

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing

JUNE 10, 2009
Jefferson City, Missouri
Volume 4

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

DANIEL R.E. JORDAN, Presiding
REGULATORY LAW JUDGE

REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE JORDAN: We're on the record in
3 Case No. WC-2009-0277, Rob Lee versus Missouri
4 American Water Company. Before we went on the
5 record, the parties discussed amongst themselves the
6 admissibility of certain documents that the
7 plaintiff, Mr. Lee, intends to offer into evidence.

8 We are in Mr. Lee's case in chief, and I
9 am going to elaborate on Exhibits 14 and 15. I
10 admitted those provisionally with Mr. Lee tying in
11 their relevance in a theory addressing some claim or
12 defense. He did that to my satisfaction yesterday in
13 his cross-examination of Missouri American's
14 witnesses, and so those exhibits are admitted.

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

17 JUDGE JORDAN: Now, the parties are
18 still discussing Mr. Lee's exhibits, and Mr. Lee is
19 reviewing his documents, so we're gonna take some
20 time now for Mr. Lee to put his exhibits into order
21 so as to speed this process along out of respect for
22 the resources of all the parties present. So we're
23 going to break for --

24 MR. LEE: I'm probably okay, Judge.

25 JUDGE JORDAN: Let's break for about ten

1 minutes.

2 (A RECESS WAS TAKEN.)

3 JUDGE JORDAN: We are back on the
4 record. Mr. Lee is reviewing his documents and we're
5 going to take a break for another 15 minutes. And
6 we'll go off the record again.

7 (A RECESS WAS TAKEN.)

8 JUDGE JORDAN: And we're on the record
9 again just briefly. We've taken our break and we're
10 going to extend it further. We're going to take
11 about -- we'll take ten minutes more and then we will
12 resume and go back on the record. And we're off the
13 record. Thank you.

14 (A RECESS WAS TAKEN.)

15 JUDGE JORDAN: Let's go on the record.
16 We're back on the record and Mr. Lee has been
17 reviewing his documents, and the parties have been
18 discussing the procedure in this case.

19 Mr. Lee, you have video of a half dozen
20 sites that you believe represents current conditions
21 at those sites; is that correct?

22 MR. LEE: That is correct.

23 JUDGE JORDAN: All right. And you think
24 that will take about a half hour, 45 minutes to go
25 through all those?

1 MR. LEE: I do.

2 JUDGE JORDAN: Okay. You also have
3 documents that you'd like to present; is that
4 correct?

5 MR. LEE: I do.

6 JUDGE JORDAN: Tell me the nature of
7 these documents. Are they all the same kind of thing
8 or do you have some different groups?

9 MR. LEE: Some of them are different. I
10 have a stack of customer complaints for the last ten
11 years.

12 JUDGE JORDAN: Okay. What else have you
13 got?

14 MR. LEE: I have got leak reports, some
15 of which I believe were submitted by Matt yesterday,
16 but there are, like, two in here that I would like to
17 include just to show the number of leak reports.

18 JUDGE JORDAN: Okay. And tell me the
19 addresses and times of those leak reports.

20 MR. NOCE: And I guess, your Honor, I
21 think what Mr. Lee is referring to, these are
22 investigations. They're not actual leak reports, but
23 for clarification.

24 JUDGE JORDAN: I appreciate that.

25 MR. LEE: It says leak report on the

1 document.

2 MR. NOCE: Okay. That's fine.

3 MS. BRUEGGEMANN: Your Honor, while he's
4 putting them together, can you remind everyone for
5 streaming purposes that they need to push their
6 microphone on "on" so that they can be heard in the
7 sound system for those listening?

8 JUDGE JORDAN: Tell me a little bit more
9 about that. Are we talking about this?

10 MS. BRUEGGEMANN: Yes. For Mr. Lee and
11 Mr. Noce, for everyone to be clearly heard through
12 the sound system, that the green light needs to be on
13 whenever they're speaking. The court reporter will
14 get it since she's in the room, but it's easier for
15 everyone listening also.

16 JUDGE JORDAN: Thank you. Since I've
17 never done a hearing in this room, I appreciate that.

18 MR. NOCE: Thank you, Shelley, I will do
19 that.

20 MR. LEE: I don't want to hold us up,
21 and I'm sure two more leak reports won't really make
22 much of a difference --

23 JUDGE JORDAN: That's up to you.

24 MR. LEE: -- in the large scheme of
25 things, so I'd like to move on.

1 JUDGE JORDAN: You have customer
2 complaints, some reports of leaks that you might want
3 to offer me. What else have you got?

4 MR. LEE: I have got information
5 provided to me in discovery here. I have information
6 provided to me in discovery from Missouri American
7 Water.

8 JUDGE JORDAN: And what do you believe
9 those documents will show the Commission?

10 MR. LEE: These documents will show the
11 Commission the number of gallons leaking from this
12 water system, and it will speak to the condition of
13 the water system.

14 JUDGE JORDAN: Okay. So the documents
15 that you're referring to right there are -- relate to
16 the amount of water lost in the system within a
17 certain time; is that correct?

18 MR. LEE: That is correct.

19 JUDGE JORDAN: Okay.

20 MR. LEE: There are some other --
21 there's other information on these documents that's
22 repetitious, so...

23 JUDGE JORDAN: Uh-huh. But you would
24 have something in there that's not repetitious; is
25 that correct?

1 MR. LEE: Correct.

2 JUDGE JORDAN: Okay. Are there any
3 other type of documents that you want to show us?

4 MR. LEE: I have more leak reports I
5 presume from the last ten years that I would like
6 to -- I do believe is important and speaks to the
7 integrity of this water system.

8 JUDGE JORDAN: And you said more leak
9 reports. I thought we just talked about leak
10 reports.

11 MR. LEE: I guess I have two different
12 kinds of documents --

13 JUDGE JORDAN: Okay. And how would you
14 distinguish them?

15 MR. LEE: -- called leak reports.

16 JUDGE JORDAN: What's the distinction?
17 Why do you make the distinction between them?

18 MR. LEE: One looks like a work-order-
19 type document with a time stamp on it that is stamped
20 I would presume in the field for the repair, and the
21 other looks like more of the same. I'm not sure why
22 I was provided two sets of leak reports.

23 JUDGE JORDAN: Okay. I wouldn't know
24 that either. It's up to you to characterize these
25 documents and decide whether they're useful to you or

1 not.

2 MR. LEE: They speak to the integrity of
3 the water system and I would like to present them to
4 the Commission.

5 JUDGE JORDAN: Okay. What other sorts
6 of documents do you have for the Commission?

7 MR. LEE: I have more leak reports.

8 JUDGE JORDAN: You have a third type of
9 leak report?

10 MR. LEE: This is another type of --
11 this says "Report Of Leak By Repair Crew".

12 JUDGE JORDAN: Okay. Does that document
13 look different from the other two types?

14 MR. LEE: This document's entirely
15 different.

16 JUDGE JORDAN: So that's a different set
17 of forms?

18 MR. LEE: It is.

19 JUDGE JORDAN: Okay. I'm looking at
20 some pretty hefty stacks as to most of what you've
21 shown.

22 MR. LEE: Correct.

23 JUDGE JORDAN: What other type have you
24 got?

25 MR. LEE: I believe that's all today.

1 You don't want to include the complaints; is that
2 correct?

3 JUDGE JORDAN: Well, the complaints are
4 just things that were said outside -- well, you can
5 offer them if you want, I'll put it that way. You
6 can offer whatever you want, but it will probably be
7 subject to objection. I won't -- just based on what
8 I've heard. I'm not gonna rule on an objection
9 before I've had the offer and the objection made.

10 MR. LEE: Okay. One thing I would like
11 to point out to the Commission in discovery -- please
12 correct me if I'm wrong -- I was told that these
13 documents would require hours and hours of digging
14 through a file cabinet and would be very cumbersome
15 to Missouri American Water, and these appear to be a
16 computer printout.

17 JUDGE JORDAN: Okay. Does that prove or
18 disprove any claim or defense at issue here?

19 MR. LEE: It has nothing to do with the
20 water leaking, it just speaks to the incredibility --
21 the credibility of the company.

22 MR. NOCE: Judge, I move to strike that
23 from the record.

24 JUDGE JORDAN: I'm not gonna strike it
25 from the record, I'm gonna keep it in. I'm not gonna

1 say what kind of weight it has. So these are the --
2 this is the evidence that I see you have prepared for
3 us today.

4 MR. LEE: That is correct.

5 JUDGE JORDAN: The movies of a half
6 dozen sites representing current conditions at those
7 sites.

8 MR. LEE: Correct.

9 JUDGE JORDAN: Take about a half hour,
10 45 minutes to get through that; is that correct?

11 MR. LEE: Correct.

12 JUDGE JORDAN: Okay. Then we have about
13 five sets of documents. I see five sets of
14 documents, three of those sets are leak reports,
15 okay? Then you have a set of customer complaints,
16 and those are complaints, all right? Those are just
17 people saying, hey, I think there's something going
18 on with my system; is that correct?

19 MR. LEE: Correct.

20 JUDGE JORDAN: Okay. Then we finally
21 have some numbers addressing lost water in the
22 system; is that correct?

23 MR. LEE: That is correct.

24 JUDGE JORDAN: And that's everything,
25 isn't it?

1 MR. LEE: That is correct.

2 JUDGE JORDAN: Okay. Looking at your
3 stack of documents, especially involving the customer
4 complaints and the three types of leak reports, your
5 description of them strikes me as likely unduly long
6 and wholly repetitious.

7 However, I would consider presentation
8 of that information to the Commission in some format.
9 Off the record the parties had discussed § 536.070,
10 subdivision 11. Would you like to speak to that
11 provision, Mr. Lee?

12 MR. LEE: I would.

13 JUDGE JORDAN: What would you like to
14 tell me?

15 MR. LEE: I'd like to tell you that this
16 information, that I would like it considered under
17 this 536.070, subdivision 11, to be admitted to the
18 Commission.

19 JUDGE JORDAN: Okay. Can you hand me
20 back my statute book, please? My initial impression
21 is that this subdivision is appropriate to the
22 information that you have, but it speaks to the
23 results of studies, audits, compilation of figures,
24 et cetera, not to the documents themselves.

25 In other words, under this subdivision,

1 you don't put in those documents, you put together a
2 synopsis, okay? And that is very plain to me from
3 subdivision 11.

4 Now, when one does that, this section
5 provides that the person who makes that document must
6 be subject to cross-examination. Is that the kind of
7 device that you were wanting to use?

8 MR. LEE: That means I need to file a
9 synopsis of what I -- how I interpret these
10 documents; is that what you're saying?

11 JUDGE JORDAN: Something like that, yes.
12 Yes, that's what we're talking about. And I take it
13 you haven't actually got such synopsis with you
14 today; is that correct?

15 MR. LEE: I do not.

16 JUDGE JORDAN: Would you like to present
17 such a synopsis to the Commission?

18 MR. LEE: I would.

19 JUDGE JORDAN: I will hold the record
20 open a week past the close of this hearing for the
21 filing of that document. Upon the filing of it, I
22 will schedule a hearing for the cross-examination of
23 whoever prepares that document and it will be subject
24 to objection just like any exhibits offered in this
25 proceeding.

1 Do the parties have any thoughts on that
2 procedure that they'd like to share just now?

3 MR. NOCE: Your Honor, I'm just gonna
4 file an objection on the record as to any synopsis
5 prepared by Mr. Lee. I believe it calls for
6 speculation of his interpretation of these records
7 created by another third party, not by him. I
8 believe that the statute speaks to a synopsis
9 prepared by the maker of the record rather than the
10 maker of the synopsis, and I also believe any sort of
11 presentation of evidence or reference to these
12 records lacks foundation and also subject to the
13 hearsay -- or is also hearsay and inadmissible.

14 JUDGE JORDAN: I note your objections,
15 and certainly you may renew them when the document
16 itself is filed and I will review and rule on those
17 objections at that time when I see the filing, and I
18 will probably issue my ruling on that in writing,
19 because you raise a lot of objections and I think
20 this deserves a thorough analysis.

21 MR. NOCE: If I could have some time to
22 brief it, your Honor?

23 JUDGE JORDAN: Oh, absolutely,
24 absolutely. Once the document is filed, then I'll
25 put out an order setting a schedule for the parties

1 to file their objections.

2 MR. NOCE: Thank you.

3 JUDGE JORDAN: And we'll do that in
4 writing. Anything from Staff on that?

5 MR. RITCHIE: Staff has no objections.

6 JUDGE JORDAN: Okay. Thank you very
7 much. All right. That takes care of these classes
8 of documents, the consumer complaints, the three
9 types of leak reports, and that leaves us with
10 documents showing water lost in this system and the
11 movies.

12 So, Mr. Lee, I intend to take a break a
13 little before 11 as I have announced to the parties,
14 so I think we don't have quite enough time to look at
15 your movies right now before then. I don't want to
16 interrupt that presentation. I'd like to do that all
17 at once. So let's talk about your information on the
18 lost water if that is -- if you're prepared to do
19 that right now.

20 MR. LEE: I guess I'm prepared as I'm
21 gonna be.

22 JUDGE JORDAN: I concur in that
23 analysis. Let's see. I'm gonna -- I've -- I swore
24 you in at the beginning of the hearing yesterday so
25 you are sworn now. You may testify from where -- you

1 may do your direct testimony from where you are, or
2 you may take the stand. It's up to you.

3 MR. LEE: I'm okay here.

4 JUDGE JORDAN: All right then.

5 MR. NOCE: Are we marking anything?

6 MR. LEE: Yeah, I guess we need to enter
7 this into evidence.

8 JUDGE JORDAN: Well, if you want to do
9 that, certainly you may. Remember the procedure is
10 you have to show it to the other party, you have to
11 hand it to the reporter so she can put a mark upon
12 it, and then we'll have a number for it so we can
13 refer to it conveniently.

14 MR. LEE: This is Respondent's first
15 supplemental response and complainant's number two
16 request.

17 MR. NOCE: I guess now would be the best
18 time to object. I'm going to again lodge a
19 continuing objection listing any reference to
20 nonrevenue water. The objection is to the relevance
21 of this. I guess it also lacks foundation as we've
22 discussed ad nauseam I think at this point. These
23 numbers correspond to county-wide and are not focused
24 in on the areas where Mr. Lee has alleged leaks.

25 JUDGE JORDAN: Let me hear a little

1 testimony on the document and, yeah, look at it, and
2 then I'll rule on your objections.

3 MR. NOCE: If I could add -- not to
4 interrupt the proceedings -- if I could have a
5 running objection as to its relevance.

6 JUDGE JORDAN: Well, if I look at the
7 document I might sustain your objection, so I don't
8 want to give you a running objection yet. I might
9 agree with you once I've seen the document, then I'll
10 rule on it. And if I overrule your objection, I'll
11 understand that you have a continuing objection.

12 So, Mr. Lee, what would you like to tell
13 me about this document?

14 MR. LEE: I actually have two that show
15 it's unaccounted for.

16 JUDGE JORDAN: And would you hand
17 those -- are they the same documents, two documents
18 of the same document or different documents?

19 MR. LEE: Different documents.

20 JUDGE JORDAN: Okay. Please give those
21 to the reporter so she may mark them.

22 (EXHIBIT NOS. 18 AND 19 WERE MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 JUDGE JORDAN: Do the other parties have
25 copies of this document?

1 MR. LEE: Not provided by me.

2 JUDGE JORDAN: Maybe they have their own
3 copies.

4 MR. RITCHIE: Staff has what's been
5 provided by the company. I'd like to make sure that
6 we have the same documents here.

7 JUDGE JORDAN: Absolutely. I want us to
8 do that right now.

9 MR. LEE: I am somewhat confused about
10 the information, Judge.

11 JUDGE JORDAN: Well, I don't know how
12 much I can help you with that, Mr. Lee. Do you want
13 to tell me something -- first, has everyone got the
14 documents that Mr. Lee is referring to?

15 MR. RITCHIE: Yes, your Honor.

16 MR. NOCE: Yes, your Honor.

17 JUDGE JORDAN: And they have been marked
18 how?

19 MR. LEE: Exhibit 18 and Exhibit 19.

20 JUDGE JORDAN: Okay. Do you have a copy
21 for me?

22 MR. LEE: I do not.

23 JUDGE JORDAN: Okay. Well, let's have a
24 look at what you've got and I will describe it for
25 the record as to what I am looking at.

1 MR. LEE: Let's look at this one first.

2 JUDGE JORDAN: This is 18. This is
3 good, that's right. Exhibit 18 is Respondent's
4 second supplemental responses -- all right, that's
5 probably a little fast. Respondent's second
6 supplemental responses to complainant's first data
7 requests. That's Exhibit No. 18.

8 Exhibit No. 19 is a document titled
9 Respondent's first supplemental responses to
10 complainant's second request for information. Okay.
11 Mr. Lee, what would you like to tell me about these
12 documents?

13 MR. LEE: These documents have a amount
14 of nonrevenue water, and the part I'm confused about,
15 on page 3 of No. 18, Missouri American Water says it
16 has been tracking unaccounted for water in the
17 St. Louis County system since 2007. "The following
18 are figures for unaccounted water in 1000-gallon
19 units."

20 And then on page 2 of 19, No. 6 states,
21 "The following are figures for nonrevenue water in
22 1000-gallon units in Missouri American Water's
23 St. Louis County system," and that takes it back to
24 1999.

25 JUDGE JORDAN: Okay. Is there anything

1 else you would like to tell me in relationship to
2 those documents?

3 MR. LEE: I would like to tell you that
4 that is a whole lot of water. I've converted the '07
5 losses to 12 and a half billion gallons of water.

6 JUDGE JORDAN: And what else would you
7 like to tell me in relationship to that document?

8 MR. LEE: I believe a portion of that
9 water is running out in my neighborhood as would only
10 be logical to assume.

11 MR. NOCE: Again, objection. This is
12 calling for speculation on Mr. Lee's part. He stated
13 he has to assume this.

14 JUDGE JORDAN: That's -- okay. That
15 much is speculation, but I understand that -- are you
16 relating this to the sites that your movies show?

17 MR. LEE: I am.

18 JUDGE JORDAN: All right. Then I'll
19 take that as an allegation rather than speculation
20 and I overrule your objection as to that.

21 What else would you like to tell me in
22 connection with these documents, Mr. Lee?

23 MR. LEE: That's really all I want you
24 to know is that there's a large amount of water being
25 pumped into the ground. I spent quite a lot of time

1 driving around North County, and I don't see any
2 water flowing -- much water flowing on the surface,
3 just in a few different locations. So a question
4 that comes to my mind is, where does the water go?
5 If it's not running into my basement, it's not
6 damaging people's property, if it's not coming up
7 between cracks in the street, what is the water
8 doing?

9 JUDGE JORDAN: Okay. Is there anything
10 else you'd like to tell me connected with these
11 documents?

12 MR. LEE: That's pretty much it.

13 JUDGE JORDAN: Okay. And you would like
14 to enter those into the record; is that correct?

15 MR. LEE: I would.

16 JUDGE JORDAN: Okay. Mr. Noce?

17 MR. NOCE: Again, I'm gonna object here
18 first to the relevance of these records. Again, as
19 we've discussed, they incorporate the entire
20 St. Louis County area and not Mr. Lee's neighborhood
21 where he is alleging leaks. I believe they also lack
22 foundation -- well, strike that. And I guess
23 Mr. Lee's analysis of these numbers I believe lacks
24 foundation as to -- it requires expert testimony, I
25 believe, on his part which he has not provided any

1 qualifications to lay the proper foundation for him
2 to provide an analysis of this. Subject to that,
3 though, those are my objections.

4 JUDGE JORDAN: Okay. Now, as to the
5 last one, I haven't actually heard an opinion that
6 would require expert testimony so I will overrule
7 your objections on that. And should these -- I don't
8 expect this matter to come up again, but you will
9 have a continuing objection as to them.

10 MR. LEE: Can I say one more thing about
11 this if I haven't said it already?

12 JUDGE JORDAN: First, I'd like to admit
13 them into the record if that's okay.

14 MR. LEE: Okay.

15 JUDGE JORDAN: Okay. They're admitted
16 into the record.

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

19 JUDGE JORDAN: Now, what else would you
20 like to tell me?

21 MR. LEE: I believe these numbers speak
22 clearly to the integrity of this water system.

23 JUDGE JORDAN: We get that.

24 MR. LEE: Just wanted that on the
25 record. Thank you.

1 JUDGE JORDAN: Okay. Mr. Lee, what else
2 do you have for me today other than the videos?

3 MR. LEE: I believe that is all.

4 JUDGE JORDAN: Well, then, let's go
5 ahead and take a lunch break, and when we resume it
6 will be time for cross-examination. Let's go off the
7 record until noon.

8 (DISCUSSION HELD OFF THE RECORD.)

9 JUDGE JORDAN: Let's go back on the
10 record briefly. We're back on the record for just a
11 moment, and Missouri American Water Company had a
12 point that it wanted to make.

13 MR. NOCE: I just ask if Mr. Lee's gonna
14 be presenting further evidence, I'd like him to do so
15 before cross-examination begins.

16 JUDGE JORDAN: And you're right about
17 that. We will view his videos before we subject him
18 to cross-examination. Thank you for that reminder.
19 And we're back off the record.

20 (THE LUNCH RECESS WAS TAKEN.)

21 JUDGE JORDAN: We're back on the record.
22 Mr. Lee is preparing to present his video footage.
23 He'll need just a few moments to bring that up, so
24 we'll take a five-minute intermission and go off the
25 record for five minutes.

1 (A RECESS WAS TAKEN.)

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

3 Mr. Lee is going to make his presentation of videos
4 which he has described as representative of current
5 conditions in his neighborhood. I'm now adjusting
6 the camera to get as good an image of his image as we
7 can. I'm zooming in on the small screen on Mr. Lee's
8 lap top.

9 The parties are watching on monitors in
10 the hearing room, and it looks to me from this
11 distance that at least for now it looks like we'll be
12 able to see what Mr. Lee has to show us.

13 Mr. Lee, would you like to take it from
14 here and tell us what we'll be seeing as we're seeing
15 it?

16 (THE VIDEO WAS PLAYED.)

17 MR. LEE: I believe this first one is
18 water being pumped out of the basement at 1201
19 McQuay.

20 JUDGE JORDAN: Okay. This is water in
21 the basement from 12 --

22 MR. LEE: Actually a sump pump running
23 into the street.

24 JUDGE JORDAN: 1201 McQuay. And when
25 was this taken?

1 MR. LEE: There's a time stamp on here.

2 JUDGE JORDAN: Okay. And has there been
3 any repair affecting this since then? I think we
4 discussed that this morning.

5 MR. LEE: I'm not sure of that to be
6 honest.

7 JUDGE JORDAN: Okay. Well, let's take a
8 look at the time stamp and see what it shows us.

9 MR. LEE: It's not my basement and
10 I'm...

11 MR. NOCE: I'm gonna object to the
12 relevance. This is not an area where there's an
13 alleged leak. He's claiming now the water's being
14 pumped -- he's assuming this, I believe, so I believe
15 this is also a speculation and lack of foundation
16 issue. Mr. Lee did not know the exact source. He's
17 speculating as to the source of the water, where it's
18 coming from.

19 JUDGE JORDAN: Okay.

20 MR. LEE: Judge, this property borders
21 the end of the storm drain. It is the adjoining
22 property to the end of the storm strain at Lilac and
23 Lydia -- or at McQuay and Lydia.

24 JUDGE JORDAN: Okay. So this is near
25 where you believe --

1 MR. LEE: It couldn't be any more
2 nearer. It joins it.

3 JUDGE JORDAN: Okay. Let's back it up
4 there and have --

5 MR. NOCE: And again, Judge, this lacks
6 foundation. Mr. Lee is making the conclusion that
7 this water coming from this storm drain is reaching
8 this basement somehow, that from my knowledge that
9 he's never even been inside the basement. He's
10 videotaping of what he believes is coming out of it.
11 This is purely speculative. There's no foundation
12 for this and it's based on pure speculation and
13 conclusions drawn by Mr. Lee. It's lack of
14 foundation.

15 JUDGE JORDAN: Okay. Well, I'm going to
16 overrule that objection let's take a look and you can
17 describe what we're seeing here if you please.

18 MR. LEE: Okay.

19 JUDGE JORDAN: Can you back that up and
20 start from the beginning?

21 MR. LEE: I am. Here we are,
22 February 23rd, 2009.

23 JUDGE JORDAN: Okay.

24 MR. LEE: This is Carl and McQuay.

25 JUDGE JORDAN: Now, I can't hear the

1 narration that accompanies this video, Mr. Lee. Is
2 that something you want us to hear?

3 MR. LEE: That is all the volume I have.
4 I don't know if that helps any.

5 JUDGE JORDAN: Well, I can't hear it and
6 I doubt anyone else can. Let's try this. Why don't
7 you tell us what you think this is showing us.

8 MR. NOCE: I think that would be better,
9 Judge. Any narration on the video, I believe, is
10 hearsay.

11 JUDGE JORDAN: Well, I will sustain an
12 objection to it because it is inaudible. Can't hear
13 it, so the narration cannot go into the record
14 anyway.

15 (THE VIDEO WAS PLAYED.)

16 MR. LEE: This is a large volume of
17 water being pumped out of the basement. I believe
18 it's 1201 McQuay. This is a sump pump exit here,
19 sump pump drain.

20 MR. NOCE: Again, Judge, a running
21 objection as to all --

22 JUDGE JORDAN: You have it.

23 MR. LEE: I traced it up to the -- to
24 right here. Okay. Now we're at March 6th of '09.

25 MR. NOCE: Can we pause this?

1 JUDGE JORDAN: Is this going to be
2 another location or the same location.

3 MR. LEE: I'm not sure what this is.

4 MR. NOCE: Then I'm gonna have to object
5 to foundation.

6 JUDGE JORDAN: Yeah, I'm gonna sustain
7 that objection because if we don't know what it is,
8 why are you showing it?

9 MR. LEE: It's more leaks in the
10 neighborhood.

11 JUDGE JORDAN: You just said --

12 MR. LEE: I'm not sure exactly what leak
13 this will be.

14 MR. NOCE: Judge, Mr. Lee had all
15 morning to review these and to prepare himself. I
16 think we need to move forward, and I would ask the
17 Commission to do so.

18 JUDGE JORDAN: I've taken a lot of
19 hearing time for Mr. Lee to do exactly that. I mean,
20 this is the time. This is past the time for Mr. Lee
21 to present this video. If he doesn't know what it is
22 by now, I don't think he's going to, so I'm going to
23 not -- I'm not going to watch the next segment if
24 Mr. Lee cannot tell me what it is, okay? And he
25 can't tell me what it is. I think we're done. We've

1 had plenty of time for this and Mr. Lee is still not
2 prepared to tell me what he's got, so I'm going to
3 sustain your objection.

4 Please turn off your camera, sir.

5 MR. LEE: The next video is water
6 flowing off my mailbox.

7 JUDGE JORDAN: Please turn off your
8 camera. Thank you. Do you have anything other than
9 these videos to show us, Mr. Lee?

10 MR. LEE: I do not.

11 JUDGE JORDAN: All right, then. That
12 concludes your case in chief. The witness is
13 tendered for cross-examination.

14 MR. NOCE: Is this okay, Judge, this
15 here?

16 JUDGE JORDAN: I can see it fine. Staff
17 might want to take a different position to see it,
18 but...

19 MR. NOCE: Are you gonna have a problem
20 seeing it? I'm going to use it as a demonstrative
21 aide.

22 MR. RITCHIE: I can sit over here.

23 MR. NOCE: Okay.

24 MR. LEE: Just for the record, if I may,
25 I'd like to object to not being able to show my

1 video. It's become an issue of how good a presenter
2 I am, not whether the --

3 JUDGE JORDAN: No, sir, it's become an
4 issue of how well you have chosen to organize your
5 case. I've taken hours of hearing time for you to
6 prepare your case. Hearing time is not the time for
7 you to prepare your case --

8 MR. LEE: I'm trying --

9 JUDGE JORDAN: The time for you to
10 prepare your case was before the hearing started.
11 I've taken hours of these people's time -- and that
12 is ultimately ratepayer time -- for you to prepare
13 your case, and you haven't done it, still haven't
14 done it. Your case in chief is over. There's no
15 question pending before you, so, no, you may not
16 state --

17 MR. LEE: That's exactly my point.
18 I'm not --

19 JUDGE JORDAN: If you continue to talk
20 out of turn, I will sanction you. Thank you.

21 All right. Mr. Lee has been a witness
22 in his case in chief. He is now subject to
23 cross-examination. I think the order is that Staff
24 goes first, but I'm flexible on that.

25 MR. NOCE: It doesn't matter to me.

1 MR. RITCHIE: It doesn't matter to us
2 either. You can go ahead.

3 JUDGE JORDAN: I see that Missouri
4 American is prepared, so Missouri American, you may
5 proceed.

6 MR. NOCE: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. NOCE:

8 Q. Mr. Lee, I have a few questions for you
9 regarding the evidence that you've submitted here
10 before the Commission. And I'm gonna try to do this
11 in geographical order based on what I understand that
12 your testimony has been, and I'm gonna start up
13 north.

14 It's my understanding that you have
15 submitted Exhibit 16A through 16E which I'm gonna go
16 ahead and grab.

17 And, your Honor, I -- Mr. Lee, I'll
18 provide them to you.

19 I've handed you what's been marked as
20 Plaintiff's Exhibit 16A through 16E, and it's my
21 understanding that those photographs are taken on
22 Coal Bank Court; is that correct?

23 A. Correct.

24 Q. If it will please the Court, I'm gonna
25 go ahead and place a No. 1 tab on Defendant's Exhibit

1 A to mark where these alleged leaks are located.

2 And Mr. Lee, I've placed a No. 1 in
3 front of 1207 Coal Bank Court. Is that approximately
4 where those photographs are shown?

5 A. It is not.

6 Q. Where is that? Can you --

7 JUDGE JORDAN: Excuse me, counselor, can
8 you move the easel a little bit more towards the
9 witness? I'm trying to make sure we can see it on
10 the monitor. A little closer. Closer to the
11 reporter if you please.

12 BY MR. NOCE:

13 Q. Okay. Well, Mr. Lee, I'll ask you what
14 address is depicted in Plaintiff's Exhibit 16A
15 through 16E.

16 A. It's actually 11545 Larimore. Only this
17 is the property facing Coal Bank Court, right under
18 that red thing which I guess is a fire hydrant.

