )  
 )  
Missouri American Water )  
Company, )  
 )  
Respondent. )

DANIEL R.E. JORDAN, Presiding  
REGULATORY LAW JUDGE

REPORTED BY:  
Pamela Fick, RMR, RPR, MO CCR #447  
Midwest Litigation Services

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25

1 P R O C E E D I N G S

2 JUDGE JORDAN: The Missouri Public  
3 Service Commission is calling Case No. WC-2009-0277,  
4 Rob Lee versus Missouri American Water Company. I'd  
5 like to begin with entries of appearance. Missouri  
6 American Water Company.

7 MR. NOCE: Matt Noce on behalf of  
8 Missouri American Water Company and I'm here with  
9 Derek Linam who's a representative of Missouri  
10 American Water Company.

11 JUDGE JORDAN: Spell that for me.

12 MR. NOCE: Yes, D-e-r-e-k, L-i-n-a-m.

13 JUDGE JORDAN: Thank you. From the  
14 General Counsel's Office.

15 MR. RITCHIE: Sam Ritchie, attorney for  
16 Staff of the Missouri Public Service Commission. I  
17 have several staff members here with me too, Jim  
18 Busch, Natelle Detrich and Jerry Scheible.

19 JUDGE JORDAN: Is there anyone present  
20 from the Office of the Public Counsel today?

21 (NO RESPONSE.)

22 JUDGE JORDAN: I don't see anyone. And  
23 the complainant, Mr. Lee, will you give your name,  
24 spell it for the reporter also and an address.

25 MR. LEE: I am Rob Lee, R-o-b, L-e-e.

1 Address is 11119 Carl, St. Louis, Missouri 63138.

2 JUDGE JORDAN: Now, there is a motion  
3 for default pending that's still at issue. Mr. Lee,  
4 you filed that yesterday?

5 MR. LEE: Correct.

6 JUDGE JORDAN: Will you briefly describe  
7 that motion, tell us -- tell the Commission what you  
8 want and why you feel you should have it?

9 MR. LEE: I was given a map here,  
10 presumably of a quarter-square-mile radius of my  
11 home, and I have received no repair orders for  
12 several repairs that were made within the radius.

13 MR. NOCE: Judge, if I may, the map that  
14 we provided to Mr. Lee, the circle on it was actually  
15 larger than the quarter-mile radius. We've had a --  
16 this is actually a map of the quarter-mile radius and  
17 the repairs that Mr. Lee is referring to is outside  
18 that.

19 MR. LEE: I object to this map then.  
20 The request was a map of a quarter-mile radius of my  
21 home. Now, I've provided a map with a circle on it  
22 that's supposed to be usable and I presume that the  
23 radius on this map is a quarter square mile.

24 MR. NOCE: Your Honor, we provided -- I  
25 agree, we provided him a larger map than what he

1 requested. I also had sent an e-mail to Mr. Lee  
2 during this proceedings asking if he would like an  
3 attachment to where he would be able to enlarge or  
4 reduce the map to his own specifications. Here's a  
5 map of the quarter-mile radius and --

6 MR. LEE: Quarter-mile radius is not of  
7 my specifications, Judge. The quarter-mile radius  
8 was specified in your order and in my request for the  
9 information.

10 JUDGE JORDAN: Right. In your discovery  
11 you asked for a quarter-mile radius.

12 MR. LEE: Also, there's no legend on  
13 this map to tell what the radius is or to tell what  
14 anything else is. It's almost useless.

15 MR. NOCE: And like I said, Judge, I  
16 asked Mr. Lee if he'd like an e-mail with an  
17 attachment to where he would be able to reduce or  
18 enlarge the map to his own specifications. He said  
19 he didn't want to be burdened with that, so I  
20 provided him with a map that we had at the time. I  
21 was not aware that this is actually the quarter  
22 mile -- the map that we gave to him includes more  
23 than what he's actually requested.

24 MR. LEE: Judge, reducing or enlarging  
25 this map will not add a legend to it. It will not

1 make it usable. Smaller or larger, it's gonna be the  
2 same thing as it is right now.

3 JUDGE JORDAN: Your motion states that  
4 you have not received records for certain addresses.  
5 Are those addresses inside the quarter-mile radius or  
6 are they outside the quarter-mile radius?

7 MR. LEE: I don't know because this is  
8 the only map I have. This is my map of my  
9 quarter-mile radius.

10 JUDGE JORDAN: Mr. Noce, can you make  
11 some representation as to that?

12 MR. NOCE: Yes, your Honor, I can. He  
13 is -- he, I believe, has addressed repair records on  
14 Coal Bank Avenue which, as you can see, this map has  
15 Mr. Lee's home in the middle of it.

16 MR. LEE: That's not --

17 JUDGE JORDAN: Mr. Lee --

18 MR. LEE: That is not the --

19 JUDGE JORDAN: Mr. Lee, when I ask you  
20 to stop talking, you must stop talking. The reporter  
21 can only take down one person at a time. Mr. Noce.

22 MR. NOCE: Mr. Lee's home is in the  
23 center of the circle. Coal Bank doesn't appear on  
24 this map because it's north of this area. And also,  
25 he is talking about repair records up here at 11475

1 Lilac which also falls outside of this quarter-mile  
2 radius.

3 JUDGE JORDAN: Okay. So it sounds like  
4 the records you have not received are records  
5 relating to addresses outside the quarter-mile  
6 radius.

7 MR. LEE: I don't know what the  
8 quarter-mile radius is because I was never provided  
9 that information, Judge.

10 JUDGE JORDAN: Okay. Well, I'm going to  
11 deny the motion for default now based on what I've  
12 heard. If you want to ask -- if you want to get some  
13 information on the quarter-mile radius, you can  
14 inquire of witnesses.

15 MR. LEE: Can I be provided a map,  
16 please?

17 JUDGE JORDAN: Well, Mr. Noce, if  
18 you're --

19 MR. NOCE: I have no objections if he  
20 wants to take a look at this.

21 JUDGE JORDAN: Yeah, if you're going to  
22 use that, will you generally share it with Mr. Lee?

23 MR. NOCE: That's fine.

24 JUDGE JORDAN: The purpose of this  
25 hearing is to make a record on the merits of the

1 complaint that is before the Commission, and we will  
2 be listening to all sides to gather evidence,  
3 evidence being testimony, testimony about facts,  
4 testimony about documents that may also come into  
5 evidence based on what is admitted into evidence. I  
6 will draft a recommended Report and Order. That's a  
7 special term used for the decision if the Commission  
8 that will resolve all claims and defenses for the  
9 Commission by applying the laws to the facts. The  
10 facts will come from the record.

11           The report consists of the things that  
12 we have entered into evidence so far and we'll -- and  
13 what we will enter into evidence today. The  
14 Commission is the final decisionmaker on all issues.

15           Here's how I want to proceed. I would  
16 like an opening statement from each party. An  
17 opening statement is where you tell the Commission  
18 what you expect your evidence to show. Then I will  
19 want each party to present its case in chief, and  
20 that's basically your evidence about your claim or  
21 your defense or any other matters that you wish to  
22 bring that are relevant to the complaint.

23           Mr. Lee, you can testify from where  
24 you're sitting, you can take the witness stand if you  
25 prefer. It's wherever you'll be more comfortable. I



1 will not make you ask yourself questions when you  
2 testify. You can simply testify in a narrative in  
3 the course of giving testimony.

4           You may hear objections, which is when  
5 you hear a request or a statement or some other item  
6 of evidence that cannot come into the record for some  
7 reason which is based upon law. When there's an  
8 objection, everyone has to stop so I can -- we can  
9 discuss the objection, and then I will rule on it.

10           There are some things that I must keep  
11 out of the record, and those include, as a matter of  
12 law, those things that are irrelevant or unduly  
13 repetitious, matters that are privileged as between  
14 lawyer and client, for example, so I'm going to ask  
15 everyone to be complete. That is, I want to hear  
16 about everything that you have to say that is  
17 relevant to this complaint, but I only want to hear  
18 about it once.

19           Each party will have the right to  
20 cross-examine every other parties' witnesses. You  
21 might also hear questions from the bench, that is  
22 questions from me, questions from a Commissioner.  
23 Because Mr. Lee has the burden of proof, I will have  
24 him open with an opening argument. Then after that  
25 he will present his case in chief first. That will

1 be followed by Missouri American Water Company and  
2 then by Staff.

3                   When everyone has presented their case,  
4 every party will have the opportunity to make a  
5 closing statement which is simply where you say what  
6 you think the evidence has shown. You will also have  
7 the right to file written argument. And written  
8 argument is where you state in writing what you  
9 believe the evidence has shown but you're able in  
10 written argument to cite the transcript.

11                   Our reporter will prepare a transcript  
12 and you'll be able to make citations to the record in  
13 written argument, sometimes called a brief. Now, I  
14 know that the contentions in this case are held very  
15 strongly and feelings have run high, but I'm going to  
16 ask everyone to maintain an attitude of civility out  
17 of respect for this process and for this tribunal's  
18 mission.

19                   I'll also ask everyone once again to  
20 speak loud enough so that our reporter can hear. Any  
21 questions about the process so far?

22                   (NO RESPONSE.)

23                   COMMISSIONER JARRETT: Judge, I had a  
24 question if I may, for Mr. Lee. Mr. Lee, we have  
25 published a handbook on procedures for hearings in

1 front of this Commission. It's been posted on our  
2 web site for some time. I just wondered if you had a  
3 chance to read that?

4 MR. LEE: I have not.

5 JUDGE JORDAN: All right. Would you  
6 like a chance to read that before we start?

7 MR. LEE: Yeah, is it real long or just  
8 something I could read in a few minutes?

9 COMMISSIONER JARRETT: It's about, I  
10 don't know, 15 pages long.

11 JUDGE JORDAN: Not all that pertains to  
12 contested cases, as I recall.

13 COMMISSIONER JARRETT: Okay. Yeah, but  
14 it's simply -- it is simply a summary about the  
15 procedures basically. The judge has laid out how the  
16 hearing will go, but we do have a handbook.

17 MR. LEE: Yeah, any help with procedure,  
18 I would welcome that.

19 JUDGE JORDAN: I will take that as a  
20 motion for a brief recess, and we'll convene back  
21 here in 15 minutes.

22 COMMISSIONER JARRETT: Sounds good to me.

23 JUDGE JORDAN: About 15. All right.

24 (A RECESS WAS TAKEN.)

25 JUDGE JORDAN: We're back on the record.

1 Mr. Lee, have you had a chance to review the  
2 Commission's handbook?

3 MR. LEE: I have.

4 JUDGE JORDAN: And do you have any  
5 questions about the procedure?

6 MR. LEE: Not right now.

7 JUDGE JORDAN: All right. Mr. Lee, what  
8 I'm going to do now is I'm going to take your opening  
9 statement. And in order to make sure that we can  
10 consider what you say, I'm going to go ahead and  
11 swear you in so that you don't have to say things  
12 twice. So please raise your right hand.

13 (Mr. Lee was sworn.)

14 JUDGE JORDAN: All right, then. Please  
15 tell the Commission what it is you'd like the  
16 Commission to do and tell us what evidence you're  
17 going to show in support of that request.

18 MR. LEE: Okay. In my complaint I  
19 filed, I -- as -- showing a number of different  
20 photos with water running out of the ground near my  
21 neighborhood. I would merely like to have the  
22 Commission hire a third party to test for leaks in  
23 the area around my home. I didn't find out until  
24 just a few minutes ago that several of the lakes that  
25 have been causing problems in the neighborhood are

1 outside of the quarter-mile radius provided on this  
2 map -- or shown on this map that was just given to  
3 me.

4                   Recently, I believe on May 1st, Missouri  
5 American came out and tested some water mains on  
6 Aspen Woods. I believe they had their test equipment  
7 hooked to this water main within 75 feet or so of  
8 where it broke ten days later. I've lost all faith  
9 in their testing. I do not know, it looks like I am  
10 facing a gauntlet of I don't know what it is, it  
11 feels like abuse over here, to solve a problem as  
12 simple as leaking water mains.

13                   In this last repair, I believe it was on  
14 May 12th, I then sent Mr. Noce an e-mail after I  
15 noticed a large reduction of water in my basement and  
16 in the neighborhood and asked if they would like to  
17 come out and inspect the neighborhood and the  
18 basement for this reduction in flow and --

19                   MR. NOCE: I think I'm going to object.

20                   JUDGE JORDAN: Hang on just a minute, if  
21 you please, Mr. Lee.

22                   MR. NOCE: I'm going to object. I  
23 believe this is irrelevant and inadmissible what  
24 Mr. Lee is talking about. I believe what he's  
25 getting into now may be settlement negotiations or

1 something along those lines. I don't believe it's  
2 evidence, and it's argumentative as well. Any  
3 discussions that myself as counsel for Missouri  
4 American Water may have had with him regarding any  
5 reduction in water over the recent weeks.

6                   If you wanted to testify as it -- or if  
7 he wants to speak to the reduction of water, I have  
8 no objection to that, but discussions between the  
9 parties, I'm going to object to and ask that they be  
10 stricken.

11                   JUDGE JORDAN: Okay. Mr. Lee, here's  
12 the objection. The objection IS based on the  
13 inadmissibility of settlement negotiations. That is  
14 when parties are talking to each other, it's helpful  
15 if they can speak freely and maybe discuss the  
16 strengths and the weaknesses of their cases.

17                   In order to encourage that kind of frank  
18 exchange, the law keeps out statements that were made  
19 in settlement negotiations. They can come in from  
20 some other way -- if you learned about information  
21 some other way, that's fine, but things you learned  
22 in settlement alone, they can't come in to evidence.  
23 You understand?

24                   MR. LEE: Okay.

25                   JUDGE JORDAN: Okay. So I'll ask you to

1 not tell us what happened while you were negotiating,  
2 discussing the issues with Mr. Noce or other persons  
3 or parties to this case. Go ahead and tell me what  
4 you want and why you think you should have it.

5 MR. LEE: What I want is the water mains  
6 repaired in my neighborhood, and I have complained  
7 and complained and complained over the years and have  
8 received nothing or have had no resolution to the  
9 problem that lasted very long at all.

10 I don't know why it is such a problem to  
11 test water mains. I don't know why it's such a  
12 problem to stop the water flowing out of the ground.  
13 That is -- you know, that's the citizens' money. We  
14 just got a big pay increase, a rate increase, and we  
15 have water flowing out of the ground. Not a little  
16 bit of water, but a lot of water. You may think, you  
17 know, a little water's not really a big deal, it  
18 couldn't hurt anybody. You put water into an  
19 enclosed building and it creates a mold problem and  
20 it creates some of the most deadly toxins on the  
21 planet.

22 MR. NOCE: Again, your Honor, I'm going  
23 to object to any reference in this case as to mold.  
24 I believe that that is irrelevant to this -- to the  
25 issues that are before this Commission. I believe

1 the sole issues are whether or not there are in fact  
2 leaks. Anything that's transpiring in Mr. Lee's  
3 basement is irrelevant and I will continue a running  
4 objection as to any reference of evidence of such  
5 mold.

6 JUDGE JORDAN: All right. Well,  
7 Mr. Lee, I'd rather not get into your damages and the  
8 issues that were raised in the pending civil suit,  
9 but let's talk about the things that this Commission  
10 regulates which is the quality of water service.

11 MR. LEE: My point is that the -- most  
12 of the time you think of a little water as harmless.  
13 It has the potential to be a lot more --

14 MR. NOCE: Same objection. Same  
15 objection, Judge.

16 MR. LEE: -- than harmless which would  
17 magnify the need for the Commission to be involved in  
18 this situation.

19 JUDGE JORDAN: I understand you have a  
20 running objection, Mr. Noce.

21 MR. NOCE: Okay.

22 JUDGE JORDAN: Is there anything else  
23 you'd like to tell me just now?

24 MR. LEE: About this situation or in  
25 general?



1                   JUDGE JORDAN: Well, tell me what kind  
2 of things you're going to show me.

3                   MR. LEE: I have video and photographs  
4 that show a reduction of water flow in my  
5 neighborhood at least four or five times in the last  
6 several years. They will repair a water main up the  
7 road, and the water running out of the ground will  
8 stop or greatly reduce.

9                   I have photos which are included in my  
10 complaint that show where water was running out of  
11 the cracks in the street at Aspen Woods the day after  
12 they repaired the water main several hundred feet up  
13 the road. The water no longer flows onto the street  
14 or -- now it takes three days of heavy rain for water  
15 to flow out of the street instead of a brief shower.  
16 There is a definite reduction in flow in water in the  
17 neighborhood.

18                  JUDGE JORDAN: All right. And -- go  
19 ahead.

20                  MR. LEE: One more thing, if I could.  
21 The need for the third party to get involved in this  
22 is tremendous. Like I said, they tested this water  
23 main and had their equipment hooked to it I believe  
24 about 75 feet from where it broke ten days later.  
25 Somehow the job is not getting done here. There is

1 a -- as you know from the civil suit, Missouri  
2 American Water has a lot invested in not finding a  
3 leak.

4 MR. NOCE: Objection, your Honor,  
5 argumentative.

6 JUDGE JORDAN: Well, it is an opening  
7 statement.

8 MR. NOCE: Okay.

9 MR. LEE: All I ask for is someone that  
10 has nothing invested in this situation to test these  
11 water pipes.

12 JUDGE JORDAN: Anything else just now?

13 MR. LEE: Not that I can think of.

14 JUDGE JORDAN: Now, I'm look at the  
15 initial complaint that you filed and I didn't see  
16 anything in it about asking for a third party to test  
17 the system in your initial complaint. In the course  
18 of discovery, you had asked for -- you -- you had  
19 asked for such relief, the Commission denied it. Am  
20 I missing something in your initial complaint?

21 MR. LEE: About asking for a third  
22 party?

23 JUDGE JORDAN: Right.

24 MR. LEE: No, I did not include that in  
25 the initial complaint.

1                   JUDGE JORDAN: Okay. In your initial  
2 complaint, if I understand it correctly, what you  
3 asked for was that the leaks that you alleged that  
4 they should be repaired --

5                   MR. LEE: Correct.

6                   JUDGE JORDAN: -- is that a fair  
7 summary? Okay. Thank you. All right.

8                   MR. LEE: Tested and repaired.

9                   JUDGE JORDAN: Okay. Now, you've  
10 mentioned that there are several places where you  
11 believe there is evidence of leakage. It will be  
12 helpful for the Commission if as you make your  
13 presentation to keep us focused as to where and when  
14 these -- these events are occurring as you're  
15 describing them, okay?

16                   MR. LEE: Correct.

17                   JUDGE JORDAN: Okay. Thank you,  
18 Mr. Lee. Missouri American, an opening statement?

19                   MR. NOCE: Yes, your Honor, thank you.

20                   If it please the Court. Your Honor, we  
21 will be presenting evidence today that will show that  
22 we've conducted several water quality sample tests --

23                   MR. LEE: Objection.

24                   MR. NOCE: -- several investigations.

25                   JUDGE JORDAN: Hang on just a second.

1 Mr. Lee, I haven't sworn him in. He's not going to  
2 be a witness so what he tells us is not actually  
3 evidence like what you said was evidence. What  
4 Mr. Noce says is not evidence. So he's just going to  
5 tell me what he's going to show.

6 MR. LEE: Okay.

7 JUDGE JORDAN: And what he says we can't  
8 base our decision on. We can base it on his  
9 witnesses and from documents, but not on what he  
10 says, okay?

11 MR. NOCE: As your Honor correctly  
12 pointed out, the issues here before this Court are  
13 very simple. The sole issues are, one, whether or  
14 not there are ongoing leaks at the certain spots that  
15 Mr. Lee has claimed throughout his neighborhood. And  
16 I can tell you, as I have stated, we've done several  
17 investigations, several tests around Mr. Lee. The  
18 evidence will show this.

19 Mr. Lee says that he has complained and  
20 he complained to us. Well, I can assure you that  
21 we'll present evidence that we've responded and  
22 responded to every one of Mr. Lee's complaints and  
23 conducted thorough investigations at each of these  
24 spots and tested the water and tested our mains and  
25 determined that there are, in fact, no leaks.

1                   Your Honor, I can assure you that you'll  
2 hear from the evidence that if and when we do find  
3 leaks in our mains, it's imperative to us to repair  
4 the leaks to prevent damage to customer's homes as  
5 well as that's our product that we are selling. If  
6 the mains are leaking, that's product that is not  
7 being sold to customers and we are losing money as  
8 well as potential -- potentially being liable for  
9 damages.

10                   I believe the evidence will clearly show  
11 this. And I won't get into it in detail. However,  
12 every single one of Mr. Lee's spots has been  
13 investigated, and you'll see that the water that he  
14 is seeing there is either from a secondary source or  
15 from water -- or from rain. It is not coming from  
16 our mains. Thank you.

17                   JUDGE JORDAN: And Mr. Noce, I'll ask  
18 you to do the same as I asked Mr. Lee. That is, when  
19 you're discussing one of these sites, to keep us  
20 focused in time and place as to what we're talking  
21 about for a clear record.

22                   MR. NOCE: Yes, your Honor.

23                   JUDGE JORDAN: Thank you. Does the  
24 Office of General Counsel have an opening  
25 statement?

1                   MR. RITCHIE: Yes. May it please the  
2 Commission. Rob Lee's complaint case against  
3 Missouri American Water certainly presents a  
4 sympathetic situation. Mr. Lee alleges leaky water  
5 pipes belonging to Missouri American in and around  
6 his neighborhood. He claims that Missouri American's  
7 water has leaked into his basement causing  
8 substantial damage to both his home and health.

9                   Indeed, Mr. Lee's leaky basement has  
10 been a continued source of frustration to him over  
11 the years. The evidence today will show that the  
12 Staff of the Missouri Public Service Commission has  
13 performed an extensive investigation into these  
14 potential leaks in the Missouri American system. The  
15 combined efforts of the PSC staff totals hundreds of  
16 hours that we've spent investigating Mr. Lee's  
17 complaints.

18                   This includes six separate trips from  
19 Jefferson City to Mr. Lee's home and neighborhood in  
20 North County, St. Louis by PSC Staff members. Staff  
21 has viewed DVD and photographic evidence submitted by  
22 Mr. Lee to the Commission detailing the water in and  
23 around his neighborhood. Staff has reviewed water  
24 test results comparing Mr. Lee's tap water to water  
25 in his basement by the Missouri Department of Natural

1 Resources. Staff has also reviewed leak testing  
2 results done by the water company.

3           Based on the extensive investigation and  
4 testing results before it, Staff cannot reach the  
5 conclusion that Missouri American's pipes are the  
6 cause of leaking in Mr. Lee's basement.

7           I'll have Jim Busch, manager of the  
8 water and sewer services department available to  
9 testify as well. Thank you.

10           JUDGE JORDAN: One or two questions.  
11 Can you just describe on the record and for the  
12 benefit of everyone here how General Counsel views  
13 its role in these proceedings and the role of Staff  
14 generally.

15           MR. RITCHIE: The role of the Staff is  
16 one of a neutral third party, one that perhaps what  
17 Mr. Lee is asking for in his opening statement. That  
18 is the role that Staff plays, as a neutral third  
19 party. We have no horse in this race, so to speak.  
20 Mr. Lee's complaint is submitted, we review it, we  
21 review all evidence, we followed up every additional  
22 amendment to his complaint with the water company, we  
23 verify testing, we've done our own investigation,  
24 we've verified investigations with other parties like  
25 the Department of Natural Resources, and based on our

1 neutral standpoint, we make a recommendation.

2 JUDGE JORDAN: Okay. One other thing.

3 Do you happen to have handy any provisions, statute  
4 or regulation or tariff relating to the types of  
5 issues we're talking about here, leakage or quality  
6 of service, do you have any of those handy?

7 MR. RITCHIE: What was that now?

8 JUDGE JORDAN: Provisions of law, be  
9 they statute, regulation or tariff, that set the  
10 standard that we're talking about here?

11 MR. RITCHIE: I don't have those handy.

12 JUDGE JORDAN: Okay. If you can come up  
13 with those.

14 Mr. Lee, it's time for you to present  
15 your case in chief. This is where you give us  
16 testimony and tell us about the facts that you know  
17 and also tell about documents that you think will be  
18 helpful to the Commission in deciding your complaint.

19 And I've already sworn you in, so you  
20 can take the stand if you wish, or you can address  
21 the Commission from where you are.

22 MR. LEE: Okay. I have some video I  
23 have taken in my neighborhood that I would like to  
24 play for you.

25 JUDGE JORDAN: Okay. I'd ask you to do



1 that.

2 MR. LEE: I don't know if you have  
3 equipment here or how that works.

4 JUDGE JORDAN: I can do that on my lap  
5 top.

6 MR. LEE: Okay. Give me just a second  
7 to get you the right timing here. If you could start  
8 that at 27 minutes.

9 JUDGE JORDAN: Okay. I'll sure try.  
10 Okay. Have a seat. I'll take a look at this. And  
11 I'll describe for the record, I have in front of me a  
12 DVD labeled 2008, April 7th, water leaking from Aspen  
13 Woods neighborhood, pumping water from basement;  
14 May 28th, water flowing from clay drain out of  
15 ground; May 28th, Aspen Woods street and sidewalk;  
16 April 8, sucking water from basement with Tom.  
17 Let's identify this as Exhibit 1. I've read the  
18 label on this.

19 Mr. Lee, can you tell me a little bit  
20 more -- can you tell us how you made it, give us the  
21 circumstances.

22 MR. LEE: I made it with my video  
23 camera.

24 JUDGE JORDAN: Okay. The description  
25 that I've read on the label, did that reflect the

1 content?

2 MR. LEE: It does.

3 JUDGE JORDAN: Okay.

4 MR. NOCE: Your Honor, I guess before  
5 it's played, I would ask that -- I'd object to the  
6 portion regarding any recordings from Mr. Lee's  
7 basement. There's no leak alleged to be -- to have  
8 occurred there. I believe it lacks foundation.  
9 Unless Mr. Lee can provide expert testimony to  
10 substantiate or establish a linkage between one of  
11 these leaks in his basement, I'm not sure that that's  
12 relevant.

13 JUDGE JORDAN: Is the material that you  
14 want us to see, does that involve activities in your  
15 basement?

16 MR. LEE: There are some activities in  
17 the basement there. And if I need to testify as to  
18 my basement leaking, I would be glad to do that. And  
19 I would be glad to start my story from the beginning  
20 and show you how I have determined that the water is  
21 coming from Missouri American Water pipes.

22 JUDGE JORDAN: Well, how you present  
23 your case is up to you. However you think would be  
24 the most helpful for the Commission is the way you  
25 ought to do it. Would you like to start with this or

1 would you like to start somewhere else?

2 MR. LEE: Let's start from the  
3 beginning.

4 JUDGE JORDAN: Okay. Then I'm going to  
5 put Exhibit 1 aside here. It's not been entered into  
6 evidence yet. I'm going to set it aside here for now  
7 while you offer us some more testimony.

8 MR. LEE: I bought the house that I live  
9 in now in December of '89. The basement had leaked  
10 and there was water running out. I think there's a  
11 photo of it in my complaint at the time that I bought  
12 this house. The basement leaked regularly the entire  
13 time that I bought the house. I bought it in  
14 December, which the ground was frozen so I believe  
15 that has -- plays a role in the basement not leaking  
16 when the ground freezes and stops the water.

17 Not long after I bought the house, the  
18 basement began to leak regularly. I at first thought  
19 that they must have built my house on a spring or  
20 that there's groundwater in my neighborhood. And it  
21 was a mystery to me for 16 years why water would flow  
22 in this basement several years when we didn't have  
23 much rainfall and for two or three months there would  
24 still be a continuous flow of water into my basement.

25 MR. NOCE: Your Honor, I'm gonna --

1 again, my running objection to any evidence of water  
2 in the basement. Again, there's no leaks alleged  
3 underneath Mr. Lee's home, there's no evidence, it  
4 lacks foundation. I don't believe Mr. Lee himself  
5 can establish that that -- that these leaks are  
6 related to his home without expert testimony.

7 JUDGE JORDAN: Okay. Here's my view of  
8 that. Mr. Lee's theory as he's expounded extensively  
9 in his complaint, supplements to his complaints,  
10 amendments and updates, is that the appearance of  
11 water outside the ground is evidence that Missouri  
12 American's system is leaking. So I don't see this  
13 testimony as to his basement as any different from  
14 the appearance of water in the street, in the gutter,  
15 in the drainage culvert.

16 I'm not taking evidence as to any  
17 damages that he may have alleged in the civil suit,  
18 but this seems to be another appearance of water, and  
19 I'll take it for that purpose.

20 MR. NOCE: Okay.

21 JUDGE JORDAN: Go ahead, Mr. Lee.

22 MR. LEE: Okay. I forgot where I was,  
23 but for 16 years I did not know where the water in  
24 the basement was coming from. Even in the fall when  
25 it wouldn't rain for several months, I would still

1 have a flow of water into my basement.

2                   At one point, I was certain that it was  
3 a natural spring under my basement causing this  
4 problem. I believe it was May of 2006 I am coming  
5 home, and Missouri American Water is repairing a  
6 water main right at the corner on Larimore in front  
7 of Warmann Oil. Immediately the water flow in my  
8 basement started to rescind and about 80 percent of  
9 the water that had been flowing through my basement  
10 dried up.

11                   At that point, several weeks after that,  
12 I'm not sure how long, it wasn't very long, Missouri  
13 American Water was several hundred feet up Larimore  
14 towards the north repairing another water main. At  
15 that time I went up there and spoke with a fella  
16 named Kevin, and I asked him, "How do you tell where  
17 these water mains are leaking?"

18                   MR. NOCE: I'm gonna object, hearsay.  
19 Also, your Honor, I'm gonna object and have a running  
20 objection to any reference to any repairs made --  
21 previous repairs made to Missouri American Water's  
22 pipes. That is -- that is irrelevant as to the issue  
23 of whether or not there are, in fact, ongoing leaks  
24 at certain areas that Mr. Lee has alleged in his  
25 complaint.

1                   JUDGE JORDAN: Okay. As to your hearsay  
2 objection, let me explain this. What you can tell us  
3 in your testimony is what you know about something  
4 personally.

5                   MR. LEE: Okay.

6                   JUDGE JORDAN: And what Mr. Noce is  
7 anticipating is --

8                   MR. LEE: Not what he said.

9                   JUDGE JORDAN: Exactly, precisely.

10                  MR. LEE: Okay.

11                  JUDGE JORDAN: Now, as to past history  
12 of leakage, I see at least a tangential relevance for  
13 that, so I'm going to -- I'm going to allow that in.  
14 You have a running objection, but I will overrule  
15 that.

16                  MR. NOCE: Thank you.

17                  JUDGE JORDAN: Go ahead.

18                  MR. LEE: Okay. I asked Kevin, how did  
19 he tell how the pipes are leaking. Kevin asked -- is  
20 that hearsay?

21                  MR. NOCE: Objection, hearsay.

22                  JUDGE JORDAN: We won't really want to  
23 hear what Kevin told you.

24                  MR. LEE: He asked to come see my  
25 basement.

1 MR. NOCE: Objection.

2 JUDGE JORDAN: Well, let's stay away  
3 from what -- what Kevin said because it might --

4 MR. LEE: Okay. I showed Kevin my  
5 basement.

6 MR. NOCE: I'm gonna object. I think  
7 it -- this is going to call for speculation as to  
8 what Kevin may have observed.

9 JUDGE JORDAN: Well, I'm going to  
10 overrule that. Let's continue.

11 MR. LEE: Okay. Kevin -- I showed Kevin  
12 the water leaking into my basement. He then went and  
13 tested pipes and found a leak on McQuay which is  
14 about 300 feet from my basement. Repairing those  
15 three water mains, two on Larimore and one on McQuay  
16 was the first time in 16 years that my basement did  
17 not leak even during heavy, heavy rains.

18 That lasted several months, not sure how  
19 long. I could look it up if you need to. Again,  
20 water starts running in a corner of the basement. I  
21 call up Missouri American Water, I get the same  
22 gauntlet of denial that I'm faced with here today  
23 starting with, "It's not our water, water doesn't run  
24 underground, it comes straight up from the pipe."

25 They came to the basement and tested the

1 water. Once again, they found it doesn't have  
2 chlorine in it, I guess, so it can't be their water.  
3 I believe at the time they tested the water they had  
4 already repaired the main, the leaking water main,  
5 and I didn't know it yet because the water had  
6 started to rescind, less water started coming in.  
7 And again, within days of that water main repair, a  
8 week or so, maybe, my basement is dry again.

9                   That lasted several more months, and  
10 that would put us into the fall of 2007, September or  
11 October, maybe. This basement has leaked  
12 continuously, leaked or seeped. Sometimes it will  
13 dry up and you can just see water trying to seep in  
14 at the -- where the floor and the wall come together.  
15 It has leaked continuously in some form since the  
16 fall of 2007.

17                   Okay. Here on May 12th, we repair  
18 another water main on Aspen Woods, and the same  
19 thing. Most of the water stops flowing through my  
20 basement. I don't know how many times I can show the  
21 same thing over and over and over before someone with  
22 intelligence can -- you know, can do something about  
23 it.

24                   If you play the DVD I have there, that  
25 shows water running out of the ground at the



1 intersection of Larimore and McQuay. It's running  
2 out of the ground and into the two-foot storm drain  
3 there, I believe, as in my complaint. I have -- the  
4 video I have here is a few days later. What's the  
5 date on that one?

6 JUDGE JORDAN: I have a few dates here.  
7 I have --

8 MR. LEE: I think it's the last one.

9 JUDGE JORDAN: -- April 7th and I have  
10 April 8, and that looks like 2008, April 8, 2008.  
11 Would you like to put it --

12 MR. LEE: This one I have is July 1 of  
13 2008. The water -- most of the water dried up.  
14 Okay. That was right after a repair up on Coal Bank  
15 Court. It's just outside of our quarter --  
16 quarter-mile radius here. There was literally an  
17 inch of water flowing over the storm drain. These  
18 are storm drains in my neighborhood, they are not  
19 creeks. I thought they were creeks. They never  
20 stopped flowing. A storm drain catches the  
21 rainwater, carries it away, and then a few days after  
22 the rain, it should dry up.

23 I'm pretty sure it's that video has an  
24 area right on top of the new water main that they  
25 installed with water bubbling out of the ground.

1 JUDGE JORDAN: Is this a good time to  
2 view your DVD, then?

3 MR. LEE: That would be a good time.

4 JUDGE JORDAN: Okay. Then you're asking  
5 this to be entered into the record?

6 MR. LEE: I am.

7 JUDGE JORDAN: Any objection?

8 MR. NOCE: What -- what date are we  
9 talking about here?

10 JUDGE JORDAN: This reads -- this is  
11 2008, and the part you want to show, is it April 7th  
12 or April 8th? Both are marked on here.

13 MR. LEE: April 8th is the leak at  
14 Larimore and McQuay. There's some of my basement  
15 leaking on there if you want to see it. There's a  
16 neighbor up the street pumping water out of his  
17 basement right at the end of Aspen Woods --

18 JUDGE JORDAN: Okay. Are --

19 MR. LEE: -- and I believe there's water  
20 running out on the street on Aspen Woods on that one  
21 too, although I'm not sure.

22 JUDGE JORDAN: And will we be seeing  
23 those things you've described on here?

24 MR. LEE: Sure.

25 MR. NOCE: As long as we know which --

1 what way we're dealing with, it's fine, no objection.

2 MR. LEE: Let's start at 27 minutes, if  
3 you would, Judge.

4 JUDGE JORDAN: Okay. I'll just take a  
5 second to get that set up. Okay. If I haven't  
6 mentioned this already, I will be receiving this into  
7 evidence.

8 (EXHIBIT NO. 1 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 JUDGE JORDAN: Okay. I'm going to try  
11 to get this to your 27-minute mark. About how long  
12 do you think this will take?

13 MR. LEE: The last portion of it?

14 JUDGE JORDAN: Well, the portion that  
15 you want me to see.

16 MR. LEE: At some point I finally want  
17 you to see all of it. If you want to let it play  
18 there, that is the corner of Aspen Woods and Larimore  
19 with water seeping out of the seams in the street.

20 JUDGE JORDAN: Uh-huh.

21 MR. LEE: If you want to back it up just  
22 a little and look through it.

23 MR. NOCE: What is the date?

24 JUDGE JORDAN: Back it up or forward?

25 MR. LEE: Back it up if you want. I

1 believe that was April 1st, didn't you say?

2 JUDGE JORDAN: April -- it's marked  
3 April 7th and April 8th.

4 MR. LEE: April 7th.

5 MR. NOCE: Judge, is that 2008? Sorry.

6 JUDGE JORDAN: Yes. And I'm backing  
7 this up. Now, did you want me to start from the  
8 beginning or do you want me to start at April -- or  
9 at the 27-minute mark that you mentioned before?

10 MR. LEE: Let's go to the 27-minute mark  
11 first. We can come back to Aspen Woods there.

12 JUDGE JORDAN: Okay. Let's try that.

13 MR. LEE: That's just earlier -- an  
14 earlier time of the leak that I photographed in my  
15 complaint. I've got a time readout as to where I am.  
16 It's probably the last quarter at least.

17 JUDGE JORDAN: Let's go to the last  
18 quarter, then.

19 MR. LEE: A little more.

20 JUDGE JORDAN: A little more. How about  
21 that?

22 MR. LEE: I think that's it.

23 JUDGE JORDAN: All right.

24 MR. NOCE: And what was the date on  
25 this? May 28th I think it said.

1 JUDGE JORDAN: Hold on a second and  
2 we'll see. We had a cell phone time check there --

3 MR. LEE: Yeah.

4 JUDGE JORDAN: -- and that will tell us.  
5 There, we passed that. I'm fast-forwarding now.  
6 This is where we want to be. This is why I never use  
7 PowerPoint when I make a presentation.

