

CASE

NUMBER:

99.436

1 to; correct?

2 A What I do with those meters is my business.

3 Q Okay. But to answer the question is yes,
4 isn't it?

5 A I have plans for those meters, yes.

6 Q But, currently, there is no customer out
7 there to use them?

8 A I would be the customer.

9 Q So, you are going to use water from 18
10 different meters right now?

11 A It is possible.

12 Q But it is not happening right now, is it?

13 A I don't have 18 meters.

14 Q But you purchased 18 meters; correct?

15 A That's correct.

16 MR. ROGERS:

17 I don't have any further questions, Your
18 Honor.

19 HEARING OFFICER SHAPIRO:

20 Mr. Pinney?

21 MR. PINNEY

22 I have no questions at this time.

23 HEARING OFFICER SHAPIRO:

24 Mr. Fox?

1 MR. FOX:
2 Yes, Your Honor.
3
4

REDIRECT EXAMINATION

5 BY MR. FOX:

6 Q Mr. Rogers asked you several questions about the
7 plans and whether they were submitted in a form
8 that was approved by the Bath County Water
9 District. At what point, if it occurred, at what
10 point were you told that the Bath Water District
11 had to approve those plans?

12 A I don't know that I was ever told they had to
13 approve the specific plans.

14 Q What was your understanding in terms of who
15 was going to approve those plans?

16 A The Division of Water would have to approve
17 those plans and it would have to be, of
18 course, acceptable for the Bath County Water
19 Board.

20 Q But as far as the approval of the sufficiency
21 and the appropriateness of the plans, what
22 was your understanding of who actually gave
23 approval?

24 A The state.

1 Q Mr. Rogers asked you about the--I believe it was
2 December 17 decision to approve the three inch
3 line that runs through the subdivision as an
4 extension. What was your understanding of the
5 impact of that decision?

6 A I felt the Bath County Water Board would hook
7 the meters up for those people that had
8 individual lines that were uncovered and put
9 water in those mains.

10 Q Individual lines that were uncovered, what do
11 you mean?

12 A Well, we have some customers that live four
13 to five thousand feet off of the main road.
14 They have one inch service lines ran in an
15 open ditch to their property to supply them
16 with water.

17 Q Why were those lines in an open ditch?

18 A Well, for one thing, the plumbing inspector
19 wouldn't allow us to cover them.

20 Q Because?

21 A Well, there were several different reasons.
22 I think that there is an actual law from the
23 state that says that that is not the correct
24 thing to do. There is--the water line should

1 be or the meter should be near the property
2 and, of course, that was our attempt with the
3 main, the three inch main.

4 Q What did--when the three inch main line was
5 approved, had that line gone into service, would
6 that have solved those problems?

7 A Yes.

8 Q Has that three inch line been placed into
9 service by the Bath County Water District?

10 A No.

11 Q Today as we speak, is it in use?

12 A No.

13 Q Is it ready for use?

14 A Yes.

15 Q There was some questions about your
16 understanding that there was an extension ban
17 in place when you bought the property. And I
18 think you testified that you believed that
19 ban would be lifted, was it, in fact, lifted?

20 A It was, just as I was instructed it would be,
21 a little late but still lifted.

22 Q You have indicated that you and your wife
23 bought this property in order to sub develop
24 it, have you sold lots in the subdivision?

1 A Several.

2 Q What has been the impact of this situation that
3 gave rise to the complaint in terms of the sales
4 of the lots in your subdivision?

5 A Well, for one thing, an open ditch with a bunch of
6 service lines streaming everywhere doesn't look
7 very good and that is not a neighborhood I would
8 move into. And I'm sure the people that live
9 there hold me responsible for their anguish with
10 frozen water. And I know the public's image has
11 to be negative because of that.

12 Q Specifically, with regard to the 18 meters
13 that you have purchased, have they been set?

14 A No.

15 Q Is it because--why have they not been set?

16 A We haven't provided a permit for those meters
17 to be set. I wanted to see--on locations is
18 the reason why I haven't pushed it. My wife
19 may have other ideas on whether she wanted
20 some of those meters set or not set. I
21 actually haven't strongly pursued it since
22 the time of purchase in lieu of this hearing.

23 Q I see. Have you and your wife lost sales of
24 lots because of this situation?

1 A I'm sure we have.

2 MR. FOX:

3 That's all I have.

4 MR. ROGERS:

5 Some follow-up Your Honor.

6

7

RE CROSS EXAMINATION

8 BY MR. ROGERS:

9 Q Mr. Hatfield, you knew at the time that you were
10 selling these lots that you had not yet gained
11 approval from the Bath County Water District for
12 acceptance of this water main, didn't you?

13 A Yes, I did.

14 Q And you knew that at the time you sold the lots
15 that you had not yet gained acceptance of this
16 water main from the Division of Water, didn't you?

17 A Yes, I did.

18 Q And the engineer that you retained to prepare
19 your water system plans, did he not tell you
20 that your plans for the water system had to
21 be approved by the District before they were
22 submitted to the Division of Water?

23 A I'm not sure, I don't recall that, it's
24 possible, but I don't recall that.

1 MR. ROGERS:

2 Okay. That's all the questions I have.

3 MR. PINNEY:

4 I just have two or three questions Mr. Hatfield.

5

6 CROSS EXAMINATION

7 BY MR. PINNEY:

8 Q How many meters currently are set and operatable
9 on the property?

10 A Twenty to twenty-two.

11 Q Twenty to twenty-two?

12 A Twenty.

13 Q They are setting there and in use?

14 A Yes, that's correct.

15 Q Yes, that's correct.

16 MR. PINNEY:

17 Okay. That's all the questions I have.

18

19 REDIRECT EXAMINATION

20 BY MR. FOX:

21 Q How many were set and in use on November 5?

22 A I think it was 11, somewhere between 11 and
23 13. I could check and be certain, but I know
24 it is a number between 11 and 13.

1 Q But in any event, is it your understanding
2 that on December 17 that three inch main
3 extension was approved by the Division of
4 Water?

5 A It is.

6 MR. FOX:

7 Nothing further.

8 HEARING OFFICER SHAPIRO:

9 Mr. Hatfield, how many lots are in the
10 subdivision?

11 A We currently have plans on developing out around
12 45 to 50. In the beginning we had plans on
13 selling smaller lots, but we have had some
14 problems, of course, with the water and it seems
15 like the demand is for a larger tract and we have
16 lessened the number.

17 HEARING OFFICER SHAPIRO:

18 Have you filed a subdivision plat?

19 A I would think so. I would think that has been
20 filed.

21 HEARING OFFICER SHAPIRO:

22 Are you selling lots according to the plat?

23 A Yes, we are.

24

1 HEARING OFFICER SHAPIRO:

2 And you say there is about 40 to 45 lots in that
3 plat--on that plat?

4 A There is actually probably more than that on
5 the actual plat.

6 HEARING OFFICER SHAPIRO:

7 So, you are selling partial lots, is that--or you
8 are combining them?

9 A We are selling mostly--most people buy two
10 lots for each house.

11 HEARING OFFICER SHAPIRO:

12 And how many lots are served by water at this
13 time?

14 A I would think 20.

15 HEARING OFFICER SHAPIRO:

16 Twenty. And you also have ordered 18, did you say
17 18 more.

18 A Uh-huh.

19 HEARING OFFICER SHAPIRO:

20 So, that would be a total 38 lots that would be
21 served by separate water meters?

22 A Uh-huh.

23 HEARING OFFICER SHAPIRO:

24 And those separate water meters are attached to

1 the Water District's main?

2 A All of the meters that are set currently are
3 on their main. A personal thought was if we
4 could--if I could arrange those additional 18
5 to be placed on the three inch main that I
6 have installed it would be more efficient and
7 effective for me.

8 HEARING OFFICER SHAPIRO:

9 There are 20 lots currently with water; is that
10 right?

11 A That's right.

12 HEARING OFFICER SHAPIRO:

13 And there are--you have purchased 18 more meters?

14 A Uh-huh.

15 HEARING OFFICER SHAPIRO:

16 And has the Water District accepted those
17 purchases, agreed to install those meters?

18 A They have accepted the check and have
19 informed me that in order for them to set
20 those meters they would have to be capable
21 and I would think that that is in regards to
22 water pressure and volume that those meters
23 would be set.

24

1 HEARING OFFICER SHAPIRO:

2 What do you mean by capable?

3 A Capable, that means they can service those.

4 HEARING OFFICER SHAPIRO:

5 I'm sorry, I didn't hear you

6 A It means they can--what I mean by that is
7 they can service those meters. They can
8 actually keep the water pressure up to the 30
9 pound without jeopardizing the rest of the
10 customers on their system in that area. That
11 means if they can service those meters, they
12 will service those meters.

13 HEARING OFFICER SHAPIRO:

14 So, essentially, what you are saying, then, is
15 they will furnish you those meters if they can
16 provide thirty pounds per square inch pressure,
17 which they are required to do by this Commission
18 standards? And what was the other reason?

19 A Well, as long as they can keep the pressure up for
20 all the other customers in the area--

21 HEARING OFFICER SHAPIRO:

22 Maintain the current--

23 A Maintain the current pressure, the minimum
24 standard for the rest of those--the rest of the

1 customers in the area.

2 HEARING OFFICER SHAPIRO:

3 So, if you were to get all 18 meters approved, if
4 you were to get 18 more meters, that would give
5 you 38 meters which would pretty much cover the
6 whole subdivision, maybe about seven lots left
7 over; is that right?

8 A That's right.

9 HEARING OFFICER SHAPIRO:

10 Anything else of this witness?

11 MR. ROGERS:

12 I would like to move to introduce the plats that
13 were identified as Exhibits 1 and 2, Defendant's 1
14 and 2.

15 HEARING OFFICER SHAPIRO:

16 Any objection?

17 MR. FOX:

18 None.

19 HEARING OFFICER SHAPIRO:

20 Thank you, Mr. Hatfield.

21 (EXHIBITS SO MARKED: Bath County Exhibits
22 Numbered 1 and 2)

23 HEARING OFFICER SHAPIRO:

24 Call your next witness?

1 MR. FOX:

2 I call Tina Hatfield.

3 (WITNESS DULY SWORN)

4

5 The witness, TINA DENISE HATFIELD, having first
6 been duly sworn, testified as follows:

7

DIRECT EXAMINATION

8 BY MR. FOX:

9 Q Tell the Judge your full name please?

10 A Tina Denise Hatfield.

11 Q And, Ms. Hatfield, are you married to Robert
12 Hatfield who previously testified?

13 A Yes.

14 Q And are you a co-owner of the Meadowbrook
15 Subdivision in Bath County?

16 A Yes.

17 Q Have you prepared an affidavit in
18 anticipation of today's hearing?

19 A Yes.

20

MR. FOX:

21 May I approach the witness? Let the
22 record reflect I'm showing her her
23 affidavit.

24 Q Tina, if you will look at that and tell us if that

1 is the affidavit that you prepared for this
2 hearing?

3 A Yes, it is.

4 Q And to the best of your knowledge and belief,
5 is the information contained in that
6 affidavit true and accurate?

7 A Yes, it is.

8 MR. FOX:

9 Your Honor, we move to identify that as
10 Complainant's Exhibit Number 2 and move
11 to introduce it as evidence in this
12 matter.

13 HEARING OFFICER SHAPIRO:

14 Any objection?

15 MR. ROGERS:

16 No, sir.

17 HEARING OFFICER SHAPIRO:

18 So ordered.

19 (EXHIBIT SO MARKED: Hatfield Exhibit No. 2)

20 HEARING OFFICER SHAPIRO:

21 Ready for cross-examination?

22 MR. FOX:

23 Yes, Your Honor.

24

1 CROSS EXAMINATION

2 BY MR. ROGERS:

3 Q Mr. Hatfield, I would just like to follow-up with
4 a few questions. You heard your husband testify
5 that he let you handle getting the documents
6 together, right?

7 A Yes.

8 Q And if you could take a look at Defendant's 1
9 and 2--

10 HEARING OFFICER SHAPIRO:

11 I think it is Bath County 1 and 2.

12 Q Okay, Bath County 1 and 2, I'm sorry. Were
13 those the documents that you provided to me
14 in response to my request for production of
15 documents?

16 A I am pretty certain that it is, yes.

17 Q And you will note that those two exhibits
18 are--the preparatory on those is dated early
19 December, 1999?

20 A Right.

21 Q Ma'am, weren't there other plans that were
22 submitted to Bath County Water District in
23 November and October?

24 A When I produced these plans, these are the

1 plans that I had possession of. The plans
2 that were submitted probably had different
3 legends. The same layout applied, the same
4 layout, the same details were the plans that
5 we submitted. The first time we submitted
6 them there were a couple of changes in the
7 details which we were asked to change, which
8 we did. But I don't have possession of the
9 plans that we had to revise because they
10 weren't of any use to us. So, I discarded
11 those.

12 Q Okay.

13 HEARING OFFICER SHAPIRO:

14 Well, the question, though, was were
15 there other plans submitted earlier?

16 A Yes.

17 Q Okay. I think you pretty much answered my
18 question, those other plans had to be
19 revised; correct?

20 A Right.

21 Q And those were revised at the request of the
22 Bath County Water District, correct?

23 A Yes.

24 Q And they made that request at their October

1 meeting?

2 A I'm not sure if it was October or November,
3 it was one of the two.

4 Q Could it have been both?

5 A No.

6 Q And your revised plans were submitted at the
7 December meeting; correct?

8 A No.

9 Q No? You did not submit any plans in
10 December?

11 A The Dec--I recall what happened at the
12 December meeting. I believe that we--our
13 plans were already approved at that point and
14 I believe that we looked at them in reference
15 to the customers, but I don't know if--the
16 plans weren't really the issue in December so
17 I don't really recall what happened with the
18 plans in December.

19 Q When you said the plans were approved in
20 December, you meant they were approved by the
21 Division of Water; correct?

22 A Yes.

23 Q Now, when they were approved by the Division of
24 Water it was a limited approval; correct?

1 A It was an approval for the 13.
2 Q Thirteen existing customers?
3 A Right.
4 Q Not for any additional customers? I'm just
5 talking about the Division of Water?
6 A No.
7 Q Did--you made reference to what Mr. Fawns has
8 told you in your affidavit, but did you--the
9 engineer that you retained to help you
10 prepare the plans for your water system in
11 your subdivision, did he ever tell you that
12 your plans, by regulation, have to be
13 approved by the District before they are
14 submitted to the Division of Water?
15 A My engineer?
16 Q Yes.
17 A No, not that I--I don't ever recall that, no.
18 Q And the limited approval by the Division of
19 Water for the 13 customers was because those
20 customers had those long lateral lines that
21 were in open ditches; correct?
22 A I'm fairly certain that was the reason, yes.

23 MR. ROGERS:

24 I don't have any further questions.

1 MR. PINNEY:

2 I have no questions at this time.

3 HEARING OFFICER SHAPIRO:

4 Any redirect?

5 MR. FOX:

6 Yes, Your Honor.

7

8

REDIRECT EXAMINATION

9 BY MR. FOX:

10 Q Were you ever made aware by the Bath County Water
11 District that they needed to approve these plans?

12 A No.

13 Q How many meetings did you attend?

14 A Seven or eight.

15 Q Okay. With the last being when?

16 A December.

17 Q December was the last meeting. So, up--I think
18 your husband testified, I think, in May, May
19 through December you attended seven meetings. At
20 any point in time did the Bath County Water
21 District during the meeting or on any other
22 occasion tell you that you had to submit plans to
23 them for approval?

24 A They told me that we needed to submit our

1 that it was up to the Bath County Water
2 District after that?

3 A The Division of Water approved the 13 without
4 the--we were supposed to have a letter from
5 the Division of Water agreeing to service the
6 line.

7 Q From the Division of Water?

8 A For the Division of Water--the Division of Water
9 wanted a letter from the Board, the District,
10 agreeing to service the extension, and I couldn't
11 get a letter from them. And, so, with our
12 circumstances being as they were the Division of
13 Water went over the Water Board to approve the
14 extension for the existing customers. But they
15 made note that what I felt the reason for was they
16 made note that it was for the existing customers
17 and was not to be considered as approval for
18 additional customers unless it was okay with the
19 Water Board, unless the Water Board was in
20 approval of that. So, my opinion was that they
21 did that so that it wouldn't be too--I guess it
22 wouldn't be so out of line for them to go over the
23 Board.

24 Q And what would have prevented the Water

1 Board, after that main extension was added,
2 the three inch extension, what would have
3 prevented them from adding more than 13
4 customers?

5 MR. ROGERS:

6 I object to the question. I'm not sure
7 she can answer that.

8 HEARING OFFICER SHAPIRO:

9 What was the question again?

10 MR. FOX:

11 What is her understanding of what would
12 have prevented the Bath Water District
13 from adding more than the 13 customers
14 after the three inch line was added to
15 the system?

16 HEARING OFFICER SHAPIRO:

17 What was the objection?

18 MR. ROGERS:

19 I guess I don't understand his question.
20 Her understanding of what the District
21 thought they could or couldn't do, what
22 would prevent--I don't understand the
23 question. And I'm sure I don't see how
24 she can answer the question.

1 HEARING OFFICER SHAPIRO:

2 Well, if she knows she can answer it.

3 Do you know?

4 A Sure. Well, my opinion is what you are
5 asking for. My opinion on why they couldn't
6 service more, we have talked about it so much
7 I've forgotten the question.

8 Q What did they tell you, I mean, what was the
9 reason that they wouldn't add more than 13
10 customers even if the three inch line was
11 added to the system?

12 A The reason would be that the pressure would
13 fall below and they wouldn't be able to
14 service the additional meters, that it
15 would--that would be the reason.

16 MR. FOX:

17 Okay. Nothing further.

18 MR. ROGERS:

19 Just one or two follow-ups.
20

21 RE-cross EXAMINATION

22 BY MR. ROGERS:

23 Q Ms. Hatfield, you said that you complied with all
24 of the requests of the District in revising your

1 plans. But they were not final until December of
2 1999; correct?

3 A Our plans were not final until December?

4 Q Right. If you would like you can look at the
5 date on them?

6 A They were approved in December, that is not to say
7 that our--we--I know that we submitted them weeks
8 before they approved.

9 Q Okay. What is the date that they were
10 prepared, you can look at the date?

11 A The drawing date says December 4.

12 Q Okay. And the meeting of the Bath County
13 Water District after December 4, the next
14 meeting was December 28, was it not?

15 A I believe it was the 27, but right around there.

16 Q Okay. And that was the next District meeting
17 and you went to that meeting; correct?

18 A Yes.

19 MR. ROGERS:

20 Nothing further.

21 MR. PINNEY:

22 I only have one question Ms. Hatfield.
23
24

1 CROSS EXAMINATION

2 BY MR. PINNEY:

3 Q In regard to the existing meters that are
4 currently in operation, was there any difficulty
5 getting them set or installed?

6 A Yes.

7 Q Could you elaborate on that please?

8 A I don't want to exaggerate, so I'll try not to.

9 Q I'd appreciate you being objective as
10 possible.

11 A Several of the meters, less than half,
12 probably, several of the meters we had
13 difficulty in obtaining. Whether there was a
14 refusal to set the meter or--an obvious
15 purposeful delay that was uncalled for, in my
16 opinion. Not to say that I could be wrong,
17 but we had difficulty in obtaining several of
18 the meters, yes.

19 MR. PINNEY:

20 Thank you.

21 HEARING OFFICER SHAPIRO:

22 Do you have anything else?

23 MR. PINNEY:

24 I beg your pardon, I have no further

1 questions.

2
3 REDIRECT EXAMINATION

4 BY MR. FOX:

5 Q Were you ever advised by the Water Board that
6 there was a tap ban on the subdivision?

7 A Yes.

8 Q Explain that if you will?

9 A I went in to try to purchase meters and I
10 told them I wanted to buy a few meters and so
11 one of the ladies in the office got out the
12 paper work and she looked at me and she said
13 are you Tina Hatfield--no, she said you're
14 not Tina Hatfield, are you? And I said why
15 yes, I am, what does that have to do with
16 anything? And she said we can't sell you any
17 meters. And I said why? And she said--I
18 said there is no tap ban so you have to sell
19 me meters. There is no meter ban, you have
20 to sell me meters. She said no, but there is
21 a tap ban for you. And I said there can't be
22 a tap ban for me and they went on to tell me
23 that there was. And I went on to call the
24 Public Service Commission from their office

1 and sat there and wait and wait for them to
2 sell me some meters. Then I tried to
3 negotiate a lower number for them to sell me
4 because I wanted 18 and I tried to get--they
5 said the way I was doing things they couldn't
6 sell me any meters. And so, I said, okay,
7 they couldn't set meters to run so far back
8 into the subdivision. I said, okay, these
9 are the meters that I want to be put on the
10 main road to serve the road front lots, and I
11 counted like 10. I said okay, I need these
12 10 lots, I promise they will be for the--go
13 on the property that they are serving, I need
14 these 10. And they said, no, couldn't sell
15 me any meters at all, no meters for me.

16 Q When was this?

17 A I want to say it was the beginning of
18 February or the end of January.

19 MR. FOX:

20 Nothing further.

21

22 RE CROSS EXAMINATION

23 BY MR. ROGERS:

24 Q That was after this complaint was filed with the

1 Public Service Commission, wasn't it?

2 A I think I maybe amended the complaint after
3 that. Maybe--no, I didn't amend the
4 complaint, I was going to amend the
5 complaint. It was after the complaint was
6 filed.

7 Q And the--and when you said I think February
8 you are talking about of 2000?

9 A Yes.

10 Q And the concern that was related to was
11 because of the previously set meters that had
12 very long lateral lines remaining in
13 uncovered ditches; correct?

14 A I'm sorry, could you repeat that?

15 Q The concern that was related to you there at
16 the Water District about these meters was the
17 past practice that you and your husband had
18 of setting meters and running extremely long
19 lateral lines and leaving the ditches
20 uncovered; correct?

21 A I can't answer what their concern was. I
22 don't really know.

23 Q But I think you testified that they said
24 based upon your past practice, did you not

1 say that?