19 Q. Okay. So, now, Mr. Lee, is the marker
20 there, is that in the correct spot?

21 A. Yeah, pretty correct.

22 Q. Okay. And it's your contention in this
23 case that this -- there is a water main leak at or
24 near this location; is that correct?

25 A. At or near, yes.

1 Q. Okay. And that has been alleged in what
2 is -- in a document that's been entitled First
3 Amendment to WC-2009-0277 which was filed on April 6,
4 2009; is that correct?

5 A. Okay.

6 Q. I don't want you to guess. I want to go
7 ahead and hand you the document and you can confirm
8 or deny that.

9 A. Yes, that's alleged in that complaint.

10 Q. Okay. And Mr. Lee, in that complaint
11 you state -- or in that amendment you say, "Recently,
12 just days ago, it rained. Then we had a sunny day of
13 over 70-degree weather. The puddle completely dried
14 up."

15 A. Uh-huh.

16 Q. Please confirm whether or not I read
17 this correctly. And I apologize. I do not have a
18 copy of this.

19 A. Yes, you did.

20 Q. Thank you. So then, Mr. Lee, it's my
21 understanding that this puddle eventually did dry up;
22 is that correct?

23 A. Yes.

24 Q. Okay.

25 A. Then it becomes wet again without any

1 rain.

2 Q. Okay. Well, Mr. Lee, you don't stand
3 outside of this address all day long, do you?

4 A. I don't.

5 Q. Okay. So you don't have any idea of
6 whether or not a resident there or customer there is
7 watering their lawn, whether they've washed their
8 car, whether they've had a sump pump discharge into
9 this area; is that correct?

10 A. I do not know that, no.

11 Q. And have you personally performed any
12 water quality test on the water at this location,
13 Mr. Lee?

14 A. I have not.

15 Q. And have you personally performed any
16 other tests other than visually observing it and
17 documenting it through photograph or videotape,
18 documenting the surface water at that location to
19 determine if, in fact, this is water coming from the
20 Missouri American Water main?

21 A. Any other testing?

22 Q. Correct.

23 A. I have not, none besides visual.

24 Q. And do you believe that the water that
25 you see, the surface water that is displayed in

1 Plaintiff's Exhibit 16A through 16E, is it your
2 contention that regardless of the source of this
3 water, that it is causing the current leaking
4 problems in your basement and has done so over the
5 years?

6 A. Do I believe this specific leak is
7 causing water in my basement?

8 Q. Yes.

9 A. I don't have any way to say that
10 specifically. I know now water is running and
11 continues to run at the north end of my basement, and
12 this is to the north of my property.

13 Q. Okay. So is it your contention that the
14 water displayed there, the surface water there,
15 whatever its source, is a cause of the leaks in the
16 north end of your basement?

17 A. Yes, this leak or a leak near here.

18 Q. Thank you. Mr. Lee, I'm gonna move to
19 the next set of records, the next location where I
20 believe you've alleged a leak, and that was done so
21 in the first amendment to WC-2009-0277 dated
22 April 10, 2009 edition.

23 And I'll go ahead and hand you this
24 document. I'm not sure if we've seen -- let me take
25 that back. Let me see if we have it. I think we do

1 have it. Plaintiff's Exhibit 9A I believe is
2 depicted -- depicts this area. And I'll go ahead and
3 grab those for you. In fact, Mr. Lee, I believe
4 you've described for the Commission that this leak
5 was occurring -- or this alleged leak was occurring
6 on the north -- on Larimore just north of Coal Bank
7 Court, correct?

8 A. Correct.

9 Q. I'll go ahead and place a No. 2 next to
10 that area. And let me know if I place it in the
11 correct area. Is that --

12 A. I don't know exactly where you placed
13 it. It covers two properties and this is not in
14 front of two properties.

15 Q. Okay. What property is that in front
16 of?

17 A. It's in front of 11545.

18 Q. Okay. Is this generally -- I know it's
19 not precise, but is this generally --

20 A. That's generally.

21 Q. Okay. And again, now, did the water
22 that's depicted -- the surface water depicted in
23 that -- in Defendant's Exhibit -- or Plaintiff's
24 Exhibit 9A, does that water ever dry up after periods
25 of no rain?

1 A. Yes, it eventually dries up.

2 Q. And Mr. Lee, have you personally
3 performed any water quality tests on the water
4 depicted, the surface water depicted in those
5 photographs?

6 A. I have not.

7 Q. Have you personally performed any other
8 tests other than visually observing them and
9 documenting the surface water at these locations to
10 determine whether or not this is water coming from a
11 Missouri American Water pipe?

12 A. I have not.

13 Q. And again, do you believe that the
14 surface water, regardless of its source, that's
15 depicted in Defendant's Exhibit 9A, is causing or
16 contributing to the leaking problem in your basement
17 currently today in the north end?

18 A. I believe it's part of the problem.

19 Q. Moving on, I believe we saw a DVD that
20 was marked Defendant's Exhibit 1 which you stated
21 evidenced water leaking out of the ground at the
22 storm drain on McQuay and Larimore on May 28th, 2008;
23 is that correct?

24 A. I presume. If I could see it, I could
25 tell you for sure.

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4 A. I do.

5 Q. Okay. Mr. Lee, are you aware that
6 according to the National Oceanic and Atmospheric
7 Administration, their records for precipitation
8 during the month of May 2008, that nearly 4.3 inches
9 of rain fell in your area in the three days preceding
10 that DVD?

11 A. I am not aware of that.

12 Q. Do you have any reason to dispute those
13 records?

14 A. Without seeing them and researching, I
15 would not be able to dispute them.

16 JUDGE JORDAN: Counsel, will we be
17 putting that into the record or is that something of
18 which the Commission can take official notice?

19 MR. NOCE: I would ask the Commission to
20 take official notice for that particular month. I do
21 have certified records from the National -- from that
22 organization.

23 JUDGE JORDAN: Okay. So you'll be
24 entering those into the record?

25 MR. NOCE: I can if the Commission needs

1 that. It is my only copy, and I apologize.

2 JUDGE JORDAN: We can accommodate that,
3 can't we? Thank you. Thank you very much.

4 MR. LEE: Over what period of time did
5 that rain fall?

6 MR. NOCE: That rain fell from May 26th --
7 from May 25th through May 27th. It totaled over 4.3
8 inches of rain.

9 Well, I guess I could speak to that,
10 Judge. The one concern I have is the way that this
11 organization does this, they tie a knot around it, so
12 it's hard to get, you can't -- cannot remove it or
13 else it loses its official...

14 JUDGE JORDAN: Well, let me have a look
15 at that.

16 MS. BRUEGGEMANN: Your Honor, we could
17 make a photocopy of it that your Honor could compare
18 to the certified copy if you wanted to place that
19 into EFIS as the exhibit, if that would solve your
20 problem.

21 JUDGE JORDAN: Well, it looks like we
22 have -- this is another one of those voluminous
23 exhibits that I don't think we need the whole thing
24 in the record. Is there one particular page in here,
25 counselor, that helps?

1 MR. LEE: I'm not sure if I'm gonna -- I
2 can -- I can -- I know that one in particular if the
3 court would like to put it in the record, I'd ask
4 that it would be.

5 JUDGE JORDAN: Well, I tell you what,
6 why don't we put that on the list of things that you
7 can file within a week at the close of this hearing.

8 MR. NOCE: Okay. I'll keep a list of
9 which ones I do.

10 JUDGE JORDAN: Okay. Thank you very
11 much. Sorry to interrupt, but I did want to clarify
12 that.

13 MR. NOCE: No, that's okay. Thank you.

14 BY MR. NOCE:

15 Q. And again, Mr. Lee, I apologize I didn't
16 do this beforehand. I'm gonna go ahead and place a
17 No. 3. You're saying that this -- the DVD that was
18 taken and the storm drain that we've seen in many
19 photographs and DVDs at Larimore and McQuay is at the
20 intersection, is that correct, or just north of the
21 intersection?

22 A. Correct.

23 Q. Okay. And is this a -- I'll place the
24 No. 3. Is this generally the location of where that
25 storm drain is located?

1 A. The north end of it.

2 Q. So up here?

3 A. No, the north end of that storm drain.

4 Q. Okay. Okay. And again, I believe --

5 and I believe you testified -- you showed a

6 subsequent DVD dated July 9, 2008, where you said

7 there's a lack or a reduction of water at this

8 location; is that correct?

9 A. I believe so.

10 Q. Okay. That was in July, in the summer

11 months, correct?

12 A. Yes.

13 Q. And I assume is that true when there's

14 periods where there's no rain, is there a reduction

15 of water in that area, a flow of water?

16 A. Over time there is. The -- I believe

17 what I tried to show in that DVD, I believe that was

18 several days or a week or two after the water main

19 repair on Coal Bank Court, but I've never been

20 provided the repair records for that, so in my

21 request to sit down and compare the DVD that I have

22 to the repair records has been refused more than

23 once.

24 Q. And Mr. Lee, just to the north of that

25 area, isn't it correct that there's a tomato farm

1 called Moller's [phonetic spelling] Farm?

2 A. Correct.

3 Q. And that's on the same side of the

4 street as the storm drain, north end of the storm

5 drain; is that correct?

6 A. That is correct.

7 Q. And is that uphill from the storm drain?

8 A. The tomato farm?

9 Q. Correct.

10 A. I don't think it is. It's all flat in

11 there.

12 Q. And Mr. Lee, have you personally

13 performed any water quality tests on the water that

14 appears in the storm drain?

15 A. No, I have not.

16 Q. Have you personally performed any other

17 tests other than visually observing and documenting

18 the water at this location to determine if, in fact,

19 there is water coming from a Missouri American Water

20 main?

21 A. I have not.

22 Q. And again, do you believe the water

23 depicted in the DVD on 5/28 of '08 and 7/9 of '08 at

24 this location, the surface water, regardless of the

25 source, is part of the current -- is causing or

1 contributing to the leaks that you are experiencing
2 in your basement and have so over 19 years?

3 A. Absolutely.

4 Q. Over 19 years, that's true, correct?

5 A. Pardon?

6 Q. In over the 19 years that you've lived
7 there; is that correct?

8 A. I believe that's true, yes. I didn't
9 know to document -- start documenting things until
10 '06 when there was a reduction in the flow in my
11 basement right after a water main repair.

12 MR. NOCE: I'd move to strike. I think
13 that's nonresponsive to the question that was posed.

14 JUDGE JORDAN: I will not strike it.

15 MR. NOCE: Okay.

16 JUDGE JORDAN: It's merely cumulative of
17 statements in the record already --

18 MR. NOCE: Okay.

19 JUDGE JORDAN: -- and therefore
20 harmless.

21 BY MR. NOCE:

22 Q. Mr. Lee, I believe the next location
23 where you've alleged that there's an alleged leak was
24 part of a complaint dated March 20th, 2009, and it
25 states that there's water continuously running in the

1 storm drain at Larimore and the railroad -- and RR
2 tracks. Just for location purposes, I'm gonna put a
3 No. 4 on Defendant's Exhibit A. And if you would,
4 please let me know if this is an accurate location of
5 what you're trying to describe in that document?

6 A. Yeah, that's close.

7 Q. Okay. So those photographs that we've
8 seen, I believe 7C is one of those particular
9 photographs that depicted this area. Is that the
10 area that's depicted by the No. 4, Mr. Lee?

11 A. Correct.

12 Q. Okay. And Mr. Lee, you've testified --
13 or strike that. Mr. Lee, is it your understanding
14 that there is no Missouri American Water main on that
15 side of Larimore and this is -- this area is actually
16 south of Larimore; is that correct?

17 A. Yeah.

18 Q. And isn't it true that all the storm
19 drains from the neighborhood up on Aspen Woods and
20 Red River and Taos all dump their water into this --
21 this storm drain along the railroad tracks?

22 A. Those storm drains dump water into that
23 storm drain into this storm drain when it hasn't
24 rained in weeks. There's a constant flow of water
25 into those storm drains. I showed you that when you

1 came to the neighborhood.

2 Q. And then isn't it true, then, that any
3 time somebody would water the lawn, the runoff water
4 is going to collect in the storm drains and it's
5 going to filter down and flow into this area,
6 correct?

7 A. We're not talking about a little
8 sprinkle here. I have seen this storm drain dry up
9 one time in 14 months.

10 JUDGE JORDAN: The witness must answer a
11 yes or no question with a yes or a no. You can
12 redirect yourself when all cross is done.

13 BY MR. NOCE:

14 Q. Is that correct, Mr. Lee, that all the
15 water, when somebody washes -- or waters the lawn,
16 washes their car, discharges their septic field, all
17 that water, all the runoff water from that is going
18 to collect and dump into this storm drain, correct,
19 from that neighborhood?

20 A. I cannot agree to that. I don't believe
21 that water collects, and I have driven through that
22 neighborhood two or three times a day for the last
23 six months, and there's just not that much water
24 flowing into these storm drains from the surface
25 unless it is raining.

1 Q. And Mr. Lee --

2 These are other weather records, Judge,
3 that I'll be putting in.

4 BY MR. NOCE:

5 Q. You've contended that the only time the
6 storm drain's ever dried up was in October of 2008,
7 is that correct, following a repair made on Larimore?

8 A. Following that repair on Larimore the
9 storm drain dried up for a period.

10 Q. Do you know the address?

11 A. For a period of time.

12 Q. And are you aware of the address for
13 that repair?

14 A. I believe that was 11533. Am I correct
15 on that? Yes.

16 Q. And are you aware that that repair was
17 actually made to a portion of the -- a section of the
18 pipe that was customer-owned?

19 A. No, I am not. And I don't believe that.
20 That's not what I saw when I looked in the hole.

21 Q. Well, okay. And Mr. Lee, are you also
22 aware that that repair was made on October 9th, 2008?

23 A. Okay.

24 Q. And are you aware that according, again,
25 to the National Weather records that I have here for

1 October of 2008, the record -- or the week following
2 the repairs, it showed no rain with temperatures in
3 the high 70s and 80s for the following five days
4 following that repair?

5 A. Okay. And how about before the repair?

6 JUDGE JORDAN: No, no, no.

7 BY MR. NOCE:

8 Q. And Mr. Lee, have you ever done
9 anything -- or have you ever performed any tests, you
10 personally, on any of the water shown -- the surface
11 water shown in Plaintiff's Exhibit 7C, performed any
12 water quality tests on that water?

13 A. I have not.

14 Q. Have you performed any other tests other
15 than visually observing them and documenting that
16 water at this location to determine if it, in fact,
17 is coming from a Missouri American Water main?

18 A. I have not.

19 Q. And you believe, Mr. Lee, isn't it
20 correct, that the water from this location,
21 regardless of its source, is causing the current
22 leaking problem in your basement as well as the
23 problems you experienced for the last 19 years?

24 A. The water from where?

25 Q. From this source -- or from this

1 location, the surface water shown in Defendant's
2 Exhibit 7C?

3 A. I believe this is one more -- one more
4 part of the problem.

5 Q. I'll move on to the next location,
6 Mr. Lee, where you've alleged possible leaks. And
7 that is depicted -- or that is alleged in a pleading
8 entitled, "Complaint" which was filed March 20th,
9 2009, and it speaks to, "Water continues to run in a
10 storm drain between 11340 Larimore and Warmann Oil
11 Company."

12 A. Uh-huh.

13 Q. And then I'm gonna go ahead and place a
14 5. I think there may be some confusion as to this
15 location on this map because I don't believe there is
16 an 11340 depicted on the map. I think we know where
17 Warmann Oil is, so we can get it close. And again,
18 this is not an exact location and I understand.

19 A. This is -- you're talking about this
20 one, correct, in the upper photo?

21 Q. Yes, I believe you've stated that's 7F.
22 If you're referring to that, I believe that is
23 correct. I believe your testimony is that that is
24 the storm drain there, correct?

25 A. Correct.

1 Q. Is this about the location, Mr. Lee?

2 A. Yeah, I would say that. Between those
3 two properties is where I believe it is.

4 Q. Okay. Okay. And Mr. Lee, the property
5 that you've discussed is 11340 which is not depicted
6 on that map, correct?

7 A. I don't see 11340 on there.

8 Q. Okay. But it is on the south side of
9 Larimore, this area that you're discussing, correct?

10 A. Correct.

11 Q. So it is on the opposite side of the
12 street as where Missouri American Water main is in
13 this area; is that correct?

14 A. That's really not correct.

15 Q. Okay. Which side of the street is
16 Missouri American Water main according to the
17 evidence that's been presented to you for the
18 records?

19 A. The water main is on the north side of
20 the street, but this is an exit for a storm drain on
21 the north side of the street which just happens to
22 flow under the street.

23 Q. Okay. And isn't this property next to
24 the neighbors' house that you stated at 11338 who has
25 had the toilet problem, or the leaking toilet that

1 you say that you've seen?

2 A. Is it next to the property?

3 Q. Correct.

4 A. Correct. Door one property, that

5 property is one property to the west from here.

6 Q. Exactly, okay. Correct.

7 A. One whole property in between.

8 Q. And I guess, is this property across

9 from the property located at 11347 there, which I

10 believe is depicted in 7 -- is it on 7F, the top

11 photograph, I believe?

12 A. You just said across from that property?

13 Q. I'm sorry. It's the bottom photograph,

14 correct.

15 A. Yes. That is across -- across -- if you

16 look at the storm drain right here, this is straight

17 across from there.

18 Q. Okay.

19 A. So that would put this a little to the

20 west of this storm drain.

21 Q. And isn't it correct that the surface

22 water that's depicted in the bottom photograph in

23 front of 11347 Larimore, it's your understanding that

24 that water is coming from a source from that

25 customer's sump pump?

1 A. That is correct.

2 Q. Do you know what the water table level
3 is at that location, Mr. Lee?

4 A. I do not know in inches. I know that
5 I've lifted the lid on this storm drain right here
6 before.

7 Q. I think, Mr. Lee, you don't have a
8 question before you there.

9 A. My answer has to do with the water table
10 in this area and --

11 JUDGE JORDAN: Your answer is you don't
12 know.

13 MR. LEE: -- on this property.

14 BY MR. NOCE:

15 Q. Mr. Lee, have -- have you personally
16 performed any water quality tests on the water that's
17 flown out of that drainage ditch on the south side of
18 Larimore?

19 A. I have not.

20 Q. Have you performed any water quality
21 tests on the water that is seen -- the surface water
22 seen in front of 11347 in Plaintiff's Exhibit 7F?

23 A. I have not.

24 Q. Okay. Have you performed any other
25 tests at these -- those two locations to determine --

1 other than visually observing and documenting, that
2 determine that it was actually water coming from a
3 Missouri American Water main?

4 A. Other than visual?

5 Q. Yes.

6 A. I have not.

7 Q. Okay. And do you believe that the water
8 from this location, regardless of its source, is and
9 has been causing the leaking problems in your
10 basement for the past 19 years?

11 A. I believe this is part of the problem.

12 Q. Okay. I'm gonna move on to the next
13 source. I'm gonna be brief with this one because I
14 believe this is the one we talked about yesterday.

15 Mr. Lee, in your initial complaint
16 that's dated January 27th, 2009, it states that
17 you're alleging that there's an alleged water main
18 leak based on water running out of the ground and
19 driveway in front of 11334 Larimore Avenue; is that
20 correct?

21 A. That is correct.

22 Q. And it was your testimony, and I believe
23 it's been depicted in Plaintiff's Exhibit 15A as well
24 as 14 -- 15A through C and Plaintiff's Exhibit 14A
25 through H, and I can show you those. And while I'm

1 up here, Mr. Lee, I'm gonna place a 6 on that
2 property. Did I do that correctly?

3 A. You did.

4 Q. Okay. And is that -- are those exhibits
5 that I've handed you, are those the exhibits that
6 depict the surface water that you're speaking of in
7 your initial complaint?

8 A. It does.

9 Q. And Mr. Lee, I believe you testified
10 yesterday that it's your understanding that this
11 water depicted in those photographs is actually water
12 caused by an overflow of a septic tank; is that
13 correct?

14 A. That's what I was told.

15 Q. Do you have any evidence that
16 contradicts that, or any knowledge that contradicts
17 that?

18 A. The only knowledge I have is that the
19 ground remained wet in that area after the repair was
20 made to the septic tank.

21 Q. Do you know whether or not there has
22 been a repair made to that septic tank?

23 A. That I do.

24 Q. Okay. And what is that? How do you
25 know?

1 A. I spoke to the neighbor.

2 Q. So you believe there's an ongoing leak
3 at this location in front of that individual's yard?

4 A. I believe the repair --

5 Q. We're speaking about 11334 Larimore
6 only?

7 A. I believe the repair at Red River and
8 Aspen Woods added to this problem, was the cause of
9 the water that remained at this location after the
10 repair to the -- to the toilet was made.

11 Q. Mr. Lee, isn't it true that the property
12 at 11334 goes uphill from the street?

13 A. Uphill from the street?

14 Q. Correct.

15 A. No.

16 Q. You deny that, that the property at
17 11334 does not slope up from Larimore? That was a
18 bad question. Let me rephrase it. Do you deny that
19 the property at 11334 slopes uphill from Larimore
20 Avenue?

21 A. The house sits up a little bit on the
22 hill. The water problem wasn't at the house, it was
23 at the street, down near the street.

24 Q. Well, the photographs you've depicted
25 show water problems all the way up along the

1 driveway.

2 A. Right. We don't have a photograph of it
3 remaining damp down here by the end of the driveway.

4 Q. And Mr. Lee, have you personally
5 performed any water quality tests on the water that's
6 depicted in Plaintiff's Exhibits 15A through C and
7 14A through H?

8 A. I have not.

9 Q. Have you personally performed any other
10 tests other than visually observing and documenting
11 the water at this location to determine if, in fact,
12 it is coming from the Missouri American Water main?

13 A. I have not.

14 Q. And do you believe the water from this
15 location, regardless of its source, is and has been
16 causing your problems with your basement leaking?

17 A. The water from this source?

18 Q. Correct.

19 A. I believe at one point that that may
20 have been part of it. Although repairing this leak
21 did nothing to solve the water problems in my
22 basement or anywhere else in the neighborhood except
23 for this yard.

24 Q. Okay. I'm gonna move on to the next
25 location. This location is referenced in Plaintiff's

1 pleading entitled second amendment WC-2009-0277, and
2 it's dated April 6th, 2009. And according to this
3 document, you believe that there was -- that there
4 appeared to be another leak at 11339 Larimore, which
5 is across the street from 11334; is that correct?

6 A. Correct.

7 Q. I'm gonna go ahead and put a 7 at that
8 location on the map. And Mr. Lee, is that an
9 accurate location?

10 A. Yes, it is.

11 Q. And this -- and in this particular
12 amendment you're alleging that the water that you'd
13 seen in the storm -- or in the drainage ditch along
14 Larimore Road is evidence of a Missouri American
15 Water leak; is that correct?

16 A. Correct.

17 Q. And I believe in your June 2000 -- June
18 7th, 2009 pleading which is marked Defendant's
19 Exhibit 7G, or one of those I believe you say the
20 property to the west of that at 11333 depicted and
21 shows a reduction in that flow; is that correct?

22 A. That is correct.

23 Q. And that was back -- and that was just a
24 couple weeks ago, correct?

25 A. Correct.

1 Q. And so does this area dry up after
2 periods of no rain?

3 A. The water dried up in front of 11333,
4 and when we get down here by 11339 and 11341, it's
5 flowing up out of the ground again even after the
6 repair on Red River and Aspen Woods. And it's
7 flowing into the drain under the driveways at 11341
8 and 11347.

9 Q. And again, 11347 is the area where you --
10 it's your understanding that the surface water that
11 was depicted in the previous photograph shown to you,
12 that that water's coming from that person's sump
13 pump, correct?

14 A. It's my understanding that the water
15 here by the mailbox is coming from the sump pump, but
16 water --

17 Q. And that drainage ditch is right next to
18 that area, isn't that correct, shown in that
19 photograph actually?

20 A. Yeah, and if you go --

21 Q. Thank you.

22 A. -- further west here, you can see a flow
23 of water headed to the east in that drainage ditch, a
24 continuous flow.

25 Q. Mr. Lee, do you know whether or not the

1 sump pumps for those neighbors discharges in that
2 drainage ditch?

3 A. I do not.

4 Q. And have you performed any water quality
5 tests on the water from the drainage ditch in front
6 of 11333 or 11339 or 11341 --

7 A. I have not.

8 Q. -- Larimore? And have you performed any
9 other tests other than visually observing and
10 documenting the water flowing in this location to
11 determine if, in fact, it is water coming from a
12 Missouri American Water main?

13 A. I have not.

14 Q. And you -- again, Mr. Lee, you
15 believe -- is it true that you believe that the water
16 depicted in those photographs and the water from this
17 location in front of 11339 and 11341 and the drainage
18 ditch there, that that water is and has been causing
19 and contributing to the problems you've had with your
20 water leak -- water -- the water in your basement,
21 regardless of its source?

22 A. I do.

23 Q. I'd move to the next location. Mr. Lee,
24 in the third amendment to WC-2009-0277, filed April
25 20th, 2009, you've alleged that water running out of

1 the street and over the sidewalk on Aspen Woods near
2 the church, you've alleged that that's a water main
3 leak; is that correct?

4 A. That is correct.

5 Q. And I believe you filed a -- an
6 amendment and an update on, I believe it was sometime
7 around May 14th or May -- I think it might have been
8 May 14th where you depicted photographs of this area
9 being completely dry. I could show that to you.
10 It's entitled third amendment to WC-20 --

11 A. Yeah, that's after three hours of rain
12 the night before, correct. That's the first time
13 water hadn't flowed out of the ground at the end of
14 that street and into that storm drain in nearly 14
15 months.

16 Q. Okay. So this area is dry --

17 A. After a rain.

18 Q. So this area is dry today, correct?

19 A. I don't know that it's dry today. The
20 last time I saw it, it had rained for three days in a
21 row, and we -- now we had water coming out of the
22 street again, where previously it could rain for 15
23 minutes and we'd have water running out of the
24 street.

25 Q. Okay. So now when it rains, even for

1 one day straight, it doesn't -- there's no evidence
2 of surface water in this location, correct?

3 A. Correct.

4 Q. And back when there was surface water at
5 this location, Mr. Lee, did you ever perform any
6 water quality tests on the water?

7 A. I have not.

8 Q. And had you personally performed any
9 other tests at this location back when there was
10 surface water evident to determine if, in fact, this
11 water was from a Missouri American Water main?

12 A. I have not.

13 Q. And back before the repair made at Aspen
14 Woods and Red River, Mr. Lee, would this area ever
15 eventually completely dry up after periods of no
16 rain?

17 A. Eventually it would.

18 Q. Okay. Thank you.

19 A. Often it would take five and six days.

20 Q. But it would dry? It would dry; is that
21 correct?

22 A. It would dry?

23 Q. And it's your contention, Mr. Lee, that
24 the water depicted in those photographs from this
25 location, regardless of its source, was or is causing

1 the current leaking problems in your basement?

2 A. Correct.

3 Q. I'm gonna move on to the next location.

4 Now, did I put up -- I'm gonna go ahead and mark this
5 with an 8. And let me know if this is a correct

6 location. I know it's kind of a wide area depicted
7 in this area, but I'll try and get as close as I can.

8 Is this approximately correct?

9 A. Yeah, that's pretty close.

10 Q. Mr. Lee, the next amendment I'd like
11 to -- that you've filed -- I don't know if it's the
12 next one in time that you filed, but it's entitled
13 fourth amendment to WC-2009-0277 update. This one
14 discusses alleged leaks and depicts pictures taken on
15 May 16th in front of 11303 Aspen Woods and 11307
16 Aspen Woods.

17 And I believe those are depicted in
18 Plaintiff's Exhibit 8. And I'll try and get those
19 for you. I'm gonna try and mark those, Mr. Lee. I
20 don't see an 11303, but is this approximately the
21 location of these pictures?

22 A. That is down further toward the court,
23 Matt.

24 Q. Down here?

25 A. No, the other way.

1 Q. Up here?

2 A. Yeah. That's two houses up from the

3 court. I'll show you.

4 Q. On 8C?

5 A. That's the corner property.

6 Q. Right here?

7 A. So this would be in front of the first

8 house here. It would be right in there at 11339, I

9 believe, maybe.

10 Q. Mr. Lee, the only reason --

11 A. That's the first house, and that house

12 is on that street, so it would have to be -- yeah,

13 it's right in that area there, looks like.

14 Q. Are you sure? I think there's another

15 one that's referring to 11333. This one right here

16 states 11303, and that's what I'm going by. And then

17 this one says 11307.

18 A. Okay. Where is 11307?

19 Q. That's down here.

20 A. Yeah. Now, that is, that's on down --

21 up a couple of properties from this photo, or down a

22 couple of properties.

23 Q. So it's generally, if we place it in

24 here, it's somewhere in this location, correct? And

25 I understand it extends up to 11333.

1 A. I believe this house here is the corner
2 house right here.

3 Q. Okay.

4 A. So this is probably right on top of that
5 there.

6 Q. Why don't I do 9A and 9B then since it
7 appears...

8 So the one at 11307 is this right here?

9 A. Yes.

10 Q. Okay. And you're saying the other one
11 shown is up here closer to the intersection?

12 A. Yeah. It's only -- it's not very far.

13 Q. Okay. But those are the two locations?

14 A. Correct.

15 Q. And Mr. Lee, does this area that's
16 depicted in Exhibits 8A through, I think, C, does
17 this area eventually dry up after periods of no rain?

18 A. Eventually it does.

19 Q. And Mr. Lee, when you took these
20 photographs, you hadn't been present at this property
21 for an extended period of time prior to it to
22 determine what the source of this water was, is that
23 correct, these wet spots?

24 A. This was days after a rain. I don't
25 know if I put how many days.

1 Q. You weren't present to check to see
2 whether or not somebody had washed their car, watered
3 their lawn at these locations, correct?

4 A. I have not.

5 Q. And Mr. Lee, have you personally
6 performed any water quality tests on the water of
7 these puddles at these locations?

8 A. I have not.

9 Q. Have you personally performed any other
10 tests, Mr. Lee, other than visually observing and
11 documenting the surface water at the locations
12 depicted in Plaintiff's Exhibit 8A through 8C to
13 determine if, in fact, it is water coming from a
14 Missouri American Water main?

15 A. I have not.

16 Q. And again, Mr. Lee, it is your
17 contention that the water from this location, the
18 water depicted in 8A through 8C, regardless of its
19 source, is and has been contributing to the water
20 problems in your basement; is that correct?

