

*General Mill Supply Co v.
The Great Lakes Water Authority*

*Bart Foster
January 14, 2021*

*Judy Jettke & Associates
Court Reporting and Video*

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

GENERAL MILL SUPPLY CO.,
Individually and on behalf of a
Class of similarly situated
persons and entities,

Plaintiff,

vs. Case No.: 18-011569-CZ
Honorable Kevin Cox

THE GREAT LAKES WATER AUTHORITY,
an incorporated municipal authority,
and

CITY OF DETROIT, a municipal corporation,
by and through its WATER AND SEWERAGE
DEPARTMENT,

Defendants.

DEPOSITION OF BART FOSTER

Taken by the Plaintiff on Thursday, January 14, 2021,
via Zoom Video Conferencing, commencing at 10:00 a.m.

APPEARANCES:

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APPEARANCES CONTINUED:

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1 Via Zoom Video Conferencing
2 Thursday, January 14, 2021 - 10:00 a.m.
3 BART FOSTER,
4 HAVING BEEN CALLED BY THE DEFENDANT AND SWORN:
5 EXAMINATION
6 BY MR. HANLEY:
7 Q Morning, Mr. Foster. You have been kind enough to
8 appear for the deposition without a subpoena.
9 Are you generally familiar with the fact that
10 this case involves a challenge to industrial waste
11 control charges that have been imposed historically by
12 either Detroit or The Great Lakes Water Authority?
13 A Yes.
14 Q All right, and for shorthand purposes, would it be
15 appropriate for me to refer to the Detroit Water and
16 Sewer Department as DWSD?
17 A Yes.
18 Q And would it be similarly appropriate for me to refer
19 to The Great Lakes Water Authority as GLWA?
20 A Or G-L-W-A. Either one, yes.
21 Q Okay, thanks. Do you currently do work for either DWSD
22 or GLWA?
23 A For GLWA, yes.
24 Q I'm not going to go into great detail, but what
25 generally is the nature of your work for GLWA,

Page 5

1 currently?

2 **A We are engaged to assist in financial- and**

3 **business-related matters. One of the key deliverables**

4 **being proposed water and sewer charges and rates.**

5 Q All right. Have you been involved in Cost of Service

6 Studies or Revenue Requirement Analysis that touch upon

7 IWC charges for the coming fiscal year?

8 **A For the coming -- yes.**

9 Q Okay, and just so that everybody understands, when I

10 refer to IWC charges, we're referring to the industrial

11 waste control charges that are at issue in the case,

12 correct?

13 **A Correct.**

14 Q All right. Is that analysis ongoing or has it been

15 completed for Fiscal Year '22?

16 **A There is a report with recommended IWC charges that**

17 **actually was issued last week.**

18 Q Okay.

19 **A And a slightly modified report without any changes to**

20 **the IWC charges was issued yesterday, and it is my**

21 **understanding that report will be public as of**

22 **tomorrow.**

23 Q Okay, and you understand what a Cost of Service Study

24 is?

25 **A Yes.**

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1 Q Did you perform a, for Fiscal Year '22, did you perform

2 a Cost of Service Study for the IWC charges?

3 **A We performed a Cost of Service Study for all of the**

4 **sewer charges, including the IWC charges, yes.**

5 Q Okay, and the reason I ask is, is I understand that for

6 Fiscal Year 2021, which is the current fiscal year, as

7 it relates to IWC charges, there was kind of an

8 across-the-board 3.5 percent increase in the Revenue

9 Requirement and, therefore, there wasn't I guess what

10 you'd call a full-blown Cost of Service Study; would

11 that be fair to say?

12 **A That's fair to say, yes.**

13 Q All right, but in this coming, for the coming fiscal

14 year, beginning July 1st of 2021, there was an actual

15 Cost of Service Study?

16 **A That's correct.**

17 Q And can you describe for me whether the recommendations

18 in that Cost of Service Study as it relates to IWC

19 charges, whether the Revenue Requirement went up, when

20 down, stayed the same?

21 **A I can look it up, but my recollection is that the IWC**

22 **Revenue Requirement increases by three plus percent, in**

23 **the three percent range.**

24 Q Okay. All right, and we can get that from public

25 sources.

Page 7

1 All right. Anything else other than what

2 you've described that's going on currently for GLWA or

3 DWSD?

4 **A I'm sorry, in terms of?**

5 Q In terms of ongoing work.

6 **A Well, I'm not engaged directly by DWSD, so there's not**

7 **anything other than coordination between GLWA and DWSD**

8 **that I'm involved in, that I'm engaged by DWSD for. I**

9 **am involved in conversations with the CFOs of both**

10 **organizations just because they're so closely aligned**

11 **in their business practices. I'm engaged by GLWA in**

12 **addition to the charges, as I mentioned, just in**

13 **routine business elements, including occasional**

14 **feasibility studies for issuances of debt.**

15 Q Okay. Have you been retained as a testifying expert in

16 this case?

17 **A Not specifically. My contract is fairly general.**

18 Q I guess what I'm saying is as part of your work for

19 GLWA or DWSD, I understand how limited DWSD has been,

20 but have you been retained to prepare or author

21 opinions in this case, to your knowledge?

22 **A Not directly, no.**

23 Q All right. So, what I mean by that is have you

24 evaluated the reasonableness of the IWC rates and

25 charges to address the allegations that we're making in

Page 8

1 our case?

2 **A The nature of our cost of service work evaluates the**

3 **reasonableness of assumptions for all the rates and**

4 **charges that are produced. Beyond that, no.**

5 Q Okay, and what I mean by that is you have performed

6 certain Cost of Service Studies in the past that have

7 recommended certain revenue requirements for the IWC

8 charges, correct?

9 **A That's correct.**

10 Q And that is contemporaneous during the time periods you

11 were looking at, correct?

12 **A Yes.**

13 Q And so I guess what I'm getting at is since this

14 lawsuit has been filed, and now it's been pending for a

15 couple of years, have you been independently engaged to

16 go back and do a retrospective analysis as to whether

17 the rates and charges for IWC have been reasonable or

18 appropriate?

19 **A No, we've been, as part of our assistance in preparing**

20 **documents and providing documents for discovery, we've**

21 **been engaged to summarize what was done each year**

22 **without really making any -- and simply to produce the**

23 **rationale and the underlying figures that went into the**

24 **historical IWC charges.**

25 Q Okay, and we're going to get into that. I'm just

Page 9

1 trying to understand whether you've been retained to
2 opine as to the reasonableness or appropriateness of
3 those charges.
4 Let's start with some basics to make sure
5 that we can understand, that we're on the same ground
6 in terms of some defined terms.
7 You understand the term, "Revenue
8 Requirement"?

9 **A Yes.**

10 **Q** And if you were explaining Revenue Requirement to a
11 layman, how would you describe what a Revenue
12 Requirement is?

13 **A Budgeted operating and other expenditures, including**
14 **capital recovery that must be generated from rates,**
15 **charges, and fees from customers.**

16 **Q** Okay. So, you'd agree with me that determining the
17 Revenue Requirement is a component of establishing the
18 ultimate rates and charges?

19 **A Yes.**

20 **Q** And would you agree with me that determining a Revenue
21 Requirement is a prospective exercise in the sense that
22 you are using budgeted but not necessarily actual
23 numbers?

24 **A Yes.**

25 **Q** All right, but you'd agree with me that it's

Page 10

1 appropriate to use the most accurate estimate of the
2 amount of each of the cost components, correct?

3 **A Yes.**

4 **Q** And if the amount of a particular cost is known or
5 fairly estimable, you should use that amount in
6 determining the revenue requirements, correct?

7 **A Yes.**

8 **Q** And it would be, from a rate-making standpoint, it
9 would be inappropriate to use a cost amount that's
10 materially higher or lower than the expected or known
11 amount, correct?

12 **A Correct.**

13 **Q** So, to make it concrete in our example, one of the
14 components of costs that a municipal utility might have
15 is debt service, correct?

16 **A Correct.**

17 **Q** And debt service consists of principle and interest on
18 debt which, for example, a bond, correct?

19 **A Yes.**

20 **Q** So, you know from an amortization schedule what that
21 debt service is going to be in the coming period when
22 you're determining Revenue Requirements, correct?

23 **A Generally.**

24 **Q** Right.

25 **A Always have the opportunity for variable rate notes and**

Page 11

1 **whatnot and projections for issues that, for new issues**
2 **that may not be accurate.**

3 **Q** But, in general, debt service cost is something that is
4 fairly estimable for coming periods, correct?

5 **A Fairly estimable, yes.**

6 **Q** All right. So, if, for example, you know debt service
7 cost in a future period are estimated to be a million
8 dollars, you wouldn't use three million dollars as that
9 cost component in your Revenue Requirement analysis,
10 correct?