2 A I don't think I said based on it. I'm sure that
3 was one of their reasons.

4 MR. ROGERS:

5 Nothing further Judge. Let me ask one
6 more question.

7 Q But you do--you did, in fact, your husband
8 purchased those meters later on, didn't he?

9 A Later on.

10 MR. ROGERS:

11 I have no further questions.

12 HEARING OFFICER SHAPIRO:

13 Thank you Ms. Hatfield. Let's take about five
14 minutes.

15 (OFF THE RECORD)

16 MR. FOX:

17 Gerard Sossong.

18 (WITNESS DULY SWORN)

19 MR. ROGERS:

20 Your Honor, before Mr. Fox begins I'd like to note
21 my objection to Mr. Sossong testifying. His proof
22 affidavit, his verified testimony has not been
23 filed in the record, to my knowledge. I will, in
24 fairness, state that I believe the affidavit he is

1 going to testify from was faxed to my office. I
2 can't recall, approximately a week ago, but it was
3 unsigned and since I never received a verified
4 document I assumed that he would not be called to
5 testify on direct. I was unable to prepare
6 rebuttal testimony and, therefore, I would object
7 to his testimony in their case in chief.

8 HEARING OFFICER SHAPIRO:

9 Do you have a copy of it Mr. Pinney?

10 MR. PINNEY:

11 I have not seen it.

12 HEARING OFFICER SHAPIRO:

13 But you did receive a copy of his testimony; is
14 that correct?

15 MR. ROGERS:

16 I received an unsigned affidavit that was faxed to
17 me, I can probably give you the time that I
18 received that, but it will take me a few moments
19 to find it.

20 HEARING OFFICER SHAPIRO:

21 Well, that's okay. Mr. Fox, did you file the
22 original?

23 MR. FOX:

24 As far as I know, Judge, like we discussed earlier

1 the other ones, wherever they are they are all
2 together.

3 MR. PINNEY:

4 I can go to the file and check.

5 HEARING OFFICER SHAPIRO:

6 Is it in this package you gave me?

7 MR. FOX:

8 Not the original, no, that's the copy I brought
9 today.

10 HEARING OFFICER SHAPIRO:

11 I mean, is this a copy--is Mr. Sossong's testimony
12 in here?

13 MR. FOX:

14 Yes.

15 HEARING OFFICER SHAPIRO:

16 Affidavit in here also?

17 MR. FOX:

18 Yes. It's probably the last document. And in
19 response to the objection, we have provided this
20 testimony to opposing counsel. There is no undue
21 surprise in the testimony that will be presented.
22 Mr. Rogers and I have discussed his testimony, I
23 don't believe that there is any surprise or any
24 information that is contained in that affidavit

1 that the defendant is not aware of.

2 HEARING OFFICER SHAPIRO:

3 I'm going to allow the witness to testify.
4 However, I will allow the defendant to reserve the
5 right to cross-examine the witness beyond this
6 hearing if, in fact, it is determined that he
7 would be prejudiced by the failure to comply with
8 the Order. As the parties know, there was an
9 Order entered directing each of the parties to
10 file verified testimony of each witness who was to
11 appear at the hearing today. This, obviously--the
12 copy I have, obviously, does not comply with that
13 Order because it too was unsigned, and I'm not
14 sure of the reason that we require the information
15 to be verified since the witness will be verifying
16 it at the hearing again. So, I'll--but I don't
17 want to--but I can understand why the defendant
18 might not have prepared--fully prepared his cross-
19 examination. And if, in fact, he is not able to
20 cover certain areas that are covered in the
21 affidavit and wishes to--or feels that he needs--
22 it is necessary for him to come back we will do
23 that.

24

1 MR. FOX:

2 Thank you, Judge.

3 HEARING OFFICER SHAPIRO:

4 But at this--so at this point we will let the
5 witness proceed.

6

7 The witness, GERARD SOSSONG, have first been duly
8 sworn, testified as follows:

9

DIRECT EXAMINATION

10 BY MR. FOX:

11 Q Mr. Sossong, did you prepare an affidavit in
12 anticipation of today's hearing?

13 A Yes, I did.

14 Q I'd like to show you a copy of that affidavit. To
15 the best of your knowledge, is the information
16 contained in that affidavit true and correct?

17 A Yes, it is.

18

MR. FOX:

19

Your Honor, we would move to introduce
20 that as Complainant's Exhibit 3.

21

HEARING OFFICER SHAPIRO:

22

Yes. Any objection?

23

MR. ROGERS:

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None other than previously noted.

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HEARING OFFICER SHAPIRO:

Okay, so ordered.

(EXHIBIT SO MARKED: Hatfield Exhibit No. 3)

HEARING OFFICER SHAPIRO:

Is the witness ready for cross-
examination

MR. FOX:

Yes, Your Honor.

CROSS EXAMINATION

BY MR. ROGERS:

Q Mr. Sossong, my name is Earl Rogers, I don't guess we have ever met before but I have some follow-up questions to ask. How long have you been an engineer sir?

A An engineer?

Q Yes, sir.

A Eight years certified as a Professional Engineer.

Q Eight years. Sir, how long have you been licensed in Kentucky?

A I don't know that exactly but I'm going to guess it is around three years now.

Q Three years?

1 A Yes.

2 Q And how many water systems have you designed
3 in the years that you have been practicing?

4 A Probably about eight.

5 Q Eight?

6 A Yes.

7 Q How many water systems have you designed and
8 submitted to the Kentucky Division of Water
9 for approval?

10 A Zero.

11 Q When did Mr. and Mrs. Hatfield first contact
12 you to design their water system?

13 A Somewhere around October.

14 Q October of 1999?

15 A That's correct.

16 Q And, sir, you are aware that pursuant to
17 Kentucky Regulations that you are to design
18 that water system--it is to be reviewed and
19 approved by the District and then with a
20 letter of approval sent to the Division of
21 Water for approval?

22 A I am not aware of that.

23 Q You are not aware that there is a Kentucky
24 regulation requiring that?

1 A That was not--no, I'm not aware of that
2 regulation. I feel that I have a need to
3 explain something there.

4 Q All right, sure, go ahead.

5 A In my review of the submittal process
6 communicating with the state, not necessarily
7 reviewing all the regulations, the communicating
8 with the state and several of their engineers at
9 the state they gave me a check list of the items
10 that I needed to complete for this water
11 submittal. And in that check list there was--one
12 of the items was an approval letter from the
13 county or the district that you are referring to.
14 And this approval letter was the item that we were
15 attempting to get the approval letter of our
16 plans.

17 Q Sir, are you, just for clarification, you are
18 not familiar nor have you read Kentucky--401
19 Kentucky Administrative Regulation 8:100,
20 Paragraph 5, you have never read that?

21 A I can't site that specifically.

22 Q And if I told you that that reg reads as
23 follows, "Final plans and specifications for
24 water treatment plants and distribution

1 facilities: (a) plans for the construction or
2 modification of public water system shall be
3 submitted by the water system or coming by
4 letter from the water system affirming that
5 it has reviewed the plans, accepts the design
6 and can and will provide water to service the
7 project".

8 A Okay, I'm familiar with that, I've read that
9 before.

10 Q Okay. So, you acknowledge--you don't dispute
11 that is what that regulation provides?

12 A I do not.

13 Q Mr. Sossong, did you prepare your own
14 hydraulics report concerning this
15 subdivision?

16 A Yes, I did.

17 Q Did you--where is that report?

18 A I have a copy of it in my file.

19 Q Okay. Do you have any idea why that report
20 was not provided to me through my request for
21 production of documents?

22 A I do not know.

23 Q Have you ever, yourself, took it upon
24 yourself to provide that report to the Water

1 District's engineer for his review?

2 A No, I did not.

3 Q Did you think it would be important for him
4 to see your report or findings?

5 A This--I will answer the question and then ask
6 for an explanation--an opportunity to explain
7 myself.

8 Q That will be fine.

9 A Yes, I think it was important for--well,
10 actually no, I think that from my
11 understanding of it, I was under the
12 understanding that they needed to review all
13 of the plans for the subdivision. There was
14 a need to--for the state to review all of the
15 plans for the subdivision. They had
16 indicated that they wanted to review the
17 plans and the lay out to make sure that we
18 were laying out our system that would be easy
19 to maintain and would be acceptable to their
20 needs.

21 Q You were aware, were you not, that the
22 District's chief concern was that this
23 subdivision would drain water pressure in
24 that area and cause it to go below 30 psi,

1 right?

2 A That's correct.

3 Q And you are aware that the District took it
4 upon itself to ask its own engineer to do a
5 model and do some calculations to see if this
6 subdivision would adversely affect the water
7 pressure in that area?

8 A That's correct.

9 Q And, in fact, this affidavit I've been given
10 today is basically you saying that you
11 disagree with his report?

12 A The methodology in the--what it disagreed
13 with is, and I'll say, yes, I disagree with
14 the method. But at the time that he did it,
15 it was satisfactory for the knowledge that we
16 had; thereafter, there was a water pressure
17 reading which was taken and was accurate
18 information at a point closer to the
19 subdivision which suddenly made any estimates
20 back from that subdivision much less
21 accurate.

22 Q So, you were aware that he did hydraulics
23 calculation or estimate or report; correct?
24 We're talking about Scott Taylor, Mr. Taylor

1 did that?

2 A Yes, yes, I saw it, yes.

3 Q And you had done hydraulics report yourself;
4 correct?

5 A On the subdivision itself.

6 Q Okay. You did not evaluate how the water
7 pressure would be affected in the surrounding
8 area, did you not?

9 A No, I did not.

10 Q And let me ask you this, you did not evaluate
11 how this subdivision would affect--strike
12 that, let me re-ask that question. In your
13 report you did not evaluate how the drain
14 that this subdivision would cause would
15 affect its own pressure, did you not? And if
16 I asked a bad question tell me, I'll try to
17 rephrase it.

18 A You might want to rephrase that.

19 Q Did you calculate--I'm not sure how to ask
20 the question, Mr. Sossong. Basically, your
21 report was only within the subdivision?

22 A That's correct.

23 Q You had no idea how the subdivision's drain would
24 affect other customers in the area?

1 A That's correct.

2 Q And you have no idea how the subdivision's
3 drain would affect its own pressure right at
4 the property line?

5 A Beyond the main extension that we were proposing,
6 I do not, but I do know how it affected along that
7 main extension throughout the property, the
8 pressures.

9 Q And you are aware, are you not, that this
10 District has an obligation to maintain 30 psi
11 to all customers?

12 A Yes, I am.

13 Q They have a legal obligation to do that,
14 don't they?

15 A Yes, I am.

16 Q In your affidavit, Paragraph A, you are
17 referring to--that the assumptions were not
18 true pressure readings and this water
19 pressure meter that was placed for one week,
20 you are referring to, is this the one you are
21 referring to as getting the 80 psi?

22 A That's correct, yes.

23 Q Do you know where that meter was located?

24 A I do not. At the time--since then I've been

1 told it was placed in the approximate area
2 where I assumed it would have been placed and
3 did my calculations from.

4 Q And that was a low area in that subdivision,
5 wasn't it?

6 A Actually, from--no, it was one of the higher
7 points in the subdivision, my intersection
8 with the mains was at a higher point in the
9 subdivision.

10 Q And you are saying that is where the meter
11 was located?

12 A From what I understand it was.

13 Q And the 80 psi reading you stated was taken
14 for one week?

15 A If--I don't recall the exact--the chart, it
16 was a circular chart that basically monitors
17 for multiple days. I think it was a week, I
18 seem to recall that was--it was a week
19 reading.

20 Q Could it have been three days?

21 A I don't recall right offhand.

22 Q You've seen the chart, right?

23 A Yes, I have.

24 Q And the chart was taken in the month of November?

1 A I don't recall the exact date at this time.

2 Q Good. Would you agree with me, as an
3 engineer and designer of water systems, that
4 the month of November or December are usually
5 low demand months?

6 A I cannot testify to that, I do not know that,
7 those statistics.

8 Q You are not familiar enough with those
9 statistics?

10 A That's correct.

11 Q Would you believe that Mr. Scott--Mr. Scott
12 Taylor would be familiar with those
13 statistics?

14 A I believe he probably would be.

15 Q And assume for me--assume with me that
16 November and December are low demand months,
17 wouldn't that mean that there would be
18 greater pressure if there is lower demand?

19 A At my--yes.

20 Q And as an engineer, would you agree with me,
21 sir, that a three day window in the month of
22 November or December of year is not a good
23 indicator of an entire year?

24 A I cannot indicate that. I was not

1 responsible charge for placing the meter or
2 running the test.

3 Q But as an engineer, wouldn't you want more
4 information?

5 A I'll say yes, but I also would give an
6 explanation.

7 Q Sure.

8 A As an engineer, of course, I always want more
9 information until the point is where it is no
10 longer an estimate. At some point you must
11 break it off in any estimate and say, okay,
12 we are going to use this amount of
13 information. This is what was provided at
14 the time.

15 Q When did you first learn that Mr. Taylor
16 didn't think this subdivision would basically
17 fly due to water pressure?

18 A I don't recall if it was the October or November
19 meeting that Scott Taylor was--showed up for the
20 meeting and was available and he provided me with
21 the model at that point. That was pretty much
22 that he was showing with his model that there was
23 not going to be sufficient pressure according to
24 his model.

1 Q Did you ever take it upon yourself to do
2 further calculations over and above what you
3 had previously done within the subdivision to
4 see if you could dispute his model?
5 A No, that--no, I did not, with also an
6 additional explanation. Within my little
7 subdivision, or my calculations, I cannot
8 dispute anything in his model because his
9 model takes into consideration everything
10 inside my subdivision plus everything outside
11 of that up to the Preston Tank. Whether my
12 calculations--whatever I do with my
13 calculations, as long as I'm not exceeding
14 the state requirements, I cannot do anything
15 to affect his model, basically. I did my
16 calculations based on the fact that we had a
17 two gallon per minute demand according to the
18 state. They required that and required a 30
19 psi at all meters. So, I took that to that
20 limit and maximized it and, basically, did my
21 calculations to verify if we had enough
22 pressure at all of the meters and if we could
23 actually provide the two gallons per minute
24 at each meter. And that was the case, so I

1 did not go beyond that. There, of course, we
2 could always open up a line someplace and,
3 yes, we would drain everything out from the
4 Preston tank also. But that is something
5 that nobody would think would be reasonable.

6 Q You don't dispute Mr. Scott Taylor's
7 knowledge of the lines, the line diameters,
8 the length of the lines, the location and
9 elevation of the lines, you don't dispute
10 those, that information, do you?

11 A They were estimates. I'm going to say I
12 don't know that they are accurate. And I
13 can't say that they are accurate because I
14 don't have that information, so, no, I can't
15 dispute them, although they are estimates.

16 Q You can't say they are inaccurate either, can
17 you?

18 A That's correct.

19 Q But my question a while ago was you obviously, to
20 some extent, disagree with Mr. Scott Taylor's
21 findings or conclusions. Did you take it upon
22 yourself to do your own study or your own model to
23 see if you could reach a different conclusion?

24 A I could not--I do not have the access to the

1 information that he has.

2 Q Did you ever request that information?

3 A No, I did not. I think that I need to give
4 an explanation for that also.

5 Q That will be fine.

6 A I did not request that because I am being
7 paid by--I could, of course, come up with all
8 kinds of work and drain these people's money
9 pockets dry. I am working for them and,
10 basically, I do what they need. Of course,
11 they are a small operator and beginning
12 developer so they are trying to--their
13 pockets are not deep.

14 Q The plans that you prepared, you attended some of
15 the Bath County Water District meetings, correct?

16 A Would you repeat that for me please?

17 Q I'm sorry, that was a two part question. So,
18 scratch that. You attended some of the Bath
19 County Water District Board meetings with
20 your client?

21 A I did, yes, I did.

22 Q I'm going from memory but I believe were you there
23 in October?

24 A Yes, I believe I was also.

- 1 Q Were you there in November?
- 2 A I believe I was.
- 3 Q What about December?
- 4 A I think I was there in December also.
- 5 Q And you came to those meetings with a set of
6 plans and specifications, correct?
- 7 A Yes--no, I did not. I came with a set of
8 plans, not the specifications and the
9 details.
- 10 Q Didn't Mr. Taylor request to see your
11 specifications and details?
- 12 A In a letter he had indicated that he has not
13 reviewed them. In our discussions I
14 indicated that it was my understanding that
15 he was going to be reviewing the plans, and
16 I'm speaking of the planned use, the layout
17 of the subdivision and not the details. And
18 at that point I assume that that was what
19 they needed to review.
- 20 Q As for the plans that he reviewed, did he and
21 the Water District request changes and
22 modifications?
- 23 A Yes, they did.
- 24 Q And I think those--were those requests made

1 at the October and November meetings?

2 A October, yes, changes were requested. Of
3 course, we changed the layout of our plans.
4 November, I can't say that they requested
5 changed to the plans.

6 Q Okay. But in any event, your plans were not
7 finalized until early December of 1999;
8 correct?

9 A That's correct.

10 Q Would you, just for the purposes of the
11 record, take a look at what we have marked as
12 Water District's Exhibits 1 and 2, and just
13 for clarification, if you could tell me
14 whether or not those were your final plans?

15 A Yes, these are my final plans.

16 Q And what was--when did you complete those
17 plans?

18 A According to this date, December 4, 1999.
19 There should also be some other plans besides
20 this. There were some details that were
21 submitted also that should have been
22 approved, that were approved, I know.

23 Q But they are not there?

24 A No.

1 Q When I asked you previously how many water
2 system designs you had submitted to the
3 Division of Water for approval you said none.

4 A I'm sorry, sir.

5 Q When I asked you previously how many water
6 system designs you had submitted to the
7 Kentucky Division of Water for approval you
8 said none.

9 A None in the correct--in regards of getting
10 their review of the plans and the approval,
11 that would be done by an engineer. That was
12 my understanding that that was to be
13 completed on a state level. Their layout
14 was, from what I was told, was to be reviewed
15 and approved by the Water Board of the
16 District.

17 Q Did you submit these plans, Exhibits 1 and 2
18 to Division of Water or did the Hatfields?

19 A I don't recall at this time who actually
20 mailed them out.

21 Q Just some questions from an engineering
22 aspect and let's take, for example, the
23 hydraulics report that you did, what was the
24 average--the peak average demand that you

1 used for your subdivision per lot?

2 A I did not hear you, the peak what?

3 Q Average demand, gallons per minute?

4 A Gallons per minute, it was two to each
5 customer.

6 Q Two to each customer?

7 A Yes, each property.

8 Q And do you think that is industry standard,
9 would you think that would be appropriate

10 A That was the state requirement. I think a
11 little explanation I think is necessary.

12 Q Sure.

13 A I think that is over what the industry
14 standard is. I think there was formulas out
15 there that Mr. Taylor and I have discussed
16 that are out there that are actually below
17 that 2.0, so I took what I felt was the
18 higher values and, of course, what the state
19 regulation.

20 Q Over seven years or over eight years, you have
21 prepared how many water system designs?

22 A I'd say about eight.

23 Q What do you do mainly?

24 A My main profession, or position right now, I

1 am an engineer from Marshall Middleton
2 Associates, or my job consists of almost
3 anything and everything in the way of
4 engineering. I'm a jack of all trades when
5 it comes down to it. I've done slope
6 stability analysis, mine plans, I'm a mining
7 engineer by background and have basically
8 have civil engineering courses that provides
9 me with the knowledge and the background and
10 the qualifications of civil engineering,
11 water design systems, sewer systems,
12 feasibility studies.

13 Q Mr. Sossong, are you familiar with the Hayes and
14 Williams head loss formula?

15 A Hayes and Williams head loss formula, I can't
16 recall at this time.

17 MR. ROGERS:

18 Your Honor, I have no further questions.

19 HEARING OFFICER SHAPIRO:

20 Mr. Pinney?

21 MR. PINNEY:

22 I have no questions.
23
24

1 REDIRECT EXAMINATION

2 BY MR. FOX:

3 Q Gerard, Mr. Rogers indicated in one of his
4 questions that the Bath County Water District's
5 chief concern was pressure on the system. You
6 have had a chance to review the estimates that
7 were prepared for the assumptions, I think, that
8 were prepared by Scott Taylor as well as the
9 actual readings that were taken by Mr. Taylor on
10 this system. Which is better information to you
11 as an engineer, the estimates or assumptions that
12 he made or the actual readings?

13 A Well, of course, the actual readings are more
14 important. The estimates were based on an
15 entire system, especially back from the
16 subdivision of the Hatfields. The actual
17 reading was taken right at the subdivision,
18 which pretty much--you can disregard all of
19 your estimates back from that point. Then
20 take that point on down the line and use that
21 accurate measurement and go from--take that
22 pressure reading and start doing estimates
23 down the line if you want to further. But
24 that accurate reading provides a lot more

1 validity to the actual conditions of the
2 system.

3 Q So, you said you could actually just
4 disregard those estimates once you had the
5 actual readings?

6 A Back from that point, yes.

7 Q Okay. Then what is your understanding of
8 what the readings did show in terms of
9 pressure to the subdivision?

10 A Well, the reading was at 80 psi was what
11 Scott and I talked about, was the average,
12 approximate average for that reading. And
13 that in comparison to what was shown at the--
14 that the model produced was around 52 to 58
15 depending on where you looked at on the
16 subdivision along those two roads, Bluffen
17 Valley and Old State. And that difference
18 between the actual and what was estimated all
19 the way back to the Preston tank down to
20 their subdivision it showed basically that
21 that estimate is off, and that actually we
22 could probably disregard the estimate and go
23 with the accurate reading. And then from
24 there start with that accurate reading and do

1 estimates down the pipe, so to speak, or
2 further down the line.

3 Q I see. So, do I understand you correctly
4 that you are saying that both his estimate
5 and the actual measurement show that the
6 pressure was greater than 30 psi at the
7 subdivision?

8 A Yes.

9 Q To your knowledge, is there any indication,
10 based on the information that has been
11 provided by Mr. Taylor and your review of
12 that information, is there anything that
13 would indicate that 30 additional customers
14 in this subdivision would deplete the
15 pressure below 30 psi?