21 A. Absolutely.

22 Q. The next area I'm gonna talk about is
23 fairly close to the other one, but this is from
24 document -- a document entitled fourth amendment to
25 WC-2009-0277, and it's dated April 21st, 2009, and

1 there's no address listed in this. However, I'll ask
2 you if you can describe for us where this is? And
3 I'll go ahead and place a 10 according to your
4 description.

5 A. That is in the same location as this
6 other photo which would be basically on top of that
7 one, yeah.

8 Q. Right here?

9 A. Correct.

10 Q. Okay. So I assume, Mr. Lee, the wet
11 spots depicted in this photograph, which I guess I
12 can hand you. I think it's Plaintiff's Exhibit 12.
13 Again, Mr. Lee, the puddles depicted in Plaintiff's
14 Exhibit 12, is it true that those wet spots
15 eventually dry up after periods of no rain?

16 A. After four or five days with no rain and
17 warm weather, they do eventually dry up.

18 Q. And again, prior to taking this
19 photograph, you can't state whether or not somebody
20 in that area had been washing their car or watering
21 their grass?

22 A. I can say that I spoke with the neighbor
23 at the time of this photo or shortly thereafter, and
24 he told me that this side of the street remains wet
25 longer than any other street in the neighborhood.

1 MR. NOCE: I'll move to strike that as
2 hearsay, your Honor.

3 JUDGE JORDAN: I'll sustain an objection
4 to it.

5 BY MR. NOCE:

6 Q. And again, Mr. Lee, I'd just ask -- my
7 question is, you weren't present for an extended
8 period of time prior to taking this photograph to
9 determine whether or not somebody had just watered
10 the lawn or washed their car?

11 A. I was not.

12 Q. And Mr. Lee, again, have you performed
13 any water quality tests on the water depicted in
14 Plaintiff's Exhibit 12?

15 A. I have not.

16 Q. And Mr. Lee, have you performed any
17 other tests other than visually observing and
18 documenting the surface water at this location to
19 determine if, in fact, it is water coming from a
20 Missouri American Water main?

21 A. I have not.

22 Q. And Mr. Lee, is it your contention that
23 the water from this location, regardless of its
24 source, is causing and has caused the current and
25 past leaking problem that you've had over the 19

1 years in your basement?

2 A. It is.

3 Q. I'm gonna move to the next location.

4 Actually, I'm sorry. Going back, I believe the date
5 on those photographs, it was taken on 4/21 of '09; is
6 that correct?

7 A. Is that what it says on there? I
8 presume that is correct.

9 Q. I believe that's what you testified as
10 to yesterday.

11 A. Yes, that's correct.

12 Q. Okay. That's the date of the document
13 at least?

14 A. (Nodded head.)

15 Q. Okay. Mr. Lee, are you aware,
16 according to the National Weather Service records
17 that I have that I'll present to the Court, that over
18 the -- April 18th and April 19th, 2009, there was
19 over 6 -- .68 inches of rain over that time period?

20 A. How much?

21 Q. .68 inches.

22 A. No, I was not aware of that. The photos
23 are taken after a rain --

24 JUDGE JORDAN: That's the end of the
25 question.

1 MR. LEE: So I'm aware --

2 JUDGE JORDAN: That's end of the
3 question.

4 MR. LEE: I'm aware of the rain, just
5 not how much.

6 BY MR. NOCE:

7 Q. I'm gonna move on to the next location,
8 and this one is depicted in Plaintiff's Exhibit 10A
9 through C, and I'll go ahead and present those to
10 you. And Mr. Lee, according to this, it's a pleading
11 entitled fourth amendment to WC-2009-0277, update,
12 May 18th, 2009?

13 A. Correct.

14 Q. And I believe the addresses listed in
15 these photographs are around 11357 and 11363 Aspen
16 Woods; is that correct?

17 A. Correct.

18 Q. I'll go ahead and place a No. 11 on
19 Defendant's Exhibit 8. Is this approximately the
20 area that you're --

21 A. Yeah. It is in the court there.

22 Q. Okay. Okay. And, again, Mr. Lee, I'll
23 ask you, after extended periods of no rain, is this
24 area dry?

25 A. It is.

1 Q. And in this pleading, Mr. Lee, you state
2 that you contacted Missouri American Water on May 18th,
3 2009, regarding a potential leak at this address, and
4 that you saw somebody from that company respond by
5 later that day, within a few hours; is that correct?

6 A. Later that afternoon, yes.

7 Q. And isn't it true that Missouri American
8 always sends somebody out when you called to complain
9 to investigate to determine whether or not there is,
10 in fact, a leak in the area?

11 A. I am not certain of that. Sometimes
12 they have. I'm not certain of every time.

13 Q. Okay. And Mr. Lee, again, I'd ask, have
14 you personally performed any water quality tests on
15 the water --

16 A. And I cannot agree to "investigate." I
17 don't -- I cannot agree to a drive-by visual
18 inspection as investigating a long-term water leak
19 the way I've been complaining about it for years.

20 Q. But somebody was at least at this
21 location from Missouri American Water; is that
22 correct?

23 A. I can agree to that.

24 Q. And Mr. Lee, have you personally
25 performed any water quality tests on the water from

1 these puddles depicted in Plaintiff's Exhibits 10A to
2 10C?

3 A. I have not.

4 Q. And have you performed any other tests
5 other than visually observing and documenting the
6 surface water at the locations to determine if, in
7 fact, this is water coming from a Missouri American
8 Water main?

9 A. I have not.

10 Q. And again, Mr. Lee, I'd ask, do you
11 believe that the water -- the surface water depicted
12 in those photographs has and is causing and
13 contributing to the problems that you've experienced
14 in your basement, with the leak in the basement --

15 A. I do.

16 Q. -- regardless of the source? Finally,
17 Mr. Lee, you've alleged that you believe that water
18 running under your mailbox in the drainage ditch is
19 evidence of leaking water mains throughout your
20 neighborhood; is that correct?

21 A. Water running under my mailbox is
22 evidence of water main leaks?

23 Q. Yes, is that correct?

24 A. Yes, that's correct.

25 Q. And you've alleged that in a document

1 entitled complaint which was filed March 20th, 2009;
2 is that correct? And I can show it to you. At least I
3 guess I can show you the photographs. I think they're
4 depicted in 17A through C. And I'm gonna go ahead
5 and place a 12 at that location. Is this correct,
6 Mr. Lee, approximately where your mailbox would be
7 located?

8 A. That is correct.

9 Q. And Mr. Lee, isn't it correct that
10 according to -- according to an e-mail that you
11 recently sent, Mr. Lee, that water flowing under the
12 mailbox has since stopped since the repair made on
13 Aspen Woods and Red River; is that correct?

14 A. That's correct.

15 Q. And is that true as of today, that
16 there's no water flowing under this area?

17 A. I presume it's true. We had a rain here
18 and it was a normal storm drain, so it should flow
19 for a day or two and then dry up, but that is a
20 pattern that I've seen since the repair.

21 Q. So as of when you left for this hearing
22 on Tuesday, I presume, there was no current problem;
23 is that correct?

24 A. That is correct.

25 Q. And Mr. Lee, again, is it your

1 understanding that there is no water main located on
2 Carl Street?

3 A. That is correct.

4 Q. And that the closest main to your house
5 is either on McQuay or on Lydia; is that correct?

6 A. That's correct.

7 Q. And you had not alleged in any of the
8 complaints a current leak on either of those two
9 streets; is that correct?

10 A. That is not correct.

11 Q. Other than -- are you speaking about the
12 main -- or the area -- the drainage ditch at McQuay
13 and Larimore?

14 A. I'm speaking about the drain at Lydia
15 and McQuay.

16 Q. Which begins up at Larimore and McQuay,
17 is that correct, the north end of it is?

18 A. It doesn't exactly begin there. I guess
19 it begins -- seems to begin to flow under that pipe
20 there, and with the sinkhole on top of that drain, I
21 assume that it continues to add to the underground
22 flow until it flows out there at Lydia and McQuay.

23 Q. Okay. Mr. Lee, have you personally
24 performed any water quality tests on the water that
25 was flowing under this drainage ditch?

1 A. I have not.

2 Q. And have you personally performed any
3 other tests other than visually observing and
4 documenting the water that flowed under this area to
5 determine if, in fact, there was water coming from
6 the Missouri American Water main?

7 A. I have not.

8 Q. And it's your contention that this --
9 that that phenomenon had occurred -- had been ongoing
10 since the date you purchased the house?

11 A. Water mains leaking in my neighborhood?

12 Q. No. I'm talking about water flowing
13 under your mailbox.

14 A. Yes.

15 Q. And you noticed that even prior to
16 purchasing your home; isn't that correct?

17 A. That is correct.

18 Q. And, in fact, the former owner who you
19 purchased the home from even informed you over 19
20 years ago that there was an ongoing problem with the
21 leaking basement; isn't that true?

22 A. Not to the magnitude that I've
23 experienced.

24 Q. But he informed you that the basement
25 leaked?

1 A. He informed me that the basement leaked,
2 and if I kept the gutters cleaned out, I wouldn't
3 have a problem.

4 Q. And Mr. Lee, isn't it true that you've
5 never conducted any tests or investigations to
6 determine -- or strike that. Isn't it true, Mr. Lee,
7 that you haven't conducted any tests or
8 investigations to rule out the possibility that your
9 home was built on a natural spring?

10 A. Any tests?

11 Q. Correct.

12 A. The tests that I have observed are water
13 main repairs in my neighborhood and then my basement
14 does not leak even after days of heavy rain. And the
15 things that I've noticed is when water is flowing out
16 of the ground around my house, that my basement leaks.

17 Q. Other than visual observations, Mr. Lee,
18 you haven't performed any other tests to rule out the
19 possibility that your home was built on a natural
20 spring; is that correct?

21 A. I have not.

22 Q. And your basement currently leaks today;
23 is that correct?

24 A. That is correct.

25 Q. And isn't it true, Mr. Lee, that you

1 have more problems with your basement leaking and
2 that more water gets in during certain months than
3 others; is that a fair statement?

4 A. I have never tracked it month-wise. It
5 appears when the ground freezes, but I -- I have not
6 tracked it like that, no.

7 Q. Mr. Lee, isn't it true that you pled
8 guilty to a manslaughter charge in the early 1980's?

9 A. That is true.

10 MR. NOCE: I believe that's all the
11 questions I have at this time.

12 JUDGE JORDAN: Thank you. Any
13 cross-examination from Staff?

14 MR. RITCHIE: Staff has no
15 cross-examination.

16 JUDGE JORDAN: Okay.

17 MR. LEE: Can I object to that last
18 question?

19 JUDGE JORDAN: You may. It's a little
20 late.

21 MR. LEE: That has absolutely nothing
22 to do with water mains leaking in my
23 neighborhood.

24 JUDGE JORDAN: Well, that's a little bit
25 late. The question's been asked and answered. But

1 I'll hear a response to that.

2 MR. NOCE: Judge, it does go to the
3 witness's credibility. Obviously a manslaughter
4 charge is a felony in the state of Missouri and
5 therefore admissible subject to his credibility.

6 JUDGE JORDAN: I will overrule the
7 objection and take it for the purpose of credibility.
8 I don't have any questions from the Commissioners.
9 I'll double-check on that. And I have no questions
10 for this witness, which brings us to redirect, and
11 here are my instructions on redirect.

12 Redirect is for the purpose of Mr. Lee
13 addressing issues that were raised on cross, And he
14 may offer testimony for that purpose. But his
15 testimony will be subject to the rules of evidence
16 that we have discussed; that is, I don't want to hear
17 anything that is repetitious, and it would be subject
18 to an objection, and I don't want to hear anything
19 that is unduly long because we've had plenty of that.

20 As to the video evidence that Mr. Lee
21 offered during his direct examination of himself,
22 here is my ruling. I am going to add that to the
23 list of documents which may be filed after this
24 hearing.

25 Now, I've been describing this as the

1 time frame for these filings, I've been describing
2 them as one week after this hearing closes, and I was
3 presuming that this hearing would close today, but
4 what we're gonna have to do is set a different date
5 for that than one week from the end of this hearing
6 because the hearing's gonna be extended a little bit,
7 at least as to the document that Mr. Lee is planning
8 to file under subdivision 11 of 536.070.

9 So let me ask my court reporter about
10 how long she thinks -- this is one of my least
11 favorite questions. A rough estimate of when a
12 transcript of this hearing might be ready.

13 THE COURT REPORTER: I think it's seven
14 business days, Judge.

15 JUDGE JORDAN: What we'll do is we'll
16 build in a little bumper for that. We can assume
17 that the transcript will be ready in ten business
18 days, that it will be filed. And what we'll do is
19 we'll set that date as the start date for a period in
20 which the parties may file the documents which we've
21 described.

22 And that will include the DVD that Mr. Lee
23 may prepare of his video evidence of water currently
24 flowing in his neighborhood in the sites he has
25 described.

1 MR. NOCE: I guess -- and we're going to
2 leave the record open as to those records?

3 JUDGE JORDAN: That's correct. And
4 here's what we're going to do. After these documents
5 are filed, we'll have a time for objections and we'll
6 have a time to resume the hearing as to those. And
7 let me make clear about this most recent one. I want
8 that DVD to have -- to be edited to the current
9 conditions, okay? I don't want anything extraneous
10 on there. So what you put on there will depict
11 current conditions from your evidence that you
12 brought today.

13 Okay. Since you've indicated you have
14 the ability to edit but it takes a little while, I
15 think that will be long enough and I think we can do
16 that.

17 MR. LEE: Again. What is the date, Judge?

18 JUDGE JORDAN: Well, it will begin when
19 the transcript is filed. And here's what I'll do.
20 When the transcript is filed, I'll put out an order
21 setting a deadline. It will probably be a week, but
22 that will be your trigger. I want everyone to know
23 what timeline we're on. So I will take the lead on
24 that.

25 MR. NOCE: So it's not a date a week

1 from today, your Honor?

2 JUDGE JORDAN: That's correct, that's
3 correct.

4 MR. NOCE: Okay.

5 JUDGE JORDAN: Because that's just not
6 gonna work for us.

7 MR. LEE: I am unclear about the cross-
8 examining myself.

9 JUDGE JORDAN: This would be redirect.
10 See, now, you've put on a witness and everybody's
11 cross-examined them and then raised more issues,
12 then you could ask the witness more questions when
13 everyone was done with cross.

14 But remembering that we only want to
15 hear things once, and we only need to because they're
16 written down in the transcript, repetition adds
17 nothing. It only takes away time.

18 If there's something that's been
19 addressed that you would like to clarify or explain
20 that you haven't already in the past two days, this
21 would be your chance to do it. So would you like to
22 do that?

23 MR. LEE: Yes, I would.

24 JUDGE JORDAN: All right. What would
25 you like to tell the Commission on redirect?

1 MR. LEE: I don't exactly know how to
2 present this, but I would like to add the water main
3 repairs that I know of to our chart here with a
4 different color Post-It.

5 JUDGE JORDAN: Okay.

6 MR. LEE: We have alleged that I have
7 complained about all those leaks, and we have done
8 that.

9 JUDGE JORDAN: But I think you're going
10 to be addressing that in your subdivision 11
11 statement, and I think I can put that together. I
12 mean, you're going to talk about water repairs over
13 how great a period of time?

14 MR. LEE: Last year, a year and a half.

15 JUDGE JORDAN: Okay.

16 MR. LEE: I believe it is -- the
17 complaints only show half the picture. Without the
18 other condition of the water system being added to
19 this, you know, you're only getting half of the
20 problem here.

21 JUDGE JORDAN: Sure.

22 MR. LEE: And the contention of Missouri
23 American is that something is wrong with me and I'm
24 making all this up or dreaming this water in the
25 neighborhood up and it has nothing to do with their

1 system, and I'm pretty sure if you could just add the
2 visual to the number of repairs just in this little
3 area, that it would have a great impact on you and
4 the Commission.

5 JUDGE JORDAN: Let me first clarify. I
6 saw Mr. Noce shaking his head when you mentioned
7 dreaming something up or imagining it. Mr. Noce, do
8 you want to speak to that?

9 MR. NOCE: I'll object to Mr. Lee's
10 characterization of Missouri American Water's
11 impression of him and his complaints.

12 JUDGE JORDAN: That's fine. That will
13 do. That will address that. It is his exhibit
14 rather than your exhibit.

15 MR. LEE: Okay.

16 JUDGE JORDAN: What do you think that
17 will tell me as far as supporting your complaint?

18 MR. LEE: That will tell you that the
19 complaints that I've had have been justified.

20 JUDGE JORDAN: Okay. I can't -- I can't
21 see that. However, I do see that that information
22 will come in, in the exhibit that you will be
23 preparing under subdivision 11, because you'll be
24 setting forth the repairs as set forth in those
25 repair records; is that correct? And I can compare

1 that to this map or any other.

2 MR. LEE: Okay.

3 JUDGE JORDAN: And is there anything
4 else that you would like to address on redirect that
5 you haven't had the chance to talk about already?

6 MR. LEE: The only other issue would be
7 the question about the manslaughter charge that
8 happened in 1981.

9 JUDGE JORDAN: And what would you like
10 to tell the Commission about that?

11 MR. LEE: I'd like to tell them that
12 that was -- gosh, how many years, '81, 28 years ago
13 and that I am not the same person today that I was at
14 that time. And I would like them all to know that,
15 yeah, I made a mistake, but now I need to move on and
16 have a life, you know, without constantly dredging up
17 my past and trying to make that who I am today.

18 JUDGE JORDAN: Okay. Is there anything
19 else that you would like to tell us on redirect that
20 you haven't had the chance to yet, that's been raised
21 on cross?

22 MR. LEE: I guess I would just like
23 everyone to know that I don't have the tools to test
24 the water. I don't believe in the water test anyway,
25 as you can tell from yesterday.

1 JUDGE JORDAN: Uh-huh.

2 MR. LEE: I have spent an enormous
3 amount of time trying to figure out and help solve
4 this problem in my neighborhood. I have received a
5 gauntlet of denial from this water company, and I
6 have damage to my health and property from water --

7 MR. NOCE: Objection.

8 JUDGE JORDAN: Sustained. Is there
9 anything else that you would like to tell the
10 Commission that was raised on cross and you have not
11 yet testified?

12 MR. LEE: That many of these issues on
13 this chart persist as we speak, as we're here in this
14 hearing.

15 JUDGE JORDAN: Okay. And is there
16 anything else to add to that?

17 MR. LEE: I guess it's my interpretation
18 of never having a continuous resolution to the
19 problem that not enough is being done on the part of
20 this company.

21 JUDGE JORDAN: Okay.

22 MR. LEE: And --

23 MR. NOCE: Objection. We're getting
24 argumentative. This is something he can address in
25 his closing argument. This is not factual.

1 JUDGE JORDAN: I'm going to sustain
2 that, and I'll ask you if there's anything, any
3 issues that were raised during your cross-examination
4 that you haven't been able to address so far on
5 questions that were asked you on cross-examination.

6 MR. LEE: I guess the issues are that I
7 was asked that American Water always responded when I
8 called.

9 JUDGE JORDAN: Okay.

10 MR. LEE: Okay. I call, make a
11 complaint. They send the van out to drive around the
12 subdivision, and then they leave, okay, which did
13 what to solve the problem? I make another complaint.
14 They send the van out, drive around, they don't see a
15 geyser, so they leave. This has been going on for
16 years.

17 JUDGE JORDAN: Okay. That sounds like
18 it pretty much fills out the explanation that you
19 wanted to give in response to that question on cross.

20 MR. LEE: Correct. Not -- I feel not
21 enough is being done to solve this problem.

22 JUDGE JORDAN: Okay. Was there anything
23 asked of you on cross, anything more that you would
24 like to tell the Commission about that you haven't
25 already?

1 MR. LEE: I had -- I had a couple
2 things. The septic tank leak in the yard at 11334
3 Larimore.

4 JUDGE JORDAN: Okay. Would you like me
5 to look at one of your exhibits for that?

6 MR. LEE: You can if you want. It is
7 Exhibit 14 and Exhibit 15.

8 JUDGE JORDAN: 14 and 15; is that
9 correct?

10 MR. LEE: That is correct.

11 JUDGE JORDAN: I have 15.

12 MR. LEE: 14 looks like this, if that
13 helps.

14 JUDGE JORDAN: I've got it. Okay. Now,
15 the question you were asked was what that you were
16 going to tell me about?

17 MR. LEE: Was -- I believe it was
18 something like, was this water leak attributed to a
19 septic tank leak.

20 JUDGE JORDAN: Right. Okay. And you
21 wanted to explain your answer a little more fully,
22 and you're going to tell me something you haven't
23 told me already?

24 MR. LEE: I am.

25 JUDGE JORDAN: Okay.

1 MR. LEE: Or -- yeah. I was told that
2 this massive amount of water leaking from the ground
3 here was from a septic tank leak, and I believe this
4 was determined by Staff and by MAWC. And my question
5 is, was that reported?

6 JUDGE JORDAN: Well, that's not really a
7 statement, that's really a question. There may be a
8 witness that you can ask that question of, because we
9 have yet to have Staff's and Missouri American's case
10 in chief.

11 MR. LEE: So I would need to ask them
12 that instead of add that on to my...

13 JUDGE JORDAN: Well, asking me would do
14 no good.

15 MR. LEE: Okay. Then I would just like
16 to say it's my understanding that that was never
17 reported to anyone, and that raises questions in my
18 mind about what Missouri American's water -- Missouri
19 American Water's duty to the neighborhood and duty to
20 citizens is to protect them.

21 JUDGE JORDAN: Okay. And is that all
22 you had that you wanted to address as to cross?
23 Anything additional for cross that you wish to
24 address that we have not heard before?

25 MR. LEE: Yeah, that's all I can do

1 right now.

2 JUDGE JORDAN: All right. Thank you.

3 Then we are ready for Missouri American Water

4 Company's case in chief.

5 MR. NOCE: Your Honor, at this time I

6 think Missouri American would like to move for a

7 directed verdict. At this time we'd like to move for

8 a directed verdict as to all the amendments, and then

9 if I could address some of the individual ones.

10 JUDGE JORDAN: Well, I think I can

11 answer that pretty succinctly by denying for a few

12 reasons. Number one, the Commission doesn't give out

13 verdicts; number two, each party has the right to

14 file a written argument and have the Commission read

15 it before the Commission makes its decision. So the

16 procedure that you're suggesting doesn't apply in

17 this forum.

18 MR. NOCE: Okay.

19 JUDGE JORDAN: So I will deny that.

20 MR. NOCE: Thank you.

21 JUDGE JORDAN: And are you ready to

22 present evidence? Do you want to break first?

23 MR. NOCE: Yeah, if we could take a

24 five- to ten-minute break.

25 JUDGE JORDAN: Let's take a ten-minute

1 break. We will be off the record.

2 (A RECESS WAS TAKEN.)

3 JUDGE JORDAN: We are back on the record
4 and we're about to begin the case in chief from
5 Missouri American Water Company. And counsel, you
6 may proceed.

7 MR. NOCE: Missouri American Water calls
8 Derek Linam.

9 (The witness was sworn.)

10 JUDGE JORDAN: Can you state your name
11 for the record and spell it.

12 THE WITNESS: Derek Linam, D-e-r-e-k,
13 L-i-n-a-m.

14 DIRECT EXAMINATION BY MR. NOCE:

15 Q. Mr. Linam, can you briefly describe your
16 education background?

17 A. Bachelor of science degree in civil
18 engineering and --

19 Q. Where is that from?

20 A. From the University of Arkansas.

21 Q. And when was that obtained?

22 A. 1991, May of 1991.

23 Q. And Mr. Linam, do you have any licenses
24 or certificates that you've obtained since then?

25 A. Yes, I do.

1 Q. And what are those?

2 A. Professional engineers license in the
3 state of Missouri.

4 Q. Can you explain to me or explain to the
5 Commission what exactly does that involve?

6 A. It involves a two-part test, some work
7 experience. The first test would be as an engineer
8 in training along with that pass -- successful
9 passing of that test, you have to work for a minimum
10 of four years experience under a professional
11 engineer. You can then apply and take your
12 professional engineers license exam.

13 Q. When did you obtain that license?

14 A. I believe it was in 1996.

15 Q. And are you -- do you have to perform
16 any current continuing education programs on a yearly
17 basis to remain current on that license?

18 A. Yes, we do.

19 Q. And what -- can you describe for the
20 Commission what exactly does that entail?

21 A. You're required to maintain a minimum of
22 I believe it's 30 hours every two years. The license
23 is a two-year license at a time, and there's 30
24 hours, I believe it is, of continuing education
25 requirements during that two-year process.

1 Q. And are you current on all your
2 continuing education?

3 A. Yes, I am.

4 Q. Do you have any other licenses or
5 certificates that you've obtained over the years?

6 A. Yes. I have a level A water treatment
7 operator's license for the state of Missouri.

8 Q. Can you explain to the Commission what
9 exactly is it that entails?

10 A. Again, examination process, passing an
11 exam, and then you receive your license from the
12 Missouri DNR.

13 Q. When did you obtain that license?

14 A. I believe it was in 1998.

15 Q. Any other licenses?

16 A. I also have a DS3, distribution system
17 operator's license for a distribution system.

18 Q. What does that allow you to do?

19 A. Same thing Mr. Simmons described
20 yesterday. It's knowledgeable of the distribution
21 system and the operation of the distribution system,
22 water distribution system.

23 Q. And how did you obtain that license?

24 A. Similar to Mr. Simmons' discussion. I
25 actually wasn't aware of that until he mentioned that

1 that was grandfathered in from 2000. I knew it
2 showed up, if you will, as part of the grandfathering
3 process as he said they were combined before.

4 Q. And are those all your licenses?

5 A. Yes, they are.

6 Q. And who's your current employer?

7 A. Missouri American Water Company.

8 Q. And when did you begin with Missouri
9 American Water?

10 A. May of 1991.

11 Q. And what position did you first hold at
12 Missouri American Water?

13 A. I was a system engineer in our
14 engineering department.

15 Q. And what does a system engineer do?

16 A. We're responsible for the installation
17 and the relocation of water mains within the
18 distribution system.

19 Q. Have you held any other positions other
20 than a system engineer?

21 A. Yes. After that I moved to our
22 production facilities as a plant engineer.

23 Q. And what does that entail?

24 A. I'm responsible for the operations of
25 the water treatment plant and small improvement,

1 capital improvement projects that need to be done
2 within that treatment plant.

3 Q. Have you held any other positions?

4 A. Yes. I was a senior production engineer
5 in our system operations group.

6 Q. What duties are included with that job?

7 A. That position worked with the tank and
8 booster sites of our distribution system. Again,
9 small capital improvement projects or capital
10 improvement projects that occurred as well as
11 hydraulic modeling that I did of the distribution
12 system, which is a computer model program.

13 Q. After that position have you held any
14 others?

15 A. Yes. I was a plant superintendent for
16 our South County and Meramec treatment plants.

17 Q. Okay. Other than that position, have
18 you held any others?

19 A. Yes. I was an engineering manager after
20 that back in the engineering department.

21 Q. Okay. And what -- what duties are
22 included with a position of engineering manager?

23 A. That position was the manager for the
24 group of system engineers as I described earlier for
25 overseeing that department and their relocation and

1 installation of water mains.

2 Q. Would that include also the repairs of
3 such mains?

4 A. No. After that I became the operations
5 manager for the construction/maintenance group.

6 Q. Okay. And what were your job duties as
7 an operations manager for that department?

8 A. Oversee the crews and the personnel that
9 maintain the distribution system, as well as install
10 water mains. That was a little bit of the -- the
11 installation -- the time in charge of the
12 construction group was maybe a year or less, and then
13 we did some reorganization and I was strictly the
14 maintenance side, but they were -- their -- they kind
15 of go hand in hand. They're very similar.

16 Q. And how long did you hold that position,
17 from what time period?

18 A. Moved -- I took the construction
19 position I believe in the fall of '03, and the
20 following July I became the maintenance manager, and
21 that was true up until about September of last year,
22 September of '08.

23 Q. Okay. And as operations manager, you
24 stated that you were in charge of overseeing the
25 crews that would do the repairs of the water mains;

1 is that correct?

2 A. Yes, that's correct.

3 Q. Okay. And are you familiar with the
4 recordkeeping procedure that would be included with
5 those repairs?

6 A. Yes, I am.

7 Q. Okay. And does that include also
8 investigations of potential leaks?

9 A. Yes, it does.

10 Q. And can you explain to the Commission
11 how exactly are leak tickets generated by Missouri
12 American Water?

13 A. Well, when we receive a call either from
14 a customer or -- doesn't necessary have to be a
15 customer, it could be a municipal official inspector,
16 police, whoever -- whenever we receive a call either
17 into our call center or dispatch, a water company
18 record is initiated, documenting what the nature of
19 the call is.

20 That information is then assigned to
21 a -- either a troubleshooter or sometimes directly to
22 a crew, but essentially we go out and investigate
23 what the report is.

24 Q. Okay. What sort of information would be
25 recorded in those tickets?

1 A. They would typically record who the
2 caller is, if it's known, or if they had when the
3 call came in, when it's -- you know, who it's
4 assigned to or when it's assigned out at least, any
5 other pertinent information that might be needed by
6 the crew that's given by that person that called it
7 in.

8 Q. And then what does the crew do with the
9 tickets after they've either investigated or made
10 repairs based on the complaint?

11 A. If it's investigated and there is a
12 repair, they make their repair, record what was done
13 on the repair, and then that record is brought back
14 into the office and matched up with any other
15 paperwork that would go with that record, any office
16 copies of any of that paperwork.

17 Q. And how is it matched up?

18 A. There's a unique ticket number
19 identifier that's on the top of those tickets, and
20 then it's filed in our offices as well as entered
21 into a database.

22 Q. Okay. And are you familiar with the
23 recordkeeping procedure of Missouri American Water
24 with regards to these leak tickets?

25 A. Yes, I am.

1 Q. And Mr. Linam, are you familiar with the
2 complaints made by Mr. Lee both in this proceeding as
3 well as the civil lawsuit?

4 A. Yes, I am.

5 Q. And what has been your involvement with
6 those complaints?

7 A. I have overseen the field personnel that
8 have gone out and done the investigation as well as
9 been out to the site myself inspecting conditions at
10 the site.