8 MR. LEE: It should be any second now.

9 JUDGE JORDAN: Okay. We'll get a read  
10 on that. I see May -- what does that look like,  
11 May 21st, May 20th --

12 MR. LEE: May 28th.

13 JUDGE JORDAN: May 28th. May 28th and  
14 there we are.

15 (The videotape was played at this time.)

16 JUDGE JORDAN: The narration, Mr. Lee?  
17 Whose -- whose voice is that for the record?

18 MR. LEE: That's mine.

19 (The videotape was played at this time.)

20 JUDGE JORDAN: Okay.

21 MR. LEE: Can I assume that my complaint  
22 is part of the record?

23 JUDGE JORDAN: Yes.

24 MR. LEE: Okay.

25 JUDGE JORDAN: It just -- but only --

1 only as to show what your theory is. It's not  
2 evidence. It hasn't been part of the record because  
3 it frames the issues of what we're talking about  
4 today.

5 MR. LEE: The water running out of the  
6 ground there on Aspen Woods in -- was it May of '08  
7 the video was?

8 JUDGE JORDAN: It was, just over a year  
9 ago.

10 MR. LEE: And if I could find my part of  
11 the complaint that shows water running out of the  
12 same street a year later or over a year later.

13 JUDGE JORDAN: Okay. Are you looking  
14 for some document that would show that?

15 MR. LEE: I'm looking for the amendment  
16 that showed Aspen Woods with the water running out of  
17 the street. Okay. It looks like the Third  
18 Amendment.

19 JUDGE JORDAN: And that's a document  
20 that would be filed in our electronic filing system.

21 MR. LEE: Which is dated April 20th,  
22 2009.

23 JUDGE JORDAN: Okay. And are you asking  
24 that that be admitted into the record?

25 MR. LEE: I am.

1 JUDGE JORDAN: Objection?

2 MR. NOCE: Is he just asking that the  
3 amendment be admitted into the record?

4 MR. LEE: I would like my entire  
5 complaint admitted into the record.

6 JUDGE JORDAN: Well, we'll deal with it  
7 a bit at a time.

8 MR. LEE: A bit at a time.

9 JUDGE JORDAN: Because it's pretty  
10 extensive and spreads over many months in many  
11 pieces. We're talking about the third amendment --  
12 we're talking about the photographs attached to the  
13 third amendment filed on April 20th, 2009; is that  
14 correct?

15 MR. LEE: Correct, the photographs and  
16 the description, please.

17 JUDGE JORDAN: Please tell us a little  
18 bit about the conditions under which you took that  
19 photograph.

20 MR. LEE: This was days, several days  
21 after a rain. I didn't include how far, but water  
22 flowed -- flowed out of the street and over the  
23 sidewalk like this for as many as four or five days  
24 after usually even a light rain until the repair to  
25 the water main was made on Aspen Woods on I believe

1 May 12th. If we --

2 JUDGE JORDAN: Of what year, please?

3 MR. LEE: 2009. If we look at the other  
4 part of the third amendment which is titled "Update,"  
5 it rained hard for -- are you on the third amendment  
6 "Update"?

7 JUDGE JORDAN: No, I'm not.

8 MR. LEE: I would like to ask that that  
9 be admitted into -- is it the record?

10 JUDGE JORDAN: Yes.

11 MR. LEE: I'm going to figure this out  
12 one of these days.

13 JUDGE JORDAN: Do you have a copy of  
14 that document?

15 MR. LEE: Not a hard copy. I can give  
16 you an electronic copy real quick.

17 JUDGE JORDAN: That's all right.

18 MR. LEE: I have a jump drive.

19 JUDGE JORDAN: You're talking about the  
20 third amendment to your complaint?

21 MR. LEE: The update.

22 JUDGE JORDAN: We're talking about the  
23 update; is that correct?

24 MR. LEE: Correct.

25 MR. NOCE: I'm not sure what --



1 JUDGE JORDAN: Is that this document?

2 MR. LEE: Yeah, that's the first photo.

3 JUDGE JORDAN: Okay.

4 MR. LEE: It says, "Picture taken  
5 May 14th" as --

6 JUDGE JORDAN: After a heavy rain the  
7 night before?

8 MR. LEE: Correct.

9 JUDGE JORDAN: And then it's followed by  
10 two more photographs.

11 MR. LEE: Correct.

12 JUDGE JORDAN: Okay.

13 MR. LEE: Which show no water running  
14 over the sidewalk and out of the street as in the  
15 previous photo and video. And if you look at the  
16 very bottom photo of that, it shows the hole in the  
17 street where the water main was repaired.

18 JUDGE JORDAN: Okay. So this shows no  
19 water flow?

20 MR. LEE: Correct.

21 JUDGE JORDAN: Okay. So this is not  
22 something that you want the Commission to render?

23 MR. LEE: This shows no water flowing  
24 after one rain. I suspect there's still several  
25 leaks in that subdivision. After several days of

1 rain, water begins to flow out of the street there  
2 again.

3 MR. NOCE: Well --

4 MR. LEE: I believe this repair was one  
5 part of the problem.

6 MR. NOCE: Your Honor, I believe  
7 Mr. Lee, his testimony here is argumentative and I'd  
8 ask that he just present facts and not present an  
9 argument as to where -- what he believes or what his  
10 theories are.

11 JUDGE JORDAN: Well, I'm going to  
12 overrule that objection. I'm trying to understand  
13 how this fits into what you want the Commission to  
14 do. It looks like you're showing me something that  
15 has been fixed.

16 MR. LEE: Correct, partially fixed.

17 JUDGE JORDAN: Okay. What the  
18 Commission needs to hear about is what needs to be  
19 fixed.

20 MR. LEE: Okay. That is in the -- also  
21 in the complaint. We need to look at a different  
22 amendment, but what I'm hoping to show here is  
23 Missouri American Water is claiming this is -- no way  
24 can it be our water, it's not our water.

25 JUDGE JORDAN: Uh-huh, uh-huh.

1                   MR. LEE: Okay. We have a year ago on  
2 video, we have -- when did I file this third  
3 amendment on --

4                   JUDGE JORDAN: Well, these pictures,  
5 your -- your amendment claims that these are taken  
6 the 14th. Are you -- are you -- are you saying that  
7 this was repaired, and if so --

8                   MR. LEE: This update is showing the  
9 repair for one leak.

10                  JUDGE JORDAN: Okay. Okay. And how  
11 does that support your argument and case today?

12                  MR. LEE: It supports my argument  
13 because I can show that water has been leaking out of  
14 that street for over a year. Now they repair a water  
15 main after -- when the entire time they claim it's  
16 not our water.

17                  MR. NOCE: Your Honor, I'm going to  
18 object.

19                  MR. LEE: Then --

20                  MR. NOCE: I'm not sure who he's  
21 referring to when he makes that statement, but it  
22 sounds like hearsay to me.

23                  JUDGE JORDAN: Yeah, that's -- and it's  
24 a little unclear. So as far as your representations  
25 that they had denied this, just what you've told me,

1 that testimony, I can't let that in. So I'm going to  
2 sustain that objection. If you have some other way  
3 of showing me, if I understand your argument, your  
4 argument is a year ago this spot leaked, today it  
5 does not leak.

6 MR. LEE: Yeah, even up to this year it  
7 leaked, there's photos of it leaking.

8 MR. NOCE: Again, your Honor --

9 MR. LEE: It leaked for an entire year.

10 JUDGE JORDAN: Okay.

11 MR. NOCE: Your Honor, this gets to my  
12 point of the relevance of this -- of this evidence.  
13 In fact, he is claiming that the leak has been  
14 repaired. I think we need to move on.

15 JUDGE JORDAN: Well, I think I -- I  
16 think I understand what Mr. Lee is saying. He's  
17 saying -- he's alleging that Missouri American has a  
18 history of denying leaks, then fixing leaks --

19 MR. LEE: And then the water --

20 JUDGE JORDAN: -- after which the water  
21 ceases to flow.

22 MR. LEE: Absolutely, thank you.

23 JUDGE JORDAN: Right. And I would take  
24 evidence on that because it will bear on credibility.  
25 I'm not making a finding of fact on that, but I will

1 hear the evidence because it bears upon credibility.  
2 But we need to get that evidence in some way other  
3 than someone told me that. So that's what we need to  
4 hear, something other than they denied it. We need  
5 something else that shows me they denied rather than  
6 hearsay.

7 MR. LEE: We have discovery where they  
8 denied it, don't we? They've denied everything.

9 JUDGE JORDAN: You would have to show  
10 me.

11 MR. LEE: I don't know how to get that  
12 in.

13 JUDGE JORDAN: Well, let's back up to  
14 the third amendment, so your WC-2009-0277 update, the  
15 document we've been talking about which features  
16 three photographs from May 13th and 14th of 2009.  
17 Are you asking that be admitted into the record?

18 MR. LEE: I am.

19 JUDGE JORDAN: All right. Further  
20 objection?

21 MR. NOCE: No objections.

22 JUDGE JORDAN: That is admitted into the  
23 record as Exhibit 2. Now I'm going to hand these  
24 things to the reporter so that she may make such  
25 marks upon them as she feels she needs to. Exhibit 1

1 and Exhibit 2. Those are admitted into the record.

2 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO  
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 MR. LEE: Next I have video on July 9th  
5 of 2008.

6 JUDGE JORDAN: And will this be by DVD  
7 also?

8 MR. LEE: It will.

9 JUDGE JORDAN: July 9, 2008.

10 MR. LEE: And if you can start this  
11 right at two minutes, but you don't have a timer.

12 JUDGE JORDAN: I have the timer and I do  
13 have a fast-forward.

14 MR. NOCE: What's the exact date, July  
15 what?

16 MR. LEE: Did I say 9th?

17 MR. NOCE: I thought it was July --

18 JUDGE JORDAN: July 9th of 2008.

19 MR. NOCE: And what are we -- 2008.  
20 What are we view -- what are we viewing?

21 MR. LEE: This is video of the same  
22 two-inch clay drain where the water was flowing out  
23 of the ground and out from under the street, and this  
24 is after a water main repair on Coal Bank Court.

25 JUDGE JORDAN: Okay. This is going

1 to -- is this going to show us the same spot of  
2 leakage?

3 MR. LEE: It is.

4 JUDGE JORDAN: Okay.

5 MR. LEE: After our repair.

6 JUDGE JORDAN: Okay. Hang on just a  
7 second.

8 MR. NOCE: Your Honor, I'm going to, I  
9 guess, object as to Mr. -- Mr. Lee's reference to the  
10 repair. I think that lacks foundation. I don't  
11 think he's established that there was an actual  
12 repair made at these spots. Without that, I think  
13 he's referring to facts that are not in evidence for  
14 the Court at this time.

15 JUDGE JORDAN: Right. He's trying to  
16 put them into evidence and you may certainly  
17 cross-examine him as to that.

18 Okay. I need a little more information  
19 about this DVD that you wanted to show us.

20 MR. LEE: Okay.

21 JUDGE JORDAN: Is this -- are you  
22 showing us the same appearance of surface water as in  
23 Exhibit 1?

24 MR. LEE: I am showing you the same  
25 spot --

1 JUDGE JORDAN: Uh-huh.

2 MR. LEE: -- with a lack or reduction,  
3 huge reduction in water flow.

4 JUDGE JORDAN: Okay. Did -- correct me  
5 if I'm wrong. Didn't you just show us that in  
6 Exhibit No. 1?

7 MR. LEE: I didn't show you a reduction  
8 in the water flow. Water was flowing out of the  
9 ground and out from under the street in that video.

10 JUDGE JORDAN: In Exhibit No. 2, the  
11 third amendment that you just put into evidence, you  
12 just showed us -- did that show us the reduction in  
13 water flow?

14 MR. LEE: The photo of Aspen Woods?

15 JUDGE JORDAN: Uh-huh.

16 MR. LEE: No.

17 JUDGE JORDAN: Okay.

18 MR. LEE: That shows you in the  
19 beginning of that video -- somehow I think I got off  
20 track there. In the beginning of that video, it  
21 shows -- well, in the end of it too, didn't it show  
22 water flowing out of Aspen Woods and over the  
23 sidewalk? So amendment three shows a reduction in  
24 water in that area.

25 JUDGE JORDAN: Okay.



1                   MR. LEE: This will show a reduction in  
2 water in the two-inch clay drain.

3                   JUDGE JORDAN: In the other area. All  
4 right. And tell us a little bit about how this DVD  
5 was made.

6                   MR. LEE: It was made with my video  
7 camera.

8                   JUDGE JORDAN: And who made it?

9                   MR. LEE: I did.

10                  JUDGE JORDAN: And will there be some  
11 narration on this also?

12                  MR. LEE: I believe so. I think my  
13 program's messed up. Some of them didn't come out  
14 with sound, but I believe that one may have sound.

15                  JUDGE JORDAN: Hang on just a moment  
16 while I prepare this. All right. I have Exhibit 3,  
17 a DVD related to July 9th, 2008, and this is the  
18 drain at the intersection of Larimore and McQuay?

19                  MR. LEE: Correct.

20                  JUDGE JORDAN: All right. And you're  
21 asking that I admit this into evidence?

22                  MR. LEE: I am.

23                  JUDGE JORDAN: Objection?

24                  MR. NOCE: No objection, your Honor.

25                  JUDGE JORDAN: All right. Thank you.

1 Thank you for your patience. How many minutes of  
2 this do you want -- do you want the Commission to see  
3 just now?

4 MR. LEE: I'm not sure of the length of  
5 it. I would like you to start it at two minutes,  
6 please.

7 JUDGE JORDAN: So we'll fast forward a  
8 little bit here. July 9th.

9 (The videotape was played at this time.)

10 MR. LEE: We will be out of the basement  
11 and have a time stamp.

12 JUDGE JORDAN: Right about there?

13 MR. LEE: I believe that's it.

14 (The videotape continued to play.)

15 MR. LEE: I think maybe it's one more  
16 past there.

17 JUDGE JORDAN: Well...

18 MR. LEE: Oh, no it's not.

19 (The videotape continued to play.)

20 MR. NOCE: Do we know where this is?  
21 This doesn't look like the storm drain. I'm sorry.

22 (The videotape continued to play.)

23 JUDGE JORDAN: Can I fast forward  
24 through the freight train or is there something on  
25 the other side of the freight train that will add to

1 what we've seen?

2 MR. LEE: You know, I'm not sure. I may  
3 be showing the storm drain on the other side of the  
4 tracks.

5 JUDGE JORDAN: Well, let's have a look.  
6 I'll fast-forward it if you like.

7 (The video was fast-forwarded.)

8 JUDGE JORDAN: Does that look like what  
9 you wanted to show us, Mr. Lee?

10 MR. LEE: Not yet.

11 JUDGE JORDAN: Okay. We're still on  
12 July 9th of 2008?

13 MR. LEE: Uh-huh.

14 MR. NOCE: Your Honor, if we could --

15 JUDGE JORDAN: Hang on, hang on, trying  
16 to pause this for you. Yes, sir.

17 MR. NOCE: What -- what are we seeing  
18 here now? Is he going to lay a foundation?

19 MR. LEE: I'm not sure, more leaks.

20 MR. NOCE: Well, then, I would object as  
21 a lack of foundation.

22 JUDGE JORDAN: All right.

23 MR. LEE: It is leaks -- it has to do  
24 with leaks of this water. I'm not sure which  
25 specific incident of it that would be coming next.

1                   JUDGE JORDAN: Okay. Well, we know  
2 the -- the time, where this is in time, but we need  
3 to know where it is in place so that we know that  
4 this is something that you've mentioned in your  
5 complaint.

6                   MR. LEE: It's right around my  
7 neighborhood. Everything I videoed is everything  
8 I've complained about in the complaint. I don't  
9 think there's anything in there that's not...

10                  MR. NOCE: Your Honor, again, I would  
11 object to the foundation of this. Mr. Lee can't even  
12 testify as to where this is.

13                  JUDGE JORDAN: Well, it sounds like you  
14 don't know if you're going to show us water running  
15 or water not running.

16                  MR. LEE: If you give me the DVD back, I  
17 can tell you what I'm going to show you real quick.  
18 I'm sorry to -- this mold has caused severe memory  
19 issues with me, Judge. I'm not stupid. I don't mean  
20 to be causing you difficulties or anything. I just  
21 have memory issues.

22                  JUDGE JORDAN: And no one wants to  
23 obstruct your case. Maybe this would be a good point  
24 to pause and take a break while you review these  
25 documents and figure out what it is you want to show

1 me.

2 MR. LEE: That's a great idea. Thank  
3 you.

4 JUDGE JORDAN: Let me take about 15  
5 minutes. Would that be good enough for you to go  
6 through these?

7 MR. LEE: Yes, that would be fine.

8 JUDGE JORDAN: Let's take a 15 -- we'll  
9 take a 15-minute break.

10 (A RECESS WAS TAKEN.)

11 JUDGE JORDAN: We are back on the  
12 record. We are going to extend our break for another  
13 15 minutes and we'll go off the record again.

14 (A RECESS WAS TAKEN.)

15 JUDGE JORDAN: We are back on the  
16 record. There have been a few discussions off the  
17 record, I'm going to put those on the record now.  
18 First, Mr. Lee has invoked the rule excluding fact  
19 witnesses from the hearing room. So all fact  
20 witnesses have or should have left the room.

21 MR. NOCE: Judge, just for  
22 clarification, we do have Derek Linam who will be  
23 called as a fact witness; however, he is the  
24 corporate representative for Missouri American Water.

25 JUDGE JORDAN: Right. He's your

1 client's representative.

2 MR. NOCE: Correct.

3 JUDGE JORDAN: He may stay. Any other  
4 fact witnesses?

5 (NO RESPONSE.)

6 JUDGE JORDAN: I don't hear any, so I'll  
7 assume everyone is complying with the rule excluding  
8 witnesses. We are in Mr. Lee's case in chief.  
9 During our break, Mr. Lee has been organizing his  
10 DVDs. He is showing us leaks that he alleges  
11 occurred throughout his neighborhood and their  
12 subsequent repair. And these are his allegations,  
13 those are the purposes of his exhibits.

14 The portions that he is showing us are  
15 the portions that are going into the record. I'm  
16 going to clarify one of my evidentiary rulings  
17 earlier. Mr. Lee alleged that representatives of  
18 Missouri American Water had denied that the water was  
19 theirs, the water that he's showing us. I had stated  
20 that -- there was a hearsay objection, I had state --  
21 I had sustained that. I'm going to reverse that  
22 ruling, and the reason is as follows: Bear with me  
23 because the law of hearsay gets a little complicated  
24 here.

25 The exchanges as recorded, as testified

1 to is this: Mr. Lee says he talked to Missouri  
2 American Water's representative stating that there  
3 was -- their water was flowing above the ground.  
4 Mr. Lee then says that representative denied that it  
5 was their water. The denial that it is their water,  
6 the statement it is not their water, we're not using  
7 that to prove that it is not their water; therefore,  
8 it is not hearsay. I will allow him to state that.  
9 That supports the admission of the -- of this  
10 evidence into the record.

11 Certainly, Missouri American has the  
12 right to cross-examine that and address that issue in  
13 its case in chief, but it is upon that foundation  
14 that I'm allowing these exhibits into the record.

15 Now, as to the record while we were --  
16 as to the content of the record, while we were off  
17 the record, Mr. Lee explained that some of the  
18 exhibits he has are originals to him and he has no  
19 duplicates to deliver to any party or -- and retain  
20 for himself and give to the Commission.

21 Others of the material that he's been  
22 showing us are already in the Commission's possession  
23 from the local public hearing in Case WR-2008-0311.  
24 So I'm going to address how we're going to handle the  
25 logistics of those -- of those materials right now.

1                   Mr. Lee has delivered to the reporter  
2 Exhibit 1, and that material also appears on local  
3 public hearing Exhibit No. 1, a DVD marked May 28th,  
4 2008. So we will have that in the record by  
5 reference to that DVD from the local public hearing  
6 and I'm going to make that ruling under §536.070,  
7 subdivision 5, which states that, "Records and  
8 documents of the agency which are to be considered in  
9 the case" -- I'm sorry, that's the wrong one. Here  
10 we go. No, that's the right one. "...considered in  
11 the case shall be offered in evidence so as to become  
12 part of the record the same as any other evidence,"  
13 which means that you have to lay the foundation that  
14 we've been discussing for each of these exhibits.

15                   "But the records and documents may be  
16 considered as a part of the record by reference  
17 thereto when so offered." So in other words, if we  
18 possess something in and of the case, you don't have  
19 to give us another copy, we just look at this copy  
20 that we already have. And since those are public  
21 records, of course, anyone can have a copy of that.  
22 So Exhibit 1 I've already discussed and Mr. Lee may  
23 retain possession of Exhibit 1 so he can keep that.  
24 Mr. Lee can get that back from the reporter.

25                   Exhibit 3, that material is on local





1 Court, I was hoping to try to get through Mr. Lee's  
2 testimony. If we want to wait, he has no problem  
3 waiting until later this afternoon.

4 JUDGE JORDAN: Okay.

5 MR. NOCE: So if we want to try and get  
6 through Mr. Lee's case in chief, maybe at 3 o'clock.  
7 If it looks like we're not going to, then, maybe.

8 JUDGE JORDAN: Okay. Then here's what  
9 we'll do. We'll go ahead and continue with Mr. Lee's  
10 case in chief. Let me know when the time becomes  
11 sensitive for your witness because we certainly want  
12 to accommodate him and hear his testimony and any  
13 other evidence. Just alert me to that.

14 MR. NOCE: Thank you, Judge.

15 JUDGE JORDAN: And I -- and I appreciate  
16 you allowing Mr. Lee to continue in the presentation  
17 of his case in chief.

18 So Mr. Lee, you are showing us DVDs in  
19 support of your case. You have handed me one that  
20 comes from the local public hearing in WR-2008-0311.  
21 Will you tell us a little bit about this DVD?

22 MR. LEE: I believe that's the one that  
23 shows the basement dry after an inch of rain the  
24 night before.

25 JUDGE JORDAN: All right. This is

1 marked, "2008 July 3rd, dry basement after one inch  
2 of rain last night." We will refer to this as  
3 Exhibit 4. This is one of the local public hearing  
4 DVDs. I'm sorry -- Exhibit 5. We're on Exhibit 5.

5 MR. NOCE: That's the July 3rd, 2008?

6 JUDGE JORDAN: "2008 July 3rd, dry  
7 basement after one inch of rain last night."

8 MR. LEE: And I believe you have that  
9 one already now.

10 JUDGE JORDAN: This is from the local  
11 public hearing file.

12 MR. NOCE: What was Exhibit 4, then,  
13 Judge? I apologize.

14 JUDGE JORDAN: This is Exhibit 5.

15 MR. NOCE: What was 4, then? I had that  
16 marked as 4.

17 JUDGE JORDAN: I believe you're right,  
18 we just haven't shown this one yet.

19 MR. NOCE: Okay.

20 JUDGE JORDAN: My apologies. I was  
21 confused on that. I'm about to show Exhibit 4.  
22 Sorry, everyone. This is Exhibit 4 we're about to  
23 see. Mr. Lee, where would that start?

24 MR. LEE: I believe it starts at the  
25 beginning and it's a short...

1                   JUDGE JORDAN: How much of this will you  
2 want us to see?

3                   MR. LEE: Probably all of it.

4                   JUDGE JORDAN: And how much is that?

5                   MR. LEE: I don't think it's but several  
6 minutes.

7                   JUDGE JORDAN: Okay. Well, we will  
8 watch a few minutes, and when it starts to become  
9 cumulative, then you understand that I'll cut it off?

10                  MR. LEE: Absolutely.

11                  MR. NOCE: Your Honor, I guess I would  
12 object to this -- or to this DVD in that I'm not sure  
13 of the relevance of showing the dry basement, how  
14 that is relevant as to whether or not --

15                  JUDGE JORDAN: Hang on, I'm sorry. I've  
16 got my DVD running. All right. And Mr. Lee, will  
17 you explain the relevance of this?

18                  MR. LEE: This is after our repair on  
19 Coal Bank Court and the basement dried up and the  
20 water stopped running out of the ground, and I  
21 believe that's very relevant to the issue of the  
22 basement leaking and the water running out of the  
23 ground.

24                  JUDGE JORDAN: Okay. So this will show  
25 us that as of July 3rd, 2008, there's no water

1 running into your basement next to your house.

2 MR. NOCE: Well, I don't see how the  
3 relevant -- how that is relevant as to whether or not  
4 there is a current leak anywhere in the system.

5 JUDGE JORDAN: I think I ruled on that  
6 already.

7 MR. NOCE: Okay.

8 JUDGE JORDAN: And we will have a few  
9 minutes of this document.

10 (The videotape was played at this time.)

11 MR. NOCE: Could we increase the volume?

12 JUDGE JORDAN: Sir?

13 MR. NOCE: I apologize. Can we increase  
14 the volume?

15 JUDGE JORDAN: We can. Thank you for  
16 mentioning that. Mr. Lee, do we need to see much  
17 more of this?

18 MR. LEE: That pretty much -- that's all  
19 you're going to see is the basement's dry, so I guess  
20 not.

21 JUDGE JORDAN: Okay. I'm going to stop  
22 that one, then. So on the next one I'll increase --  
23 so let me know -- let me know, Mr. Noce, if you can't  
24 hear on these.

25 MR. NOCE: Yes, your Honor.

1                   JUDGE JORDAN: Okay. All right. We are  
2 admitting that material into the record by reference  
3 to the local public hearing in WR-2008-0311, and that  
4 was Exhibit 4.

5                   (EXHIBIT NO. 4 WAS RECEIVED INTO  
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7                   JUDGE JORDAN: Mr. Lee, do you have  
8 another exhibit for us?

9                   MR. LEE: I do. Okay. There's quite a  
10 lot on here. What I want us to see is the --  
11 Larimore and McQuay with the two-inch drain tile in  
12 the sinkhole.

13                  JUDGE JORDAN: Uh-huh, uh-huh.

14                  MR. LEE: And -- well, all right. Let's  
15 look at that part of it. I may to want come back to  
16 that DVD and see another part on there after I show  
17 these other two.

18                  JUDGE JORDAN: Okay. Let me get some  
19 more information on this DVD first. The matter  
20 that's on this DVD, is that contained in the file in  
21 the other case to which we've been referring, the WR  
22 case?

23                  MR. LEE: I believe that.

24                  JUDGE JORDAN: Okay. Do you have a copy  
25 of this for other parties?

1                   MR. LEE: I don't think I have that  
2 copy.

3                   JUDGE JORDAN: Okay. Then what I'll  
4 want you to do is file a copy with the Commission --

5                   MR. LEE: Correct.

6                   JUDGE JORDAN: -- the week after this  
7 hearing closes and serve a copy on other parties.  
8 Okay. Now, the portion that you want in the record  
9 is "December 7th, Larimore and McQuay two-foot drain  
10 and sinkhole"; is that correct?

11                  MR. LEE: Correct.

12                  JUDGE JORDAN: Okay. And where will I  
13 find that on this DVD, how far through?

14                  MR. LEE: I don't have a time stamp on  
15 it for you. You might start at a quarter, a quarter  
16 of the way through maybe.

17                  JUDGE JORDAN: Okay.

18                  MR. NOCE: What -- what year is this,  
19 Judge? I'm sorry.

20                  MR. LEE: I believe that's 2008.

21                  JUDGE JORDAN: I'm going to double-check  
22 from the title written on this DVD. The top says --  
23 at the top it is written "2008," the date is  
24 "December 7th," the location, "Larimore and McQuay,  
25 two-foot drain and sinkhole."

1                   MR. LEE: I do have copies of that,  
2 Judge.

3                   JUDGE JORDAN: Okay. Well, in that  
4 case, how many copies have you got?

5                   MR. LEE: I have two left.

6                   JUDGE JORDAN: Well, why don't you give  
7 one to each party.

8                   MR. LEE: Do you need a duplicate of  
9 this?

10                  MR. NOCE: I don't know if I have a copy  
11 of it, so sure.

12                  MR. LEE: I'm pretty sure you have that  
13 already.

14                  MR. RITCHIE: Do you have a copy for  
15 Staff?

16                  JUDGE JORDAN: Staff is considered a  
17 party by regulation even when they don't take a  
18 position in the case.

19                  MR. LEE: I only have one left. Are you  
20 able to view the one out of the file here?

21                  JUDGE JORDAN: Here's what we'll do:  
22 You've got a copy, Mr. Lee?

23                  MR. LEE: Uh-huh.

24                  JUDGE JORDAN: You've delivered one to  
25 Missouri American, correct?



1 MR. LEE: Correct.

2 JUDGE JORDAN: Okay. Within a week of  
3 this hearing's close, file one with the Commission,  
4 serve one on Staff. Is that agreeable?

5 MR. RITCHIE: That's agreeable.

6 MR. LEE: Even though you have one?

7 JUDGE JORDAN: This is yours.

8 MR. LEE: I have one other extra one  
9 here, he can have that one.

10 JUDGE JORDAN: Okay. Missouri American  
11 has one, right?

12 MR. LEE: I have one and you have one.

13 JUDGE JORDAN: Okay.

14 MR. LEE: So I will need to send Sam  
15 one, right?

16 JUDGE JORDAN: Yeah, you need to keep  
17 one to make duplicates from for all of us, so do  
18 that. So a week after this hearing closes, serve a  
19 copy on Staff through General Counsel, okay?

20 MR. LEE: Correct.

21 JUDGE JORDAN: Okay. And I will be  
22 numbering this Exhibit 5.

23 (EXHIBIT NO. 5 WAS MARKED FOR  
24 IDENTIFICATION BY THE HEARING OFFICER.)

25 JUDGE JORDAN: And I am going to try to

1 start about a quarter of the way through. Mr. Lee,  
2 let me know if I'm getting this right. Let me know  
3 where we are in cross -- into the evidence you want  
4 the Commission to consider. Whenever you're ready,  
5 let me know.

6 MR. LEE: Beg your pardon?

7 JUDGE JORDAN: Well, I'm starting this  
8 at about a quarter --

9 MR. LEE: Okay.

10 JUDGE JORDAN: -- about a quarter of the  
11 way through, so let me know --

12 MR. LEE: Which way to go, yeah.

13 JUDGE JORDAN: -- yes, which way to go.

14 And Mr. Noce, let me know if there's a problem with  
15 the volume.

16 (The videotape was played at this time.)

17 MR. LEE: I think you need to go back  
18 just a little on that.

19 JUDGE JORDAN: We'll do that.

20 MR. NOCE: I think we're at the  
21 beginning. I think we're at the beginning.

22 JUDGE JORDAN: Yeah.

23 MR. LEE: At the beginning.

24 JUDGE JORDAN: Yeah. Yeah, we're at the  
25 start.



1 MR. NOCE: Judge, a little louder.

2 JUDGE JORDAN: You can come up here and  
3 listen.

4 MR. NOCE: I mean, I guess I have to  
5 object. I mean, you hear Mr. Lee and his narration  
6 saying, "I guess the water now flows under the  
7 concrete," but clearly he's speculating there. The  
8 fact that he -- is this how you want me to do  
9 objections during the narration?

10 JUDGE JORDAN: That's fine.

11 MR. NOCE: And ask that that be  
12 stricken.

13 JUDGE JORDAN: I'll overrule the  
14 objection. Are there any other objections to the  
15 admission of this material into the record?

16 MR. NOCE: No.

17 JUDGE JORDAN: Of course, your objection  
18 goes to the weight of this evidence.

19 MR. NOCE: Correct.

20 JUDGE JORDAN: We'll not keep the -- not  
21 keep the evidence out of the record. Mr. Lee, I  
22 noted your narration described this as the  
23 intersection of McQuay and Lydia.

24 MR. LEE: Uh-huh.

25 JUDGE JORDAN: Have we seen something

1 else dealing with McQuay and Lydia?

2 MR. LEE: Not with McQuay and Lydia yet.  
3 That is the other end of the two-inch clay drain  
4 tile.

5 JUDGE JORDAN: And the other -- and this  
6 is the other end. Where is the first end?

7 MR. LEE: The first end will be next.

8 JUDGE JORDAN: Okay. Okay. Here's what  
9 I'm asking you: You've been trying to show us dry  
10 spots, places where there is no water, where water  
11 ran before. Have you shown us that water ran here  
12 before?

13 MR. LEE: I haven't shown you that it's  
14 run out of there before, no.

15 JUDGE JORDAN: Okay. Then --

16 MR. NOCE: Nor is it alleged at this  
17 point.

18 MR. LEE: I'm showing you this because  
19 this is the other end of the clay drain tile, and in  
20 between this end and the other end, the neighbor's  
21 yard has become a huge sinkhole.

22 JUDGE JORDAN: Okay. So this is not of  
23 the nature of the evidence that you're showing us  
24 before where you're alleging there was a leak, a  
25 denial, a repair, then no leak. This is different

1 from that; is that correct?

2 MR. LEE: You can see at the other end  
3 of the sinkhole that the link -- that the leak has  
4 reduced, been greatly reduced, it's no longer flowing  
5 out of the columns by the street.

6 JUDGE JORDAN: From what? Have you  
7 shown us where water was flowing before?

8 MR. LEE: I showed you where it was  
9 flowing at that location before, yes.

10 JUDGE JORDAN: Okay. Now, what -- which  
11 exhibit was that, what was that location? Because I  
12 haven't heard about McQuay and Lydia until now.

13 MR. LEE: Okay. That was Larimore and  
14 McQuay.

15 JUDGE JORDAN: Okay. All right. The  
16 next material -- then I will admit this -- this  
17 material into the record.

18 (EXHIBIT NO. 3 WAS RECEIVED INTO  
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE JORDAN: The next material, is  
21 that on this disk or another disk?

22 MR. LEE: Yeah, the next one is -- is  
23 immediately following the --

24 JUDGE JORDAN: Okay.

25 MR. LEE: -- that one.

1 (The videotape was played at this time.)

2 MR. NOCE: And it's my understanding,  
3 Judge, if you'll stop a minute.

4 JUDGE JORDAN: Yes. Mr. Noce, you have  
5 an objection?

6 MR. NOCE: Yeah, I believe -- again,  
7 Mr. Lee, it's my understanding that this will be  
8 evidence of no water at Larimore and McQuay which I  
9 believe is repetitive of what we just saw in the --  
10 in Exhibit -- dated July 9, 2008, Exhibit 3, which  
11 was a DVD which showed no water at Larimore and  
12 McQuay.

13 JUDGE JORDAN: Well, that showed us no  
14 water in the -- let's see, you're talking about  
15 Exhibit 3?

16 MR. NOCE: Correct.

17 JUDGE JORDAN: Okay. And this is just  
18 July 9th, 2008.

19 MR. NOCE: I think we're getting  
20 repetitive here. We haven't -- we spent nearly all  
21 morning talking about no leaks. I'd just as soon get  
22 to where there are, in fact -- where there's the  
23 evidence of current leaks.

24 JUDGE JORDAN: Yeah, I see where you're  
25 headed. You're suggesting that this is repetitive,

1 that these attacks on Missouri American's credibility  
2 are growing repetitive?

3 MR. NOCE: Correct, your Honor.

4 MR. LEE: My --

5 JUDGE JORDAN: Mr. Lee, how many more of  
6 these are there?

7 MR. LEE: My purpose for showing this  
8 location again is to show the sinkhole that has  
9 appeared in the yard right under this drain, not  
10 necessarily to show the water or lack of. We've  
11 already seen the water and lack of the water.

12 MR. NOCE: I guess I would object to the  
13 lack of foundation.

14 MR. LEE: There is a huge sinkhole in  
15 the yard and the edge of the street is starting to  
16 fall in between location A and location B of this  
17 drain.

18 MR. NOCE: I'm going to object as lack  
19 of foundation. Mr. Lee cannot establish himself that  
20 the cause of this sinkhole is, in fact, a leak,  
21 running water underneath it.

22 JUDGE JORDAN: Well --

23 MR. NOCE: Several geological events  
24 could have transpired to cause this.

25 JUDGE JORDAN: Sure, but I'd like to



1 give him the chance to show it to me, and then it  
2 will either come together or it won't. In other  
3 words, entering this into the record does not mean  
4 it's found as a fact.

5 MR. NOCE: Correct.

6 JUDGE JORDAN: And it will -- and it is,  
7 of course, Mr. Lee's burden to put these things  
8 together. Whether he can or not, well, we haven't  
9 made a decision on that yet. However, Mr. Lee, it's  
10 starting to sound a little bit redundant and  
11 repetitive to me. So I will show this --

12 MR. LEE: For this part of it?

13 JUDGE JORDAN: -- for this -- for -- I  
14 will show this, I will view this, and then we'll deal  
15 with your next exhibit.

16 MR. LEE: Which part is repetitive?

17 JUDGE JORDAN: Well, if we're  
18 starting -- you've mentioned a pattern of leak  
19 alleged, denial, repair and no more leak, right?

20 MR. LEE: Okay.

21 JUDGE JORDAN: Okay. There's only so  
22 many times you need to show that to me before I get  
23 the picture.

24 MR. LEE: We have a number of different  
25 areas in the neighborhood. Is it for the same issue

1 or for --

2 JUDGE JORDAN: Well, it sounds like  
3 you're doing pretty much the same thing with each of  
4 them, you see. What you've been showing me is that  
5 Missouri American has been denying that there were  
6 leaks, then conducted repairs and then after that,  
7 the leaks stops.

8 MR. LEE: Correct.

9 JUDGE JORDAN: Okay. We need to show --  
10 you need to show me not just that they've -- that  
11 their statements have been incorrect in the past, you  
12 need to show me where these things are now so that we  
13 can address your claim.

14 MR. LEE: Okay.

15 JUDGE JORDAN: Okay. I'll go ahead and  
16 look at this, we'll look at this and then we'll move  
17 on, okay?

18 (The videotape was played at this time.)