11 **A I'll cede the point for purposes of the discussion,**
12 **yeah.**

13 **Q** All right, and the same would go for other costs. You
14 know, personnel cost is a component of a municipal
15 utilities overall cost, correct?

16 **A Correct.**

17 **Q** People that work for the utilities, and those personnel
18 costs are largely dependent upon the number of
19 employees and the compensation to be earned by each of
20 those employees?

21 **A Correct.**

22 **Q** All right, and so again as in debt service, if you know
23 there's 20 employees and they all have compensation of
24 \$50,000 a year, you'd use a million dollars as your
25 estimated personnel cost for the Revenue Requirement,

Page 12

1 correct?

2 **A Well, in general. I mean, really for purposes of the**
3 **Revenue Requirement, one would rely on whatever**
4 **strategies were put together to develop the budget by**
5 **the organization.**

6 **I'm not suggesting anything different than**
7 **what you described, but to the extent that those**
8 **budgets had other considerations in personnel cost,**
9 **whether that be, you know, anticipated adjustments in**
10 **benefit rates or what have you, then I don't think it's**
11 **that straight forward as what you're laying out, but,**
12 **yes.**

13 **Q** Right. I understand there may be adjustments in the
14 budget based upon people's expectations, but we should
15 go with those expectations in determining the Revenue
16 Requirement, correct?

17 **A We should go with the budget in determining the Revenue**
18 **Requirement, yes.**

19 **Q** Okay. But the assumption you'd have as a person who is
20 deriving a Revenue Requirement is that they were being
21 accurate as they could be in the budget, right?

22 **A Correct.**

23 **Q** In other words, if the actual personnel costs were a
24 million but the budget said three million, if you
25 relied on the budget you may not end up with the

Page 13

1 correct Revenue Requirement, correct?

2 **A By definition, the budget is generally the correct**

3 **Revenue Requirement in a prospective rate analysis.**

4 **Q** Right. My point is you're relying on the budgeted

5 numbers in determining your Revenue Requirement?

6 **A Correct.**

7 **Q** All right, so if the budget numbers turn out to be

8 wrong, that could impact the correctness of the Revenue

9 Requirement?

10 **A By definition, the prospective Revenue Requirement is**

11 **just that, the prospective Revenue Requirement.**

12 **Q** I guess what I'm saying is, is when you're determining

13 the Revenue Requirement, I think you said you look at

14 the budgeted costs that are provided to you by your

15 client, correct?

16 **A Correct.**

17 **Q** All right. So, you're not peeling back that onion. If

18 they tell you it's three million dollars, you accept

19 that for purposes of a Revenue Requirement?

20 **A I would say that's generally accurate, yes.**

21 **Q** Okay. So, if it turns out that the personnel costs are

22 actually one million, in my example, that could have an

23 impact on the accuracy of your Revenue Requirement,

24 correct?

25 **A By definition, we're preparing prospective rates and**

Page 14

1 **charges. The expected Revenue Requirement is**

2 **equivalent to the budget absent some adjustment that is**

3 **prepared and discussed with the client.**

4 **Q** All right. So, the ultimate answer is you rely upon

5 the budget numbers; fair to say?

6 **A Yes.**

7 **Q** Okay. Have you gone back and compared, and we're going

8 to get into some documents very shortly, but compared

9 the amount of cost included in the IWC Revenue

10 Requirement for, say, 2014 to the present with the

11 actual costs?

12 **A I have not.**

13 **Q** All right. Now, I am going to pull up a document so

14 bear with me. I'm hoping I will -- here we go.

15 Can you see a document on your screen that

16 has an IWC Revenue Requirement comparison?

17 **A Yes.**

18 **Q** Okay. I'm going to go all the way up to show you where

19 this comes from and then we're going to return to this

20 page.

21 **MR. PELLAND:** Is this one of the exhibits?

22 **MR. HANLEY:** Yes, it's Exhibit 8 for counsel.

23 (Defendant's Supplemental Answers were marked

24 as Exhibit Number 8 for identification and

25 are attached hereto.)

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1 **MR. HANLEY:** I'll show you the first page.

2 It's Defendant's Supplemental Answers to Plaintiff's

3 Amended Second Set of Interrogatories, and, again for

4 the record, I circulated this to counsel earlier this

5 week.

6 **BY MR. HANLEY:**

7 **Q** And, Mr. Foster, have you received this package of

8 documents?

9 **A I have.**

10 **Q** Okay. So, I want to go to the page on the bottom that

11 has -- there's going to be varying parts of this

12 document, but I want to start with the page that I'm on

13 right now, which has the locator number 463957. If you

14 can tell me when you've reached that, I want to have a

15 discussion about it.

16 **A Yeah, I've actually got a printout of this page.**

17 **Q** Okay. Wonderful. That's good.

18 And this is something that you prepared

19 that's dated 11/13/2020?

20 **A Correct.**

21 **Q** And I'll show you it shortly, but there's an earlier

22 incarnation of this document, of this page, that was

23 created back in September of 2020; is that correct?

24 **A Correct.**

25 **Q** All right, and what was your reason for creating the

Page 16

1 IWC Revenue Requirement Comparison that appears on page

2 463957?

3 **A Well, there's actually probably an earlier iteration,**

4 **as well. Actually, I think in the documents you sent**

5 **over, there may be three or four different iterations**

6 **of this schedule, and I don't know whether it was**

7 **directly related to this litigation or just in ongoing**

8 **review of the industrial waste control revenue**

9 **requirements and charges, we were asked to provided a**

10 **simplified history of what went into those annual**

11 **revenue requirements. So, we -- I'm sorry, go ahead.**

12 **Q** Is what we're looking at now the latest and greatest

13 incarnation of this document?

14 **A I believe that there was some initial work done to add**

15 **a column for Fiscal Year 2022. That hasn't been**

16 **completed, obviously, with the report just being filed**

17 **yesterday. We haven't fully updated that. So, yes,**

18 **this is, with respect to the data through 2021, Fiscal**

19 **Year 2021 prospective, this is the most recent**

20 **incarnation.**

21 **Q** All right, and I want to start in the far left column

22 and I want to go down that column and try to understand

23 what each of these elements are, and then we'll go

24 across the columns to figure out how the numbers break

25 out for each of the years.

Page 17

1 **A Okay.**
2 **Q** Under Direct IWC Budget, what is the Direct IWC Budget?
3 **A** **Within the DW, for purposes of the first column, this**
4 **would be the Fiscal Year 2013 budget, which would**
5 **encompass the time period July 1, 2012 through June 30,**
6 **2013. At the time this was -- there was no GLWA. This**
7 **would have been DWSD.**
8 **Q** Okay, and for now I don't necessarily want to talk
9 about the numbers. I just want to talk about what each
10 of those components represents.
11 **A Right.**
12 **Q** And we'll go across and talk about the actually
13 numbers. But, for example, --
14 **A I'm trying to get to that. I'm trying to get to that.**
15 **Q** Okay.
16 **A So, for this particular period, and frankly for all**
17 **periods, there is referenced as a cost center within**
18 **the financial structure and the budget and the**
19 **accounting structure of DWSD for the Industrial Waste**
20 **Control Division, and the amounts on lines one through**
21 **six are the budget for 2013 for that specific cost**
22 **center.**
23 **Q** Okay, and when you say, "Budget," and then it says, IWC
24 Revenue Requirement Comparison, are these numbers on
25 the Direct IWC Budget the numbers that were actually

Page 18

1 utilized in the Revenue Requirement analysis?
2 **A Yes.**
3 **Q** Okay. So, that goes back to your statement of budget
4 equals, you know, what goes into the Revenue
5 Requirement, correct?
6 **A Correct.**
7 **Q** Okay. Personnel costs, are those the actual direct
8 costs associated with the people who work within the
9 IWC Division?
10 **A Yes.**
11 **Q** And that would include all personnel costs, salary,
12 benefits, bonuses, the whole shabang, correct?
13 **A Correct.**
14 **Q** All right, and then there's contractual services,
15 which, what do those refer to?
16 **A Vendor payments or support services. Whether that's,**
17 **in the IWC area that could be preparation of delivery**
18 **of IT to track activities. I don't know what else**
19 **specifically.**
20 **Q** And let me ask you this: I don't want to talk about
21 specific numbers, but I haven't seen a Cost of Service
22 Study prior to Fiscal Year 2016 that breaks out the
23 Direct IWC Budget in the way that is done here for
24 Fiscal Year '13 and '14. Are you aware of a document
25 that does that, a contemporaneous document that was