11 Q. How many times would you estimate that
12 you've been out to the site on Mr. Lee's property?

13 A. Maybe three to four. I can't remember
14 the exact date right now. Maybe three to four.

15 Q. And generally without getting specific
16 into the tickets, what sort of things has Missouri
17 American Water done to your knowledge to investigate
18 these leaks, or these alleged leaks?

19 A. We've done some water characteristic
20 analysis sampling, we have done some, what I would
21 call sounding, or listening on the mains with, I
22 would call it -- we call it a horn, but essentially a
23 manual listening device, and then as well as some
24 more extensive thorough electronic listening with our
25 correlating equipment.

1 Q. Can you estimate how many times you
2 believe the crews have actually responded to the
3 complaints by Mr. Lee since the initial complaint
4 filed with the Public Service Commission, if you
5 know?

6 A. At least four or five, maybe more. I
7 don't know for sure.

8 Q. And are those in addition to your -- the
9 times that you were out there?

10 A. I was there sometimes when the crew was
11 there and other times I was out there when they
12 weren't there.

13 Q. Okay. I'm gonna go through a few of the
14 records I have before you now I think in a binder
15 there. If I could ask you to turn to what's been
16 marked as Defendant's Exhibit D1.

17 A. Okay.

18 Q. I'll represent this is a multipage
19 document. Can you first identify this document for
20 the Commission?

21 A. Yes. This is a printout, if you will,
22 of screen shots of our customer information system.

23 Q. And what did that show in that -- the
24 first page?

25 A. The first page is showing a service

1 order number, when it was scheduled, when it was
2 closed.

3 Q. What was the date it was scheduled?

4 A. 4/21 of 2004.

5 Q. And is that the date that you received
6 that complaint?

7 A. Yes -- as -- I believe so. Yeah, as far
8 as I know, that's the date we received that
9 complaint.

10 Q. Okay. And moving to page 2, according
11 to that document, who is identified as a caller?

12 A. It was documented under Rob Lee's
13 account which would -- he was the caller for the
14 request.

15 Q. And according to Defendant's Exhibit D1,
16 how did Missouri American respond to the complaint --
17 or strike that. Actually, let me back up. What was
18 the complaint according to this document?

19 A. The complaint says that, "Customer says
20 that ever since the house next door was torn down,
21 there's been water noticeable in the ground. Needing
22 to have someone come out to investigate.

23 Q. And when you say that the record was
24 closed, what is that referring to?

25 A. It's referring to -- well, the service

1 order -- it's referring to the field person
2 representative, troubleshooter went out to the site
3 and was not able to find any type of leak on our
4 system.

5 Q. When did they go out there? When was
6 this ticket?

7 A. According to the close date, it was
8 4/21, so I would say it was on the same day.

9 Q. And again, how is this record generated
10 by Missouri American Water?

11 A. It's an electronic service order record.
12 This was generated by printing the comments from
13 the -- it's not real conducive to, you know, printing
14 the screen, so we had to print the screen to show
15 what the comments were.

16 Q. Okay. So this is something that was
17 kept electronically?

18 A. Yes.

19 Q. And why is there not a hard copy ticket
20 that corresponds with this work order?

21 A. If there had been a leak found, the
22 troubleshooter would have generated one of our leak
23 tickets that they maintain in the maintenance
24 department that had that unique tracking number I was
25 referring to follow through with a repair and file

1 that in our drawer, leak database.

2 Q. So because there was no leak found and
3 nothing found, there's no actual leak ticket
4 generated; is that correct?

5 A. Correct.

6 Q. And was this electronic ticket generated
7 by Missouri American Water, or at least the
8 information on it generated by Missouri American
9 Water at or near the time the work was performed?

10 A. Yes. The service facility was created
11 at or near the time the work was performed.

12 Q. And the information contained on here,
13 is this electronic ticket kept by Missouri American
14 Water in the ordinary course of business?

15 A. Yes, it is.

16 Q. Then I'd ask you to turn to Exhibit D2.

17 A. Okay.

18 Q. And again, who -- can you identify this
19 document for the record?

20 A. This is a one-page document of a leak
21 investigation or a leak -- I should say a leak
22 reported actually by looks like one of our field
23 service representatives.

24 Q. Okay. And can you kind of explain, now
25 that we have one of these in front of us maybe for

1 the Commission, how is this -- how is the information
2 generated onto this ticket?

3 A. He would have either called in or
4 stopped by the dispatch office and reported the
5 information. They wrote the street address down,
6 where the call came from, a phone number looks like
7 with the name Rob written underneath, so I believe
8 that would be Mr. Lee based on the address, and it
9 has a time stamp of when they called and time stamp
10 of when it was given to the troubleshooter.

11 Q. And is there -- is there a second page
12 that corresponds to this document or is it just a
13 one-page document?

14 A. In my folder it's just one page.

15 Q. Okay. I don't know why yours only has
16 one, but maybe I can make an extra copy?

17 JUDGE JORDAN: I also have only one.

18 And we're talking about D2; is that correct?

19 MR. NOCE: Correct.

20 JUDGE JORDAN: Yes, I only have one page.

21 MR. NOCE: Okay. Well, I guess I have
22 to make a copy of this. And I apologize to the
23 Commission. I have a two-page document.

24 BY MR. NOCE:

25 Q. But going back to the first page of D2,

1 where would this ticket be once the information was
2 received, what would happen with this ticket? Where
3 would it go, I guess?

4 A. It would go to the troubleshooter to
5 begin the investigation to determine...

6 Q. And again, according to D1, the one page
7 that everybody has in front of them, what address is
8 listed as the complaint?

9 A. The address is listed as 11119 Carl
10 Drive, and then, slash, McQuay Avenue.

11 MR. LEE: Do you mean D1 or D2?

12 MR. NOCE: I'm sorry. D2. The first
13 page of D2. The one page that we're talking about.

14 BY MR. NOCE:

15 Q. And again, what's the date on that?

16 A. It was dated April 8th of 2008.

17 Q. Okay. And what is the complaint?

18 A. Water going into the basement.

19 Q. And who -- who does the -- this ticket
20 refer to?

21 A. It was referred to it Jerry Barklage.

22 Q. And who is that?

23 A. Troubleshooter in our field -- field
24 maintenance department.

25 Q. Okay. And if I could -- again, I have a

1 ticket. I'll show this to Mr. Lee before I present
2 it to the witness. If it's okay with the Court,
3 maybe during a break I can make a copy of this page.

4 JUDGE JORDAN: That's fine.

5 MR. NOCE: Thank you. Mr. Lee should
6 have a copy of that.

7 MR. LEE: I don't. I have one page
8 also.

9 MR. NOCE: I think it was produced to
10 you, though, during discovery. And I apologize to
11 the Court that I didn't have that.

12 JUDGE JORDAN: While the parties are
13 comparing documents, I need to mention to everyone
14 here that this hearing will not go past six o'clock
15 this evening, and the reason being our computer
16 system will shut down.

17 MR. NOCE: I have no intention of
18 keeping the Commission that long.

19 JUDGE JORDAN: I'm sure everyone here
20 appreciates that.

21 BY MR. NOCE:

22 Q. Mr. Linam, I've just handed you what
23 will be marked, I guess, as Defendant's Exhibit D2,
24 the second page. Can you identify that document?

25 A. This is troubleshooter Jerry Barklage's

1 ticket that he used to write on when he received the
2 call about the possible leak and what he wrote on
3 after his investigation.

4 Q. Okay. And what was the result of his
5 investigation?

6 A. He did not find any leak.

7 Q. And what was the date of that?

8 A. April 8th of 2008.

9 Q. Moving to Defendant's Exhibit D3,
10 again -- strike that. If we could move back real
11 quickly to Defendant's Exhibit D2. Are these two
12 documents -- are these two documents generated by
13 Missouri American Water at or near the time listed on
14 here?

15 A. Yes, they were.

16 Q. And are these two documents kept in the
17 ordinary course of business by Missouri American
18 Water?

19 A. Yes, they are.

20 Q. Moving on to Exhibit D3. And can you
21 identify for the Commission what this document is?

22 A. This is a record of investigation filled
23 out by one of my supervisors up at Lydia and McQuay.

24 MR. NOCE: And if it please the
25 Commission, all these leak reports I assume are gonna

1 be filled out in the same fashion. Rather than go
2 through the process, is it okay if we skip that and
3 just discuss what was done on it?

4 JUDGE JORDAN: Well, I'll tell you what,
5 why don't we -- why not ask the witness whether that
6 is, in fact, the case. Have him look at the
7 documents and then ask him those questions.

8 MR. NOCE: Okay.

9 BY MR. NOCE:

10 Q. Mr. Linam, is it your understanding that
11 all of these leak reports that we'll be discussing
12 here in D3 through D13, that all of these are
13 completed in the same fashion, in that a call comes
14 in, information is recorded, and then it's presented
15 to a field services representative?

16 A. Yes, that is typical. Again, a call
17 could be to our call center, a call could be directly
18 into our maintenance office.

19 Q. But the information recorded on the top,
20 is that what would be received from the caller?

21 A. Yes, the location, the address and the
22 other -- they're all very similar. It's all done the
23 same way.

24 Q. Okay. And do you know how this ticket
25 or why this ticket was generated?

1 A. I -- we had done some investigation at
2 Mr. Lee's house on actually May the 20th of '08, and
3 I asked my supervisor to make a record of that
4 investigation so that we would have information on
5 what was done.

6 Q. And who was your supervisor?

7 A. I'm sorry. I asked the supervisor that
8 worked for me to fill out the record.

9 Q. Oh, okay. And who was the field service
10 representative who actually performed the work?

11 A. Bob Robinette.

12 Q. And what -- according to the ticket,
13 what work or what investigation was conducted on
14 May 20th, 2008?

15 A. Located and listened on the water main
16 with the correlating equipment, had no picture or
17 sound on the mains, listened on the mains on Lydia
18 and McQuay.

19 Q. And again, when we say located and
20 listened on the water main, what does that mean?

21 A. It means they made contact with either --
22 as Mr. Bommarito described yesterday, either on the
23 valves themselves or through probing rods or metal
24 rods making contact with the pipe and putting the
25 electronic equipment and/or -- the manual as well on

1 the -- on those valves and/or main to listen for
2 leaks.

3 Q. Okay. And what was the result of those
4 tests?

5 A. Nothing found.

6 Q. And again, why is this document dated
7 6/7/08?

8 A. Did not have a write-up on the date. It
9 was done -- Mr. Robinette had to have some surgery,
10 and when he returned, I asked him to make me a record
11 of that investigation.

12 Q. Okay. And was this record kept in the
13 ordinary course of business by Missouri American
14 Water?

15 A. Yes, it is.

16 Q. Okay. And again, is this area at or
17 near the area depicted on Defendant's Exhibit A with
18 the number 3?

19 A. Yes, it's near No. 3, Lydia and McQuay.

20 Q. Okay. Moving on to Defendant's Exhibit
21 D4, can you identify that document for the record?

22 A. This is a record of investigation by one
23 of our maintenance crews dated January 15th of 2009
24 on Larimore Road.

25 Q. Okay. Actually, before I get to that

1 document, I'm gonna try to go in order here. And I
2 apologize. I'm gonna back up a little bit. You
3 stated that you've had a chance to investigate this
4 area throughout the course of this litigation; is
5 that correct?

6 A. Yes, I have.

7 Q. Okay. And have you had a chance to
8 investigate the area on Coal Bank that is depicted by
9 the No. 1 on Defendant's Exhibit A?

10 A. Yes, I have.

11 Q. Okay. And what exactly have you done at
12 that location?

13 A. I have been out there to visually review
14 the wet spots that were presented in Mr. Lee's
15 photographs, as well as I believe was present the day
16 that -- or I was present the day that Mr. Bommarito
17 and then the correlating crew were there as well in
18 May of this year.

19 Q. When would -- when did you first go out
20 there to investigate the complaint -- or the
21 photographs depicted by Mr. Lee in his complaints?

22 A. I recall going out there April 9th, I
23 believe it was, of 2009.

24 Q. And what do you recall seeing on Coal
25 Bank on that date?

1 A. There was no water puddle that existed.

2 Q. The area depicted in Mr. Lee's
3 photographs was dry; is that what you're saying?

4 A. Yes, the area pictured in the photograph
5 in the complaint was dry.

6 Q. Was there anything else significant
7 about the area depicted by Mr. Lee's photographs in
8 his amendment on Coal Bank that was significant to
9 you?

10 A. I observed the area that -- where the
11 water was puddling and the photograph was the lowest
12 elevation along that road. The road leading to
13 Larimore actually had a slight slope downward and
14 then from that point where the water in the picture
15 was puddled, Coal Bank sloped upwards, a slight
16 elevation there, as well as the yard I believe for on
17 the map, 11545 also slopes slightly downward toward
18 that.

19 Q. While you were out there on that day,
20 did you have a chance to look at -- or to inspect the
21 culvert that's depicted and noted on Defendant's
22 Exhibit A as No. 2?

23 A. Yes, I did.

24 Q. And what did your investigation reveal
25 in that area?

1 A. It was also dry.

2 Q. And again, on that same date on April
3 9th, did you have the chance to investigate the area
4 near the intersection of McQuay and Larimore where
5 the storm drain is located?

6 A. Yes, I did. I looked at the storm drain
7 that was -- ran from west to east or northwest to
8 southeast on Larimore at McQuay there.

9 Q. And is that the storm drain we've heard
10 Mr. Lee refer to that runs under Larimore and then
11 comes out at Lydia?

12 A. Yes, it's by sticker No. 3 on your map.

13 Q. Okay. And what did your investigation
14 on that date, what did you observe?

15 A. There was water pooling in the bottom of
16 the inlet or the -- I don't know if you'd call it an
17 inlet, or of the ditch on the west side -- north side
18 of Larimore, northwest side of Larimore. I noticed
19 that the -- that ditch was actually lower in
20 elevation than the flow line of the pipe going across
21 the road, so there was water that just pooled in the
22 bottom that couldn't escape through the flow line of
23 the pipe.

24 Q. Were you able to make any conclusions as
25 to why that water was pooling in there other than...

1 A. It just appeared to be poor drainage,
2 poor setup with having -- of flow line of the ditch
3 lower than the flow line of the pipe going from one
4 side of the road to the other.

5 Q. Did you observe any flow of water into
6 that storm drain while you were there?

7 A. I didn't observe any water entering into
8 that ditch drain there. There's two pipes that come
9 there. They were completely dry.

10 Q. Okay. Going back to Defendant's Exhibit
11 D4 that's in front of you, again, can you identify
12 this record for the Court?

13 A. Yes. Again, this is a record of a leak
14 investigation by one of our maintenance crews on
15 January 15th of 2009 on Larimore Road.

16 Q. Okay. This ticket looks a little bit
17 different than D1 and D -- from D2 and D3 that we've
18 previously talked about, so let's go ahead and
19 explain. Can you explain to the Commission how this
20 record is generated?

21 A. This was generated by an actual repair
22 crew that went up to do the investigation as opposed
23 to a troubleshooter or the correlating crew. It's
24 actually the second page of -- it's actually a
25 document that would be utilized if we actually found

1 a leak, and so because that crew probably didn't have
2 any other tickets on their truck, he went ahead and
3 utilized the side of the page that would be utilized
4 if we actually had some repair that would have been
5 made.

6 Q. And can you identify from this document
7 what the investigation consisted of?

8 A. They listened on the valves and on the
9 service T heads and the fire hydrants, the new PVC
10 main along Larimore Road from Aspen Woods Drive
11 eastward to the railroad tracks.

12 Q. So would that -- if I could, hold on one
13 second. So does that area include the areas depicted
14 on Defendant's Exhibit A which would include 4, 5, 6
15 and 7?

16 A. Yes, essentially. Four looks like it's
17 right on the railroad tracks, and according to this,
18 they went up to what I'll call the western or
19 southern side of the railroad tracks.

20 Q. Okay. And who was the person who signed
21 this ticket?

22 A. Kevin Dorn.

23 Q. And who is that?

24 A. He's one of our maintenance department
25 lead man. It's a union position in charge of the --

1 that leads the construction -- or the maintenance
2 crew out in the field.

3 Q. Okay. And what, if any, damage was
4 reported, or leaks?

5 A. None was noted.

6 Q. And was this record generated by
7 Missouri American -- or strike that. I don't know if
8 I asked you the date. What was the date that this
9 document was -- or that this work was performed?

10 A. January the 15th of 2009.

11 Q. And was this record generated in the
12 ordinary course of business by Missouri American
13 Water?

14 A. Yes, it was.

15 Q. And moving on to Defendant's Exhibit D5,
16 will you identify that ticket for the Commission?

17 A. This is a leak investigation generated
18 by a -- or a ticket generated at 11338 Larimore Road.

19 Q. And is that the -- is that near the area
20 depicted on Defendant's Exhibit A that's numbered 6?

21 A. Yes.

22 Q. And that's the address 11338 which is
23 the address next to 11334; is that correct?

24 A. Yes, it is. I can't see the 4.

25 Q. Just to make sure.

1 A. Yes, it is.

2 Q. Okay. And again, this address is on the
3 opposite side of the street as the main; is that
4 correct?

5 A. That's correct.

6 Q. What was the complaint on this,
7 according to this ticket?

8 A. It was a request to check for a service
9 line leak.

10 Q. And what did the crew do?

11 A. They investigated at the site for a
12 service line leak. They looked at the meter and the
13 meter was registering water.

14 Q. What does that mean?

15 A. Well, the meter obviously turns whenever
16 there is flow -- whenever there is usage or flow
17 occurring in the service line, and so the meter dial
18 will be spinning, and so they looked at that meter to
19 observe that it was turning, which they then
20 concluded or noted that water -- there was either
21 usage or a toilet leaking inside the house.

22 Q. And according to that record, what
23 problems did they believe that was causing at this
24 address?

25 A. Well, they noted that the leak at the

1 road where they saw the water, it notes here it is in
2 line with the septic tank. If the toilet was
3 leaking, it may be filling the septic.

4 Q. What was the date that the call was
5 received?

6 A. November 21st of 2006.

7 Q. And according -- I know it says to turn
8 it over, but according to the initial record on this
9 page, when was the response by Missouri American
10 Water?

11 A. November 23rd of 2006.

12 Q. Did Missouri American Water conduct any
13 follow-up investigations?

14 A. Yes, they did.

15 Q. And what was that? What and when was
16 that done?

17 A. What was done was -- well, on 11 -- on
18 November the 28th -- actually it was -- the ticket
19 was held to say and go verify that there was no leak,
20 or if there was one on the surface because the
21 troubleshooter wasn't able to conclude for sure, so
22 the maintenance crew was actually sent, I believe,
23 because when we went out on the 28th, it was signed
24 by one of our maintenance lead people.

25 He noted that there was water running in

1 the front yard of 11338 to the drainage ditch, and he
2 says it's coming from what I believe is the septic
3 tank which is probably damaged or not working. The
4 small valve on the meter was constantly moved. Went
5 into the basement of the building which is served by
6 one water meter, turned off stop and waste valve and
7 meter stopped registering usage.

8 Therefore he concluded the leak was
9 inside the house and assumed it was probably the
10 toilet. Did not leave the service line notice
11 because it would be the customer's responsibility to
12 pay for the repair.

13 Q. And with a leaking toilet, what kind of
14 problems can result in that in your experience?

15 A. Well, you can have obviously water
16 continuing to flow through the house and out the
17 drain, in this case having the septic system that
18 would be flowing into the septic system [sic].

19 Q. And was that record -- I know there's
20 multiple dates on this, but was that record generated
21 at or near the dates that are listed?

22 A. Yes, it is.

23 Q. Okay. And is that record kept by
24 Missouri American Water in the ordinary course of
25 business?

1 A. Yes, it is.

2 Q. Moving on, can you identify Defendant's
3 Exhibit D6, which is a multiple-page document. And
4 if you can, explain what the relation is between
5 these documents?

6 A. Okay. This is a call from 11338
7 Larimore Road on April 2nd of '07. It is a -- it
8 came in through our call center and it's a report --
9 the homeowner's calling to report water coming up in
10 the back yard in several spots. He states it's clear
11 water and states this is a lot of water which is
12 bubbling up from the ground. "Customer states
13 tenants are not home." And so we went out to do some
14 investigation.

15 Q. And what was the result of those
16 investigations?

17 A. It appears to be groundwater, or at
18 least not our water because there's no mains in the
19 area.

20 Q. Okay. Where's the main in relation to
21 this address, real quick?

22 A. The main is on the north side of
23 Larimore Road, and this house is, again, on the south
24 side, and the report of the water was actually in the
25 back yard of that house.

1 Q. And have you been to this property?

2 A. Yes, I have.

3 Q. Okay. And can you describe it? What is
4 the elevation from Larimore to this property?

5 A. The home sits above the -- above
6 Larimore Road. It's higher in elevation than
7 Larimore Road.

8 Q. Does that elevation help explain why
9 Missouri American Water would conclude that this
10 appears to be groundwater in the backyard? Did that
11 have any significance to that conclusion?

12 A. The location of the main, yeah, the fact
13 that the water's in the backyard and difference in
14 elevation would have some impact on that.

15 Q. How would water coming from the main
16 located across the street, what would it look like if
17 it were causing problems in the back yard at higher
18 elevation? What would have to -- what would have to
19 happen for that to be the case?

20 A. You'd need a boat to be able to go down
21 Larimore Road. The water level on Larimore would
22 have to be above the elevation of the ground in the
23 backyard to be able to push water up into the
24 backyard like that.

25 Q. And Mr. Linam, were these records -- I

1 know the first one -- again, the first one on this
2 page, or D6, was that record part of these electronic
3 records we talked about with reference in D1?

4 A. Yes. The electronic record was reduced
5 to a paper ticket that was utilized by the
6 maintenance department.

7 Q. And all three of these tickets are all
8 dated April 2nd, 2007; is that correct?

9 A. That is correct.

10 Q. And they all have the address of 11338
11 Larimore, correct?

12 A. Correct.

13 Q. And are these records kept in the
14 ordinary course of business by Missouri American
15 Water?

16 A. Yes, they are.

17 Q. Moving on, I think we can skip D7.
18 Moving on to D8, this is the last one I'll have at
19 this address. Can you identify this document for the
20 Commission?

21 A. This is a leak report investigation
22 ticket generated by Missouri American Water.

23 Q. What is the date on this address -- of
24 this ticket?

25 A. December 12th of 2008.

1 Q. And according to this ticket, where is
2 the complaint of a potential leak?

3 A. 11334 Larimore Road.

4 Q. That's the same address we've been
5 discussing; isn't that correct? Or this is next
6 door?

7 A. The next one to the west, yes.

8 Q. Okay. And where is the alleged leaks --
9 where is the leak claiming to be occurring, claiming
10 to be?

11 A. It says, "Leak near the driveway."

12 Q. And who's listed as the individual
13 reporting the leak?

14 A. Myself and Mr. Lee.

15 Q. Do you know why you're listed on there?

16 A. I believe I received this via an e-mail
17 that was generated by Mr. Lee to the Commission, and
18 I contacted our dispatcher from there and asked them
19 to create the ticket to go investigate.

20 Q. Okay. And when was that investigation
21 conducted?

22 A. December 13th of 2008.

23 Q. Okay. Who conducted the investigation
24 according to this ticket?

25 A. One of our troubleshooter, Bob Koddloski

1 [phonetic spelling].

2 Q. What was the result?

3 A. It appeared to be groundwater not our
4 water.

5 Q. Mr. Koddloski, did he perform any other
6 tests at the address at that date?

7 A. He did. He notes no chlorine, so he did
8 a field test for the presence of chlorine.

9 Q. And again, what was the result of that
10 test?

11 A. No chlorine found.

12 Q. And was this record generated at or near
13 the time of December 13th, 2008, by Missouri American
14 Water?

15 A. Yes, it was.

16 Q. And was this record kept in the ordinary
17 course of business by Missouri American Water?

18 A. Yes, it is.

19 Q. I'm gonna go ahead and skip Defendant's
20 Exhibit D9 because that's repetitive. Can you
21 identify for the Commission, though, what Defendant's
22 Exhibit D10 is?

23 A. It's a letter from Missouri American
24 Water to the customer at 11334 Larimore Road.

25 Q. Okay. And according to this letter,

1 what -- what did Missouri American Water inform the
2 customer of?

3 A. That we had visited the property on
4 December 26th and read his meter. "During our visit
5 we found movement on the water meter which may
6 indicate that water was being used or that there is a
7 leak at the property. We were unable to determine if
8 there's a service line leak due to a toilet running
9 full blast, and we found that the stop and waste
10 valve would not hold. The repairs to the stop and
11 waste valve will need to be completed before we can
12 determine if there is a service line leak."

13 Q. Okay. And maybe -- and I apologize to
14 the Commission. Maybe I should back up. I was
15 thinking that that was gonna be repetitive, but I
16 forgot what was done on 12/26, so maybe we do need to
17 back up to D9 and describe what work was performed on
18 that date. Can you identify the multipage document
19 that's noted as Defendant's Exhibit D9?

20 A. Yes. It's the service order that was
21 generated. The customer generated a request to come
22 inspect the meter and check for leaks because the
23 customer said they had a high bill.

24 Q. And again, what did Missouri American
25 Water do?

1 A. We went out to do the investigation.
2 That's when we found the stop and waste valve
3 wouldn't hold on. We couldn't determine if there was
4 a leak on the service line, and then that's when we
5 generated the letter back to the customer.

6 Q. Okay.

7 JUDGE JORDAN: Can you just give us a
8 brief explanation of what that means, "stop and waste
9 valve does not hold"?

10 THE WITNESS: The stop and waste valve
11 is the valve right before your meter, and typically
12 it would be used to change your meter. It's inside,
13 you know -- it's inside the basement right below the
14 meter, and you would shut that off. That would
15 obviously isolate any additional flow going into the
16 house, so if we were looking for a leak between the
17 house and back to our main out in the yard, that
18 would stop any flow.

19 It's also if there was a leak past that
20 and we closed it off, the meter should stop spinning
21 if there was a leak going on inside. So it helps us
22 isolate if it's inside or outside.

23 JUDGE JORDAN: But it didn't work in
24 this case?

25 THE WITNESS: Correct, it would not

1 hold.

2 JUDGE JORDAN: It does not work.

3 THE WITNESS: It would not hold, and
4 it's the customer's responsibility to have it
5 repaired.

6 MR. NOCE: Thank you, your Honor, for
7 that clarification.

8 BY MR. NOCE:

9 Q. And again, we notified the customer of
10 this problem on what date?

11 A. We sent a letter on January 6th --

12 Q. Okay.

13 A. -- of 2009.

14 Q. And have you had a chance to review
15 service records for this account to determine whether
16 or not we've received any follow-up from the customer
17 at that address?

18 A. Yes. I did not see any notifications or
19 requests to come back out and check after repairs
20 were made.

21 Q. Have you received any further complaints
22 of leaking for that address? No leaks?

23 A. Not to my knowledge, no.

24 Q. Moving to Defendant's Exhibit D10.

25 A. That was the letter.

1 Q. I'm sorry. D11, can you identify this
2 record for the Commission?

3 A. Again, a record of a leak investigation
4 for 11339 Larimore Road.

5 Q. And is 11339, is that the address that's
6 noted on Defendant's Exhibit A with, I believe it's
7 No. 7?

8 A. Yes, it is.

9 Q. Okay. And what was the result of that
10 investigation?

11 A. There was a comment by the
12 troubleshooter that did the investigation that there
13 was a new main installed and there's a possible main
14 leak that needs to be checked out and needed to have
15 a construction crew up there to dig out them to fix
16 if it was leaking.

17 Q. And who was the troubleshooter?

18 A. Larry Zipway [phonetic spelling].

19 Q. And what was the date that that
20 investigation was conducted?

21 A. February 9th, 2007.

22 Q. And again, this is a multipage document.
23 How can you tell that these tickets, these three
24 pages are related?

25 A. Well, again, they have a unique

1 identifier number. The first one has a printed
2 number stamped on it. The second document --

3 Q. What is that number for the record?

4 A. 169356.

5 Q. And then turning to page 2, again, how
6 do you -- does that number appear on that record?

7 A. Yes. That's -- this is what starts out
8 as a blank copy that the field crew would use to go
9 make the repair and they write the same ticket number
10 in the box at the top of the page.

11 Q. Okay. And what is the date of that --
12 of this ticket?

13 A. February 10th, 2007.

14 Q. And what was done according to this
15 ticket by Missouri American Water?

16 A. We sent a crew up there and they --

17 Q. Where?

18 A. I'm sorry. Up to the site, which is
19 referenced as -- be on the north side of Larimore
20 Road about 250 feet east of the centerline of Aspen
21 Woods Drive. And we --

22 Q. Is there an address listed on there?

23 A. Yes. I'm sorry. 11339 Larimore Road.

24 Q. All right. Go ahead. I'm sorry.

25 A. And the lead man for the crew that was

1 doing the work noted on here that he had the
2 correlators up there and could not find a leak.

3 Q. Was there any follow-up investigation at
4 this address regarding this complaint?

5 A. Yes. The miscellaneous -- the ticket
6 was kept in the maintenance office, and it was --
7 again, that would be the third page still with ticket
8 No. 169356 where the maintenance crew went up six
9 days later, looks like on February 16th of 2007.
10 Again, it was Kevin Dorn. "No sound on service lines
11 noted. Small amount of water in the ditch line, but
12 no chlorine."

13 Q. What does it mean again when there's no
14 sound on the service line, what does that mean they
15 did?

16 A. Again, they were listening -- they
17 utilized the services to -- at the connection point
18 to the main as well as to listen to the sewer to see
19 if there was any evidence of a leak.

20 Q. And what was the date of that
21 investigation?

22 A. February 16th of 2007.

23 Q. So for this particular leak, Missouri
24 American Water was out there on three separate
25 occasions to investigate this leak; is that correct?

1 A. That's correct.

2 Q. Moving to Defendant's Exhibit D12, can
3 you identify that document for the record?

4 A. A report of -- generated by Missouri
5 American of a leak -- a possible leak at 11347
6 Larimore Road.

7 Q. And what date was that?

8 A. That was dated October the 14th of 2008.

9 Q. And according -- again, this is a
10 two-page record. Turning to the second page, what
11 was the result of the investigation conducted?

12 A. States that there was nothing found.
13 "Water in the driveway is the customer's sump pump."

14 Q. And what was the date of that
15 investigation?

16 A. I believe it to be the same date, but I
17 don't see the actual date on the handwritten part
18 that the troubleshooter filled out.