19 JUDGE JORDAN: Will that do, Mr. Lee?

20 MR. LEE: Yes.

21 JUDGE JORDAN: Okay. I have admitted  
22 Exhibit 5 into the record.

23 (EXHIBIT NO. 5 WAS RECEIVED INTO  
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 MR. NOCE: And Judge, just for

1 clarification, when we're admitting this into the  
2 record, it's just the sections that have been shown,  
3 correct, not the other --

4 JUDGE JORDAN: That's right.

5 MR. NOCE: Okay.

6 JUDGE JORDAN: Okay. Now, Exhibit 5,  
7 this is something the Commission can keep; is that  
8 correct, Mr. Lee?

9 MR. LEE: It's dated November 13th,  
10 2008, at the top?

11 JUDGE JORDAN: Yes, it is.

12 MR. LEE: Yes, that's correct.

13 JUDGE JORDAN: All right. Then I will  
14 hand this one to the reporter to mark.

15 (EXHIBIT NO. 6 WAS MARKED FOR  
16 IDENTIFICATION BY THE COURT REPORTER.)

17 JUDGE JORDAN: Mr. Lee, do you have  
18 another exhibit to show us?

19 MR. LEE: Yes. This one will show us  
20 water leaking out of the ground in front of 11533  
21 Larimore. Then the next exhibit will show Missouri  
22 American Water, they're digging and repairing this  
23 leak. And what I want to show is how similar to the  
24 other areas in the neighborhood that this water looks  
25 when it runs out of the ground right on top of this

1 leak.

2 JUDGE JORDAN: It sounds like we're  
3 getting -- we're getting repetitive. I'm just going  
4 to --

5 MR. NOCE: Judge, if I could, again,  
6 this is not an area where he's alleging a leak,  
7 1130 -- 11533 Larimore is not one of the addresses  
8 listed in the petition. Again, I'd -- like your  
9 Honor states, I think this is getting repetitive. If  
10 we could move on to evidence of actual leaks that  
11 currently exist.

12 MR. LEE: I have alleged leaks in my  
13 basement for the last 19 years.

14 JUDGE JORDAN: Right, but they can't  
15 repair a leak in your basement 19 years ago. What  
16 you want, if I understand, is you want any current  
17 leaks repaired.

18 MR. LEE: Correct.

19 JUDGE JORDAN: Okay.

20 MR. LEE: And I am merely trying to show  
21 their attitude and their neglect in stopping these  
22 leaks.

23 JUDGE JORDAN: I think we get the  
24 picture. You've shown us several examples of that.

25 MR. LEE: Okay.

1                   JUDGE JORDAN: That's what I mean by  
2 repetitive. So I'd like to move on if we can to  
3 current leaks that you allege.

4                   MR. LEE: This leak is again from  
5 October 9th. This is video of the actual main  
6 leaking underground after they removed the water --  
7 or after they removed the dirt from the pipe.

8                   JUDGE JORDAN: I see that's dated 2008.

9                   MR. LEE: That's correct.

10                  JUDGE JORDAN: Okay. Is that one that  
11 is current and active, is that still going on now?

12                  MR. LEE: No. I don't have any way to  
13 know where the water is leaking right now. I have to  
14 rely on history to paint a picture of what's going on  
15 now. This water main leaked for months that I know  
16 of.

17                  JUDGE JORDAN: Uh-huh, uh-huh.

18                  MR. LEE: They came out and said they  
19 tested everything and found nothing. They wrote my  
20 congressman's office a real nice letter that said  
21 there's no -- nothing anywhere near Mr. Lee's home  
22 that could be causing a problem.

23                  MR. NOCE: Objection, hearsay, your  
24 Honor.

25                  MR. LEE: And then I'm inspecting the

1 neighborhood and I see this leak, the water running  
2 out of the ground, and get them here to repair it.

3 JUDGE JORDAN: Okay.

4 MR. LEE: And that's the same thing  
5 that's going on with the current leaks. They deny  
6 everything. They test it and they say nothing's  
7 wrong. Then what happens to the break and comes to  
8 the surface, then they go and fix that one.

9 JUDGE JORDAN: I understand, and I think  
10 you've made a record of all that. Now, my question  
11 is can you show me a leak that's active, that's  
12 current that we can have them repair?

13 MR. LEE: I can do that.

14 JUDGE JORDAN: Okay.

15 MR. LEE: You don't want to see the  
16 water running out under the ground. This is just one  
17 more piece of information that proves large  
18 quantities of water flow underground and can be  
19 headed to my basement. This is the water that was  
20 running in my basement. This is right up the street  
21 from the two-inch clay drain tile.

22 JUDGE JORDAN: Is that -- are -- are you  
23 showing me a current leak with that DVD in your hand?

24 MR. LEE: I can't show you a current  
25 leak, Judge. I don't have a backhoe to go excavate

1 the neighborhood to show you a current leak.

2 JUDGE JORDAN: There's something I'm not  
3 getting about this. You want to show me an event in  
4 October of 2008; is that correct?

5 MR. LEE: Correct. After they inspected  
6 the neighborhood, after they came and tested with  
7 their ultrasonic equipment, after they certified the  
8 neighborhood, had no leaks, we have water running out  
9 of the ground.

10 JUDGE JORDAN: Okay. So I can take your  
11 testimony as to that if you want to tell me where the  
12 water was running out of the ground, I don't think we  
13 need to see a movie of it. So just tell me about it.

14 MR. LEE: Okay. If we could just watch  
15 this first one, we could fast-forward. It's real --  
16 it has a lot of impact as to the water exiting the  
17 pipes underground.

18 JUDGE JORDAN: So this is going to show  
19 me something different from what I've seen so far?

20 MR. LEE: It is.

21 JUDGE JORDAN: Okay. And how is it  
22 going to be different?

23 MR. LEE: This will show you the actual  
24 pipe with water spraying from the pipe after they  
25 removed the dirt from the pipe.

1 MR. NOCE: Is this prior to a repair?

2 MR. LEE: (Nodded head.)

3 MR. NOCE: Well, then, Judge --

4 THE COURT REPORTER: I'm having trouble  
5 hearing you.

6 MR. NOCE: I apologize.

7 JUDGE JORDAN: Sorry, sorry.

8 MR. NOCE: Again, we're getting  
9 repetitive if we're making a repair, if he's -- if  
10 he's showing us making a repair.

11 MR. LEE: And, again, repetitive in  
12 we're making a repair, it has been a series of  
13 repetitive repairs in this neighborhood.

14 JUDGE JORDAN: Right. But history is  
15 not necessarily what we're -- what your claim is.  
16 Your claim is where, if there are leaks today, we  
17 will fix those. I understand the history you've been  
18 painting.

19 MR. LEE: I would like to watch this,  
20 not for the fact of we need one more leak, but for  
21 the fact of the visual of the water spraying out of  
22 the pipe after the dirt is removed underground.

23 JUDGE JORDAN: Okay. So this is the  
24 course of a repair?

25 MR. LEE: It is.



1                   MR. NOCE: Your Honor, I don't see the  
2 relevance of this document again as to this issue  
3 before this Commission.

4                   MR. LEE: I'm claiming water is exiting  
5 these pipes and flowing underground, and this DVD  
6 shows it.

7                   JUDGE JORDAN: That would show what it  
8 looks like.

9                   MR. LEE: Right.

10                  JUDGE JORDAN: Okay. And it sounds like  
11 it wouldn't take very long to see that. Am I right?

12                  MR. LEE: It would not.

13                  JUDGE JORDAN: Okay. Well, I will have  
14 a minute or two of that. I think that's all I need  
15 to -- that's all the Commission needs to see.

16                  MR. LEE: It's the very first one, and  
17 what I want you to see is toward the end of the first  
18 segment.

19                  JUDGE JORDAN: All right. And this will  
20 be Exhibit 6.

21                  MR. NOCE: What's the date on that,  
22 Judge?

23                  MR. LEE: July 9th?

24                  JUDGE JORDAN: "2008 October 9th" --

25                  MR. LEE: October 9th.

1                   JUDGE JORDAN:  -- "Missouri American  
2 Water, repair of Larimore and Coal Bank."

3                   (The videotape was played at this time.)

4                   JUDGE JORDAN:  Is that what you wanted  
5 me to see?

6                   MR. LEE:  It's toward the end.  If you  
7 wanted to fast-forward, you can see the actual water  
8 spraying out of the pipe.

9                   JUDGE JORDAN:  Well, I did see some  
10 water spraying out of the pipe.

11                   MR. LEE:  Not like you're going to see.

12                   JUDGE JORDAN:  Okay.  And this is going  
13 to show us what it looks like when a pipe is leaking;  
14 is that correct?

15                   MR. LEE:  Underground, correct.  Well,  
16 once the dirt is removed.

17                   JUDGE JORDAN:  Right.  And to clarify,  
18 this is not a current leak --

19                   MR. LEE:  It is not.

20                   JUDGE JORDAN:  -- that you're alleging?  
21 This is just kind of a demonstration of what it looks  
22 like for this leak?

23                   MR. LEE:  Correct.

24                   JUDGE JORDAN:  Okay.

25                   (The videotape is fast-forwarded.)

1 JUDGE JORDAN: Are we getting close?

2 MR. LEE: Probably go forward a little  
3 more.

4 JUDGE JORDAN: I see a pump spraying  
5 water. I think that's what I saw before.

6 MR. LEE: Correct.

7 JUDGE JORDAN: Let me know when we get  
8 close. Is this what you want me to see or is that  
9 the pump?

10 MR. LEE: No. We'll see down in the  
11 bottom of the hole in a minute.

12 JUDGE JORDAN: I don't think I can  
13 fast-forward faster than that.

14 MR. LEE: It should be just right around  
15 the corner here. There we go. Did we miss it  
16 already?

17 JUDGE JORDAN: That was it. All right.

18 MR. LEE: And you missed the impact of  
19 it in fast-forward mode.

20 JUDGE JORDAN: All right. This is "2008  
21 October 9th, Missouri American Water repair, Larimore  
22 and Coal Bank" as Exhibit No. 6, and that showed us a  
23 water pipe leaking which is not at issue in this  
24 case; is that correct? That is not one of the leaks  
25 that you allege; is that correct?

1                   MR. LEE:  It's not one that I allege at  
2 this time, no.

3                   JUDGE JORDAN:  Okay.

4                   MR. LEE:  And I only have one copy of  
5 that --

6                   JUDGE JORDAN:  Would that be your only  
7 copy?

8                   MR. LEE:  -- so I need -- so I need to  
9 send you one.

10                  JUDGE JORDAN:  This is --

11                  MR. LEE:  Unless you have that.  Do you  
12 have that in your -- I have one here.  It's not in  
13 any of these of what you have in the other case, is  
14 it?  That's not it.

15                  JUDGE JORDAN:  No, that's not it.  No.

16                  MR. LEE:  The other one.

17                  JUDGE JORDAN:  Oh, the other ones.

18 Let's take a look.  No, no, no, no and no.  If you  
19 will file a copy of that with the Commission and  
20 serve a copy on each party one week after this  
21 hearing closes.  And I've admitted that into the  
22 record.

23                               (EXHIBIT NO. 6 WAS RECEIVED INTO  
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25                  JUDGE JORDAN:  Mr. Noce, your objection

1 is noted. It will go to the weight of the evidence  
2 but does not affect its admission into the record.

3 MR. NOCE: Okay.

4 JUDGE JORDAN: Mr. Lee, have you got  
5 something else to show me?

6 MR. LEE: The other evidence is in my  
7 complaints.

8 JUDGE JORDAN: Do you have any more  
9 exhibits to offer me right now or any other  
10 testimony?

11 MR. LEE: As far as video?

12 JUDGE JORDAN: Of any kind. The order  
13 in which you present things to me is -- is quite up  
14 to you, however you think it would be most effective  
15 for the Commission.

16 MR. LEE: I have other testimony. I  
17 have -- I would like to testify to all of the  
18 pictures that I've submitted in my complaint.

19 JUDGE JORDAN: Okay. So you have  
20 documents that are already on file with the  
21 Commission and you'd like them -- you would like to  
22 put them into the record; is that correct?

23 MR. LEE: I would.

24 JUDGE JORDAN: All right. Will you be  
25 having any more DVDs for us?

1                   MR. LEE: I have no more DVDs. I could  
2 have some more video if I could hook my camera up to  
3 your system somehow.

4                   JUDGE JORDAN: I don't know how to do  
5 that. All right. I see that it's 12:28 by these  
6 clocks. How do the parties feel about taking lunch?  
7 I can go all day and all night without a break, so  
8 it's entirely up to the parties.

9                   MR. NOCE: I'm getting a little hungry,  
10 your Honor, but it's up to you.

11                   JUDGE JORDAN: Mr. Lee, would you like  
12 to take a break for lunch?

13                   MR. LEE: Either way's fine with me. I  
14 can go or I could stay.

15                   JUDGE JORDAN: Let's take a break now  
16 and let's come back in a half an hour. And we'll go  
17 off the record.

18                   (THE LUNCH RECESS WAS TAKEN.)

19                   JUDGE JORDAN: We are back on the record  
20 briefly. We had a brief discussion off the record in  
21 regard to the exhibits that Mr. Lee is going to offer  
22 next. He's going to be referring to materials that  
23 are already in the Commission's possession and he  
24 will ask that they be put into the record. The  
25 parties are going to discuss those exhibits now and

1 we're going to go off the record while they figure  
2 out what they can agree to and what they cannot. So  
3 we will take a break for 15 minutes. All right.  
4 Thank you.

5 (A RECESS WAS TAKEN.)

6 JUDGE JORDAN: We are back on the record  
7 just briefly while the parties are agreeing as to the  
8 next exhibits to be admitted. We're going to  
9 continue our break for about 15 minutes more.

10 (A RECESS WAS TAKEN.)

11 JUDGE JORDAN: We're back on the record  
12 briefly. The parties are continuing to discuss the  
13 next series of exhibits and testimony that Mr. Lee is  
14 going to present. Are the parties making progress?

15 MR. NOCE: We're almost done, your  
16 Honor.

17 JUDGE JORDAN: All right. Well, I'll  
18 give you, what, five minutes, ten minutes more?

19 MR. NOCE: Five -- five minutes should  
20 be fine.

21 JUDGE JORDAN: We'll resume in five  
22 minutes and we're off the record again.

23 (A RECESS WAS TAKEN.)

24 JUDGE JORDAN: We are back on the record  
25 now. The parties have had a discussion off the

1 record regarding Mr. Lee's next series of exhibits  
2 and related testimony. Mr. Noce, would you like to  
3 speak to that discussion?

4 MR. NOCE: Your Honor, Missouri American  
5 Water has agreed to stipulate to the authenticity of  
6 several of the photographs that Mr. Lee has attached  
7 to his various pleadings in this -- in this case.  
8 All -- the only photograph that Mr. Lee was unable  
9 to -- that we cannot stipulate to is the one taken  
10 and attached to First Amendment to WC-2009-0277 that  
11 was filed on April 6th, 2009.

12 MR. LEE: And I think I just found that  
13 photo on here, Matt, and I would have taken that on  
14 January 12th.

15 JUDGE JORDAN: Mr. Noce, does that  
16 satisfy your --

17 MR. NOCE: If that's when that  
18 photograph was taken, then I -- then that -- we will  
19 waive an objection as to the authenticity of that  
20 photograph.

21 JUDGE JORDAN: Okay. So as to all the  
22 exhibits that Mr. Lee is about to offer in this next  
23 part of his testimony and his case in chief, can you  
24 just one more time summarize what the stipulation of  
25 the parties is, and Mr. Ritchie, feel free to add



1 anything that you need to add.

2 MR. NOCE: Mr. -- or I mean, Missouri  
3 American Water Company is willing to stipulate as to  
4 the authenticity of the photographs that Mr. Lee is  
5 about to introduce into evidence that have been  
6 attached to the various amendments and complaints  
7 filed in this action.

8 JUDGE JORDAN: Okay. In other words,  
9 you're agreeing they are what he's going to represent  
10 them to be?

11 MR. NOCE: Correct.

12 JUDGE JORDAN: All right. And, of  
13 course, we'll have -- well, first, Mr. Ritchie,  
14 anything to add?

15 MR. RITCHIE: Nothing to add. Staff  
16 will also stipulate to the authenticity.

17 JUDGE JORDAN: Thank you, thank you.  
18 We'll take it from there. Mr. Lee, you may resume  
19 your presentation of your case in chief.

20 MR. LEE: Okay. I don't want to sound  
21 repetitive, but water is still spilling out of the  
22 ground in many different areas in the neighborhood.  
23 I have filed an update.

24 JUDGE JORDAN: And you'll be telling us  
25 about current appearances of surface water in this

1 next part of your testimony; is that correct?

2 MR. LEE: That is correct. I apologize.  
3 I am just so overwhelmed with paperwork here that...

4 JUDGE JORDAN: Are you arranging your  
5 exhibits?

6 MR. LEE: I am.

7 JUDGE JORDAN: Okay. You can have a  
8 minute to do that.

9 MR. LEE: I filed an update on June 7th  
10 which was a trip around the neighborhood that  
11 morning. And in the first photo -- are you able to  
12 see this? I don't have a copy for you.

13 JUDGE JORDAN: I don't have any copies.  
14 If you'd like to give some testimony in connection  
15 with one of your photographs, what you should do is  
16 show it to the reporter, let her mark it, show me a  
17 copy so I can follow along with what you have to say  
18 about it.

19 MR. LEE: Somehow I don't have a hard  
20 copy of my last filing.

21 JUDGE JORDAN: Well, I believe I've got  
22 one in black and white if that would do for our  
23 purposes just now. Are we talking about the Third  
24 and Fourth Amendment updated June 4th, 2009?

25 MR. LEE: June 7th?

1 JUDGE JORDAN: Update June 7th, 2009.

2 MR. LEE: The top photo shows a  
3 reduction in water flow in the ditch at the corner of  
4 Larimore and Aspen Woods.

5 JUDGE JORDAN: Okay. How does that tell  
6 me what -- where surface water is appearing now?

7 MR. LEE: Okay. If we look at the  
8 Fourth Amendment update on May 18th, 2009...

9 JUDGE JORDAN: Fourth Amendment update  
10 May 18th, 2009. What would you like to tell me about  
11 this?

12 MR. LEE: That shows water coming out of  
13 the seams in the street on Aspen Woods.

14 JUDGE JORDAN: And which picture are we  
15 talking about? There are several in this filing.

16 MR. LEE: The top picture and the one  
17 below it with the silver vehicle in the back --

18 JUDGE JORDAN: Uh-huh.

19 MR. LEE: -- and the one below that --  
20 where it's coming out of a crack, looks like sealer  
21 between the concrete.

22 JUDGE JORDAN: And what would you like  
23 do?

24 MR. LEE: These photos were taken when  
25 there was no rain for four days and there's still

1 water coming out of the concrete and between the  
2 seams in the street on Aspen Woods.

3 MR. NOCE: Your Honor, I'm having a hard  
4 time following Mr. Lee. I'm not sure which ones he's  
5 referring to.

6 JUDGE JORDAN: Fourth Amendment update,  
7 May 18th, 2009.

8 MR. NOCE: But without seeing it, your  
9 Honor, there's several Fourth updates and amendments.

10 JUDGE JORDAN: Well, there's one that I  
11 know of that's Fourth Amendment update, May 18th,  
12 2009. It looks like this.

13 MR. NOCE: Okay.

14 JUDGE JORDAN: Let me ask the parties  
15 this: How many of these photographs are there that  
16 you've been through? Rough idea, anyone?

17 MR. NOCE: I didn't count each of them  
18 individual, your Honor.

19 JUDGE JORDAN: Okay. So --

20 MS. BRUEGGEMANN: Possibly 30, your  
21 Honor.

22 JUDGE JORDAN: Maybe -- maybe 30. Okay.  
23 Well, if we're going to go through these, maybe what  
24 we should do is go ahead and number them. Let's take  
25 some time to number them so that we can know what

1 we're talking about. At least the parties can know  
2 what they're talking about because I don't have any  
3 copies of what you've been through yet. So let's  
4 take a break for about five minutes and see how the  
5 reporter wants to number those items. And we'll go  
6 off the record.

7 (DISCUSSION HELD OFF THE RECORD.)

8 (EXHIBIT NOS. 7; 7 A THROUGH 7 G; 8 A  
9 THROUGH 8 C; 9 A AND 9 B; 10 A THROUGH 10 C; 11 A  
10 THROUGH 11 C; 12 AND 13 A THROUGH 13 E WERE MARKED  
11 FOR IDENTIFICATION BY THE COURT REPORTER.)

12 JUDGE JORDAN: We're back on the record  
13 briefly just to state that the parties are organizing  
14 the exhibits, and we will take another five minutes,  
15 ten minutes? Let's take another ten minutes to  
16 organize these exhibits and we'll go off the record  
17 again.

18 (DISCUSSION HELD OFF THE RECORD.)

19 (EXHIBIT NOS. 14 A THROUGH 14 H; 15 A  
20 THROUGH 15 C; 16 A THROUGH 16 E AND 17 A THROUGH 17 C  
21 WERE MARKED FOR IDENTIFICATION BY THE COURT  
22 REPORTER.)

23 JUDGE JORDAN: We are back on the  
24 record. We are in Mr. Lee's case in chief. While we  
25 were off the record, the parties have been discussing

1 his next series of exhibits. It is my understanding  
2 that General Counsel and the Commission's Staff have  
3 assisted in producing and reproducing these exhibits  
4 as the parties have been organizing them, and I want  
5 to thank Staff for its assistance to the Commission  
6 in this regard.

7                   Mr. Lee, you have some exhibits you'd  
8 like to show the Commission?

9                   MR. LEE: I do.

10                  JUDGE JORDAN: And they are concerning  
11 the part of your complaint, if I understand it, which  
12 is that water is currently leaking from Missouri  
13 American Water Company's system and you're going to  
14 show me the locations where that is occurring as  
15 evidenced by the appearance of surface water; is that  
16 correct?

17                  MR. LEE: That is correct.

18                  JUDGE JORDAN: Let's hear it.

19                  MR. LEE: Okay. If we could first look  
20 at update dated June 7th, 2009.

21                  MR. NOCE: Mr. Lee, can you refer to  
22 them as exhibit numbers? That will be easier to  
23 follow.

24                  MR. LEE: 7 A. Thank you.

25                  JUDGE JORDAN: And what would you like

1 to tell me about that?

2 MR. LEE: Okay. The first two did show  
3 a reduction of flow after the repair. The second  
4 page, 7 C, is the storm drain at Larimore and the  
5 railroad tracks, and you can see it still has a flow  
6 of water in it. That is a storm drain, it is not a  
7 creek.

8 I followed this up the railroad tracks  
9 and water is leaking out of the storm drains from the  
10 subdivision on Aspen Woods and Red River and Taos.  
11 There's a steady leak of water into the storm drain  
12 even when it hadn't rained in weeks.

13 JUDGE JORDAN: And is that illustrated  
14 in some of these photographs?

15 MR. LEE: It is not.

16 JUDGE JORDAN: What else would you like  
17 to tell me about the pictures in Exhibit 7?

18 MR. LEE: 7 B is the storm drain, the  
19 clay drain tile at Larimore and McQuay, and as you  
20 can see, it still has water in it. This has a steady  
21 flow of water, it never dries up even after weeks  
22 with no rain. And this is one end of the other end  
23 that we see in 7 E here that comes out at Lydia and  
24 McQuay.

25 7 F is -- the top picture is just to the

1 west of Warmann Oil. Again, that is a storm drain  
2 that drains from the other side of the street, the  
3 other side of Larimore, and it has a steady, constant  
4 flow of water in that storm drain when it hasn't  
5 rained for weeks.

6                   The bottom photo is the neighbor to the  
7 north of that storm drain, and you can see the water  
8 near his mailbox there is coming from his sump pump.  
9 And there's --

10                   MR. NOCE: Your Honor, I guess I'd  
11 object to that, to 7 F, "water coming from a sump  
12 pump" I don't believe has any relevance as to  
13 Mr. Lee's complaint, so I'd move to strike that  
14 exhibit.

15                   JUDGE JORDAN: I'm going to overrule  
16 that objection.

17                   MR. NOCE: Okay.

18                   MR. LEE: If the basement's leaking,  
19 it's another indication that there's water flowing  
20 into --

21                   JUDGE JORDAN: I've ruled on your  
22 objection, I've ruled -- I've ruled on the objection,  
23 I've overruled it. You may continue.

24                   MR. LEE: And I might add that I see  
25 this water there continuously. 7 G is just to the



1 west on Larimore from 11347, that's the next drive,  
2 two driveways to the west. There is a constant flow  
3 of water in this storm drain.

4 JUDGE JORDAN: Anything else you want to  
5 tell me about Exhibit 7?

6 MR. LEE: Those photos were taken on  
7 Sunday morning, June 7th, 2009, so that is a very  
8 current representation of what's going on in the  
9 neighborhood.

10 JUDGE JORDAN: Okay. And you're asking  
11 that this be admitted into the record?

12 MR. LEE: I am.

13 JUDGE JORDAN: Any other objections?

14 MR. NOCE: None, your Honor.

15 JUDGE JORDAN: Thank you. Exhibit 7 is  
16 admitted.

17 (EXHIBIT NOS. 7A THROUGH 7G WERE  
18 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
19 RECORD.)

20 JUDGE JORDAN: Let me take a minute to  
21 clarify what the parties have stipulated to. Do I  
22 understand that these documents before me which are  
23 coming into the record are true and accurate copies  
24 of what Mr. Lee has filed in EFIS?

25 MR. NOCE: Yes, your Honor.

1                   JUDGE JORDAN: Okay. Thank you. And  
2 Mr. Lee, is your representation with regard to each  
3 of these exhibits going to be that they truly and  
4 accurately represent the conditions when you took  
5 these pictures?

6                   MR. LEE: Absolutely.

7                   JUDGE JORDAN: Thank you. What would  
8 you like to tell me about -- would you like to move  
9 on to Exhibit 8 next?

10                  MR. LEE: I think in an effort not to  
11 consolidate each area, we could go to 10 A.

12                  JUDGE JORDAN: What would you like to  
13 tell me about Exhibit 10, Mr. Lee?

14                  MR. LEE: This is Aspen Woods in a water  
15 lane in the street here, it lays in the street for  
16 days after it rains. 10 B, again, shows water coming  
17 up from a crack in the street in two different  
18 places. And again, 10 C, the top photo is on the  
19 north side of the street and the bottom photo is  
20 water seeping from the seams in the street on the  
21 south side of the street. And if I could at this  
22 time...

23                  JUDGE JORDAN: Is there anything else  
24 you'd like to tell me about Exhibit 10?

25                  MR. LEE: Not about Exhibit 10.

1                   JUDGE JORDAN:  Would you like that to be  
2  admitted into the record?

3                   MR. LEE:  I would.

4                   JUDGE JORDAN:  Any other objections?

5                   MR. NOCE:  Your Honor, I think I have to  
6  object as to the foundation here.  I'm -- he's -- all  
7  he's indicated was that it's on Aspen Woods.  You  
8  know, I think he may have told me what the date was,  
9  but I think the record needs to be clear as to when  
10 these were taken.

11                  JUDGE JORDAN:  Would you like to respond  
12 that, Mr. Lee?

13                  MR. LEE:  Okay.  Would you please repeat  
14 that?  All I said, it was on Aspen Woods and what?

15                  JUDGE JORDAN:  The date, the date these  
16 were taken.

17                  MR. NOCE:  And the location, your Honor.

18                  MR. LEE:  Okay.  It says, "The below  
19 three pictures were taken on May 17th after no rain  
20 for at least three days."

21                  JUDGE JORDAN:  And is the address that's  
22 listed here, is that as depicts?  Is that what these  
23 pictures depict?

24                  MR. LEE:  The -- pardon?

25                  JUDGE JORDAN:  11357 Aspen Woods --

1 MR. LEE: Aspen Woods --

2 JUDGE JORDAN: -- is that what these are  
3 pictures of?

4 MR. LEE: Yes.

5 JUDGE JORDAN: Okay. Any other  
6 objections, Mr. Noce?

7 MR. NOCE: No objection.

8 JUDGE JORDAN: Thank you.

9 MR. LEE: The other last photo, somehow  
10 they got out of order, were taken on May 18th after  
11 no rain for four days.

12 MR. NOCE: What exhibit are you talking  
13 about? I'm sorry.

14 MR. LEE: 10 B.

15 JUDGE JORDAN: So 10 B is May 18th?

16 MR. LEE: No, they're in order. Yeah,  
17 the below three were taken one day later on May 18th.

18 JUDGE JORDAN: All right. I will  
19 receive that into evidence. That is Exhibit 10.

20 (EXHIBIT NOS. 10A THROUGH 10C WERE  
21 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
22 RECORD.)

23 JUDGE JORDAN: What exhibit would you  
24 like to tell me about next, Mr. Lee?

25 MR. LEE: If we go to Exhibit 8 A...

1                   JUDGE JORDAN: Exhibit 8. What would  
2 you like to tell me about that?

3                   MR. LEE: It's one more location where  
4 water is seeping out of the street on Aspen Woods.

5                   JUDGE JORDAN: And I see that this  
6 document has the address of 11303 Aspen Woods and it  
7 has also 11307 --

8                   MR. LEE: Correct.

9                   JUDGE JORDAN: -- on the next page, and  
10 those -- are those the addresses that these  
11 photographs depict?

12                   MR. LEE: Yes.

13                   JUDGE JORDAN: All right. And the dates  
14 that are represented in this document, are those the  
15 dates on which you took these pictures?

16                   MR. LEE: Yes, it is.

17                   JUDGE JORDAN: Is there anything else  
18 you want to tell me about Exhibit 8?

19                   MR. LEE: The bottom photo is a picture  
20 of a water main repair.

21                   JUDGE JORDAN: Okay. And you're  
22 referring to the patch of asphalt in the street?

23                   MR. LEE: Yes, I am.

24                   JUDGE JORDAN: Okay. And that's on the  
25 last page of this --

1                   MR. LEE: And that is just to the south  
2 of 11307 Aspen Woods.

3                   JUDGE JORDAN: And is there anything  
4 else you'd like to tell me about Exhibit 8?

5                   MR. LEE: No.

6                   JUDGE JORDAN: Okay. And I'm going to  
7 assume and I will take a blanket motion to admit all  
8 of these into the record, though I will rule on them  
9 one at a time as you give me testimony on them.  
10 Would that be acceptable?

11                   MR. NOCE: Yes, your Honor.

12                   JUDGE JORDAN: All right. Then I will  
13 receive Exhibit 8 into the record.

14                   (EXHIBIT NOS. 8A THROUGH 8C WERE  
15 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
16 RECORD.)

17                   JUDGE JORDAN: What would you like to  
18 talk to me about next, Mr. Lee?

19                   MR. LEE: Exhibit 12.

20                   JUDGE JORDAN: Exhibit 12. And what  
21 would you like to tell me about Exhibit 12?

22                   MR. LEE: That is roughly the same area  
23 on Aspen Woods, once again, with water seeping from  
24 the street on a different day.

25                   JUDGE JORDAN: And that's the same as

1 Exhibit 8, is that what you're saying, that's --

2 MR. LEE: This is just a little further  
3 to the north of what Exhibit 8 showed.

4 JUDGE JORDAN: And what would you like  
5 to tell me, anything more about Exhibit 12?

6 MR. LEE: It just shows water seeping  
7 from the seams in the street.

8 JUDGE JORDAN: Now, I have the date of  
9 April 21st, 2009 on the face of this document. Is  
10 that the date these pictures were taken?

11 MR. LEE: Correct.

12 JUDGE JORDAN: Okay. Any objection to  
13 Exhibit 12, Mr. Noce?

14 MR. NOCE: None, your Honor.

15 JUDGE JORDAN: Thank you. Then that is  
16 received into the record.

17 (EXHIBIT NO. 12 WAS RECEIVED INTO  
18 EVIDENCE AND MADE A PART OF THE RECORD.)

19 JUDGE JORDAN: What would you like to  
20 offer the Commission next, Mr. Lee?

21 MR. LEE: 11 A and 11 -- Exhibit 11, I  
22 guess. Although this may appear repetitive, it just  
23 shows the amount of time or space in time that the  
24 water has continued to flow.

25 JUDGE JORDAN: So this is -- this

1 Exhibit 11 is a picture of water flowing?

2 MR. LEE: In front of...

3 JUDGE JORDAN: At 11334 Larimore; is  
4 that correct as shown on this document?

5 MR. LEE: Yes, across from 11334.

6 JUDGE JORDAN: Okay. And I see the date  
7 on the second page as March 26th, 2009. Is that when  
8 these photographs were taken?

9 MR. LEE: I believe so.

10 JUDGE JORDAN: Okay. Any other  
11 objections to this, Mr. Noce? No, I take that back.  
12 First, is there anything else you want to tell me  
13 about it, Mr. Lee?

14 MR. LEE: I believe my original  
15 intention for taking the photo on the bottom of 11 B  
16 was to show that the water, I guess it flowed  
17 underground, it didn't really flow into the end of  
18 this pipe. If you look to the right bottom of that  
19 photo, there's no water on top of the ground.

20 JUDGE JORDAN: Okay. Anything else you  
21 want to tell me about that?

22 MR. LEE: So that water was flowing up  
23 underground --

24 JUDGE JORDAN: Uh-huh, uh-huh.

25 MR. LEE: -- coming into the pipe and



1 flowing out of the other end of the pipe --

2 JUDGE JORDAN: Uh-huh, uh-huh.

3 MR. LEE: -- which I thought was kind of  
4 unusual. 11 C at the bottom, you can see the amount  
5 of water coming out on top of the ground.

6 JUDGE JORDAN: Okay. Anything else you  
7 want to tell me about Exhibit 11 C?

8 MR. LEE: No. That's...

9 JUDGE JORDAN: Mr. Noce, any other  
10 objections to Exhibit 11?

11 MR. NOCE: None, your Honor.

12 JUDGE JORDAN: Thank you. That is  
13 received into the record.

14 (EXHIBIT NOS. 11A THROUGH 11C WERE  
15 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
16 RECORD.)

17 JUDGE JORDAN: What exhibit would you  
18 like to tell the Commission about next, Mr. Lee? We  
19 have six exhibits left.

20 MR. LEE: I guess 13 A.

21 MR. NOCE: I'm sorry. What?

22 JUDGE JORDAN: 13 A?

23 MR. LEE: Correct.

24 JUDGE JORDAN: 13, Exhibit No. 13. What  
25 would you like to point out to the Commission about

1 this exhibit, Mr. Lee?

2 MR. LEE: This shows surface water  
3 flowing over the sidewalk and up through the seams  
4 into the street and sometimes over the edge of the  
5 street.

6 JUDGE JORDAN: I see a reference on this  
7 document to Aspen Woods. Are these pictures of the  
8 street called Aspen Woods?

9 MR. LEE: Correct.

10 JUDGE JORDAN: All right. And did that  
11 include the last two pages as well?

12 MR. LEE: It does. And this water -- I  
13 won't say it completely stopped. To get this  
14 condition now, we have to have heavy rain for three  
15 days. We would have this water flowing over the  
16 street for the last year that I've been watching it.  
17 With a slight rain, water would come up from the  
18 street. After the repair right up the road, now it  
19 takes three days for the water to run over. And if  
20 you look at the street there, the top photo on 13 B,  
21 it looks very similar to the water in 8 A, 8 B and  
22 8 C and 10 A, 10 B and 10 C.

23 JUDGE JORDAN: What else would you like  
24 to tell the Commission with regard to Exhibit 13,  
25 Mr. Lee?

1                   MR. LEE: On 13 E it's hard to see on a  
2 black and white photo, but you can see it on the  
3 color one and I have video of it. Water flowed out  
4 of the ground at this spot. This was right to the  
5 north of the photo in 13 A. In fact, it's -- it's at  
6 the bottom corner. If you connected these photos  
7 together, 13 E would be right to the right of --  
8 right bottom of 13 A. That massive amount of water  
9 that flowed out of the grass right there stopped with  
10 the repair on Aspen Woods.

11                   MR. NOCE: Your Honor, if I could, I  
12 thought we had established this this morning we were  
13 going to stop presenting evidence of reduction of  
14 water -- surface water and just stick to what's  
15 currently leaking. And if I could, please --

16                   JUDGE JORDAN: Right, I'm going to ask  
17 for a clarification. Are you saying that this is --  
18 this has been repaired, that this is no longer  
19 leaking?

20                   MR. LEE: I'm saying that the amount of  
21 water no longer flows out of the grass in this  
22 picture, and I'm also saying that to get this result,  
23 no longer takes a light sprinkle, it has to rain  
24 heavy for three days to get water to flow out of the  
25 street here.



1                   JUDGE JORDAN: Okay. Are there any  
2 other objections to the admission of Exhibit No. 13?

3                   (NO RESPONSE.)

4                   MR. NOCE: No, your Honor.

5                   JUDGE JORDAN: Hearing none, that is  
6 received into the record.

7                   (EXHIBIT NOS. 13A THROUGH 13E WERE  
8 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
9 RECORD.)

10                  JUDGE JORDAN: What exhibit would you  
11 like to tell us about next, Mr. Lee?

12                  MR. LEE: Exhibit 9.

13                  JUDGE JORDAN: Exhibit 9. And what  
14 would you like the Commission to know about  
15 Exhibit 9, Mr. Lee?

16                  MR. LEE: This is a -- 9 A is a photo at  
17 the corner of Coal Bank Court and Larimore. Water  
18 comes out of the bottom of this storm drain. Half of  
19 it dries up and water continues to flow out of the  
20 other half.

21                  MR. NOCE: I'm sorry, Mr. Lee. Which  
22 one? I didn't hear you.

23                  MR. LEE: Pardon?

24                  MR. NOCE: Which exhibit are you  
25 referring to?

1 MR. LEE: 9 A.

2 MR. NOCE: Okay.

3 JUDGE JORDAN: And you're telling us  
4 that water flows in or out of this culvert and from  
5 which photograph?

6 MR. LEE: Exhibit A, it flows up through  
7 a hole, it looked like, in the bottom of it, like a  
8 break in the concrete.