16 A It appears on my--on that subdivision that it
17 would not. Again, I did not do calculations
18 beyond the subdivision.

19 Q I'm asking you about his calculations. Is
20 there anything about his calculations that
21 would lead you to believe that 30 additional
22 customers would deplete the pressure below 30
23 psi?

24 A I cannot recall the actual numbers on his

1 charts, I cannot say yes or no to that.

2 HEARING OFFICER SHAPIRO:

3 Well, doesn't the report that Mr. Taylor
4 --I'm looking at Mr. Taylor's report
5 here and doesn't it say that 30
6 additional customers would not go below
7 30 psi?

8 MR. ROGERS:

9 I believe that is what it says.

10 Q Would that information--that information would be
11 based on the circumstances as they existed when
12 the readings were taken; is that right?

13 A What are you referring to, I'm confused?

14 Q The water pressure meter readings were taken,
15 I don't think there is any dispute, it was
16 taken between November 3 and November 5.

17 A Okay.

18 Q So, the information that has been provided by Mr.
19 Taylor, that would indicate that those conditions
20 as they existed in the beginning of November,
21 November 3 through 5?

22 A That would be reasonable, yes.

23 Q Based on the actual readings that were taken,
24 what is your opinion of the model that Mr.

1 Taylor incorporated?

2 A I think that it needs to be reconsidered or
3 re-reviewed, that because of the difference
4 between what the model said was going to--the
5 pressure was going to be at that point and
6 the actual measurement of the pressure at
7 that point, the significant difference which
8 is around 25% at the least, depends on where
9 you look at on the road, is a pretty
10 significant difference in what the pressure
11 actually was.

12 Q Is a 25% margin of error standard in the
13 engineering field?

14 A Usually 10% is the standard of error except--
15 or reasonable for any of my budget estimates
16 or work that I have done, I usually try to
17 stick within 10% plus or minus.

18 Q With regard to the plans that you and Mr.
19 Taylor discussed, you have indicated that
20 plans were finally prepared, I think,
21 December 4 of '99; is that right?

22 A Yes.

23 Q Had there been discussions with Mr. Taylor
24 about those plans before that time?

- 1 A Yes, there was.
- 2 Q For how long or for what period of time had those
3 plans been discussed?
- 4 A Since the time, I'd say, probably a month
5 after the Hatfields retained me--
- 6 Q Which was when?
- 7 A --on this project. I don't know the exact
8 date, but I think in our previous discussion
9 we said that they retained me somewhere in
10 October, plus or minus. Anyway the point--at
11 a point during my review, after communicating
12 with the Bath County Board and the state, I
13 had been led to their engineer with the Board
14 that was Mr. Taylor and I communicated with
15 him, yes.
- 16 Q Okay. So, I think you indicated earlier that
17 there were some changes that were made to
18 accommodate the Bath County Water District, but
19 were those substantive changes in the plans or
20 were those just simply accommodations to the Water
21 District?
- 22 A Yes, they were.
- 23 Q They were accommodations?
- 24 A Yes, well, they were changes that were

1 requested to improve the system, yes.

2 Q Did it change the overall design of the plan?

3 A From the first revision, yes, it did.

4 Q Okay. After the first revision did it change?

5 A After the first revision? No, after the
6 first revision there wasn't substantive
7 changes that were requested. Actually, the
8 first revision was taken with us to the
9 October Board hearing which we reviewed them
10 and there was some concerns. I also, if I'm
11 correct, submitted then, sent an e-mail copy
12 to Scott at that time. He reviewed them and
13 came to the conclusion that there were some
14 needed changes and they were inadequate. We
15 made the changes and--

16 Q At that point in time when you made those
17 changes, was that when you and/or the
18 Hatfields began to seek the letter of
19 approval from the Bath County Water District?

20 A That's correct.

21 Q And was that given?

22 A No, it was not.

23 Q Was there any explanation as to why the
24 letter of approval was not given?

- 1 A No, there was not. It wasn't because of the
2 plans. It was my understanding that the
3 plans were satisfactory during our review. I
4 think it was during the November Board
5 hearing that their objection was simply
6 because there was lack of--their concern for
7 the lack of pressure.
- 8 Q Okay. Do you know what date that was in
9 November?
- 10 A I do not recall at this time the exact date
11 of the hearing. I think it is the fourth
12 Tuesday of every month.
- 13 Q It was the November meeting though?
- 14 A I seem to recall it was the November meeting.
- 15 Q November 23, does that sound right?
- 16 A That would be approximate, yes.
- 17 Q So, that would have been after those pressure
18 readings were taken on November 3 and 5?
- 19 A That would be correct.
- 20 Q And the Bath County Water District was still
21 telling you that they thought there was
22 insufficient pressure to provide service into
23 Meadowbrook Subdivision?
- 24 A That's correct.

1 Q Mr. Rogers asked you several questions about
2 your qualifications. Have you designed or
3 come up with any designs that have been
4 adopted by the state as models in terms of
5 water or sewage?

6 A Would you repeat that please?

7 Q Have you developed any designs that have been
8 adopted by the state as models?

9 A Yes, I have.

10 Q What are some of those?

11 A It was for a sewer system, septic system
12 actually, for the Hatfields.

13 Q You said that you attended the meetings. Was
14 there any discussion by the Board members
15 themselves where they question their engineer
16 Scott Taylor's findings that you recall?

17 MR. ROGERS:

18 I object, I think it is beyond the scope
19 of cross.

20 HEARING OFFICER SHAPIRO:

21 Go ahead, beyond the scope of your
22 cross?

23 MR. ROGERS:

24 Yes, sir.

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HEARING OFFICER SHAPIRO:

What's your response?

MR. FOX:

I didn't know if you wanted me to respond. Your Honor, it is not beyond the scope of cross. There has been discussion in the cross-examination about the pressure readings themselves and the estimates. The question is intended to explore the Bath County's-- the Water District's refusal to accept their own engineer's reports. I think that this witness can talk about what their discussion was at the meeting regarding pressure readings.

HEARING OFFICER SHAPIRO:

Well, as I recall the affidavit that you have tendered, basically, this witness is saying that he disagrees with the findings of the initial report because he said they were based on estimates; isn't that right?

MR. FOX:

That's right.

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HEARING OFFICER SHAPIRO:

And that he thought that the estimates should, instead of using estimates, they ought to be--use pressure readings.

MR. FOX:

Ought to use pressure readings.

HEARING OFFICER SHAPIRO:

I think Mr. Taylor's report itself says that--or his affidavit--indicates that they made two estimates, one based on 30 customers and one based on 60. The first one on 60 and then he came back on 30, he doesn't tell us, I don't believe, in here what the 30--what the first one found, but I assume from what he has done here that it didn't--well, he does say--it said it would fall below 30 psi, but that with 30 customers it would not fall below 30 psi, if I'm reading it correctly. And I don't know where, even though--what does this witness actually offering beyond the fact that he thought that--does he disagree with the 30 psi estimate with the 30 additional

1 customers or not?

2 MR. FOX:

3 Well, we don't--

4 HEARING OFFICER SHAPIRO:

5 He actually didn't make a model, did he?

6 He doesn't--he hasn't made his own

7 calculations. I think he said all he

8 did was review Mr. Taylor's

9 calculations. And on the basis--and he

10 felt like Mr. Taylor's calculations were

11 not reliable, I'd say, because they were

12 based on estimates rather than actual

13 readings. Isn't that the extent of his

14 testimony?

15 MR. FOX:

16 That is the heart of his testimony.

17 HEARING OFFICER SHAPIRO:

18 The heart of his testimony.

19 MR. FOX:

20 That is the heart of his testimony and I

21 guess this illustrates the discussion we

22 had before the hearing where I proposed

23 to you that I call Mr. Sossong as a

24 rebuttal witness. I was concerned that

1 the information presented by the
2 defendants would not be consistent with
3 what Mr. Sossong has testified to here
4 today. I think you understand the heart
5 of his testimony, yes.

6 HEARING OFFICER SHAPIRO:

7 Well, that's the way I understand it
8 now. I may be convinced otherwise later
9 by one of the parties, but that is my
10 impression at this point. Essentially,
11 all this witness is saying is I disagree
12 with Mr. Taylor's methodology. It is
13 not that--he is saying that Mr. Taylor's
14 methodology was based upon estimates
15 rather than actual readings and he felt
16 like that is not the methodology--the
17 proper methodology or the more accurate
18 methodology, the more reliable
19 methodology would be to use actual
20 readings.

21 MR. FOX:

22 Yes.

23 HEARING OFFICER SHAPIRO:

24 So, what does this question that you had

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have to do with any of that?

MR. FOX:

Well, what this question has to do with is to demonstrate that there was not only no basis for denial by the Bath County Water District for these--for the adoption of the three inch water main and the additional meters, but it also is intended to show that there seems to be some proactive attitude of the Bath County Water District to prevent the Hatfields from getting these--

HEARING OFFICER SHAPIRO:

Well, your question was did anybody question--the question you proposed to the witness was did anybody at the meeting--

MR. FOX:

The Board members was the question.

HEARING OFFICER SHAPIRO:

Any of the members question--

MR. FOX:

Mr. Taylor.

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HEARING OFFICER SHAPIRO:

--Mr. Taylor's findings.

MR. FOX:

Yes.

HEARING OFFICER SHAPIRO:

And the objection is that that is a new issue that hasn't been raised by any of the previous--in any of the previous testimony.

MR. FOX:

Well, it's--I mean, it is the--

HEARING OFFICER SHAPIRO:

How does it relate to any of the test-- it wasn't--he didn't say--he didn't raise it in his testimony initially. Now, did--how does it relate to any of the examination that Mr. Rogers conducted. Did he ask him any questions about that?

MR. FOX:

He didn't ask him specifically about what the Bath County Water District did at their meetings, but they discussed meetings in his cross-examination about

1 whether he attended and about the
2 pressures that were available.

3 HEARING OFFICER SHAPIRO:

4 But this is an issue that is being
5 raised for the first time, isn't it?

6 MR. FOX:

7 No, this is the central issue of--

8 HEARING OFFICER SHAPIRO:

9 Well, this is an issue--the central--you
10 are saying--I can see where it is
11 relevant in the sense that you are
12 saying that other people were
13 questioning the findings. But he--it
14 wasn't raised on cross-examination and
15 it wasn't--so it is--it wasn't raised on
16 direct examination, we agree on that, it
17 is not in the original affidavit.

18 MR. FOX:

19 We agree on that.

20 HEARING OFFICER SHAPIRO:

21 Okay. So, in order for it to be
22 rebuttal it would have to be raised on
23 cross-examination. Right?
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MR. FOX:

Yes, that's correct, I agree with you.

HEARING OFFICER SHAPIRO:

Okay. Now, you can argue with me, I'm--
you can convince me otherwise if I'm
wrong but--or try to convince me. It
seems to me that this is a question that
is being raised for the first time on
rebuttal to the--or redirect which is
essentially rebuttal of cross.

MR. FOX:

Well, it is my position that the Bath
County Water District's denial of their
--of the Hatfield's request for water in
the subdivision is the central issue in
this hearing. And that the cross-
examination conducted by Mr. Rogers
touched on those issues dealing with why
the Bath County Water District denied
the request for water. And I am asking
Mr. Sossong to elaborate on that issue
of whether or why the pressure was--or
why the water applications were denied.
And I think one of the explanations can

1 be answered in his answer to the
2 question I posed.

3 HEARING OFFICER SHAPIRO:

4 But this is the first time that I heard
5 any mention of whether the findings by
6 Mr. Taylor were questioned by the Board
7 itself. That has not been raised in any
8 of the previous testimony?

9 MR. FOX:

10 That has not been raised specifically.

11 HEARING OFFICER SHAPIRO:

12 Well, I'm going to sustain the
13 objection.

14 MR. FOX:

15 No further questions.

16 MR. ROGERS:

17 Nothing further, Your Honor.

18 HEARING OFFICER SHAPIRO:

19 Thank you Mr. Sossong. Can this witness be
20 excused, you don't have to make him leave, but is
21 there any objection to his being excused at this
22 point?

23 MR. ROGERS:

24 I have no objection.

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HEARING OFFICER SHAPIRO:

You may want to keep him here, but I--but he is free to leave if you so choose.

MR. FOX:

Thank you.

HEARING OFFICER SHAPIRO:

Let's be in recess until one o'clock.

(OFF THE RECORD)

HEARING OFFICER SHAPIRO:

Back on the record. Mr. Rogers, you want to call your first witness.

MR. ROGERS:

Yes, sir. I would call Alfred Fawns.

(WITNESS DULY SWORN)

MR. ROGERS:

Your Honor, I have the verification--my copies of the verified affidavits and attached documents that we recorded. Am I to introduce those?

HEARING OFFICER SHAPIRO:

Is that the only ones that you have?

MR. ROGERS:

Yes.

HEARING OFFICER SHAPIRO:

Why don't you introduce those and then we will

1 Q And, Mr. Fawns, where do you live?

2 A 436 Ferguson Road, Owingsville, Kentucky
3 40360.

4 Q And how are you employed?

5 A Manager of the Bath County Water District.

6 Q And as Manager, who do you report to or who
7 do you work under?

8 A The Water Board, District Commissioners.

9 Q And how long have you been employed with the
10 Bath County Water District?

11 A Since August.

12 Q And at my request have you prepared an
13 affidavit that was signed and notarized?

14 A Yes, I did.

15 Q In this proceeding?

16 A Yes, I did.

17 Q And I'd like for you to take a look at that
18 document and the attachments to it. Is that
19 your affidavit that has been executed for
20 this proceeding?

21 A Yes, it is.

22 Q And the exhibits attached thereto, do you desire
23 that they be incorporated and made a part of your
24 testimony?

1 A Yes.

2 Q And you desire that this affidavit be
3 accepted by the court as your testimony here
4 today?

5 A Yes, I do.

6 Q Does it truly and accurately reflect your
7 statement of facts and observations relating
8 to this case?

9 A Yes, it does.

10 MR. ROGERS:

11 Your Honor, I would move to introduce
12 this exhibit as I believe that will be
13 Defendants 3.

14 HEARING OFFICER SHAPIRO:

15 Bath County 3.

16 MR. ROGERS:

17 Bath County Number 3.

18 HEARING OFFICER SHAPIRO:

19 Is the witness tendered for cross-
20 examination?

21 MR. ROGERS:

22 Yes, he is, sir, assuming that the
23 exhibit is admitted into evidence.

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HEARING OFFICER SHAPIRO:

Yes, so ordered. Mr. Fox?

(EXHIBIT SO MARKED: Bath County Exhibit No. 3)

MR. FOX:

Thank you.

CROSS EXAMINATION

BY MR. FOX:

Q Mr. Fawns, you have indicated that you have been employed as the manager of Bath County Water District since August of '99. Were you employed by the District before August of '99?

A No, I wasn't.

Q Okay. Before August of '99, had you ever been employed by the Bath County Water District?

A No.

Q So, what is the extent is your understanding or familiarity with the day to day operations of the District before August of '99?

A Before August of '99 I was County Judge for five years for Bath County.

Q And did your term end the December before you began work in August?

A No, it was in December of '98.

1 Q Okay. So, it was just eight months or so
2 between your stint as Judge-Executive and
3 Manager of the Water Board?

4 A I guess that is right, yes.

5 Q Okay. As the former Judge-Executive of Bath
6 County, were you familiar with the Bath
7 County Water District?

8 A Somewhat, yes.

9 Q Okay. And how long did you serve as Judge-
10 Executive?

11 A Five years.

12 Q Just one term?

13 A Yes.

14 Q Okay. Now, in your affidavit, do you discuss
15 the water purchase contract, or a water
16 purchase contract that you have--the Water
17 District has with the City of Morehead Water
18 Utility Plant Board Ground Water,
19 Incorporated, are you familiar with that?

20 A Yes.

21 Q Do you know when it was first entered into?
22 Was it 1979, is that your understanding?

23 A That sounds right, of course, it has been
24 redone.

1 Q Right, I understand it has been--
2 A Renegotiated.
3 Q --renegotiated. But, essentially, as I
4 understand it, Bath County has been buying
5 water from Rowan County and other entities in
6 Rowan County for about 20 years?
7 A Yes, I'd say so.
8 Q Is that a correct summary?
9 A Yes.
10 Q Is Bath--the Bath Water District able to
11 supply its present customers within the terms
12 of that contract? In other words, do you
13 have to buy more water than is described in
14 the contract or less, or do you just use what
15 is allotted in the contract?
16 A We do buy more water from the City of Mount
17 Sterling sometimes, most all time.
18 Q So, you buy water from these entities in Rowan
19 County, Morehead, as well as water form Mount
20 Sterling
21 A Right.
22 Q In your affidavit I think you say that the
23 allotted capacity--well, you don't say what
24 the allotted capacity is, you just say that

1 it exceeded the allotted capacity in 1999.

2 A Yes, that's right.

3 Q I'm saying all of this to ask this question,
4 how long has Bath County Water District been
5 exceeding its allotted--allotment of water,
6 for how many years?

7 A It has been for some time, I can't exactly
8 quote you the dates its been, but I know in
9 '99 it did, approximately five times they
10 went over their contract. And our contract--
11 our contract with Morehead is 20% of what
12 they produce. And we say it is a million but
13 there is, you know, a question of how much
14 they can produce. They say it is 880,000
15 gallons. And we did exceed the contract with
16 Mount Sterling also, two times.

17 Q When you say two times, five times, do you
18 mean monthly

19 A It's monthly, yes.

20 Q Monthly, okay. Do you recall exceeding the
21 allotment while you were Judge-Executive?

22 A I was in several meetings trying to get
23 upgrades and everything, you know, to get the
24 grants and so forth. There was a study done

1 I think it was approximately two years ago to
2 do upgrades with the Morehead Utility Plant
3 Board and that has been gone through to do
4 these upgrades.

5 Q So, is that a yes?

6 A That's a yes.

7 Q And you were--you served as Judge Executive
8 the years of '94, '95, '96, '97 and '98?

9 A Right.

10 Q Do you know if the Water Board was exceeding
11 its allotment before 1994?

12 A No, I couldn't say for sure, but I knew they
13 were--you know, it was tight, that they
14 needed extra water. I know they give us
15 several--they were out several thousand
16 dollars to do the study. I know the Board
17 did a study.

18 Q At what point in time was the decision made
19 by the Bath Water District to sell more water
20 than it could contractually buy from these
21 other sources?

22 A I don't understand that question.

23 Q Well, you told us that at some point in the
24 90s while you were Judge-Executive you know

1 that the Bath Water District was providing
2 water to its customers in excess of the
3 contracted amounts that were allotted by
4 these entities of Morehead as well as Mount
5 Sterling. What I'm asking you is when was
6 the decision made to sell more water than you
7 could contractually buy?

8 A Well, I don't know whether it was a decision
9 made, it is like we tried to accommodate all
10 the customers and Morehead was good about
11 coming up with, you know, they never give us
12 any deadline or anything to stop selling
13 water is what I'm trying to say.

14 Q I see.

15 A Just like we do with Frenchburg. We have a
16 contract with Frenchburg for 250,000 gallons
17 a day and they have exceeded it several times
18 like 357 a few times last year. So, you
19 know, it is just sort of trying to serve all
20 you can.

21 Q I understand. So, if I understand what you
22 are telling me, there has never been a
23 decision, a formal decision, by the Bath
24 Water District to deny an application for

1 water because the providers of water had
2 contracts that limited the amount that you
3 could buy?
4 A No, but I think it should be in the back of
5 your heads too. You know, you can't--it's
6 hard to give or sell something that you don't
7 have. I mean, they could stop it at any
8 time.
9 Q Well, I understand that it is--
10 A And they have made the comment that if they
11 got extra industry and so forth, that what
12 they have told us this will go out the
13 window, they can't serve us.
14 Q I understand, but that has been the situation
15 since you were Judge-Executive, right?
16 A Yes.
17 Q If not before then?
18 A Probably.
19 Q Okay. And knowing that, I'm speaking
20 directly towards the Bath County Water
21 District, knowing that, there has never been
22 a formal decision to not sell water to
23 customers because of available volumes of
24 water?

1 A No, we have always tried to serve.

2 Q Okay. Do you know approximately how many
3 customers have been added by the Bath County
4 Water District beginning approximately 1994

5 A No, I couldn't say for sure.

6 Q Can you guess?

7 A It usually runs around--I think it is probably in
8 the neighborhood of 120 customers per year,
9 probably.

10 Q You'll add to the system?

11 A Uh-huh.

12 Q Okay. And is that a fairly consistent number
13 of customers over the years?

14 A You know, I can't state it as a fact.

15 Q I understand.

16 A But, yeah, I would think so.

17 Q Okay. So, other than those periods of time
18 when there has been imposed by the Division
19 of Water a main line extension ban or a tap-
20 on ban, other than those periods of time,
21 there has been no formal decision by the Bath
22 Water District to not provide water service
23 to those who requested it?

24 A No.

1 Q One of the documents that you attached, I
2 believe it is to your affidavit, was a letter
3 from the Division of Water--let me find it--
4 dated May 27, 1999. It was written,
5 actually, to Mr. Grimes, dated May 27, 1999,
6 addressed to Mr. Grimes from Vickie L. Ray,
7 Manager of the Drinking Water Branch,
8 Division of Water. It may be helpful if I
9 show you a copy of it if the record will
10 reflect that I'm showing you a copy of it.
11 Do you recall seeing that letter before?

12 A Yes, I have.

13 MR. ROGERS:

14 Mr. Fox, what is the exhibit number on
15 that?

16 MR. FOX:

17 K.

18 MR. ROGERS:

19 K, okay, thank you.

20 Q You are familiar with this letter?

21 A Yes, I think I saw that before.

22 Q And if you will read the second paragraph?

23 A "Future extensions of the Bath County Water
24 District service areas such as potentially

1 planned to secure growth in demand does not
2 outstrip the pace of upgrades in the system."

3 Q "Future expansion of the Bath County Water
4 District's service area should be proactively
5 planned to insure that growth in demand does
6 not outstrip the pace of upgrades in the
7 system." Do you understand what is indicated
8 in that second paragraph of that letter?
9 Would you not agree that the Department of
10 Water through the Drinking Water Branch is
11 directing the Division--or the Bath County
12 Water District to proactively plan so that
13 growth doesn't outstrip the pace of upgrades?
14 Do you understand that?