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1 created as opposed to a reconstruction later on?
2 **A Are you referring to 2013 right now?**
3 **Q** I'm referring to 2013 and '14?
4 **A Yeah. I don't believe that such a document exists in**
5 **the same level that you've seen for the other years in**
6 **the schedule.**
7 **Q** Okay. So, the numbers that are here, again we'll get
8 into the specifics of the numbers, but for Fiscal Year
9 '13 and '14, would it be fair for me to say that these
10 numbers were reconstructed after the fact?
11 **A No.**
12 **Q** Okay. Where is the source document that would show me
13 these line items that was created back in for Fiscal
14 Year '13 or and Fiscal Year' 14?
15 **A There's an underlying summary of the budget -- not**
16 **summary, but detailed line item budget that would have**
17 **been provided by DWSD.**
18 **Q** Okay. So, these numbers that you have for Fiscal Year
19 '13 and '14 for the Direct IWC Budget, those come off
20 an actual budget document?
21 **A Yes.**
22 **Q** Okay. All right. Continuing on, what is electricity?
23 **A That's budgeted electricity costs at the facility that**
24 **houses the IWC Division.**
25 **Q** Okay. All right, and is that an apportionment of

Page 20

1 the -- that's an actual facility cost, is what you're
2 saying?
3 **A That's my understanding, yes.**
4 **Q** Okay, and then chemicals, what does that refer to?
5 **A In 2013, there weren't any, but that would have been**
6 **any budgeted purchase of chemicals?**
7 **Q** Okay, and other utilities, what does that refer to?
8 **A I'd be speculating, but I'm sure that natural gas,**
9 **water.**
10 **Q** Okay. All right, and finally, other. Do you know what
11 gets lumped into "other"?
12 **A Supplies and I don't know what other.**
13 **Q** Okay. But then you get a Subtotal Direct Budget, and
14 for, you know, we'll get into the other years, but for
15 purposes of Fiscal Year '13 and Fiscal Year '14, those
16 numbers come off an actual budget document?
17 **A Correct.**
18 **Q** All right, and then line item number eight, Analytical
19 Lab Budget, first of all, tell me what the Analytical
20 Lab is.
21 **A The laboratory activities for DWSD, if we're talking**
22 **about 2013 and 2014, for both the Waste Water Treatment**
23 **Plant and the activities of the Industrial Waste**
24 **Control Division were all consolidated within a budget**
25 **category related to lab.**

Page 21

1 Q All right, and has that been true throughout the entire
2 period that is represented on this document?
3 A **Yes.**
4 Q Okay, and then there's a portion that's applicable to
5 IWC, and you'd agree with me that that, for '13 and '14
6 that says "NA," but for later years it varies from 76
7 percent to 40 percent. Do you see that?
8 A **Yes.**
9 Q And so somebody made a judgment of the, of what portion
10 of the entire Analytical Lab Budget should be a
11 apportioned to the IWC Division?
12 A **Yes.**
13 Q And in the years in which that apportionment was made,
14 who was responsible for making that apportionment?
15 A **Can you ask about a specific year, please?**
16 Q Well, let's say Fiscal Year '16.
17 A **So, Fiscal Year '16, I believe there are other**
18 **documents that you sent over was the result, and it's**
19 **kind of highlighted by the footnote B down on this**
20 **exhibit that Mr. Savitske did a review of the, kind of**
21 **a breakdown and build back up of the Industrial Waste**
22 **Control Revenue Requirement, and that estimate would**
23 **have come from his work.**
24 Q Okay, and by the way, were you involved in that or
25 consulted about that?

Page 22

1 A **I was. I was, and involved with respect to providing**
2 **some background and history. I was not directly**
3 **involved in the investigation or the findings.**
4 Q Okay, but you've reviewed that analysis and been able
5 to provide input on it?
6 A **Correct.**
7 Q Okay. The 76 percent that's allocated for Fiscal Year
8 '16, would it be fair to say that that was
9 Mr. Savitske's judgment?
10 A **Either judgment or his representation of findings based**
11 **on other folks' judgment, yes.**
12 Q Okay, but what I'm getting at is you didn't make an
13 independent assessment as to --
14 A **Correct .**
15 Q -- as to whether 76 should be the percentage or 50
16 percent or some other percentage?
17 A **That's correct.**
18 Q Okay. For Fiscal Year '18, there's a 60 percent
19 allocation. Were you involved in making a judgment
20 about that assessment?
21 A **I'm sure I was involved. I don't -- it would not have**
22 **been my independent estimate that 60 percent was**
23 **appropriate. I don't recall specifically where that**
24 **number came from.**
25 Q Do you know who else was involved?

Page 23

1 A **I would be speculating, but there are folks at GLWA**
2 **that are more intimately involved in tracking these**
3 **types of things than there were in the DWSD era.**
4 Q Okay. Are you aware of any document that kind of
5 performs a calculation that ends up at any of these
6 percentages?
7 A **I believe Mr. Savitske's document does.**
8 Q Okay. But that would have been applicable to '16.
9 What about the later years where there's 60 percent, 40
10 percent?
11 A **I don't recall.**
12 Q Okay. Fair enough.
13 And then line item 10 generates an actual
14 dollar figure based upon the total Analytical Lab
15 Budget and the percentage applicable to IWC, correct?
16 A **Correct.**
17 Q And '13 and '14, there are just gross allocations to
18 IWC of \$6,500,000 and \$8,000,000. No, 6,500,000 for
19 Fiscal Year '13 and \$8,000,000 for Fiscal Year 2014; do
20 you see those?
21 A **Correct.**
22 Q How were those derived?
23 A **I don't recall the specifics. Obviously, with such**
24 **round numbers, it was an estimate that was provided by**
25 **either somebody in the Industrial Waste Control**

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1 **Division or in Waste Water Operations.**
2 Q Did you ever investigate what the entire Analytical Lab
3 Budget was for Fiscal Year '13 and Fiscal Year '14?
4 A **My recollection is that the budget documents for '13**
5 **and '14 for the Waste Water Operations in total were**
6 **not allocated to individual divisions in a manner that**
7 **will allow that investigation.**
8 Q Right, but my question is, we know from Mr. Savitske's
9 document, which we'll get to, but it's represented in
10 your document here that the Analytical Lab Budget for
11 Fiscal Year 2016 was \$3,058,800, correct?
12 A **Correct.**
13 Q That would be the entire Analytical Lab Budget?
14 A **Based on his review, yes.**
15 Q Right, and what he did in his review was generate '16
16 based upon actual '14, correct?
17 A **I haven't reviewed his review in detail enough to be**
18 **able to agree with that, but I have no reason to doubt**
19 **it.**
20 Q All right, but you know as you sit here today that the
21 entire Analytical Lab Budget for Fiscal Year '14 was
22 significantly less than \$8,000,000, correct?
23 A **I don't know that, no.**
24 Q All right. But you've never investigated what the
25 Analytical Lab Budget was for Fiscal Year '13 or '14,

Page 25

1 the actual budget, correct?

2 **A As I explained a moment ago, I don't believe that the**

3 **budget for the Waste Water Operations of which the**

4 **Analytical Lab is a piece, was fully assigned to**

5 **divisions that would allow one to make such a**

6 **conclusion.**

7 **Q** No. Leaving aside the -- what I'm talking about is the

8 gross number. What was the Analytical Lab Budget in

9 total for Fiscal Year '13 and Fiscal Year '14?

10 **A The amounts directly budgeted to the Analytical Lab in**

11 **'13 and '14 are part of this document.**

12 **Q** Okay. Why does it say "NA" for '13 and '14?

13 **A Because the amounts that were budgeted for '13 and '14**

14 **of the Direct Analytical Lab did not include the**

15 **amounts that were part of Waste Water Operations that**

16 **were just budgeted as general.**

17 **Q** All right, but that's a different question. Let's see

18 if we can agree that for Fiscal Year 2014, in looking

19 back at how the Revenue Requirement was generated for

20 that year, what you assumed was at \$8,000,000 of the

21 Revenue Requirement was attributable to the Analytical

22 Lab Budget, correct?

23 **A Attributable to the Analytical Lab activities in the**

24 **budget that were allocable to the Industrial Waste**

25 **Control program, yes.**

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1 **Q** All right, so, but at least \$8,000,000 of Analytical

2 Lab Budget was attributable to the IWC Division,

3 correct?

4 **A Yes, that's the assumption that went into the 2014 Cost**

5 **of Service Study.**

6 **Q** Okay, and is there a document contemporaneously, say,

7 at the very top of your Revenue Requirement Comparison

8 that we're looking at, there's a line item that says,

9 Budget Date for Cost of Service Study, and it looks to

10 me like the Cost of Service Study that would have been

11 done for Fiscal Year 2014 would have been dated around

12 December of 2012?

13 **A Correct.**

14 **Q** All right. So, is there in that Revenue Requirement or

15 in that Cost of Service Study for December 2012 for

16 Fiscal Year 2014, is there a line item for the

17 Analytical Lab Budget that corresponds to \$8,000,000?

18 **A No.**

19 **Q** So, the \$8,000,000, would it be fair for me to assume,

20 was a reconstruction after the fact?