19 Q. What's the date of the time stamp? Or
20 I'm sorry.

21 A. On the first page of it is October 14th
22 of 2008.

23 Q. And was that not the date, then, of the
24 result of the investigation at the bottom?

25 A. Yes, it is. "Water from sump pumps."

1 I'm sorry.

2 Q. What's the date on that?

3 A. October 14th of 2008.

4 Q. Okay. And again, are these -- and when

5 I ask you this, I'm gonna refer to Defendant's

6 Exhibit D10, 11 and 12 because I forgot to ask you

7 for those. Have those records that we've been

8 discussing, have all of these been generated by

9 Missouri American Water in the ordinary course of

10 business?

11 A. Yes, they are.

12 Q. Okay. And again, you know that this --

13 these two pages of Defendant's Exhibit D12 are

14 related how?

15 A. By their unique identifier number, which

16 is 185792.

17 Q. Move on to Defendant's Exhibit D13.

18 Where's the reported -- let me start off, where is

19 the street address listed on the top as the location

20 of the reported leak?

21 A. 11119 Carl Street.

22 Q. Okay. And what is the date of this

23 ticket or this complaint?

24 A. April 7th of 2008.

25 Q. Okay. Where is the actual -- in the

1 other "remarks" section, though, what is the location
2 of the water reported flooding or coming from?

3 A. It says water is coming from the corner
4 of Aspen Woods and Larimore.

5 Q. And what did Missouri American Water do
6 according to this?

7 A. The troubleshooter went to the site to
8 investigate and found -- nothing found. Didn't find
9 a leak.

10 Q. And what does NF stand for?

11 A. Nothing found.

12 Q. And who was the troubleshooter that did
13 this?

14 A. Keith Bacon.

15 Q. And what was the date of this
16 investigation by the troubleshooter?

17 A. April 7th of 2008.

18 Q. So the same date that the call came in;
19 is that correct?

20 A. Yes.

21 Q. And who was reported as the caller?

22 A. It came in through our call center, so
23 it's noted as the FRCC, our call center, but it has
24 in the phone -- a phone number listed and it has Rob
25 written underneath it, and I believe that to be

1 Mr. Lee.

2 Q. Okay. And if I could, we'll move on to
3 Defendant's Exhibit E1. Excuse me. Actually, I'm
4 gonna back up before we go to the photographs.

5 During your investigation of the area on
6 April 9th of '09, did you have an opportunity to
7 investigate anywhere along Larimore on that date?

8 A. Yes. I went along Larimore from the
9 railroad track area, westward to Aspen Woods.

10 Q. Okay. And what did you observe on that
11 date? And why don't we start along the north side of
12 Larimore.

13 A. There was some water in the ditch,
14 drainage ditch areas, and I also noted that the
15 culverts under the driveways were packed full of
16 leaves and creating a poor drainage situation.

17 Q. What about the drainage ditch to the
18 south of Larimore, did you note anything during your
19 investigation on that date?

20 A. I believe I noted there was still some
21 water present there as well.

22 Q. Were you able to conclude where that
23 water was coming from?

24 A. No. I went on up Larimore a little bit
25 more to the west. I noticed a black corrugated metal

1 pipe coming perpendicular from the property
2 terminating into the drainage ditch a little bit west
3 of that, probably at either 11320 or 11306 Aspen
4 Woods, based on the map here.

5 Q. And that's the south side --

6 A. That was on the south side of Larimore,
7 that's correct.

8 Q. Okay. And also before we get to the
9 photographs, you stated that you were out there I
10 believe when Mr. Bommarito was out there in May?

11 A. On the first visit he was out there, on
12 May the 1st.

13 Q. Okay. And on May the 1st did you have
14 an opportunity to investigate the area along Aspen
15 Woods near the church there that we've been
16 discussing and I think is marked as Defendant's
17 Exhibit A -- or on Defendant's Exhibit A as the
18 No. 8.

19 A. Yes.

20 Q. Okay. Do you recall anything from your
21 investigation of that area that was significant?

22 A. The -- right behind at the back of the
23 building there was saturated ground, appeared to be
24 flowing, seeping out across the sidewalk and over
25 into the street area, I guess. And there was a -- I

1 don't know, a cistern or whatever, they had a pallet
2 on top of it in that area.

3 Q. What about the church parking lot, were
4 you able to determine -- make any determinations as
5 to how it -- any run-off water escaped from there?

6 A. The church has a large parking lot in
7 the back of the building, and it all runs to a drain
8 that then appears to come eastward over to Aspen
9 Woods. The flow path appears to be collected on the
10 parking lot and then eastward over to Aspen Woods.

11 Q. And where did that drain appear to empty
12 in relation to the number, the 8 that's the number on
13 there?

14 A. Right about where No. 8 is.

15 Q. Now, moving to Defendant's Exhibit E1
16 through E10. We'll start with E1. Can you identify
17 this document for the Court?

18 A. E1.

19 Q. Yes.

20 A. It's a photograph that I took I think in
21 response to some of the filings that Mr. Lee had
22 made. I can't remember if they were supplemental
23 filings out along Aspen Woods.

24 Q. And do you know where this photo was
25 taken, what address?

1 A. I think it was in the vicinity of 11307.

2 Q. Okay. And is that noted by the number
3 9, I believe, 9A?

4 A. Yes, it is.

5 Q. Okay. And do you recall when this
6 photograph was taken?

7 A. May -- sometime in May. I think May
8 19th.

9 Q. Okay. And what are you trying to depict
10 by this photograph?

11 A. I was trying to represent the same area
12 that Mr. Lee had in previous photographs showing
13 water in that curb line that is now dry.

14 Q. If we could move on to Defendant's
15 Exhibit E2, where is this photograph taken?

16 A. It's the same area of the first
17 photograph. I was looking to the north. This one's
18 looking to the south.

19 Q. Okay. And again, was this taken the
20 same date?

21 A. Yes, it was.

22 Q. Okay. I'm sorry. I didn't ask you this
23 on E1. Does that photograph fairly and accurately
24 depict the area in front of 11307 on May 19, 2009?

25 A. Yes.

1 Q. Same question for E2?

2 A. Yes.

3 Q. Moving to E3. Again, can you identify
4 where this photograph was taken and when?

5 A. May 19th in the same area as No. 9.

6 Q. And what was the significance of this
7 photograph?

8 A. Making sure I captured all of the curb
9 line along that area.

10 Q. And was this -- does this photograph
11 fairly and accurately depict that area in front of
12 11307 Aspen Woods --

13 A. Yes.

14 Q. -- as of May 19th?

15 A. Yes.

16 JUDGE JORDAN: What year, please?

17 THE WITNESS: 2009, this year.

18 BY MR. NOCE:

19 Q. Sorry. Moving on to E4, can you
20 identify that document for the Commission, please?

21 A. That is a photograph I took out in front
22 of 11363 Aspen Woods.

23 Q. Okay. And is that located anywhere near
24 any of the numbers depicted on Defendant's Exhibit A?

25 A. Yes, near No. 11.

1 Q. And when was this photograph taken?

2 A. Same day, May 19th, 2009.

3 Q. And what was the purpose of this
4 photograph?

5 A. Again, I was taking a picture of the
6 area that was previously submitted by Mr. Lee as
7 being wet, and showing the dry spot there in front of
8 the mailbox.

9 Q. And does this photograph fairly and
10 accurately depict the area in front of 11363 Aspen
11 Woods on or about May 19, 2009?

12 A. Yes.

13 Q. Moving on to Exhibit E5, can you
14 identify that for the Commission, please?

15 A. It's a second photograph of the same
16 area in front of 11363.

17 Q. And what was the date of that
18 photograph?

19 A. Same date, May 19th, 2009.

20 Q. And does that fairly and accurately
21 depict that area as of that date?

22 A. Yes.

23 Q. Moving on to E6, was this the same area?

24 A. Yes, it is.

25 Q. This was taken the same date?

1 A. Yes, it was.

2 Q. And does this photograph fairly and
3 accurately depict that area as of that date?

4 A. Yes, it does.

5 MR. LEE: Objection. Why do we have
6 three photographs of the same spot on the same day?

7 MR. NOCE: I think he actually is
8 backing up here.

9 THE WITNESS: I think I was trying to
10 show farther behind the white car in the adjacent
11 property. If I recall, there might have been a wet
12 spot there too in the previous photo submitted, so I
13 wanted to try to capture everything.

14 BY MR. NOCE:

15 Q. Okay. Thank you. And moving on to
16 Defendant's Exhibit E7.

17 JUDGE JORDAN: I will overrule the
18 objection.

19 MR. NOCE: Oh, I'm sorry, Judge.

20 JUDGE JORDAN: That's okay.

21 BY MR. NOCE:

22 Q. Moving on to E7, can you identify that
23 document for the record?

24 A. A photograph taken by me on the same day
25 backing up to be in front of 11371 Aspen Woods Drive.

1 Q. Okay. And does this photograph -- what
2 was the purpose of this photograph?

3 A. Again, to record the dry curb line that
4 had been submitted in previous photographs.

5 Q. And does this photograph fairly and
6 accurately depict the area in front of 11371 Aspen
7 Woods?

8 A. Yes, it does.

9 Q. Again, is this all near the 11 that's
10 marked on Defendant's Exhibit A?

11 A. Yes, it is.

12 Q. And moving on to Defendant's Exhibit E8,
13 can you identify this document for the Court?

14 A. Second photograph for 11371.

15 Q. Okay. And when was that taken?

16 A. May 19th of 2009.

17 Q. And does that photograph fairly and
18 accurately depict the area?

19 A. Yes, it does.

20 MR. LEE: Could I just ask for
21 clarification? We have five photos of the same spot.
22 Am I seeing this wrong? What are -- what are you
23 trying to show?

24 MR. NOCE: This is in response to if you
25 look at Plaintiff's Exhibit D8 -- or 10A, I'm sorry,

1 you'll see that there's multiple puddles that he's
2 trying to depict in this cul-de-sac, and it's our
3 contention that Mr. Linam was trying to capture the
4 entire cul-de-sac through these series of photographs
5 and cover the entire area that Mr. Lee is alleging
6 where leaks are occurring.

7 JUDGE JORDAN: Okay. I just had that
8 exhibit. What is it? Is that 10?

9 MR. NOCE: It's 10A.

10 JUDGE JORDAN: Okay. I see. So you're
11 telling me what, that what you're trying to do with
12 this series of photographs is match the photographs
13 of 10A -- let's see. I see a couple of them. I see
14 two of them. I see two with the silver truck.

15 MR. NOCE: Correct.

16 JUDGE JORDAN: On the first page, are
17 those some of the photographs you're referring to?

18 MR. NOCE: These photographs are being
19 offered to dispute the alleged -- the allegations
20 that there's a leak, and if you follow the series,
21 it's continuing to back up to show more area around
22 the circle.

23 JUDGE JORDAN: Okay. Well, let me take
24 a look.

25 MR. LEE: My question is, am I missing

1 something? These appear to be at least four
2 photographs of the same spot in the street.

3 MR. NOCE: I think if the Commission
4 will --

5 JUDGE JORDAN: Okay. As we go through
6 the photograph, the foreground changes a little bit
7 differently. It changes a little bit.

8 MR. LEE: Okay.

9 JUDGE JORDAN: Is that the clarification
10 you sought?

11 MR. LEE: I'm fine.

12 JUDGE JORDAN: Okay. Thank you.

13 BY MR. NOCE:

14 Q. Mr. Linam, can you identify for the
15 Commission Defendant's Exhibit E9?

16 A. Yes. It's a photograph in front of 1360
17 Aspen Woods, which is on the opposite side of the
18 street from where the previous photographs were
19 taken.

20 Q. Okay. And is that also near Exhibit
21 No. 11 on Defendant's Exhibit A?

22 A. Yes, it is.

23 Q. And what were you attempting to show in
24 that photograph?

25 A. That there was -- there is still water

1 in front of the mailbox, but it is less and drying up
2 than the amount -- than the water that was provided
3 in Mr. Lee's photograph.

4 JUDGE JORDAN: Are you referring to this
5 as Exhibit 11?

6 MR. NOCE: No. I believe it's
7 Exhibit 10C. Is that the photograph you're referring
8 to? And the exhibits should be in front of you. I
9 don't have his in here, but they should be...

10 JUDGE JORDAN: I see. I've got it.
11 Thank you.

12 MR. NOCE: But, yeah, if you want to go
13 ahead and take a look and just confirm that that's
14 the area that you're trying to depict. And I'm
15 referring to the bottom picture on 10C, I believe.

16 THE WITNESS: Yes, that's what I was
17 trying to depict.

18 JUDGE JORDAN: I see that.

19 BY MR. NOCE:

20 Q. Okay. And Defendant's Exhibit E10, does
21 that -- excuse me, does Defendant's Exhibit E9 fairly
22 and accurately depict that area it front of 1360
23 Aspen Woods?

24 A. Yes, it does.

25 Q. And moving on to Defendant's Exhibit

1 E10, can you identify that record for the Court, or
2 for the Commission.

3 A. It's a close-up of the same area in
4 front of that address, 1360 Aspen Woods, showing the
5 smaller-sized puddle.

6 Q. And when was that photograph taken?

7 A. May 19th, 2009.

8 Q. And does that photograph fairly and
9 accurately depict the area in front of 1360 Aspen
10 Woods on that date?

11 A. Yes, it does.

12 Q. Mr. Linam, you've been present in the
13 court over these past few days and heard the
14 testimony of all the witnesses; is that correct?

15 A. Yes, I have.

16 Q. If I could ask you to turn to
17 Defendant's Exhibit H. Can you identify what that
18 document is?

19 A. It's a summary table of the
20 investigations that have been done, site visits and
21 investigations of possible leaks in the area as part
22 of this complaint.

23 Q. And does that fairly and accurately list
24 the summary of the investigations conducted by
25 Missouri American Water in the evidence that you've

1 heard both today and yesterday? Have you had a
2 chance to review that document?

3 A. Yes, I believe it does.

4 MR. NOCE: At this time I don't have any
5 further questions. I would ask that several exhibits
6 be admitted into evidence, and I guess I can go
7 through them. I guess it would be Exhibit D1, D2.
8 And I'll get the second page during a break. D3, D4,
9 D5. I think we skipped D6. Or I think we did D6.
10 We skipped D7, so I'd ask that D6 be admitted. We
11 skipped D7. No, I apologize. We did go over D7.
12 That was the one we went back to.

13 MR. LEE: Are those in the binder here?
14 D like dog, right?

15 MR. NOCE: Yes. D8, D9, D10, D11, D12,
16 D13, and then E1 through 10, and H, and ask that all
17 of those be admitted into evidence.

18 JUDGE JORDAN: Okay. Objections?

19 MR. LEE: I don't know enough to
20 object.

21 JUDGE JORDAN: Okay. While you're
22 thinking about it, I'll ask Staff. Any objections?

23 MR. RITCHIE: Staff has no objections,
24 your Honor.

25 MR. LEE: I guess I don't have a problem

1 with it.

2 JUDGE JORDAN: Okay. I have one
3 question about E. And -- no, I'm sorry. That's H,
4 summary of investigations. I don't remember you
5 saying -- the witness saying who prepared this
6 document.

7 MR. LEE: Pardon?

8 JUDGE JORDAN: I don't remember the
9 witness saying who prepared the document.

10 MR. NOCE: Judge, I can address that. I
11 actually did prepare the document.

12 JUDGE JORDAN: I've heard no objection
13 to it, so it's admitted. Those exhibits will be
14 admitted.

15 (EXHIBITS D1 THROUGH D13, E1 THROUGH E10
16 AND H WERE RECEIVED INTO EVIDENCE AND MADE A PART OF
17 THE RECORD.)

18 MR. NOCE: It's just a summary, your
19 Honor. I'll go ahead and put this in with the actual
20 documents that are being submitted. No further
21 questions at this time.

22 JUDGE JORDAN: Okay. Cross-examination
23 from Staff.

24 MR. RITCHIE: Staff has no cross.

25 JUDGE JORDAN: All right.

1 Cross-examination from Mr. Lee.

2 CROSS-EXAMINATION BY MR. LEE:

3 Q. Okay. H, Exhibit H.

4 A. Yes.

5 Q. The first page, No. 4?

6 A. Yes.

7 Q. It says, "Storm drain at Larimore and
8 railroad tracks on 3/20 of '09."

9 A. Okay.

10 Q. I assume you mean this in 7C; am I
11 correct?

12 A. I believe that's correct. Yes, at the
13 gravel parking lot near the railroad tracks at
14 Larimore and -- yes.

15 Q. Okay. And your explanation is here,
16 that the main is on the opposite side of the road?

17 A. Yes.

18 Q. Okay. I guess if that drain runs under
19 the railroad tracks, how could that be an intelligent
20 reason that it couldn't be leaking?

21 MR. NOCE: I'll object the question as
22 argumentative.

23 JUDGE JORDAN: It is argumentative. Can
24 you rephrase that?

25 BY MR. LEE:

1 Q. If the water main is on the other side
2 of the railroad tracks, how can -- which in the drain
3 goes under the railroad tracks, how can which side of
4 the road the main is on be an issue?

5 A. Well, it's just stating that the main is
6 on the opposite side of the street.

7 Q. Okay. So you're not using that as a --
8 in several of these other things, I believe I've
9 heard, well, the main's on the other side of the
10 street is a reason that water couldn't be on the
11 other side, but you're not necessarily saying that in
12 this --

13 A. It's a factor to consider, but it's not
14 the only factor.

15 Q. And then my point is, if it's a straight
16 pipe running under the road, how could that be even
17 anything to remotely consider?

18 A. If what's a straight pipe running under
19 the road? I don't understand the question.

20 Q. That drain runs under the tracks. It's
21 a pipe that runs under the tracks.

22 A. Okay.

23 Q. If you have the pipe that runs -- that
24 connects both sides of the road, how could which side
25 of the road it's on be an issue?

1 JUDGE JORDAN: You understand the
2 question?

3 THE WITNESS: No.

4 JUDGE JORDAN: I think I do. The drain
5 spans a road or railroad tracks. Why does it matter
6 which side, or does it matter which side of the road
7 the main is on, why does that matter in accounting
8 for water in the drain?

9 THE WITNESS: I mean, it's just a note
10 that the main is on the opposite side of the street
11 of where the picture is and where the water is seen.
12 It would be a consideration, but again, there's
13 multiple factors to consider. That's just one of
14 them.

15 JUDGE JORDAN: In other words, you're
16 not saying that's determinative.

17 THE WITNESS: Correct.

18 JUDGE JORDAN: Okay. Sometimes it's
19 helpful to isolate the premise of these questions.

20 BY MR. LEE:

21 Q. Okay. Do you know if that's currently
22 leaking, that location?

23 A. Not to my knowledge.

24 Q. Okay. Have you inspected it lately?

25 A. What is lately, I guess?

1 Q. The last week.

2 A. No.

3 Q. Or last month, the last two months.

4 When was the last --

5 A. The last inspection would have been the
6 correlation of the main on Larimore Road on May the
7 1st.

8 Q. May the 1st?

9 JUDGE JORDAN: Of what year?

10 THE WITNESS: Of 2009.

11 JUDGE JORDAN: Thank you.

12 BY MR. LEE:

13 Q. So you can't -- you don't know today if
14 that's leaking right now, or before the rain
15 yesterday, you have no way of knowing it?

16 A. All I can say is it wasn't leaking on
17 May 1st, 2009.

18 Q. So the problem has not been solved,
19 correct?

20 MR. NOCE: Objection. I don't think
21 there's been -- vague as to what the problem is; and
22 B, I'm not sure it's been established that there is a
23 problem.

24 JUDGE JORDAN: That's a difficult
25 question for the witness to answer. You asked him

1 when was the last time he examined this, and he
2 answered. It kind of sounds like the current
3 question is connected to that, but I can't tell. So
4 maybe you want to rephrase that.

5 MR. LEE: Let me try to say what I'm
6 trying to get here.

7 JUDGE JORDAN: Explain your line of
8 inquiry to me and we'll take it from there.

9 MR. LEE: This is a summary that I guess
10 is trying to prove that there's no problem here.

11 MR. NOCE: Your Honor, if I can speak to
12 that. This summary was prepared just as a summary
13 for the purpose of all the investigations that were
14 done. It's not -- it's just a reference to the
15 exhibits that have been submitted. As I stated, I
16 was the one -- I'm the author of this. All it is,
17 though, is summarizing what was on those exhibits.

18 JUDGE JORDAN: I am taking this as sort
19 of a demonstrative exhibit --

20 MR. NOCE: Correct.

21 JUDGE JORDAN: -- that is something that
22 will guide me through the other exhibits. And for
23 the record, H does not have independent probative
24 value; is that correct, Mr. Noce?

25 MR. NOCE: Yes, it is. Yes, correct.

1 JUDGE JORDAN: Okay. It's like a table
2 of contents.

3 MR. NOCE: Exactly, your Honor.

4 JUDGE JORDAN: Thank you.

5 BY MR. LEE:

6 Q. Okay. Another question here on the
7 right lower corner under "Water Sample," it says,
8 "Lab results came back zero for chlorine in water
9 collected by PSC at 11338 Larimore."

10 After the testimony of Mr. Simmons
11 yesterday about the unreliability of the lab results,
12 are you still willing to consider this as a valid
13 test for this water?

14 MR. NOCE: Objection. It misstates the
15 testimony by Mr. Simmons yesterday.

16 JUDGE JORDAN: Well, I'll sustain that
17 as to characterization. Your question will not
18 constitute evidence that the tests were unreliable,
19 so the rest of the question is fine.

20 MR. LEE: Maybe I could rephrase it.

21 JUDGE JORDAN: Please do.

22 BY MR. LEE:

23 Q. Yesterday we heard testimony that four
24 of the ten tests performed on this water in the
25 laboratory, that you couldn't tell if it was tap

1 water or groundwater.

2 MR. NOCE: Object. Misstates the
3 testimony yesterday of Mr. Simmons.

4 JUDGE JORDAN: Allow me to ask the
5 question, this question. Do you remember
6 Mr. Simmons' testimony as to the content of tap water
7 and groundwater?

8 THE WITNESS: I do.

9 JUDGE JORDAN: Okay. Do you remember
10 Mr. Lee's cross-examination of Mr. Simmons as to
11 that -- as to that testimony and the content of tap
12 water versus groundwater?

13 THE WITNESS: Most of it. Quite a bit
14 of it.

15 JUDGE JORDAN: Okay. Do you remember
16 Mr. Lee's questions with regard to -- I think I'll
17 stop there. I'll stop there. Mr. Lee, maybe you can
18 pick it up from there.

19 BY MR. LEE:

20 Q. Are you qualified to collect water
21 samples?

22 A. I believe I'm qualified to collect a
23 water sample for a leak investigation, yes.

24 Q. If you collected a water sample out of a
25 tap, and en route your bottle fell over, say it fell

1 on a table or it fell on the floor or it fell in some
2 dirt, would you set that water back up and put it in
3 a -- I believe the bottle was autoclaved, washed in
4 an expensive dishwasher and took extreme measures to
5 make sure we had a sterile bottle.

6 MR. NOCE: I think I'm gonna object.

7 JUDGE JORDAN: Let's wait until the
8 question is finished.

9 BY MR. LEE:

10 Q. If you spilled that water out of that
11 bottle and it went on either one of those surfaces, a
12 table, a floor or into dirt, would you suck that
13 water back up and put it back in the jar and take it
14 to the lab?

15 A. You're referring to a bacteriological
16 sample, and no, I would not, because I'm not
17 taking -- and I wouldn't be taking a bacteriological
18 sample, which is the bottle you were describing, for
19 a leak investigation.

20 Q. I don't know that Mr. Simmons stated
21 that the clean bottles were only for bacteriological
22 samples. It was my understanding we had sterile
23 bottles for all samples.

24 JUDGE JORDAN: Okay. Well, since
25 this -- all testimony is being transcribed, the

1 transcript will show what he said. He's answered
2 your question. You can ask another question if you'd
3 like.

4 BY MR. LEE:

5 Q. But you would not put that water back in
6 the bottle?

7 JUDGE JORDAN: That's the same question.
8 So you can ask him -- he's answered that question.

9 BY MR. LEE:

10 Q. Then my next question is, I just can't
11 figure this out. Say this water is flowing a quarter
12 mile underground or less, being contaminated through
13 soil, through limestone, through we don't even know
14 what. How can you show up on the scene with a
15 sterile bottle and claim to start the chain of
16 command after the sample is already contaminated?

17 MR. NOCE: I'm gonna object.

18 JUDGE JORDAN: That sounds like a
19 rhetorical question.

20 MR. LEE: The test could only be --

21 MR. NOCE: I'm going to object.

22 MR. LEE: -- used to compare groundwater
23 to other groundwater. It could not be used to
24 compare tap water to groundwater because of the
25 contamination factor.

1 MR. NOCE: I'm gonna move to strike.
2 Mr. Lee is testifying here, and I believe it lacks
3 foundation. He's laid no foundation for this
4 testimony, and furthermore, he's cross-examining a
5 witness at this time.

6 JUDGE JORDAN: Right. I think I
7 understand what the question is, though. You're
8 asking about the nature of the sample that is
9 collected, correct?

10 MR. LEE: (Nodded head.)

11 JUDGE JORDAN: Maybe you can rephrase
12 that and focus on that.

13 MR. NOCE: Judge, I guess I'd also
14 object that this is beyond the scope of what this
15 witness has been presented, the evidence that this
16 witness has been asked to testify to.

17 MR. LEE: I object to that. He's
18 already testified to water samples and their validity
19 in determining the leak.

20 JUDGE JORDAN: Right.

21 MR. NOCE: I don't believe this witness
22 did testify to any of the water samples. Mr. Simmons
23 was offered as the expert.

24 MR. LEE: Each one of these pages says
25 no chlorine found, and we used that information to

1 prove that it's not tap water.

2 JUDGE JORDAN: Okay. That will do.
3 That will do for now. I'm going to give you my
4 ruling here by reference to the statute. And I'm
5 going to cite § 536.070, subdivision 2, which states
6 that each party shall have the right to cross-examine
7 opposing witnesses on any matter relevant to the
8 issues, even though that matter was not the subject
9 of direct examination.

10 In other words, we have open
11 cross-examination in this forum. So he can ask this
12 witness something that was not the subject of direct.

13 Now, let's focus on this question. I'll
14 give you another run at it. You're trying to pin
15 down the quality of a sample that's taken, its
16 nature; am I correct in that?

17 MR. LEE: I am. I believe we're
18 comparing apples to oranges here.

19 JUDGE JORDAN: Okay. And you can ask
20 him a question that will illustrate that, but we're
21 gonna have to move on. I'm gonna give you one more
22 chance to take a run at this.

23 BY MR. LEE:

24 Q. Okay. We wouldn't contaminate tap water
25 if the jar fell over. My question is, if this water

1 ran underground or even came in contact with the
2 ground and we picked it up off the ground and put it
3 in the bottle, how can contaminated water results
4 even remotely compare to water that's not touched the
5 ground?

6 A. You're asking me a question about a
7 sterilized bottle utilized for bacteriological
8 testing only. It doesn't -- we don't test chlorine
9 in the bottle that is sterilized and sealed when it's
10 taken out, so I can't answer the question other than
11 to tell you that I don't use bacteriological bottles
12 to test for chlorine.

13 Q. Any type of bottle that you put it in --

14 JUDGE JORDAN: Okay. We're almost
15 there, I think. We're almost there. You're not
16 really asking about the bottle. You're asking about
17 the quality of the water.

18 BY MR. LEE:

19 Q. The quality of the water. One water has
20 flown through or touched soil, one water has come
21 straight out of a tap. How can we compare the
22 results on those two samples? One is contaminated
23 before it's tested, one is straight out of the tap.

24 JUDGE JORDAN: Let's isolate the premise
25 of that question also. If water runs through

1 ground -- I'll ask this question. , I can ask the
2 question. If water from a main flows through the
3 earth, can you tell us, just with those facts, how it
4 will compare to water from a main that has not flowed
5 through the earth? Are you qualified to tell us?

6 THE WITNESS: Treated water that had
7 chlorine in it that flows through ground could still
8 have chlorine in it when we collected the sample and
9 took it for analysis.

10 JUDGE JORDAN: Okay.

11 MR. LEE: Could. May or may not.

12 JUDGE JORDAN: Now, whether it does or
13 not, what will determine that?

14 THE WITNESS: The test itself telling us
15 that there's chlorine still present in the water.

16 JUDGE JORDAN: Let me rephrase my
17 question. What factors affect the chlorine content
18 of the water that you collect from the earth?

19 THE WITNESS: Whether or not there's
20 enough chlorine demand to reduce that level to
21 nondetectible or zero.

22 JUDGE JORDAN: Okay. Water from your
23 main and water that comes from the ground, okay,
24 after -- say water flows from the main to the ground,
25 and then there's water that just comes out of the

1 main, tap water, okay, we're trying to compare those
2 two, and I'm having a hard time with this also. I
3 think I know where we're trying to go. We've had
4 testimony stating that water taken from these sites
5 does not have the characteristics of Missouri
6 American's water.

7 Okay. The issue here is, first, would
8 having flown through the ground affect those
9 characteristics? Can you tell us that?

10 THE WITNESS: It could.

11 JUDGE JORDAN: Okay. It could. What
12 would be the characteristics of such flow? What
13 would be the variables as to how much it changes the
14 characteristics of that water.

15 MR. NOCE: And again, Judge, if I could
16 have a running objection to this line of questioning.
17 This witness is not being offered for this type of
18 expert testimony.

19 JUDGE JORDAN: Well, first of all, I'll
20 ask you, can you tell us about that?

21 THE WITNESS: Some.

22 JUDGE JORDAN: Okay. If I were to say
23 it depends on how long the water sat in the ground,
24 how far it flowed from the source to the collection
25 point, the type of soil and the type of geology that

1 it went through, are those among the factors that
2 would change the characteristics of Missouri
3 American's tap water?

4 THE WITNESS: Yeah, I think they would
5 have some impact on it.

6 JUDGE JORDAN: Okay. That concludes my
7 inquiry. Thank you for indulging me. Mr. Lee, I'll
8 let you resume.

9 BY MR. LEE:

10 Q. So would you say that it is not fair to
11 compare tap water results to groundwater results --

12 MR. NOCE: I think I'll object.

13 BY MR. LEE:

14 Q. -- to determine that that water did not
15 come from a water main?

16 MR. NOCE: Object. Argumentative, the
17 characterization of what Mr. Lee means by fair.

18 MR. LEE: How is that argumentative?

19 JUDGE JORDAN: Okay. He's focusing on
20 the term fair, and that sounds argumentative. You're
21 trying to get to whether these things are
22 scientifically comparable. Tap water that has flown
23 through the ground versus tap water that just comes
24 out of the tap.