15 A Uh-huh.

16 Q What has the Bath Water District done in
17 terms of proactive plan to prepare for that
18 demand in contrast to the upgrades of the
19 system?

20 A Well, to the contract with Morehead, like I
21 stated, has done their study to do the
22 upgrades that where the quantity of water, we
23 will have more quantity of water, almost
24 double the quantity down through the years.

1 Q Is there a plan that has been adopted, a
2 written plan?

3 A There is a proposed study that has been done,
4 we haven't signed the contract with them yet.

5 Q Okay. Well, I mean, have you or someone with
6 the Division of Water undertaken to do a
7 study to determine what the economic--the
8 projected economic growth or development is
9 within the county?

10 A I would think so. Not myself, but I think we
11 had and our engineers has done this, you
12 know, to look to the future. We hadn't done
13 the Help One project and there is a Help Two
14 project that, you know, is to come along once
15 we get the quantity of water. We don't have
16 the quantity to do these upgrades right now.

17 Q Well, do you know what the information is
18 about the projected growth of the county?

19 A Like percentage of growth, no, I can't recall
20 that.

21 Q So, has that information been made available
22 to the customers in Bath County?

23 A No, I don't think so.

24 Q Are you aware that there are rules and

1 regulations that have been adopted by the
2 Bath Water District and I guess approved by
3 the Public Service Commission that were
4 effective--the date is hard to read--
5 February--or excuse me, March 1988, they were
6 attached as Exhibit A to your answers to
7 interrogatories?

8 A That's the tariff, yes.

9 Q Are you familiar with those?

10 A Uh-huh.

11 Q Do you think that the Bath Water District has
12 complied with all the provisions of those
13 rules and regulations?

14 A Yes, I do.

15 Q Okay. We'll come back to that in a moment.
16 How often, in terms of monthly meetings, how
17 often do people come to the Bath District--
18 Bath County Water District meetings to ask
19 for service in terms of extensions or meters
20 or things of that nature?

21 A Well, I can't, you know, since I've been
22 there, you are talking since I've been
23 Manager?

24 Q Uh-huh. Is it monthly?

1 A Pretty regular, yes. There are some months
2 they don't, but pretty regular.

3 Q What policies and procedures does the Bath
4 County Water District have that directs
5 people on how they are to apply and how their
6 applications are considered when they do ask
7 for water service in Bath County

8 A Well, there is--they are asked, you know, for
9 the engineer and so forth, to do studies. We
10 try to accommodate as many customers as
11 possible as funds we have and as much
12 quantity of water we have. You know, that is
13 also in the back of their minds also.

14 Q But my question is what policies and
15 procedures have you adopted that directs the
16 applicants on what steps they have to take in
17 order to be approved for water service?

18 A We have--they adopted a policy last meeting,
19 but it hasn't been approved by the Public
20 Service Commission, but there hasn't been any
21 that I know of before.

22 Q As we speak here today there is no approved
23 plan or no policy procedure I should say?

24 A No.

1 Q That has been approved?

2 A Right.

3 Q So, when these complainants, the Hatfields,
4 were--have been in--as they have been in the
5 process of asking for water from your Water
6 District, there has been no written rules or
7 policies directing anyone how to get that
8 water service that they have asked for?

9 A No, just to service as many as we can.

10 Q Okay. Is it basically taken on a case by
11 case basis?

12 A Yes.

13 Q How do you insure that people are treated
14 fairly in that situation

15 A Well, that is the Board's decision, it is not
16 mine.

17 Q When I say you, I don't mean you, I mean--and
18 that's probably a poorly worded question.
19 How does the Bath Water District insure that
20 applicants are treated fairly and uniformly
21 with regard to their request for applications
22 of service?

23 A Most usually, in some cases, it is cost per
24 customer and, you know, if it is the area

1 where we can serve or can't serve. You know,
2 I can't sit here and tell you what runs
3 through the Board's mind. I mean, I'm just
4 an employee of the Board.

5 Q I understand that. But when you say what
6 they can and can't serve, what do you mean by
7 that?

8 A Well, if you are referring to this case?

9 Q I'm referring to the entire system.

10 A If--we have them submit us plans for what they are
11 going to, say subdivision, and it is studied and
12 they have submitted plans and we have the engineer
13 look at the plans. And like this case, the plans
14 were for 75 customers, not for 30 customers, not
15 for 20 customers. They plans are actually for 75
16 customers. And we don't have the facilities in
17 that area to serve 75 customers, according to our
18 engineers.

19 Q Again, what policy or procedure is--was in
20 place that would have told these--this couple
21 that they needed to submit a plan? Was there
22 one that you are aware of?

23 A Well, that's, you know, in order to get--no,
24 there is no set--in order to get a set of

1 plans approved there are some steps you have
2 to go through though.

3 Q And where are those steps written?

4 A There is no written steps.

5 Q So, how--do you think that the Hatfields were
6 told?

7 A Yes.

8 Q How do you know that?

9 A I told Tina Hatfield when they first--it was
10 back probably in September.

11 Q Okay. You told her what?

12 A That there were certain steps, they was
13 anxious to get water real quick. And I told
14 her it would take time, that there were
15 certain steps they had to do. They would
16 have to have a set of plans and the Board
17 would ask an engineer--would have to have a
18 seal on them before the Board could submit it
19 to the Division of Water, and that does take
20 time. Sometimes it takes the Division of
21 Water two weeks or three weeks before it
22 returns.

23 Q You say this was in September?

24 A Probably, I'm not sure, but I think it was

1 about September, the first time I met them.

2 Q You took your position in August; is that
3 right?

4 A Yes.

5 Q And what training or orientation did you go
6 through to learn how to be the Plant Manager there
7 at the Bath County Water District?

8 A I didn't go through any training, I haven't
9 had any training.

10 Q And you have never worked there in any
11 capacity prior to August?

12 A No, no.

13 Q So, in August of 1999 do you think you were
14 fully aware of all of the policies,
15 procedures, regulations and requirements that
16 applied to the Bath County Water District?

17 A Probably not, no, not all of them, no.

18 Q Isn't it correct or true that when the
19 Hatfields began selling lots and, when I say
20 selling lots, I mean lots that were not
21 adjacent to the two main road--to the two
22 road main line extensions, the Blevins Road
23 and the Old State Road, are you familiar with
24 what I'm talking about?

1 A Say that again.

2 Q Let me back up, strike what I just said, we
3 will start a little slower. Are you familiar
4 with the Meadowbrook Subdivision?

5 A Yes, I am.

6 Q Are there roads that are adjacent to that
7 subdivision?

8 A Yes.

9 Q What are they?

10 A Blevins Valley and Old State Road.

11 Q And are there main lines on Old State Road
12 and Blevins Valley Road?

13 A Yes, there are.

14 Q So, some of the people who have bought lots
15 in the Meadowbrook Subdivision are adjacent
16 to those roads and those main lines; is that
17 correct?

18 A Right.

19 Q Some of the lots, however, are not adjacent
20 to those main lines there within the
21 subdivision, right?

22 A Right.

23 Q Some of those lots that were sold were sold
24 meters for property that is not adjacent to

1 the Old State Road and Blevins Valley Road;
2 that's correct?

3 A Right.

4 Q And those properties are serviced by what I'm
5 calling service lines where the meter is on
6 the main line but the service line runs
7 hundreds if not more than a 1,000 feet to the
8 property line; is that your understanding?

9 A Right.

10 Q Those are the lines that Mr. Hatfield
11 discussed previously that had been left
12 unopen and frozen over the winter?

13 A In my understand it is--that--we are
14 responsible to the meter, that's his
15 responsibility once we turn the meter on.

16 Q When did you give permission to Mr. Hatfield
17 to set those meters like that?

18 A Permission to set them?

19 Q Uh-huh.

20 A When he came in and signed up for them.

21 Q Did he ask to do it that way or did you
22 suggest that it be done that way?

23 A If he wanted one, like I said, right quickly,
24 we'd have to do it until the others got

1 approved.

2 Q Until what others got approved?

3 A Until this line got approved.

4 Q Until the three inch line got approved?

5 A Uh-huh.

6 Q Is that what you are talking about?

7 A Yes.

8 Q So, that was December 17, wasn't it, that the
9 Division of Water approved that three inch main
10 line?

11 A They didn't approve it for them, for the--all
12 these meters that they have already gotten.

13 Q Did they approve it?

14 A They approved it for 13 only.

15 Q So, it was approved on December 17 for 13
16 meters, right?

17 A Yes.

18 Q That line is not in service today?

19 A No.

20 Q Today is April 11.

21 A No.

22 Q Why have you all not allowed that three inch
23 line to go into service if it was approved
24 back in December?

1 A The Board feels that once they take this line
2 over that they will be back down here to the
3 Public Service Commission once they exceed
4 the 30 pounds pressure where they can't serve
5 it--they submitted plans for 75 customers.
6 The District can't service 75 customers in
7 that area. So, once these lines are
8 connected they become property of the
9 District and we can't refuse to serve an
10 individual customer. So, if it goes up to 75
11 we will be right back in here again.

12 Q So, let me understand what you are saying.

13 A They are in this business to make a profit
14 and we service, you know, individuals, but we
15 can't service 75 customers according to our
16 engineers, we can't service these--this area,
17 75.

18 Q But you know here today that they are not
19 asking for 75?

20 A It's not what they are asking, it is what the
21 plans that the Board had to review and they
22 didn't approve the plans for 75. And the way
23 I think if it is tomorrow they want to come
24 back with 30, there will have to be another

1 set of plans and approved by the Division of
2 Water.

3 Q Let me ask you a question please. To make
4 sure I understand what you are telling me,
5 you are saying that the reason that three
6 inch line was not approved--or it has not
7 been put into service after it was approved
8 in December of 1999, is because you fear
9 future complaints with the Public Service
10 Commission for not allowing additional
11 customers on that line; is that right?

12 A Yeah.

13 Q Okay. The approval by the Division of Water
14 for those 13 meters was specific as to the 13
15 meters because of concerns about pressure;
16 right?

17 A I'm not sure what their--I mean--

18 Q Well, that's your concern though, isn't it,
19 with the Bath County Water District? Isn't
20 that what you are telling us here today, is
21 that if more than a certain number--

22 A It wouldn't be concerned on the 13, no, I
23 don't think so. We'd have to ask our
24 engineer. But the engineer says we can't

1 take care of 75 and that's basically the
2 reason that that wasn't approved.

3 Q That was the reason what wasn't approved?

4 A The plans by the Board.

5 Q So, when are you talking about when you
6 didn't approve the plans? When were they
7 disapproved?

8 A Well, the--I think you said the plans were
9 actually--December when they actually had the
10 plans drawn. There might have been some
11 sketches or something before but there has
12 always been talk of 75 customers.

13 Q When did you notify the Hatfields that you
14 were not going to accept the three inch water
15 line with those 13 metered customers after it
16 was approved in December of '99?

17 A When the Board decided?

18 Q When were they notified that the Division of
19 Water's approval was not going to be
20 acknowledged and that they were not going to
21 be able to use that three inch line?

22 A I guess probably at the Board, the Board decision
23 probably in December, I would think. They said
24 they wanted to move them, but they didn't want to

1 accept the line. Of course, it is not possible to
2 do one without the other. They approved the
3 moving of the 13 meters, but they didn't want to
4 accept the line.

5 Q I'm looking at the minutes of December 28,
6 1999, and it is indicated in the one, two,
7 three, four, five, sixth paragraph down, it
8 says, "Commissioner Norris moved to move the
9 13 existing meters to the property of users
10 at an approximate cost of \$75 to be paid for
11 by the users. Commissioner Ginter seconded
12 the motion. Commissioners present voting yes
13 and Commissioner Crooks abstained from
14 voting. There was no approval by the Board
15 for the 8,000 linear feet of three inch
16 line." It doesn't say anywhere in the
17 minutes why that was not allowed. Can you
18 tell me why, specifically, that was not
19 allowed?

20 A No, I can't.

21 Q You were there, weren't you?

22 A Well, they didn't accept the line.

23 Q No reasons were given?

24 A I can't have an opinion of what their

1 thoughts were.

2 Q I'm not asking you to tell us what they were
3 thinking, I want you to tell us what the
4 stated reason was for disapproving that three
5 inch line that was approved by the Division
6 of Water?

7 A I think maybe there was some comments of what
8 I commented earlier, that once they accept
9 these lines they were property of the
10 District, and their plans said 75 customers
11 and we couldn't serve 75 customers because of
12 the facilities.

13 Q How many could you serve?

14 A That's--I mean, I'm not an engineer and that
15 is something we ask our engineer.

16 Q Do you know?

17 A No, I don't.

18 Q Okay. That's all you have to say, I don't
19 know.

20 A Okay.

21 Q So, what was the reason that they moved--I
22 don't understand this, why did they move--why
23 was the motion made to move those water
24 meters if they weren't going to be able to

1 use the three inch line?

2 A There was several of the residents that came
3 to the meeting and they were sort of--they
4 wanted something like, I think, the Division
5 of Water, that's my opinion, okay, that they
6 wanted something to do with these customers
7 that had these lines out there freezing up,
8 and so forth, in these open ditches.

9 Q Uh-huh. It was a bad situation, wasn't it?

10 A Yes, it was.

11 Q So, the Board--let me see if I understand
12 this, the Board voted to move the meters,
13 charged the user \$75, but they wouldn't agree
14 to put water in the line; is that basically
15 it?

16 A That's basically it.

17 Q Was that meant to accomplish something?

18 A I can't answer that, I don't know.

19 Q Are you still selling meters in that area?

20 A Yes, we are. We put two in for them Friday,
21 those 18 you were talking about--

22 Q Two of them have been--

23 A Yes.

24 Q --been set?

1 A Uh-huh.

2 Q Right, but they are adjacent to the Old State
3 Road and Blevins Valley Road?

4 A Yes, they are.

5 Q Not off of that three inch main that runs
6 through the middle of the subdivision

7 A No.

8 Q Do you know how many customers have been
9 added and extensions granted after the
10 Hatfields have asked for this extension to be
11 added to their system?

12 A I don't know of any.

13 Q Do you know a Ms. Stamper on Old State Road?

14 A I know Ms. Stamper on Old State Road, it
15 hasn't been granted.

16 Q Hasn't been granted?

17 A No.

18 Q What is the status of that, because it
19 appears from the minutes that there are other
20 people even adding on to her line?

21 A They are still just like this, they was
22 looking at it, you know, when we had--they
23 come to the meetings they look at all of the
24 projects.

- 1 Q I didn't hear the last part.
- 2 A They look at every--you know, when you come
3 to a meeting asking for water, they don't
4 just say, you know, they just consider it
5 like they consider all projects. If they can
6 serve a few, they will serve them.
- 7 Q Has she ever submitted plans to the Division
8 of Water?
- 9 A Not to my knowledge, no.
- 10 Q But her line is in the ground, isn't it?
- 11 A Yes, her individual line, yes, we serve her
12 with a meter.
- 13 Q Right, and she came to the August meeting and
14 said that she wanted to install that line and
15 wanted you all's approval because--"Ms.
16 Stamper wanted someone from the Water
17 District to inspect the line as it was being
18 built in case others wanted to tie into the
19 line in the future." Do you recall that?
- 20 A Yes, I do.
- 21 Q And you all accepted that?
- 22 A Do what?
- 23 Q You all accepted that from Ms. Stamper?
- 24 A We haven't accepted the line, no.

- 1 Q But you haven't gotten any plans from her, right?
- 2 A No.
- 3 Q Are the Cophers hooked on to Ms. Stamper?
- 4 A Cophers?
- 5 Q Cophers.
- 6 A Where is this at?
- 7 Q Apparently adjacent to Ms. Stamper?
- 8 A Not to my knowledge, no.
- 9 Q On October 26, 1999, the Cophers family at
- 10 2727 Old State Road came in and wanted
- 11 service off the Ms. Stamper line?
- 12 A Oh, no, no. That line is still her line.
- 13 Q But there is water in it?
- 14 A Yes.
- 15 Q Were the Hatfields ever told specifically
- 16 what they needed to do to comply with the
- 17 Bath Water District's requirements in order
- 18 for the Bath Water District to provide them
- 19 service?
- 20 A Say that again?
- 21 Q Were the Hatfields ever told specifically
- 22 what they needed to do to get water from the
- 23 Bath County Water District?
- 24 A Like I said earlier, I stated when I first

1 met these--this couple that I told them the
2 steps.

3 Q This was in September?

4 A Yes. I think it was in September, you know,
5 it was early on, I just had come on board. I
6 told them that they basically would have to
7 have a set of plans.

8 Q Okay. And then they got the plans?

9 A And they had to be submitted to the Board.

10 Q Okay.

11 A And they would have to have an engineer to--there
12 would have to be a seal from the engineer before
13 the Board could submit these plans to the Division
14 of Water.

15 Q I understand. So, that's the only--all that
16 has been done, hasn't it?

17 A No.

18 Q What hasn't been done?

19 A The Board hasn't agreed to supply 75
20 customers on this line because the facilities
21 is not there.

22 Q Has it agreed to provide water to the
23 customers that it can?

24 A Yes.

1 Q Oh, really? How many can you provide water
2 to?

3 A Well, that is what I have been hearing our
4 engineers argue about, I don't know just exactly
5 to this day how many we can, 30, I mean, you know,
6 I don't know.

7 Q You have read over Mr. Taylor's affidavit and
8 his answers, haven't you?

9 A Mr. Taylor wasn't hired to actually do these,
10 he was hired to review Mr.--their engineer's
11 study.

12 Q That wasn't my question. You have reviewed
13 Mr. Taylor's affidavit and his answer to
14 interrogatories?

15 A Yes, yes, and does it state exactly how many?

16 Q Well, I'm asking you the questions. He says
17 that 30 additional customers won't cause a
18 problem with pressure; right?

19 A Well, if it doesn't cause a problem, we are
20 willing to serve 30.

21 Q Well, how long have you known that?

22 A We cannot serve 75, that is the only plans we
23 have had for this.

24 Q Mr. Fawns, I'm trying to learn--

1 A You are trying to bargain 30 customers.
2 Seventy-five customers is what we considered.

3 Q I'm trying to learn how many customers that
4 you agree that you can serve. You see, I'm
5 trying to find a point at which we agree, and
6 if we can start there then we can kind of set
7 that aside and then we can talk about what we
8 disagree about.

9 MR. ROGERS:

10 I object.

11 A I cannot agree on--

12 MR. ROGERS:

13 Wait just a minute, I object, first of
14 all, Mr. Fawns doesn't have authority to
15 sit here and speak for the Board as to
16 what they can agree to and what they
17 can't. As for the engineering reports,
18 I think they speak for themselves and we
19 can let the engineer testify to that.
20 But if he is asking Mr. Fawns to say
21 what his board collectively would agree
22 to do, I don't think that is fair to Mr.
23 Fawns to tie him down that way.

24

1 MR. FOX:

2 Let me rephrase the question because I'm
3 not asking him what he agrees--what they
4 will agree to do. I'm asking the
5 witness if he agrees that the
6 information is that at least 30
7 customers can be served without
8 depleting water pressure in that
9 subdivision or to the existing
10 customers.

11 MR. ROGERS:

12 Well, if that is the question that is
13 fine. That's a fine question to ask.

14 MR. FOX:

15 Well, I'm asking it.

16 A I understand that and our engineer says they
17 can serve 30 customers.

18 Q Okay. And how long have you known that?

19 A Well--

20 Q They did that water pressure test in November
21 of '99.

22 A I can't--let's see--probably--I don't know
23 just exactly, I was trying to think. I can't
24 recall, to be honest I can't.

1 Q It's been months though, hasn't it?

2 A Well, like I said, this study that their
3 engineers done, it was on this water pressure
4 test which was probably in--

5 HEARING OFFICER SHAPIRO:

6 Mr. Fawns, are you tell us that the
7 reason the Hatfield's request was turned
8 down was because the initial request was
9 for 70 meters--

10 A Seventy-five.

11 HEARING OFFICER SHAPIRO:

12 --75 meters and the Board determined
13 that they could not--or felt like they
14 could not provide water service to 75
15 meters and meet the requirements of this
16 Commission and I guess maybe the
17 Department of Water; is that right?

18 A Exactly.

19 HEARING OFFICER SHAPIRO:

20 Or the Division of Water?

21 A Yes, sir.

22 HEARING OFFICER SHAPIRO:

23 But that a lesser number, as far as you
24 know, well, I guess you are aware of

1 everything they have done, I assume,
2 since you have been employed by them.

3 A Right.

4 HEARING OFFICER SHAPIRO:

5 By the Board. And since you have an
6 employee of the Water District they have
7 never considered whether or not a lesser
8 number of residents could be served--a
9 lesser number of taps could be served
10 from that three inch line?

11 A That's right, they haven't been--they haven't
12 had any plans from the Hatfields for a lesser
13 amount to consider.

14 HEARING OFFICER SHAPIRO:

15 But they have been aware since the
16 report that was filed by Mr. Taylor that
17 there, at least according to the report,
18 that the line could serve as many as 30
19 customers--

20 A Yes, sir.

21 HEARING OFFICER SHAPIRO:

22 --without affecting--and still comply
23 with the requirements and regulations
24 and the standards?

1 A Yes, sir, that's exactly true.

2 HEARING OFFICER SHAPIRO:

3 Has that information ever been conveyed
4 to the Hatfields, as far as you know?

5 A As far as I know it has.

6 HEARING OFFICER SHAPIRO:

7 It has?

8 A Yes, as far as I know.

9 HEARING OFFICER SHAPIRO:

10 They were told by somebody either by you
11 or somebody from the Water District that
12 if they sought to amend their
13 application they would be able to
14 receive service for 30 taps?

15 A I think they were at the meeting when both
16 engineers were there and had this discussion
17 and said 30 or whatever.

18 HEARING OFFICER SHAPIRO:

19 And are you telling us now that the
20 Board--was this discussed through the
21 Board itself?

22 A Yes.

23 HEARING OFFICER SHAPIRO:

24 And did the Board, in fact, make a

1 statement to that effect?