21 **A No.**

22 **Q** Okay. Where does the \$8,000,000 come from?

23 **A The Cost of Service Study for 2014 reviewed the Waste**

24 **Water Operations budget in total, which, by the way,**

25 **what I'm about to explain is two pages further down in**

Page 27

1 **this document.**

2 **Q** Okay.

3 **A The granularity of the budget for 2014 with respect to**

4 **the Waste Water Operations Division in total was not**

5 **sufficient to determine how much the Analytical Lab**

6 **Budget was, nor how much any of the individual pieces**

7 **were.**

8 **Q** Right.

9 **A So, we relied on an estimate from either Waste Water**

10 **Operations or IWC or some combination thereof. They're**

11 **just discussions in the budget process, what is an**

12 **appropriate estimate of the Analytical Lab Budget that**

13 **would be allocable to the Industrial Waste Control**

14 **program. That's the extent of the generation of the**

15 **\$8,000,000 and the same process for the six million**

16 **five in 2013.**

17 **Q** All right. I guess what I'm saying is, is if the judge

18 were to say to you where is the source document created

19 at the time that has \$8,000,000 for the Analytical Lab

20 Budget? Is there a document that you could point me

21 to?

22 **A No.**

23 **Q** Okay. All right.

24 **A There's not a budget document that I could point you to**

25 **other than somebody may have meeting notes from the**

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1 **conversation, on the interviews that we did as part of**

2 **the Cost of Service Study.**

3 **Q** All right, but leaving aside whether there's a document

4 that you could point to, is it your testimony that the

5 \$8,000,000 was something that was used at the time to

6 come up with the 22.45 million dollar Revenue

7 Requirement?

8 **A Yes.**

9 **Q** Okay. All right. Now, I want to, give me a minute.

10 (Surcharge Program Review was marked as

11 Exhibit Number 11 for identification and is

12 attached hereto.)

13 **BY MR. HANLEY:**

14 **Q** I'm showing you a document now that we've marked as

15 Exhibit Number 11, which is a March 25th, 2015

16 Industrial Waste Control and Pollutant Surcharge

17 Program Review author by Mr. Savitske and Ms. Jordan

18 for DWSD. Are you familiar with this document?

19 **A I'm familiar with versions of this document.**

20 **By the way, if you're attempting to have it**

21 **on the screen, all I'm seeing is a list of your files.**

22 **I don't see the exhibit itself.**

23 **Q** You don't see the exhibit. Okay. Hold on a minute.

24 **MR. HANLEY:** Jim, are you seeing this?

25 **MR. PELLAND:** All it is is your drive showing

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1 Exhibit 11, but it's not actually showing the actual
2 exhibit.
3 **MR. HANLEY:** Okay. Hold on.
4 **MR. PELLAND:** It's showing the PDF file of
5 Exhibit 11, but it's not open.
6 **MR. HANLEY:** Okay. Hold on. I don't why.
7 **THE WITNESS:** We've had issues like this all
8 week on meetings like this. I think if you stop
9 sharing and then share again, sometimes it helps.
10 **BY MR. HANLEY:**
11 Q Does that work?
12 A **Yes.**
13 Q Okay. Thank you.
14 Are you familiar with Exhibit 11?
15 A **Yes. I don't know that I ever saw this comprehensive**
16 **Exhibit 11, but I was familiar with many of the**
17 **schedules that went into this.**
18 Q Okay.
19 A **Simple answer is, yes, I'm familiar with the document.**
20 Q Okay. So, you were referring a couple of minutes ago
21 to some analysis that Mr. Savitske had done; is this
22 what you're referring to?
23 A **Yes.**
24 Q Okay. So, I want to make sure I understand what he did
25 is he obtained Fiscal Year 2014 Revenue Requirement

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1 data for the \$8.85 base IWC charge and then he
2 reconstructed the cost build-up from the bottom up,
3 based on actual for Fiscal Year 2014; do you see that?
4 A **Yeah. Does it say on there that he used actual data**
5 **for 2014?**
6 Q Well, that's what he's saying. Using based on actual
7 for Fiscal Year 2014, and then he used the
8 reconstructive data from Fiscal Year 2014 to
9 recalibrate Fiscal Year --
10 A **Okay. Yeah, I see the actual. Yes. Okay.**
11 Q Okay. So, what he did was he went back and figured out
12 what the actual costs were for 2014 and he
13 reconstructed the Revenue Requirement using actual as
14 opposed to what was used at the time, correct?
15 A **Right.**
16 Q Okay. So, he's got reconstructed Waste Water Lab Ops,
17 and he comes up with a total budget in 2014 of, or
18 total actual from 2014, of \$3,016,090; do you see that?
19 A **Yes.**
20 Q And then he allocated 76 percent to IWC to come up with
21 \$2,292,000 and change, correct?
22 A **Correct.**
23 Q So, does this refresh your recollection that the actual
24 Waste Water Lab Budget or costs for Fiscal Year 2014
25 was just a little bit more than \$3,000,000?

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1 A **If that's Mr. Savitske's analysis of actuals as posted**
2 **by DWSD, I have no reason to doubt that the \$3,000,000**
3 **figure in this schedule is not accurate.**
4 Q Okay, but if the actual, again the document says what
5 it says and I'm not asking you for your independent
6 assurance of this, but if the actual Analytical Lab
7 costs for 2014 were \$3,000,000, if \$8,000,000 were used
8 in generating the IWC Revenue Requirement, then we're
9 wildly inaccurate, correct?
10 A **The assumptions that were provided in December of 2012**
11 **for the 2014 budget of \$8,000,000 were much higher than**
12 **what the after-the-fact actual review Mr. Savitske**
13 **prepared.**
14 Q Right. By about \$5,000,000?
15 A **Numbers are the numbers.**
16 Q Okay, and let's go back to Exhibit 8 again. Is Exhibit
17 8 showing again?
18 A **Yes, it is. Yes, it is.**
19 Q For Fiscal Year '15, there's a lot of blanks, and it
20 says, First year of rate simplification. Based on
21 prior analysis, IWC allocated 10 percent of O & M
22 Budget and 0.2 percent of capital revenue requirements
23 for that fiscal year, correct?
24 A **Correct.**
25 Q Would there be any reason to believe that any of the

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1 numbers in the line items here would be less, given
2 that the overall Revenue Requirement increased?
3 Well, wait. Let me withdraw that question
4 because that was a bad question.
5 Have you seen anything allocating the Fiscal
6 Year '15 budget by line item as it's done for, say,
7 Fiscal Year 2014?
8 A **Have I seen anything? I'm quite sure that when we**
9 **prepared the Cost of Service Analysis and Charge Study**
10 **for Fiscal Year 2015, we reviewed detailed line item**
11 **budgets.**
12 Q All right. I guess what I'm saying is why is the
13 Fiscal Year '15 column blank for the Direct IWC Budget
14 line items and Analytical Lab Budget line items, the
15 Waste Water Ops Functional line items, and the Waste
16 Water Ops General?
17 A **Fiscal Year 2015 was the first year for which rate**
18 **simplification was implemented for DWSD. The**
19 **initiative was largely designed to address the**
20 **wholesale charges for all the county districts and the**
21 **city of Detroit, but the over-arching premise was to**
22 **apply that same level of simplification in 2015, based**
23 **on the relative allocation of the entire Revenue**
24 **Requirement to the various wholesale pieces and also to**
25 **Industrial Waste Control and industrial surcharges.**

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1 **There was just simplified assumptions made, and based**
2 **on historical budget amounts, IWC was roughly 10**
3 **percent of the operating budget, so it got allocated 10**
4 **percent of the 2015 operating budget.**
5 Q Okay. Just so I understand, for example, in Fiscal
6 Year 2014, they allocated 22.45 million dollars to the
7 IWC Revenue Requirement, correct?
8 A **Correct.**
9 Q So, based upon that historical allocation, somebody
10 said, well, that's about 10 percent of the Sewer O & M
11 budget and .2 percent of then capital revenue
12 requirements, so we're going to apply those percentages
13 to the numbers for Fiscal Year '15?
14 A **Correct.**
15 Q Okay. So, for example, the Subtotal Direct Budget of
16 6.2 million dollars would essentially carry forward to
17 Fiscal Year 2015, correct?
18 A **For purposes of determining the IWC charges, yes.**
19 Q And the same would be true of the Analytical Lab Budget
20 number, that would essentially carry forward?
21 A **I think that's a reasonable assumption.**
22 Q Okay. All right. So, then we get to, well, let's
23 continue on down the row first so that I understand
24 what all of these numbers are.
25 Line item 11, Allocated Waste Water Ops