25 MR. LEE: To me it seems like one sample

1 is contaminated before they test and one is pure, and
2 they're trying to compare the results.

3 JUDGE JORDAN: They are comparing the
4 results according to what I've heard. What you're
5 calling contamination is what I referred to as the
6 flow through the earth.

7 MR. LEE: Right. Absolutely.

8 JUDGE JORDAN: Now, you want to ask
9 something I think about the validity of such
10 comparison.

11 MR. LEE: Correct.

12 JUDGE JORDAN: Okay. Why don't you ask
13 that question.

14 BY MR. LEE:

15 Q. Okay. How are these test results
16 comparable?

17 A. It's still valid to test the components
18 of the water as one -- or the characteristics of the
19 water as one component of a leak investigation to
20 determine if a leak exists.

21 Q. But you just said the --

22 JUDGE JORDAN: That's okay. We heard
23 what he just said. And remember, this is all
24 transcribed. So if there's an inconsistency, it will
25 appear in black and white.

1 BY MR. LEE:

2 Q. So it seems like much of Missouri
3 American Water's defense or reason that this water
4 did not come from their water mains relies on lab
5 work of either on-site lab work with the little pill
6 bottle, or water collected and taken to a lab; is
7 that correct?

8 MR. NOCE: I'll object. It misstates --
9 it mischaracterizes the evidence that's admitted.

10 JUDGE JORDAN: Well, the witness can
11 answer because he is a Missouri American's witness.
12 He can say.

13 THE WITNESS: It's one component of
14 everything we do to investigate a complaint about a
15 leak.

16 Q. If a complaint is called in, a Missouri
17 American worker is sent out, water's flowing out of
18 the ground, they do their little swimming pool test
19 on that water and it shows no chlorine, what is the
20 next step?

21 A. To inspect also the nature of the water,
22 how the water is flowing out of the ground, what it
23 looks like, you know, where is it going, and make
24 additional -- listen on the valves and the service
25 lines and even correlate, if necessary, to further

1 detail and make sure there's not a leak.

2 BY MR. LEE:

3 Q. So every time I've called in a
4 complaint, they have come and tested the water and
5 correlated that water main?

6 A. Not necessarily every time.

7 Q. Okay. I just asked what the next
8 procedure was after the test, and you said correlate.

9 A. That could be the last -- that could be
10 done if in their experience and knowledge they don't
11 see the need to correlate and especially if they can
12 tell from their observation that it's not typical of
13 the way a leak presents itself, then they would
14 necessarily take it to the step of correlating.

15 Q. Could you describe to me how a leak
16 typically presents itself?

17 A. Well, I'll use Aspen Woods as an
18 example. The ground around the main, if there was a
19 leak, would saturate, and then that saturation that
20 yard would be -- the water would come to the surface
21 and flow a little bit away from there. If it
22 continued, it would continue further, but the grass
23 in that area would be so saturated that you would --
24 right over the main there, that you would -- that
25 would be a strong indication that, you know, there

1 would be a leak there then.

2 Q. In every leak that would be the case?

3 A. It's pretty -- "every" is a broad
4 statement, but it's pretty dominant. If that would
5 be the case, you're gonna see evidence right around
6 the main.

7 Q. If that's true, there's no reason to
8 have the correlating equipment, is there? You could
9 just find a wet spot and know the leak was right
10 there.

11 A. No. You could -- again, if you let a
12 leak -- correlating it also gives you exactly where
13 to dig, so they use that correlating equipment for a
14 lot of reasons, and, you know, correlating is the --
15 the best -- I would guess -- I would say it was the
16 best method, or the most comprehensive method or
17 portion component, if you will, of an entire leak
18 investigation.

19 Q. I agree with that. My next question is,
20 the one documented here was a complaint about me from
21 2004 about water running under my mailbox, I believe.

22 MR. NOCE: I think it was D1.

23 THE WITNESS: It doesn't say anything
24 about it running under your mailbox. It makes
25 reference to a house being torn down next door, and

1 there's been water noticeable in the ground. Can
2 someone come investigate.

3 Q. If I could, just for knowledge part of
4 this, the house was torn down just to the north of my
5 property, which is where my mail box --

6 MR. NOCE: I think I'm going to object,
7 your Honor. I think this is him testifying again
8 outside of his case in chief.

9 JUDGE JORDAN: Right, which means I'll
10 allow a question phrased as a hypothetical, as an
11 "if" statement, you can ask him a question, assuming
12 something.

13 BY MR. LEE:

14 Q. Okay. If this complaint was about water
15 running under my mailbox, would the correlation
16 equipment have been hooked to the line?

17 A. I don't know.

18 Q. Was the correlation equipment hooked to
19 the water main on this complaint?

20 A. I don't know.

21 Q. If we could go to B2. I'm a little
22 curious about what the time stamp means, and
23 specifically what got done in it looks like 12
24 minutes. What did that employee spend 12 minutes
25 doing at my address?

1 A. The call was received by, or notified by
2 our dispatcher, and 12 to 13 minutes later she
3 dispatched it to the troubleshooter. He didn't go
4 out there until after he got that call.

5 Q. So that's not in and out time, is it?
6 That's the time I called and the time she gave it to
7 him; is that correct?

8 A. It's actually the time that the field
9 service representative notified her.

10 Q. So from this, I assume, although it
11 doesn't say here, that this gentleman visited my
12 property?

13 A. Yes.

14 Q. Can you tell me what was done?

15 A. Not specifically, no. Just that he
16 investigated and didn't find anything, any leak.

17 Q. What does investigated mean?

18 A. Any of the parameters that I've
19 described before as what's part of an investigation.

20 JUDGE JORDAN: Is this the document to
21 which we so far lack the second page?

22 MR. NOCE: Yes, it is, your Honor. I
23 believe Mr. Lee has a copy that was provided in
24 discovery of that fact, which I pointed out to him as
25 we were going through it.

1 MR. LEE: I do. And if the Court would
2 like to see a copy, I could show you.

3 JUDGE JORDAN: Can you just hand that to
4 me and let me have a look at it?

5 Okay. The second page has a notation NF
6 being explained as nothing found. Maybe I should ask
7 the witness. Is that correct.

8 THE WITNESS: Yes, it is correct.

9 JUDGE JORDAN: Thank you. Do you have
10 much more on cross, Mr. Lee? Our reporter needs a
11 break.

12 MR. LEE: We can take a break. Could I
13 just finish up with this one document so we're not in
14 the middle of it?

15 JUDGE JORDAN: That sounds all right
16 with me.

17 BY MR. LEE:

18 Q. So with this visit on April 8th, it
19 could have been an investigation; the term
20 "investigation" could have meant a visual inspection,
21 they never even got out of the van?

22 A. I don't know. I wouldn't say that he
23 didn't get out of the van.

24 Q. But you don't know if he did or not?

25 A. No. He didn't document whether he

1 listened on the main with his ear horn or the service
2 lines. He just noted that he did not find a leak.

3 Q. We don't know if he tested water?

4 A. Right. He didn't note if he looked for
5 chlorine or not.

6 Q. So I guess I'm really confused. When I
7 have a complaint and I call up the water company,
8 it's almost an unspoken agreement that I'm gonna get
9 an intelligent or a systematic process to solve my
10 problem.

11 JUDGE JORDAN: Remember to ask a
12 question.

13 BY MR. LEE:

14 Q. Is it assumable for me to assume when I
15 call up and make a complaint, that I will get a
16 systematic process to follow through and solve my
17 complaint?

18 A. It's assumable that we would investigate
19 the complaint.

20 Q. An investigation you just said could be
21 as little as driving by and not getting out of the
22 van, right?

23 A. I didn't say that.

24 MR. NOCE: Objection.

25 JUDGE JORDAN: Yeah.

1 BY MR. LEE:

2 Q. Well, you said you didn't know that he
3 investigated, but you don't know if he got out of the
4 van.

5 JUDGE JORDAN: What he said is what he
6 said. This is not really questioning; this is
7 arguing, arguing with the witness, which you can't do.

8 MR. LEE: I'm just trying to understand.
9 I hear the word investigation.

10 JUDGE JORDAN: Then you need to ask him
11 what constitutes an investigation.

12 MR. NOCE: He has been and it's asked
13 and answered.

14 BY MR. LEE:

15 Q. What constitutes an investigation? Is
16 it the same all the time?

17 MR. NOCE: Again, objection. This is
18 asked and answered several times.

19 JUDGE JORDAN: I'll overrule that.
20 We'll take one more run at it.

21 THE WITNESS: No. I would say it's
22 based on the circumstances.

23 MR. LEE: And -- all right. I guess I
24 don't have any more. I am -- the problem has
25 continued for so long, this Exhibit 1, when I called

1 in, in '04 --

2 JUDGE JORDAN: Mr. Lee, it's not the
3 time for you to testify.

4 MR. LEE: I'm trying to get to a
5 question here.

6 JUDGE JORDAN: Okay. Well, make it
7 quick because our reporter needs a break.

8 MR. LEE: All right. Well, let's stop
9 now.

10 JUDGE JORDAN: Okay. We'll go off the
11 record. We'll take a break for ten minutes.

12 (A RECESS WAS TAKEN.)

13 JUDGE JORDAN: And we are resuming the
14 cross-examination of Missouri American with
15 Mr. Linam.

16 BY MR. LEE:

17 Q. All right. If I could just refresh my
18 own memory for a minute here. I believe we went over
19 the 4/21/04 repair. Or was that the last one?

20 MR. NOCE: You mean complaint?

21 BY MR. LEE:

22 Q. My question is, do you know any repairs
23 that were made near my home after this complaint?

24 MR. NOCE: Objection, relevance.

25 JUDGE JORDAN: And which complaint are

1 we talking about? You'll have to refresh me on that.

2 MR. LEE: 1D, D1. I won't even ask
3 that. Let me ask it a different way.

4 BY MR. LEE:

5 Q. My home -- where is my house?

6 A. It's by No. 12.

7 Q. My home is here. Okay. If I complained
8 about a leak in '04 here, could there have been a
9 water main leaking here for the next two years?

10 A. Not that I know of.

11 MR. NOCE: Objection, calls for
12 speculation.

13 JUDGE JORDAN: Well, if you can please
14 ask the question again, and if you can answer without
15 guessing, do so. But if you don't know, of course
16 the answer is you don't know.

17 BY MR. LEE:

18 Q. How long do water mains leak
19 underground?

20 MR. NOCE: Objection, vague.

21 JUDGE JORDAN: I'll sustain that.

22 MR. LEE: So I have to ask a different
23 question?

24 JUDGE JORDAN: Do you have another
25 question for him?

1 BY MR. LEE:

2 Q. How far have you seen water surface from
3 the repair point of the water main?

4 A. Not very far.

5 JUDGE JORDAN: Can you quantify that to
6 move this along?

7 THE WITNESS: Less than 100 feet.

8 JUDGE JORDAN: Thank you.

9 BY MR. LEE:

10 Q. Are there currently water mains leaking
11 in this system as we speak?

12 A. I don't know.

13 MR. NOCE: Are you referring to those
14 shown on the map on Defendant's Exhibit A?

15 MR. LEE: I'm referring to any leak, a
16 leak in the system, in this system currently.

17 JUDGE JORDAN: Okay. But you're
18 gesturing towards the map. Are you confining your
19 question to the area shown on the map or do you mean
20 the system as in everywhere?

21 BY MR. LEE:

22 Q. Okay. Let's do it both ways. Would you
23 suspect there are leaks in this area on this map
24 right now?

25 A. No.

1 Q. No. Everything is watertight?

2 A. Based on all the testing we've done in
3 the last month, I don't have anything else to go on.

4 Q. Okay. Have you ever seen any data in
5 your career about how long water mains leak
6 underground?

7 A. Not that I recall.

8 MR. LEE: I just don't know how to ask
9 about the leaks now without proving a history, and
10 also without showing that water mains leak for long
11 periods of time underground and produce lakes and
12 springs and a number of different things.

13 JUDGE JORDAN: Well, you would have to
14 present some evidence of that happening, and if this
15 witness doesn't have that knowledge, then you're
16 asking the wrong person.

17 MR. LEE: Okay. And all my evidence is
18 in already. I can't put any more in; is that
19 correct?

20 JUDGE JORDAN: Well, you've rested.
21 Your case in chief is over. You will be putting in
22 more evidence such as I have directed already. There
23 will be more evidence coming in.

24 MR. LEE: Okay.

25 BY MR. LEE:

1 Q. Do you know of any repairs near these
2 complaints?

3 MR. NOCE: Objection, relevance.

4 JUDGE JORDAN: And I find the question a
5 little bit confusing when you say "these complaints."

6 MR. LEE: Well, we have 11 different
7 complaints. We have one, two, three, four, five that
8 I know of repairs in this small area here.

9 JUDGE JORDAN: You're referring to the
10 yellow flags on the map as complaints. Now you're
11 asking him if he knows of repairs that have occurred
12 near those; is that your question?

13 MR. LEE: Correct. Were some of these
14 complaints justified?

15 MR. NOCE: Again, I'm gonna object to
16 the relevance of repairs.

17 MR. LEE: I might as well go home if I
18 can't show history, because I can't show present
19 without excavating the neighborhood. I can show
20 water running out of the ground, which they deny.

21 JUDGE JORDAN: You will be showing
22 history, and you will be showing water running out of
23 the ground according to the documents that I'm
24 allowing you to file after the close of today.

25 MR. LEE: Okay.

1 BY MR. LEE:

2 Q. D3, please. I'm not sure who complained
3 about this. Do you have any idea what generated this
4 leak report?

5 A. It was based on, I believe, your civil
6 lawsuit when we came out on the 20th of May and took
7 water samples at various locations in addition to
8 this investigation here.

9 Q. And No. 4, do you know what generated
10 that?

11 A. This hearing -- or this case, and I
12 don't remember if it was someone from Staff that had
13 asked that we do this or it was just a follow-up
14 check, but it was related to this PSC complaint.

15 Q. I can't read that. It said, "We
16 listened on valves..."

17 A. "...listened on valves, serviced T-heads
18 and fire hydrants." And it's noting that it's a new
19 water main, new PVC pipe here, and there was no sound
20 from Aspen Woods east to RR tracks.

21 Q. Do you know of an industrywide problem
22 with detecting sound on PVC water mains because of
23 the acoustic nature of them deadening the sound?

24 A. I know it's different. I'm not aware of
25 industrywide problem.

1 Q. And how do they locate a plastic pipe?

2 A. Can you -- are you talking about
3 underground? With a locating device, metal detector.
4 They put a trace wire with it and they install it.

5 Q. The next one, 9 --

6 JUDGE JORDAN: Please remember to keep
7 your voice up so the court reporter can hear, and me
8 too.

9 BY MR. LEE:

10 Q. This is another complaint it looks like.

11 MR. NOCE: Which exhibit? I'm sorry, I
12 didn't hear.

13 MR. LEE: 9, No. D9.

14 THE WITNESS: It was a complaint about a
15 high bill, a high water bill.

16 BY MR. LEE:

17 Q. And the leak report, "Appears to be
18 groundwater. No mains in area." If there's no mains
19 in the area, how does a man get his water?

20 A. On D9?

21 Q. Page 2 on D9.

22 MR. NOCE: I think Mr. Lee is referring
23 to D6.

24 MR. LEE: I am sorry. I looked at the
25 other side of it. D6.

1 JUDGE JORDAN: Thank you. And the
2 question is, if there is no, quote, main in the area,
3 how does water get to the residence?

4 MR. LEE: Absolutely.

5 THE WITNESS: The leak location reported
6 by the customer was in his backyard, and the water
7 main is across the street. It would be normal to
8 state that there's no main in the area of his
9 backyard.

10 JUDGE JORDAN: Right. But the question
11 was, how does the water get from the main to his
12 residence.

13 THE WITNESS: I'm sorry. He gets his
14 water off of the water main on Larimore Road.

15 BY MR. LEE:

16 Q. Was this leak more than 100 feet from
17 the water main?

18 MR. NOCE: Object. I don't think it's
19 established that this was a leak. I think it was
20 established as something other than a water leak.

21 JUDGE JORDAN: Answer the question
22 anyway.

23 BY MR. LEE:

24 Q. Was the complaint more than 100 feet
25 from the water main?

1 A. I don't know the distance. I remember
2 stating earlier that it was in the backyard and that
3 that home set higher in elevation than the water
4 main, but I don't remember the -- I don't know the
5 distance without measuring that.

6 Q. But if it was -- theoretically you said
7 you'd seen water travel 100 feet. If it would have
8 been 100 feet or less, the water could have traveled
9 there, correct?

10 MR. NOCE: I'll object. I think it
11 misstates his prior testimony. I believe the
12 furthest he'd seen water is less than 100 feet on his
13 previous testimony. Water surfaced from the leak was
14 less than 100 feet.

15 JUDGE JORDAN: I'll overrule the
16 objection.

17 THE WITNESS: I don't believe this water
18 leak could have come from the water main on Larimore
19 Road due to the difference in the elevation.

20 BY MR. LEE:

21 Q. Okay. So am I safe to assume that every
22 time there is a complaint of water leaking out of the
23 ground, that the correlation equipment is not hooked
24 to the water system?

25 A. I'm sorry, could you repeat that?

1 Q. Every time there is a complaint, a
2 complaint does not make it mandatory to hook the
3 correlation equipment to the water system; is that
4 true?

5 A. I would say that's correct.

6 Q. And much of that is based on a chlorine
7 test; is that correct?

8 A. It's based on the experience of the crew
9 investigating and any other analysis or investigation
10 that they would do as part of their site visit.

11 Q. In that experience what tools do they
12 use to determine that?

13 A. Visual observation, the listening on the
14 main, water quality, water characteristic testing.

15 Q. Okay. That's not the question.
16 Somebody calls in a leak. They go out and take a
17 sample of water, do a chlorine test, on the spot
18 chlorine test and they find no chlorine. Do they
19 hook the correlation equipment to it?

20 A. Not necessarily.

21 MR. NOCE: Objection, calls for
22 speculation.

23 JUDGE JORDAN: I'll overrule that.

24 MR. LEE: Just trying to find out the
25 testing procedures.

1 JUDGE JORDAN: I understand. That's why
2 I overruled the objection.

3 MR. NOCE: Then I'll object that it's
4 been asked and answered.

5 JUDGE JORDAN: I don't remember it being
6 asked and answered of this witness, so I will
7 overrule that objection also.

8 BY MR. LEE:

9 Q. Okay. Back to the samples of water. If
10 water was leaking from a break right here and it ran
11 down a trench in that water main and you sampled it
12 at the bottom of the hill there, would you consider
13 that water to be contaminated?

14 MR. NOCE: I'll object. This has been
15 asked and answered.

16 JUDGE JORDAN: We have been through this
17 theme some already. I'll also note that you
18 haven't -- remember, we're preparing a written
19 transcript, so if you can refer to the numbers on the
20 yellow stickers, that would be helpful. And we've
21 had a lot of questions on this.

22 I'll allow a couple more just to make
23 sure that you feel that you have cleared everything
24 up, but I'm starting to hear the same questions over
25 and over again.

1 MR. LEE: I feel like I have some loose
2 ends around this for the fact that I believe you said
3 that if you had a sample in a bottle and it fell on
4 the dirt, that you wouldn't put it back in the
5 bottle, correct?

6 Now water may be running 500 feet
7 underground. Why aren't we calling that water
8 contaminated?

9 A. I was referring to a bacteriological
10 sample earlier when you asked me if I'd put it back.

11 Q. Well, I'm trying to focus on the
12 chlorine test that seemed to be the main factor for
13 the employees getting in their vehicles and not doing
14 any further testing when they find no chlorine. We
15 find no chlorine, so it's not our water, so the
16 problem persists.

17 If you spilt water on the dirt, you
18 wouldn't pick it up. And let's say this water was
19 leaving the main here. It would only be fair if we
20 were gonna compare these two samples to get it out of
21 the main right there before it contacted the soil; is
22 that correct?

23 A. No, not if you were trying to
24 investigate a leak.

25 JUDGE JORDAN: Okay. I think I

1 understand what your point is, I believe.

2 MR. LEE: Okay.

3 JUDGE JORDAN: You're questioning
4 whether the testing of water that comes, say, from a
5 drainage ditch, how that can -- how it is fair to
6 characterize it as having the characteristics of
7 Missouri American's water?

8 MR. LEE: Absolutely.

9 JUDGE JORDAN: I think we've been
10 through that a lot.

11 MR. LEE: Okay.

12 JUDGE JORDAN: I don't think you can ask
13 any more questions about that, and the reason I say
14 that is because I don't think you have any more
15 questions because I'm hearing the same questions.

16 MR. LEE: Something seems unclear. But
17 I'll move on. I guess it just seems like that test
18 is the determining factor if they hook the
19 correlation equipment to it. If every test they do
20 is contaminated, then they continually --

21 JUDGE JORDAN: Well, you haven't asked
22 whether that is the determining factor. You have not
23 asked that.

24 MR. LEE: I just asked that, I thought.

25 BY MR. LEE:

1 Q. Is a chlorine test a determining factor
2 in whether they hook the correlation equipment to
3 that system?

4 A. No, not necessarily.

5 Q. It's not a determining factor?

6 JUDGE JORDAN: He just said no. That's
7 the same question.

8 BY MR. LEE:

9 Q. What determines whether they hook the
10 correlation equipment up?

11 A. If they are uncertain of a leak and they
12 want to further verify it with the correlation
13 equipment, they would hook the correlation equipment
14 to it and check.

15 Q. What test, scientific test, determines
16 whether they hook the correlation equipment to the
17 system to check for a leak?

18 MR. NOCE: Objection, asked and
19 answered.

20 JUDGE JORDAN: I don't think we've had
21 quite this. I will inquire from the bench.
22 Sometimes you use correlation equipment and sometimes
23 you don't, right?

24 THE WITNESS: Yes.

25 JUDGE JORDAN: What's the difference?

1 What makes the difference?

2 THE WITNESS: If we go out and see the
3 water surfacing, take a sample and it has chlorine,
4 we would then listen with -- if the correlator crew's
5 not there, everybody knows how to listen on existing
6 valves and hydrants or even put probing rods on the
7 main and listen and pinpoint the leak, a leak without
8 the correlating equipment.

9 As I described earlier, the way, you
10 know -- something like Mr. Lee is trying to present,
11 the ground -- the pipe would be super saturated. It
12 would be intuitively obvious to us that there was a
13 leak there. You wouldn't necessarily need the
14 correlating equipment.

15 If they exhausted all of those and still
16 weren't sure, they could call -- they would call for
17 the correlators and hook up the correlating equipment
18 just to verify as an additional test.

19 JUDGE JORDAN: Okay. So the field
20 chlorine test we've been discussing is a factor, but
21 it is not the factor; is that correct?

22 THE WITNESS: Correct.

23 JUDGE JORDAN: Okay. Mr. Lee.

24 BY MR. LEE:

25 Q. So before they make the determination of

1 no problem found, do they hook the correlation
2 equipment to it?

3 JUDGE JORDAN: We've had that question
4 and that answer. Sometimes they do, sometimes they
5 don't.

6 MR. LEE: My point is how sporadic the
7 diagnosis of the system is.

8 JUDGE JORDAN: Okay. But do remember
9 that this is not the time for argument. You will
10 have a time for argument. I want to reiterate this.
11 There will be a time for argument and you can make
12 your written argument, put it down in writing after a
13 transcript is filed. This is a time to ask this
14 witness questions. Once you get the answer, then you
15 move on.

16 BY MR. LEE:

17 Q. Okay. Those photos I was told was
18 coming from a septic tank.

19 JUDGE JORDAN: And can you refer to
20 those by exhibit number, please?

21 MR. LEE: I can. 15A and I think that
22 was 14, wasn't it? Yeah 14. Well, 14 and 15.

23 BY MR. LEE:

24 Q. Do you know if that water came from a
25 septic tank?

1 A. No, I don't know.

2 Q. If the diagnosis of that problem was a
3 stuck ball valve on a toilet stuck wide open, would
4 that water have been coming from a septic tank?

5 A. I don't know. It could be, could not.

6 Q. I complained about that water. They
7 sent a crew out and determined that the cause of that
8 water was a stuck valve on a toilet; is that correct?

9 A. I believe they noted that there was a
10 stuck valve on the toilet. I don't know if they went
11 as far as to definitely say that that's where this
12 water was coming from. They -- the field guy may
13 have made an assumption or assertion to that, but I
14 can't tell you for sure when you ask me that that's
15 where that came from.

16 Q. So I made a complaint and one more time
17 they didn't determine the cause of the water?

18 JUDGE JORDAN: Well, the witness said he
19 doesn't know.

20 THE WITNESS: We determined that the
21 water wasn't coming from our main there on Larimore.

22 BY MR. LEE:

23 Q. And they went home without determining
24 the cause of the complaint?

25 MR. NOCE: I don't know if that's a

1 question, first of all. And second, I'd object, I
2 think it misstates the testimony.

3 JUDGE JORDAN: Well, I'm gonna overrule
4 both of them because it sounded like a question to
5 me. I kind of heard a question mark at the end and I
6 think it's a proper follow-up to that question. The
7 witness has been saying that they determined it was
8 not their water, and the other evidence that we've
9 had is that this was a problem inside the house.

10 When I say not their water, I mean not
11 coming from their main. That was the witness's
12 testimony. Other evidence has shown that this water
13 was coming from inside the house. Now, ask him
14 whether they determined the cause of the leak or not.
15 I don't know, once he's told you -- once he's told
16 you that they determined it did not come from their
17 main, that seems to be the end of it.

18 MR. LEE: That's my point.

19 JUDGE JORDAN: All right.

20 MR. LEE: I was told this water was
21 coming from a septic tank flowing through the septic
22 tank into the field, and my point for asking these
23 questions is, are there any dangers for sewage
24 running out like that that you know of?

25 MR. NOCE: I guess I'll object as to

1 relevance.

2 JUDGE JORDAN: Yeah, what's the
3 relevance of that?

4 MR. LEE: The relevance to that is I
5 complained about water running out of the ground.
6 They claim it's sewer water, but the complaint was
7 never -- you know, we never followed through and took
8 care of the problem.

9 JUDGE JORDAN: I'll sustain that
10 objection.

11 MR. LEE: And it's a health hazard.

12 MR. NOCE: And I'll also point out that
13 there has been evidence put in that there was a
14 letter sent to that customer.

15 JUDGE JORDAN: I'm going to sustain the
16 objection.

17 BY MR. LEE:

18 Q. I guess I just have one other question
19 around the testing from Mr. Simmons' testimony
20 yesterday. Can you 100 percent, be 100 percent sure
21 that the water, when it shows up as groundwater in
22 the test, did not leave your water main?

23 MR. NOCE: I'll object as vague. If he
24 wants to specify a specific location or a specific
25 test that was conducted.

1 JUDGE JORDAN: If I understand the
2 question, it is with regard to the quality of testing
3 overall; is that correct?

4 MR. LEE: Right. Can we be 100 percent
5 sure that at some point that water did not leave a
6 water main. Is that an okay question?

7 JUDGE JORDAN: Yes. The witness may
8 answer if he knows the answer.

9 THE WITNESS: Can you ask it one more
10 time, please?

11 BY MR. LEE:

12 Q. Based on the -- so many discrepancies in
13 the test that Mr. Simmons testified to yesterday, for
14 the test he couldn't tell if it was groundwater or
15 tap water. Several of the other --

16 JUDGE JORDAN: I think we've been
17 through this.

18 MR. LEE: -- witnesses were easily
19 swayed.

20 MR. NOCE: Objection.

21 JUDGE JORDAN: I'm going to --

22 MR. LEE: So knowing the --

23 JUDGE JORDAN: Mr. Lee, hang on. I
24 think I'm gonna wrap this line of questioning up
25 pretty quick. You recall that I asked you whether

1 you remembered Mr. Simmons' testimony yesterday?

2 THE WITNESS: Uh-huh.

3 MR. NOCE: Answer audibly.

4 THE WITNESS: Yes.

5 JUDGE JORDAN: Thank you. You remember
6 his response to the question that you've just been
7 asked, do you have 100 percent certainty that water
8 tested from the ground has never been in a Missouri
9 American Water Company main? Do you remember that
10 question?

11 THE WITNESS: Close to that line. Maybe
12 not that exact way, but yes.

13 JUDGE JORDAN: Okay. Is your answer any
14 different from his?

15 THE WITNESS: Other than that's such a
16 broad question, that the answer --

17 JUDGE JORDAN: You don't have to comment
18 on the question.

19 THE WITNESS: I don't have any different
20 answer, no.

21 JUDGE JORDAN: Mr. Lee, do you have
22 another line of questioning for this witness?

23 BY MR. LEE:

24 Q. With all the tests that you've
25 performed, the swimming pool test and the lab test,

1 how certain are you that the water never left the
2 main? If you're not 100 percent certain, can you be
3 50 percent certain?

4 MR. NOCE: Object as to vague. If
5 Mr. Lee wants to refer to a specific complaint that
6 he has made -- he's just referring to the main. I'm
7 not sure where he's talking about.

8 JUDGE JORDAN: Well, we'll talk about
9 your confidence in testing overall. If you can
10 quantify it by a percentage, you may answer the
11 question.

12 THE WITNESS: I don't feel like I have
13 enough details to be able to answer the question.

14 JUDGE JORDAN: Then your answer is you
15 don't know?

16 THE WITNESS: (Nodded head.)

17 JUDGE JORDAN: You have to say yes or
18 no, give us a yes or no.

19 THE WITNESS: Based on that question, I
20 don't know.

21 JUDGE JORDAN: Are you saying you cannot
22 answer that question?

23 THE WITNESS: I'm saying I don't know
24 the answer to the question, yes.

25 BY MR. LEE:

1 Q. So you don't know how reliable your
2 tests are?

3 A. I think I've testified they're reliable.
4 It's gonna depend on the situation. I mean, we do
5 find chlorine present when we -- to find main brakes,
6 it's not uncommon to find it and know that we then
7 have a -- we have a break there and we fix it. So,
8 you know, again, just because we didn't find any
9 chlorine didn't mean we stopped there. We
10 correlated, you know, we did every test we have
11 possible to determine if there's a leak, and the
12 answer is no, it's coming up there is no leak.