2 A No, no, what it was, our engineers said there
3 was a possibility of serving 30 but it
4 wouldn't serve 75. So, you know, they
5 couldn't okay these plans that they had.

6 HEARING OFFICER SHAPIRO:

7 They couldn't okay the plans for the 75.

8 A Right.

9 HEARING OFFICER SHAPIRO:

10 But were they ever told to resubmit
11 plans for the 30?

12 A No, not to my knowledge.

13 HEARING OFFICER SHAPIRO:

14 Does that cover what you wanted to ask
15 him?

16 MR. FOX:

17 I think so.

18 HEARING OFFICER SHAPIRO:

19 Okay. Let's go on to something, I think
20 we have beat this horse well enough.

21 MR. FOX:

22 Just a couple more hits on this horse
23 Judge.

24 Q Isn't it true that they did, in fact, submit plans

1 or proposal for 60 customers in October and 30
2 customers in November?

3 A They were plans submitted to the Board?

4 Q Proposals to knock the request down from 75 to 60
5 in October and to 30 in November?

6 A Like I said, they were--you know, there are
7 amounts talked, 60, 30, 45, but to get back
8 to what I said, the Board had to consider the
9 plans that were submitted to them.

10 HEARING OFFICER SHAPIRO:

11 Wait a minute. Now, I'm getting lost.

12 Plans were submitted for 75 taps.

13 A Right.

14 HEARING OFFICER SHAPIRO:

15 And the Board said--you told us that the
16 Board determined that based upon what
17 Mr. Taylor told them, they couldn't
18 provide service to meet the requirements
19 of the statutes and regulations for 75
20 taps on that line.

21 A Right.

22 HEARING OFFICER SHAPIRO:

23 Now, Mr. Fox has asked you were they--
24 isn't it a fact that plans were

1 submitted for 60 taps?

2 A Not to my knowledge, I haven't saw those
3 plans.

4 MR. FOX:

5 My question was was a proposal for 60
6 and a proposal for 30?

7 HEARING OFFICER SHAPIRO:

8 Was a proposal made to the Board, then,
9 for 60 taps, do you remember?

10 A Not to my knowledge.

11 HEARING OFFICER SHAPIRO:

12 Not to your knowledge, is that right?

13 A Like I said, there were several things
14 discussed, it might have been 60, 30, 45, it
15 was--I mean, it was like--but not any plans
16 for 60, no.

17 HEARING OFFICER SHAPIRO:

18 There was no plans, but did they come in
19 and say--did these people, the
20 Hatfield's, come to the Board while you
21 were there, or come to you, and say,
22 okay, we can't have 75, can we have 60?

23 A Myself, I don't think the Board either one
24 could say until we have our study?

1 HEARING OFFICER SHAPIRO:

2 No, I'm asking did they come to you or
3 to the Board--

4 A No, no, not to my knowledge.

5 HEARING OFFICER SHAPIRO:

6 --and ask you could we have 60?

7 A It is possible, I guess, like I said, there
8 were several different numbers discussed.

9 HEARING OFFICER SHAPIRO:

10 If its reflected in the minutes would
11 that be--would that mean it is correct?

12 A Yes, it would mean it is correct.

13 HEARING OFFICER SHAPIRO:

14 If its in your minutes?

15 A Right.

16 HEARING OFFICER SHAPIRO:

17 Did they come to the Board and ask for
18 30 taps or propose 30 taps?

19 A Not to my knowledge.

20 HEARING OFFICER SHAPIRO:

21 Not to your knowledge, but if it is
22 reflected in the minutes, then that
23 would be--then you will say that that is
24 probably true.

1 A I would, yes.

2 HEARING OFFICER SHAPIRO:

3 In any event, whether there were plans
4 submitted or proposals made, there was
5 never any approval given to them for
6 anything at all, as far as you know,
7 whether it was for 75 taps, 60 taps or
8 30 taps?

9 A Right, there was not.

10 Q Just a moment. Do you know Mitchell Crooks?

11 A He's one of the Commissioners.

12 Q One of the Commissioners. Has he indicated
13 to you his position on the extension?

14 A Nothing only what is said in the Board
15 meetings.

16 Q And in the Board meetings hasn't he said that
17 under no circumstances would he approve the
18 extension?

19 A He would have to see the plans, I think he
20 said. He wouldn't approve unless he saw the
21 plans.

22 Q He would not approve the plans?

23 A Yes, he would have to see the plans or see
24 it, you know. What it was, I think they were

1 asking me to write a letter and he said he
2 wanted to see the plans that that were asking
3 for.

4 Q Right, now when you talk about plans, are you
5 possibly confusing plans with the plat, the
6 plat that describes 75 separate lots? You
7 have been present today, you heard Mr.--

8 A The plans that are here is 75 customers also.

9 Q But you heard Mr. Hatfield testify that some
10 of the people that have purchased land in the
11 Meadowbrook Subdivision were purchasing more
12 than one lot to obtain a larger size tract.

13 A I don't know that.

14 Q You heard that.

15 A I heard him state that.

16 Q You understand that?

17 A Yes.

18 Q Okay. So, if a person is buying more than
19 one lot then that by necessity means that
20 there are going to be less than 75 houses
21 built in that subdivision? You have known
22 that since the beginning, right?

23 A Since the beginning?

24 Q Yes, well, since August of '99?

1 A I guess that's possible, yes, you could sell
2 four or five of them to one customer.

3 Q In your affidavit--yes, in your affidavit on page
4 five, beginning, I guess, under number five on
5 page four, the paragraph that is at the end. I'll
6 just read it. It says, "Even if an agreement
7 could be fashioned that would be binding upon the
8 Hatfields to limit the number of lots that would
9 be provided water within Meadowbrook Subdivision,
10 it is the position of Bath County Water District
11 Board that such an agreement would be unfair to
12 other prospective customers in that same area in
13 that such an agreement would allot all of our
14 available water capacity to one subdivision
15 regardless of whether or not the lots are prepared
16 and ready to hook on. Therefore, should another
17 perspective customer desire to hook on in that
18 area, we would have to deny service to that
19 customer due to the fact that all of our capacity
20 will be set aside for the Hatfield subdivision."
21 Do you recall saying that?

22 A Yes.

23 Q Okay. Now, as I understand your earlier
24 testimony and if you will look further on in

1 your affidavit, even on that same page, you
2 are already over capacity, aren't you?

3 A The facilities, you mean the quantity of
4 water we have?

5 Q Yes. What percentage of increase do you
6 think that these houses in this subdivision
7 is going to cause for your overage in water
8 usage for the whole water district?

9 A I can't answer that. You are saying percentage
10 wise.

11 Q Well, you are already over your capacity, you
12 are over the amount of water that you have
13 available to you under your contracts, right?

14 A Five months out of last year, yes.

15 Q Okay. But you are saying that that is the
16 reason that you don't want to provide water
17 service in this subdivision. My question
18 is--

19 A That's not the--okay, that's not the only
20 reason. Like I said, the amount of customers
21 in this subdivision. Like I said, we have
22 served them, I think we have got 24 customers
23 in the subdivision with the addition of two
24 more Friday, so--but--

1 Q But my question to you is--is it your
2 understanding, Mr. Fawns, that in that
3 portion of your affidavit under number five
4 that I just read that that relates to the
5 physical requirements or stresses that would
6 be placed on the pipe, actual pipe so as to
7 cause problems with pressure, not volume of
8 water?

9 A Yes.

10 Q That's your understanding of it. So it is a
11 question of pressure not volume, in your
12 mind?

13 A If I was, I mean--

14 Q We have already spent a lot of time talking
15 about the pressure and I think you have
16 acknowledged that since November of 1999 you,
17 through your engineer, have known that the
18 pressure is not the problem for at least 30
19 customers. And we also know that since 1994
20 that your Water District has been over the
21 amount of available water to it, in terms of
22 capacity and volume. So, if those two things
23 are already--

24 A Since '94 it has been over the capacity?

1 Q Well, I guess I'm summarizing your--what I
2 think your testimony is, that the Bath County
3 Water District has been selling more water
4 than it has the contractual right to buy
5 since the middle of the 1990s. Isn't that
6 what you said? So, if pressure has been
7 addressed and the capacity has apparently not
8 been something to keep you all from adding a
9 100 or so customers a year since the mid
10 1990s, why is it preventing the Hatfields
11 from getting water in this case?

12 A We are back to the same thing, we cannot
13 serve 75 customers particularly.

14 Q All right.

15 A Facilities we don't have.

16 Q Can--I've not seen it, is there a letter to
17 the Hatfields somewhere that says we can
18 serve 30?

19 A No.

20 Q Is it somewhere in the minutes where they
21 were told we can serve 30?

22 A I seen it earlier, I don't have it--I didn't
23 bring it with me.

24 Q But there has never been a vote of the water

1 district to allow 30 customers in that
2 subdivision?

3 A Not to my knowledge.

4 Q Even though you all have had the physical
5 capacity and ability to provide 30 pounds of
6 pressure at the meters in that subdivision
7 and to the existing customers in neighboring
8 areas?

9 A There has never been a letter.

10 Q Was there ever any discussion or proposal to
11 add customers a few at a time to see what the
12 actual affect on the water system would be?

13 A No, but that is being done. I mean, like I
14 said we added two Friday on the end
15 subdivision.

16 Q But those customers are on Old Valley Road or
17 Blevins Road, right? Those are not within
18 the subdivision because that three inch water
19 line has not been put into use, right?

20 A I don't see any difference, they are still
21 serving the customers.

22 Q You don't see any difference?

23 HEARING OFFICER SHAPIRO:

24 Well, wait a minute. It's right, it is

1 customers along Old--what road?

2 MR. FOX:

3 Old Valley--Blevins Valley Road and Old
4 State Road.

5 HEARING OFFICER SHAPIRO:

6 Blevins Valley Road and Old State Road,
7 he has answered the question and I think
8 that is a little argumentative.

9 MR. FOX:

10 I understand.

11 HEARING OFFICER SHAPIRO:

12 Let's go on.

13 MR. FOX:

14 Nothing further.

15 HEARING OFFICER SHAPIRO:

16 Mr. Pinney?

17 MR. PINNEY:

18 Nothing further.

19 MR. ROGERS:

20 I have some redirect, I'll be very brief.

21

22 REDIRECT EXAMINATION

23 BY MR. ROGERS:

24 Q Mr. Fawns, you were asked on cross and I heard you

1 mention that the Morehead Utility Plant Board or
2 the City of Morehead has made the comment about
3 restricting your flow or restricting your water if
4 they need their capacity. When did those
5 discussions start?

6 A It was in a meeting at the Morehead Utility
7 Board back in the summer when Owingsville was
8 in desperate need of emergency use of water.
9 And we had a meeting there and they said they
10 would continue to supply us water as long as
11 they could but--and to go ahead and let them
12 have water. But--then they wouldn't reduce
13 our water, like I said, until they had to.
14 But if they had any industry, or so forth,
15 come into Morehead that what they said in
16 this meeting went out the window, that they
17 would have to--

18 Q So, this was back in the summer of '99?

19 A Right.

20 Q Exhibit K that was referred to, which is the
21 letter from the Division of Water dated May
22 27, I just want a point of clarification and
23 you stated this in your affidavit, but I
24 wanted to clarify this. The letter is dated

1 May 28 of '98, but in fact that is 1999;
2 correct?

3 A Huh?

4 Q The letter Exhibit K was dated May 27, 1998,
5 but in fact it was mailed in 1999, May 27,
6 1999, the letter, right?

7 A 1999, right.

8 Q Mr. Fox was asking about what things the
9 District has done and you mentioned Help
10 Grants. Can you elaborate a bit more?

11 A Well, in Help One that's funding from ARC and
12 FHA and so forth, and that put in some larger
13 lines and a large pump in the Midland area,
14 it was--and also, in that particular grant
15 there was some projects in Menifee County for
16 some customers.

17 Q So, basically, these are grants that you have
18 applied--the District has applied for to
19 upgrade your lines and--

20 A Right.

21 Q --your pumps?

22 A Right.

23 Q And are you currently making more
24 applications for more funding to do the same

1 type of thing?

2 A Yes, it will be Help Two.

3 Q And does the end result of bigger lines or
4 more lines and more pumps mean you can serve
5 customers such as the Hatfields and those
6 where pressure is low?

7 A Yes, right, once we have the quantity of
8 water to do so.

9 Q Mr. Fox was asking you about, I think it was
10 reasons for denying extensions. Sir, didn't
11 you provide to Mr. Fox a list in your
12 Response to Interrogatories of requested
13 extensions that had been denied?

14 A Yes, I did.

15 Q And those date back, it looks like, to 1993,
16 correct?

17 A Right.

18 Q And what were some of--I'm not asking on a case by
19 case specific basis, but what were some general
20 reasons for denial of those extensions?

21 A Some of those applications, you know, was
22 about petition and they were putting some of
23 these projects, and they got turned down
24 according to cost per customer. That's why,

1 you know, this ARC and this money is put up.
2 And some of these projects had to have pumps
3 to serve the area, it was cost per customer
4 really.

5 Q But some were turned down because they didn't have
6 pressure, right?

7 A Right.

8 Q You said you would have had to buy a pump to
9 serve the area?

10 A Right, there had to be pumps.

11 Q Mr. Fox was also asking you about these
12 meters with long lateral lines. Is it your
13 understanding of the Public Service
14 Commission Regs that if the property is
15 within 50 feet of your main you have to serve
16 them? Is that what your understanding is?

17 A Yes.

18 Q When you set these meters on the property line--
19 this long lateral line may have run to another
20 lot--but wasn't all that property owned by Mr.
21 Hatfield?

22 A Yes.

23 Q Mr. Fox was asking you about a Ms. Stamper and a
24 line that she has that has water in it. Who owns

1 that line?

2 A Ms. Stamper.

3 Q In fact, how many years has she been asking
4 the District to take over that line?

5 A I think I looked back and it was `93 when I
6 saw where she had been to some of the
7 meetings.

8 Q And you still haven't taken it?

9 A No.

10 Q Why?

11 A Because we can't serve that area because of
12 pressure.

13 Q And this property is just past the Hatfield's
14 property, isn't it?

15 A That is right.

16 Q They were--Mr. Fox was asking you about Mr.
17 Crooks' statement and I'll just ask you, is the
18 Board's concern based upon the Public Service
19 Commission Reg that they would have to hook up
20 lots within 50 feet of the main? Is that what
21 really bothers the Board?

22 A Exactly.

23 Q And is it your--if you accept that three inch
24 extension, would that be considered a main to

1 you?

2 A Yes, it would.

3 Q And would the District have any control over
4 how the lots are subdivided or partitioned if
5 they accept that three inch main?

6 A No.

7 MR. ROGERS:

8 I have no other questions Judge.

9 HEARING OFFICER SHAPIRO:

10 You are limited to something that was raised the
11 first time here, you understand?

12 MR. FOX:

13 I understand.

14

15 RE CROSS EXAMINATION

16 BY MR. FOX:

17 Q You mentioned that the other applications that
18 were denied, the main reason was cost per
19 customer?

20 A That's in these projects that is considered
21 federal funds and so forth, you have to have
22 so many customers per mile and you have to
23 have cost per customer in those projects.

24 Q But cost per customer is not an issue here,

1 is it, because the Hatfields paid for all the
2 development?

3 A No, like I stated before, we can't serve 75
4 customers in this area.

5 Q I understand what you are saying. With regard to
6 Ms. Stamper, you said that the big problem there
7 was with pressure. Mr. Rogers said her house is
8 just down the road.

9 A Yes, it is.

10 Q But her elevation is how many hundreds of
11 feet higher than the Meadowbrook Subdivision?

12 A It's quite a bit.

13 Q Quite a bit, isn't it?

14 A Uh-huh.

15 MR. FOX:

16 That's it.

17 HEARING OFFICER SHAPIRO:

18 Mr. Fawns, let me see if I can summarize some of
19 what you have told us here this afternoon to get
20 it clear in my own mind. It is your understanding
21 that the Board rejected the plans submitted by the
22 Hatfields because the Board felt the plans would
23 require them to extend service to at least 75 new
24 taps; is that correct?

1 A That's right.

2 HEARING OFFICER SHAPIRO:

3 And that the Board felt it could not extend
4 service to 75 new taps and still comply with state
5 regulations. The Board's engineer or the engineer
6 they hired--was he hired for this case to evaluate
7 the situation?

8 A He is our engineer.

9 HEARING OFFICER SHAPIRO:

10 He is your regular engineer?

11 A Yes.

12 HEARING OFFICER SHAPIRO:

13 But in any case, it was his view, based upon what
14 he reviewed, that while the line might not support
15 75 new taps, it could support or seemed to be able
16 to support 30 new taps. But the Board has never
17 taken any action based upon that information?

18 A Right.

19 HEARING OFFICER SHAPIRO:

20 But if the Board was sure--if the Board was
21 assured that the number of taps on the three inch
22 line did not exceed the number that would allow
23 the Board or allow the Water District to comply
24 with state regulations, would it have any

1 objection, as far as you know, to allowing that
2 number of taps to be placed on the line?

3 A As far as I know, no.

4 HEARING OFFICER SHAPIRO:

5 But there is a concern that if they accept the
6 line they have no way to control the number of
7 taps?

8 A Exactly.

9 HEARING OFFICER SHAPIRO:

10 So, that is the second reason for rejecting it?

11 A Exactly.

12 HEARING OFFICER SHAPIRO:

13 But that same situation exists all along that
14 road, doesn't it?

15 A Exactly.

16 HEARING OFFICER SHAPIRO:

17 Isn't that correct?

18 A At this particular time until we exceed this
19 number, it does.

20 HEARING OFFICER SHAPIRO:

21 I'm talking about in general?

22 A Exactly, on all roads.

23 HEARING OFFICER SHAPIRO:

24 On all roads?

1 A Yes.

2 HEARING OFFICER SHAPIRO:

3 You mean this--your line runs up to public
4 highways; isn't that correct?

5 A Right.

6 HEARING OFFICER SHAPIRO:

7 And I assume there are tracts that went in
8 abutting that highway or both highways?

9 A Uh-huh.

10 HEARING OFFICER SHAPIRO:

11 Isn't that right?

12 A Right.

13 HEARING OFFICER SHAPIRO:

14 So, depending upon how many parcels those tracts
15 are subdivided in will depend--will decide how
16 many taps might be asked for that line?

17 A Exactly.

18

19 HEARING OFFICER SHAPIRO:

20 Isn't that right?

21 A That's right. And there is another subdiv--

22 HEARING OFFICER SHAPIRO:

23 So, you have the same problem, you have the same
24 problem with your own mains as you would with the

1 main that the Hatfields are proposing for their
2 subdivision; is that correct?

3 A That's correct, yes.

4 HEARING OFFICER SHAPIRO:

5 You have to answer verbally because she is writing
6 down what you say. Although Vivian has perifial
7 vision so she can usually see what is going on on
8 the side. So, if a proposal was made to the Board
9 that allowed for a number of taps that would not
10 affect the Water District's ability to comply with
11 the statutes, and if that proposal also fixed the
12 number of taps that were made to that three inch
13 line going into the subdivision at that number,
14 whether it be 30, whether it be 50, whether it be
15 10, that would be a reasonable proposal as far as
16 you can see; is that right?

17 A As far as I can see, yes, it would.

18

19 HEARING OFFICER SHAPIRO:

20 And you would--would you see any problem with
21 that, would you see any problem that the Board
22 might have with that?

23 A I wouldn't see anything--I mean, I can't
24 speak for the Board, you know, I couldn't see

1 any problem with that.

2 HEARING OFFICER SHAPIRO:

3 Thank you Mr. Fawns. I assume that takes care of
4 it.

5 MR. ROGERS:

6 Nothing further.

7 HEARING OFFICER SHAPIRO:

8 Thank you Mr. Fawns. We'll talk about 10 minutes.

9 (OFF THE RECORD)

10 HEARING OFFICER SHAPIRO:

11 Let's go back on the record.

12 MR. ROGERS:

13 Your Honor, I would call Scott Taylor.

14 (WITNESS DULY SWORN)

15

16 The witness, DAVID SCOTT TAYLOR, having first been
17 duly sworn, testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. ROGERS:

21 Q State your name please?

22 A David Scott Taylor.

23 Q Scott, how are you employed?

24 A I am an Engineer for Mayes, Sudderth and

1 Etheredge, Incorporated.

2 Q What is your alls address?

3 A 624 Wellington Way, Lexington.

4 Q How long have you been a licensed engineer?

5 A Since `78. So what is that?

6 Q That will do for an answer and how long have
7 you been with MSE?

8 A Full-time basis now since `76 and before that
9 I went to work with them while I was in
10 school for a few years.

11 Q And what particular area of the engineering field
12 do you work in now?

13 A I'm the Manager of the Water Supply Section,
14 water supply is my area.

15 Q How many water supply systems have you designed
16 over the years?

17 A I couldn't count, hundreds, actually, over
18 the course of the years my résumé showed a
19 list of a portion of those clients and we
20 have done--on many of those we have done
21 multiple projects for them. Some of them 90
22 miles of water mains, tanks, and pumps,
23 another one 80. We do many in the 40 and 50
24 mile range. I had two bidding this month in

1 the 40 mile range.

2 Q And do you submit plans to the Division of Water
3 for approval on a regular basis?

4 A Yes, sir.

5 Q How long have you been employed with the Bath
6 County Water District?

7 A I'm trying to recall.

8 Q You can approximate.

9 A Over 20 years.

10 Q Okay. And have you been the engineer on all
11 of their projects during that period of time?

12 A In that period, yes.

13 Q Scott, I'd like you to take a look at this
14 document and ask you if you recognize it and
15 the attachments to it?

16 A Yes.

17 Q And what is this?

18 A This is my affidavit.

19 Q And is that your signature?

20 A Yes.

21 Q And the attachments, are those letters or
22 reports that you have prepared at the request
23 of the Bath County Water District?

24 A Yes.

1 Q And would you desire that this affidavit and
2 the accompanying reports be made a part of
3 the record as your testimony here today?