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1 Functional, do you know what that refers to?
2 A **Yes.**
3 Q What is that?
4 A **There's specific illustration of it in other pages**
5 **here, but the concept employed throughout this period**
6 **was that in addition to whatever Waste Water Operations**
7 **costs should be directly assignable to Industrial Waste**
8 **Control, such as the Direct Budget on lines one through**
9 **six, such as the directly allocable Analytical Lab**
10 **Budget on line 10, there are other support services**
11 **provided to the Industrial, excuse me, to all Waste**
12 **Water Division, including the Industrial Waste Control**
13 **Division by general Waste Water Operations.**
14 Q Okay, and again, we're going to get into the specific
15 calculations, but in general, it's allocating a portion
16 or percentage of those other costs because they somehow
17 relate to or support the IWC Division functions?
18 A **That's correct.**
19 Q Okay, and who is involved in making judgments about
20 what portions of those amounts to allocate to IWC?
21 A **It would have been prepared in the same discussions**
22 **that we had regarding the appropriate level of the**
23 **Analytical Lab. I think as the other information in**
24 **this package will show, the estimate was two and a half**
25 **percent is an appropriate portion of the general waste**

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1 **water activities to assign to IWC. Who that came from**
2 **I don't recall. It would have been, you know, the**
3 **chief operating officer of Waste Water or the**
4 **Industrial Waste Control manager or some combination**
5 **thereof.**
6 Q Okay, and then there's Allocated Waste Water Ops
7 General. What's the difference between Function Waste
8 Water Ops and General Waste Water Ops?
9 A **So, the functional line item is intended to be, and**
10 **perhaps the titles aren't as accurate as they could be**
11 **on these two line items. Line 11 is intended to be**
12 **activities at the Waste Water Treatment Plant itself at**
13 **the facility down there on Jefferson, and then line 12**
14 **is those activities that are waste water total, not**
15 **necessarily just at the plant.**
16 Q Okay. All right, and then line item 14, it says
17 Allocated Admin/Central Services OH, which I'm assuming
18 refers to overhead?
19 A **Correct.**
20 Q What does that refer to?
21 A **The Cost of Service Study assigns to each cost pool of**
22 **which IWC Revenue Requirements, one of them is supports**
23 **services of the executive staff, legal, finance, what**
24 **have you, across to the direct activities, and that's,**
25 **this would be the portion that is allocable to**

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1 **Industrial Waste Control.**
2 Q All right, and would it be fair for me to say that the
3 higher the direct costs under the IWC Revenue
4 Requirement, the higher these Allocated Admin/
5 Centralized Services overhead costs would be?
6 A **Yeah. I think that's exactly what we refer to in**
7 **Footnote F to this exhibit.**
8 Q Okay. So, if you lower the direct budget, there would
9 be a proportionate decrease in the line item 14
10 Allocated Admin/Central Service charges?
11 A **Yes, as indicated by Footnote F, yes.**
12 Q Okay, and we could determine the impact on any changes
13 in the Direct by using the percentages that were
14 arrived at later in the document, as demonstrated later
15 in the document?
16 A **Yes.**
17 Q Okay. All right, and then line item 16, Allocated
18 Capital Debt Service, plus I & E Deposit, what does
19 that refer to?
20 A **The Capital Revenue Requirement, building up the entire**
21 **budget, when I say "budget," I'm talking budgeted**
22 **revenue requirements, not just the operating expenses.**
23 **There is debt service and what is referred to as pay-go**
24 **capital, which is the I & E deposit. It's basically**
25 **out-of-pocket revenue used to fund capital improvements**

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1 on an annual basis. So, this line item 16 illustrates
2 that, the portion of those amounts that are allocated
3 to the Industrial Waste Control Division or activities.
4 Q Okay. The I & E deposit, was that something that
5 existed before GLWA became involved?
6 A Yes.
7 Q Okay, and then the line item 17 is the Allocated MBO
8 Revenue Requirements; what does that refer to?
9 A So, with the implementation of GLWA, there are specific
10 other elements that are required to be recovered, via
11 revenues and become revenue requirements. The MBO
12 refers to the Master Bond Ordinance. Effectively,
13 those Revenue Requirements consist of the legacy
14 pension obligations to the city of Detroit that are a
15 part of the lease between GLWA and the City of Detroit.
16 They include the lease payment from the GLWA, well,
17 yeah, from GLWA to the City of Detroit, or through the
18 DWSD piece anyway, and those are the two big ones that
19 are showing up on that line item.
20 Q Okay. The MBO Revenue Requirements, when did those
21 start to go into effect?
22 A 2016.
23 Q Fiscal Year 2016 or calendar year 2016?
24 A Fiscal Year 2016.
25 Q Even though GLWA didn't, for lack of a better word,

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1 take over until January 2016, these MBO Revenue
2 Requirements would have been included for the entire
3 Fiscal Year '16 budget?
4 A Yes.
5 Q And was that a contractual requirement due to your
6 knowledge?
7 A Yes, yes.
8 Q All right. So, these are, for lack of a better word,
9 additional Revenue Requirements that a portion gets
10 attributable to IWC?
11 A Correct.
12 Q And how is the apportionment done? Like the other
13 apportionments of Allocated Admin/Centralized Services?
14 A It's a little bit different. The lease, well, the
15 pension obligation, and there are two pieces of the
16 pension obligation, is allocated to cost pools of which
17 Industrial Waste Control is one of them, based on an
18 analysis of labor costs supporting each cost pool.
19 So, within the Cost of Service Study, I can,
20 if you want to get into the details I can point to you
21 where the budgeted labor, budgeted personnel costs are
22 used as an allocator for that.
23 The lease payment by the agreements is
24 allocable based on just the total revenue. So, when we
25 get to the lease payment and the Cost of Service Study

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1 and allocate that across the various cost pools, it's
2 just effectively an overhead of everything. So, it's a
3 subtotal of all other directly, allocated revenue
4 requirements determines the responsibility for each
5 cost.
6 Q Okay. But there's a judgment made, correct, as to what
7 portion or percentage ought to be allocated?
8 A There's a methodology for allocating.
9 Q Right, and my question, then we'll get into what
10 numbers are actually used, but whose decision was it to
11 choose a particular percentage to allocate as opposed
12 to some other percent?
13 A With respect to the pension, it was based on an
14 analysis that I did that was endorsed by GLWA and DWSD
15 reps as they were structuring the implementation of the
16 agreements.
17 With respect to the lease payment, it is a
18 direct representation of the guidance provided by the
19 lease.
20 Q Okay. When we get to Fiscal Year '17, there are blanks
21 again for a lot of the line items under the Direct IWC
22 Budget, the Analytical Lab Budget, et cetera. Can you
23 explain why there aren't line items for those, for
24 Fiscal Year '17?
25 A Fiscal Year '17, and I believe we referenced the

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1 concept earlier when we were talking about Fiscal Year
2 '21. It wasn't directly the same, but the charges, the
3 rates and charges for Fiscal Year '17 were developed at
4 a time when there was, DWSD, this is in a note that the
5 budget data is December of 2015, which was literally a
6 month before the transition from DWSD to GLWA took
7 place.
8 Because of the complexities of the
9 transition, there wasn't a discreet GLWA budget by
10 these various cost pools available at the time and the
11 decision was made to just take the regional portion, in
12 other words, the portion of the DWSD budget for 2016
13 that would be taken over, for lack of a better term, by
14 GLWA for 2017 and use that for purposes of the charges.
15 Q All right. So, would it be fair for me to say that
16 line items one through 14 basically carried through
17 with some, you know, percentage adjustment from 2016 to
18 2017?
19 A It would be accurate to assume that the total amount
20 shown for 2017, if allocated back to those other line
21 items, that the relative relationship would have been
22 consistent.
23 Q Okay. All right, and now we get to Fiscal Year 2018.
24 Well, first of all, for Fiscal Year 2017, there wasn't
25 a freestanding Cost of Service Study applicable to the