13 Q. There's a leak, we just haven't figured
14 out --

15 MR. NOCE: Objection.

16 JUDGE JORDAN: It's not time for
17 testimony.

18 MR. LEE: My point is --

19 JUDGE JORDAN: No, don't tell me what
20 your point is. Ask another question.

21 BY MR. LEE:

22 Q. The question is, if you cannot be 100
23 percent certain that that water in your test, every
24 time, 100 percent certain, how can you trust in it as
25 a reliable diagnostic tool?

1 A. I can only speak to this scenario, and I
2 am very confident that our tests, if we had a leak up
3 here, that the main -- the water would surface close
4 enough to the main, that we would see characteristics
5 that told us we had a leak.

6 JUDGE JORDAN: Okay. We're getting into
7 argument here, so it's time to move on to another
8 line of questioning.

9 BY MR. LEE:

10 Q. All right. I'm confused. I thought we
11 weren't -- didn't have much reliability in our test
12 and now we're saying we do. Did I understand
13 correct?

14 JUDGE JORDAN: No, it's time for a new
15 line of questioning. And what his answers are will
16 be recorded in the transcript. That's why we do it.

17 BY MR. LEE:

18 Q. If I could focus your attention on 18
19 and 19, and No. 8 of 18 and No. 6 of 19. I don't
20 know if you have a copy of that. No. 8 was the
21 number of gallons unaccounted for in this water
22 system.

23 A. I'm sorry. And No. 18?

24 Q. 8 on 18.

25 A. Okay.

1 Q. And page 2 on 19. A couple
2 discrepancies here. First it just says that you've
3 been tracking water.

4 JUDGE JORDAN: Don't tell us what it
5 says, just ask him the question.

6 BY MR. LEE:

7 Q. Do you see a discrepancy in question 8
8 and question 6?

9 A. No.

10 MR. NOCE: I'm sorry. Go ahead.

11 BY MR. LEE:

12 Q. Question 8 says -- can I read this? I
13 can read this. Question 8 says, 12 million
14 408,753,000 [sic] gallon units are unaccounted for,
15 for 2007. On page 2 for 2007, it says 13 million,
16 176, 9 -- 294, 100,000 [sic] gallon units are
17 unaccounted for?

18 MR. NOCE: I think I'll object.

19 MR. LEE: Is there --

20 MR. NOCE: I think that he misstated the
21 answer.

22 JUDGE JORDAN: Well, he's just read from
23 the document. Now, what that portends --

24 MR. NOCE: I think he gave the wrong
25 unit. I think he said 12 million -- or 13 million,

1 et cetera, 100,000 gallons.

2 JUDGE JORDAN: Let's just refer to the
3 documents which will be in the record for that --

4 MR. NOCE: That's fine.

5 JUDGE JORDAN: -- and that are before
6 the witness.

7 MR. NOCE: The document will speak for
8 itself.

9 JUDGE JORDAN: And the question before
10 the witness, the question pending is, do you see a
11 discrepancy between those two quantities? And your
12 answer was?

13 THE WITNESS: It was no.

14 JUDGE JORDAN: Okay.

15 BY MR. LEE:

16 Q. Okay. I'm good with that. For the year
17 2008, I don't need to read it to you, but there's a
18 discrepancy in those numbers too.

19 A. There's a difference in those numbers.

20 Q. A difference in those numbers. What do
21 you attribute that difference to?

22 A. You asked two different questions.

23 No. 8 asks for gallons of unaccounted for water, and
24 No. -- in Exhibit 18, and in Exhibit 19 the question
25 asked for nonrevenue water.

1 Q. Okay. What is the difference in those?

2 A. Well, nonrevenue water is the difference
3 between what was delivered to the system or produced
4 and delivered to the system minus the billed sales to
5 the customer, and unaccounted for is, I guess, quite
6 a complex -- or consists of many components.

7 Q. Which some of which would be?

8 A. Usage during fire fighting, billing,
9 meter reading errors, billing errors, errors in
10 production meter, flow meters, water main breaks,
11 flushing water for new mains, flushing waters for
12 distribution, flushing of your system, theft,
13 unauthorized usage, construction activity by others
14 for permitted usage on a fire hydrant. I don't know
15 if I've covered them all, but that's most of them.

16 Q. When there's a fire, do you account for
17 that water at flow rate?

18 A. No.

19 Q. Have there been many fires in North
20 County lately?

21 MR. NOCE: Objection, relevance.

22 JUDGE JORDAN: I have to sustain that
23 because the question asked in discovery was not North
24 County.

25 MR. LEE: It was not what?

1 JUDGE JORDAN: It was not North County.
2 It was about the whole system.

3 MR. LEE: Okay. My understanding was
4 the system was in North County. Am I misunderstood
5 about that?

6 JUDGE JORDAN: You just asked a
7 different question. If you want to ask a question
8 about the system, then you may.

9 BY MR. LEE:

10 Q. Is the system more than just North
11 County?

12 A. Yes.

13 Q. How large is the system that we're
14 talking about for this lost water?

15 A. All of St. Louis County and a portion of
16 Jefferson County.

17 Q. Do you try to account or track any of
18 this water?

19 JUDGE JORDAN: Will you specify which
20 water you're talking about? The unaccounted for
21 verses the nonrevenue, which are you asking him
22 about? They're two different measures according to
23 his testimony.

24 BY MR. LEE:

25 Q. On the unaccounted for water.

1 A. Well, no. I guess that's why it's
2 called unaccounted for, because there's not a
3 quantifiable way to really account for it.

4 Q. Does a fire district have to tell you
5 they used your water?

6 A. No.

7 Q. They can just hook on and use as much as
8 they want?

9 A. Yes.

10 Q. And do you try to account for any of the
11 nonrevenue water, which is theft and things like
12 that, correct?

13 A. Yeah. It's everything.

14 Q. This is a total of this plus more?

15 A. I don't understand your question.

16 Q. You don't have a total of approximately
17 25 million units. The nonrevenue water is the
18 unaccounted for water plus the small amount which
19 equals the total here, right?

20 A. The unaccounted for water is a part of
21 the nonrevenue water.

22 Q. All right. So how do you try to account
23 or do you -- any way that you try to cut these
24 losses?

25 MR. NOCE: I'll object to the relevance.

1 JUDGE JORDAN: I don't see the
2 relevance.

3 MR. LEE: Well, a water loss survey
4 would be one way to account for this, to go around
5 and if we had any integrity issues in our system, we
6 could do a systematic water loss survey to try to
7 account for some of this water.

8 JUDGE JORDAN: And that's --

9 MR. LEE: And I'm trying --

10 JUDGE JORDAN: -- too far afield. I'm
11 going to sustain that objection.

12 MR. LEE: -- find out what precautions
13 or what -- it's not relevant.

14 BY MR. LEE:

15 Q. Do you have any idea of just how much
16 water if I converted that to 13 and a half billion
17 gallons of water? Would that be correct?

18 MR. NOCE: Again, I'll object. I
19 believe the document speaks for itself, the numbers.

20 JUDGE JORDAN: Yeah, the probity of the
21 water loss through the entire system, the entire
22 system, is not great. I can't see it frankly. I
23 mean, throughout St. Louis County and Jefferson
24 County is where these numbers apply. What that does
25 for your neighborhood, I can't see. I cannot see it.

1 I can't see how that tells me anything about this
2 area.

3 MR. LEE: If I have a small portion of
4 this water which you would assume logically that --
5 that I could have a small portion of this water
6 running out of the ground in my neighborhood.

7 JUDGE JORDAN: Right, so your
8 questioning is going to be based on the assumption
9 that the amount of water lost in your neighborhood is
10 in the same proportion that your area, your
11 neighborhood bears to the entire system; is that
12 correct?

13 MR. LEE: I wouldn't say exactly, but I
14 would assume that it would be close.

15 JUDGE JORDAN: Okay. Well, I'm gonna
16 sustain the objection.

17 BY MR. LEE:

18 Q. Okay. There's no way to determine how
19 much of this is lost to a leaking system? It's
20 pretty much agreed to industrywide that most systems,
21 if not all of them, have leaks; is that correct?

22 A. It's a component of the unaccounted for
23 water and the nonrevenue water.

24 Q. Do you know if any other water systems
25 do water loss surveys to test the integrity of their

1 system to show their stockholders or their consumers,
2 you know, the citizens?

3 MR. NOCE: I'll object.

4 JUDGE JORDAN: We've run down this line
5 of questions. That's the kind of thing you want to
6 address in discovery. Now, do you have.

7 BY MR. LEE:

8 Q. Can I ask, so we don't know how much of
9 this water goes underground? Do we know that?

10 JUDGE JORDAN: Now you're talking
11 systemwide?

12 MR. LEE: Systemwide.

13 THE WITNESS: No.

14 BY MR. LEE:

15 Q. Could it be 50 percent?

16 JUDGE JORDAN: He's answered that
17 question.

18 MR. LEE: We don't know.

19 JUDGE JORDAN: He's already told you he
20 doesn't know, so it's time for another question.

21 BY MR. LEE:

22 Q. If I could point your attention towards
23 the pictures in the back. And picture 4 would be?

24 JUDGE JORDAN: You're referring to E4?

25 MR. LEE: E4.

1 JUDGE JORDAN: E4.

2 BY MR. LEE:

3 Q. Do you know how many days it had been
4 since it rained when you took this picture?

5 A. No, I don't.

6 Q. If the water remained in that area for
7 four days and you came out on the fifth day, it would
8 be dry, wouldn't it? You would have missed the
9 water?

10 A. Say that again.

11 Q. If it only leaked for four days after a
12 rain and you showed up on the fifth day to take the
13 picture, you would have missed the water, correct?

14 A. If it was leaking I wouldn't miss the
15 water.

16 Q. Are you 100 percent certain of that?

17 A. Yes.

18 Q. If these water mains were leaking in
19 other areas and saturated the ground and then it
20 rained, the rainwater would not be able to soak into
21 the ground and could cause a leak; would you agree?

22 A. No. Rainwater soaking into the ground
23 would not cause a leak.

24 Q. Okay. It wouldn't cause a leak. It
25 would cause the appearance of water on the street,

1 could cause the appearance of water on the street
2 like this, correct?

3 A. A leak could cause -- can you rephrase
4 that?

5 Q. If we had the ground saturated like a
6 soggy piece of bread, and then it rained, we could
7 have water coming up out of the cracks in the streets
8 for several days; is that correct?

9 A. You could have water coming up out of
10 the cracks in the street if it rained for several
11 days -- I mean if it rained. I'm not sure that the
12 soggy piece of bread has to happen for there to be --

13 Q. If there's ground under the street
14 saturated, then the water wouldn't be able to run
15 off; is that correct? You'd have an excess of water
16 under the street trying to come up?

17 A. But it would still be coming out in this
18 picture.

19 Q. Not if the evaporation content --

20 JUDGE JORDAN: Not time for testimony.
21 You may ask another question.

22 BY MR. LEE:

23 Q. Could the evaporation have dried that up
24 and there still be a leak under the ground?

25 A. Not in my opinion, no.

1 Q. Is one of your diagnostic procedures on
2 a visual inspection to look for water on the street
3 like this?

4 A. Yes.

5 Q. Does this picture seem to depict a
6 recurring water problem right there?

7 A. Seems to be a low spot where debris and
8 leaves and sticks and trash collect when it rains.

9 Q. On your visit to the neighborhood, did
10 you talk with any of the residents there?

11 A. No, I did not.

12 Q. Would that be a good thing to do if
13 you're calling what you're doing an investigation?

14 A. I don't know. For my investigation, no,
15 it wasn't necessary.

16 Q. Okay. Exhibit 2 --

17 JUDGE JORDAN: Is that E2?

18 MR. LEE: I think this was Exhibit 2.

19 MR. NOCE: It was.

20 BY MR. LEE:

21 Q. Well, I don't see the rest of the third
22 amendment. Have you ever seen water flow out of the
23 street there?

24 A. I've seen pictures of it, and I believe
25 I've seen it on one site visit.

1 Q. If this water stopped flowing out of the
2 cracks in the street one day after the water there
3 was repaired -- water main was repaired at Red River
4 and Aspen Woods, would you presume that water had
5 come from that water main all that time?

6 MR. NOCE: Again, I think I'll object as
7 to the relevance. We're getting back into repairs.

8 JUDGE JORDAN: I'll overrule that
9 objection. Answer if you can.

10 THE WITNESS: No, I would not presume
11 that.

12 BY MR. LEE:

13 Q. So what good is your visual inspection
14 to look for water in the streets if you can't --

15 JUDGE JORDAN: That's argumentative.
16 We've been through it.

17 BY MR. LEE:

18 Q. How reliable are your visual inspections
19 of the street if you can't rely on them?

20 MR. NOCE: Objection, argumentative.
21 And I believe it's been asked and answered.

22 JUDGE JORDAN: I can't remember that
23 question being asked as regard to visual inspections.
24 So how reliable do you think these visual inspections
25 are?

1 awfully familiar.

2 MR. LEE: -- that it could not be
3 correlated to the repair? Pardon?

4 JUDGE JORDAN: I said this question
5 sounds really familiar.

6 MR. LEE: I just can't imagine --

7 JUDGE JORDAN: This is not the time for
8 argument. This is not the time for argument. There
9 will be one and we'll want to hear it. This is not
10 it.

11 MR. LEE: All right.

12 BY MR. LEE:

13 Q. Do you know if any of this water main on
14 Coal Bank has been replaced?

15 A. I do not recall.

16 Q. Do you know if there had been any
17 repairs on Coal Bank Court?

18 MR. NOCE: Objection, relevance. We're
19 getting into repairs, I believe, and I think we've
20 addressed this.

21 JUDGE JORDAN: Yeah, we've...

22 We've addressed that.

23 MR. LEE: I just don't know how I can --
24 if I don't rely on historical data, how I can show
25 anything's leaking at the present.

1 JUDGE JORDAN: Well, if the issue were
2 historical data, of course you could, but we've
3 addressed how you will deal with that in my ruling.

4 BY MR. LEE:

5 Q. Are you aware of my invitation to come
6 out and inspect Aspen Woods and my basement, the
7 reduction of flow in my basement --

8 MR. NOCE: Objection.

9 MR. LEE: -- on May -- I believe it was
10 May 14th or May 15th, an e-mail that I sent to
11 Mr. Noce.

12 MR. NOCE: Again, objection. We've
13 addressed this. I believe this is getting into
14 discussing settlement negotiations between the
15 parties. It's also --

16 JUDGE JORDAN: Yeah, I think I have to
17 keep that out. I have to sustain that objection.
18 No, wait a minute. Answer the question. The
19 question was, are you aware of an invitation to
20 inspect.

21 MR. NOCE: Then I guess I might have to
22 object as attorney/client privilege, your Honor.

23 JUDGE JORDAN: Okay. Please repeat your
24 question.

25 BY MR. LEE:

1 relevance. I'm not sure why Missouri American Water
2 has a duty to inspect a reduction of an alleged leak.

3 JUDGE JORDAN: I'm gonna overrule that
4 objection and let the witness answer if he can. Is
5 there a reason why Missouri American would not come
6 to Mr. Lee's basement to look at it?

7 THE WITNESS: I have been to look at it
8 once.

9 BY MR. LEE:

10 Q. How many times have you been there
11 immediately following a repair when I claimed there
12 was a huge reduction in water flow?

13 A. None that I -- none.

14 Q. Could that tell us something about the
15 repair?

16 JUDGE JORDAN: I think we've been
17 through that.

18 BY MR. LEE:

19 Q. Is it your opinion as an engineer that
20 storm drains should have water in them almost
21 continually?

22 A. I'm not a storm water or an MSP [sic]
23 employee here. My career's not been in storm water,
24 so in my -- I would think they would have water in
25 them sometimes and not others. It depends on the

1 situation and circumstances.

2 Q. But if they remained wet year long, wet
3 if not flowing, would you consider that could be a
4 problem?

5 JUDGE JORDAN: That's the same question.

6 MR. LEE: Okay. I guess I'm done. I'm
7 confused and I guess I'm kind of going in circles
8 so...

9 JUDGE JORDAN: All right. That's
10 Mr. Lee's cross. I don't have any questions from the
11 bench, so...

12 MR. NOCE: If it please the Commission,
13 I have some brief redirect.

14 JUDGE JORDAN: That would be the next
15 step, yes.

16 REDIRECT EXAMINATION BY MR. NOCE:

17 Q. Mr. Linam, in several of the records
18 that have been produced as part of Group Exhibit D, I
19 believe they stated nothing found. And I'll ask you,
20 is it Missouri American Water's policy that it tells
21 its investigators when they go out in typical
22 situations to record all investigations that they
23 perform when they're at a site visit and they don't
24 find a leak?

25 A. No, not necessarily.

1 Q. And the ones that are related to this
2 investigation and these complaints by Mr. Lee, why is
3 it that they are -- the investigation efforts are
4 recorded in detail?

5 A. Because of the nature of the complaint
6 and the fact that we're under a civil lawsuit as well
7 as this PSC complaint.

8 Q. And Mr. Linam, in your time with the
9 water service, have you ever seen instances where a
10 leak would go away or dry up on its own without being
11 repaired?

12 A. No.

13 MR. NOCE: No further questions.

14 JUDGE JORDAN: Thank you.

15 MR. NOCE: I guess at this time, your
16 Honor, I did have -- I did mention to the parties
17 that I do need to correct part of Exhibit H. Would
18 this be an appropriate time?

19 JUDGE JORDAN: This would be a good
20 time. Tell us about that, please.

21 MR. NOCE: There was a test result and
22 an exhibit referred to in I guess the row numbered 5
23 and No. 6 which was never entered into evidence nor
24 was it ever discussed by the witnesses, so I -- I'm
25 going to go ahead and strike that from the record.

1 JUDGE JORDAN: Okay.

2 MR. NOCE: And mark it out.

3 JUDGE JORDAN: Will you state what
4 paragraphs those are again, please?

5 MR. NOCE: Oh, yes. It's discussing a
6 lab test conducted at 11338 Larimore on 1/12/09.

7 JUDGE JORDAN: And just for clarity of
8 the record, will you refer to them by, let's see,
9 line number?

10 MR. NOCE: Yes. It's line 5 on page 1,
11 and then line 6 on page 2 in the last column under
12 "Water Sample."

13 JUDGE JORDAN: Okay. Is there any
14 other part of that that you want to withdraw or is
15 that it?

16 MR. NOCE: I believe that is it.

17 JUDGE JORDAN: Okay. Our regulations do
18 not require recross of a witness, so while Mr. Noce
19 is moving into working on his document revision, the
20 next step would be Staff's rebuttal. We have an hour
21 before our computer shuts down. Staff's case in
22 chief I guess is really the word for this.

23 MR. RITCHIE: I'd like to call Jim Busch
24 as a witness, please.

25 JUDGE JORDAN: That sounds good. And

1 will you be following up on the question I asked you
2 during your opening statement?

3 MR. RITCHIE: Yes, your Honor.

4 JUDGE JORDAN: Thank you very much.

5 MR. NOCE: Judge, what would you like me
6 to do? This is a series of exhibits that have been
7 admitted in Respondent's case. Do you want me to
8 give these to the court reporter, this booklet?

9 JUDGE JORDAN: Well, the court reporter
10 should possess the exhibits that have been
11 introduced, but only those. I wouldn't want -- I
12 mean, not everything there has been admitted into the
13 record; is that correct?

14 MR. NOCE: Actually, it has, your Honor.
15 I've removed everything that is not.

16 JUDGE JORDAN: Oh, have you? Very good.
17 Can I have a look at it, please?

18 Yes. These are admitted into the
19 record. Thank you very much.

20 MR. NOCE: All right. Thank you, your
21 Honor.

22 JUDGE JORDAN: All right. Mr. Ritchie,
23 you called someone to the stand, have you?

24 MR. RITCHIE: I have. I've called Jim
25 Busch as a witness.

1 JUDGE JORDAN: All right. Then please
2 raise your right hand.

3 (The witness was sworn.)

4 JUDGE JORDAN: Thank you.

5 MR. RITCHIE: Judge, actually, before I
6 start with my questions, I'm just going to note that
7 it is almost five after five o'clock and I'm aware
8 that the computers are shutting down at six o'clock.

9 Given the nature of previous
10 cross-examination, I'm not sure that we'll be able to
11 get through this in one sitting here by six o'clock,
12 so in light of that, I'd like to go ahead and offer
13 Staff's report of the investigation made. The
14 Staff's report was filed March 20th, 2009. Offer
15 this into evidence, please.

16 JUDGE JORDAN: Well, objection?

17 MR. LEE: No.

18 JUDGE JORDAN: Okay. Any objection from
19 Missouri American?

20 MR. NOCE: None.

21 JUDGE JORDAN: Okay. Then I will admit
22 it into the record.

23 (EXHIBIT NO. 20 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 (EXHIBIT NO. 20 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 JUDGE JORDAN: As we get closer to six
3 o'clock and we end our recording for today, we'll
4 discuss matters relevant to your case in chief that
5 have not come into the record already. In other
6 words, we will be scheduling another hearing, but
7 we'll be scheduling another hearing anyway to deal
8 with the matters that are going to be filed after
9 today.

10 So right now I envision those things
11 happening on the same day, but we can discuss that.

12 MR. RITCHIE: That would be fine. Thank
13 you, Judge.

14 JUDGE JORDAN: All right. And who
15 knows, maybe we'll get through this entire case
16 before six o'clock.

17 MR. RITCHIE: Maybe so.

18 JUDGE JORDAN: All right. And you may
19 proceed.

20 MR. RITCHIE: Thank you, your Honor.

21 DIRECT EXAMINATION BY MR. RITCHIE:

22 Q. Can you please state your name and spell
23 it?

24 A. My name is James Busch. J-a-m-e-s,
25 B-u-s-c-h.

1 Q. And what is your occupation, Mr. Busch?

2 A. I am the manager of the water and sewer
3 department at the Missouri Public Service Commission.

4 Q. Could you please describe your duties?

5 A. My duties as a manager, I have general
6 supervision over the water and sewer department.
7 Some of the things that we do, we investigate
8 complaints, we do rate requests, we do inquiries from
9 customers and the company, we do general inquiries
10 from the public, we investigate certificates of
11 convenience and necessity, we deal with tariff
12 filings, we work with the DNR for possible
13 violations.

14 Q. Okay. And how long have you been the
15 manager of the water and sewer department?

16 A. I've been the manager since February 1st
17 of 2008, so about almost a year and a half.

18 Q. And what did you do before that job?

19 A. Just prior to that job I was a
20 regulatory economist III in the Public Service
21 Commission in the energy department. Prior to that I
22 was a economist with the Office of Public Counsel for
23 over five years, and prior to that I was an economist
24 in the procurement analysis department here at the
25 Public Service Commission.

1 Q. So how many total years experience do
2 you have in the area of public utility regulation?

3 A. I have over 12 years experience in the
4 field of public utility regulation.

5 Q. Now, can you briefly describe the role
6 of the Staff of the Public Service Commission in a
7 formal consumer water complaint case such as this?

8 A. In a formal complaint such as this where
9 a complaint has been filed in front of the
10 Commission, Staff is generally ordered to do an
11 investigation and file a report. So what we do is we
12 will get the information, the nature of the
13 complaint, we will -- I will assign it to one of my
14 staff, and I have staff members who are engineers,
15 professional engineers, technicians such as people
16 who have operator licenses, and they will do an
17 investigation into the nature of the complaint.

18 They will contact the company, see what
19 the company's doing, making sure that there are no
20 violations of the PSC rules or the tariff violations.
21 We will then, based upon that investigation, write a
22 report, basically giving the Commission what our
23 recommendation is.

24 Q. Okay. Now, are you aware of any
25 statutory guidance that the utility needs to meet?

1 A. Yes, I am.

2 Q. And would that be Section -- Missouri
3 statute § 393.130.1?

4 A. I believe it is.

5 MR. RITCHIE: I would ask the Commission
6 to take official notice of that statute, and if I
7 could hand a copy to my witness?

8 JUDGE JORDAN: The answer to both is
9 yes.

10 MR. RITCHIE: Thank you, Judge.

11 MR. NOCE: What was the number on that?

12 MR. RITCHIE: 393.130.

13 MR. LEE: What does this have to do with
14 the water leaks?

15 MR. RITCHIE: Well, are you objecting?

16 JUDGE JORDAN: I take that as an
17 objection to relevance.

18 MR. RITCHIE: This has to do with
19 Staff's role in the investigation of your water
20 leaks, or your alleged water leaks.

21 JUDGE JORDAN: We're getting background
22 for the witness, in other words.

23 MR. LEE: Their office role or their
24 diagnostic role?

25 JUDGE JORDAN: Well, let's find out.

1 MR. RITCHIE: I think if -- if I was
2 able to go on, we would address some of your
3 questions with my witness. May I proceed, Judge?

4 JUDGE JORDAN: Please do.

5 BY MR. RITCHIE:

6 Q. Mr. Busch, can you please read the first
7 line of § 393.130.1?

8 MR. LEE: Did you give me a copy of
9 this?

10 MR. RITCHIE: I've asked the Commission
11 to take official notice of it, but I can provide
12 copies to whoever would need one.

13 JUDGE JORDAN: Do you want a copy?

14 MR. LEE: I have a copy.

15 JUDGE JORDAN: Okay. It's not an
16 exhibit and it doesn't need to be because the
17 Commission has to take official notice of the
18 statutes. It has to.

19 THE WITNESS: The first sentence of that
20 section states, "Every gas corporation, every
21 electrical corporation, every water corporation and
22 every sewer corporation shall furnish and provide
23 such service, instrumentalities and facilities and
24 shall be safe and adequate and in all respects just
25 and reasonable."

1 BY MR. RITCHIE:

2 Q. Okay. Thank you, Mr. Busch. So in the
3 course of its investigation, the Staff will make
4 findings and then write a Staff report?

5 A. In the situation like in this case where
6 it is a formal complaint, yes, Staff will do an
7 investigation and then write a report and file that
8 with the Commission.

9 Q. Now, are you familiar with Rob Lee's
10 complaint case against Missouri American Water?

11 A. Yes, I am.

12 Q. And what's your understanding of his
13 claims?

14 A. The claims that are, I think, specific
15 for this complaint are, there are leaks, alleged
16 leaks in the -- Missouri American's infrastructure in
17 and around Mr. Lee's house and his neighborhood, and
18 that those leaks are not being repaired, and then
19 causing leaking into his basement. That's my
20 understanding.

21 Q. And have you personally met with Lee and
22 discussed this case with him?

23 A. Yes, I have personally met with Mr. Lee.

24 Q. What other members of the Staff of the
25 Public Service Commission have been involved in this

1 case?

2 A. Other members of the Staff that have
3 been involved with this case -- are you referring to
4 just this specific case, this water, the
5 WC-2009-0277? I just want to make sure.

6 Q. Yes.

7 A. This case, Staff members involved have
8 been Mr. Jerry Scheible, Mr. Steve Loethen,
9 Ms. Natelle Detrich. The other members of the -- of
10 my department, we've done a -- when we investigate a
11 case such as this which is complex, we have a
12 collaborative process, so we'll discuss it, but those
13 are the ones who have actually had contact with
14 Mr. Lee and involved in this case.

15 Furthermore, members of the consumer
16 services department and I believe the records
17 department.

18 Q. You mentioned Steve Loethen. What are
19 Mr. Loethen's qualifications to work in this area?

20 A. Mr. Loethen has worked in the water and
21 sewer department for I think eight to nine years. He
22 is a utility operations technical specialist II I
23 believe is his title. He holds a wastewater and
24 water license. He also has a license to be a water
25 distributor. I think that's the way it's called.

1 And then prior to that, I know Mr. Loethen has worked
2 for a utility as an operator, operating water
3 systems, and I believe that Mr. Loethen actually
4 currently operates a system in his home town.

5 Q. And can you speak about Mr. Scheible's
6 qualifications?

7 A. Mr. Scheible has worked at the
8 Commission almost as long as Mr. Loethen, about
9 almost eight years. Mr. Scheible has a degree in
10 civil engineering and, in fact, is a PE.
11 Mr. Scheible also holds wastewater and water
12 license -- operator license.

13 Q. And what roles did Mr. Loethen and
14 Mr. Scheible play in our -- in Staff's investigation?

15 A. Mr. Loethen and Mr. Scheible have gone
16 out to visit Mr. Lee with me. In one of Staff's
17 first visits with Mr. Lee, they have reviewed what
18 Missouri American has done. We have discussed the
19 actions taken by Missouri American to make sure that
20 they were -- that they seemed appropriate actions on
21 how to investigate a leak.

22 They also have gone out on their own to
23 visit with Mr. Lee or to visit the area to look at
24 some of the allegations that Mr. Lee has put forth.
25 Mr. Loethen has also took samples at Mr. Lee's house

1 on one of his visits.

2 Q. Do you know how many times someone from
3 the PSC Staff, either individually or together, has
4 traveled from Jefferson City to Mr. Lee's home in
5 St. Louis to investigate these claims?

6 A. For this case in particular, I would say
7 five times.

8 Q. And can you describe each of those
9 visits, please?

10 A. For this case what brought this to my
11 attention, first time I had heard of Mr. Lee was
12 during the local public hearing that was held in
13 Case WR-2008-0311, Missouri American's last full rate
14 case. Mr. Lee testified at the local public hearing.

15 We set up a meeting for October 7th of
16 which myself and Mr. Scheible, Mr. Loethen and
17 Ms. Detrich went out and visited with Mr. Lee. We
18 also at that time invited members of Missouri
19 Department of Natural Resources and the
20 Metropolitan -- St. Louis Metropolitan Sewer
21 District.

22 Q. And when was the next visit?

23 A. The next visit involved in this
24 complaint, Mr. Scheible and Mr. Loethen and myself
25 set up a meeting with Missouri American. We met at

1 Missouri American's offices. I believe this was
2 December 11th or 12th. We looked at some maps, we
3 discussed --

4 Q. I'm sorry, of 2008?

5 A. Of 2008. I'm sorry. The first visit
6 was in 2008 as well.

7 Q. Thank you.

8 MR. LEE: December 12th you said?

9 THE WITNESS: December 11th or 12th,
10 yes. And we met, we discussed the complaint with
11 members of Missouri American, trying to come up with
12 some ideas of what could possibly be going on out in
13 that area, hearing more about what the tests that
14 they've done, and then we all -- and then also a
15 member of DNR was at that meeting as well.