4 A Yes.

5 MR. ROGERS:

6 Your Honor, for the record, I'd like to
7 submit and ask to be introduced into
8 evidence this affidavit of Scott Taylor
9 and the two attachments to it. I would
10 like to reserve, since this is my copy,
11 I would like to reserve the right to
12 supplement or to replace it with a copy
13 later. But I think we can go ahead and
14 introduce that as Bath Water Exhibit 4,
15 I believe.

16 MR. FOX:

17 No objection.

18
19 HEARING OFFICER SHAPIRO:

20 Any objection?

21 MR. FOX:

22 No objection.

23 HEARING OFFICER SHAPIRO:

24 So ordered.

1 (EXHIBIT SO MARKED: Bath County Water District
2 Exhibit No. 4)

3 MR. ROGERS:

4 Your Honor, I will pass the witness for
5 cross-examination.
6

7 CROSS EXAMINATION

8 BY MR. FOX:

9 Q Mr. Taylor, when did you first become aware of the
10 Hatfield's request for water service on the
11 Blevins Valley Road?

12 A I don't really recall which meeting it was.
13 Robert did mention it was the meeting he
14 attended where he gave us a--showed a copy of
15 a hand drawn sketch of the subdivision that
16 he did. He and another fellow from Pike
17 County introduced himself as "sorry folk from
18 Pike county."

19 Q Now, was this in the summer or fall, just
20 roughly?

21 A I think probably around August or something
22 like that, maybe.

23 Q Okay. And when did you become involved on a
24 professional basis with his request?

1 A I believe it was late October after Bath
2 County meeting in October.

3 Q And you were directed to do what?

4 A Review the Division of Water submittal, the
5 plans and specifications, hydraulics for Bath
6 County in order to give my opinion as to
7 whether they could write their letter
8 accepting and approving the project.

9 Q I see. Your affidavit discusses the concerns
10 you had with Mr. Sossong's plans and you
11 talked with Mr. Sossong about your concerns.
12 Did you find that he was willing to make the
13 changes that you suggested?

14 A Yes. Basically, at the time I gave the
15 letter, I believe it was like November 28,
16 discussing those deficiencies in the plans,
17 actually, he was at the meeting at the Bath
18 County Water District in November when we
19 discussed it, so it was in front of everyone
20 that he learned along with every one else
21 what my opinion was.

22 Q Now, this was you said the November 28
23 meeting. At that point you had already
24 conducted a study of the actual pressure that

1 existed near the Meadowbrook Subdivision; is
2 that right?

3 A Yes.

4 Q Okay. And who directed you to do that?

5 A The Bath County Water District asked me in
6 part of my review, since I didn't have any
7 hydraulics, I did some on my own to review
8 it.

9 Q I see. Would you agree that actual pressure
10 readings are much more accurate and reliable
11 than estimates or assumptions?

12 A As a general statement?

13 Q Yes.

14 A Yes.

15 Q So, you did determine for the period of time
16 between November 3 and November 5 what the
17 pressure was on the main line that would
18 serve the Meadowbrook Subdivision?

19 A Bath County Water District faxed me a chart
20 of pressures during that period, yes.

21 Q And what is your recollection of the amount
22 of pressure that was on that line?

23 A It varied and what we have talked about is a
24 minimum of 80 pounds on the chart.

- 1 Q All right. Now, are you familiar with the
2 elevations of the water lines that are--that
3 lie within the Meadowbrook Subdivision?
- 4 A Yes.
- 5 Q Are most of those elevations below the
6 elevation at which you took those pressure
7 readings?
- 8 A It is not my understanding, no.
- 9 Q There are some locations within the
10 subdivision that are higher than this?
- 11 A Than the pressure chart, yes.
- 12 Q All right. Did you conduct any other studies
13 of pressure in and around that area?
- 14 A No.
- 15 Q So, you felt like, then, on November 5 or
16 when you received the information that that
17 information was sufficient?
- 18 A For my review at that time?
- 19 Q Yes.
- 20 A Yes.
- 21 Q If it hadn't been sufficient you would have done
22 more studies?
- 23 A Yes.
- 24 Q Well, based on the information that you had

1 the first week of November, did you advise
2 the Bath County Water District that there was
3 sufficient pressure for additional customers
4 within that subdivision?

5 A My initial letter, of course, advised that it
6 was based on 60 users discussed, and I
7 advised that it was not adequate. At that
8 meeting--at a meeting--

9 Q Let me stop you right there though. Who came
10 up with the 60 customers?

11 A I don't really recall, in a meeting with the
12 Hatfields there and the Board it was
13 discussed. The 75 was being discussed and I
14 think someone said what if we had 60, do your
15 calculations for 60, so that's what I based
16 it upon.

17 Q So, probably sometime in October because this was
18 done November 3 through 5.

19 A The test was done November 3 through 5 and my
20 calculations were sometime near the 28 just
21 before attending the meeting.

22 Q Okay. But sometime before November 3 it was
23 decided that your--or maybe I misunderstood you.
24 Sometimes before November 28 it was decided that

1 your calculations were going to be based on 60
2 customers?

3 A Yes, sir.

4 Q Not 75?

5 A Yes.

6 Q Have you ever done a study for 75 customers?

7 A I have not computed it at 75.

8 Q I mean, you have heard Mr. Fawns testify that
9 one of the reasons why the Bath County Water
10 District had denied service to this
11 subdivision was because it could not service
12 75 customers. But that has never been part
13 of your calculations or the directive given
14 to you by the Bath County Water District, has
15 it?

16 A No, but it would be obvious that if it can't
17 serve 60, it can't serve 75.

18 Q I understanding if you can't do 60, you can't
19 do 75, but you--they never discussed with you
20 75 customers?

21 A Discussed it, yes, but I did not compute it.

22 Q All right. What was the effect of 60
23 customers, specifically, in terms of pressure
24 readings in that subdivision?

- 1 A Well, in this review the subdivision area
2 pressures were shown to drop from 55 to 30.
3 Q To 30. Now, you said 55, the actual study or
4 the chart shows 80 psi, right?
5 A Yes.
6 Q Where did the 55 come from?
7 A From my analysis in the November 28. I used
8 a model from the tank out to the subdivision,
9 applied the number of customers that I
10 understood, from a previous study, were in
11 that region, and based on my knowledge of the
12 pressure chart being placed at a low point,
13 the low point out there, I thought the
14 numbers I showed matched up fairly well at
15 the 80 pounds.
16 Q But in any event, the 55 number, the starting
17 point, the 55 pounds per square inch number
18 was based on a model or an estimate, whereas
19 the 80 pounds per square inch was the actual
20 number that you found?
21 A Actually, I believe the 55 I'm talking to is
22 about--is at a high spot near the corner and
23 the 80 is at a low spot near the creek. So,
24 they are two different locations as shown on

1 my calculations.

2 Q So, were measurements taken at two different
3 locations?

4 A No, only at the low spot where the 80 was.

5 Q Where the 80 was. So, again the 50 or 55 psi
6 that you found is an estimate?

7 A It is calculated based upon the 80 at the low
8 spot and less pressure at high spots.

9 Q All right. And what was the resulting
10 pressure effect on other customers if 60
11 customers were placed in the Meadowbrook
12 Subdivision?

13 A In the area of the subdivision they dropped
14 from 55 to 30.

15 Q To 30?

16 A Uh-huh.

17 Q And that's with 60 customers?

18 A Yes.

19 Q Okay. What about existing customers, was there an
20 effect on pressure there?

21 A Yes. One up toward the end there is a
22 customer with 52 and it is shown to have
23 dropped to 23.

24 Q Twenty-three, okay. And that's with 60

1 customers?

2 A Yes.

3 Q Was there a calculation that caused you to arrive
4 at this opinion of 30 additional customers not
5 having an adverse effect or was that simply an
6 estimate that you calculated?

7 A When I reported that the 60 wouldn't work,
8 the Hatfields said what about 30, would you
9 calculate it again for 30 and I did.

10 Q Okay. And what was your results of the
11 calculations of 30?

12 A It would show that in the original pressures
13 at the concerned customers were 52 and with
14 60 it went to 23, with 30 it would be 37.

15 Q 37?

16 A Estimated.

17 Q That's estimated, okay. So, to summarize
18 your opinion based on the effect of
19 additional customers in the subdivision, 30
20 additional customers would not adversely
21 affect the existing customers and the Bath
22 County Water District would be able to
23 provide adequate service to new customers or
24 30 additional customers in the subdivision?

1 A Is that a question?

2 Q Yes, is that right?

3 A As I told them when I calculated this 30, I
4 don't--there is a point where you are not
5 going to be able to compute, you know. If 30
6 by the numbers here shows it is okay, 60
7 shows it is not, surely somewhere in between
8 is the one that breaks it. I don't believe
9 that with the two or three day information
10 that we had in November and basing this data
11 on that that that is sufficient to get down
12 to counting five and ten customers out there.
13 But my number of 30 based on the same method
14 that I used in computing for 60 showed that
15 it would work. But I definitely think it is
16 a very close call.

17 Q And you have told the Bath County Water
18 District that they could do 30 customers;
19 right?

20 A I told them that the result of my
21 calculations estimations was that 30--it
22 shows pressures above 30 pounds for all
23 users.

24 Q Okay. You are familiar with this situation

1 where the customers that are out there have
2 had these long service lines, hundreds of
3 feet, if not thousands of feet?

4 A Yes.

5 Q Is that a good situation, in your opinion?

6 A Long service lines in general are not uncommon,
7 but with a subdivision I suppose it may be wise to
8 do otherwise.

9 Q Isn't it contrary to the regulations of the
10 Bath County Water District?

11 A To have long service lines?

12 Q Well, to have meters on property that the
13 meters don't serve?

14 A I'm not aware of any.

15 Q In other words, let me ask you this, and I'm
16 looking at Exhibit A, on the one, two, three,
17 four, fifth page--

18

19 HEARING OFFICER SHAPIRO:

20 Exhibit A to Mr. Fawns's deposition.

21 MR. FOX:

22 Of the Answers to Interrogatories I
23 believe by the defendant. It's a copy
24 of the tariff, it is page, I guess it is

1 indicated as sheet number 4.

2 HEARING OFFICER SHAPIRO:

3 That was Mr. Fawns's affidavit, it's an
4 exhibit to his affidavit.

5 MR. FOX:

6 That's right, I'm sorry, yes, Exhibit
7 Number 4 has six paragraphs, six
8 numbered paragraphs.

9 A I still haven't found it.

10 Q Okay, I can show you mine. Just one sentence
11 in number six, says, "All meters will be
12 located on district mains and in the absence
13 of special permission, on the property to be
14 served." Were you familiar with that?

15 A No.

16 Q So, only in special circumstances should
17 these meters be placed on some piece of
18 property other than property that it is
19 serving, according to Bath County's tariffs,
20 rules and regulations, right?

21 A That's what is stated.

22 Q Okay. Were you aware of any special
23 permission that was requested or given for
24 that?

1 A By whom?

2 Q By anybody? Do you know if it was ever
3 discussed as a special circumstance where
4 permission was either asked for by the
5 Hatfields or permission was granted by the
6 Bath County Water District?

7 A I don't know that anyone identified it as
8 such. I think by virtue of the fact that we
9 had the problems with the service of the
10 pressure makes it a special condition.

11 Q When you discussed the pressure readings at
12 the individual--before the individual
13 customers and the effect on the individual
14 customers of these additional customers in
15 the subdivision, are you talking about the
16 pressure at the meter or the pressure at the
17 house?

18 A These figures I've just given are along the main
19 at the meter.

20 Q At the meter?

21 A Yes.

22 Q So, you didn't consider the elevations of the
23 actual house?

24 A No. There is one across the street from the

1 subdivision that would be a problem, but it
2 has not been the issue. The meter is low but
3 the customer lives up on a high spot. But
4 that is not the controlling.

5 Q The water system that supplies the Meadowbrook
6 Subdivision, I've seen plans that you have
7 described here, do they form a loop around the
8 subdivision?

9 A Two sides.

10 Q I mean, it doesn't dead end, it attaches on the
11 back end; is that right? It is attached on both
12 ends so it makes a loop.

13 A The lines on--there are lines on two sides of
14 the subdivision.

15 Q Right.

16 A The one going down Blevins Valley Road goes
17 on down Blevins Valley Road, the one on
18 State--Old State goes back there and dead
19 ends.

20 Q Okay. And the three inch line that runs
21 through the subdivision that would attach on
22 one end to the Blevins Valley Road and on the
23 other end--

24 A To State--or to Old State Road.

1 Q Old State Road.

2 A Yes, sir.

3 Q So, if the three inch line is adopted into
4 the system, that forms a loop, does it not?

5 A Yes.

6 Q That in and of itself would increase the
7 pressure, wouldn't it?

8 A It could improve the pressure out past the
9 subdivision, right.

10 Q Are there tanks or pumps on the--what I call
11 the low or the down flow side of the
12 Meadowbrook Subdivision? I'm not an
13 engineer, so I'm using terms that may confuse
14 you.

15 A I don't follow the question.

16 Q Can the water flow from either direction?

17 A Yes, I follow you now. The Preston--there is a
18 pump station in Preston which feeds water to a
19 tank that actually has a water line coming back
20 over to the corner of that subdivision, a long
21 three inch line ending.

22 Q Considering all of that, then, if that three
23 inch line is implemented into this system and
24 used, then the pressure is likely to

1 increase, isn't it?

2 A Yes.

3 HEARING OFFICER SHAPIRO:

4 The pressure might increase where; in
5 the three inch line?

6 MR. FOX:

7 In the three inch line.

8 A Yes. Well, the three inch line has that pressure
9 on it, if it were open to feed back to the
10 subdivision it would be different.

11 Q Are you aware of any occasion where the Bath
12 County Water District has supplied either the
13 Hatfields or their engineer the specific
14 requirements that would allow their request
15 to be honored?

16 A No.

17 Q Do you know if the Morehead Water Treatment
18 Plant is operating at full capacity now?

19 A Today, I would estimate it is not.

20 Q It is not operating at full capacity?

21 A At this date. It could do like Mr. Sossong--
22 I understand last summer it was at 24 hours a
23 day full capacity.

24 Q And last summer was probably the driest

1 summer in a 100 years, wasn't it?

2 A I have no idea. It was a dry year, a drought
3 year.

4 Q But as we speak the--one of the suppliers of
5 water to the Bath County Water District is
6 not operating at full capacity, to your
7 understanding?

8 A It would be a guess, total speculation.

9 Q All right. Do you know anything about the
10 Mount Sterling water supply?

11 A Their capabilities, total capacity, no. I know
12 only the limitations of the contract for the Mount
13 Sterling end.

14 Q Okay. But Bath County has exceeded the
15 limitations of that contract for several
16 years, hasn't it?

17 A Mount Sterling's or Morehead?

18 Q The Morehead?

19 A Morehead. I suppose, it depends on which basis
20 you look at it, daily basis, monthly or annual.
21 So the answer is yes and no. On a daily basis
22 some days, monthly some days, on the year, no.

23 Q How would you describe your role with the
24 Bath County Water District? Is it simply

1 advisory when problems come up or do you
2 actively participate in the policy making and
3 planning of the water district?

4 A My role, consulting engineer. Generally, I
5 am designing a specific project, specific
6 needs. But, also, I am available for many
7 other consulting tasks as--for consulting
8 advice, and I'm sure that through the work
9 over the years that working with me and
10 seeing the way things work that it may have
11 affected their policies in the long run.

12 Q Okay. You were in the hearing room earlier
13 this morning when I discussed with Mr. Fawns,
14 I believe, the May 27, 1999, letter from the
15 Division of Water that suggested to the Bath
16 County Water District that they implement a
17 proactive plan to address the use as opposed
18 to the capacity. Have you been involved in
19 any plan that has been established or
20 discussed by the Bath Water District?

21 A Yes, sir.

22 Q Is that a written plan?

23 A The--there is no formal adopted report
24 written plan, but what I was involved in is

1 meetings with Morehead, Bath County,
2 Frenchburg, Owingsville, for supply over the
3 next 30 years, the planning of the new
4 treatment plant and the financing and what
5 impact that would have financially on the
6 various customers in Bath County and to their
7 service to Frenchburg and Sharpsburg, and the
8 new customer, Owingsville.

9 Q Okay. And that plan, did it identify how to
10 deal with and determine a procedure when new
11 customers come to Bath Water District and
12 apply for service?

13 A No, it is really a plan of upgrading and
14 improving the system facilities to allow for
15 more service.

16 Q And is there any policy or procedure that you
17 are aware of that objectively and fairly
18 identifies how to handle these applications
19 for water when they do come in?

20 A I don't know the plan, but in working with
21 them over the years I can tell you what I
22 have seen as they apply.

23 Q I'm asking for a policy or procedure.

24 A I know of no written policy or procedure

1 other than what was written today, what was
2 discussed today. And I guess by default the
3 Public Service Commission rules on
4 extensions.

5 Q Mr. Fawns, I think, said it was on a case by
6 case basis, is that your understanding?

7 A His description of it was fair and accurate, yes.

8 MR. FOX:

9 Nothing further.

10 MR. ROGERS:

11 No questions.

12 HEARING OFFICER SHAPIRO:

13 Mr. Taylor, let me ask you some questions about
14 pressure, particularly with respect to the three
15 inch line, and when I'm referring to the three
16 inch line I'm referring to the line that goes into
17 the subdivision. I assume that line, the main is
18 probably four inches or more, isn't it? Is that
19 correct?

20 A Four inches.

21 HEARING OFFICER SHAPIRO:

22 It's a four inch line that goes in front of the
23 subdivision?

24 A Yes.

1 HEARING OFFICER SHAPIRO:

2 And I think you said that there was actually two
3 lines, two mains, two four inch lines that go in
4 front of the subdivision. One goes down the Old
5 Blevins--

6 A Blevins Valley and Old State.

7 HEARING OFFICER SHAPIRO:

8 And Old State Road, one is Old Blevins and one is
9 Old State. And I believe Mr. Fox asked you
10 whether or not--you told--you responded to a
11 question by Mr. Fox that the line, the three inch
12 line will loop from one to the other. Will the
13 flow of water be in one direction or will--can it
14 be in both directions under those circumstances?

15 A It would be in one direction from the tank
16 past the subdivision, and right now it goes
17 past the subdivision on Old Blevins Valley
18 and turns down State to the additional
19 customers. With their three inch line it
20 would allow once it reaches the subdivision
21 the water could go two directions, come back
22 into Old State and go, which could allow for
23 some slight--

24

1 HEARING OFFICER SHAPIRO:

2 So, instead of going from Blevins Valley--

3 A To Old State up to the end.

4 HEARING OFFICER SHAPIRO:

5 --to Old State but it would go through the three
6 inch line?

7 A Yes, sir. But it would--it could go through
8 that three inch line which hydraulically
9 could reduce some of the flow through the
10 fours and relieve a little pressure. But if
11 you calculate usage on the three inch, I
12 don't know which one would weigh the most,
13 whether it would actually increase or
14 decrease the pressure.

15 HEARING OFFICER SHAPIRO:

16 But as you go through it now with nothing on it,
17 no taps on it at all, that's the maximum pressure
18 that that line is going to have, will be able to
19 maintain; is that right?

20 A That would be right.

21 HEARING OFFICER SHAPIRO:

22 And I believe as you go, as you add taps it would
23 reduce the pressure on that three inch line?

24 A Exactly.

1 HEARING OFFICER SHAPIRO:

2 And you--your testimony is that based upon your
3 calculations, as I understand it, you made your
4 calculations from a measurement that you took at
5 one point and then you used, I guess, models or
6 formulas to determine what they would be at other
7 points?

8 A Yes.

9 HEARING OFFICER SHAPIRO:

10 Is that right?

11 A Yes.

12 HEARING OFFICER SHAPIRO:

13 So it's not--when we are talking about estimate it
14 is not really an estimate it is more of a
15 calculation?

16 A Yes, sir.

17 HEARING OFFICER SHAPIRO:

18 It is a little more accurate than an estimate?

19 A Yes, sir.

20 HEARING OFFICER SHAPIRO:

21 So, you calculated that serving 30 customers along
22 that three inch line would reduce the pressure on
23 that line to around 37 pounds per square inch; is
24 that right?

1 A It is actually--the usage at that subdivision
2 would draw the system pressures down such
3 that a point on Old State in that area would
4 be down to the 37.

5 HEARING OFFICER SHAPIRO:

6 At Old State. What would it be in the subdivision
7 itself?

8 A I show 43 and 42, depending on--I have two
9 points located along the subdivision, 43 and
10 42 pounds, where the 37 is on the higher
11 ground past that point.

12 HEARING OFFICER SHAPIRO:

13 So, by bleeding it off at that subdivision you are
14 reducing the pressure along the entire four inch--
15 along the--both the four inch lines as well?

16 A Yes, sir.

17 HEARING OFFICER SHAPIRO:

18 And you would have about 42 pounds going into the
19 subdivision serving 30 customers; is that right?

20 A Yes, sir.

21 HEARING OFFICER SHAPIRO:

22 Is that what you have just told us?

23 A I think that is accurate.

24

1 HEARING OFFICER SHAPIRO:

2 And what pressure does, as an engineer, what
3 pressure needs to be maintained, first of all, on
4 the Old Blevins Road and the Old State Road in
5 order for them to be able to constantly meet the
6 requirements of the regulations and standards?

7 A Well, that is a tough question, the comfort
8 factor part. The 30 pounds is the law, these
9 calculations are the pressures in the main,
10 you would have to include loss in the bit of
11 service line to the meter also. It is very
12 nice to have closer to 40 pounds as service
13 in the mains so that you are assured to have
14 the 30 at the points. But the law is 30 so I
15 guess you could take it down to 30. There is
16 actually--of all the work I've done at Bath
17 County there is one spot, several years ago,
18 that is right at the 30 pounds, you know.

19 And we don't ever want to end up there again.

20 HEARING OFFICER SHAPIRO:

21 So, you are saying 37, though, is also a fairly
22 good--it's a fairly good number?

23 A Yes, that would be reasonable.

24

1 HEARING OFFICER SHAPIRO:

2 Okay. Now, what--did you make any calculations
3 with respect to what that pressure would be if you
4 added the number of taps, and I believe it was 48
5 is what they are looking for now?