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1 IWC charges; would you agree with that?
2 **A Correct.**
3 Q But there was one for Fiscal Year 2018?
4 **A Correct.**
5 Q And then there was another Cost of Service Study done
6 for IWC and other components for Fiscal Year '19?
7 **A Correct.**
8 Q And let's focus on those two columns, Fiscal Year '18,
9 Fiscal Year '19. You would agree with me that between
10 those years the Direct IWC Budget decreased by about 50
11 percent?
12 **A Yeah, I wouldn't quibble with the 50 percent.**
13 Q All right, and a large driver of that was the personnel
14 costs went down from 4.3 million to about 2.3 million;
15 do you see that?
16 **A Yes.**
17 Q Do you know why that is the case?
18 **A I don't have specific knowledge as to why.**
19 Q If I were to say that the number of employees remained
20 relatively constant between those two years, would you
21 have any basis to disagree?
22 **A I'm sorry, are you comparing '18 and '19?**
23 Q Yes, Fiscal Year '18 and Fiscal Year '19.
24 **A I don't have any -- I haven't reviewed that. I don't**
25 **know why it decreased.**

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1 Q But isn't it true that when you did the Fiscal Year
2 2019 Cost of Service Study, you did a, for lack of a
3 better word, deeper dive into what the personnel costs
4 actually were?
5 **A No, that's not true. We took whatever was budgeted for**
6 **the Industrial Waste Control Division in 2018 and we**
7 **used that figure for 2018.**
8 Q And why are the personnel costs \$2,000,000 less?
9 **A You'd have to ask whoever put the budget together.**
10 Q Did you ever go back and look at what the actual
11 personnel cost and Direct IWC costs were for 2018?
12 **A I did not.**
13 Q And then there's, going future down there's a
14 significance increase in the Analytical Lab Budget
15 between Fiscal Year '18 and Fiscal Year '19; do you see
16 that?
17 **A Yes.**
18 Q Are you aware of the explanation for that?
19 **A I am not.**
20 Q But, again, would it be fair to say that you just took
21 the budgeted numbers that were provided to you without
22 doing a deeper dive into what made up that budget?
23 **A That would be fair.**
24 Q All right, and then the 60 percent for Fiscal Year '18
25 versus the 40 percent for Fiscal Year 2019 that is

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1 allocated to IWC, do you know the reasons for that?
2 **A I don't recall. In this era of GLWA there are much**
3 **more involved members of the finance team that**
4 **participate in providing information for the Cost of**
5 **Service Study, and my presumption is that that's an**
6 **estimate of one of those individuals.**
7 Q All right, but again, you're not making an independent
8 judgment as to whether 60 percent is appropriate versus
9 40 percent; you're relying upon the judgment of others,
10 correct?
11 **A Correct.**
12 Q And for Fiscal Year '18 and '19, do you know who those
13 others are or were?
14 **A I know who I would ask today. I don't, you know, going**
15 **back to December of '16 and December of '17, I don't**
16 **know if it's the same people.**
17 Q Who is it today? We'll start with that.
18 **A I would ask a gentleman named Robert Arbaugh.**
19 Q Can you spell his name?
20 **A A-r-b-a-u-g-h, I believe.**
21 Q Okay. All right. Appreciate that.
22 Going on to line items 11 and 12, the
23 Allocated Waste Water Ops, both Functional and General,
24 you'd agree with me that there was a significant
25 reduction in those costs in the Revenue Requirement

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1 between Fiscal Year '18 and '19?
2 **A Yes.**
3 Q And do you know why that is the case?
4 **A I know how the methodology used for the Cost of Service**
5 **Study produced a lower allocation.**
6 Q Okay. Can you generally describe that? And, again,
7 we'll get into the specifics, but I'm trying to
8 understand generally what the reason was.
9 **A I'll give you a general explanation that's better**
10 **illustrated by the specifics, but a lot of this has to**
11 **do with the maturation of the GLWA business practices**
12 **and budgeting processes and the granularity with which**
13 **budgets at the Waste Water Operations are assigned to**
14 **specific divisions and processes.**
15 **There is a global assumption that Waste**
16 **Water, a portion of the Waste Water Operations support**
17 **is allocable to IWC. In 2018, that general, the**
18 **population, the big number of general operations was a**
19 **larger number than it was in 2019 and 2020, because in**
20 **2018 budget, the maturation and the assignment of those**
21 **general pieces to individual components was not as far**
22 **along as it was in '19 and '20.**
23 **So, there is an assumption embedded in the**
24 **Cost of Service Study that five percent of the support**
25 **services that the Waste Water Operations were allocable**

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1 to IWC, and so for 2018, that produced a larger number
2 than it did for 2019 and 2020.

3 Q All right, and is it also a function of the fact that
4 the direct budget was significantly lower for '19 than
5 it was for '18?

6 A Yes, that's fair to say, as well.

7 Q And that would be true of the Allocated Admin/Central
8 Services, which we know is at least partially dependent
9 upon the amount of the direct budget?

10 A Correct.

11 Q Okay. All right, and you would agree with me that
12 there was a material reduction in the IWC Revenue
13 Requirement between Fiscal Year '18 and Fiscal Year
14 '19?

15 A Yes.

16 Q And is there a practical explanation for why that is
17 true?

18 A I think I --

19 Q Well, let me start more basic, because I know that
20 there are technical reasons, but it wasn't the case
21 that the IWC Division was downsized and got rid of a
22 significant number of employees, correct?

23 A I can't agree with that statement. I don't know the
24 specifics, but I think anecdotally I believe that there
25 were budgetary efficiencies established within the

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1 **Industrial Waste Control area.**

2 Q Well, my question goes to the number of employees.
3 Have you investigated whether, I mean, one explanation
4 for this, if you're just coming to the table is while
5 they eliminated positions or transferred people out of
6 there or did something. That could be one explanation
7 for why there was a \$2,000,000 reduction in personnel
8 costs, correct?

9 A Yes.

10 Q But you're not aware as you sit here today that that
11 actually occurred, correct?

12 A I don't know the specifics of that reduction. I do
13 know that there was efforts to streamline all divisions
14 across Waste Water, and I think if you were to evaluate
15 the Waste Water, the total Waste Water operating budget
16 in 2016 compared to 2020 that that evidence would be
17 there. How much that directly impacts IWC, I don't
18 know.

19 Q All right. Well, let's make it concrete. Let me flip
20 this view.

21 MR. PELLAND: Is that Exhibit 8?

22 MR. HANLEY: Still on Exhibit 8.

23 BY MR. HANLEY:

24 Q This is part of the sworn interrogatory answers of the
25 Defendants, and there is a -- we asked them, you know,

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1 what were the number of employees for the IWC Division,
2 and you can see that in Fiscal Year '18, they said
3 there were 29 budget positions and 27 staff positions,
4 and in Fiscal Year '18, '19, there were 28 in budgeted
5 positions and 27 staff positions; do you see that?

6 A Yes.

7 Q So, can we agree at least at this level that the
8 \$2,000,000 decrease in the personnel cost between
9 Fiscal Year '19 and Fiscal Year '18 was not a result of
10 a significant workforce reduction?

11 A I am not involved in the detailed budget preparation in
12 order to make -- it wouldn't appear from the data that
13 you're showing me here. I don't know what went into
14 the budget for 2018.

15 Q Okay. But you're not, you can't say categorically
16 either way, right?

17 A Correct.

18 (Documents were marked as Exhibit Number 13
19 for identification and is attached
20 hereto.)

21 BY MR. HANLEY:

22 Q Okay. Can you see what I've pulled up as Exhibit 13?
23 Is that showing up on your --

24 A It's showing up. It's pretty small.

25 Q No, no. I'll try and make it bigger, but you see at

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1 the bottom of Exhibit 13, you're actually seeing a
2 document?

3 A Yes, sir.

4 Q Okay.

5 THE WITNESS: Excuse me. Can you give me 30
6 seconds? I'm going to grab a sweatshirt here.

7 MR. HANLEY: Yes. Take your time.
8 (At 11:12 a.m., off the record.)
9 (At 11:12 a.m., on the record.)

10 BY MR. HANLEY:

11 Q And you have the hardcopy of Exhibit 13 available?

12 A I didn't print it, but I do have it, yes.

13 Q Okay. Well, I just want to make sure I can identify
14 it.

15 A Yes.

16 Q It's a document that has produced. GLWA 350 through
17 GLWA 356. So, it's been produced by GLWA to us.
18 Are you familiar with an IWC cost analysis
19 that I've pulled up here on GLWA 354, dated 18th of
20 December '18?

21 A I recall seeing this or a version of this, yes.

22 Q Okay. As I'm reading this, and 18th of December of
23 2018, would have been after the close of Fiscal Year
24 '18, correct?