9 JUDGE JORDAN: Is it -- is it coming out  
10 of the -- is it coming out of the pipe or is it going  
11 into the pipe?

12 MR. LEE: It's going into the pipe from  
13 the hole in the concrete in the middle of it there.

14 JUDGE JORDAN: Okay. And anything else  
15 you want to tell us about Exhibit 9?

16 MR. LEE: 9 B, the top photo, is the  
17 same from a different angle, and the bottom photo is  
18 directly across the street with the storm drain at a  
19 convenience store.

20 JUDGE JORDAN: Okay. I see a date on  
21 here, a date of this document. It's labeled  
22 "April 10, 2009 edition to the First Amendment," but  
23 I don't see a date when these photographs were taken.  
24 Can you tell me when these photographs were taken?

25 MR. LEE: I can.

1                   JUDGE JORDAN: Okay. Was that a "can"  
2 or a "cannot"?

3                   MR. LEE: I can.

4                   JUDGE JORDAN: Okay.

5                   MR. LEE: Bear with me just a moment,  
6 please.

7                   JUDGE JORDAN: Sure.

8                   MR. LEE: Those photos were taken on  
9 4/8, April 8th.

10                  JUDGE JORDAN: Okay. Is there anything  
11 else you want to tell the Commission about Exhibit 9,  
12 Mr. Lee?

13                  MR. LEE: Exhibit 9 is at the corner of  
14 Coal Bank Court and Larimore. There have been three  
15 repairs on Coal Bank Court.

16                  MR. NOCE: Your Honor, I have to object  
17 to this foundation -- the lack of foundation as to  
18 repairs made. Mr. Lee has presented no evidence of  
19 repairs.

20                  JUDGE JORDAN: I don't know what more he  
21 would have to say except that there have been repairs  
22 there. Now, you can certainly cross as to his  
23 knowledge and why he says that, but I don't see any  
24 reason why he cannot certainly say that.

25                  MR. NOCE: Okay.

1                   JUDGE JORDAN: Are there any other  
2 objections to the exhibit? And Mr. Lee, was there  
3 anything else you wanted to tell me, tell the  
4 Commission about that?

5                   MR. LEE: The one repair broke on its  
6 own. The --

7                   MR. NOCE: Well, now, your Honor, I have  
8 to object as to lack of foundation. There he's  
9 clearly speculating as to how the break occurred. I  
10 don't think Mr. Lee has any evidence to establish  
11 that.

12                  MR. LEE: Okay. Let me -- I can  
13 rephrase that. I drove by one day and saw ice,  
14 sheets of ice on the street, and I believe it was  
15 around Christmastime. A while after that, I saw  
16 Missouri American Water there repairing the main at  
17 1234 Coal Bank. The -- that was the second time it  
18 broke.

19                  The first time it broke was when we saw  
20 a large reduction in the flow of water in the storm  
21 drain with the two-inch drain tile. I believe that  
22 was sometime in last -- around last July. Okay. The  
23 third week I had e-mailed Mr. Bush and told him I had  
24 seen water coming out of the street, and he called or  
25 contacted Missouri American and they went out and



1 tested it and found a leak for the third time.

2 JUDGE JORDAN: Okay. And those are all  
3 related to Exhibit 9, that's all those?

4 MR. LEE: Correct.

5 JUDGE JORDAN: Okay. Is there anything  
6 else you want to tell us about Exhibit 9?

7 MR. LEE: Exhibit 9?

8 JUDGE JORDAN: Yes, Exhibit 9.

9 MR. LEE: No, I'm fine.

10 JUDGE JORDAN: Mr. Noce, any other  
11 objections?

12 MR. NOCE: None, your Honor.

13 JUDGE JORDAN: No other objections, that  
14 will be received into the record.

15 (EXHIBIT NOS. 9A AND 9B WERE RECEIVED  
16 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

17 JUDGE JORDAN: What exhibit would you  
18 like to talk about next, Mr. Lee?

19 MR. RITCHIE: I'm sorry. If we could go  
20 back to Exhibit 9 for just one second?

21 JUDGE JORDAN: Mr. Ritchie.

22 MR. RITCHIE: Mr. Lee said that --

23 JUDGE JORDAN: You have an objection?

24 MR. RITCHIE: -- he called Mr. Bush  
25 about the leak and Mr. Bush got in touch with

1 Missouri American. I was just wondering if I could  
2 get a date that you had gotten in touch with Mr. Bush  
3 and he had followed up on that for you.

4 MR. LEE: I can. It will take me a  
5 second.

6 MR. RITCHIE: That's fine.

7 JUDGE JORDAN: I'll allow that as a form  
8 of voir dire during his case in chief.

9 MR. LEE: In fact, I believe that is one  
10 of my amendments that didn't get printed out here, or  
11 at least it's filed on EFIS. That was on 3/17 of  
12 2009. I can read the e-mail to you here, it's short  
13 if you'd like.

14 MR. RITCHIE: You said it's filed in  
15 EFIS?

16 MR. LEE: The e-mail?

17 MR. RITCHIE: Uh-huh.

18 MR. LEE: No. The -- I believe photos  
19 of it are to one amendment that I didn't get a copy  
20 of here when they printed it out.

21 JUDGE JORDAN: Does that answer your  
22 question, Mr. Ritchie?

23 MR. RITCHIE: I think it does.

24 JUDGE JORDAN: Okay. And you certainly  
25 can follow up on that in cross. I will admit

1 Exhibit 9 into the record.

2 Mr. Lee, what exhibit would you like to  
3 tell us about next?

4 MR. LEE: Okay. We're going to be  
5 jumping around a little here because it's all I have  
6 left, but I would like to tell you about -- I don't  
7 know what number that is. The number didn't get  
8 copied on here. I would like to tell you about 17.

9 JUDGE JORDAN: Exhibit 17.

10 MR. LEE: The top photo was a attempt at  
11 a time stamp but it didn't work. The bottom photo is  
12 a picture of the property just to the north of my  
13 property, which you can't see the water flowing under  
14 those sticks in the black and white photo, but  
15 there's a stream of water flowing across the  
16 property. 17 B is a photo of a hole where I took a  
17 shovel and I turned a couple of scoops of dirt over,  
18 and within a minute or less, the hole was full of  
19 water.

20 JUDGE JORDAN: Uh-huh.

21 MR. LEE: And this is not a -- well, it  
22 hadn't rained in three or four days here. This had a  
23 steady flow of water through the corner of this  
24 property. It is a -- I guess it's somewhat of a  
25 storm drain, but four or five days after it rains,

1 the water should be gone, and water has literally  
2 flowed through this area for years, literally for  
3 years.

4 JUDGE JORDAN: And this is -- all the  
5 photos in Exhibit 17 are the property to the north of  
6 the yours; is that correct?

7 MR. LEE: That's correct.

8 JUDGE JORDAN: Okay.

9 MR. LEE: And I would also like to add  
10 that within several days of the water main repair on  
11 Aspen Woods, this water stopped flowing under my  
12 mailbox. I would also like to say that this is  
13 probably maybe 75 feet from my basement. I do not  
14 know how my basement could ever not leak with  
15 groundwater at the surface.

16 JUDGE JORDAN: Is there anything else  
17 you'd like to tell us about Exhibit 17?

18 MR. LEE: No, that's all.

19 JUDGE JORDAN: Any other objections to  
20 Exhibit 17?

21 MR. NOCE: None, your Honor.

22 JUDGE JORDAN: Hearing none --

23 MR. RITCHIE: No.

24 JUDGE JORDAN: -- Exhibit 17 will be  
25 admitted into the record.

1                   (EXHIBIT NOS. 17A THROUGH C WERE  
2 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
3 RECORD.)

4                   JUDGE JORDAN: What exhibit is next for  
5 you, Mr. Lee?

6                   MR. LEE: Exhibit 16.

7                   JUDGE JORDAN: Exhibit 16. What would  
8 you like the Commission to know about Exhibit 16,  
9 Mr. Lee?

10                  MR. LEE: This is Coal Bank Court and  
11 Larimore, and the first photo shows where water lays  
12 in a narrow seam in the street. The second photo  
13 shows slightly to the west water coming out of the  
14 seam. The next photo is at the first house on the  
15 north side of Coal Bank Court.

16                  JUDGE JORDAN: And you did say we're  
17 talking about Larimore and Coal Bank Court; is that  
18 correct?

19                  MR. LEE: I did.

20                  JUDGE JORDAN: And the last page gives  
21 me a date of January 12th, '09. Is that when these  
22 photographs were taken?

23                  MR. LEE: It is. This photo is in front  
24 of 1201 Coal Bank Court, and the fresh concrete to  
25 the upper left is where the first water main repair

1 was.

2 JUDGE JORDAN: And that's the third page  
3 of this exhibit, is it not?

4 MR. LEE: Pardon?

5 JUDGE JORDAN: Third page, third page of  
6 this exhibit?

7 MR. LEE: Yes.

8 JUDGE JORDAN: And you are telling us  
9 that this is -- this represents a repair of some  
10 kind?

11 MR. LEE: If you give me just a second  
12 here, I can tell you when the repair was made two  
13 doors up from there at 1207 -- well, one door from  
14 the first driveway, the second house up. I was  
15 almost certain I filed that as an amendment to my  
16 complaint.

17 JUDGE JORDAN: And you're looking to see  
18 when the repair was made?

19 MR. LEE: Correct.

20 JUDGE JORDAN: And that's depicted on  
21 page 3 we can come back to that later. Later in your  
22 case in chief we'll discuss that. I am prepared to  
23 admit this Exhibit 16 into the record, but I'll take  
24 objections.

25 Any other objections first?

1 MR. NOCE: None, your Honor.

2 MR. RITCHIE: None.

3 JUDGE JORDAN: No objections. I will  
4 admit Exhibit 16 into the record.

5 (EXHIBIT NOS. 16A THROUGH 16C WERE  
6 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
7 RECORD.)

8 JUDGE JORDAN: I have two more in the  
9 bundle I was handed, 14 and 15. Mr. Lee, which one  
10 would you like to do just now?

11 MR. LEE: I found a date here. These  
12 photos were taken on January 21st.

13 JUDGE JORDAN: Of what year?

14 MR. LEE: Of 2009.

15 MR. NOCE: Wait, which photos are you  
16 referring to?

17 MR. LEE: This was Exhibit 16. And they  
18 repaired the leak on February 5th, I believe.

19 JUDGE JORDAN: Your Honor, just for  
20 clarification, it looks like the photos say  
21 January 12th, 2009, and he stated January 21st.

22 MR. LEE: I'm sorry. I mixed -- got the  
23 numbers backwards, January 12th.

24 JUDGE JORDAN: And you were trying to  
25 tell us something about February?

1                   MR. LEE: The water main was repaired on  
2 February 5th in front of 11 -- no, 1207 Coal Bank  
3 Court which explains the water flowing out of the  
4 ground in these photos out in the street.

5                   JUDGE JORDAN: Wait a minute. We're  
6 looking at -- we're back on Exhibit 16 and you're  
7 telling me that there was a repair two doors up from  
8 the site depicted in page 3, correct?

9                   MR. LEE: That site is No. 1. This was  
10 adjoining the property next to this one driveway to  
11 the west from this driveway that you see in this  
12 photo.

13                   JUDGE JORDAN: One driveway up from the  
14 driveway I see in this photo there was a repair; is  
15 that correct?

16                   MR. LEE: That's correct.

17                   JUDGE JORDAN: And when did that repair  
18 occur?

19                   MR. LEE: On -- on about February 5th.

20                   JUDGE JORDAN: February 5th of?

21                   MR. LEE: 2009.

22                   JUDGE JORDAN: 2009. Okay. But these  
23 pictures were taken on what date?

24                   MR. LEE: These pictures were taken on  
25 January 12th.



1                   JUDGE JORDAN: Okay. Okay. Now, we  
2 have two more, numbers 14 and 15. Which one would  
3 you like to tell us about first, Mr. Lee?

4                   MR. LEE: I could tell you about 15  
5 first.

6                   JUDGE JORDAN: I see these bear a  
7 date -- let's see, the last photograph in this series  
8 says January 16th, '09.

9                   MR. LEE: That is correct.

10                  JUDGE JORDAN: Is that when these  
11 pictures were taken?

12                  MR. LEE: It is.

13                  JUDGE JORDAN: All right. And my copy  
14 has a notation in front of 11334.

15                  MR. LEE: Correct, Larimore.

16                  JUDGE JORDAN: And that's the Larimore  
17 and that's what these photographs depict; is that  
18 correct?

19                  MR. LEE: It is.

20                  JUDGE JORDAN: And this is just to the  
21 east of Aspen Woods on the other side of Larimore.  
22 And this was water running out of the driveway. The  
23 bottom picture is water running out of the yard. And  
24 the yard and the driveway on the other picture  
25 looking at the top picture is a picture of my foot

1 and water oozing over my shoe when I stepped in  
2 the -- the yard.

3                   And this -- Missouri American came out  
4 and investigated this, and it ended up being a leaky  
5 valve on a toilet supposedly at this residence. And  
6 what I find so important about this document and also  
7 the photos in 14, they wanted to find --

8                   JUDGE JORDAN: Let's stick with -- let's  
9 stick with 15 first. Is there anything you want to  
10 tell me that just relates to 15?

11                   MR. LEE: Okay. 15 B, the top  
12 photograph, they claim that the toilet valve was  
13 stuck open.

14                   MR. NOCE: Your Honor, I'm going to  
15 object to hearsay. Now he's referring -- he's -- he  
16 is offering those for the truth of the matter  
17 asserted.

18                   JUDGE JORDAN: Well, I don't know what  
19 he's going to tell me -- why he's telling me this. I  
20 won't take it -- if you'd like, I won't take it for  
21 the fact that the toilet valve was stuck open.

22                   MR. NOCE: Okay.

23                   MR. LEE: Yeah, that's not the point.  
24 The point is this water in the yard supposedly came  
25 from the toilet valve that flooded the septic tank

1 field, okay? So water ran straight from the water  
2 system down the toilet through the septic tank field,  
3 and we show up with our chlorine tester and we take  
4 this water, I guess, to the lab and do tests on it.

5 MR. NOCE: Your Honor, now I'm going to  
6 object as a foundation on any tests conducted by  
7 someone -- by a third party. I don't believe Mr. Lee  
8 can lay a foundation as to what tests were done or  
9 the results of those tests. I believe that calls for  
10 expert testimony as well as foundational testimony as  
11 to foundation of such testimony -- when they were  
12 taken, what -- what was done. For Mr. Lee to just  
13 state the results of tests also probably would  
14 otherwise be hearsay as well.

15 JUDGE JORDAN: Well, I tell you what,  
16 I'm going to overrule that objection, but I'm going  
17 to expect to find some sort of -- I'm going to expect  
18 it to relate to something, some defense in the case  
19 eventually; otherwise, it just won't have any value.

20 MR. NOCE: So he's -- he's permitted to  
21 testify as to tests conducted by a third party he  
22 hasn't identified --

23 JUDGE JORDAN: Well, I don't know why  
24 he's telling me about these tests right now, you see,  
25 so it's hard for me to rule on a hearsay objection.

1 What would you like me to know about this, Mr. Lee?

2 MR. LEE: I would like you to know how  
3 useless their chlorine tests are and their testing is  
4 if the water runs in the toilet and in the yard and  
5 Missouri American Water's tests do not find chlorine  
6 and they do not find any trace of their water in it,  
7 how far does it have to run? It ran 50 feet down a  
8 yard and there's no traces of anything their lab can  
9 find in this water supposedly. The DNR shows up with  
10 their test kit, and I believe my work order from this  
11 address even says, "No chlorine in the water."

12 JUDGE JORDAN: Okay. And your  
13 objection?

14 MR. NOCE: I'm objecting and moving to  
15 strike all this as to what the DNR may or may not  
16 have done. If he wants to call somebody from the  
17 DNR, he is more than -- that is his right to do so.  
18 He can't testify as to what they've done -- what they  
19 have done, what their test results are.

20 JUDGE JORDAN: Yeah, I can't really see  
21 the relevance of it just yet. I'm not going to  
22 strike it from the record, but I am going to sustain  
23 your objection. And Mr. Lee, if somebody brings in  
24 evidence as to a water test, of course you may  
25 cross-examine them as to that.

1                   MR. LEE:  If my -- I don't know how the  
2 work orders in my discovery fit into this process  
3 because I'm not familiar with it, but I'm pretty sure  
4 I read in one of my work orders that it said the  
5 water in this yard did not contain chlorine from  
6 Missouri American Water.

7                   MR. NOCE:  Your Honor, he's testifying  
8 as to hearsay, upon hearsay now.

9                   JUDGE JORDAN:  Well, he's -- well, he's  
10 telling me about an exhibit, he hasn't shown me that  
11 exhibit yet.  He can certainly do so.  I'd like to  
12 stick with this exhibit right now.  You can certainly  
13 offer an exhibit later.

14                   MR. NOCE:  Okay.

15                   MR. LEE:  Okay.

16                   JUDGE JORDAN:  Okay.  Is there anything  
17 else you want to tell me about these photographs  
18 right now?

19                   MR. LEE:  In Exhibit 15, no.

20                   JUDGE JORDAN:  Okay.  Are there any  
21 other objections to 15?

22                   MR. NOCE:  I -- I'll object to the  
23 relevance of these photographs.  Mr. Lee has  
24 testified that he believes that they've come from a  
25 septic field.  I don't know what relevance they have

1 as to whether or not a water main leak is causing  
2 this -- the water that's depicted in these  
3 photographs.

4 MR. LEE: I can tell you exactly what I  
5 was told by Mr. Bush and I can read you the e-mail.

6 JUDGE JORDAN: Well, just -- just tell  
7 me why you think this -- okay. Here's what I've  
8 heard you say, that there's -- there's surface water  
9 here --

10 MR. LEE: Uh-huh.

11 JUDGE JORDAN: -- someone has said it  
12 came from a leaking valve in a nearby residence --

13 MR. LEE: That's correct.

14 JUDGE JORDAN: -- and you don't think  
15 that's true. Is that pretty much a synopsis of what  
16 you're trying to say?

17 MR. LEE: No, I think it came from a  
18 leaky valve.

19 JUDGE JORDAN: Okay. Why do we care  
20 about a leaky valve in a residence?

21 MR. LEE: Their contention was that the  
22 water ran down this person's toilet into their septic  
23 tank, overloaded their field and flowed out of the  
24 ground. That is less than 75 feet from that toilet  
25 to where this water is flowing out of the ground.

1                   JUDGE JORDAN: Okay. This does not  
2 represent a current leak in Missouri American Water  
3 Company's system according to what you're telling me;  
4 is that correct?

5                   MR. LEE: Not a current leak. I'm telling  
6 you how inefficient their chlorine tests are --

7                   MR. NOCE: Your Honor --

8                   MR. LEE: -- from the distance that that  
9 water flowed from the toilet to the yard and they can  
10 find no chlorine in it.

11                  MR. NOCE: I'd move to strike that  
12 testimony, your Honor, as irrelevant and improper. I  
13 don't believe -- I think he's trying to cross-examine  
14 something that hasn't been put into evidence.

15                  JUDGE JORDAN: I understand exactly what  
16 you're saying, Mr. Noce, and I will admit it into  
17 evidence conditionally and overrule your objection.  
18 Subject to it becoming relevant, I'm going to admit  
19 it, something showing me that it's relevant in this  
20 hearing right now. Right now I don't see any  
21 evidence yet. So that's going to be my ruling on 15.

22                                 (EXHIBIT NO. 15 WAS RECEIVED INTO  
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24                  JUDGE JORDAN: I do believe that leaves  
25 us with only Exhibit 14, Mr. Lee.

1                   MR. LEE: Yeah, 14 is just more pictures  
2 of the yard and the house. Actually, the house is to  
3 the left of the second photograph there.

4                   JUDGE JORDAN: Would you like to tell me  
5 what yard and what house?

6                   MR. LEE: This is the same yard in the  
7 last set of photos with the water flowing out of the  
8 ground.

9                   JUDGE JORDAN: This is the same as  
10 Exhibit 15, same photos -- same location as  
11 Exhibit 15; is that correct?

12                   MR. LEE: Same location, correct.

13                   MR. NOCE: And again, your Honor, I'd  
14 just -- I know the running objection as to this group  
15 of photographs is irrelevant.

16                   JUDGE JORDAN: Okay. Mr. Lee, would you  
17 like to tell us how this is relevant to current leaks  
18 in Missouri American Water Company's system?

19                   MR. LEE: This is relevant in -- to the  
20 current testing procedures that they use. If you  
21 look at Exhibit 14 C, you can see the short distance  
22 from that house to that water running out of the yard  
23 there.

24                   JUDGE JORDAN: So -- so this is --  
25 this relates to the same issue that you raised



1 before --

2 MR. LEE: Correct.

3 JUDGE JORDAN: -- that this is the  
4 background for water tests that were done which you  
5 were going to tell me -- you were going to show me  
6 are unreliable; is that correct?

7 MR. LEE: Unreliable, yes, sir.

8 JUDGE JORDAN: Okay. All right.

9 MR. LEE: If they can't test water  
10 running out of a -- that quantity of water running  
11 straight through a septic system, you know, what --  
12 how reliable is the test?

13 JUDGE JORDAN: I understand your  
14 argument. Mr. Noce?

15 MR. NOCE: Objection, this is  
16 argumentative. We're trying to present evidence  
17 here, your Honor.

18 JUDGE JORDAN: Well, you know --

19 MR. NOCE: I understand.

20 JUDGE JORDAN: -- I understand. And in  
21 an administrative hearing, what one generally tries  
22 to do is put in the facts, make the record and go  
23 home. I understand that entirely. There's no jury  
24 here, there's no passions to inflame, but Mr. Lee is  
25 pro se, so he's not going to understand the

1 distinctions between fact and argument so I'm going  
2 to cut him slack on that.

3 MR. NOCE: Okay.

4 JUDGE JORDAN: So I will overrule that  
5 objection. Do you have any other objections to  
6 No. 14?

7 (NO RESPONSE.)

8 MR. LEE: I've lost track. Do I have  
9 any left?

10 JUDGE JORDAN: 14 is the last one and  
11 I'm seeing if there are any further objections to  
12 No. 14, but I'm not hearing any.

13 MR. RITCHIE: None from Staff.

14 JUDGE JORDAN: So subject to its -- to  
15 development of its relevance, I will admit it into  
16 the record.

17 (EXHIBIT NOS. 14A THROUGH 14H WERE  
18 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
19 RECORD.)

20 JUDGE JORDAN: And that is the end of  
21 the bundle of exhibits that I have just been  
22 handed -- handed.

23 Mr. Noce, I see that it is 20 minutes  
24 until 4:00. Do you have witnesses whose appearance  
25 here is time-sensitive?

1                   MR. NOCE: Yes, your Honor. However,  
2 I'm not sure if Mr. -- are you finished with your  
3 testimony, Mr. Lee?

4                   MR. LEE: I don't know what that means.  
5 I --

6                   JUDGE JORDAN: Well, let me explain.

7                   MR. LEE: -- have my repair orders and  
8 the stuff that I got on discovery.

9                   JUDGE JORDAN: Okay. And --

10                  MR. NOCE: And I guess maybe, your  
11 Honor, I'll go ahead and lodge an objection as to the  
12 foundation of these repair orders. Unless Mr. Lee  
13 can present somebody to lay a foundation, I believe  
14 they're hearsay until that is done.

15                  JUDGE JORDAN: Okay. Are we talking  
16 about documents produced in discovery?

17                  MR. LEE: Correct.

18                  JUDGE JORDAN: Okay. Then I think he  
19 can tell me that he received them in response to  
20 discovery.

21                  MR. LEE: That I did.

22                  MR. NOCE: For them to be admissible, he  
23 has to -- he has to lay a foundation. I'll object to  
24 that.

25                  JUDGE JORDAN: He will have to describe

1    them for me, and I will -- I will see what they are  
2    when -- when they're shown to me and I'll be able to  
3    decide then whether they come into the record under  
4    any exception to the hearsay rule, that is correct.

5                   MR. RITCHIE:  That's fine.  And then  
6    if -- before we start that, if I could call my  
7    witness, the time-sensitive witness, I'd appreciate  
8    that.

9                   JUDGE JORDAN:  All right, then.  Then  
10   we'll do that.  We're going to take a witness out of  
11   order.  We're going to put your case in chief on  
12   hold.  We're going to take one of Missouri American  
13   Water Company's witnesses.

14                   MR. RITCHIE:  Your Honor, if I may  
15   approach the bench, I have an exhibit book for the  
16   Court and the Commission if they'd like as well as  
17   for the witness.

18                   JUDGE JORDAN:  Yes, you may.

19                   MR. RITCHIE:  I did not put stickers on  
20   them except for this one, but they are labeled by --

21                   JUDGE JORDAN:  I see they're tabbed.

22                   MR. RITCHIE:  Tabbed, yes.

23                   JUDGE JORDAN:  Okay.

24                   MR. LEE:  Am I going to be testifying?

25                   MR. RITCHIE:  No.

1                   JUDGE JORDAN:  And that's -- that's  
2 fine.  Our reporter will mark this as an exhibit, the  
3 whole thing, when -- when you're ready for that.

4                   MR. LEE:  Okay.  I've -- I've marked --  
5 I've actually marked these that I will be referring  
6 to the stickers.  And I'll just...

7                   (The witness was sworn.)

8 DIRECT EXAMINATION BY MR. NOCE:

9           Q.       Can you please state your name for the  
10 record.

11          A.       It's Gaetano Bommarito.

12          Q.       Okay.  And I understand you go by Tom,  
13 right?

14          A.       Go by Tom, yes.

15                   THE COURT REPORTER:  Can you spell your  
16 name, please?

17                   THE WITNESS:  G-a-e-t-a-n-o and then the  
18 last name is B-o-m-m-a-r-i-t-o.

19                   THE COURT REPORTER:  Thank you.

20 BY MR. NOCE:

21          Q.       And Mr. Bommarito, who is your current  
22 employer?

23          A.       Missouri American Water.

24          Q.       And how long -- when did you start with  
25 Missouri American Water?

1           A.       I started in August of '95 which --  
2 right at 14 years, pretty close.

3           Q.       And over those 14 years, Mr. Bommarito,  
4 what positions have you held?

5           A.       I was a distribution system worker,  
6 which we locate leaks and fix main breaks. I've held  
7 that for ten years. And then for the last four  
8 years, I've been an operation supervisor.

9           Q.       What does an operations supervisor do?

10          A.       We -- we over -- oversee the operations  
11 that go on for the maintenance department for leaks,  
12 breaks, regular upkeep and maintenance.

13          Q.       And is that across the St. Louis County  
14 area?

15          A.       Saint -- just St. Louis County, yes.

16          Q.       And you personally work on crews who go  
17 out and actually attempt locate leaks?

18          A.       I don't do the work physically. I  
19 oversee -- I do go from -- from crew to crew.

20          Q.       Okay. And how does a crew -- when it  
21 gets a report of a potential leak or a possible leak,  
22 what does the crew do in ways of trying to locate  
23 that, where it is or whether or not there is a leak?

24          A.       What we -- what we do is we'll send a  
25 troubleshooter out to a job, and most of the time

1 they're -- it's customers calling and then we'll --  
2 we'll -- we'll send someone out there. And a  
3 troubleshooter will set up -- set up the job and then  
4 they will go back to our dispatcher and then the  
5 dispatcher will -- will call a crew -- or call me or  
6 one of the other supervisors and then we'll reroute a  
7 crew over there.

8                    Depending on what kind of leak or break,  
9 if it's a -- if it's a major break, then we'll just  
10 send a crew right there. If it's a slight leak,  
11 we'll -- we'll set it up for a correlating crew to go  
12 over there or a crew there to investigate it.

13            Q.        Okay. Let me ask you what does a  
14 correlating crew do?

15            A.        Correlating crew, they -- they have  
16 machines that all they do is investigate leaks.  
17 They -- they set it up what are more or less the  
18 leaks that our regular crews can't -- can't hear or  
19 are a little -- little harder. What they do is  
20 they -- they go to the job, they investigate it, they  
21 have the machine to take care of -- to tell them  
22 where it's at and then those set up the --

23                    MR. LEE: Objection.

24                    JUDGE JORDAN: What's your objection,

25 Mr. Lee?

1                   MR. LEE: We can't hear the leak, the  
2 crew can can't hear the leak.

3                   JUDGE JORDAN: I don't -- that's not  
4 really an objection. If you want to develop his  
5 testimony, you may do that on cross-examination.

6                   MR. LEE: Okay.

7                   THE WITNESS: And what they'll do is  
8 then they'll -- they'll go ahead and set up for --  
9 for the crew or if it's something that's a little --  
10 that needs to be taken care of right away, the crew  
11 will come out and take care of it.

12 BY MR. NOCE:

13                 Q.       Okay. And then can you explain how the  
14 correlating process works? You talked about hearing  
15 the leak.

16                 A.       What -- what -- the system we have is  
17 called a TriCore system. It runs off of just sound.  
18 It has an A- and a B-box which is the actual  
19 listening -- it's got a mic, and it's -- you can  
20 listen through that -- through these boxes.

21                   The computer itself, and what -- what we  
22 do is they'll set up, try to -- the best way is to  
23 make direct contact on the main which would be at a  
24 valve or a hydrant. If they can't get to that, then  
25 what we do is we put metal-to-metal rod -- we'll put



1 a rod in the ground and make contact with the main  
2 and then we'll -- what they -- what they do is  
3 they'll set an A-box in one -- one place and a B-box  
4 in the other. And then what we do is we take the  
5 size of the main, the distance between and what type  
6 of main it is.

7                   There's -- I mean, we have -- we have  
8 several different types of mains in our systems,  
9 plastic, steel, cast iron, and what -- what this  
10 computer -- you punch all this information into the  
11 computer. And what we -- we call it shooting the  
12 main which is when -- when we punch this information  
13 in, we're making that shot. What it's doing is it's  
14 sending a pulse always from the A-box to the B-box.  
15 And what it does is it shoots a pulse to the B-box  
16 and then the B-box sends it back to the A-box. And  
17 what it's doing is it's listening for sound.

18                   On our graphs it has 12 filters, it will  
19 run anywhere from -- what we tend -- tend to do is  
20 before -- when you start on -- when you start the  
21 machine up, it will -- it will filter itself. What  
22 it's doing is it's reading -- it's reading the shot.  
23 And it will have a graft on there where it will give  
24 you a strong graft at, say, filter five.

25                   So what we'll want to do is we'll to

1 want center that filter, we'll put -- I'll punch it  
2 up at filter five and it will be the center. And  
3 what it does is it gives us three graphs. It will  
4 give us filter four, filter five and filter six, and  
5 it will run those -- run those filters.

6                   If -- what happens is it will run those  
7 filters, and then it will show the best -- the best  
8 filter. If it shows me -- you know, it will run up  
9 the graft and there will be a spike. If there's a  
10 spike that running -- it's got an A at the top and a  
11 B at the bottom, and if that spike is in the middle  
12 or pretty close, then we have that leak in between --  
13 in between the A- and the B-box. If it -- if that  
14 spike is at -- towards the B or the A, then we know  
15 to move the -- move one of the boxes either way and  
16 it will -- it will tell us.

17           Q.       Let me back up for a second and just  
18 kind of explain this. You're describing a spike.  
19 What is a spike reading?

20           A.       A spike is almost -- I'm -- kind of  
21 simple is like if you get a reading of an earthquake  
22 how a spike will run up or -- or for EKG, that kind  
23 of -- what it does is that's -- that's where  
24 you're -- you're getting the most sound is when that  
25 spikes up, that's where -- where the most sound is.

1 Q. So the spike -- if I could --

2 A. Yeah.

3 Q. -- so we can explain this, the spike  
4 corresponds to a sound heard on the main?

5 A. Yes, yeah.

6 Q. And what does that indicate to you when  
7 you hear a sound on the main?

8 A. When we hear sound on the main, then --  
9 then we know -- you can hear sound on the main and it  
10 could not be in between those two. Just because we  
11 set those up doesn't mean it's there.

12 What we want to do is, there's  
13 different -- you'll know the sound, and that comes  
14 with being -- doing it, you know, for -- for as many  
15 years as what -- what some of these are guys have.  
16 You just know that you can move the box. It's not --  
17 the sound doesn't match the water or the sound  
18 doesn't -- that's not good enough sound for what's  
19 going on here, so...

20 Q. What sound does a leak make?

21 A. It makes like a frying sound, almost  
22 like a -- like you -- you -- like a sizzling sound.  
23 If you turn on your hose and you put your thumb over  
24 the end of a hose, it will -- that sound that that  
25 makes, that's kind of like a -- what it -- what it

1 makes.

2 Q. And is there a listening device that  
3 goes with this correlating equipment that allows the  
4 person running it --

5 A. Yes.

6 Q. -- to hear the sound?

7 A. Well -- and that's what we do. When  
8 we -- when we first set up, before we even make the  
9 shot with the computer, before we even punch in any  
10 information, we -- when we set those boxes up, our  
11 correlaters, they'll put those -- put -- put the  
12 earphones on and they'll listen to hear if they have  
13 sound. If they have real good sound down on one end  
14 and you don't have good sound at this end, then we'll  
15 move it up a little closer to kind of get it to where  
16 we can -- we can get a better shot on it.

17 Q. Okay. But if you don't hear any sound  
18 when you first hook it up, then what do you do?

19 A. We'll still shoot it just in case -- we  
20 want to cover every -- every part of what -- you  
21 know, every inch of the main that we think there's a  
22 leak there.

23 Q. And when you say "shoot it," that's when  
24 it sends the electronic pulse; is that correct?

25 A. That's when it shoots the pulse from the

1 A- and the B-box.

2 Q. Okay. And then what will this pulse  
3 detect?

4 A. It will detect a leak. It will -- it  
5 will come up again. If -- if the leak -- if it's  
6 past that B-box or A-box, it will -- it will spike  
7 closer to the A and B on the chart.

8 Q. Okay. And when a crew goes out to  
9 perform this correlating or to determine whether or  
10 not there's a leak, is there a document, a record  
11 generated normally?

12 A. Yes, which would be the leak ticket.  
13 When we have that leak ticket, we'll sign out --  
14 we'll sign off on it. If there's -- if there's  
15 something -- if there's a leak there, then -- then  
16 we'll -- we'll dispatch it and we'll get a crew out  
17 there to take care of it.

18 If not, what we'll do is we'll explain  
19 what we did there, then we'll sign off on it and give  
20 it back and we'll put it in our records. Then if we  
21 ever have to go back there, then we know that we --  
22 that we were there and this is what we found in that  
23 area.

24 Q. Okay. And are you familiar with the  
25 recordkeeping procedure of Missouri American Water --

1 A. Yes.

2 Q. -- with regard to these tickets?

3 A. Uh-huh.

4 Q. And -- and have you been to the -- asked  
5 to investigate -- or strike that. Are you familiar  
6 with Mr. Lee's claims in this lawsuit?

7 A. Yes.

8 Q. And have you been asked to conduct any  
9 sort of investigation in the area surrounding  
10 Mr. Lee's home?

11 A. Yes.

12 Q. And what type of -- just generally, what  
13 type of investigation have you conducted?

14 A. We -- we went ahead and -- and  
15 correlated from Coal Bank all the way down to McQuay,  
16 down McQuay all the way down Larimore Road up to  
17 Aspen Woods. We went down Red River and that Taos,  
18 and then all the way around to 13 -- it was -- I  
19 think it was 1347 or -- or 1353, I can't remember.  
20 I'd have it look on -- and see which --

21 Q. Okay. And I'll get into the specifics  
22 in a second. When did you do -- perform these  
23 correlating tasks or investigations?

24 A. We did it on the 1st --

25 Q. Of what month?

1           A.       -- of May.

2           Q.       2009?

3           A.       2009.

4           Q.       Okay. Any other dates that you were out  
5 there?

6           A.       We were there -- I was there later on  
7 this month in the...

8           Q.       Okay. But it was recent?

9           A.       It was recent.

10          Q.       And we'll -- we'll get to the individual  
11 tickets. Okay. And if you could, could -- if I  
12 could, while you have them right there, can you flip  
13 through Exhibits B 1 through, I think it's B 12, just  
14 real quickly and just for the Court, generally  
15 identify what these tickets are?

16          A.       Okay. These -- these tickets are --  
17 are -- are leak tickets. This is what we write up  
18 for -- the correlaters will write it up --

19                   MR. LEE: Is this an exhibit?

20                   MR. NOCE: You have a copy, Mr. Lee, of  
21 B 1 through 12.

22                   THE WITNESS: Right. I'm on B 1.

23                   JUDGE JORDAN: Okay. Are we moving into  
24 testimony on these?

25 BY MR. NOCE:

1 Q. Well, I'm just asking you to generally  
2 identify these tickets for the Court so that he knows  
3 what he's looking at.

4 A. This is a -- this is a leak report.  
5 This is what -- this is what the crew will get when  
6 they -- when they go and investigate a leak.

7 Q. And were those reports generated at or  
8 near the time of those investigations that you just  
9 discussed?

10 A. Yes.

11 Q. Okay. And are these reports kept in the  
12 ordinary course of business at Missouri American  
13 Water?

14 A. Yes.

15 Q. Okay. Now we'll go ahead and return to  
16 Exhibit B 1. And --

17 JUDGE JORDAN: Hang on just a second.  
18 Mr. Lee and Mr. Ritchie, do you have these documents  
19 in front of you?

20 MR. RITCHIE: Yes.

21 JUDGE JORDAN: Mr. Lee?

22 MR. LEE: Yes.

23 JUDGE JORDAN: Okay. I don't --

24 BY MR. NOCE:

25 Q. Mr. Bom -- what's that?



1 JUDGE JORDAN: Do you want me to see  
2 these?

3 MR. NOCE: Oh, yes. Do you have a copy?  
4 I'm sorry, Judge. I think they were -- didn't I  
5 provide you with a copy of the -- it's in this --  
6 it's tabbed "B 1."