16 And we drove out to Mr. Lee's
17 neighborhood and we walked around the neighborhood.

18 BY MR. RITCHIE:

19 Q. And when was the next visit?

20 A. The next visit was in early March, I
21 think March 3rd of 2009. Mr. Scheible and
22 Mr. Loethen went out to the area. I believe they
23 tried to make contact with Mr. Lee, but unfortunately
24 they were unable to make contact, and they did some
25 just general inspection of the area.

1 Q. And the next visit?

2 A. The next visit I believe was March 12th,
3 and that's where Mr. Loethen went out there. He did
4 meet with Mr. Lee. At that meeting they did take --
5 Mr. Loethen took samples to get tested from both
6 Mr. Lee's basement and from the tap.

7 Q. And was there one more visit where Staff
8 traveled there?

9 A. I believe the last visit was May 1st,
10 and I believe there were various parties involved.
11 And I know from Staff Mr. Loethen was there and I
12 believe with our attorney. And those are the ones
13 that I'm aware of. There might have been other
14 instances where Mr. Loethen or Mr. Scheible were
15 investigating other matters in the St. Louis area and
16 drove by the Larimore neighborhood. Those are the
17 ones that I'm aware of.

18 Q. Now, what sort of testing has the Staff
19 used to find out if Missouri American's pipes were
20 leaking?

21 A. We don't have any, you know, formal or
22 testing equipment such as been described so far like
23 Missouri American has. Generally what we do is if we
24 find out that there was a complaint of a potential
25 leak and we'd go out and visit, we'd look for some of

1 the obvious signs such as water running out of the
2 ground, try to locate, you know, where the mains
3 were, look and see if there was situations where it
4 looks like the soil is really saturated or if maybe
5 there's a situation where the grass looks like it's
6 growing a lot more than the rest of the yard. That
7 would indicate that there's water, a potential leak,
8 there's water in that area.

9 Q. Now, you're familiar with some of the
10 more sophisticated testing that the water company has
11 done to investigate this?

12 A. I'm familiar with --

13 MR. LEE: I object.

14 JUDGE JORDAN: And your objection is?

15 MR. LEE: The testing has never been
16 referred to as sophisticated.

17 JUDGE JORDAN: Okay. So you object to
18 the characterization of the testing as sophisticated?

19 THE WITNESS: Correct.

20 JUDGE JORDAN: Okay. Do you want to
21 rephrase your question?

22 BY MR. RITCHIE:

23 Q. Certainly. Are you aware of any
24 Missouri American testing?

25 A. Yes.

1 Q. Now, have you viewed Mr. Lee's videos
2 that he has submitted to the Commission of the area?

3 A. I believe I've seen all -- I believe
4 I've seen all of them. There's been quite a few
5 videos that have been submitted, and I think I've
6 seen all of them. It's been months since I've viewed
7 them, though.

8 Q. Uh-huh. Would these have been the
9 videos from the local public hearing?

10 A. Yes. And I believe there were some
11 other videos that Mr. Lee submitted to the Office of
12 the Public Counsel, and I got copies of those from
13 that office.

14 Q. Okay. Now, has Staff been in Mr. Lee's
15 basement?

16 A. I'm aware of Staff being in Mr. Lee's
17 basement on two occasions.

18 Q. What did Staff see there?

19 A. The first visit to Mr. Lee's basement
20 that I'm aware of was the one on October 7th. On
21 that day it was raining, drizzly weather. In
22 Mr. Lee's basement there was no standing water. It
23 looked like there was water that was seeping into
24 what I would assume is the northwest corner of his
25 basement near a crawl space.

1 Q. And what has Staff observed in Mr. Lee's
2 neighborhood?

3 A. At that time, like I said, it was wet,
4 so there was, you know, water. There was -- we saw
5 there was a creek that goes just to the east of
6 Mr. Lee's house. We went down a railroad track and
7 there was water in that storm ditch, drainage ditch
8 that was on the side of the railroad track.

9 We looked at the McQuay and Larimore
10 intersection where like a culvert goes underneath
11 Larimore there, and there was a pipe. And there
12 might have been some water there, but again, it was
13 raining.

14 I know we then walked up to Coal Bank,
15 and that's where we saw the -- where Mr. Lee pointed
16 out that he thought there was a leak in front of, I
17 think it's 11533 Larimore, and I think it was
18 Mr. Loethen or maybe Mr. Scheible, but I think it was
19 Mr. Loethen pointed out that it looks like there
20 might be a leak there because of the grass looked
21 newer, fresher and taller than the grass in the
22 neighborhood, so that was one of the times where we
23 went and contacted Missouri American and they
24 repaired. It was a leak on the service line, and
25 they repaired it.

1 Q. You verified that that was followed up
2 on and repaired?

3 A. Yes.

4 JUDGE JORDAN: Did you say they repaired
5 a service line?

6 THE WITNESS: They told us it was a
7 service line.

8 JUDGE JORDAN: Okay. Did you also --
9 are you also saying that Missouri American repaired
10 it?

11 THE WITNESS: Yeah, Missouri American
12 repaired it, yes.

13 MR. LEE: I object to that. It's
14 hearsay. "They told us." It's never been
15 determined. A service line can be feet long. It's
16 never been --

17 JUDGE JORDAN: I'll sustain the
18 objection.

19 MR. LEE: -- been exactly what the
20 repair was, although they --

21 JUDGE JORDAN: I sustained your
22 objection.

23 MR. LEE: Thank you.

24 BY MR. RITCHIE:

25 Q. Okay. How would you explain running

1 water in ditches and culverts around the neighborhood
2 when maybe there hadn't been rain for several days?

3 A. Yes. If you assume that there hasn't
4 been rain for several days --

5 MR. LEE: Objection. Is this expert
6 testimony or is this an opinion?

7 MR. RITCHIE: This is expert testimony.

8 MR. LEE: I don't know --

9 MR. RITCHIE: I'm asking my witness in
10 his experts opinion.

11 MR. LEE: I don't know that you've
12 presented him as an expert on running water, have
13 you?

14 MR. RITCHIE: Yes, I think I have. I
15 established him as an expert at the very beginning of
16 my questioning when I established his experience in
17 utility regulation, 12 years.

18 MR. LEE: You established him as having
19 quite a lot of administrative experience.

20 JUDGE JORDAN: Okay. How are you going
21 to characterize your witness's expertise for me?

22 MR. RITCHIE: He's an expert in
23 water and -- as the manager of the water and sewer
24 department at the Public Service Commission,
25 regulated water utilities are what he's worked with

1 for a number of years, and on top of his experience
2 in public utility regulation generally for over the
3 last decade I would say establishes him as an expert
4 in this area.

5 JUDGE JORDAN: Okay.

6 MR. LEE: And I object to that.

7 JUDGE JORDAN: Right. I think I'm gonna
8 need to hear more. Okay. The question you're asking
9 him, though, is about the flow of water. Can I hear
10 something more about knowledge, skill or training or
11 experience in the flow of water? Because that's what
12 you're asking him about. Maybe a little more
13 foundation for his background on those issues would
14 be helpful.

15 For now I'll sustain the objection.

16 MR. RITCHIE: Okay. I'll withdraw the
17 question.

18 JUDGE JORDAN: Okay.

19 BY MR. RITCHIE:

20 Q. Based upon the Staff's investigation,
21 has the Staff prepared a report for this case?

22 A. Yes, we have.

23 Q. And who prepared the report?

24 A. I wrote the report based upon --

25 MR. LEE: Objection. Is this an expert

1 report or is this an opinionated report?

2 JUDGE JORDAN: Well, so far we're just
3 asking questions about a document, and it's already
4 in the record so...

5 MR. LEE: Missed my chance, didn't I?

6 JUDGE JORDAN: Proceed.

7 THE WITNESS: I was the author of the
8 report, but the information that was put in the
9 report was based upon the knowledge and experience of
10 the entire water and sewer department staff and
11 information that we received from both the company,
12 DNR, et cetera. So I was the author, but, you know,
13 it was a collaborative effort amongst the entire
14 water and sewer department staff.

15 BY MR. RITCHIE:

16 Q. So you received input from Steve
17 Loethen, Jerry Scheible?

18 A. Yes.

19 Q. And we established earlier that they
20 have a substantial amount of experience?

21 A. They have substantial experience in the
22 water and wastewater field, and I am their manager.

23 Q. And you also -- did you also mention
24 that we had information from the water company for
25 the Staff report?

1 A. We have looked at information and
2 received it from the water company, that's correct.

3 Q. And what information was that?

4 A. Some of the information that we received
5 were like some of the test results that they did. We
6 received leak repairs or -- you know, I'm gonna
7 misstate what exactly that they sent us because there
8 was a lot of information. But anytime that there was
9 a complaint or an allegation, that they had a work
10 order. We received those work orders and reviewed
11 those.

12 We received -- like I said, we reviewed
13 the test results, and we also reviewed the testing
14 that they did to try to determine where the leaks
15 are.

16 Q. And I'll just go ahead and mention that
17 the Staff report I've been referring to has been
18 entered into evidence as Exhibit No. 20.

19 Mr. Busch, is that your signature on the
20 Staff report, or did you sign it?

21 A. I believe I did. In fact, I know I did.
22 So maybe just verify. You're referring to the
23 affidavit?

24 Q. Yeah. There's a signature --

25 A. Yeah, at the top. Yeah.

1 Q. Okay. Now, are you aware of any tariffs
2 that would apply to the situation in the complaint
3 case for Missouri American?

4 A. The only tariffs I'm familiar with that
5 deal with like leaks would be the fact that if
6 there's a leak on a service line, which is the line
7 that goes from the main to the customer's house is
8 the responsibility of the customer's.

9 Q. And are you aware of any tariff
10 violations from the company?

11 A. No, I am not.

12 Q. Are you aware of any PSC rules
13 violations from this company?

14 A. I am not.

15 Q. Are you aware of any Department of
16 Natural Resources violations of this company?

17 A. I am not.

18 JUDGE JORDAN: Can we narrow that scope
19 a little bit? Try to clarify the question. Is that
20 like ever?

21 BY MR. RITCHIE:

22 Q. Let's say since July 2008.

23 JUDGE JORDAN: Thank you.

24 THE WITNESS: The answer is still I am
25 not aware for any of those three.

1 BY MR. RITCHIE:

2 Q. Thank you. Can you explain, what do
3 leaks have to do with safe and adequate service?

4 A. Well, if there's a leak in the area, it
5 goes into the integrity of the system and it goes
6 into potential health risks, property risks. So if
7 we see leaks or we hear about leaks, we contact the
8 company and send the company regardless if it's
9 Missouri American or any company that we regulate to
10 go and fix those problems as soon as possible.

11 Q. So if leaks are excessive, how does that
12 affect safe and adequate service?

13 A. Well, and something it could also,
14 depending upon the size of the leak --

15 MR. LEE: Objection.

16 JUDGE JORDAN: What is your objection?

17 THE WITNESS: Any leak could affect the
18 safe and adequate service, not excessive.

19 JUDGE JORDAN: Right, that's not really
20 an objection to that question, though. So will you
21 repeat the question?

22 BY MR. RITCHIE:

23 Q. Yes. If leaks are excessive, how does
24 that affect safe and adequate service?

25 A. Well, if it's an excessive leak,

1 something else, it could affect the water pressure
2 that the customers receive, it could lower the water
3 pressure significantly which is not adequate service.
4 I believe DNR has regulations that they have to
5 maintain at least 20 psi pressure-wise in order to
6 utilize the service of their homes.

7 Q. So what could the Commission do about
8 excessive leaks?

9 A. If we had a situation where we had to
10 come in and somebody had excessive leaks and they
11 were not fixing them, I would think the Commission
12 could use their authority underneath the statute to
13 compel the company to fix those leaks.

14 Q. Could excessive leaks affect water
15 rates?

16 A. They can. As we've talked about earlier
17 throughout the two days, part of what's built into
18 rates, there's an allowance for lost and unaccounted
19 for, and depending upon how that would be resolved in
20 front of the Commission, the higher amount
21 theoretically could cause rates to go up.

22 Q. So would you say that the service
23 provided and response made by Missouri American would
24 qualify as safe and adequate as required under
25 § 393.130.1?

1 JUDGE JORDAN: Could we narrow that down
2 a little bit to like a time frame perhaps, and maybe
3 time and space?

4 BY MR. RITCHIE:

5 Q. Sure. Let's say, has the response the
6 company has made to investigate potential leaks in
7 your opinion been -- meet -- meet safe and adequate
8 service as required under § 393.130?

9 A. That is what Staff's opinion is.

10 Q. And what is your opinion about the water
11 in Mr. Lee's basement?

12 MR. LEE: Objection as to an expert
13 opinion.

14 JUDGE JORDAN: That's a really vague
15 question.

16 BY MR. RITCHIE:

17 Q. What is the -- I'll rephrase. What is
18 the water and sewer services' department at the
19 Public Service Commission's opinion about the water
20 in Lee's basement?

21 MR. LEE: Objection. That's hearsay.

22 JUDGE JORDAN: Well, it's not hearsay,
23 so...

24 MR. LEE: Somebody else's opinion, how
25 can he know that?

1 JUDGE JORDAN: This is the manager of
2 the department, so he is the department for these
3 purposes. So I will overrule that objection. But
4 can you get a little more specific about -- in your
5 question as to what you're asking about the water?
6 Because that would help me.

7 MR. RITCHIE: Certainly, Judge, yeah.

8 BY MR. RITCHIE:

9 Q. Can the water and sewer services
10 department of the Public Service Commission -- of the
11 Public Service Commission say with any certainty
12 where the water running into Mr. Lee's basement is
13 coming from?

14 A. With any certainty, no.

15 MR. RITCHIE: No further questions.

16 Thank you.

17 JUDGE JORDAN: Okay. Cross from
18 Missouri American Water Company.

19 MR. NOCE: Are we up first? I was
20 assuming Mr. Lee was going first.

21 JUDGE JORDAN: Missouri American as the
22 Respondent goes first.

23 MR. NOCE: Okay.

24 JUDGE JORDAN: You don't have to if you
25 don't want to. If you'd like to defer that to

1 Mr. Lee, I might be open to that.

2 MR. NOCE: Well, I think I'm gonna go
3 ahead and try and ask a few questions, if that's
4 okay.

5 JUDGE JORDAN: Please do.

6 CROSS-EXAMINATION BY MR. NOCE:

7 Q. Mr. Busch, can you state for the
8 Commission, do you have any certifications or
9 licenses that you've obtained over your career?

10 A. Could you be more specific?

11 Q. Sure. Well, let's start, I guess, what
12 is your education background?

13 A. My education background, I have both a
14 bachelors and master's of science in economics.

15 Q. Okay. And through your work here at the
16 Missouri Public Service Commission, have you applied
17 for any licenses with regards to sewer and water?

18 A. I have not.

19 Q. What has your job experience entailed
20 over the time you've been with the Public Service
21 Commission?

22 A. With the PSC?

23 Q. Yes.

24 A. Going back to when I first started, I
25 worked in the procurement analysis department. We

1 investigated natural gas issues, pricing of natural
2 gas, hedging programs with the LDCs, the local
3 distribution companies, Laclede Gas Company, stuff
4 like that. Then I will add to that, I went to five
5 years to Office of Public Counsel where I was an
6 economist, and at the Office of Public Counsel we did
7 just about everything.

8 We looked into water/sewer cases, we
9 looked into telephone, telecommunications, gas,
10 electric.

11 Q. If I could stop you. What sort of
12 investigations did you do with regards to water and
13 sewer?

14 A. At the Office of Public Counsel my role
15 with the water companies were basically the rate
16 requests that Missouri American filed while I was
17 there looking into the rate design aspect of it.

18 Q. Okay. You can go on. I'm sorry to cut
19 you off.

20 A. And then after that I worked in the
21 energy department. We did cost of service studies,
22 which was looking into class cost of service studies
23 which were looking into development of rates. We
24 also -- or I also did integrated resource planning
25 when we look at, you know, the company's building new

1 facilities to generate electricity. There might have
2 been some issues where I looked into tariff -- all of
3 them I looked into tariff filings and to make sure
4 that the companies were following their tariffs, or
5 helping to write tariffs, reviewing tariffs. Might
6 have some issues with some complaints in the energy
7 department with electric service.

8 Q. And again, you've stated that you're the
9 manager of what department?

10 A. I am the manager of the water and sewer
11 department. We have two professional engineers on
12 staff, we have another gentleman who has an
13 engineering degree, then we have one person who is an
14 auditor who deals with the rate and the tariff. He's
15 called a rate and tariff examiner.

16 And then we have two other individuals
17 who are technicians who go out and they -- all of
18 them except for the rate and tariff guy go out and
19 they inspect all the water systems.

20 Q. Okay. And those include the individuals
21 that investigated the complaints filed by Mr. Lee in
22 this case, correct?

23 A. That is correct.

24 Q. And was your office able to form any
25 conclusions as to what the cause of the water

1 reaching Mr. Lee's basement was?

2 A. What the direct cause of the water, we
3 do not know what the direct cause. We did -- as the
4 department at this time has not seen any indications
5 that the water's coming from Missouri American's
6 pipes in the area.

7 Q. And did you offer Mr. Lee any
8 recommendations in your report?

9 A. Yes, we did.

10 Q. And what was that?

11 A. In the report when we talked about
12 keeping water out of Mr. Lee's basement, we talked to
13 him about finding somebody who can waterproof his
14 basement.

15 MR. NOCE: Okay. I don't believe I have
16 any further questions for you at this time. Thank
17 you very much.

18 JUDGE JORDAN: Okay. Next in our order
19 would ordinarily be Mr. Lee's cross-examination. We
20 only have about 20 minutes left today, and we will be
21 scheduling another session for this hearing.

22 If Mr. Lee wants to begin his cross, he
23 can do it now or he can save it for the next session.

24 MR. LEE: I'm fine.

25 JUDGE JORDAN: Okay

1 CROSS-EXAMINATION BY MR. LEE:

2 Q. Most of your education and training that
3 you just stated to me seemed like it was
4 administrative; is that correct?

5 A. I wouldn't describe it as
6 administrative.

7 Q. You're dealing with tariffs and
8 economics and office; working for the Office of
9 Public Counsel is not administrative?

10 A. No. When we do a class cost of service
11 study, that's a very mathematically-intensive
12 process. I wouldn't call it administrative work.

13 Q. How much training do you have in
14 diagnostic procedures?

15 A. I personally don't, but I believe that
16 members of my staff do.

17 Q. And what training do they have?

18 A. Mr. Loethen was an operator, and part of
19 being an operator is looking into repairing leaks, so
20 what his specific training for that is, you know, I
21 don't know the exact nature of it, but I would assume
22 anybody who's an operator of a system has knowledge
23 of how to look at diagnostics.

24 Q. You would assume that?

25 A. If they had to go out and repair a leak.

1 Q. I wouldn't assume that. I would like to
2 know what training he has had in diagnostics.

3 MR. RITCHIE: Judge, I'm gonna object.
4 That's asked and answered. Argumentative also.

5 BY MR. LEE:

6 Q. And how much training do you have in
7 diagnostics?

8 A. Again, I said I don't have any myself.

9 Q. In your report here you stated that my
10 complaint was water in my basement?

11 A. Could you point me to where that is
12 written?

13 Q. I believe it's in the Findings. "The
14 nature of Mr. Lee's complaint was that he had water
15 in his basement."

16 JUDGE JORDAN: Where is that language?

17 MR. LEE: That is the first paragraph
18 about halfway down.

19 THE WITNESS: Okay. I see that
20 statement.

21 BY MR. LEE:

22 Q. Okay. Are you aware of any
23 communications I had with Senator Tim Green's office
24 where I complained about water running out of the
25 ground in a number of different areas in my

1 neighborhood, or at the Public Service Commission
2 rate increase hearing where I complained about --

3 MR. RITCHIE: Judge, I'm gonna object to
4 this questioning.

5 BY MR. LEE:

6 Q. -- running out of the ground in several
7 areas of my neighborhood?

8 JUDGE JORDAN: Go ahead and speak your
9 objection.

10 MR. RITCHIE: First of all, it's
11 compound, and the first part of it is irrelevant.

12 JUDGE JORDAN: Well, I don't -- it is
13 compound, so let's ask about like one matter at a
14 time. So I'll sustain that.

15 As far as the relevance of your
16 communications with a legislator, I don't see -- can
17 you tell me why that is going to be relevant, how
18 that is going to prove or disprove a claim or defense
19 in this case?

20 MR. LEE: When I read this, it seems to
21 discount my complaints of water running out of the
22 ground at a number of different areas in my
23 neighborhood. I had complained about the water
24 running out of the neighborhood at the rate increase
25 hearing, I have also complained about the water

1 running out of the ground in the neighborhood to my
2 senator, and I believe to not include this complaint,
3 Mr. Hummel and Mr. Busch seem to have ignored the
4 problems of the water running out of the ground and
5 want to focus on my basement. That was not the main
6 part of my complaint.

7 JUDGE JORDAN: I don't see how --

8 MR. RITCHIE: Judge, I'd like to --

9 JUDGE JORDAN: -- those inquiries you've
10 mentioned are really relevant to what I think you're
11 getting to. I think you're getting to the quality of
12 this report; is that correct?

13 MR. LEE: I am.

14 JUDGE JORDAN: Okay. Well, see, your
15 communications with other persons, that's not
16 relevant.

17 MR. RITCHIE: I'd like to lodge an
18 additional objection.

19 JUDGE JORDAN: Let's hear it.

20 MR. RITCHIE: As mischaracterizing what
21 my witness said. If you go down just a couple more
22 lines, Mr. Busch does mention in his report that
23 finally Mr. Lee claimed that there were leaks
24 throughout his neighborhood, all a result of MAWC
25 mains.

1 JUDGE JORDAN: Right.

2 MR. LEE: What paragraph are you in?

3 MR. RITCHIE: The first paragraph, just
4 two or three lines after the line you put in.

5 JUDGE JORDAN: I'm going to sustain the
6 objection for the reasons that I've -- that I've
7 already stated, and I'm also going to mention that
8 I've read this document, and I've read it more than
9 once, and I know where it emphasizes Mr. Lee's
10 basement, and I also know where it emphasizes other
11 leaks, other appearances of surface water throughout
12 the neighborhood.

13 MR. LEE: Okay. So I'm not sure what
14 that means to me.

15 JUDGE JORDAN: That means you can ask a
16 different question.

17 MR. LEE: I can do what now?

18 JUDGE JORDAN: Ask another question, a
19 different question.

20 MR. LEE: Ask another question.

21 BY MR. LEE:

22 Q. Did Mr. Hummel communicate anything to
23 you about water leaks in my neighborhood?

24 A. I believed you're referring to
25 Mr. Martin Hummel, an engineer on my staff.

1 Mr. Hummel's involvement with this situation was an
2 informal complaint that was filed with the Commission
3 in June of 2008, and then Mr. -- it's my
4 understanding that at that time most of the complaint
5 seemed to revolve around water in Mr. Lee's basement,
6 and that's where Mr. Hummel was doing his
7 investigation on. After the public hearing in
8 September of '08, Mr. Hummel has not really been
9 involved with this case.

10 Q. Okay. So he could have ignored the
11 complaints of the water running out of the ground and
12 you would not know that, correct?

13 A. I'm not -- I don't know necessarily what
14 the complaints were from June of '08. I don't have
15 them in front of me. So I don't know what --
16 everything that you were complaining about in June of
17 '08?

18 Q. Okay. You've said that your staff has
19 investigated my complaint. What tests were done
20 during that investigation?

21 A. Tests that were done during the
22 investigation were -- I know Missouri American has
23 done many tests as to -- trying to determine where
24 the source of water was from.

25 Q. And which tests are those?

1 A. Those are where they take water samples
2 and then they do the tests that Mr. Simmons was
3 describing yesterday.

4 Q. Okay.

5 A. I believe that DNR took some samples and
6 investigated as well.

7 Q. Is that more water samples?

8 A. That is more water samples. And I know
9 the testing that Missouri American did on its pipes,
10 the ultrasonic testing, the listening devices.

11 Q. And so how much of your investigation
12 relies on water sampling and testing?

13 A. I think our -- what the role of the
14 Staff is, is to look into an investigation or into a
15 complaint and then to follow up with the company and
16 the customer, and it is -- we look at it as what does
17 the company do to investigate this complaint? So our
18 determination has been made by the fact that through
19 our visits, Missouri American has shown that they
20 have been out there on numerous occasions. Whenever
21 we get -- whenever I got a call or an e-mail from
22 Mr. Lee, I would contact --

23 Q. That's a nice answer, but it's not an
24 answer to the question. How much of your
25 investigation relies on water testing?

1 A. I don't know that I can put a number or
2 percent of how much of it was involved. It was a
3 collaborative process with all the information that
4 we have.

5 Q. And what other test results did it
6 entail?

7 A. What other test results did what entail?

8 Q. Your report here, the production of your
9 report. What other test results did you use to write
10 this report? You've used water sampling and --

11 A. We looked at water sampling,
12 understanding what the company provided us based upon
13 their water sampling, and we also based it upon
14 the -- doing that ultrasonic testing that
15 Mr. Bommarito was talking about yesterday and when
16 they would go out and investigate the leaks.

17 We based it upon what our collective
18 knowledge in the water and sewer department is and
19 what it looked like Missouri American was doing to
20 try to find the answer to the problem.

21 MR. LEE: Okay. Could you go to the
22 chart and show me exactly how much of that water
23 system on the chart has been tested with the
24 ultrasonic method at the time that you wrote this
25 report?

1 MR. RITCHIE: Judge, I'm gonna object to
2 that. That's not related to Mr. Busch's role here.

3 JUDGE JORDAN: Well, if Mr. Busch can
4 answer the question, he should answer the question.

5 THE WITNESS: I don't know exactly where
6 they put that equipment on. I know that they used
7 that testing at various points, at various leaks, or
8 various alleged leaks that we were aware of. I do
9 not know -- I would assume it was up and down
10 Larimore and McQuay and --

11 MR. LEE: Objection. How could you
12 write an important document, an important report that
13 affects people's lives and not know what the test
14 results were or how much of the system had been
15 tested?

16 JUDGE JORDAN: That's a pretty
17 argumentative question. How could you write a
18 report? I think that's argumentative. But you could
19 make a question out of it that is not argumentative,
20 although I think you pretty much covered it.

21 BY MR. LEE:

22 Q. If you don't know what the test results
23 were, how could you write an important report based
24 on it where you don't even know which pipes were
25 tested?

1 A. I know that -- we do know the results of
2 the test results, and we do know that whenever
3 Missouri American went out to investigate a potential
4 leak, they told us what the result was.

5 Q. Okay. Can you show me which part of
6 that pipe was tested to give you which results?

7 A. No, I cannot off the top of my head come
8 up there and show you. Whenever you would talk about
9 a potential leak, I would contact Missouri American,
10 generally Mr. Linam, and then they would go out and
11 test it, and then they would let me know we did not
12 find a leak.

13 Q. Okay. So how much of your
14 recommendation in your report is based on ultrasonic
15 test results?

16 JUDGE JORDAN: We've heard that question
17 already.

18 MR. LEE: I believe that was how much
19 was related to the water sampling.

20 JUDGE JORDAN: Okay. It was related to
21 testing. Answer the question if you can.

22 THE WITNESS: Again, I don't know
23 specifically how much of that. It was -- that report
24 was a compilation of the experience of the water and
25 sewer department and the information --

1 MR. LEE: I don't want to know about
2 experience. I want to know what test results your
3 report was based on.

4 JUDGE JORDAN: That's been asked and
5 answered.

6 MR. RITCHIE: Objection for asked and
7 answered.

8 JUDGE JORDAN: He's already described
9 the types of tests. You already asked that question,
10 and he answered it.

11 MR. LEE: I don't know that I got an
12 answer. Is it -- could you refresh my memory,
13 please?

14 JUDGE JORDAN: No, no.

15 MR. RITCHIE: Your Honor, it's already
16 in the transcript.

17 MR. LEE: We have used two different
18 test results to base our report on. We can't
19 determine -- we've already determined one of them may
20 not be credible -- a credible way to test for water.
21 The other we don't even know which part of the system
22 we tested. How could the report be reliable if we
23 don't know what test results it's based on?

24 JUDGE JORDAN: That's a great argument,
25 and this is not the time for argument. It is the

1 time to --

2 MR. LEE: -- ask questions.

3 JUDGE JORDAN: Exactly. And, in fact, I
4 think the time to ask questions is about up, the
5 reason being, we are about five minutes away from our
6 computer shutdown. So I'm going to have to adjourn
7 this hearing. And we had planned to reconvene
8 anyway, so when we reconvene, we can resume with the
9 cross-examination of this witness, if you have more
10 questions.

11 MR. LEE: And when may that be?

12 JUDGE JORDAN: Well, we're going to have
13 to work on that. And I intend to put that matter
14 into the order that I will issue when the reporter
15 files the transcript, and then I will deal with all
16 these pending issues, and then we'll start the
17 scheduling process.

18 MR. LEE: Will we get a copy of the
19 transcript?

20 JUDGE JORDAN: The transcript will be
21 filed in EFIS, so if you want to read the transcript,
22 you can read it in EFIS or you can get a copy from
23 the reporter as well, and you'll have to contact her
24 to do that if you want your own.

25 MR. LEE: EFIS is fine.

1 MR. RITCHIE: Your Honor, could we
2 submit conflict dates for a potential hearing, being
3 that there's a lot of people to coordinate with the
4 Staff.

5 JUDGE JORDAN: There really is. And
6 it's my usual MO to ask for conflict dates first,
7 but, you know, I'll make a note of that just to make
8 sure. Certainly if I ever deviate from that
9 practice, I know it's going to cause problems.

10 MR. RITCHIE: Appreciate that, your
11 Honor.

12 JUDGE JORDAN: That's not a problem. I
13 will get conflict dates, and that's from everybody.
14 And any questions? Well, I think I've addressed what
15 I intend to do pretty thoroughly, but I'm going to
16 reiterate it one more time. When the reporter files
17 the transcript of this hearing so far, I will put out
18 an order addressing further scheduling of the
19 hearing, also addressing the filing of the matters
20 that we've discussed which will include a timetable
21 for filing them and also for making objections to
22 them, and then we'll start a scheduling process in
23 that order.

24 And with that I'm going to adjourn this
25 hearing temporarily until the next scheduled date.

1 So we will go off the record.

2 (WHEREUPON, the hearing of this case was
3 recessed until a date to be determined.)

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