25 A Correct.

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1 Q And what this is showing me is that the payroll for
2 Fiscal Year '18 was a little bit less than \$2,000,000,
3 correct?
4 A Yes.
5 Q And then there's some other numbers that we can get
6 into, but this, does this refresh your recollection
7 that there was an analysis as to what the actual
8 personnel costs were for Fiscal Year '18?
9 A **There was, the purposes of this analysis was to**
10 **establish, my recollection is was to establish a**
11 **baseline for application of a partial Industrial Waste**
12 **Control charge for certain areas of the system that**
13 **were going to perform some of these services on their**
14 **own.**
15 Q All right, but does it also refresh your recollection
16 that it was part of your 2019 Cost of Service Study,
17 you were looking at the historical cost to determine --
18 A **I did not prepare this and it was not part of, it would**
19 **not have been part of the 2019 Cost of Service Study.**
20 Q All right, but do you have any basis to contest the
21 number in here for payroll of 1.99 million dollars?
22 A **I do not.**
23 Q All right, and then if you go to the very first page,
24 I'll try and make it a little bit bigger, there is
25 Great Lakes Water Authority, period ending 6/30/18,

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1 Industrial Waste Control expenditures, and there's
2 salaries, wages, and fringes, a million that they've
3 allocated to administrative and 944,000 to field
4 services; do you see that?
5 A Yes.
6 Q So, this again is consistent with the personnel costs
7 being around \$2,000,000, correct?
8 A **The analysis shows that that's what was the costs for**
9 **year ending 2018, yes.**
10 Q All right. So, we're going back to Exhibit 9 --
11 A **Eight, I think you want to go to eight.**
12 Q I'm sorry. You're right.
13 If you go back to Exhibit 8, the Revenue
14 Requirement for personnel cost was over double that
15 amount, correct?
16 A **I'll wait until you get there.**
17 Q Yeah, wait until I get there.
18 So, if we go up here, the actual personnel
19 costs that were included in the Revenue Requirement
20 were more than twice the actual, correct?
21 A **Can you scroll up just a little bit, please? Right**
22 **there. That's good.**
23 **So, yes. The way that I'll respond to that**
24 **is that document dated December of 2018 determined that**
25 **the personnel costs actually incurred during Fiscal**

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1 **Year 2018 were in the neighborhood of \$2,000,000. That**
2 **information was also utilized in December of 2020 to**
3 **prepare a budget for 2020 in the neighborhood of**
4 **\$2,000,000 for those costs.**
5 Q Right.
6 A **What assumptions were in the budget in December 2016**
7 **for those personnel costs, I don't know.**
8 Q Okay. All right. Again, and there are documents that
9 will show that. I'm just trying to get the basic
10 point, which is that the Revenue Requirement for
11 personnel costs in the Direct IWC Budget for Fiscal
12 Year '18 were more than twice what the actual cost
13 ended up being, correct?
14 A **That's what the data shows, yes.**
15 Q All right. Thank you.
16 All right. Did you become aware in the case
17 that we had asked the Defendants, the City and GLWA, to
18 tell us, to go year by year and tell us what the actual
19 Direct IWC costs were versus what was in the Revenue
20 Requirements?
21 A **I recall seeing and perhaps participating in a response**
22 **to an interrogatory along those lines.**
23 Q Okay. All right.
24 (Defendant's Answers Interrogatories were
25 marked as Exhibit Number 12 for

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1 identification and are attached hereto.)
2 **BY MR. HANLEY:**
3 Q Let me pull up Exhibit 12. Is it showing on your
4 screen, a new exhibit?
5 A Yes.
6 Q Okay. This is, for the record, Defendant's Answers to
7 Plaintiff's First Set Of Interrogatories, and on page
8 7, we have in Interrogatory 7 that asks the following:
9 For each fiscal year between July 1st, 2013
10 to current, identify and state by fiscal year the total
11 direct and indirect costs incurred by GLWA and/or the
12 City associated with the Industrial Waste Control
13 Division.
14 All right. Is this the interrogatory that
15 you participated in responding to?
16 A Yes.
17 Q Okay. So, you understand that an interrogatory is an
18 actual binding document that people have to swear to as
19 to the information conveyed?
20 A Yes.
21 Q All right, and so the numbers that are on page 7 of
22 Exhibit 12 can be compared to the numbers that were
23 used in the Revenue Requirement as reflected in Exhibit
24 8, correct?
25 A **On lines one through seven of --**

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1 Q Right.

2 A **Yes.**

3 Q Okay. So, let's just do a quick comparison so that we

4 understand the differences, if any.

5 For Fiscal Year '13, that would have been the

6 year ending June 30, 2013, the actual Direct Industrial

7 Waste Control expenses were a little less than 4.2

8 million dollars, correct?

9 A **Correct.**

10 Q But in deriving the Revenue Requirement, the subtotal

11 of the direct budget was 6.58 million dollars, correct?

12 A **Correct.**

13 Q In 2014, the actual Direct Industrial Waste Control

14 operating expenses were somewhat less than 3.8 million

15 dollars, correct?

16 A **As reported on this, yes, and I will caveat all of this**

17 **with as reported on the subsidiary financial schedules**

18 **of DWSD, yes.**

19 Q Okay, but the IWC Direct Budget that was utilized in

20 deriving the Revenue Requirement was a little bit more

21 than 6.2 million dollars, correct?

22 A **Correct.**

23 Q And for Fiscal Year '15, the operating, direct

24 operating expenses that were used was a little less

25 than 2.4 million dollars, correct?

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1 A **Correct.**

2 Q And your schedule on Exhibit 8 doesn't contain a number

3 for that Direct IWC Budget, correct?

4 A **Correct.**

5 Q But if we go later on in the sworn interrogatory

6 answers, we asked in interrogatory number 13 to tell us

7 for each fiscal year beginning July 1st, 2013 to the

8 present fiscal year, identify by fiscal year the

9 methodologies you utilized to determine the Revenue

10 Requirement for the Industrial Waste Control Division

11 and the amount of the Revenue Requirement; and for

12 Fiscal Year 2015, the sworn interrogatory is that 6.6

13 million dollars was the Revenue Requirement for the

14 Direct IWC cost, correct?

15 A **Correct.**

16 Q All right. So, that would be --

17 A **Subject to the foot note included in there, yes.**

18 Q Right, because it was carried through, but somebody

19 went back and estimated what that carry through would

20 be, correct?

21 A **Correct.**

22 Q All right, and you didn't disagree with any of these

23 numbers at the time, correct?

24 A **Nor do I now.**

25 Q Okay. Now, for Fiscal Year '16, the actual operating

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1 expenses or direct operating expenses for IWC are not

2 available, as stated in Exhibit 12, correct?

3 A **Correct.**

4 Q Do you know why that is the case?

5 A **Yes.**

6 Q And why is that the case?

7 A **Fiscal Year '16, and I'll use this to caveat what is**

8 **reported here as being actual, as those are the actual**

9 **amounts reported on subsidiary financial ledgers of**

10 **actual activity for the Detroit Water and Sewage**

11 **Department for '13, '14, and '15.**

12 Q Right.

13 A **The accuracy of those numbers in terms of a fully**

14 **evaluated amount I wouldn't vouch for.**

15 **In 2016, it was a hybrid year. The first six**

16 **months of the regional operation was all DWSD. In**

17 **other words, the DWSD books and records would**

18 **illustrate the activities of the regional system as**

19 **well as the local DWSD system.**

20 **For the last six months of Fiscal Year 2016,**

21 **the DWSD records would only indicate the local system**

22 **activity, so there wouldn't be any IWC activities and**

23 **there wouldn't be any, you know, treatment activities**

24 **or costs associated with that; and then GLWA first year**

25 **of existence was actually a six-month year, so there**

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1 **would be all of the regional activities for that six**

2 **months would be shown on the GLWA books and records.**

3 **I think in preparing this response, I believe**

4 **there was an assessment made that just because of all**

5 **of the confusion, there was not a set of records that**

6 **would accurately provide the Direct IWC expenses.**

7 Q Okay, but do we have any reason to believe that they

8 were materially different from Fiscal Year 2015?

9 A **I don't have any -- I can't make that conclusion.**

10 Q Okay. You haven't done the analysis?

11 A **I haven't done any analysis of that.**

12 Q Okay. All right, and then in Fiscal Year '17, the

13 direct operating expenses for the IWC Division were

14 almost 4.9 million dollars?

15 A **As reported by GLWA, yes.**

16 Q All right, and then Exhibit 8, the actual were -- I'm

17 sorry, were we talking about '17?

18 A **'17 is 4.9, yes.**

19 Q Yes. The Revenue Requirements for '17 are not listed

20 in your schedule that's part of Exhibit 8, correct?