7 JUDGE JORDAN: Okay. B 1. Thank you.

8 MR. NOCE: I'm sorry.

9 JUDGE JORDAN: Thank you.

10 BY MR. NOCE:

11 Q. And can you identify Exhibit B 1 for the  
12 record, Mr. Bommarito?

13 A. It is a -- it's a leak ticket that I  
14 wrote up on -- at Larimore and Coal Bank Road.

15 Q. Okay. And what's the date on this -- on  
16 this ticket?

17 A. It would be 5/1/09.

18 Q. Okay. And according to this ticket,  
19 what -- what work was performed at that address?

20 A. Okay. We hooked up the machine to the  
21 valve -- to the valve right at --

22 Q. Why don't you go ahead and point. Yeah.

23 A. Okay. Right here, that valve right  
24 there which is a -- which is a line. These -- that  
25 is considered a valve. And these are fire hydrants

1 here which has a valve on it too, even though it's  
2 that little -- that little line there in between that  
3 is the valve.

4                   What we did was, we shot from -- from  
5 the valve down to 1207 which was right here, and we  
6 came up with -- with no leak or no sound and the  
7 graph didn't show anything at all. Then -- that was  
8 on this -- that was on this B 1.

9           Q.       And it says "No picture." What does  
10 that refer to on B 1?

11          A.       That goes back to that -- that graph,  
12 that filters is what I was talking about where it  
13 will shoot -- it will have three -- three graphs  
14 and -- which -- which we call a picture, and it  
15 showed no -- no spike, no -- nothing going on, just a  
16 straight -- you know, just a bunch of lines.

17          Q.       Just so -- just so we're clear, would  
18 that machine allow you to detect any other leaks that  
19 may have occurred nearby on that main?

20          A.       Yeah, if -- if -- it would have -- if we  
21 would have set an A-box here and a B-box here, if it  
22 would have -- if there would have been leaks, say,  
23 down in through here, there would have been a spike  
24 on that B-box indicating, okay, it's passed that --  
25 that box.

1                   So what we would have done is we would  
2 have set up, say, on this fire hydrant that went down  
3 to this flush valve here, and then that would have --  
4 that would have gave us the whole picture of what --  
5 but there was no reason to go on past that because we  
6 weren't getting any sound or any picture.

7           Q.       Okay. Moving to Exhibit B 2, if you  
8 could flip to that. And can you identify that record  
9 for the Court, please?

10          A.       Okay. Yeah, we shot -- again, this is  
11 on Larimore Road. What we did was we came from here,  
12 from Coal Bank, and shot down to this one here,  
13 this -- this valve here on 15 -- at 15541 to get  
14 directly on the main. This way we had -- we made  
15 good contact. Again, if there would have been a  
16 leak, if we -- we set up the A-box here. If there  
17 would have been a leak, any -- indicating that it  
18 would have been this way or this way, on our filters  
19 it would have showed a spike towards the A -- the A  
20 graph which would have told us we needed to go down  
21 this way.

22          Q.       And what was the result of that  
23 correlating investigation?

24          A.       There was no -- no sound or picture.

25          Q.       All right. Moving on to B 3 -- and I'm

1 sorry. Whose -- whose signature is on -- going back  
2 to B 1 and B 2, whose signature is that at the  
3 bottom?

4 A. That is mine.

5 Q. Okay. And just so I avoid having to ask  
6 it on every one, did you sign each and every one of  
7 these --

8 A. Yes, sir.

9 Q. -- tickets B 1 through 12?

10 A. Yes, sir.

11 Q. Okay. So you're the author of each of  
12 these exhibits, B 1 through B 12?

13 A. Yes.

14 Q. Okay. Moving on to B 3, can you  
15 identify that record for the Court, please?

16 A. Yes. We were down here at McQuay right  
17 in here. And what we did was set up and shot down to  
18 1201, and from 1201, we -- again, we set up -- we set  
19 up the -- the machines and gave us no -- no picture  
20 or no -- no spikes and we had no sound.

21 Then we shot down to this -- this flush  
22 valve -- let's see. Right here we went from this  
23 valve to here and came up with nothing. The same way  
24 with here to this valve, and we had nothing there.

25 Q. And what was date of that document?

1           A.       That was also 5/1/09.

2           Q.       Okay.  Moving on to Exhibit B 4, can you  
3 identify that document for the Court and what you --  
4 what work you performed?

5           A.       Okay.  We were down by the -- by the  
6 tracks here which was here.  What we did was we set  
7 up on -- on -- on the -- on this valve here on the  
8 fire hydrant, and then we set it up on this valve,  
9 which again, if we made direct contact with --  
10 with -- with the mic, it's -- that's the best way to  
11 go.  And -- and we -- we shot this distance and we  
12 had no sound on the hydrants and we had no picture.

13          Q.       And again, if there was a leak further  
14 north up near the intersection of Larimore and  
15 McQuay, would that have been picked up by this?

16          A.       Yes, it would -- it would have been  
17 picked up either way.

18          Q.       Okay.  And again, you had no -- what was  
19 the result?

20          A.       We had no sound or no picture.

21          Q.       Moving on to Exhibit 5, what work was  
22 performed on -- according to this ticket?

23          A.       Okay.  We shot -- we set up on -- on the  
24 hydrant that we shot across the railroad tracks, we  
25 put one of the boxes here and one of the boxes in

1 front of this address, and we shot that distance and  
2 we came up with no sound or no picture. We shot  
3 all -- all of our filters which we -- again, we had  
4 12 filters on the machine to make sure that  
5 everything was covered.

6 Q. And again, that -- what was the date on  
7 that?

8 A. Yes.

9 Q. No, what was the date? I'm sorry.

10 A. 5/1/09.

11 Q. Moving on to Exhibit 6, can you identify  
12 that for the Court and explain what work was  
13 performed according to this ticket?

14 A. Okay. Exhibit 6. Exhibit 6 was up in  
15 here. When we -- that Exhibit 5 was actually -- we  
16 shot these -- we went from this valve and shot up --  
17 shot up to here on Exhibit 5 on B 5.

18 Q. On B 5?

19 A. Yeah. Back here. No.

20 Q. That's before -- yeah, I think -- B 5,  
21 what are the addresses listed on B 5?

22 A. Let me make sure. No, that's right.  
23 That was along the 12-inch main to the Aspen Woods.  
24 I'm sorry.

25 Q. So just so we're clear, B 5, was it -- I

1 want to be clear on this -- where was that shot from  
2 again?

3 A. Okay. Let's see. Okay. This main --  
4 we shot it from this valve -- or from this hydrant to  
5 this hydrant here.

6 Q. Okay.

7 A. That was B 5.

8 Q. We're moving on to B 6, what work was  
9 performed according to that?

10 A. Okay. B -- B 6 was we listened -- okay.  
11 All these here, we went through here, we listened on  
12 every one of these -- these service lines, all  
13 through here to see if we could hear a sound because  
14 this is where we had -- there was -- after some rain,  
15 there was some water in a little ditch line, so we  
16 wanted to make sure that it wasn't a service going  
17 across the road there.

18 Q. And when you say a "service line," can  
19 you explain to the Court what you mean?

20 A. They would be tapped off of this  
21 12-inch -- these address on this side would be all --  
22 would be tapped on -- on this -- on this 12-inch  
23 here. And what -- sometimes you'll have a leak in  
24 one of these houses, and if -- we want to make sure  
25 that we covered all our bases and we even listened

1 on -- on all -- all the service lines to make sure  
2 that -- that there was nothing leaking there.

3 Q. And what addresses did -- specifically  
4 did you look at?

5 A. We listened at 1330 -- or 1340 --

6 Q. Is that 11340?

7 A. 11340 and 11334 which is right -- right  
8 here, and 11339.

9 Q. Which I think is on the north side?

10 A. Which is right here, right.

11 Q. Okay. And it indicates "T-heads" on  
12 there. What -- what do you mean by a T-head?

13 A. There's -- it's -- they have a --  
14 there's -- there's a small valve, what we they call a  
15 stop cock, between -- there's a core, then it goes to  
16 a T-head and then it would go to their meter. And  
17 what that does is -- is if there's a problem inside  
18 the house or if it's a non-pay, that is where we can  
19 control it without having to dig the main up. We'll  
20 shut that off.

21 Q. Okay. And that's where you -- you  
22 hooked onto on each of these --

23 A. We went ahead and listened on every one  
24 of those which we put rods on or a key. We have  
25 metal keys that we put on it and we listen to it on



1 that.

2 Q. Okay. And there's no -- and what was  
3 the result?

4 A. There was no sound.

5 Q. Okay. Indicating what?

6 A. That there was no leak there.

7 Q. Moving on to Exhibit B 7. Can you  
8 identify that for the Court?

9 A. Okay. This is Aspen Woods. We shot  
10 from this right here on -- on Aspen Woods to 35 --  
11 35 B which would have been another -- another valve  
12 up through here, and we came up with -- with no -- no  
13 sound or picture.

14 Q. And how far was that according to this  
15 now? How -- how -- what was the length of pipe?

16 A. 671 feet.

17 Q. Okay. So across that 671 feet, you  
18 didn't hear any sound?

19 A. No.

20 Q. And what does that indicate?

21 A. There's no leak there.

22 Q. Okay. And is -- what is date of this --  
23 this document?

24 A. This was 5/29.

25 Q. And the last line, what does that state?

1           A.       Excuse me?

2           Q.       The last sentence on this document, what  
3 does that state?

4           A.       "We had no sign of water."

5           Q.       What do you mean by that?

6           A.       On the 1st, we -- we went out there and  
7 there was a couple puddles that were around in  
8 certain areas. On 5/29, we went back out there to  
9 shoot some -- some spots that we had missed, and  
10 there was no -- no -- the puddles were gone, there  
11 was no -- no sign of water.

12                    We had -- there was a spot right in here  
13 that looked like an old cistern from the church -- I  
14 guess the church has, and what they -- water was  
15 actually coming out of there and coming down. Seems  
16 after when it rains, I imagine that cistern probably  
17 fills up and then runs down the curb. But at the  
18 time when we went out, there was -- there was no --  
19 no sign of water at all.

20           Q.       What do you mean by "cistern"?

21           A.       It was -- it's just like a concrete pit  
22 where they would get water. If they didn't have  
23 water, it would just be water that they would be able  
24 to collect.

25           Q.       And again, this was done on 5/29/09?

1           A.       Yes.

2           Q.       Okay.  Moving to B 8, can you identify  
3 this document and explain what work was performed?

4           A.       Okay.  We shot this from Taos, from  
5 right here.  This was -- from right here to here.  We  
6 shot this main from here to here, and what -- what we  
7 ended up -- I got a S&R of -- it was -- it was a  
8 slight S&R.

9                   And what I mean by -- it's sound and  
10 noise ratio, and that's -- on the machine, the  
11 greater the S&R when it -- when it comes up, that --  
12 that means there is a leak.  If the S&R is 14 or 20,  
13 we know definitely there is a leak here.  So the S&R  
14 at that time was at a three, so I got a picture on  
15 the machine at this address right here, I think it  
16 was 13 -- or 11339.

17          Q.       If I can refer you to the document, I  
18 think it says -- I think it may say 1133 --

19          A.       Yeah, you're right.  It was -- it was --  
20 it was 333.

21          Q.       Okay.  All right.  And what is that --  
22 and so what did you do once you got the picture at  
23 11333?

24          A.       What I did was we tried to get on the  
25 stop cock which is where the T-head is that operates

1 the water to the house, and --

2 Q. What happened when you tried to do that?

3 A. We couldn't get on it because it was  
4 full of toys or -- a lot of times, if -- if -- if --  
5 when people don't want to pay their water bill or we  
6 go out there and we turn them off, they'll jam things  
7 in these boxes, which you can't get on it so you have  
8 to dig it up at the main.

9 Q. What did you do in this instance?

10 A. What I did was I developed a leak ticket  
11 and I had a crew -- I -- we couldn't get on it, so I  
12 just developed a leak ticket and had a crew come out  
13 and dig it up just to verify to make sure that there  
14 was nothing going on.

15 Q. And when was that done?

16 A. That was done on the 5th.

17 Q. Of May?

18 A. Yes.

19 Q. '09?

20 A. Uh-huh.

21 Q. Okay. And what was the result when they  
22 went back and dug up the main on that date?

23 A. It was -- it was dry. They -- they dug  
24 it up, uncovered the main, everything -- everything  
25 was dry on it. We -- we got the -- the -- the valve

1 box out. It had -- it was full of toys, they jammed  
2 some -- a bunch of toys down in this -- in this box  
3 and we cleaned it all out.

4 Q. Did you do anything after that?

5 A. We went ahead and -- and backfilled it,  
6 listened on the main, shot it again and we came up  
7 with -- we didn't come up with anything, no picture.

8 Q. Do you have any explanation as to what  
9 may have been causing the original slight picture at  
10 this main?

11 A. Sometimes if they have a toilet leaking  
12 inside the house or a faucet that's -- that's running  
13 or a shower, if you -- if that valve, that stop cock  
14 is opened up right there, you'll pick up that sound  
15 inside the house, and then that's where you'll get  
16 your reading if it's a -- and again, that S&R of  
17 three or two, we wouldn't -- we wouldn't normally dig  
18 on that. We would investigate it more in order to  
19 get -- to make sure that we got a leak. But since we  
20 did -- we dug this up, we shut it off at the stop  
21 cock, shot it again, we had no -- and then I was  
22 getting no S&R at all and no sound or picture.

23 Q. Okay. Moving on to B 9, can you  
24 identify this document for the Court?

25 A. Okay. This is right in this area here.

1 We -- we listened on -- we went on this -- this flush  
2 valve here and we listened on all these services all  
3 through here to make sure that we covered every --  
4 every part of this main here and we came up with  
5 no -- no sound.

6 Q. Again, it indicated there was no leak in  
7 that area?

8 A. Yeah.

9 Q. And what was the date on that --

10 A. That was on the 29th.

11 Q. Okay. Moving on to B 10, what work did  
12 you perform according to this record?

13 A. B 10 was from Red River to the hydrant  
14 down -- there's a hydrant right in -- right in here.  
15 We shot this main coming all the way across down Red  
16 River all the way here and we came up with -- with no  
17 sound or -- or picture on the machine.

18 Q. Okay. Then finally moving on to -- I'm  
19 sorry, no. Moving on to B 11 -- I'm sorry. Going  
20 back to B 10 real quick, what was the date that that  
21 work was performed?

22 A. That was on the -- that was also on the  
23 29th.

24 Q. Okay. Moving on to B 11, can you  
25 identify this ticket and speak to what work was

1 performed according to this ticket?

2 A. Okay. We shot from Red River on up here  
3 to Taos. And again, we -- we had no sign on the  
4 machine, no -- no sound, no picture or any -- no  
5 sound -- no signs of any leak.

6 Q. What do you mean by that?

7 A. That there was no -- there was no  
8 wetness in the ground, there was -- there was no --  
9 no -- no signs of -- of a leak at -- at all.

10 Q. Okay. And that was on what date?

11 A. And that was on the 29th.

12 Q. Finally on Exhibit B 12, can you  
13 identify that document and explain what work was  
14 performed according to it?

15 A. Okay.

16 Q. I know the numbers get smaller.

17 A. 1353. We -- we set up at this -- this  
18 valve right here and we shot from this address here.  
19 And again, we put the machines on and had no -- no  
20 picture, no sound, and we didn't see any reason to go  
21 on past here because it wasn't pointing us into that  
22 direction. There was no -- there was no leaks, no  
23 signs of any wetness anywhere, so we went ahead and  
24 that was as far as we shot.

25 Q. And when you say there was no signs of

1 any wetness, can you explain where you mean by that?

2 A. All through here we listened on all  
3 these services because there's like this cul-de-sac,  
4 there's a big -- like an island there, so we wanted  
5 to make sure instead of just shooting the main, we  
6 went and listened on all their services, and we  
7 couldn't -- couldn't hear anything.

8 And there was no visual signs as we came  
9 down through here, there was no -- no visual signs of  
10 any -- any yards wet or -- the main actually sits in  
11 the -- in the yard -- yards on here, and if there  
12 was -- that ground up there is really -- it's almost  
13 like farm -- farmland ground. It's -- it's black,  
14 rich soil. If you get any kind of water to that  
15 ground, you'll -- you'll know there's -- there's  
16 something going on there.

17 Q. And just so -- just so I understand you  
18 correctly, you're saying not only did you shoot the  
19 main in this area, you also shot each of the service  
20 T's or the service lines --

21 A. We -- we didn't shoot these, we just  
22 listened on the T-heads.

23 Q. Okay.

24 A. And then -- and if -- again, these  
25 boxes, if -- if I would put that key on this house



1 right there on their service line, I could have -- I  
2 could have someone go down there with a quarter and  
3 tap on that fire hydrant and I could hear them  
4 tapping on that fire hydrant there.

5 Q. Okay. And so -- and so all the work you  
6 performed, Mr. Bommarito, during the month of May,  
7 2009, going from Coal Bank all the way down and  
8 around up to Aspen Woods, did you see any sign or  
9 have any test come back that evidenced a sign of a  
10 leak?

11 A. No, sir.

12 MR. NOCE: Okay. Thank you. That's all  
13 I have. At this time I'd ask to admit Exhibits B 1  
14 through 12 into evidence.

15 JUDGE JORDAN: Any objections?

16 MR. RITCHIE: No objection.

17 MR. LEE: No objection.

18 JUDGE JORDAN: Then they are received.

19 (EXHIBITS B1 THROUGH B12 WERE RECEIVED  
20 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

21 JUDGE JORDAN: Cross-examination of this  
22 witness by Staff.

23 MR. RITCHIE: Will you give me just a  
24 moment, Judge?

25 JUDGE JORDAN: I've got a request for a

1 five-minute break. We'll take a five-minute break  
2 and go off the record.

3 (A RECESS WAS TAKEN.)

4 JUDGE JORDAN: We are back on the record  
5 and we're ready to resume with cross-examination from  
6 Staff.

7 MR. RITCHIE: Yes, your Honor. I just  
8 have a few questions that I think that will help  
9 develop the record.

10 JUDGE JORDAN: Go ahead.

11 MR. RITCHIE: Thank you.

12 CROSS-EXAMINATION BY MR. RITCHIE:

13 Q. In your opinion, is the correlation  
14 equipment that Missouri American Water uses the most  
15 modern and effective equipment on the market?

16 A. Yes, even -- we have -- we have two  
17 different types of --

18 MR. LEE: Objection.

19 THE WITNESS: -- correlated equipment.  
20 We have a -- we have a new style --

21 JUDGE JORDAN: Hang on just a minute, we  
22 have an objection. What's your objection?

23 MR. LEE: There's been nothing about his  
24 knowledge or training or anything about different  
25 types of equipment.

1                   JUDGE JORDAN: So you're objecting to  
2 his opinion on the quality of the equipment; is that  
3 correct?

4                   MR. LEE: Correct. We've never even  
5 heard that he used more than one type.

6                   JUDGE JORDAN: Would you like to develop  
7 that with some more questioning, address that?

8                   MR. RITCHIE: Well, I do believe that  
9 was developed on the direct examination, his  
10 experience in this field.

11                  JUDGE JORDAN: Uh-huh, right. We went  
12 through something about his experience with Missouri  
13 American, the positions he's held.

14                  MR. RITCHIE: Yeah, that's right.

15                  JUDGE JORDAN: I'm going to overrule  
16 that objection. Go ahead.

17                  MR. RITCHIE: Okay. I'm sorry, Judge.  
18 I'm going back through my notes.

19                  JUDGE JORDAN: That's okay. That's  
20 quite all right.

21                  THE WITNESS: We have -- they're made by  
22 the -- by the same company. We have two -- two  
23 different styles of correlating equipment. The older  
24 style that we -- we use regularly is what -- is  
25 really the better of the two. Both -- both of them

1 are up to date. There -- it's -- any -- any --  
2 any -- there's quite a few correlating companies out  
3 there, but FCS is -- is probably the best -- the  
4 better of -- they're the ones that produce this  
5 technology.

6 BY MR. RITCHIE:

7 Q. And you use their equipment?

8 A. Yes.

9 Q. Okay. How long does a normal  
10 correlation test last?

11 A. There's -- it takes -- it takes  
12 60 seconds to run through the filter. What we do --  
13 I mean, that's dependent on how we set it up. I  
14 would say anywhere from 15 to 20 minutes you could --  
15 you could make a shot.

16 Q. How many workers are there on a  
17 correlation crew?

18 A. Two.

19 Q. Can you describe the role of each worker  
20 on the crew?

21 A. They're -- they're both -- when I was a  
22 distribution system worker, I had me and a partner  
23 and we would go out. It was even though -- no one  
24 was -- was above the other. They -- they both  
25 equally know the equipment. Yeah, they're -- it's --

1 they're both -- both trained the same.

2 Q. What is the distance between the A-box  
3 and the B-box approximately?

4 A. It's whatever you want to -- you want to  
5 put in. You could -- you can shoot -- they tell you  
6 not to shoot anything less than 20 feet, but you can  
7 shoot anywhere up to 6, 700 feet if you wanted to  
8 shoot.

9 Q. Up to 600 feet?

10 A. Yes, sir.

11 Q. And how far beyond the A- and B-box  
12 would this equipment hear a leak?

13 A. It would -- it would shoot a graph if  
14 it -- depending on what size -- what -- if it was any  
15 size of a leak, it would go -- it would  
16 automatically -- if it -- if it heard something at  
17 that A-box or the B-box, whichever, it would -- it  
18 would have a spike there, it would -- it would  
19 indicate that there was something going on. Not to  
20 say that two miles down the line there could be  
21 something going on, but...

22 But in that general area where you're --  
23 where you're looking, it would pick it up.

24 Q. Can you give any distances in feet  
25 approximately?

1           A.       No, I wouldn't -- I'm not sure.

2           MR. RITCHIE:   Okay.  I have no further  
3 questions.

4           JUDGE JORDAN:  Thank you.  Mr. Lee, any  
5 questions for this witness?

6 CROSS-EXAMINATION BY MR. LEE:

7           Q.       How much of your leak detection is  
8 visual inspections?

9           A.       Excuse me?

10          Q.       How much of your leak detection process  
11 is visual inspections?

12          A.       We -- every leak we go to, we visual --  
13 we look at it and we also -- we make sure we get on  
14 the main and -- and -- and shoot the main to make  
15 sure that nothing's going on.

16          Q.       So every time you look at a leak or  
17 every time you're called out on a leak, you hook the  
18 equipment to it?

19          A.       If it's a correlating -- if our  
20 correlaters go out there, absolutely, yes.

21          Q.       If they go out there, they hook the  
22 equipment to it?

23          A.       They will put the -- they will hook the  
24 equipment on a valve and they'll shoot from a -- from  
25 a distance.  If they're listening to it, they'll

1 listen to it, they'll listen -- they'll -- they'll  
2 hear a sound, they'll put the equipment on and  
3 they'll take -- they'll take a shot on it.

4 Q. And if somebody calls in a leak and  
5 some -- and one of your employees drives by and sees  
6 it, do they then dispatch the correlaters?

7 A. Not necessarily the correlaters.  
8 They'll -- they'll dispatch -- they'll go ahead and  
9 call dispatch. If one of our employees see it and  
10 they see there's a leak going on, they'll call  
11 dispatch and we'll send a troubleshooter out and then  
12 we'll make the decision one way or the other. If  
13 it's -- if it's something that's a major break, we'll  
14 just -- we'll by -- bypass the correlaters altogether  
15 and we'll send a crew there. We won't -- it doesn't  
16 require the correlaters to hook a machine on  
17 something that we know is broke in that area.

18 Q. You said if they see a leak, then you  
19 send the correlaters out. So the first part of a  
20 leak detection process is to see water bubbling up  
21 out of the ground?

22 A. Yes.

23 Q. If they didn't see that, they wouldn't  
24 send the correlaters?

25 A. With -- if there was no indication of a

1 leak, then we wouldn't send the correlaters, no.

2 Q. Okay. And an indication being water  
3 bubbling out at the specific address?

4 MR. NOCE: Asked and answered.

5 THE WITNESS: I'm not understanding what  
6 he's --

7 JUDGE JORDAN: Okay. I can see there's  
8 some confusion as far as what the question is  
9 being -- what question is being asked here. Tell us  
10 when you send out your correlaters.

11 THE WITNESS: We send out -- if the  
12 dispatch sends out a leak -- leak ticket, if it's --  
13 if it's something that's a slight leak that  
14 doesn't -- isn't a main break, they'll go and  
15 investigate that. That's when -- when -- when a  
16 correlater will go out there and they'll investigate  
17 the leak.

18 JUDGE JORDAN: If you see water  
19 squirting from the ground you need to send out  
20 correlaters?

21 THE WITNESS: If -- if water is  
22 boiling --

23 JUDGE JORDAN: Right.

24 THE WITNESS: -- we'll send a trouble --  
25 and the troubleshooters, our troubleshooters decide



1 one way or the other what -- what it is. If it's  
2 something that -- that -- if water is boiling out of  
3 the ground --

4 JUDGE JORDAN: Uh-huh.

5 THE WITNESS: -- we'll probably send a  
6 crew over there.

7 JUDGE JORDAN: Okay.

8 THE WITNESS: And our correlaters assist  
9 our crews too, so if our crew goes out there and  
10 they -- they can have water boiling up and they're --  
11 they're -- and they could hear no sound, the  
12 correlaters will come out and they'll -- with their  
13 expertise, they'll -- they'll take that from there.

14 BY MR. LEE:

15 Q. So every time water bubbles up, it boils  
16 onto the ground, it's right on top of the break?

17 A. Not necessarily, no. Just because that  
18 water is right there in that spot doesn't mean that's  
19 where it's at.

20 Q. How far away could it be coming from?

21 MR. NOCE: Objection.

22 THE WITNESS: I don't know. It depends.

23 JUDGE JORDAN: I'll overrule your  
24 objection.

25 BY MR. LEE:

1           Q.       In your 15 -- was it 15 years'  
2 experience, what's the furthest away from the boiling  
3 point that you ever saw the break?

4                   MR. NOCE:  I guess I'll object to the  
5 relevance.  I'm not sure.

6                   JUDGE JORDAN:  If you can answer, please  
7 do.

8                   THE WITNESS:  The most I've seen if it  
9 was boiling up, probably 80 feet, maybe, at the most.

10 BY MR. LEE:

11           Q.       Theoretically, it could travel for  
12 miles, correct?

13                   MR. NOCE:  That's not a question.

14                   THE WITNESS:  I don't --

15                   JUDGE JORDAN:  That's a -- that's a  
16 question.  Can you answer that, do you have that  
17 knowledge?

18                   THE WITNESS:  I don't know.  I mean --

19                   JUDGE JORDAN:  If you don't know, that's  
20 a perfectly fine answer.

21                   THE WITNESS:  Yes.

22                   MR. LEE:  Can I draw a little diagram on  
23 this white board, please?

24                   JUDGE JORDAN:  On the white board, yes,  
25 not on the exhibit.

1 MR. LEE: Right.

2 MR. NOCE: Your Honor, I guess I'd  
3 object. I'm not sure what -- he's drawing a diagram  
4 he -- he's wearing his counselor hat, he's not a  
5 witness. I feel like he's going -- trying to present  
6 evidence here.

7 JUDGE JORDAN: I'm going -- I'm going to  
8 overrule that objection.

9 MR. NOCE: Okay.

10 BY MR. LEE:

11 Q. When a main is installed, at some point  
12 in time, if this is the surface, they dig a trench  
13 like that, correct?

14 A. Uh-huh.

15 Q. Okay. Then do they put gravel in here?

16 A. Sometimes.

17 Q. Okay. How much gravel, would you know?

18 THE COURT REPORTER: Can you keep your  
19 voice up, Mr. Lee?

20 MR. LEE: Yeah.

21 THE WITNESS: I don't know. Sometimes  
22 they don't put any gravel in there.

23 BY MR. LEE:

24 Q. None -- from none to a foot, probably,  
25 would be --

1           A.       I have -- I have no idea.  It's --  
2  it's -- it can go from nothing...

3           Q.       Okay.  Then a pipe would go in here,  
4  correct?

5           A.       The pipe would go in the ditch but not  
6  necessarily would there be gravel.

7                   MR. NOCE:  I think I'm going to object.  
8  It seems like the witness -- or Mr. Lee is testifying  
9  here as to what he believes goes on.

10                   MR. LEE:  I'm asking the expert.

11                   THE WITNESS:  I don't -- I don't install  
12  water main, so I don't know.

13                   MR. NOCE:  And again, I believe it lacks  
14  foundation.  I've not offered Mr. Bommarito as an  
15  expert.  He's been offered to testify as to what he  
16  has done and what tests he has performed.

17                   MR. LEE:  I can't believe he's worked 15  
18  years in a water company and doesn't know how water  
19  mains are installed.

20                   JUDGE JORDAN:  Well, if he -- if he  
21  knows, he knows.  There's going to be a finite amount  
22  of "I don't knows" that we're going to get out of him  
23  because if he doesn't know about these issues, then  
24  you're asking the wrong witness.

25                   MR. LEE:  I'm okay with that.

1                   JUDGE JORDAN: Ask him a few more  
2 questions and see where it goes.

3 BY MR. LEE:

4           Q.       So then, this could have 12 inches of  
5 gravel below the pipe?

6           A.       I don't know.

7                   MR. NOCE: Objection, this lacks  
8 foundation.

9 BY MR. LEE:

10          Q.       You don't know. And then I've seen them  
11 dump gravel on these all the time.

12                   JUDGE JORDAN: Overruled.

13 BY MR. LEE:

14          Q.       So it could have gravel on top of them.  
15 Do you ever dig them up and there's gravel on them?

16          A.       Sometimes and sometimes it's dirt.

17          Q.       And then it could have dirt up here.  
18 And in that trench, once a pipe separates or gets a  
19 crack in it and starts to leak, that water  
20 theoretically could travel miles, couldn't it?

21                   MR. NOCE: Your Honor, I'm going to  
22 object.

23                   THE WITNESS: I don't know.

24                   JUDGE JORDAN: He's answered his -- his  
25 answer is he doesn't know.

1                   MR. NOCE: These questions lack  
2 foundation because, you know, and we haven't  
3 established -- he's testifying here, your Honor,  
4 saying that --

5                   JUDGE JORDAN: I'm not taking this as  
6 testimony.

7                   MR. NOCE: Okay.

8                   JUDGE JORDAN: I'm taking them as  
9 questions.

10                  MR. NOCE: Okay.

11                  JUDGE JORDAN: And the answer is mostly  
12 "I don't know."

13                  MR. NOCE: Okay.

14                  MR. LEE: So can everyone see okay?

15 BY MR. LEE:

16                  Q. Okay. So if we had water running out of  
17 the street here, could it be coming from over here?

18                  A. I -- I don't know.

19                  Q. You don't know if it could, but at the  
20 same time, you don't know that it couldn't, correct?

21                  A. That's a long -- that's a long stretch  
22 between there, and you're pointing at the house.  
23 There's another street over.

24                  Q. Uh-huh. It's -- it doesn't seem that  
25 far to me. If you had had a break right here --

1           A.       Yeah.

2           Q.       -- it could -- water, especially if it  
3 was downhill, flow to right here?

4           A.       If it was on top of the street, yes.

5           Q.       But not underground?

6           A.       I really don't know.

7                   MR. NOCE: Running objection to all  
8 these hypotheticals, your Honor. He's not being  
9 offered --

10                   JUDGE JORDAN: That's fine. I'll grant  
11 you the running objection.

12                   MR. LEE: So what does that mean to me?

13                   JUDGE JORDAN: That means you can  
14 continue asking questions, but you're getting a lot  
15 of "I don't know" which suggest that you're asking  
16 the wrong witness.

17                   MR. LEE: I'm asking, I guess, the only  
18 expert -- expert so far in finding leaks.

19                   JUDGE JORDAN: Right.

20                   MR. LEE: This is our leaks person. So  
21 wouldn't a leak expert know if we had a leak right  
22 here if it could run out of the ground down here?

23                   JUDGE JORDAN: Well, again, you're  
24 asking the wrong guy.

25                   MR. LEE: I know that.

1                   THE WITNESS: Okay. If you had a  
2 complaint of a leak here, it would be coming from  
3 this street. We would check out -- it -- it -- I  
4 don't -- I don't -- I have no idea.

5 BY MR. LEE:

6           Q.       You don't know if it could, but you  
7 don't that know it couldn't, correct?

8           A.       I mean, you're going from one -- I mean,  
9 I -- I -- I don't know.

10                  JUDGE JORDAN: If the answer is "I don't  
11 know," that's the answer.

12 BY MR. LEE:

13           Q.       You don't know that it couldn't. You  
14 could not say that water could not be leaking out of  
15 that main right here and show up on this street?

16                  MR. NOCE: Your Honor, we've spent --  
17 I'll object to the question. We've spent all morning  
18 establishing where there are no longer leaks. I  
19 don't think we need to spend the entire afternoon  
20 establishing what Mr. Bommarito does not know and  
21 cannot testify to.

22                  MR. LEE: We established where the water  
23 is running out of the ground. We've never  
24 established where it's coming from.

25                  JUDGE JORDAN: Well, the problem this



1 witness seems to be having is that there aren't  
2 enough facts to really give you an answer to your  
3 question.

4 THE WITNESS: There's a lot of -- a lot  
5 of things that go into -- I mean, we check for  
6 chlorine, there's a whole lot of things that we  
7 would -- we would -- we would check before we would  
8 go.

9 BY MR. LEE:

10 Q. What is the accuracy of your chlorine  
11 test?

12 MR. NOCE: Objection, lacks foundation.

13 THE WITNESS: I mean, we have a field --  
14 a field test that we put on the water, and if it has  
15 chlorine it will turn it pink, and that's...

16 BY MR. LEE:

17 Q. And if it left a main over here and it  
18 ran several hundred feet, didn't run --

19 A. I'm not a -- I'm not a lab person. I  
20 don't --

21 Q. -- saturated through soil with microbial  
22 growth in it and other minerals, by the time it got  
23 over here, would it have any chlorine in it?

24 A. Again, I'm not a lab person and I'm  
25 not -- I'm not -- I can't give you that answer.

1           Q.       So you really -- are you qualified to do  
2 the test, then?

3           A.       At the point --

4                   MR. NOCE:  Objection.  Do you want to  
5 specify as to what test you're -- you're referring  
6 to?

7                   MR. LEE:  The chlorine test.

8                   THE WITNESS:  It's a field test.

9                   MR. NOCE:  He's never testified that he  
10 performed any chlorine test.

11                  MR. LEE:  He just said he used a  
12 chlorine test.

13                  JUDGE JORDAN:  He hasn't said he used a  
14 chlorine test on -- on your leaks, so I've heard him  
15 testify as to the tests he performed around this  
16 neighborhood and it's kind of a spiral.

17                  MR. LEE:  He said --

18                  JUDGE JORDAN:  I didn't hear chlorine  
19 test on that.

20                  MR. LEE:  -- if water was running out  
21 over here and somebody complained over here, he would  
22 do a chlorine test on it.  My point is, after the  
23 water runs through the ground, how accurate is the  
24 test?

25                  JUDGE JORDAN:  Well, is that another --

1 okay. Answer that question. If you know the answer,  
2 you may answer.

3 THE WITNESS: If -- if it would show up,  
4 it would show up as pink if there was something  
5 leaking right there. They would have chlorine in the  
6 water.

7 BY MR. LEE:

8 Q. If it was leaking right here. If it ran  
9 300 feet underground --

10 A. I can't tell that. I'm not a -- I'm not  
11 a lab person.

12 Q. So you can't say that it -- that for  
13 sure that if it was leaking here and you tested that  
14 water 300 feet away, you cannot say for sure --

15 MR. NOCE: Asked and answered.

16 JUDGE JORDAN: We've already had that  
17 question.

18 MR. LEE: He's saying it wouldn't. I'm  
19 just trying to say --

20 JUDGE JORDAN: We've narrowed that down.

21 MR. LEE: -- the opposite that it cannot  
22 be proven that it did not have -- that it was not --  
23 I mean, from a water main because --

24 JUDGE JORDAN: We've got that. We've  
25 got that.

1 BY MR. LEE:

2 Q. All right. Is it TriCore system, T-r-y?

3 A. T-r-i.

4 Q. T-r-i. And that is the name of the  
5 company?

6 A. That's the name of the machine.

7 Q. Is that the company that manufacturers  
8 the machine?

9 A. FCS.

10 Q. FCS. And what is the degree of accuracy  
11 for that machine?

12 A. The degree of accuracy is what most of  
13 your correlating companies will -- like anything  
14 else, they'll tell you that it's -- it's accurate up  
15 to seven feet. It will meet you within seven feet of  
16 the leak. That is just -- and that's shooting -- if  
17 we would detect any part of a leak that would come  
18 up, we would even close in closer to our guys, and I  
19 have 13 maintenance crews that we have.

20 If we -- if we correlate a leak and we  
21 miss it by two feet, a lot of them guys consider it a  
22 miss which, you know, most of the -- they're right on  
23 the money as far as -- far as when we dig up and  
24 correlate a leak.

25 Q. It's my understanding that all test

1 equipment has a plus or minus degree of accuracy. Do  
2 you know about that on this piece of equipment?

3 A. No.

4 MR. NOCE: I'll --

5 BY MR. LEE:

6 Q. So is the -- does the accuracy vary on  
7 the type of material you're testing?

8 A. It would be the same on -- on -- on  
9 plastic. If it's -- if it's a plastic main, it will  
10 be -- it will vary, but we'll still hone in on the  
11 leak.