6 MR. FOX:

7 Forty-five, I believe.

8 HEARING OFFICER SHAPIRO:

9 Is it 45, what would be the pressure along Old
10 Blevins and Old State Road if it was 45 taps?

11 A In between, I have not calculated it.

12 HEARING OFFICER SHAPIRO:

13 Can you give us a ball park figure?

14 A Well, again, would that be based on these
15 conditions, the November measurement of three
16 days, you know. I happen to think that these
17 conditions may not even be acceptable in July
18 when they are at peak usages. So, what I
19 find difficult and never really want to
20 commit to here is whether it is 43 or 44
21 customers, because for one you are having me
22 project what these customers will use, and we
23 have no idea, they have never been customers
24 for us before. So, we are having to assume

1 that they will be standard water district
2 customers and in standard residential usages.
3 But, in fact, any one of them could use two
4 or three times the standard residential usage
5 and count for multiple customers.

6 HEARING OFFICER SHAPIRO:

7 Well, but that's a chance you take in any case.

8 A Right, exactly, which is why you don't like
9 to calculate it down to that point and try to
10 say you can add one or two more users.

11 HEARING OFFICER SHAPIRO:

12 Well, I'm talking about what would--I'm trying to
13 determine what would be the result of adding 45
14 taps to that line?

15 A Based on these exact numbers, because it is
16 real simply, when I did it for 60 I just went
17 into the model changed it to 30 and
18 recalculated it. I changed it, the one
19 that's hurt to 43 and it hit 30 pounds at
20 that point.

21 HEARING OFFICER SHAPIRO:

22 Okay. At 43 it would be down to the very minimum?

23 A Absolute minimum, and that's if there are no
24 errors anywhere.

1 HEARING OFFICER SHAPIRO:

2 So, at 45 it would be somewhere about the same
3 point?

4 A Worse.

5 HEARING OFFICER SHAPIRO:

6 Yes, but it is not going to make it--

7 A Not much worse.

8 HEARING OFFICER SHAPIRO:

9 Now, how could that be alleviated?

10 A I discussed with the District a parallel
11 line. The problem we have here is 100
12 customers being served on a long four inch
13 line. It does not have the capacity to do
14 that, it loses too much pressure and friction
15 in that line. So, I suggested a parallel
16 line from the entire four inch which would
17 resolve the problem and give everyone
18 reasonable pressure.

19 HEARING OFFICER SHAPIRO:

20 So, you feel comfortable with 30 customers right
21 now on that line, don't you?

22 A I don't know that I would stamp an approval
23 and send in drawings for 30 customers.

24

1 HEARING OFFICER SHAPIRO:

2 Why not, if it is going to be--

3 A Because it is so close that I would think it
4 would require additional review, a little
5 closer look. What I was doing was a
6 preliminary review before receiving their
7 hydraulics.

8 HEARING OFFICER SHAPIRO:

9 What would be a way, without a parallel line, to
10 maintain that pressure? Would a pump--

11 A A--what would be called a hydropneumatic
12 booster pump. There is no provision for an
13 in-line pump in this state that does not
14 discharge to a tank of some sort. So, it
15 would either have to be a pump and a tank or
16 what is called a hydropneumatic tank which is
17 a bladder and closed pressurized tank that
18 the pump pumps to and fills and then that
19 bladder pressurized tank feeds out. If you
20 are familiar with like a home well system or
21 cistern that pumps to a bladder tank that
22 feeds the house. It would be just a large
23 set of those.

24

1 HEARING OFFICER SHAPIRO:

2 And where would be the optimum point to put that
3 tank?

4 A Somewhere north of the site where the
5 pressures had not been drawn down to that
6 point, because the pump would have to run and
7 itself would draw pressures down. So, it
8 would have to be located north of the site so
9 that the--towards the source so that the
10 pressures would not be drawn down too far
11 feeding into that pump station.

12 HEARING OFFICER SHAPIRO:

13 So, it would be below the entrance off of Old
14 Blevins Road?

15 A It would be north of the entrance on Blevins
16 Valley, yes, which would say between the tank
17 and the subdivision on Blevins Valley.

18 HEARING OFFICER SHAPIRO:

19 So, from the tank you could come south down Old
20 Blevins Valley Road and then would enter that
21 subdivision?

22 A Yes.

23 HEARING OFFICER SHAPIRO:

24 So, you would want that in-line--

1 A Booster pump and pneumatic tank.

2 HEARING OFFICER SHAPIRO:

3 --somewhere--

4 A Before the subdivision.

5 HEARING OFFICER SHAPIRO:

6 And if it was large enough--well, what size would
7 you be looking at?

8 A Ten state standards require that the pump be
9 sized at ten times the average demand for
10 those customers. And if we are looking at 60
11 there, an additional maybe 20 existing
12 customers, that's 80, somewhere in the range
13 of a 90 gallon a minute pump.

14 HEARING OFFICER SHAPIRO:

15 Ninety gallon a minute, that's for 60 customers?

16 A Uh-huh.

17 HEARING OFFICER SHAPIRO:

18 But for 45 you wouldn't need it--

19 A Proportionally reduced.

20 HEARING OFFICER SHAPIRO:

21 And what would be--what size would you be looking
22 at 45?

23 A At the 45 with additional 26, about 70 gpm
24 pump.

1 HEARING OFFICER SHAPIRO:

2 And what kind of cost are you talking about?

3 A I recently did one for a 25 gpm and the pump
4 is not a cost--so much of the cost is
5 housing, heating tanks and the rest, it was
6 \$71,000.

7 HEARING OFFICER SHAPIRO:

8 \$71,000?

9 A Serving 12 users.

10 HEARING OFFICER SHAPIRO:

11 But if you were to put a pump in there you would
12 be putting a pump in there for use beyond the
13 subdivision?

14 A It would be for the subdivision and the
15 existing 20 or so that is down there now in
16 that--south of the subdivision area.

17 HEARING OFFICER SHAPIRO:

18 So, would it be fair to say that at this point,
19 without any improvements, a proposal of 30 or 35,
20 I forget the number, of taps along that three inch
21 line, it seems to be at least a reasonable plan
22 without--with the condition that further study
23 might be necessary. Would that be a reason?

24 A Yes, I think you're accurate.

1 HEARING OFFICER SHAPIRO:

2 And that to go to 45 or more, the Water District
3 would require some sort of auxiliary system,
4 either a parallel line or a pump?

5 A Yes.

6 HEARING OFFICER SHAPIRO:

7 Which would be the least expensive, a parallel
8 line or a pump?

9 A I think on just a cost--capital cost basis
10 the pump station would be cheaper. But, of
11 course, you have got the perpetual
12 maintenance and power costs for it. So, I
13 think ultimately the parallel line would be
14 more favorable to the district on a long-term
15 cost basis because of the maintenance cost
16 and the power cost for that pump station.

17 HEARING OFFICER SHAPIRO:

18 That's all I have, any redirect?

19 MR. ROGERS:

20 Yes, sir.

21

22 REDIRECT EXAMINATION

23 BY MR. ROGERS:

24 Q Just to make sure we are clear. Scott, you heard

1 Mr. Sossong's testimony and I think he was
2 politely critical of some of your estimates. Did
3 he say anything to cause you to change your mind
4 as to your calculations?

5 A No.

6 Q Do you feel you have sufficient knowledge as
7 to the distance of the pipes and the
8 diameters of the pipes and the amount of flow
9 and pressures at the pump stations or at your
10 beginning points to make the calculations you
11 did?

12 A Yes.

13 Q Were you the engineer when those things were
14 installed?

15 A Yes.

16 Q Were your calculations based upon principles
17 and formulas that are generally accepted in
18 the engineering community, specifically as to
19 designing hydraulics?

20 A Yes. In fact, the formula we discussed that
21 10 times the square root of C, I looked into
22 the source of that and it was a form we had
23 picked up from the Public Service Commission
24 engineers years ago in determining peak

1 demands for number of customers. So, it is
2 an industry standard.

3 Q The amount of usage per customer in your
4 model, what did it come out to be?

5 A It is the neighborhood of one gallon per
6 minute per user, less--just slightly under
7 one gallon per minute per user.

8 Q And since you have done that model, have you
9 compared that with actual figures from the
10 1999 year?

11 A Yes.

12 Q And how much, if any, were you off?

13 A The customer count was considerably higher
14 from what we had in our initial estimate of
15 it.

16 Q But what did the gallons per minute?

17 A Oh, what we had estimated as an average usage
18 was .12 gpm, and the 1999 averages were .11
19 gpm per user. So 1/100 of a gpm difference.

20 Q Okay. So, the 80 psi reading for the three
21 days in November, is it your testimony that
22 that was not inconsistent with your model?

23 A Yes.

24 Q Yes, it was not?

1 A Yes, it was not, yes. When I ran my model
2 and added the customers I found the low point
3 near the creek had showed 80 pounds in my
4 model and that's what I compared with.

5 Q Now, for a point of clarification here, when
6 you did your model and you said that you--and
7 have reported to the District that you
8 thought 30 customers were acceptable. Are
9 you saying 30 customers in addition to
10 whatever taps they have already granted to
11 Meadowbrook Subdivision or are you just
12 saying 30 for that area that that subdivision
13 is located?

14 A My calculations are based on 30 total
15 customers for that subdivision. That the
16 test was taken November 3 through 5 and it is
17 my understanding at that time seven meters
18 had been set and how many of those were
19 actually utilizing water we are still not
20 certain.

21 Q So, you didn't use any existing customers at
22 the time you did your model? You didn't use
23 any existing subdivision customers in your
24 factor--in your calculations?

1 A No, none.

2 Q So, you are saying 30 total. And is the 30 total
3 is that just for that one little subdivision or
4 are you saying for that entire area?

5 A I'm afraid it is for that area. It has the
6 same effect in drawing the pressures down,
7 all over.

8 Q Right. So, the same effect in drawing the
9 pressures down as in the subdivision or just
10 across the road if somebody wanted to put a
11 house in on the other side of Old State Road
12 or Blevins Valley Road?

13 A Yes, sir.

14 MR. ROGERS:

15 Nothing further.

16 HEARING OFFICER SHAPIRO:

17 Mr. Pinney?

18 MR. PINNEY:

19 Nothing.

20

21 RE CROSS EXAMINATION

22 BY MR. FOX:

23 Q I'm getting confused, Mr. Taylor, with the answers
24 that you are giving us just now. I'm looking at

1 the Answers to Interrogatories and Request for
2 Production of Documents that Mr. Rogers prepared
3 and there were some attachments to that not
4 identified by exhibit number, but what I'm looking
5 at computer generated charts, I think there is a
6 total of three, looks like this?

7 A Yes, sir, I've got them.

8 Q Let the record reflect I think the title of
9 it at the top is "Profile Data Input Range
10 and Parallel Pipe Equivalent Diameter
11 Calculation Table," and it shows a graph of--
12 with XY. And I'm looking at, you've got one
13 of those, you've got the drawing of the Bath
14 County Water District, Meadowbrook
15 Subdivision, there are two of those, then the
16 next page is another one of those similar
17 charts and it's called, "After Meadowbrook
18 Subdivision With 30 Additional Customers."
19 Do you see that?

20 A Okay, yes.

21 Q Do you see the one I'm talking about?

22 A Yes.

23 Q What date did you prepare these calculations?

24 A December 3.

1 Q December 3. And you are telling us now that
2 these calculations exclude the customers that
3 were in place on December 3 in the
4 Meadowbrook Subdivision?

5 A Yes.

6 Q But you had already taken the actual pressure
7 measurements on November 3 and calculated them.
8 And you said that those calculations were right in
9 comparison to the actual measurements they took?

10 A Yes.

11 Q Now, we have added how many customers by
12 December 3?

13 A I don't know. The December--there is no
14 pressure comparisons here made on December 3
15 to know.

16 Q I mean, you tell us that you disregarded a
17 number of customers, how many did you
18 disregard?

19 A Well, I wouldn't say I disregarded, they are
20 in that 30. What I'm showing is if you will
21 see under the customer per note, column 25,
22 40, 20, 10, there are 30 users there where
23 that was zero before, that is 30 new users
24 for the subdivision. That would take into

1 account if there were 10 out there, then that
2 is 10 plus 20 that aren't there.

3 Q Okay. So, this--these calculations don't
4 really have any tie to the actual pressure
5 readings that you took?

6 A Yes, they do. The model--the procedure is to
7 prepare a model based on the existing data,
8 but since you cannot take a pressure reading
9 after the addition of 20 customers or 60
10 customers since they are not there, you have
11 to project what those pressures will be based
12 on what they were at the time that you did
13 have a count and the usage. So, the first
14 letter on December 28 where we--where I
15 included two charts, the first one you will
16 see shows no customers at the subdivision and
17 has at line--at node number three, 80 pounds,
18 and at nodes number four and five, 57 and 55.
19 Those are in the subdivision. The next chart
20 shows 60 customers being added and the
21 pressure is dropping. So, basically, since I
22 cannot measure the pressures today for what
23 60 customers will do to it, I do have the
24 pressures today, or on November 3, for what

1 was going on then and what pressure was then.
2 So, when I plug the model in and it matched
3 that 80 pounds and the flow was just based on
4 customer count and at 10 times greater than C
5 average usage, I get 80 pounds at that point.
6 I add 60 more users and it drops. There is
7 no way to measure unless you go out there,
8 open the hydrant and simulate 60 users
9 drawing peak demand and see what the pressure
10 has become. I know that it is not going to
11 be 80 once you add more users.

12 Q But there were already 13 customers using
13 that on November 5, so there was 82 pounds of
14 pressure, wasn't it, with 13 additional
15 customers already included?

16 A My understanding at the date of that there
17 were seven meters set and they weren't in
18 full water usage, they were not living in the
19 homes utilizing a typical water users amount
20 of water.

21 Q Okay. I mean, you have been here today, you
22 heard both Mr. and Mrs. Hatfield testify, and
23 I asked both of them and there was 13 to 15
24 meters were in use on November 5.

1 A Do you know how much water they used that
2 month?

3 Q No, sir, you would be in a better position to
4 know that than I would.

5 A My understanding is that there were seven and
6 not moved in using the water as a regular
7 customer. So, my usage of that matched that
8 80 pounds at zero new customers.

9 Q Well, all right. Even assuming that you were
10 right and there were only seven, that is 30
11 customers in addition to those seven, right?

12 A I don't believe you can calculate it to that
13 degree.

14 Q Well, you have.

15 A Oh, yes, you could plug in the numbers, but
16 whether you can say surely or not, I don't
17 know. The seven users, to my understanding,
18 and I suppose the record would indicate what
19 they used that month and find out if they
20 were an average user, but in my model I
21 didn't have any users at that point and I
22 matched the 80 pounds. Had I had seven users
23 in that and matched the 80 it would have made
24 a slight difference.

1 Q Okay. So, I think we finally gotten to the
2 crux of it. You didn't calculate for any
3 users at that time, whether it was seven or
4 13?

5 A Correct.

6 Q So, if you had of calculated for the users that
7 were present on November 5, the 30 would be in
8 addition to however many that was, the seven or 13
9 or whatever number?

10 A These calculations, yes.

11 Q Okay, all right. We were looking at these
12 charts that showed the Meadowbrook
13 Subdivision. These charts show elevations,
14 do they not?

15 A Yes, uh-huh.

16 Q Can you tell us where on this chart the water
17 pressure meter was set?

18 A I'm really not certain, I believe it was set off
19 the site on the four inch main above the site.

20 Q Okay. When you say above the site, as I'm
21 looking at it, Blevins Valley Road that this
22 is--

23 A It is north-south.

24 Q --north or south, Blevins Valley Road runs

1 north and south, Old State Road runs east and
2 west, coming south on Blevins Valley Road
3 indicates a four inch PVC pipe and then there
4 is a 780 where the three inch PVC pipe begins
5 to run each way. Does that 780 indicate an
6 elevation of 780 feet?

7 A Yes, uh-huh.

8 Q In that area is that where the pressure meter
9 was set?

10 A I had it figured at a creek north of that
11 site, north of that.

12 Q Can you tell me the elevation of the creek?

13 A 730.

14 Q 730, is that indicated somewhere in these
15 records?

16 A Not that I--not directly, it is shown in the
17 chart at point three, elevation at 730. The
18 chart before--

19 Q Yes?

20 A --shows a point three marked at--I guess the three
21 is not labeled on it, 730 just above the 780, that
22 represents that point that you were talking about
23 in the subdivision.

24 Q I see. It is--can you show me where your

1 point? 750?

2 A It should be 30.

3 Q I'll show you a larger copy of it there, 750?

4 A 730.

5 Q Just so the record will reflect what we are
6 doing, we are looking at your chart, the
7 computer generated charts which, I guess,
8 correlate the number, elevation, customer
9 node, columns, the elevations for each number
10 which is charted on that graph correspond
11 with that hand drawn; is that right?

12 A Yes.

13 Q So, that is clear, right?

14 A Yes. And my bad handwriting, that is a 730,
15 here is the original.

16 Q Can you see that?

17 A Yes, I can see how you can construe 750, yes,
18 the blur of the copy it looks like.

19 Q Have you done--do you--are--strike all that. Are
20 you aware that additional customers have been
21 added since November 5 and December 3

22 A Yes.

23 Q Have you undertaken to do additional studies
24 to see what the impact of those additional

1 customers have been on the pressure?

2 A No.

3 Q Why not?

4 A I have not been asked to.

5 Q Okay. Is there a formula or a, basically, a
6 rule of thumb that would indicate how much
7 pressure you will lose per linear foot as the
8 elevation drops per foot?

9 A Yes.

10 Q What is that?

11 A That one foot, or one psi of pressure is
12 equal to 2.306 feet of elevation. So, for
13 every 2.306 feet you rise in grade your
14 pressure would drop one psi.

15 Q Roughly two to one?

16 A 2.3 to one.

17 Q Oh, 2.3. So, if you go 10 foot--23 feet you
18 are going to drop 10 pounds of pressure?

19 A Ten pounds.

20 Q Okay. Well, in looking at that chart you
21 indicate that point number 3 is where the
22 water pressure is meeting the meter. And
23 that would have been at elevation of 750--

24 A 730.

1 Q --beg your pardon, 730--then what was the
2 elevation at point number four?

3 A 780.

4 Q So, that's a 30--what is that 30 foot?

5 A 50.

6 Q A 50 foot drop. What would you expect would
7 be the loss of pressure on 50 feet?

8 A To rise 50 feet in elevation like that?

9 Q Yes.

10 A I can't do the math too well, 22 pounds or
11 something, 50 divided by 2.3. But keep in--
12 on this chart you will notice that the line
13 drawn here is not horizontal, that not only
14 have you risen in elevation but you have lost
15 pressure in the main.

16 Q This is a declining line showing declining
17 pressure?

18 A Yes, right. So when you are asking that
19 question about how many feet and all that,
20 that is really static pressure water not
21 moving.

22 MR. FOX:

23 I see. Alright. No further questions.

24

1 MR. ROGERS:

2 Nothing further.

3 HEARING OFFICER SHAPIRO:

4 Thank you Mr. Taylor.

5 MR. ROGERS:

6 There is nothing further for the District, Your
7 Honor.

8 MR. FOX:

9 Nothing else further from the Hatfields Your
10 Honor.

11 HEARING OFFICER SHAPIRO:

12 We'll take about five minutes and then we will
13 wrap it up.

14 (OFF THE RECORD)

15 HEARING OFFICER SHAPIRO:

16 Okay, back on the record. In an off the record
17 discussion the parties have indicated that they
18 wish to file briefs in this matter and also make
19 closing statements. The briefs will be due 20
20 days from the date the transcript is filed and the
21 briefs will be filed simultaneously. We will
22 begin the closing arguments with the defendant,
23 Bath County Water District.

24

1 MR. ROGERS:

2 Thank you, Your Honor. Mr. Fox, Judge, as a brief
3 summation today I guess I look back to our
4 Response to Interrogatories where the question was
5 asked, state with specificity the basis for the
6 defendant's denial of the complainant's request
7 for water service. There has been a denial here
8 or a refusal to accept an extension, not a denial
9 of water service. And for one reason completed
10 plans weren't presented until after, and I want to
11 point something out because a lot of what was
12 filed on behalf of the District was documentary
13 evidence, but if you will note that in mid-
14 December the Division of Water reimposed a water
15 extension ban on this District. And there had not
16 been completed plans submitted by that date.
17 Further, the complainants here, the Hatfields, did
18 not when they learned that there were concerns
19 over these deficiencies in water pressure or
20 deficiencies in the system in this area did not
21 take it upon themselves to have their own study
22 done to provide assurances to this district that
23 they weren't jeopardizing other clients by
24 accepting the three inch water main. The District

1 contacted its own engineer and asked for a model
2 to be done, but the complainants here do nothing
3 but pick and challenge the District's Engineer as
4 if he has some bias or some reason to be against
5 them on this. I point out that the District is in
6 the business of selling water and desires to sell
7 water. But we can't jeopardize our existing
8 customers in the name of growth. We have to
9 protect the customers we have. The District is
10 being proactive, they have applied for grants in
11 the past year or so that were granted and
12 constituted upgrades. They are applying for
13 grants now that will pay for upgrades to their
14 system and, hopefully, they can resolve this
15 situation in Blevins Valley. At what point in
16 time that will occur I don't know. Also, they are
17 working together with Rowan County, the City of
18 Morehead, the City of Owingsville and Frenchburg
19 to all come together to build a bigger water
20 treatment plant to have more water to sell. But
21 they are over their capacity and I would point
22 out, yes, the City of Morehead has been very
23 tolerate with this District over the past years as
24 to the amount--as to the District going over their

1 allotted capacity. This past year when the
2 drought hit the City of Morehead, as Judge Fawns
3 testified, said, guys, if it gets much worse we
4 are going to have to start cutting you all back to
5 protect ourselves, because it is their plant. And
6 that is a concern that the District had, that is a
7 concern that ferried on up to the Division of
8 Water. It is one of the considerations that the
9 Division of Water has considered when they have
10 imposed the extension ban. But the real concern
11 here is the limited facilities. I mean, that is
12 what it boils down to, the limited capacity to
13 carry the water to this subdivision without
14 hurting the other customers. And Mr. Taylor has
15 given an opinion that, yeah, we can carry 30 more
16 customers. And I wanted you to understand that
17 and that's why I asked him on redirect, are you
18 saying just 30 more customers for this subdivision
19 or this area. I think the court's questioning was
20 going toward shouldn't there be a resolution here
21 that the Hatfields will agree only to 30 customers
22 in that subdivision. That does, on its face,
23 sound like a reasonable alternative and it is
24 something that was actually discussed since this

1 litigation began and since we went to the
2 prehearing conference. But I can tell you in my
3 discussions with the Board their concerns were
4 over that, based upon Mr. Taylor's testimony, is
5 that we only have 30 more or in that range,
6 customers we can allow in that whole area, not
7 just that subdivision. And you heard testimony
8 that Mr. Taylor(sic) has come in and bought 18
9 meters as if to get in line before anyone else
10 regardless of whether or not the house is ready or
11 the property is ready to be served. Now, what
12 happens to this District if right across the road
13 from this subdivision a young couple comes in,
14 buys a lot, not in the subdivision, builds their
15 home, has it completed and is ready to move in and
16 says we need water. And this District has already
17 sold all of its meters to the Hatfields even
18 though they are not using them. Do we have to
19 turn down that person? That is a concern this
20 District has with accepting the limited number.
21 We don't want to allot everything to one customer
22 even though they are not going to use it. And
23 that is a big concern that we have.
24

1 HEARING OFFICER SHAPIRO:

2 Can I ask you something about that?

3 MR. ROGERS:

4 Yes, sir.

5 HEARING OFFICER SHAPIRO:

6 I was wondering about that. If he purchases 18--
7 let's say he purchases 30 meters and the meters
8 are set, then those meters start producing revenue
9 right away, don't they?