12 Q. Okay. I'm sorry. I didn't understand  
13 that. It would be the same on plastic?

14 A. Plastic -- plastic main -- and again,  
15 metal and plastic are a little different. On the  
16 plastic it would -- it would vary. Most of your  
17 leaks on plastic will be at the valves. If there is  
18 something leaking, it will be at a connection or the  
19 valves. And we'll -- we'll listen on -- we'll cover  
20 all those bases when we investigate the leak.

21 Q. So what's the degree of accuracy on  
22 plastic?

23 A. I'm not really sure. I mean, we've --  
24 we've shot it and we've come up with leaks on plastic  
25 just the same as we've come up with it on steel.

1 Q. Is there a major problem industry-wide  
2 over not being able to detect leaks on plastic pipe  
3 because of the sound absorption?

4 A. On -- on -- they say that plastic, it's  
5 easier to detect a leak on steel than it is on  
6 plastic, yes.

7 Q. Okay. Easier by how much?

8 A. I -- I -- I don't know.

9 Q. Is some of the plastic pipe, especially  
10 the larger mains, nearly impossible to detect a leak  
11 on?

12 A. No. You can -- you can detect a leak.  
13 You've just got to go about it in a different way.  
14 Again, all -- 90 percent of your leaks will be at a  
15 connection, they'll be at a saddle where a service  
16 is. And again, when we talk about -- we cover all  
17 the bases when we investigate leaks. We'll -- we'll  
18 shoot it, if we don't come up with anything, we'll --  
19 we'll listen on -- on services, we'll do everything  
20 we can to make sure that we find that leak.

21 Q. So the industry as a whole is not having  
22 a problem detecting leaks on plastic pipe?

23 A. It's -- it's not 100 -- it's not 100  
24 percent on plastic pipe. I mean, it's -- you still  
25 have to do other things to find -- to find the leak.

1 It's not just -- nothing's 100 percent.

2 Q. So is the industry as a total having a  
3 huge issue detecting leaks on plastic pipe, yes or  
4 no?

5 A. I have no idea. I'm not with the  
6 industry. I'm just with the water company.

7 Q. Okay. That's fine. This machine,  
8 again, depends on operator error; is that correct?  
9 You have to have the operator interpreting the  
10 machine?

11 A. The machine will tell you where it's at.

12 Q. Okay. And if you -- if on May 1st you  
13 tested all of this pipe through here -- is that what  
14 you said?

15 A. Not all of it, no.

16 Q. You didn't test all of that?

17 A. No, because we were moving around -- we  
18 went back on the 29th and tested parts of Aspen  
19 Woods.

20 Q. So I've been complaining about a leak  
21 right here for over a year and they call out the crew  
22 to test the pipe and you would not test that whole  
23 pipe?

24 A. We tested it all on the 29th -- on the  
25 1st and the 29th we tested all of Aspen Woods.

1 Q. On the 1st, which would have been the --  
2 would that have been the first time you were here?

3 A. The 1st was the first time I was there,  
4 yes.

5 Q. You did not test the entire length of  
6 pipe on Aspen Woods when you were there on the 1st?

7 A. We tested -- we tested from Taos,  
8 from -- from Red River going up to Taos, and then --  
9 and then Taos up to that 11351. And then we came  
10 back and we did the other parts on the 29th.

11 Q. And on the 29th you said you saw no  
12 signs of leaks anywhere?

13 A. No, sir, on Aspen Woods.

14 Q. This is Exhibit 8 C. Could you identify  
15 that bottom photo, please?

16 A. That is -- where this is, this is at Red  
17 River. That's an old repair.

18 Q. An old repair?

19 A. Yes, sir.

20 Q. Do you know what date that repair was  
21 made?

22 A. On the -- I want to say the 5th -- or  
23 not the 5th. I'm not sure. I'd have to look and  
24 see.

25 JUDGE JORDAN: Can you give us a year?



1 THE WITNESS: It was this year.

2 JUDGE JORDAN: Thank you.

3 BY MR. LEE:

4 Q. Was that there when you were there on  
5 the 1st of May?

6 A. That was not there on the 1st.

7 Q. Was that there on the -- what was the  
8 other date you said?

9 A. 29th.

10 Q. 29th?

11 A. Yes.

12 Q. Was that there on the 29th?

13 A. Yes.

14 Q. So that repair was sometime between the  
15 1st and the 29th of last month?

16 A. Yes.

17 Q. And that's an old repair?

18 A. That's -- that was a recent -- recent --  
19 recent repair.

20 Q. Okay. It can either be a recent one or  
21 an old one --

22 A. It was a recent repair.

23 Q. Thank you. On the top photo here, if  
24 you saw water on the side of the street running out  
25 of the cracks in the street like that, what would you

1 think?

2 A. It would be -- it would -- could be  
3 rainwater. I mean --

4 Q. If that water remained in a number of  
5 different places on that street for days, sometimes  
6 four or five days after it rained every time, what  
7 would you think?

8 A. If it was -- if the water main is  
9 sitting up in here in the grass, I would say it's  
10 rainwater because you would -- it would be -- it  
11 would come up in the grass way before it would come  
12 up in the concrete.

13 Q. How do you know that?

14 A. I do know it.

15 Q. Well, how? How do you know it?

16 A. I mean -- I mean, I've seen enough --  
17 enough leaks and breaks in my time, I -- I know that  
18 that main -- that if it was leaking in that area  
19 right there, it would show in the grass, which I do  
20 know if the main sits up in the grass, it would show  
21 in the grass before it would come out in the  
22 pavement.

23 Q. And you know that for sure, 100 percent  
24 sure?

25 MR. NOCE: Asked and answered.

1                   JUDGE JORDAN: That's been asked and  
2 answered.

3 BY MR. LEE:

4           Q.       I'm just trying to figure how we are so  
5 proficient at knowing something that's going on  
6 underground. How do we know that?

7           A.       It's a lot easier to come through the  
8 dirt than it would be through the concrete,  
9 especially that dirt.

10          Q.       We don't know that. We don't know that.

11                   JUDGE JORDAN: This is not the time for  
12 you to testify.

13                   MR. LEE: All right.

14                   JUDGE JORDAN: It's time for you to ask  
15 him questions and live with the answers.

16 BY MR. LEE:

17          Q.       If the entire street looked like that in  
18 many different places, would it be time to consider  
19 whether there's probably a problem there?

20                   THE COURT REPORTER: I can't hear you,  
21 Mr. Lee.

22 BY MR. LEE:

23          Q.       If the entire street or four or five  
24 different places in the neighborhood had water  
25 pouring out of the seams in the street, would it be

1 time to consider there was a leak somewhere?

2 A. The chances of five or six of those  
3 leaks going on at the same time are very rare --  
4 would be very rare. I would say it would be  
5 rainwater.

6 Q. Every other spot in the street dries up  
7 except for four or five different places.

8 MR. NOCE: Objection. Again, Mr. Lee is  
9 testifying here, I think.

10 JUDGE JORDAN: If you want to phrase  
11 your question in the form of a hypothetical, you may.  
12 For example, an "if." You can ask him if it would  
13 change his testimony "if."

14 BY MR. LEE:

15 Q. If every other place on the street dried  
16 up except four or five and they were the same areas  
17 again and again and again --

18 A. And we would -- we would investigate  
19 those areas until we -- until we found something.

20 Q. And if you had a leak here, what area  
21 would you investigate?

22 A. We would investigate where that main is  
23 at. We would do just like what we did. We would go  
24 through the whole -- the whole street and we would  
25 investigate it.

1 Q. Okay. The first time you came out --

2 A. Uh-huh.

3 Q. -- where did you have your equipment

4 connected?

5 A. I'd have to look back on the sheets. We

6 had -- we shot from the valve on up to Taos, which

7 would be right in here on up to here. Either way,

8 they would have showed us if there was something

9 going on. Again, we would have had a spike, it would

10 have -- it would have -- it would have signaled us to

11 move the machine one way or the other.

12 Q. And if my addition is correct, nine days

13 after you were there --

14 A. Uh-huh.

15 Q. -- maybe ten days, we had a eruption

16 right here.

17 A. Okay.

18 Q. And your report stated that you heard a

19 sound on that --

20 A. Not there. We had an S&R here. And

21 then I had a -- I had a small picture right here

22 which -- which we dug it up.

23 Q. And --

24 A. And it was dry all the way through.

25 Q. You were there?

1           A.       We completely exposed the main and it  
2 was dry all the way down.

3           Q.       If this broke here and the water was  
4 running downhill, would it necessarily be wet there?

5           A.       What's the question again?

6           Q.       If we had a break here on Red River --

7           A.       Right.

8           Q.       -- and the water was running downhill  
9 this way --

10          A.       Right.

11          Q.       -- would you necessarily expect it to be  
12 wet if it wasn't going that way?

13          A.       It wouldn't -- there wouldn't be -- if  
14 there's no leak up there, it wouldn't be wet up  
15 there.

16          Q.       How would you explain water running out  
17 of this street for over a year and repairing this --  
18 a water main right here and that water --

19          A.       I would say there's a cistern right  
20 here, and when we were there the first time, it  
21 just -- just finished raining or it had been raining  
22 and the water was coming out of the cistern and this  
23 was all saturated, all this -- all this grass and  
24 ground was saturated, which goes back to it would be  
25 more wetter on the -- on the dirt than it would be --

1 and it was coming down the curb.

2 JUDGE JORDAN: I'm going to interrupt  
3 just for a second. I see you're pointing to the  
4 chart there. Can you read me the address just for  
5 the record, Mr. Lee?

6 THE WITNESS: That would be 11309  
7 Larimore.

8 JUDGE JORDAN: Thank you.

9 MR. LEE: So there's a church here.

10 JUDGE JORDAN: Thank you.

11 BY MR. LEE:

12 Q. The cistern, I believe, is about halfway  
13 through that property?

14 A. At the end -- you're -- you're correct.  
15 It's right around in that area.

16 Q. The water running out of the ground on  
17 the back side of that parking lot stopped when this  
18 water main was repaired?

19 MR. NOCE: Again, we're testifying here.

20 JUDGE JORDAN: Okay. But you -- this is  
21 not the time to testify, it's the time to ask your  
22 questions. You will be resuming your case in chief.

23 MR. LEE: I'm a little confused. I'll  
24 try to stick to the --

25 JUDGE JORDAN: I understand. This is --

1 I'll -- I'll review here. This is the time to ask  
2 the witness questions.

3 MR. LEE: I'm on mental overload today,  
4 Judge.

5 JUDGE JORDAN: Aren't we all. And if  
6 the witness hears a question that calls for a yes or  
7 no answer or an I don't know, that will be okay. And  
8 if the answer is I don't know, the answer is I don't  
9 know. That's fine.

10 MR. LEE: I'm okay with "I don't know."

11 BY MR. LEE:

12 Q. If water stopped running out of the back  
13 of that parking lot one day after this water main was  
14 repaired, would you presume it was coming from that  
15 water main?

16 A. I don't know.

17 Q. Okay. One other question. This is my  
18 home. Can you say 100 percent for certain if this  
19 water main was leaking right here that that water  
20 could not have gone down that trench that that pipe  
21 was laid in, got in this trench and ran right there  
22 into my basement, 100 percent certain?

23 A. In my 14 years I have never seen water  
24 travel that far.

25 Q. Okay. Because you have never seen it,



1 can you say 100 percent certain that could not  
2 happen?

3 A. In 14 years I have never seen it travel  
4 that far.

5 Q. Okay. I understand that, but again, are  
6 you --

7 MR. NOCE: It's asked and answered.  
8 He's answered the question.

9 JUDGE JORDAN: He's answered the  
10 question. The witness has told you that's outside of  
11 his experience. I think that's the best answer that  
12 you're going to get.

13 MR. LEE: Okay.

14 JUDGE JORDAN: He has not said no, he  
15 has said it is outside his experience.

16 MR. LEE: I didn't understand it was  
17 outside his experience, but -- because he hasn't seen  
18 it, doesn't mean it couldn't happen.

19 JUDGE JORDAN: I understand.

20 MR. LEE: I think that's all I have.

21 JUDGE JORDAN: All right.

22 MR. NOCE: If I could, Judge, quick  
23 redirect?

24 JUDGE JORDAN: Well, I've got a question  
25 or two.

1 MR. NOCE: Okay. I'm sorry.

2 JUDGE JORDAN: If you please. I don't  
3 have any questions from the Commissioners, but I have  
4 a question or two for you.

5 QUESTIONS BY JUDGE JORDAN:

6 Q. Mr. Lee pointed out his house. Can you  
7 point that out to me on this map?

8 A. Did he say right in here or right in  
9 here?

10 MR. NOCE: It's this one right here.

11 THE WITNESS: Okay.

12 BY JUDGE JORDAN:

13 Q. Okay. Give me an idea of the lay of the  
14 land. Which way is uphill?

15 A. I'd say uphill would be up here. That  
16 would be uphill.

17 Q. And to the -- to the left of his house  
18 on that map, would that be uphill or downhill?

19 A. That would be going downhill here, I  
20 think.

21 MR. LINAM: Well, that's towards you. I  
22 think he's asking towards you.

23 BY JUDGE JORDAN:

24 Q. Towards the left edge of your map.

25 A. Right here?

1 Q. Yeah.

2 A. I would say that would be downhill from  
3 where his...

4 MR. LEE: I object.

5 JUDGE JORDAN: And your objection?

6 MR. LEE: He has no map, he has no data  
7 at all to base what he would say on. He's pulling a  
8 rabbit out of the hat.

9 JUDGE JORDAN: Well, he did tell us that  
10 he'd been there several times, so I will overrule  
11 that objection.

12 BY JUDGE JORDAN:

13 Q. All right. Refresh me on your testing,  
14 the equipment that you use to start it at that  
15 cul-de-sac, Coal Bank Court; is that correct?

16 A. Up here, yes. Right up -- right up in  
17 there.

18 Q. Well -- okay. I'm using the word  
19 "start" the wrong way. One end of your testing was  
20 at the cul-de-sac, that is correct?

21 A. Right, yes, sir.

22 Q. Okay. It's not to the left of where you  
23 just pointed?

24 A. It -- it started right here at this  
25 intersection right in here.

1 Q. Okay. Let me ask this in a different  
2 way. Your tests, did they reach the cul-de-sac of  
3 Coal Bank Court?

4 A. No. What we did was we shot to right  
5 there and if it indicated that there was a leak on  
6 that main, it would have -- it would have showed  
7 us -- it would have showed a spike and that would  
8 have had us move forward that way.

9 Q. All right. Now I'll ask this -- I'll  
10 try to -- this is not a problem with your answer,  
11 it's a problem with my question. Did you take  
12 readings on this equipment that give you information  
13 at the end of that cul-de-sac?

14 A. No.

15 Q. Okay.

16 A. But --

17 Q. Halfway down; is that correct?

18 A. Right, about halfway down --

19 Q. Okay.

20 A. -- we went in there, and again, it would  
21 have -- it would have showed if there was -- if there  
22 was a leak here on -- on our machine, it would have  
23 said -- say we put the B-box there, it would have  
24 said, "Move B" and it would have had a spike on the  
25 filter showing that it's beyond B. So what we would

1 have done is we would have packed up and we would  
2 have went down here and then set up again and shot  
3 that. We just didn't see no reason to go.

4 Q. Okay. Okay. I think I understand what  
5 you're saying. Then your tests go to that  
6 intersection, that diagonal street, is that Larimore;  
7 is that correct?

8 A. Right here?

9 Q. Yeah.

10 A. That's Larimore, yes.

11 Q. Larimore. And then you tested all the  
12 way down --

13 A. Yeah.

14 Q. -- where it goes -- I take it that's --  
15 I take it the top of the map is north?

16 A. Is where? Yeah.

17 Q. Is that north?

18 A. It's north.

19 Q. Okay. And you went over to, what is  
20 that, Aspen Woods --

21 A. Aspen Woods.

22 Q. -- all the way up there. And how far do  
23 you -- do your test results reach --

24 A. We --

25 Q. -- from there?

1           A.       We came through here.

2           Q.       Uh-huh.

3           A.       We went down to Red River to this -- to

4 this hydrant --

5           Q.       Uh-huh.

6           A.       -- shot Taos.

7           Q.       Uh-huh.

8           A.       Then we went on up through here and went

9 to this house right here.

10          Q.       Okay. All right. A question or two

11 about your equipment. It sounds like you get

12 information both by listening --

13          A.       Yes.

14          Q.       -- and also from an electronic pulse?

15          A.       Yes.

16          Q.       And the electronic pulse produces a

17 graphic?

18          A.       Yes.

19          Q.       And the graphic shows you anomalies in

20 the sounds that you ordinarily expect to hear in a

21 water pipe; is that correct?

22          A.       Correct. What -- what normally you

23 don't -- you can't hear with the ear, you would --

24 you would pick that up. There would be a -- again,

25 like I was saying with the quarter, if you tapped on

1 that and you listened on there, you could hear that  
2 quarter tapping.

3 Q. Uh-huh, uh-huh, uh-huh.

4 A. We've had -- I've had incidents where  
5 we've shot main, and water was just spraying out a  
6 little bit where you could barely see -- it was just  
7 a mist --

8 Q. Uh-huh.

9 A. -- but the computer picked it up.

10 JUDGE JORDAN: Okay. All right. And  
11 that's all the questions I have. Redirect?

12 MR. NOCE: Yes, your Honor.

13 REDIRECT EXAMINATION BY MR. NOCE:

14 Q. Again, real -- just real quick, you were  
15 shown some exhibits by Mr. Lee, Mr. Bommarito, and  
16 I'll show you the color copies. I believe they're  
17 Exhibit 8 C. There's the colored copies.

18 And Mr. Bommarito, I'll represent to you  
19 that Mr. Lee has testified that I believe those --  
20 those leaks -- or those pictures were actually --  
21 strike that -- excuse me -- were actually at or near  
22 11303 and 11307 Aspen Woods. When you were out there  
23 on 5/29, did you see any evidence that you see -- any  
24 other surface water that you see in those?

25 A. No.

1 Q. And again, going back to what Mr. Lee  
2 was talking about at Red River in here, the repair  
3 that was made around -- at this intersection, had  
4 that main been leaking when you were out there on  
5 May 1st when you shot from Red River up to Taos,  
6 would that have been picked up?

7 A. Yes.

8 Q. Okay. And of course, you did not  
9 receive any sign of a leak; is that correct?

10 A. No.

11 Q. Okay. Is it fair to conclude, then,  
12 from that test that there was no leak on that date?

13 A. Yes.

14 Q. And that when you went back on May 5th  
15 and dug up the main, it was dry; is that correct?

16 A. Yes.

17 MR. NOCE: No further questions.

18 JUDGE JORDAN: All right.

19 MR. LEE: Can I ask a couple of more  
20 questions or am I done?

21 JUDGE JORDAN: You can have a couple  
22 questions --

23 MR. LEE: Thank you.

24 JUDGE JORDAN: And then you will be  
25 done.



1                   MR. LEE: Can I use the color copies  
2 too? They're much easier to see.

3 RE-CROSS-EXAMINATION BY MR. LEE:

4           Q.       The time you were there on May 5th, did  
5 you inspect the storm drain at the corner of Aspen  
6 Woods and Larimore?

7                   MR. NOCE: Your Honor, I mean, I'd  
8 object. I think it's beyond the scope of recross  
9 examination here.

10                   JUDGE JORDAN: Cross is -- cross is  
11 open. We have open cross.

12                   THE WITNESS: The storm drain?

13 BY MR. LEE:

14           Q.       Correct.

15           A.       No.

16           Q.       I saw you had placed -- or someone --  
17 whoever was doing the testing that day placed an  
18 arrow right on the sidewalk just to the west of...

19           A.       Where are we talking about?

20           Q.       Put an arrow like right there somewhere.

21           A.       Okay. That's where we would mark a  
22 valve.

23           Q.       Okay.

24                   THE COURT REPORTER: Speak up, if you  
25 would.

1 BY MR. LEE:

2 Q. And the storm drain that I'm speaking of  
3 runs in front of this first house?

4 A. Yeah.

5 Q. Okay. That day you were there, did you  
6 inspect that storm drain?

7 A. On the 1st?

8 JUDGE JORDAN: I need both parties to  
9 speak up, please.

10 BY MR. LEE:

11 Q. Correct.

12 A. On the 1st --

13 Q. On the 1st.

14 A. -- or on the 29th? We -- we had -- we  
15 checked. There was -- there was some water in the  
16 ditch line, and we -- again, we used our little  
17 sample, field sample pack to check for running water  
18 and -- and -- and checked it and it showed no  
19 chlorine.

20 Q. All right. So you tested the water in  
21 that storm drain right there?

22 A. Uh-huh.

23 Q. If that water would have been coming  
24 from that main all that way, would it have lost its  
25 chlorine?

1 A. I don't know.

2 Q. You don't know that?

3 A. That's right. I don't know.

4 Q. Do you know if chlorine is a reactive  
5 chemical?

6 A. I don't know.

7 Q. Don't know. This picture -- these two  
8 pictures were taken Sunday morning on June 7th, but  
9 if I need to, I can look through there and find some  
10 that were taken about three days after the repair on  
11 Red River here. This is the storm drain in front of  
12 11 --

13 JUDGE JORDAN: Can you identify what for  
14 the record -- say for the record what it is we're  
15 looking at?

16 MR. LEE: It is a -- two photos of the  
17 storm drain in front of 113 --

18 JUDGE JORDAN: Exhibit 3?

19 MR. LEE: -- No. 3 Larimore. 7 B. I'm  
20 sorry.

21 JUDGE JORDAN: Very good.

22 BY MR. LEE:

23 Q. Now, if a water main was repaired here,  
24 and days after that, water that had been running for  
25 14 months stopped running in this -- front of this

1 house right here, would you tend to believe that it  
2 could have come from that leak?

3 A. I have no idea. I don't know that  
4 that's been running for 14 minutes. I don't know.

5 Q. Okay. So is this the first time --  
6 May 1st of 2009, is that the first time you have been  
7 to the neighborhood to test this?

8 A. That was the first time that I  
9 personally was on Aspen Woods.

10 Q. Do you know if anyone else had tested  
11 that?

12 A. I'm not sure. I'd have to look at our  
13 data and our leak reports.

14 Q. Okay. 7 C, that is the storm drain at  
15 Larimore and the railroad tracks.

16 A. Okay.

17 Q. It always has water in it.

18 A. Okay.

19 Q. It's not a creek. Could you explain  
20 that?

21 A. It's a storm drain.

22 Q. Right, and when it doesn't rain for  
23 three or four weeks, there is a flow -- a constant  
24 flow of water in that storm drain.

25 A. I mean -- I mean, you -- it's a storm

1 drain. You could be getting water from pools,  
2 sprinklers, all different sources. There's --  
3 there's septic tanks out -- or septic fields in that  
4 area.

5 Q. You could be getting it from water mains  
6 also, right?

7 A. I have no idea. If -- if there was a  
8 leak, I -- in that area where that -- where that  
9 drain sewer is, yes.

10 Q. Okay. This is 7 D.

11 THE COURT REPORTER: 7 what?

12 BY MR. LEE:

13 Q. D like "dog." Have you seen that  
14 before?

15 A. That's at McQuay?

16 Q. Uh-huh, Clay tile that runs under  
17 McQuay.

18 A. Uh-huh.

19 Q. That would be -- that would be right at  
20 the end of McQuay probably a tad to the north --

21 A. Uh-huh.

22 Q. If you saw water running into that storm  
23 drain when it hadn't rained for five or six weeks,  
24 what would you think?

25 A. I wouldn't know -- I couldn't be for

1 sure that it hasn't rained for five or six weeks.

2 JUDGE JORDAN: Just -- just assume that  
3 that were the case, just assume.

4 THE WITNESS: Yeah, okay.

5 JUDGE JORDAN: You don't have to  
6 evaluate the quality of his question.

7 THE WITNESS: If there was -- if there  
8 was a leak problem, I would -- we would investigate  
9 everything around that storm drain to find out  
10 whether or not one of our mains were leaking.

11 BY MR. LEE:

12 Q. Okay. And if this water persisted in  
13 all these areas for over 14 months, would you assume  
14 not much had been done or what would you assume?

15 A. We would keep looking. If it was -- we  
16 felt like it was something that was ours, we would  
17 keep -- we would keep searching for the leak.

18 Q. 7 F, please. Are you familiar with the  
19 top photo there?

20 A. Yes. That is right at 11357 here, right  
21 in this area, I think.

22 Q. Yeah, I believe the storm drain, there's  
23 like a sewer-looking drain on this side?

24 A. If I'm not mistaken, I thought he had a  
25 sump -- like a sump -- something with a sump pump or

1 something that was leaking or a service line. I  
2 can't...

3 Q. Is this a sump pump?

4 A. Right, right.

5 Q. My problem with it is the amount of it  
6 that constantly pumps out of his basement. This  
7 drain is connected to a -- it looks like an MSD storm  
8 sewer and it just runs under Larimore right --  
9 probably at the corner of -- where those two  
10 properties meet.

11 MR. NOCE: Is there a question?

12 JUDGE JORDAN: Get to a question  
13 quickly, please.

14 BY MR. LEE:

15 Q. If water ran out of that storm drain for  
16 14 months when it hadn't rained for six weeks, what  
17 would you think?

18 A. It could be his -- it could be his sewer  
19 that's leaking and going off and causing his sump  
20 pump to pump water down there and go down through  
21 the -- through that drain pipe. There's a whole lot  
22 of scenarios that it could be, not just a water main  
23 leak.

24 Q. If that was sewer water, that would be  
25 very easy to test with a lab, and Missouri American

1 has a lab, doesn't it?

2 A. Yeah.

3 Q. We could identify sewer water with a --

4 A. It could be anything.

5 Q. Easily. We could probably smell sewer  
6 water.

7 A. You probably could.

8 Q. If the water looked like it was clean  
9 enough to drink and didn't have an odor and it ran  
10 out of that ground for 14 months that you knew of,  
11 what would you assume?

12 MR. NOCE: Again, your Honor, I'm going  
13 to object as asked and answered.

14 JUDGE JORDAN: I think -- I think we got  
15 the point.

16 MR. LEE: Thank you. Could I make one  
17 more slight point?

18 JUDGE JORDAN: Well, you can ask him one  
19 more question.

20 BY MR. LEE:

21 Q. This is the other end of the driveway,  
22 7 G, please. This is one driveway to that property,  
23 11347. This is the other driveway. The house sits  
24 in between the two driveways.

25 A. Uh-huh.



1 Q. We still have water running out of the  
2 ground --

3 A. Okay.

4 Q. -- under this pipe.

5 A. Uh-huh.

6 Q. Being employed at the water company, if  
7 that water was clear and it ran for weeks and months  
8 with no rain, what would you think?

9 A. Again, we would check everything that --  
10 all our mains along that -- along Larimore, we  
11 would -- we would investigate the same way we  
12 investigated, we would never give up on the leak. I  
13 mean, there's -- to me, it's like you think we're  
14 avoiding trying to find a leak. We do this every  
15 day. We would -- we would -- we would not give up  
16 until we found the leak.

17 Q. How many repairs have been made in this  
18 vicinity in the last --

19 A. I'm not really sure.

20 Q. -- nine or ten months?

21 A. I'm not sure, but I know we've re-laid  
22 Larimore, that is all new main.

23 Q. That doesn't really matter. You had a  
24 break right here.

25 JUDGE JORDAN: You need to ask a

1 question.

2 BY MR. LEE:

3 Q. Did you have a break right here --

4 A. That was --

5 Q. -- on the brand new main?

6 A. That was a service on -- it was on a  
7 corp. That was -- that was a service line.

8 Q. Did you have another problem right here  
9 at the corner?

10 A. I have to look in our -- in our leak --  
11 leak database to see what -- I'm not familiar with  
12 it.

13 Q. It's on a -- a little ways up the road,  
14 they tore the sidewalk out again repairing the main?

15 A. Again, it could be a corp, it could  
16 be -- it could be a service line. I -- unless I look  
17 at the leak report, I wouldn't know.

18 Q. My point is that it's a new main doesn't  
19 necessarily mean it's not having a problem, just like  
20 a new automobile.

21 A. And if it's got a problem, we'll fix it.

22 Q. If there is water running out on the  
23 ground in six or seven different areas --

24 JUDGE JORDAN: I think we've heard this  
25 already.

1 BY MR. LEE:

2 Q. -- the water main system --

3 JUDGE JORDAN: We've heard this already.

4 BY MR. LEE:

5 Q. -- had been repaired eight or nine times  
6 in less than one year, wouldn't you be willing to  
7 consider there may be a problem?

8 JUDGE JORDAN: You don't have to answer  
9 that. We've heard this question and answer.

10 MR. LEE: I don't think I said the part  
11 about "eight times." I could be wrong.

12 JUDGE JORDAN: You can answer if you  
13 want.

14 THE WITNESS: I don't know.

15 JUDGE JORDAN: Okay. And I don't have  
16 any more questions for this witness. Is this witness  
17 here under subpoena?

18 MR. NOCE: No, he is not.

19 JUDGE JORDAN: Okay. Well, you can  
20 stick around or you can go.

21 Do you have another witness that you'd  
22 like to present this evening before we adjourn?

23 MR. NOCE: Well, if -- yeah. If the  
24 Court would allow me, I'd like -- I guess I want to  
25 have --

1 JUDGE JORDAN: Hang on just a second.  
2 Mr. Noce, you wanted to tell me something about your  
3 witness.

4 MR. NOCE: If the Court will allow me, I  
5 do have a witness who's driven in who I will -- I'd  
6 like to present if I could. And he's ready to go,  
7 I'm sure.

8 JUDGE JORDAN: And this would prevent --  
9 this would prevent an overnight stay?

10 MR. NOCE: It would prevent him from  
11 having to drive back and drive back tomorrow morning.

12 JUDGE JORDAN: Let's do that after a  
13 break. Thank you. Go off the record.

14 (A RECESS WAS TAKEN.)

15 JUDGE JORDAN: We will go back on the  
16 record. And Missouri American Water Company has  
17 another witness to present. By the way, are you  
18 offering that into evidence?

19 MR. NOCE: This -- it's more than form.  
20 Yeah, it's a demonstrative aid, I guess, but it is --  
21 it's Defendants' Exhibit A. I guess I would offer it  
22 into evidence.

23 JUDGE JORDAN: Do I hear any objection?

24 (NO RESPONSE.)

25 JUDGE JORDAN: Hearing none, I'll admit

1 that into the record.

2 (EXHIBIT A WAS RECEIVED INTO EVIDENCE  
3 AND MADE A PART OF THE RECORD.)

4 MR. NOCE: I'm trying to think. I want  
5 to use this board here, your Honor, and I'd like to  
6 have this map. I guess I'll just set this aside.

7 JUDGE JORDAN: That's fine. I'll set  
8 the same deadline for that. That will be a week  
9 after the hearing closes.

10 MR. NOCE: Okay.

11 JUDGE JORDAN: Though we don't know  
12 quite when that is yet. And you have another witness  
13 for us?

14 MR. NOCE: Yes, your Honor. Missouri  
15 American calls Tom Simmons.

16 (The witness was sworn.)

17 JUDGE JORDAN: You may proceed.

18 DIRECT EXAMINATION BY MR. NOCE:

19 Q. Can you please state your name and spell  
20 it for the record.

21 A. Thomas Simmons, T-h-o-m-a-s,  
22 S-i-m-m-o-n-s.

23 Q. And Mr. Simmons, can you briefly give us  
24 a background into your education?

25 A. I have a degree in biology and a minor

1 in chemistry from the University of Missouri.

2 Q. And do you have any licenses that you've  
3 obtained over the years?

4 A. I have a Class A water plan operators  
5 license in the State of Missouri. I've had it since  
6 1987.

7 Q. Can you explain to the Court what is  
8 that?

9 A. A Class A is the highest level of  
10 operating license you can get in the State of  
11 Missouri for running a water treatment facility. You  
12 have to have a certain amount of experience and you  
13 have to pass a test in order to get that license.

14 Q. What sort of test? Is it a written  
15 exam?

16 A. It's a written exam, yes, it is.

17 Q. And when did you obtain that?

18 A. 1987.

19 Q. Okay. Any other licenses?

20 A. I have a Class C wastewater license with  
21 the State of Missouri that I obtained in 2002.

22 Q. And what is that?

23 A. That means I'm -- the level of licensing  
24 allows you to operate certain types of facilities,  
25 like the level A for water, you can operate any water

1 plant in Missouri. A level C would -- for wastewater  
2 would relegate you to certain types of plants that  
3 are rated at that level by the State, by the  
4 Department of Natural Resource.

5 Q. Okay.

6 A. I also have a DS3 distribution license  
7 which is the highest distribution license you can  
8 obtain in Missouri, and that just indicates that you  
9 understand how the distribution system works, you  
10 know how to operate the valves, do chlorine analysis,  
11 whatever.

12 Q. And how did you obtain that license?

13 A. I tested -- well, that one was actually  
14 grandfathered in at -- originally the DS, the  
15 distribution license and the plant operator's license  
16 were actually one and the same, and then in 2000 the  
17 State of Missouri decided to split those and they  
18 grandfathered the people who had already had a water  
19 plant operator's license.

20 Q. And who is your current employer?

21 A. Missouri American Water.

22 Q. And how long have you been with them?

23 A. 29 years.

24 Q. Okay. And over those 29 years, what  
25 positions have you held at Missouri American Water?

1           A.       I was a laboratory technician when I  
2 started. I've held positions as a water quality  
3 specialist, water quality supervisor, water quality  
4 superintendent, and my current position is water  
5 quality manager since 2004.

6           Q.       What does a lab technician do, a  
7 laboratory technician?

8           A.       They pick up samples throughout the  
9 treatment process and analyze those samples and  
10 record them.

11          Q.       Are you talking about samples from the  
12 field?

13          A.       No. This would be from within the  
14 treatment process, the treatment plant itself.

15          Q.       Okay.

16          A.       We do have lab personnel that go out  
17 into the distribution system to collect samples, but  
18 most of the samples out there are collected by field  
19 service personnel.

20          Q.       And then you said you were a water  
21 quality specialist after that; is that correct?

22          A.       Yes.

23          Q.       And what -- what sort of duties did that  
24 entail?

25          A.       As you advance up, you just have more



1 responsibility as far as the overall treatment  
2 process is concerned, making decisions on chemical  
3 changes to the process, supervising other employees,  
4 training other employees.

5 Q. And then after that, what was the next  
6 level?

7 A. Supervisor, water quality supervisor.  
8 At that point you sought -- you might be signing  
9 monitoring reports, compliance reports for the State,  
10 again, supervising more employees than before and  
11 making -- having a larger input into the  
12 decision-making process regarding treatment of water.

13 Q. Okay. And then finally, your current  
14 position, what is that?

15 A. Water quality manager. I've had that  
16 position since 2004. I'm responsible for the water  
17 quality and the water treatment process for all the  
18 Missouri American's Water treatment facilities and  
19 wastewater facilities.

20 Q. And is that throughout not only the  
21 St. Louis area but --

22 A. It's throughout -- actually here in  
23 Jefferson City, Joplin, St. Joe, St. Louis County,  
24 Mexico, Warrensburg, Brunswick, Parkville, Warren  
25 County, Cedar Hill, Sand Creek.

1 Q. And what sort of demands does your job  
2 have on you in monitoring the distribution process?

3 A. I make sure all of our facilities are in  
4 compliance with all federal and state regulations.

5 Q. And how -- how do you accomplish that?

6 A. I oversee the super -- I have six  
7 supervisors throughout the state. I oversee the  
8 supervisors, I look at the reports that are prepared  
9 before they're submitted, I train these individuals  
10 if necessary, I make decisions on chemicals, which  
11 chemicals we may or may not try if we decide to  
12 change things, I make decision to how we actually  
13 treat the water.

14 Q. So is it fair to say that you're the top  
15 guy at Missouri American Water with regards to --

16 A. Water quality yes, yes.

17 Q. Okay. And where is your office located?

18 A. It's in St. Louis County at the central  
19 plant, Chesterfield.

20 Q. Okay. And at that plant do you conduct  
21 water quality samples -- water quality analysis of  
22 samples collected in the field?

23 A. Yes, I do.

24 Q. And are you familiar with that process  
25 of how that is done?

1 A. Yes.

2 Q. Okay. And if you could, can you kind of  
3 walk us through how that process occurs or what is --  
4 what is done?

5 A. Regarding --

6 Q. Water quality.

7 A. -- samples from the distribution system,  
8 samples from the treatment process?

9 Q. Let's focus on samples from the field,  
10 collected from the field service agency.

11 A. All right. Well, if it's a leak sample  
12 or a complaint sample or even sometimes just a  
13 request for analysis of some type, they will  
14 generally call our customer service who will issue a  
15 service order or they'll call out to dispatch in  
16 St. Louis County and they'll issue a service order.

17 The troubleshooters are generally the  
18 ones that go out and deal directly with the  
19 customers. It's a union position, field service.  
20 They'll pick up the service orders in the mornings  
21 and then they'll or else in the afternoons if it's an  
22 evening troubleshooter. They'll go --

23 Q. I couldn't -- what is it collected in?  
24 Is there a certain container or --

25 A. It depends on the type of the sample.

1 If it's just for mineral analysis, metal analysis,  
2 physical wet chemistry, it's collected in a glass --  
3 about a one-liter, usually a dark glass bottle.

4 Q. Okay. What is --

5 A. And if it's a -- if it's a customer  
6 complaint, we'll also pick up a bacteriological  
7 sample. With leaks, we don't pick up bacteriological  
8 samples because obviously the nature of the sample  
9 itself would indicate there's probably no point in  
10 doing that.

11 Q. And why is that?

12 A. Well, if it's a leak, it's -- it could  
13 potential be sewer. If it comes through the ground,  
14 it's probably been contaminated and there would be no  
15 point. It's most likely not going to be a chlorine  
16 residual.

17 Q. Okay. And once those samples are  
18 collected, where -- where are they brought?

19 A. Well, the troubleshooter goes out,  
20 usually call the customer first, they set up a  
21 prearranged appointment. They'll go out and collect  
22 the sample, they'll mark the time the sample is  
23 collected and the location and the date.

24 Then they'll bring -- usually they bring  
25 that sample with the report that they've started, the

1 was service ticket back to the service center.  
2 They'll put it in the refrigerator and the next  
3 morning they're all picked up and brought out to the  
4 central plant laboratory. However, on occasion, they  
5 sometimes bring them directly back to the laboratory.

6 Q. And then how are these samples tested at  
7 your laboratory?

8 A. Well, again, it depends on the nature of  
9 the request. If it's a leak sample, we test for  
10 parameters that we would expect to see that are  
11 consistent with our water, the water that we -- that  
12 leaves our treatment facility and goes into the  
13 distribution system.

14 Q. Okay. Before we talk about those  
15 parameters, what type of tests or machines do you use  
16 to do that?

17 A. Well, we use ion-specific meters,  
18 pH meters, we use spectrophotometers, amperometric  
19 titrators, turbidimeters, steam baths. We do a lot  
20 of hands-on wet chemistry, which actually the person  
21 themselves does the titration them self, the physical  
22 titration.

23 The laboratories that we have in our  
24 treatment plants are pretty much considered  
25 process-controlled laboratories, so we analyze

1 samples to evaluate our treatment process and also  
2 our distribution system. Our compliance samples are  
3 normally sent to our Belleville laboratory. It's the  
4 corporate laboratory in Belleville, Illinois.

5 Q. And why is that?

6 A. The compliance?

7 Q. Correct.

8 A. Well, those are samples that are for EPA  
9 or DNR and they're usually tested at a higher level  
10 with more instrumentation. They're not -- what we  
11 do, we run hundreds of tests a day to monitor the  
12 treatment process. What they do is, we take -- some  
13 of them are monthly samples, some of them are  
14 quarterly, some of them are semiannual. They go over  
15 there to fulfill our federal and the state  
16 requirements.

17 Q. Now, is your -- are your labs that  
18 you -- that you work at in St. Louis, are those  
19 regulated in any way by the State of Missouri or  
20 federal?

21 A. I -- we have a bacteriological  
22 laboratory that's certified by the State of Missouri.

23 Q. And what does that mean?

24 A. That means they come in every three  
25 years and inspect to make sure we're keeping proper

1 documentation and running the tests in the correct  
2 fashion, and they verify who's approved to do the  
3 actual testing and what type of testing we do.

4 Q. And are you current on all those in your  
5 labs?

6 A. Yes.

7 Q. And when a -- when a field sample is  
8 collected for -- to determine whether or not it is  
9 treated water, is there a form or a report generated  
10 when these tests are conducted?

11 A. Yeah, I'd say a preprinted form that has  
12 multiple uses for different types of samples. And  
13 then, again, depending on the nature of the request  
14 and what analysis we want to see, what parameters,  
15 we'll check off which ones we want the technician to  
16 run, the water quality technician or lab technician,  
17 and then they'll perform that analysis.

18 Q. Okay.

19 A. They record those numbers on that  
20 report. It's the same report that was initially  
21 started by the troubleshooter. And then they'll sign  
22 their names to it and someone will usually evaluate  
23 it after that and sign off on it.

24 Q. What is done after it's been signed off  
25 on by the evaluator?

1           A.       It goes to our customer service  
2 technician usually, and sometimes there's a call back  
3 to the customer directly if it's requested, or else  
4 there will be a report generated to be mailed out to  
5 the customer along with a letter explaining the --  
6 the results that we came to or the conclusions we  
7 came to based on the results of the analysis.

8           Q.       And then after the report is done, what  
9 does Missouri American do with it?

10          A.       We file it away and keep it. We're  
11 required to keep analysis depending on what type it  
12 is for X amount of years by the State of Missouri and  
13 the EPA. I think bacteriological is ten or 12 years,  
14 and the -- I believe the other analyses is five or  
15 six, but we keep everything forever anyway, so  
16 it's --

17          Q.       Is --

18          A.       -- it's -- up to three to five years is  
19 usually readily accessible. Anything older than that  
20 is probably in data storage.

21          Q.       And so these reports that you've been  
22 discussing, are they kept -- generated and kept by  
23 Missouri American Water within the -- within its  
24 course and scope of its business?

25          A.       Yes.



1           Q.       Okay. Mr. Simmons, when you perform a  
2 water quality test to determine whether or not water  
3 is treated water by Missouri American Water, what  
4 chemicals or characteristics do you focus on?

5           A.       We focus on -- well, our source water in  
6 St. Louis County comes -- primarily comes from the  
7 Missouri River, about 70 or 80 percent of it, and the  
8 rest of it comes from the Meramec River.

9                    So we -- and we also soften at all four  
10 of our plants, so we concentrate on -- on -- we aim  
11 for certain ranges in our treatment process when it  
12 leaves the facility and we concentrate on those  
13 parameters because that -- it would indicate where  
14 we've added chlorine, we've added fluoride or we've  
15 added lime, and lime will affect the pH, the  
16 alkalinity and the hardness, so we check those  
17 parameters and we can usually get a pretty good idea  
18 if it's our water or not.

19          Q.       Okay. And I assume those parameters are  
20 going to be different from what you would expect to  
21 see in groundwater; is that correct?

22          A.       That is correct.

23          Q.       If you could for the Court, can you, on  
24 this white board, set out maybe the different  
25 chemicals and characteristics you look for and

1 provide a range as to tap water as opposed to  
2 groundwater --

3 A. All right.

4 Q. -- so we have an idea when we're  
5 discussing these exhibits?

6 A. Now, the groundwater is going to be a  
7 much wider range because I have groundwater systems  
8 all over Missouri, and they're markedly different  
9 depending on where you're at. It depends on the  
10 geological --

11 Q. If I -- if I could ask you if you could,  
12 and I'm not sure if you will be able to, but if you  
13 could provide ranges that you would expect to see in  
14 the Spanish Lake if you're familiar or if you know?

15 A. Well, we don't normally analyze  
16 groundwater in St. Louis County due to the nature --  
17 the fact that our source water comes from Missouri  
18 River. I am somewhat familiar with it, but again, it  
19 depends on the geological structure.

20 Q. That's fine.

21 A. Let's see.

22 Q. If you could, it might be easier as  
23 you're writing to describe what you're writing.

24 A. All right. First and foremost, we'll  
25 check a sample for chlorine. If it has chlorine in

1 it, it's treated water. Chlorine cannot be present  
2 in the water unless it's added.

3                   We check the pH because that's a very  
4 important part of our treatment process. We add lime  
5 to soften the water to remove hardness, so we elevate  
6 the pH from what the original pH is. When we add the  
7 lime, we'll begin to change the chemical  
8 characteristics of the water, so we monitor how the  
9 alkalinity changes and also the hardness when you get  
10 down to that.

11                   We also add fluoride to the water.  
12 There's a municipal ordinance in St. Louis County, I  
13 believe there's one in Jefferson City also, to  
14 fluoridate the water. We add ammonia to the water.  
15 We add the ammonia with the chlorine to create what's  
16 called a chloramine. It's just another type of  
17 disinfectant. For various reasons it has a longer  
18 lasting residual, it reduces disinfection byproduct  
19 formation and it also has less of a chlorine taste  
20 and odor.

21                   MR. LEE: Could you spell those words  
22 out, please? I'm not -- I don't have the biology  
23 background.

24                   THE WITNESS: Sure. This one's going to  
25 be tough here.

1                   JUDGE JORDAN: Can you read those,  
2 Mr. Lee?

3                   MR. LEE: Probably when I get up there,  
4 I can. Yeah, I'm fine. Thank you.

5                   THE WITNESS: I apologize. My writing's  
6 not the best. We monitor calcium, there's calcium  
7 present in the water, and we actually add lime which  
8 is also calcium hydroxide. We also -- well, we call  
9 it calcium right now, but we also monitor magnesium.

10 BY MR. NOCE:

11           Q.       Why do you to that?

12           A.       The primary constituents of hardness in  
13 water are calcium, magnesium, the bicarbonates and  
14 carbonates.

15           Q.       You said during the process you actually  
16 soften the water?

17           A.       Yes, we do, which is why you'll see when  
18 I put the ranges up what we're actually looking for  
19 when we do this. We monitor total hardness and then  
20 we also, when it's a leak sample, we'll check  
21 chlorides. Chlorides are naturally -- naturally  
22 occurring. If it the level of chloride is extremely  
23 high or higher than what we're accustomed to seeing,  
24 it can be an indication in a lake sample -- in a leak  
25 sample of sewer -- sewage water.

1                   So get some numbers up here. On the tap  
2 I'm going to put in the ranges that I would expect to  
3 see from our finished water that's in our  
4 distribution system. And on the groundwater, again,  
5 I'm going to put in ranges that I would -- it would  
6 be somewhere in there. Now, these are wide ranges,  
7 though.

8           Q.       Okay.

9           A.       And these are all going to be in what's  
10 called parts per million or milligrams per liter,  
11 it's the same thing.

12          Q.       If I could, can I ask you -- I see that  
13 you've referred to that as residual chlorine. What  
14 do you mean by residual chlorine?

15          A.       Residual chlorine is what we actually  
16 measure in the water after the chlorine demand has  
17 been met. We feed chlorine to the water until all  
18 the -- it's -- all the oxidation takes place.  
19 There's a number of different organisms, bacteria  
20 that exercise a demand on chlorine and also minerals  
21 and metals like the iron, reactionized iron,  
22 manganese.

23                   So there's -- it's just -- ammonia, if  
24 there's natural ammonia, we'll burn it out, we'll  
25 reach a break point chlorination point and then we'll

1 add ammonia after that point. But we want to satisfy  
2 the chlorine demand first. It's actually -- the most  
3 important thing we do is disinfect the water.  
4 Everything else is secondary.

5 MR. LEE: Judge, could you -- could I  
6 ask that some room, please, be left on the side of  
7 that white board?

8 THE WITNESS: Sure.

9 MR. LEE: You -- you're just going to  
10 put about -- some numbers, correct, like that, all  
11 the way across?

12 THE WITNESS: Is this enough?

13 MR. LEE: Yeah, that's plenty.

14 THE WITNESS: Fine.

15 BY MR. NOCE:

16 Q. And then chlorine, what -- what levels  
17 would you expect to see in groundwater?

18 A. Zero. Chlorine has to be added to the  
19 water, it can't exist naturally. When we add the  
20 lime to the water, basically the pH that we look for  
21 in our finished water during our softening process  
22 range from 9.5 to a 10.2, okay? The pH in  
23 groundwater should usually be in the range of 7 to 8.  
24 So you can see that there's going to be a significant  
25 difference after we treat the water.

1 Q. And you said you added the calcium,  
2 you're referring to as lime --

3 A. Lime.

4 Q. -- the calcium --

5 A. Well, now, there's calcium present,  
6 okay? What we do is we add additional lime to the  
7 water to supersaturate it, and we start precipitating  
8 out the hardness. We're actually changing the  
9 chemical characteristics of the water.

10 Q. Okay.

11 A. The phenol saline alkalinity, below a pH  
12 of 8.3 it shouldn't exist, okay? So in this range,  
13 normally you're not going to see anything. As you  
14 get above 8.3, you're converting -- and alkalinity,  
15 you're converting from bicarbonate to carbonate, so  
16 basically, this should be in the range of probably 20  
17 to 25 parts per million.

18 Total alkalinity, our range is about 110  
19 to 120. And groundwater, I've -- now, this is my  
20 experience with the systems that I deal with.  
21 Groundwater total alkalinity can range anywhere from  
22 150 all the way up to -- or actually 100, say 100 up  
23 to 250.

24 Chloride, again, we add fluoride here in  
25 the St. Louis County. The Missouri River is about .3

1 so we add .7 to bring it up to about 1.0. And we  
2 stay very consistently for the most part in the range  
3 of like .98 to 1.02. Groundwater can go from zero up  
4 to three parts-plus, depending on geological  
5 formation and where you're at.

6 Q. But just so -- just so we're clear,  
7 though, you said the Missouri River, the groundwater  
8 near there is what?

9 A. It's about .3.

10 Q. Okay.

11 A. It fluctuates depending on the level of  
12 the river sometimes.

13 Q. Okay.

14 A. Ammonia, you generally run about a .6 to  
15 a .8. And groundwater, it's usually zero, but I  
16 have -- I have systems that you can have up to .6 of  
17 natural-occurring ammonia. Calcium --

18 Q. I'm sorry. I apologize. I keep jumping  
19 in.

20 A. Sure.

21 Q. Ammonia is a -- is a product that we add  
22 to the water in Missouri, American Water adds to the  
23 water?

24 A. We add ammonia to the water, it binds  
25 with the chlorine on a certain ratio and it creates



1 what's called a chloramine, and it's just another  
2 form of disinfectant.

3 Q. Okay.

4 A. And the primary reason is free chlorine  
5 can actually react with organics in the water and  
6 create undesirable products, disinfection  
7 by-products.

8 Q. Okay.

9 A. Calcium, when we treat the water, we're  
10 looking for roughly about a 22 to a 24. In  
11 groundwater you're going to see anywhere from a 30 to  
12 an 80-plus. Magnesium, we're looking at about a 12  
13 to a 14. Groundwater, you're going to see anywhere  
14 from 14 to 30-plus. Total hardness, right, this is  
15 60 to 70. Total hardness is actually 110 to 120.

16 Q. And here you're talking -- what exactly  
17 do you mean by "total hardness"?

18 A. Hardness is -- it's kind of hard to  
19 explain, actually. The hardness is determined by the  
20 type of compounds that are present which is primarily  
21 calcium, magnesium, carbonates and bicarbonates.  
22 Hardness is a nuisance issue. It's not unhealthy,  
23 but it's undesirable. Most customers prefer a softer  
24 water. In St. Louis, again, you need from 110 to  
25 120.

1                   It's not necessarily recommended below  
2 100 because the water can be corrosive at that point.  
3 It might attack your internal plumbing. Hardness,  
4 again, it's hard on electrical appliances, it's --  
5 the harder the water, the more soap you have to use,  
6 the scaling is worse in your home, issues with hot  
7 water heaters, coffee makers, dishwashers.

8           Q.       And what range would you expect to see  
9 it in groundwater?

10          A.       Anywhere from 150, which is low for  
11 groundwater, all the way up to 400-plus. I've seen  
12 600 but not in Missouri, but -- and chlorides, you  
13 generally run 20 to 30. And groundwater, it should  
14 run somewhere around -- anywhere from zero to  
15 30-plus. And again, to illustrate -- or did you want  
16 to go through these or --

17          Q.       Sure. What -- I guess if you want to  
18 explain the significance in your testing what you're  
19 looking for, that might help the Commission.

20          A.       All right. Again, we're a soft -- our  
21 treatment approach is softening. That's what we do.  
22 So besides the disinfection approach, obviously if  
23 there's chlorine in the sample, there's no question  
24 that it's treated water. Chlorine just doesn't --  
25 doesn't show up naturally. It has to be added to the

1 water.

2                   But the rest -- of the rest of these  
3 parameters like the phenol saline alkalinity, the  
4 total alkalinity and the total hardness, the calcium,  
5 magnesium, these ranges that we look for in these --  
6 in these compounds are because of our softening  
7 process. We're starting with -- well, again, we  
8 treat Missouri River water, so to give you an idea,  
9 the pH in Missouri River water is around an 8. We  
10 Alumate it to 9.5 to 10.2.

11                   The average alkalinity, total alkalinity  
12 on Missouri River is about 190. The average hardness  
13 is about 250. The ammonia on the river is usually  
14 about .05, it's not that high. We add it, again, to  
15 bind with the chlorine. We add the fluoride. The  
16 chlorides is fairly consistent on the river. Our  
17 system -- our treatment approach doesn't affect that.

18                   But we can look at these parameters, and  
19 if we're in these ranges which we -- I mean, we are  
20 normally very consistent in these ranges, and we get  
21 a sample in that could potentially be a leak, then we  
22 look for these parameters in that water and it gives  
23 us a pretty good idea. First thing is chlorine,  
24 second thing is fluoride, then we start looking at  
25 some of these others.

1           Q.       Okay. All right. Moving on to the  
2 exhibits, and I've placed an exhibit both in front of  
3 you, Mr. Simmons, right there, and I'll be referring  
4 to those tabs.

5                       But before we do that, I have a quick  
6 question now. Is Missouri American Water subject to  
7 regulations or tariffs that set out these parameters  
8 that it must meet its treated water?

9           A.       Other than your municipal fluoride  
10 requirement ordinance, the rest of them -- well, you  
11 know, we're required to have a certain amount of  
12 chlorine in the water as it leaves the facility. For  
13 chlorines, it's 1.0, for free chlorine it's .5. You  
14 can see we're well over that, actually. One reason  
15 for that is because the size of our distribution  
16 system, it's huge, and we want to maintain that  
17 residual throughout the distribution system.

18                       There are certain requirements, but  
19 disinfection and -- we have a turbidity requirement.  
20 I didn't put that up there because it doesn't relate  
21 to groundwater nor to leak samples. We don't even  
22 check because the nature, again, of where the water  
23 is probably coming from or potentially coming from  
24 would invalidate that test. It's not a really  
25 significant point, but we are monitored very closely.

1 We have to -- we have to submit monthly reports,  
2 quarterly reports, yearly reports to the EPA and  
3 Department of Natural Resource.

4 Q. Okay. Moving to Defendant's Exhibit C 1  
5 which is in that booklet before you. It's on the  
6 tabs, if you could flip there. There should be a  
7 sticker down there. Can you identify this record for  
8 the Court, please?

9 A. Yes. It's a water sample record for  
10 Missouri American Water.

11 Q. And what is your understanding of when  
12 this sample was collected?

13 A. May 20th of last year, 2008.

14 Q. And what is your understanding of where  
15 it was collected?

16 A. Larimore Road from the sewer ditch.

17 Q. Do you have any knowledge as to which  
18 sewer ditch that is referring to?

19 A. No, I do not.

20 Q. Okay. And according to -- can you tell  
21 from this record what tests were performed on that  
22 sample?

23 A. Yes, I can.

24 Q. Okay. And what was that?

25 A. Pretty much what I put on the board in

1 addition to a noncarbonate hardness, residual  
2 chlorine, alkalinity, pH, ammonia, chloride,  
3 fluoride, calcium, magnesium, total hardness and  
4 nondeposit hardness.

5 Q. Can you explain for us how those -- how  
6 you test for those different levels?

7 A. Residual chlorine is tested in two  
8 different ways; one is on a spectrometer which is a  
9 color and metric analysis. It measures the intensity  
10 of a color after we add reagents to it. Similar  
11 somewhat to the field tests they do, but a little bit  
12 more accurate, there's less interference.

13 And then the other tests we do is  
14 amperometric titration which is probably the best way  
15 to measure chlorine. It's an electrical current that  
16 passes between two electrodes. It's very, very  
17 accurate --

18 Q. Okay.

19 A. -- at just -- if there's even a .1 or  
20 less chlorine in the water, it will register.

21 Q. Okay. And what --

22 A. Alkalinity is performed by a wet  
23 chemistry analysis, pH is a pH meter, ammonia is a  
24 gas sensing electrode, chloride is a titration,  
25 fluoride is an -- is an ion-sensing electrode and

1 calcium magnesium total hardness are done by  
2 titration.

3 Q. Okay. And what was the result of -- or  
4 strike that. Based on your review of these results  
5 that are recorded under Defendants' Exhibit C 1, what  
6 is your opinion as to whether or not this water was,  
7 in fact, treated water?

8 A. It is not treated water, in my opinion.  
9 There's no chlorine, the characteristics are markedly  
10 different from what we expect to see in our water and  
11 what we do see in our water consistently.

12 Q. And what -- what -- real briefly,  
13 what -- what inconsistencies are you noting?

14 A. Well, there's zero chlorine, the pH 7.1  
15 or 7.06, the ammonia is barely over .1, the chloride  
16 is higher than our -- in fact, we usually run a tap  
17 comparison at the time and you can see the tap was  
18 18, the sample was 56, the fluoride's .32. Again,  
19 we're consistently in the .98 to 102 range. Calcium  
20 is extremely high. This -- obviously, this water is  
21 hard. It's 338 milligrams per liter. It just -- it  
22 doesn't have any characteristics that would indicate  
23 that it's remotely close to our water.

24 Q. Okay. And I believe you testified  
25 earlier that chlorine at times, there are -- what did

1 you say?

2 A. Chlorine demand.

3 Q. Chlorine demand, correct, thank you.

4 A. Yes.

5 Q. And -- now, that can be -- that can be  
6 found in minerals and soil?

7 A. Yes.

8 Q. Okay. So it's fair to say that if water  
9 is collected after -- if it has traveled through  
10 ground, it could change the composition, it could  
11 result in a zero test result of chlorine; is that  
12 correct?

13 A. Yes.

14 Q. Okay.

15 A. That's correct.

16 Q. What about these other tests like  
17 fluoride? Is that something that -- is there such a  
18 thing as a fluoride demand in the ground?

19 A. No.

20 Q. Is that going to be removed?

21 A. Fluoride is difficult to remove from  
22 water.

23 Q. Why is that?

24 A. It's ion-exchanged. It's just the  
25 nature of the mineral. You have to use ion exchange



1 or some other type of treatment to actually  
2 physically remove it. Our softening process removes  
3 a lot of compounds and contaminates and it can alter  
4 the -- or change the chemistry of some others but it  
5 doesn't impact natural fluoride.

6 Q. But if you were to collect a water  
7 sample relatively close proximity to where a leak is  
8 believed to be occurring, would you expect to see  
9 some chlorine in that water?

10 A. If it's pretty close, I would think. If  
11 it's close to the surface, yeah.

12 Q. All right. And then do you know when  
13 was -- when were the tests on this document performed  
14 according to --

15 A. 5/21, May 21st, 2008.

16 Q. Okay. And then it looks like -- when  
17 were the remarks issued?

18 A. Those remarks of our customer service  
19 technician are actually Marty Robinson. Jane Bishop  
20 is a customer service technician, Marty Robinson is a  
21 bio, and those are his initials. He's a water  
22 quality supervisor at the central plant.

23 Q. And are both of those individuals  
24 qualified to perform these tests?

25 A. The tests were actually performed by --

1 where it says "Lab technicians," Isaac Walk and  
2 Anthony Allen, those -- both laboratory analysts that  
3 actually -- they're not technicians, they're  
4 analysts.

5 Q. Okay. And are they qualified to perform  
6 the tests?

7 A. Yes, they both are degreed and have been  
8 working labs for...

9 Q. And is it your understanding that this  
10 document is -- this record has been kept in the  
11 ordinary course of business by Missouri American  
12 Water?

13 A. That is correct.

14 Q. I'm going to skip up to actually  
15 Defendants' Exhibit C 4 for time's sake. And can you  
16 identify this document for us, please?

17 A. Yes. Similar to water the sample record  
18 for Missouri American Water Company.

19 Q. Okay. And according to this document,  
20 where was that collected?

21 A. This was collected in a drainage ditch  
22 off of Larimore.

23 Q. What's the address on that?

24 A. 11333 Larimore.

25 Q. Okay.

1           A.       I was actually present when this sample  
2 was collected.

3           Q.       You were present at 11333 --

4           A.       Yes, I was.

5           Q.       And what was the date of that that the  
6 sample was collected?

7           A.       1/12 of -- January 12th of 2009.

8           Q.       And what was the purpose of  
9 collecting -- was there was there a reason for  
10 collecting that sample or was that done at somebody's  
11 request?

12          A.       We were actually at the site with Jack  
13 Baker and Jim Hessler of the Department of Natural  
14 Resource. Jerry Horman is a water quality  
15 superintendent at Missouri American Water, and --

16          Q.       And just --

17          A.       -- the four of us were present there.

18          Q.       Okay. And just so the Court knows,  
19 where -- where exactly was this collected according  
20 to this map?

21          A.       I'm not real good with maps. I would  
22 say somewhere around in here probably.

23                   MR. LEE: It's the corner house if the  
24 address is the same --

25                   THE WITNESS: There was a -- there's a

1 church --

2 MR. LEE: -- corner of -- corner at

3 Aspen Woods.

4 MR. NOCE: It says 11333.

5 THE WITNESS: Oh, I'm sorry. I wasn't

6 even looking there.

7 MR. LEE: There you go.

8 THE WITNESS: Okay. All right. Yeah.

9 There was a church right here, I believe.

10 BY MR. NOCE:

11 Q. Okay. And so it was collected right

12 here --

13 A. Right here in this ditch, yes.

14 Q. Okay.

15 A. Sorry.

16 Q. That's okay. All right. And what --

17 was that water tested by Missouri American Water?

18 A. Yes, it was.

19 Q. And what were the results of that test?

20 A. You mean the actual figures on the sheet

21 or the analysis itself?

22 Q. I think we've gone through the process.

23 I don't think we need to go through that again, I

24 guess.

25 A. Okay.

1           Q.       Based on your review of these results  
2 depicted on Defendants' Exhibit C 4, what is your  
3 conclusion as to whether or not this is Missouri  
4 treated water?

5           A.       It doesn't demonstrate any  
6 characteristics of our water.

7           Q.       And what do you base that on?

8           A.       Well, there's no chlorine, alkalinity is  
9 too high, the pH is too low. The ammonia on this  
10 sample showed up extremely high which could be a  
11 couple of things. One, it could actually be an  
12 indication of sewer -- sewage, but the other could be  
13 this -- this is a very poor sample point, very --  
14 there's a lot of color, a lot of dirt, so --  
15 whatever. Just not a very good sample point  
16 actually, because it is a leak sample and there can  
17 be some interference with some of those types. This  
18 is a gas sensing electrode, so...

19          Q.       Would septic -- a septic discharge  
20 result in high ammonia?

21          A.       Possibly, yes.

22          Q.       And why is that?

23          A.       Well, waste, human waste. But the  
24 chloride here is interesting because it's extremely  
25 high, and this was a sewage ditch in January right

1 next to the road, and it didn't apply any type of  
2 chemical. Normally for deicing of the streets, it --  
3 it's chloride, chloride-based, sodium chloride or a  
4 solution of some type of chloride, and that will be  
5 elevated possibly from that too.

6 Q. And again, was this record kept -- or  
7 generated and kept by Missouri American Water?

8 A. Yes.

9 Q. Was within the course and scope of  
10 business?

11 A. Yes.

12 Q. Okay. Moving on to C 5, can you  
13 identify this document?

14 A. Yes. Water sample record, Missouri  
15 American Water.

16 Q. And where does -- where is it indicated  
17 on this record that this sample was collected?

18 A. 1201 McQuay.

19 Q. Okay. And I guess just so we have an  
20 idea, there's a laser pointer I think up there, right  
21 here.

22 A. Oh, okay.

23 Q. I'll represent that this is McQuay.

24 A. 1201?

25 Q. Yep.

1           A.       Right there.

2           Q.       Okay.  Is there any indication that  
3 the -- where this water -- what the source of this  
4 water was?

5           A.       The sump discharge from the house.

6           Q.       Okay.  And when was this water sample  
7 tested by the lab?

8           A.       It was tested on May 21st, 2008.

9           Q.       Okay.  And based on your review, the  
10 results of those tests, was your conclusion as to  
11 whether or not this is treated water?

12          A.       No, it is not.

13          Q.       And why is that?

14          A.       Again, there's no chlorine, the  
15 alkalinity is high and this water is extremely hard.

16          Q.       What does that indicate to you?

17          A.       It most likely is groundwater.  I  
18 mean -- but this is extremely hard.  There could be  
19 some other factors involved, but yeah, that's very,  
20 very hard water.  Chloride is very, very high, again,  
21 fluoride's low.  It just doesn't have any  
22 characteristics of our -- they're extremely, again,  
23 markedly different.

24          Q.       And the fluoride, what is the level  
25 there?

1           A.       .29.

2           Q.       And again, that's not consistent with  
3 Missouri American Water. And was this record kept by  
4 Missouri American Water in the ordinary course of  
5 business?

6           A.       Yes, it was.

7           Q.       Moving on to Defendants' Exhibit C 6,  
8 can you identify this record for the Court?

9           A.       Yes, this, again, is a water sample  
10 record from Missouri American Water.

11          Q.       And when was it collected?

12          A.       May 20th, 2008.

13          Q.       And where was this water collected  
14 according to this record?

15          A.       11408 Larimore.

16          Q.       So let's go back to the map and just  
17 identify it there.

18          A.       All right. That would be right there.

19          Q.       Okay. And does it say the source of  
20 that water?

21          A.       A sump pump.

22          Q.       And again, when was test or sample  
23 analyzed?

24          A.       May 21st, 2008.

25          Q.       Based on your review of the results of



1 that -- of that test, what is your conclusion as to  
2 whether or not this is treated water?

3 A. Again, there's -- I would not consider  
4 this to demonstrate any characteristics of our water,  
5 basically.

6 Q. Based upon what?

7 A. Zero chlorine, the alkalinity, there is  
8 no p alkalinity, the pH is too low, total alk is too  
9 high, ammonia is low, the chloride's too high, the  
10 fluoride's too low, the hardness -- the water's too  
11 hard. Most of these samples are actually even harder  
12 than Missouri River water, significantly, so...

13 Q. Does that have any significance to you?

14 A. It just indicates that probably this is  
15 influenced by Missouri River, but it's also  
16 groundwater based on the location, which isn't that  
17 far from the Missouri River.

18 Q. Okay. And again, Defendants'  
19 Exhibit C 6, is this generated and kept by Missouri  
20 American Water in the ordinary course of business?

21 A. Yes, it was.

22 Q. Moving on to Defendants' Exhibit C 7,  
23 can you identify for the record what this -- or  
24 identify this record?

25 A. Yes, a water sample record from Missouri

1 American Water.

2 Q. And what was date that it was collected?

3 A. June 9th, 2007.

4 Q. And where was this water collected?

5 A. From 11119 Carl.

6 Q. Okay. Where -- where on that property  
7 was it collected?

8 A. From the basement floor.

9 Q. And when was it analyzed?

10 A. It was analyzed the same day, June 9th,  
11 2007.

12 Q. Based on your review of those results,  
13 what is your conclusion as to whether or not this is  
14 treated water by Missouri American Water?

15 A. Does not demonstrate characteristics.

16 Q. What is that based upon?

17 A. Zero chlorine, the alkalinity's -- well,  
18 the p-alk's too low, the total alk is too high, the  
19 pH is too low, the ammonia is low, the chloride is  
20 extremely high, actually; fluoride's low, calcium is  
21 too high, the magnesium is not that high but the  
22 hardness is too high.

23 Just doesn't have any characteristics  
24 that are, you know...

25 Q. This water sample collected, is this

1 consistent with groundwater?

2 A. The chloride's a little high, but other  
3 than that, yeah, it's reasonably consistent with  
4 groundwater.

5 Q. Okay. Was this record generated and  
6 kept by Missouri American Water --

7 A. Yes.

8 Q. -- in the ordinary course of business?

9 A. Yes, it was.

10 Q. Okay. Moving on to C 8. Okay. Again,  
11 Mr. Simmons, can you identify this record for the --  
12 the document for the record?

13 A. Yes. This also is a water sample record  
14 from Missouri American Water.

15 Q. When was it collected?

16 A. May 20th, 2008.

17 Q. Where was it collected?

18 A. 11119 Carl.

19 Q. Where in that property?

20 A. Basement floor.

21 Q. When was it analyzed?

22 A. May 21st, 2008.

23 Q. And based on the results of the tests  
24 conducted by your lab, can you -- have you formed an  
25 opinion as to whether or not this is consistent with

1 Missouri American Water?

2 A. It is not consistent with the  
3 characteristics of our water, no. Zero chlorine, no  
4 p-alkalinity, the pH is low, the total alk is  
5 high, the water is hard, ammonia's low, the chloride  
6 is high, fluoride is low and the calcium is high.

7 Q. Okay. And again, is this water -- is  
8 this sample consistent with groundwater?

9 A. I would think so, yes, somewhat.

10 Q. Okay. And was this record generated and  
11 kept by Missouri American Water in the ordinary  
12 course of business?

13 A. Yes.

14 Q. Moving on to C 9. And can you  
15 identify this record for -- or this document for the  
16 record?

17 A. Yes. It's a water sample record from  
18 Missouri American Water.

19 Q. Okay. And when was it collected?

20 A. May 20th, 2008.

21 Q. Okay. And what was the -- where was it  
22 collected?

23 A. 1119 -- 11119 Carl, I assume. It  
24 doesn't say "Carl" in this one.

25 Q. Okay. And where -- where on that

1 property was it collected?

2 A. The floor of the basement back room.

3 Q. Okay. And again, this was tested at  
4 your lab; is that correct?

5 A. Yes.

6 Q. Okay. And what -- and based on the  
7 results of the tests conducted by your lab, do you  
8 have any opinions as to whether or not this was  
9 Missouri American Water?

10 A. No.

11 Q. And what are those opinions?

12 A. Zero chlorine, total alk is high, pH is  
13 low, ammonia is low, chloride is high, fluoride is  
14 low, the calcium is high and the water's fairly hard,  
15 300.

16 Q. Okay. And again, is the water  
17 consistent with what you would expect to see in  
18 groundwater in this area?

19 A. Somewhat, yes.

20 Q. Moving on to --

21 JUDGE JORDAN: Before we move on to  
22 that, I am just going to interrupt and ask a  
23 question.

24 MR. NOCE: Sure.

25 JUDGE JORDAN: You mentioned something

1 about the date that this was collected. You asked a  
2 question and you made the answer. I'm looking on  
3 here, I'm not seeing a date that it was collected.  
4 Can you find that for me?

5 THE WITNESS: I believe the sample was  
6 attached to the other samples. It all came in at the  
7 same time.

8 JUDGE JORDAN: Okay.

9 THE WITNESS: That's why there is no  
10 date on there.

11 JUDGE JORDAN: Okay. So this is your  
12 recollection of how this sample came in?

13 THE WITNESS: Yes, yes.

14 JUDGE JORDAN: Okay. Thank you.

15 BY MR. NOCE:

16 Q. They were picked up by the same  
17 individual. And just to clarify the record -- well,  
18 when was the date that this sample was analyzed on  
19 Defendant --

20 A. On May 21st.

21 Q. Okay. And was this record kept in the  
22 ordinary -- or was this record generated and kept by  
23 Missouri American Water in the ordinary course of  
24 business?

25 A. Yes, it is.

1 Q. Moving on to C 10, when was this  
2 water -- or what -- can you identify this record for  
3 the -- or this document for the record?

4 A. Water sample records from Missouri  
5 American Water Company.

6 Q. Okay. What was the date that it was  
7 collected?

8 A. March 12th, 2009.

9 Q. And do you know where it was collected  
10 from?

11 A. Basement floor sample.

12 Q. Is it your understanding that this was  
13 collected from Mr. Lee's basement?

14 A. That is -- that is correct.

15 Q. Okay. And who collected this?

16 A. Steve Loethen of the Public Service  
17 Commission.

18 Q. Okay. And when was -- and was this  
19 sample analyzed by your lab?

20 A. Yes.

21 Q. Okay. Based on the results of the  
22 analysis done by your lab, can you provide an opinion  
23 as to whether or not you believe this to be Missouri  
24 American Water?

25 A. I do not believe this to be Missouri

1 American Water.

2 Q. And why is that?

3 A. Zero chlorine, the alkalinity is  
4 extremely high, the pH is low, ammonia's very low,  
5 chloride's very high, fluoride is low, calcium is  
6 very high, magnesium is very high and, like I said  
7 it's extremely hard.

8 Q. You mentioned -- what about the  
9 fluoride?

10 A. Fluoride is low, .39.

11 Q. And was this record generated and kept  
12 by Missouri American Water in the ordinary course of  
13 business?

14 A. Yes, it was.

15 Q. Finally moving on to Defendants'  
16 Exhibit C 11, can you identify this record -- or this  
17 document for the record?

18 A. Yes. This is a water sample record of  
19 Missouri American Water.

20 Q. And what was the date it was collected?

21 A. March 12th, 2009.

22 Q. And what type -- what type of sample is  
23 this?

24 A. This is a tap sample, a finished water  
25 sample.



1 Q. So -- and was this sample collected --  
2 or strike -- excuse me -- was this sample analyzed by  
3 your lab?

4 A. Yes, it was.

5 Q. And what was -- based on those -- on  
6 that analysis, what's your opinion as to whether or  
7 not this was treated Missouri water?

8 A. Yes, definitely repetitive of our water,  
9 very much so.

10 Q. Okay. And why is that?

11 A. The chlorine 2.4, right in -- everything  
12 is basically pretty much right in the range that we  
13 would like it to be in. It looks very good. Very  
14 consistent with -- with what we have at the plant.

15 Q. Okay. And Mr. Simmons, our --  
16 Mr. Simmons, based on your review of all these that  
17 we've gone over, Exhibit C 1, 4, 5, 6, 7, 8, 9, 10  
18 and 11, have you seen anything that leads you to the  
19 conclusion that any of the water other than this tap  
20 sample collected has shown characteristics that are  
21 consistent with Missouri American Water?

22 A. No, they have not.

23 MR. NOCE: Thank you. I don't believe I  
24 have any further questions for you at this time. I  
25 would ask that Defendants' Exhibits C 1, C 4, C 5, C

1 6, C 7, C 8, C 9, C 10 and C 11 be admitted into  
2 evidence.

3 JUDGE JORDAN: That's 1, 4, 6, 7, 8, 9,  
4 10 and 11; is that correct?

5 MR. NOCE: And 5.

6 JUDGE JORDAN: And 5.

7 MR. NOCE: 5.

8 JUDGE JORDAN: All right. And do I hear  
9 any objection?

10 MR. RITCHIE: The Staff has no  
11 objections, your Honor.

12 JUDGE JORDAN: Mr. Lee, any objections?

13 MR. LEE: None from me.

14 JUDGE JORDAN: All right. Then they  
15 will be admitted into the record.

16 (EXHIBITS C1, C4, C5, C6, C7, C8, C9,  
17 C10 AND C11 WERE RECEIVED INTO EVIDENCE AND MADE A  
18 PART OF THIS RECORD.)