10 MR. ROGERS:

11 Yes, they do.

12 HEARING OFFICER SHAPIRO:

13 Because there is a minimum bill?

14 MR. ROGERS:

15 Assuming--yes, assuming they are set and in use,
16 yes.

17 HEARING OFFICER SHAPIRO:

18 So, it is not--so if someone else comes along and
19 says I want--I mean, when people come along and
20 say I want service, essentially, there is--you are
21 saying there is 30 more spots open along that
22 route?

23

24

1 MR. ROGERS:

2 Right.

3 HEARING OFFICER SHAPIRO:

4 How were those spots given out? Are they given
5 out on the basis of areas or are they given out on
6 first come first served basis?

7 MR. ROGERS:

8 First come first served. And let me back up and
9 say something else, Judge. Just because he has
10 purchased some meters doesn't mean it is set. I
11 think if you will recall from the testimony Mr.
12 Hatfield says he hasn't even gotten the plumbing
13 permit yet which has to be acquired before the
14 meter can be set because he doesn't even know
15 which lot he is going to be put that meter on. He
16 hasn't--either he hasn't sold it or someone hasn't
17 built on it, I don't know. I'm not sure, he said
18 he had plans to use them. But he hasn't directed
19 the District as to where to locate the meter. He
20 has only purchased the meter.

21 HEARING OFFICER SHAPIRO:

22 Well, let me ask you another question then. Let's
23 assume that he says, okay, I want a meter at this
24 particular location.

1 MR. ROGERS:

2 Yes, sir.

3 HEARING OFFICER SHAPIRO:

4 Why can't that meter be placed along on that three
5 inch line rather than at the road if it is going--
6 putting it at the road is going to require, say, a
7 1,000 foot extension?

8 MR. ROGERS:

9 I understand.

10 HEARING OFFICER SHAPIRO:

11 Is it because of the fear that if you take over
12 the--if you do that you will have to take over the
13 line?

14 MR. ROGERS:

15 Exactly. The concern for the District has been
16 from the get go is if we accept the three inch
17 line then every--any customer or any lot that is
18 sold along that three inch line we are going to
19 have to set a meter for. Regardless--and we have
20 no way to control it, we have no way to control
21 the growth And it is going to hurt our existing
22 customers.

23 HEARING OFFICER SHAPIRO:

24 But that is the concern?

1 MR. ROGERS:

2 That is the concern.

3 HEARING OFFICER SHAPIRO:

4 If that concern were eliminated, what would be the
5 objection to putting it on a three inch line;
6 would there be any?

7 MR. ROGERS:

8 I cannot tell you there would be, I would not see
9 an objection to accepting the three inch line so
10 long as we can limit the growth.

11 HEARING OFFICER SHAPIRO:

12 I can understand why you don't want to accept this
13 three inch line but--to a certain extent, but if
14 you accept the three inch line and you get--let's
15 say you get 40 applications, what happens if you
16 get 40 applications now along Blevins and the Old
17 State Road, whatever--Blevins Valley and Old State
18 Road--I'll have it by the end of the day--if you
19 get 40 applications you are going to fill those
20 applications on the first come first served bases;
21 right?

22 MR. ROGERS:

23 Right.

24

1 HEARING OFFICER SHAPIRO:

2 What would be the difference what happens when you
3 get to number 30, when you get number 31, what do
4 you do then? Do you--I mean--

5 MR. ROGERS:

6 I don't know. I mean, we are trying to prevent
7 getting to that point by accepting this three inch
8 line but, yes, if somebody comes in, if they want
9 to put 40 houses right along Old State and Blevins
10 Valley Road and set meters right away, we are
11 going to be in another dilemma because we have got
12 to decide are we going to stop at some point even
13 though it is contrary to PSC reg, but at some
14 point it is a catch 22 for us. We either stop
15 setting meters which violates PSC reg or we keep
16 setting meters and we go right over and our psi
17 drops below 30 and we violate another PSC reg. It
18 is a catch 22 for us and, fortunately, we haven't
19 got to that point and we are trying to keep from
20 getting to that point within reason.

21 HEARING OFFICER SHAPIRO:

22 So, it is your position at this point, at least it
23 is our understanding of your requirement that--of
24 the regulations that if you get 40 requests for

1 meters along Blevins Valley Road, because you have
2 a main there, you have no choice except to provide
3 them, even though in doing so you will not be able
4 to maintain the pressure standards that the
5 regulations require?

6 MR. ROGERS:

7 At this point in time--

8 HEARING OFFICER SHAPIRO:

9 Is that your understanding, I'm not--

10 MR. ROGERS:

11 My understanding is that if we got to that point
12 I'm sure the Board would look to me and say what--
13 lawyer, what are we going to do? And I'll tell
14 you what I would tell them.

15 HEARING OFFICER SHAPIRO:

16 What are you going to tell them?

17 MR. ROGERS:

18 Yes, I would tell them--my advice to the Board
19 would be no more meters at that point in time.
20 Right or wrong that's--I'm telling you that is
21 what I would tell them to do whether they would do
22 it or not, because I believe the first obligation
23 is to existing customers.
24

1 HEARING OFFICER SHAPIRO:

2 Do you think that is a course that you can give
3 them as a valid course or is that something that
4 you are just offering that as a matter of
5 practicality?

6 MR. ROGERS:

7 Your Honor, I'm not sure I understand your
8 question.

9 HEARING OFFICER SHAPIRO:

10 Okay. Are you saying that the Board has the
11 authority to do that or do you--or are you saying
12 that the Board has no choice but to do that and
13 violate the law?

14 MR. ROGERS:

15 I would say, in my opinion, they would have no
16 choice because they would be violating the law
17 either way they go. And it would appear to me to
18 be--it would appear to me to be, I mean, as a
19 practical matter, if it is a violation of the law
20 either way you go your first option is to protect
21 your existing customers. I may be wrong Your
22 Honor. I need--I find no authority as to which
23 one has priority. But, fortunately, we haven't
24 gotten to that point but that very well may be

1 something that is coming up. I mean, from what I
2 understand there is a possibility somebody else is
3 wanting to build another subdivision in that area.
4 So, you know, this District is trying to get their
5 facilities upgraded to where we can serve that
6 area, but until that happens we are going to be in
7 a tight situation. And I'm not sure how--I'm
8 telling you how I would advise them. From your
9 tone I think you--

10 HEARING OFFICER SHAPIRO:

11 No, I'm asking you.

12 MR. ROGERS:

13 --I think you disagree, but--

14 HEARING OFFICER SHAPIRO:

15 No, I'm not sure I do, I'm just trying to--I'm
16 asking you what your position would be, what the
17 position of the Water District would be. I'm not
18 sure what the law is in this area either, I mean,
19 this is a new issue for me too. I don't know what
20 you are required to do at this point under those
21 circumstances. But I'm trying to figure out from
22 you what your position would be under those
23 circumstances and you don't know either?
24

1 MR. ROGERS:

2 I don't know either, I've told you what I would
3 advise the Board to do.

4 HEARING OFFICER SHAPIRO:

5 At this point?

6 MR. ROGERS:

7 At this point, assuming--

8 HEARING OFFICER SHAPIRO:

9 You don't know whether you will ever get to that?

10 MR. ROGERS:

11 I hope we never get to that.

12 HEARING OFFICER SHAPIRO:

13 Go ahead, finish your argument then.

14 MR. ROGERS:

15 Well, if you couldn't tell already I was sort of
16 speaking what I thought and I guess my point is
17 this, you know, I'm not unsympathetic to the
18 Hatfield's problem, but it is a situation where we
19 have to look out for existing customers.
20 Hopefully, this situation can be corrected but
21 until it is we have--I think it is in the best
22 interest of the District and their existing
23 customer base to not accept this three inch
24 extension, you know, unless there is some way that

1 this can be restricted. And I'm not sure what the
2 answer is here. But this Board has taken the only
3 course they know to do to protect themselves and
4 their existing customer base at this point. Thank
5 you Judge.

6 HEARING OFFICER SHAPIRO:

7 Thank you. Mr. Fox.

8 MR. FOX:

9 I guess I disagree in part with Mr. Rogers in that
10 not only do they have an obligation to their
11 existing customers, they have got an obligation to
12 provide service to qualified applicants when they
13 can provide the water service. They can provide
14 this service. There is not any evidence to the
15 contrary. They can do it. And they have known
16 since November of 1999 that there is adequate
17 pressure to provide service in this subdivision.
18 They have known that for six months.

19 HEARING OFFICER SHAPIRO:

20 Yes, but he is saying that if he provides service
21 to more than 30 customers then they cannot
22 maintain the standards that are set by state
23 regulations.

24

1 MR. FOX:

2 Okay, if that is true--

3 HEARING OFFICER SHAPIRO:

4 So, what happens when you get to number 31?

5 MR. FOX:

6 A lot of things happens before you get to number
7 one. Number one, people get their water service.
8 This is an assumption that has been made that
9 customer number 31 causes the problem. We are
10 dealing with prospective complaints. They are
11 denying service to these people because they think
12 that it is going to be a problem when they get to
13 number 31. They may be right. But until you get
14 to number 31 they are violating their duty and the
15 reason for existence by not giving them water.
16 These are actual people that need water. So, yes,
17 when you come to 31, if I was in Mr. Roger's
18 position, I'd probably say the same thing to the
19 Bath County Water District. You have got a duty
20 to all of the people that we have said we are
21 going to provide you water, people are living in
22 these houses. And if we allow 31, 32, 33 to come
23 on to this system, everybody's pressure is going
24 to go down and we are not doing a good job for

1 anybody. I need to read, I guess, that regulation
2 that says they have to give it to anybody that
3 asks that is on a main. But, you know, that is
4 the second point. That problem exists today, not
5 when 31 customers are on that Meadowbrook
6 Subdivision.

7 HEARING OFFICER SHAPIRO:

8 It does along Blevins Valley Road and Old State
9 Road.

10 MR. FOX:

11 That's right.

12 HEARING OFFICER SHAPIRO:

13 And they say it is their policy to provide water
14 service to customers who request that service on a
15 first come first serve basis. But they are also
16 saying that they don't want to extend the system
17 in that area at this point because they don't
18 believe it could--they feel they--they believe
19 they only have about 30 more spots available at
20 this time. If they go--if they extend it further
21 --well, wait a minute. If they extend it further
22 they are going to make--they are going to open the
23 market--they are going to open themselves up to
24 potentially more customers than are out there

1 right now. So, they are concerned about that,
2 because they say they don't have the capacity or
3 the ability to provide that service to more than
4 30 customers. So--and they are saying that this,
5 in effect, is an extension because what they are
6 going to do is, it is not simply putting a tap in
7 there for somebody along Old Blevins Road or Old
8 State Road. They are actually going to put a new
9 line that will have taps off of it as well. So,
10 what happens--so does their obligation, their
11 current obligation, require them to put in an
12 extension of service off of those existing mains
13 in order to serve this subdivision and when, in
14 fact, it may put them beyond their capacity.

15 MR. FOX:

16 But it won't. I mean, their people are telling
17 them that it won't. I mean, this couple has--

18 HEARING OFFICER SHAPIRO:

19 They are telling them that it won't serve--it
20 won't put them beyond their capacity with the 30
21 taps.

22 MR. FOX:

23 Right.

24

1 HEARING OFFICER SHAPIRO:

2 But they are also saying it is 30 taps for the
3 entire area.

4 MR. FOX:

5 Okay. Well, it may be so. But what are they in
6 essence saying? They are saying all right, we
7 think that in the future Mr. and Mrs. Jane Doe may
8 buy a house down on the lower end of Old State
9 Road. So, because we think that might happen four
10 or five years from now, we are not going to sell--
11 we are not going to let this customer install the
12 meters on property that they are selling to Mr. and
13 Mrs. John Smith that want to live in Meadowbrook
14 Subdivision. And those people want to live there
15 now, they have lost some sales because of this.

16 HEARING OFFICER SHAPIRO:

17 Well, what I'm saying is I'm seeing the distinction
18 here, though, between the customers who put their
19 taps on Old State Road and Blevins Valley Road and
20 the customers who want to tap on to a new line--a
21 new main that would be running off of those two
22 roads.

23 MR. FOX:

24 They are not making a distinction. They are

1 requiring this couple to run thousand foot service
2 lines off of Old State Road and Blevins Road to
3 houses that are located in the interior of that
4 subdivision.

5 HEARING OFFICER SHAPIRO:

6 Right, because they saying they don't want it to
7 attach to a new extension.

8 MR. FOX:

9 Right. But this--if they are so concerned about
10 that three inch line being considered a main line
11 extension, why are they not saying, okay, you all
12 agree to not make it main line extension and we
13 will service up to 30 people. I mean, they are not
14 going to the extent that they need to go to solve
15 the problem. I mean, we heard Mr. Fawns testify,
16 you know, we can't serve 75 meters out there so we
17 are not going to do any of them.

18 HEARING OFFICER SHAPIRO:

19 Okay. Let me ask both of you a question. Assuming
20 it can be done, and I don't know whether it can be,
21 but let's say the--you know, we are talking about
22 practical effect and we are also talking about the
23 legal effect here. And it doesn't seem to make a
24 lot of sense to run a line from the highway when

1 you can run it from an existing main a lot cheaper
2 and a lot more efficiently. I mean, everybody--I
3 think we can all agree on that, from what I've
4 heard. The concern that you all have, though, is
5 if that is considered an extension, then that is
6 going to increase the obligation of the Water
7 District. But what if it wasn't considered an
8 extension, what if it was treated as if--well,
9 let's--what if the water line--that line remained
10 the property, for example, of the developer, but an
11 exception were made to allow the meter to be placed
12 upon that line. Then it would be back to the first
13 come first serve basis. In other words, whoever
14 comes along first will get on that system. Now,
15 when you reach the maximum point where you no
16 longer can meet the regulations, then you have to
17 cross that bridge when you come to it. Wouldn't
18 that put you in the same position you are in today?

19 MR. ROGERS:

20 I believe so, I'm not sure I can answer that.

21 HEARING OFFICER SHAPIRO:

22 What do you think Mr. Fox?

23 MR. FOX:

24 Yes, I think they would be in the same position,

1 because what they are saying and arguing is that we
2 have to add 30 customers on Old State Road or
3 Blevins Valley Road if they just come and ask. The
4 difference is that the Hatfields own the
5 subdivision. They have got a nice--better
6 situation with this three inch line, that the Water
7 District doesn't want to adopt because they are
8 afraid of what might happen in the future. And
9 that is just simply not fair. And if that three
10 inch water line is essentially the same as those
11 service lines that they have been required to--they
12 have run two systems in this development, service
13 lines and the three inch line. But if they don't
14 have a problem with a 1,000 feet of one inch lines
15 how--

16 HEARING OFFICER SHAPIRO:

17 Well, they don't have a problem with it because it
18 is not their problem. Their problem is up to the
19 meter.

20 MR. FOX:

21 Well, but it is a better situation to have these
22 meters coming off a three inch line.

23 HEARING OFFICER SHAPIRO:

24 Well, I think from a practical standpoint everybody

1 agrees on that. But they are just concerned about
2 the extension.

3 MR. FOX:

4 But it has been approved by the Division of Water
5 as an extension. It has been approved, it has been
6 approved for five months.

7 HEARING OFFICER SHAPIRO:

8 But it has not been approved by the Board.

9 MR. FOX:

10 No, and the reason--

11 HEARING OFFICER SHAPIRO:

12 But are they are required to approve every
13 extension that is offered to them?

14 MR. FOX:

15 But what are the stated reasons? We don't have
16 enough pressure, we don't have enough water. But
17 their witnesses say, yes, we've got enough
18 pressure. And the question about whether there is
19 not enough water, apparently there has not been a
20 question for the past five or six years.

21 HEARING OFFICER SHAPIRO:

22 Well, there is a question about them not having
23 enough. I mean, they don't have enough, if they do
24 that then they in a sense they don't have enough to

1 extend the whole area. At least that is their
2 argument.

3 MR. FOX:

4 But you serve the people who want the service now,
5 let's not wait ten years to see if somebody might
6 move down the road. There are people who want to
7 live there now. There are people that are living
8 there now that were living there this winter that
9 had no water because the lines were frozen and went
10 for two weeks without water. There are people who
11 wanted to buy these lots and they had to cancel the
12 closing because they had no water. Those people
13 exist today. It is not a mythical speculative
14 couple that lives down the road five years from
15 now. They have the ability and the capacity to
16 serve customers in that subdivision today. They
17 have had that ability and capacity for the last
18 five months and they have not done it.

19 HEARING OFFICER SHAPIRO:

20 Well, let me make a suggestion to both of you. Why
21 don't you address the issue in your briefs, these
22 issues in your brief. Number one, what obligation
23 will the Water District face when the number of
24 customers that are requesting service exceed the

1 ability of the Water District to provide that
2 service in conformity with the Commission's
3 Regulations and Standards. Number two, what--
4 number two, does the Water District have to accept
5 the three inch line as an extension in order to
6 allow the meter to be placed on that three inch
7 line. And address any other issues you think of.
8 Can you work that out?

9 MR. FOX:

10 For the life of me, I don't think that I'm
11 conveying my--

12 HEARING OFFICER SHAPIRO:

13 I understand what you are saying, but I also
14 understand what they are saying, and I don't know
15 how--at this point I would like--I think it would
16 be helpful if we had your views on how the law
17 applies.

18 MR. FOX:

19 I guess that my consternation is that I don't
20 understand the argument that, yes, we have the
21 ability to provide water to customers today and
22 provide it with adequate pressure and we don't want
23 to do that because we are afraid that sometime in
24 the future somebody else may come along and want

1 service and we have to turn them down.

2 HEARING OFFICER SHAPIRO:

3 Well, I think you can address that as well in your
4 brief, is that a valid argument or what is their
5 obligation under those circumstances.

6 MR. ROGERS:

7 We have 20 days in which to file our briefs and did
8 you say that--

9 HEARING OFFICER SHAPIRO:

10 Well, it's 20 days from the date that the
11 transcript is filed.

12 MR. ROGERS:

13 Will we receive copies of the transcripts

14 HEARING OFFICER SHAPIRO:

15 You will have to make arrangements with the court
16 reporter for that.

17 MR. ROGERS:

18 Okay.

19 HEARING OFFICER SHAPIRO:

20 She can actually tell you the day they will be
21 filed.

22 MR. FOX:

23 If Mr. Rogers and I discuss it, obviously we
24 haven't, but if we agree to do it earlier than

1 that, in other words, I don't--I'm sitting here
2 wondering whether we need the transcript to discuss
3 these issues.

4 MR. ROGERS:

5 That's probably true.

6 HEARING OFFICER SHAPIRO:

7 Well, I think you might want it for the rest of the
8 issues, but that's fine. You can review those
9 issues or address those issues without the
10 transcript though. That's up to you. If you
11 decide you want to file them early, yes, you can
12 file them earlier. But you will have 20 days.

13 MR. ROGERS:

14 That will be fine.

15 HEARING OFFICER SHAPIRO:

16 Anything else?

17 MR. ROGERS:

18 No, sir.

19 HEARING OFFICER SHAPIRO:

20 The hearing is adjourned.

21 (OFF THE RECORD)

22

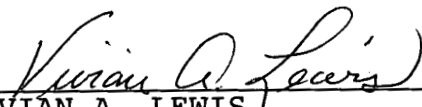
23

1 CERTIFICATE

2
3 STATE OF KENTUCKY)
4 COUNTY OF FRANKLIN)
5

6 I, VIVIAN A. LEWIS, a Notary Public in and
7 for the state and county aforesaid, do hereby certify
8 that the foregoing testimony was taken by me at the
9 time and place and for the purpose previously stated in
10 the caption; that the witnesses were duly sworn before
11 giving testimony; that said testimony was first taken
12 down in shorthand by me and later transcribed, under my
13 direction, and that the foregoing is, to the best of my
14 ability, a true, correct and complete record of all
15 testimony in the above styled cause of action.

16 WITNESS my hand and seal of office at
17 Frankfort, Kentucky, on this the 25th day of April,
18 2000.
19

20
21 
22 VIVIAN A. LEWIS
23 Notary Public
24 Kentucky State-at-Large
25
26
27

28 My commission expires: 7-23-01

Vivian A. Lewis

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