19 JUDGE JORDAN: Cross-examination from  
20 Staff.

21 CROSS-EXAMINATION BY MR. RITCHIE:

22 Q. Mr. Simmons; is that correct?

23 A. Yes, sir.

24 Q. I'm counsel for the Public Service  
25 Commission. I just wanted to address a couple of

1 things to make the record clear. When you were  
2 writing the figures on the board here, I'm not sure  
3 that you read the chlorine figures out loud, that you  
4 just wrote those.

5 A. At the top, 2.4 to 2.8.

6 Q. That's for the -- that's for the tap  
7 water?

8 A. Yes, residual chlorine for tap water.

9 Q. And -- and what is it for groundwater?

10 A. Zero. It should be. Or surface water,  
11 for that matter, and lakes and rivers, and...

12 Q. And I believe the same for the total  
13 alkalinity, I'm not sure that that was read out loud  
14 either.

15 A. 60 to 70 milligrams per liter is  
16 generally the range for tap and the total alkalinity.

17 Q. And for groundwater?

18 A. It can vary, but anywhere from 100 to as  
19 high as 250 or higher, actually.

20 Q. Okay. And in Exhibit -- Defendants'  
21 Exhibits C 10 and C 11 -- I'm sorry. I'm going to  
22 grab my book here. Okay. You testified that Steve  
23 Loethen took the samples. I just wanted to clarify,  
24 you had mentioned that he's from the Public Service  
25 Commission?

1 A. I thought he was. I'm not positive.

2 Q. I just wanted to clarify that that is  
3 Steve Loethen --

4 A. Loethen.

5 Q. -- of the Public Service Commission  
6 Staff, and that's L-o-e-t-h-e-n.

7 JUDGE JORDAN: You might want to ask him  
8 whether he knows that.

9 BY MR. RITCHIE:

10 Q. Would that be correct?

11 A. That is correct, yes.

12 MR. RITCHIE: Thank you. No further  
13 questions.

14 JUDGE JORDAN: Cross-examination from  
15 Mr. Lee.

16 CROSS-EXAMINATION BY MR. LEE:

17 Q. Hi, Mr. Simmons.

18 A. Sir.

19 Q. I'm Rob Lee, I'm the owner of the  
20 basement where the water came from. If I could start  
21 with No. 11 first where you analyzed the tap water.

22 A. Yes.

23 Q. And then you compared that to the  
24 basement water which, was that in No. 10, wasn't it?  
25 Basement floor sample. Yes.

1           A.       Yes.

2           Q.       Okay.  So my question is, isn't the only  
3 thing these two tests are telling you that the water  
4 on the floor didn't come out of my tap?

5           A.       It tells me the water on the floor  
6 wasn't treated.

7           Q.       Do you know that 100 percent for sure  
8 that that water on the floor was not treated?

9           A.       At some point, no, I do not know that it  
10 could not at some point have been treated, but I can  
11 tell you based on that snapshot in time that this  
12 water does not exhibit any characteristics of treated  
13 water.

14          Q.       Okay.  That I can accept.  So these  
15 chemicals are for basically water right out of the  
16 tap; is that correct?

17          A.       Well, these are actually -- most of  
18 these --

19          Q.       Or the system?

20          A.       -- yeah, these -- these are ranges that  
21 we would expect to see out of a tap.

22          Q.       In your system?

23          A.       Yes.

24          Q.       Okay.  And these are out of the ground?

25          A.       These -- these are ranges for what you

1 might see from groundwater.

2 Q. This groundwater or rainwater? Would  
3 rainwater be different?

4 A. This is -- most of these characteristics  
5 I pulled from my own personal experience with systems  
6 that I have worked with around Missouri. So this is  
7 basically what actually can come out of the ground,  
8 okay, and does in certain areas of Missouri, all  
9 right?

10 Just as a comparison purpose, whether  
11 these do not reflect that, can -- and groundwater  
12 actually usually is a lot of times from runoff. It  
13 percolates down through the ground and then recharges  
14 the aquifers. Is that the question you're asking me  
15 or...

16 Q. No, I understand all that. The question  
17 I'm asking is how close to these numbers is  
18 rainwater?

19 A. Rainwater is normally not hard like  
20 that.

21 Q. Even like the first rain that would wash  
22 the pollution out?

23 A. Oh, you mean the runoff. Not the rain  
24 itself, the runoff.

25 Q. Yeah, the runoff --

1           A.       Yeah, runoff from -- yeah.

2           Q.       -- from the ground and the chemicals in  
3 the air get washed out of the air with the rain,  
4 correct?

5           A.       Correct.

6           Q.       Are any of these chemicals in the air?

7           A.       No, they exist in the ground, calcium,  
8 magnesium, fluoride, but they do not exist in the  
9 air.

10          Q.       Okay. If we took 10 percent of this  
11 water and mixed it with this water, how much would  
12 that throw the test off?

13          A.       You'd have to do it to actually  
14 determine it, but --

15          Q.       So you have no idea?

16          A.       I would think 10 percent wouldn't make  
17 that much difference. It would have to be  
18 significantly more than that, probably, to make that  
19 big of a difference.

20          Q.       But you can't really say that, right?  
21 You've already said chlorine is a reactive chemical.  
22 If 10 percent of this water had organisms in it, that  
23 chlorine would disappear quickly, correct?

24          A.       That's possible, yes.

25          Q.       Okay. If this water ran through 100

1 feet of soil, we really need to get lost here because  
2 we need -- we would need to know which type of soil  
3 or how many different types of soil it went through.  
4 And then, say -- and I need to reference my map here  
5 a second, please. This is the same as Exhibit A,  
6 only this map shows a quarter-mile radius is why I  
7 would want to use this map instead of the one down  
8 here.

9                   If we had a water leak right here which  
10 is outside of that quarter-mile radius, my house is  
11 down here, that would run through the ground for over  
12 a quarter mile, correct?

13           A.       I guess, yes. That would seem correct.

14           Q.       It could have went -- literally went  
15 through hundreds of soil samples -- soil types, I  
16 mean. It could have literally went through hundreds  
17 of feet of pesticides or herbicides or any kind of  
18 runoff that people use from their ground, you know,  
19 to fertilize their garden, to make their grass grow.  
20 It could have went through many different rock types  
21 which contained calcium and many other minerals, and  
22 after that went a quarter mile, would you expect to  
23 be able to identify it?

24           A.       I don't think it would resemble that,  
25 but --



1                   MR. NOCE: I think if I could, I'd like  
2 to pose an objection. I think it's an incomplete  
3 hypothetical. He admits he doesn't have the soil  
4 types, he can't testify as to what this water may  
5 have experienced.

6                   JUDGE JORDAN: That was part of the  
7 question, so if the answer is I don't know, then that  
8 will be the answer, but --

9                   MR. NOCE: Okay.

10                  JUDGE JORDAN: -- subject to that --

11                  THE WITNESS: Yeah, I do believe the  
12 reality of that is that it would take a significant  
13 amount of time for that water to travel that far.

14 BY MR. LEE:

15                  Q. Uh-huh. A week?

16                  A. Oh, no, no, we're talking much longer  
17 than that. In our aquifer it can take months for  
18 water to travel that far.

19                  Q. It can --

20                  A. In the ground.

21                  Q. -- and it can take a long time. If that  
22 water was traveling through a trench that was full of  
23 gravel, had a water main in it, was full of some more  
24 gravel and had a top of soil on it, would it take  
25 that long to permeate the gravel?

1 A. You mean if it came straight up?

2 Q. No. I mean if it went horizontal.

3 A. I couldn't answer that question. It  
4 would depend on elevation, is it downhill, is it  
5 uphill? But again, how packed -- how tightly packed  
6 is it, how much water are we talking about? It's all  
7 hypothetical.

8 Q. Okay. Let's say the water ran out of  
9 the water main, it got diluted with rainwater,  
10 groundwater, we'd even -- we'd need to, say, do one  
11 at 10 percent, 25 percent, 50 and 75 percent, then  
12 we'd need to factor that in by the distance, wouldn't  
13 we?

14 A. Yeah, I don't understand the nature of  
15 the question.

16 JUDGE JORDAN: Yeah, try to rephrase  
17 your question.

18 BY MR. LEE:

19 Q. Say the water leaves the water main --

20 A. Uh-huh.

21 Q. -- over a quarter a mile away from my  
22 house.

23 A. All right.

24 Q. We're not sure how much groundwater  
25 mixes with the water that leaves the water main. We

1 don't even know how long it takes. It seems like it  
2 takes about a week for -- after a water main repair  
3 in my neighborhood for my basement to start to dry  
4 up.

5 JUDGE JORDAN: You need to start your  
6 question again --

7 MR. LEE: Okay.

8 JUDGE JORDAN: -- and ask him a  
9 question.

10 BY MR. LEE:

11 Q. Plus the time --

12 JUDGE JORDAN: Ask him one question.

13 BY MR. LEE:

14 Q. What would that do to these numbers?

15 MR. NOCE: Objection, vague.

16 JUDGE JORDAN: Well, if -- and what is  
17 the objection?

18 MR. NOCE: I would object as vague,  
19 ambiguous, I don't understand the question.

20 MR. LEE: Okay. We start with --

21 JUDGE JORDAN: Only the witness needs to  
22 understand the question --

23 MR. LEE: -- tap water --

24 JUDGE JORDAN: -- and he either does or  
25 he doesn't. Let's get -- let's see if there's an

1 answer to your question first.

2 MR. LEE: We start with tap water --

3 JUDGE JORDAN: No, no, let's -- first  
4 let's find out if the witness can answer the question  
5 you asked.

6 THE WITNESS: I'm not sure exactly --  
7 yeah.

8 JUDGE JORDAN: Okay. Okay. Thank you.  
9 Now let's move on.

10 BY MR. LEE:

11 Q. You're not sure of the question?

12 A. Yeah.

13 Q. Okay. We start with water leaving this  
14 water main.

15 A. All right.

16 Q. It mixes with some percent of  
17 groundwater.

18 A. Okay.

19 Q. On its trip, a quarter mile, over a  
20 quarter mile into my basement, what would you --  
21 could you put the numbers up here that you would  
22 expect to see?

23 A. Not without knowing how much influence  
24 could be from groundwater, how much influence could  
25 be from runoff, how much influence could be from

1 leaking sewer mains, how much influence from  
2 everything.

3 Q. Absolutely. Calcium in the soil,  
4 minerals in the soil, biological --

5 A. It probably wouldn't -- some of those  
6 characteristics might not show up that soon. The  
7 travel time can be extensive for water underground.

8 Q. Right. So the tap water test is really  
9 of no use in this scenario, is it?

10 A. Well, why wouldn't it be? If there were  
11 any characteristics whatsoever in that sample, it  
12 would indicate immediately that it was treated water.

13 Q. Because you can't put the numbers up  
14 here for me.

15 A. No, but you can't -- your -- your  
16 example is strictly totally hypothetical. These are  
17 real numbers that if -- if any of those  
18 characteristics existed in any of those samples that  
19 were collected, it would indicate to me that there's  
20 a real good chance that that was treated water --

21 Q. There has not --

22 A. -- and we would investigate further.

23 JUDGE JORDAN: This is not the time for  
24 you to testify, this is the time for you to ask  
25 questions, and you can do that hypothetically, but

1 it's not time for you to testify.

2 BY MR. LEE:

3 Q. In the water samples there was no  
4 mention of how far the water traveled.

5 A. In these samples?

6 Q. Correct.

7 MR. NOCE: Is that a question?

8 MR. LEE: Yeah.

9 MR. NOCE: I don't think that's a  
10 question.

11 THE WITNESS: How would you determine  
12 that?

13 BY MR. LEE:

14 Q. Is -- is there any reference in the  
15 water samples for how far the water traveled before  
16 it ran into my basement?

17 A. I don't know how you would ever  
18 possibly -- you know what the water table in your  
19 area? Is it high?

20 Q. When the water mains are leaking, I can  
21 turn a shovelful of dirt over and a shovel fills.  
22 It's almost --

23 JUDGE JORDAN: Okay. Hang on, hang on.

24 When you get a question, don't answer with a  
25 question. Answer his question. And if the answer --

1 THE WITNESS: Okay.

2 JUDGE JORDAN: -- is -- if it calls for  
3 a yes or a no, do that --

4 THE WITNESS: Okay.

5 JUDGE JORDAN: -- and if you can't  
6 answer the question in that form, just say I can't  
7 answer it or I don't know.

8 THE WITNESS: Okay. I don't -- I don't  
9 know how far that water travels.

10 BY MR. LEE:

11 Q. Okay. If the water didn't travel a  
12 quarter mile to my basement and it traveled 100 feet  
13 with 25 percent rainwater added to it, could you put  
14 the numbers up here?

15 A. No, I couldn't.

16 Q. So this -- the tests do not determine  
17 that that water did not flow out of that main; is  
18 that correct?

19 A. Right. They do not determine that the  
20 water came out of that main at all.

21 Q. It doesn't determine --

22 A. They have no characteristics whatsoever  
23 of the water that's in the main, so how would we be  
24 able to determine that it was -- if there are  
25 absolutely no characteristics resembling our water, I

1 don't understand the nature of the point there.

2 There's no way that's all hypothetical.

3 Q. Do these tests determine that that water  
4 did not come out of that water main?

5 A. They do not indicate any -- any  
6 characteristics.

7 Q. I've heard that repeatedly.

8 A. Yeah.

9 Q. Do these tests determine --

10 A. In my estimation --

11 MR. NOCE: Asked and answered.

12 JUDGE JORDAN: Was that an objection?

13 BY MR. LEE:

14 Q. -- 100 percent, 100 percent that --

15 THE COURT REPORTER: Mr. Lee -- Mr. Lee,  
16 wait just a minute.

17 MR. NOCE: Objection, this has been  
18 asked and answered. I think we need to move on.

19 JUDGE JORDAN: Yeah, I think I -- I  
20 think I understand the point. I think I understand  
21 the point. Your question is do these documents  
22 eliminate the possibility to a percentage of 100 --

23 MR. LEE: After it runs a quarter mile.

24 JUDGE JORDAN: Please wait. -- that any  
25 water in these samples did not at some time exist in



1 the main.

2 MR. LEE: Correct.

3 JUDGE JORDAN: Okay.

4 THE WITNESS: No.

5 JUDGE JORDAN: Okay. Thank you.

6 THE COURT REPORTER: I didn't hear your  
7 answer.

8 THE WITNESS: No.

9 THE COURT REPORTER: Thank you.

10 JUDGE JORDAN: Okay. Do you have any  
11 more questions, Mr. Lee?

12 MR. LEE: I do.

13 JUDGE JORDAN: And they'll be questions  
14 we've not yet heard, correct?

15 MR. LEE: I think so.

16 BY MR. LEE:

17 Q. How long would this tap water have to be  
18 in contact with soil before it destroyed your  
19 readings?

20 A. I do not know that.

21 Q. Oh, I was curious how you measured the  
22 chlorine again. I kind of missed that. Did you say  
23 two electrodes?

24 A. Yes.

25 Q. And then --

1           A.       There's a reagent called phenyl oxygen  
2 oxide that's added as a titrant.

3           Q.       Those are chemicals --

4           A.       Yes.

5           Q.       -- that are put into the water with  
6 chlorine?

7           A.       And you measure the electrical current  
8 as it passes between the electrodes, and that gives  
9 you a chlorine reading, the level of how much is in  
10 the water.

11          Q.       So many millivolts and then you convert  
12 it to a decimal?

13          A.       Yeah, it actually -- you look how much  
14 you use of the reagent, the titrant, and that's --  
15 gives you an idea of how much chlorine in there.  
16 It's a -- there's a needle there that will move  
17 whenever you titrate. And if it doesn't move at all,  
18 there's no chlorine in the water. If it even moves a  
19 little bit, it will indicate there's some little bit  
20 or little amount of chlorine in the water.

21          Q.       So you get a voltage in --

22          A.       No. It actually -- you read off the  
23 scale off the --

24          Q.       Meter itself?

25          A.       -- the direct that you're actually

1 titrating with as you watch the needle, how much  
2 chemical does it take to make that move. It actually  
3 is very accurate. It's what we use to set up our  
4 curves for our spectrometers.

5 Q. Okay. One other question. The accuracy  
6 of the test, each test, every test has a plus and  
7 minus so many degrees of accuracy. Do you know, how  
8 accurate are these tests?

9 A. Most of these are plus or minus 2  
10 percent, and all these methods come out of standard  
11 methods which is American Waterworks-approved testing  
12 methodology.

13 Q. And how often is the equipment  
14 certified?

15 A. Depending on the manufacturers'  
16 recommendation, some of it's monthly, some of it's  
17 quarterly. We have an internal QA/QC program. All  
18 our analysts and technicians are required to analyze  
19 unknown samples to determine how accurate they are,  
20 how consistent they are.

21 Q. So you're testing your people?

22 A. Yes, absolutely, all good labs do that.

23 Q. Good. I am kind of curious about one  
24 other thing. If water seeped through concrete, I am  
25 not sure, I guess there's lime and many other

1 chemicals in concrete?

2 A. Yes.

3 Q. And if it's seeped through that concrete  
4 for so long that the concrete was beginning to  
5 deteriorate, what would that do to your water sample?

6 A. I would think you would see an elevated  
7 hardness, probably.

8 Q. So that could explain some of the  
9 hardness in my basement water?

10 A. It's possible.

11 Q. Okay.

12 A. Some of the samples were actually harder  
13 even than what I would consider the groundwater to be  
14 which could indicate contact with -- extensive  
15 contact with concrete or limestone.

16 Q. Another question. You're mainly -- you  
17 seem like the head guy at the water treatment plant;  
18 is that correct?

19 A. Just in water quality. I'm responsible  
20 for making sure that we -- we're in compliance with  
21 all our treatment and testing, monitoring, our  
22 reporting of data, yes.

23 Q. Okay. Are you responsible for the lost,  
24 unaccounted for water?

25 A. No, I am not.

1 Q. You have no idea about anything except  
2 quality of the water?

3 A. I'm responsible for the quality of the  
4 water, that's correct.

5 Q. Okay. I believe that. One other  
6 question. You said sometimes the water is  
7 transported in a brown bottle and sometimes it is  
8 not?

9 A. No. It -- we use one-liter brown  
10 bottles, they're sterilized to transport our -- or  
11 they're not sterilized, they're actually washed in a  
12 laboratory grade dishwasher we use to collect samples  
13 with. And then if we are going to pick up a  
14 bacteriological sample, which we don't do with leak  
15 samples for obvious reasons, but for customer  
16 complaints or throughout our system, we use a --  
17 either it's a bottle that's already purchased  
18 sterilized or else we have bottles that we autoclave  
19 and sterilize ourselves for bacteriological testing.  
20 But everything else is picked up in a -- it's a dark  
21 brown, they call them amber color. I believe it's a  
22 one-liter bottle, glass bottle.

23 Q. Every sample is -- uses a brown bottle  
24 so light --

25 A. The one -- yes.

1 Q. -- won't react with the chemicals?

2 A. The ones that we pick up outright in the  
3 distribution system, yes, for customer complaints and  
4 leaks, that is correct.

5 Q. Okay.

6 A. One liter gives us plenty of water to  
7 work with if we need to do additional testing on it.

8 Q. Okay. I had another question. If any  
9 of this was coming from a sewer or a septic system,  
10 wouldn't that be very easy to identify in your lab  
11 biologically?

12 A. The only test in here that could  
13 possibly indicate that would be if the ammonia was  
14 very high, it could potentially indicate that or if  
15 the chloride was extremely high.

16 Now, the MCL, the maximum contaminant  
17 level for chloride is 250, and none of these samples  
18 were that. Even though they're higher than what our  
19 water is -- and I think especially the one would  
20 indicate probably runoff from the streets in January,  
21 salt -- salt compounds. But other than that, we --  
22 you know, we're a water -- a water system and a water  
23 laboratory, not a wastewater as far as...

24 Q. I get that. I was just --

25 A. But ammonia would be an indicator, yeah.

1 If it was very high in ammonia, that would  
2 indicate...

3 Q. Can I use the colored copies for 14?  
4 14, I believe that's 11533 -- 334, I guess. But I  
5 had complained about water flowing out of the ground  
6 here.

7 THE COURT REPORTER: I can't hear you,  
8 Mr. Lee.

9 BY MR. LEE:

10 Q. I had complained about water flowing out  
11 of the ground here. This is in front of this house  
12 that's a large iceberg, and you can see there's no  
13 other -- much other...

14 JUDGE JORDAN: Do you want to tell us  
15 what date you're talking about?

16 BY MR. LEE:

17 Q. We looked at page A and now we're  
18 looking at page B, 14 B. And Missouri American went  
19 out there. That's another good picture of it. And  
20 they determined that this water was flowing --

21 JUDGE JORDAN: Let's ask a question, not  
22 give testimony here.

23 MR. LEE: Okay. Thank you.

24 BY MR. LEE:

25 Q. If this water was flowing from the

1 septic tank in this house, thousands of gallons of it  
2 as it appears to be, would you expect to see some  
3 indication of it being -- coming from the tap?  
4 They're -- they claim that the septic tank overflowed  
5 and that it --

6 JUDGE JORDAN: Well, it --

7 BY MR. LEE:

8 Q. If the septic tank had overflowed and  
9 caused the field to overload and the water was just  
10 coming straight on from the toilet into the yard,  
11 would you expect to have some characteristics of tap  
12 water?

13 A. I don't know. This water -- are you  
14 talking about here? The water is --

15 Q. Here, that's a big iceberg from the...

16 A. You've got a lot of organics here, so I  
17 don't know what -- there would be chlorine demand  
18 exercised. I -- most septic tanks will -- most of  
19 the chlorine will not survive a septic tank.

20 Q. Even if it's just flowing straight  
21 through?

22 A. If it's just flushing out, I -- you  
23 know, I don't know. I've never had any experience  
24 with septic tanks.

25 Q. So we really don't know. The test



1 didn't determine it either way?

2 MR. NOCE: If I could object here. I  
3 think we're arguing about water that he admits is not  
4 coming from the Missouri American Water main. I'm  
5 not sure what the relevance is of this line of  
6 questioning.

7 JUDGE JORDAN: I understand. He's going  
8 from the quality of chlorine testing.

9 MR. LEE: Not only chlorine testing, the  
10 whole testing process. This water flowed straight to  
11 the septic tank, ran out in the yard, and we call it  
12 groundwater. I saw it flowing out into the toilet.

13 JUDGE JORDAN: Actually, ask the  
14 question --

15 MR. NOCE: Again, this is testifying.  
16 He's testifying here.

17 JUDGE JORDAN: I understand that because  
18 he's not a trained professional.

19 BY MR. LEE:

20 Q. If that water flowed into the toilet and  
21 ran 24 hours a day with a wide-open ball, which I  
22 don't know how many gallons that is, you may know --  
23 that's a lot -- into the septic tank, overloaded,  
24 overfilled the septic tank and was flowing straight  
25 out into the field, would you expect to see some of

1 your readings, then?

2 A. I honestly can't answer that. It's  
3 possible if it wasn't in contact with any other thing  
4 that could exercise demand to change the  
5 characteristics.

6 Q. But because you didn't see any of these  
7 ratings --

8 A. What's this got to do with a leaky main,  
9 I guess? This is coming out of a septic tank.

10 Q. It has to do with the quality of the  
11 testing. This water flowed out of the tap.

12 JUDGE JORDAN: Okay. We've been through  
13 that. You explained the scenario to him. His answer  
14 is he does not know.

15 THE WITNESS: Yeah.

16 BY MR. LEE:

17 Q. To me it looks like these numbers  
18 overlap.

19 A. Somewhat. Some of them are numbers that  
20 won't necessarily change that much.

21 Q. These numbers overlap.

22 A. Neither of these indicate these types  
23 of -- based on our normal level of treatments, we  
24 would not change these numbers that much in our  
25 treatment process. In other words, you can see that

1 right there. We do not -- the only way to change  
2 this number is to do what's called excess lime --

3 THE COURT REPORTER: I'm having --  
4 really struggling trying to hear you guys. Sorry.

5 THE WITNESS: Oh, I'm sorry. All I'm  
6 saying is that these two parameters in particular are  
7 not impacted by lime softening at the level we saw  
8 them.

9 JUDGE JORDAN: For the record, which two  
10 are those?

11 THE WITNESS: Magnesium and chlorides.

12 BY MR. LEE:

13 Q. Okay. This one is in the same  
14 parameter.

15 JUDGE JORDAN: And which one is that?

16 THE WITNESS: Ammonia.

17 BY MR. LEE:

18 Q. Ammonia.

19 A. There is naturally occurring ammonia in  
20 groundwater and there's also ammonia in sewage, so...

21 Q. These are in the same parameters, right?

22 JUDGE JORDAN: Which two are "these"?

23 BY MR. LEE:

24 Q. No, they're not. I'm sorry.

25 A. pH is much higher on tap than you would

1 expect to see in the groundwater or surface water.

2 Q. Okay. And what's this one, then, zero  
3 to 1.02?

4 A. This is .98 to 1.02, yes. This is --  
5 this is the fluoride level in our system based on .3  
6 in the Missouri River and .7 that we add, so we  
7 consistently run in this range. Groundwater can have  
8 zero -- I have systems with zero fluoride and I have  
9 systems that have 1.7 fluoride. There are systems up  
10 in Troy, Missouri that have almost three parts of  
11 fluoride. It depends on the geological formations.

12 Q. So that really leaves us with six tests  
13 out of ten chlorine is reactive. It could fall to  
14 zero immediately with any type of bacteria or --

15 A. Not immediately, but as demand is  
16 exercised the chlorine residual will be diminished.

17 Q. Which oftentimes is microbial, correct?

18 A. Could be.

19 Q. Which the ground is full of microbes?

20 A. It's more likely going to be oxidized by  
21 something else.

22 Q. But the potential for oxidation once it  
23 hits the soil is huge, right?

24 A. Once in -- you know, I -- it depends on  
25 what's there. You know, I have no idea.

1           Q.       We don't know. That's what I'm -- the  
2 point I'm trying to make. And pH, what do you do to  
3 change that?

4           A.       We add lime, quick lime, limestone,  
5 calcium hydroxide, calcium oxide, and that's to raise  
6 the pH, get us into a range where we begin to change  
7 the chemical characteristics of the water.

8           Q.       Lime is naturally occurring in the soil;  
9 is that correct?

10          A.       Yes.

11          Q.       So that's really not even an accurate  
12 test?

13          A.       Well, no, that is an accurate test  
14 because that's pH. You can have a high hardness or a  
15 high alkalinity in a low pH water. It's not  
16 necessarily related. What -- it's not exactly --  
17 it's not the same as what we're doing to the water.  
18 We're actually adding lime product and causing the  
19 water to change. We're elevating the pH of the  
20 water.

21          Q.       Right. Is this limestone they put in  
22 these mains?

23          A.       I don't...

24                   MR. NOCE: He can't testify.

25                   THE WITNESS: Oh, he -- oh.

1 BY MR. LEE:

2 Q. White gravel, do you know?

3 A. White gravel? I don't know what type of  
4 gravel you use for backflow, actually.

5 Q. But once water hits the soil, it's a big  
6 possibility that that could alter...

7 A. It would -- I can't answer that either.  
8 It would be significant -- it would have to be  
9 significant and these things usually --

10 Q. But lime occurs in the soil naturally.

11 A. -- it takes -- it takes time, exposure  
12 over time to make most changes.

13 Q. And you said the alkalinity could change  
14 from the concrete, correct?

15 A. The hardness could elevate -- the  
16 alkalinity could probably be impacted possibly.

17 Q. So is that both of these?

18 A. No. This was more pH-based.

19 Q. And that's from the lime, right?

20 A. This is from when you -- you add lime to  
21 raise it above 8.3 pH. All these samples, most of  
22 these samples were below that level, but --

23 Q. And lime is occurring, naturally  
24 occurring, and this is --

25 A. Not in all areas, only in some areas.

1 You'd have to check the geological formations of the  
2 area that you live in to find out how much limestone  
3 is actually present.

4 Q. Yeah, so --

5 THE COURT REPORTER: Your Honor, I am  
6 really -- I'm having trouble hearing and --

7 MR. LEE: I'm sorry.

8 MR. NOCE: What's the question, I guess?

9 JUDGE JORDAN: And was there an  
10 objection in the meantime?

11 MR. NOCE: We're getting close to  
12 argumentative. This line of questioning is  
13 argumentative here with Mr. Lee testifying as to what  
14 he believes and then --

15 JUDGE JORDAN: I'm only hearing -- I'm  
16 only hearing questions and I'm not really hearing  
17 argument, so I don't know -- so I'll overrule that  
18 objection.

19 BY MR. LEE:

20 Q. So lime changes alkalinity; is that  
21 correct?

22 A. Over time, given significant time,  
23 anything can change, that is correct.

24 Q. On that test isn't -- does calcium --  
25 that sounds like a naturally occurring mineral in

1 soil; is that correct?

2 A. We actually change the calcium levels in  
3 the water with our treatment process.

4 Q. Is calcium naturally occurring in the  
5 soil?

6 A. Yes. Not in soil, in geological  
7 formations.

8 Q. Geological formations. So what does  
9 that leave, that leaves the total hardness?

10 A. I still don't really see the point  
11 you're making here.

12 Q. The point I'm making is once --

13 JUDGE JORDAN: No, no, no, no. It's not  
14 time for you to make your point.

15 BY MR. LEE:

16 Q. Do you understand --

17 JUDGE JORDAN: Ask him a question. Is  
18 there a question for him?

19 MR. LEE: Do you understand so I can  
20 move on what I'm saying?

21 JUDGE JORDAN: I understand your line of  
22 questioning and I understand the answers. You may  
23 certainly move on.

24 BY MR. LEE:

25 Q. And what changes the hardness?



1           A.       We add lime to reduce the hardness to  
2 soften the water.

3           Q.       More lime like up here to change the pH?

4           A.       The actual -- we add lime that elevates  
5 the pH, we begin to change the chemical  
6 characteristics of the water, we get to precipitate  
7 out calcium carbonate. In other words, we add lime  
8 to supersaturate the water to remove additional lime.  
9 It precipitates it out as we elevate the pH. That  
10 pulls the hardness out, some of the hardness out of  
11 the water depending --

12          Q.       To reduce it?

13          A.       To reduce it, make it a more desirable  
14 product to our customers.

15          Q.       So once -- if it's all lime in the soil,  
16 that test wouldn't even be accurate?

17          A.       Over time, possibly.

18          Q.       So I guess my question is, to determine  
19 that the water running into my basement did not come  
20 from this pipe, what good are these tests?

21          A.       They're -- those tests will tell me if  
22 there are any characteristics in the water in your  
23 basement that are -- match up with what the water is  
24 in our pipe.

25          Q.       Right.

1           A.       We have to have some indication that  
2 that water --

3                   MR. LEE:   We've been here before, right,  
4 your Honor.

5                   JUDGE JORDAN:   Yes, we've been here.

6                   MR. LEE:   Okay.   Exhibit C 4, I can't  
7 remember if I asked this already.   Judge, if I did --

8                   JUDGE JORDAN:   I'm sure someone will  
9 remind us.

10 BY MR. LEE:

11           Q.       C 4 was taken at 11133?

12           A.       Yes.

13           Q.       If that water left a break in the main  
14 right here and ran underground, that's got to be  
15 several hundred feet.   Could you rely on this test  
16 for accuracy, for 100 percent accuracy?

17           A.       I honestly don't know.

18                   JUDGE JORDAN:   Okay.

19                   MR. LEE:   Okay.   I believe that's all.  
20 I'm wearing out here.

21                   JUDGE JORDAN:   Any redirect?

22                   MR. LEE:   Thank you for your time.

23                   MR. NOCE:   Yes, your Honor.

24 REDIRECT EXAMINATION BY MR. NOCE:

25           Q.       Mr. Simmons, if water is alleged to have

1 been traveling from Missouri American Water main for  
2 19 years straight and reaching Mr. Lee's basement,  
3 would you expect to see some characteristics of  
4 treated water?

5 A. No, I would not. 19 years?

6 Q. If it was coming from -- over this  
7 course and had been coming from Missouri American  
8 Water mains and reaching the basement, would you  
9 expect to see some characteristics of treated water  
10 in that water reaching the basement if it had been  
11 doing so for 19 years?

12 A. Oh, for 19 years?

13 Q. Correct.

14 A. A steady stream?

15 Q. Correct.

16 A. I would believe there might be some  
17 characteristics, I guess, yes.

18 Q. Okay. And you did not see any of those  
19 characteristics in any of the tests that were  
20 conducted, correct?

21 A. No.

22 MR. LEE: I have one more question,  
23 Judge.

24 JUDGE JORDAN: Are you through with your  
25 redirect, Mr. Noce?

1 MR. NOCE: Yes, your Honor.

2 JUDGE JORDAN: Okay. You can ask one  
3 question.

4 RE-CROSS-EXAMINATION BY MR. LEE:

5 Q. If for 19 years that water did not run  
6 in a steady stream but it ran through the soil like a  
7 soggy piece of bread and just oozed under the soil,  
8 would you expect to see those characteristics?

9 A. I can't answer that question. I would  
10 doubt, I guess, I suppose.

11 Q. Adding the oozing through the soil plus  
12 the amount of time that it took would really throw  
13 your test results off, I would imagine?

14 A. If it had been over an extended period  
15 of time, it probably would not necessarily resemble  
16 those characteristics over time.

17 MR. LEE: Thank you.

18 JUDGE JORDAN: Is this witness under  
19 subpoena?

20 MR. NOCE: No, your Honor, he's not.

21 JUDGE JORDAN: I'm presuming you have no  
22 more redirect generated from those questions?

23 MR. NOCE: Well, I guess maybe -- maybe  
24 one more. I don't know if my last redirect question  
25 was -- I don't know if I asked him very well in a

1 correct way. So if I could, your Honor, real  
2 briefly.

3 FURTHER REDIRECT EXAMINATION BY MR. NOCE:

4 Q. Mr. Simmons, if it is alleged that water  
5 had been traveling underground from a source -- from  
6 a source believed to be Missouri American Water water  
7 main, wouldn't you expect that characteristic -- the  
8 characteristics of Missouri American Water reaching  
9 the basement to dominate or at least show some signs  
10 of treatment if it had been occurring --

11 MR. LEE: Objection --

12 MR. NOCE: And I'm not saying it's taken  
13 19 years to come from the water main. I'm saying  
14 it's occurring over 19 years.

15 JUDGE JORDAN: I'm going to overrule  
16 your repetitive objection.

17 THE WITNESS: I would think if there was  
18 a significant leak it would show up, yes.

19 BY MR. NOCE:

20 Q. In a continuous leak?

21 A. Yes, yes.

22 Q. Okay.

23 A. Yeah, yes. There's -- yes.

24 Q. All right. You would expect to see what  
25 sort of indications?

1                   MR. LEE: I object to that answer.  
2 We've already said that we didn't know.

3                   JUDGE JORDAN: Well, you can't object to  
4 the answer.

5                   THE WITNESS: Yeah. It would be  
6 difficult to determine that.

7                   JUDGE JORDAN: As long as it is  
8 responsive to the question.

9                   MR. LEE: Can I object to the question?  
10 We already said we didn't know about the  
11 characteristics of water running under the ground.  
12 Now we're saying we do.

13                   JUDGE JORDAN: I'm going to overrule  
14 that objection.

15                   THE WITNESS: I would expect maybe  
16 fluoride and chloride might show up with some  
17 indication, but otherwise, the rest of them would  
18 be terribly -- it would be very difficult to tell.

19 BY MR. NOCE:

20                   Q.       And again, why would you expect to see  
21 fluoride?

22                   A.       Because fluoride, you really can't  
23 remove fluoride. And chloride, you know, unless  
24 there's some sewer contamination, it should remain  
25 fairly steady. I mean...

1 Q. And once last question. Just all the  
2 tests that we've discussed and all those exhibits  
3 that are before you that we've talked about, have you  
4 seen any readings of fluoride that are consistent  
5 with the treated water?

6 A. No.

7 MR. NOCE: Thank you.

8 MR. LEE: Objection. We already said  
9 we didn't know what minerals --

10 JUDGE JORDAN: I've already heard the  
11 testimony. I know what the question was and I  
12 know what the answer was. Okay. You've told me  
13 this witness is not under subpoena from anyone, no  
14 one's subpoenaed this witness; is that correct?

15 MR. NOCE: (Nodded head.)

16 JUDGE JORDAN: Okay. Then you are free  
17 to go or you can hang around in Jefferson City, if  
18 you prefer.

19 THE WITNESS: I appreciate the  
20 opportunity to testify this evening.

21 JUDGE JORDAN: Thank you. Thank you for  
22 your testimony.

23 I will adjourn the hearing until  
24 9 o'clock in the morning. We will reconvene in room  
25 310, we will resume Mr. Lee's case in chief. We are

1 adjourned.

2 (WHEREUPON, the hearing of this case was  
3 recessed until June 10, 2009 at 9 o'clock a.m.)

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| 16 | Exhibit No. 18<br>Respondent's Second<br>Supplemental Responses to<br>Complainant's First Data<br>Requests        | *        |
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| 4  | Exhibit D2<br>Investigation ticket<br>for Lee's basement<br>leak on 4/8/08           | *        |
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| 3  | Exhibit E10<br>Photograph of 1360 Aspen                          |          |
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| 5  | Exhibit F<br>Lee e-mail dated 5/22/09                            | *        |
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| 7  | Exhibit G<br>Lee e-mail dated 3/23/09                            | *        |
| 8  |  |          |
| 9  | Exhibit H<br>Table of Investigations of<br>Complaints/Amendments | *        |
| 10 | * Not yet received into evidence.                                |          |
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