21 A **Correct.**

22 Q For reasons we've already discussed?

23 A **Correct.**

24 Q But if we go to later on in Exhibit 12, we know that,

25 as represented by DWSD and GLWA, the actual amount used

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1 for the Revenue Requirement was 5.87 million dollars,
2 correct?
3 **A Correct.**
4 Q All right, and you don't have any reason to quarrel
5 with that?
6 **A No.**
7 Q All right, and finally for '18, Fiscal Year '18, the
8 actual expenses as reported by DWSD are 5.16 million
9 dollars, as reported by Defendants it's 5.16 million
10 dollars?
11 **A Yes.**
12 Q And did you independently validate that number for
13 2018?
14 **A I don't recall.**
15 Q Well, we now have established that the personnel costs
16 for that fiscal year were only \$2,000,000. Do you know
17 how there would be \$3,000,000 of non-personnel costs in
18 the Direct IWC costs?
19 **A I didn't evaluate anything other than what was reported
20 as a Direct IWC cost.**
21 Q Okay, but we have the amount used for 2018 for the
22 Revenue Requirements was 5.64 million dollars for the
23 Direct O & M, correct?
24 **A Correct.**
25 Q And that ties out to completely your schedule that's in

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1 Exhibit 8, correct?
2 **A Correct.**
3 Q All right.
4 **MR. HANLEY:** I'm at a logical stopping point.
5 Do you want to take a short break and reconvene in
6 about 10 minutes?
7 (At 11:29 a.m., off the record.)
8 (At 11:43 a.m., on the record.)
9 **BY MR. HANLEY:**
10 Q I'm back on Exhibit 8, the schedules that are attached,
11 and I'm on page 463958. This is another schedule that
12 you prepared in November of 2020?
13 **A Yes.**
14 Q And can you tell me what, starting out at a high level,
15 what this is intended to depict?
16 **A It is a follow onto the schedule we were discussing
17 before the break. It provides context in terms of
18 the -- the prior schedule just showed the Industrial
19 Waste Control Revenue Requirement, and this was
20 provided to illustrate the total Revenue Requirements
21 for the Waste Water System for the same years and the
22 relative Industrial Waste Control, relative amounts of
23 those Revenue Requirements assigned to the Industrial
24 Waste Control Division, or the Industrial Waste Revenue
25 Requirement, and that's what shown on the top of the**

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1 **table, and then the bottom of the table I'm not sure
2 was intended to be on the same page, but illustrates
3 the, begins to illustrate the summary level of the
4 allocated indirect amounts to the Industrial Waste
5 Control Division or Revenue Requirement.**
6 Q Okay. So, the top, you know, lines one through six are
7 an attempt to, you know, show over time ultimately what
8 percentage of the total Revenue Requirements of the
9 sewer system are attributable to the IWC Division?
10 **A For purposes of charges and rates, correct.**
11 Q So, back in '13, '14, '15, it was between 4.3 to 4.5
12 percent of the total Revenue Requirements and currently
13 it's in the range of 1.8 percent?
14 **A That's accurate.**
15 Q All right, and in the second part, second half of the
16 document, is an attempt to show how the various
17 allocations were arrived at for certain years of the
18 indirect operating costs, correct?
19 **A That's correct.**
20 Q All right, and we've discussed one through three, which
21 is the Analytical Lab budget and how that got
22 allocated. Let's talk about line items four through
23 six, the Waste Water Treatment Plant, Water Resources
24 Recovery Facility, General Operations.
25 There's an allocation of two and a half

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1 percent in Fiscal Year '13, '14, and '16, and then
2 there are allocations that range from 4.8 percent in
3 2018, 4.0 percent in 2019, and 4.2 percent in Fiscal
4 Year 2020.
5 Can you describe for me how those percentages
6 were determined?
7 **A Yes, and it will be moderately different for discreet
8 periods for individual years.**
9 Q Okay.
10 **A And really I don't know that you want to go there yet,
11 but the more detailed element of this is on the
12 following page.**
13 Q Okay. Yeah, and we're going to get to that. I want
14 to, first of all I want to know, first of all, whether
15 with respect to four of the percentages that are in
16 line item five, were you part of the decision-making
17 process that led to the application of those
18 percentages?
19 **A Yes, and I believe we talked about the general two and
20 a half percent when we had the prior schedule up that
21 you see for '13, '14, and '16, which would have been
22 provided as an estimate by either the Waste Water
23 Operations chief or somewhere in that arena of folks as
24 we did the Cost of Service Studies for those individual
25 years.**

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1 Q Okay.

2 A **Somebody's judgment call at 2.5 percent was an**
3 **appropriate portion.**

4 Q Do you know why the numbers in line item four declined
5 so significantly between 2013 and the present?

6 A **Towards the tail end of DWSD existence, there were**
7 **efficiencies being established at the Waste Water**
8 **Treatment Plant with GLWA's -- I'm sorry. You're just**
9 **looking at line item four, correct?**

10 Q Yes.

11 A **Okay. The general operation, I alluded to this a**
12 **little bit earlier, in the more -- as GLWA matured, the**
13 **precision with which budgets were assigned to**
14 **individual waste water activities became more granular.**
15 **So, there was less allocated to just general operations**
16 **at the Waste Water Plant, which is what you're seeing**
17 **evidence of on line four, in addition to the fact that**
18 **the total cost budgeted at the Waste Water Plant,**
19 **whether you call that the Treatment Plant or the**
20 **Resource Recovery Facility, has also been significantly**
21 **reduced during this time frame.**

22 Q Right. So, the creation or reallocation to different
23 cost centers of what used to be considered General
24 Operations?

25 A **Correct.**

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1 Q Okay. But in the later years, although the amount
2 allocated was smaller, the percentage allocation went
3 up in the four-plus percent range, and do you know why
4 that occurred?

5 A **I think it's a part and parcel of the more refined**
6 **budgeting that was going on in the latter years, where**
7 **there was less in the general pool and just different**
8 **opinions on whoever is establishing these judgment**
9 **calls as to what the appropriate amount is allocable to**
10 **IWC was.**

11 Q For example, in Fiscal Year '18, there's 4.8 percent of
12 \$37,000,000 that's allocated to IWC; do you see that?

13 A **Yes.**

14 Q Is there a document that could be, that exists to your
15 knowledge that has a calculation of how you got to 4.8
16 percent as opposed to some other percentage?

17 A **Yes.**

18 Q And is that part of Exhibit 8?

19 A **Yes.**

20 Q Okay, and we'll get to that in a minute. But going on
21 to line item seven through nine, there's an allocation
22 of Waste Water General Administration expenses that
23 ranges, you know, from 9.3 percent up to 19 percent,
24 depending upon what year you're talking about; do you
25 see that?

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1 A **Yes.**

2 Q And how were those percentages derived?

3 A **Again, there's details as we get into it here, but it's**
4 **the same general methodology that's applied throughout**
5 **the time period, which is whatever the IWC allocated**
6 **Revenue Requirements be it direct, lab, and general**
7 **operations were as a percentage of the total Waste**
8 **Water activities, Waste Water operations, activities,**
9 **the administrative functions of the Waste Water**
10 **activities were allocated proportionally as an overhead**
11 **cost.**

12 Q Okay. So, it's a function of the direct costs?

13 A **Yes. Well, the direct and indirectly allocated**
14 **support. So, it's a function of the direct, plus the**
15 **lab, plus the general operations.**

16 Q Okay, and then finally line items 10 through 12 deal
17 with Administrative/Centralized Services allocations
18 that range from a high of 10.4 percent in Fiscal Year
19 '14 to a low of 2.2 percent in Fiscal Year '20 and '19.
20 How were those derived?

21 A **Same concept. Whatever the IWC budget of Waste Water**
22 **Operations results from the prior subtotals here, using**
23 **2013 as an example, if the, and I believe the**
24 **Administrative/Centralized Services allocation in most**
25 **years is limited to either personnel cost or**

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1 **non-commodity; in other words, ignoring the utilities**
2 **and things like that; and my point being, if the IWC**
3 **Revenue Requirement, it would have been on that basis**
4 **in 2013 would have been 9.4 percent of the entire Waste**
5 **Water direct budget, which would include not just the**
6 **plant but all the CSO facilities and the conveyance**
7 **facilities and whatnot, then that's the proportion of**
8 **the Administrative and Centralized Support Services**
9 **that IWC Revenue Requirement would pick up.**

10 Q Okay. So, there's a direct correlation between the
11 percentage of overall O & M represented by IWC and this
12 indirect allocation of Administrative/Centralized
13 Services cost?

14 A **Yeah, it's a true overhead allocation as the last step.**

15 Q Okay. Now let's go to a document that I think breaks
16 this out in more details. It's a couple of pages
17 later. It's called a Detailed Calculation of Allocated
18 Direct and Indirect Operating Costs, GLWA Budget Era,
19 and this one is Fiscal Year '18.

20 Is this the document that you say reflects a
21 more detailed calculation?

22 A **Yes.**

23 Q Okay. So, let's walk through this.

24 There's an allocation of Chief Operating
25 Officer Waste Water. There's a column that says,

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1 Eligible for IWC Allocation and then there's a
2 percentage allocation that results in a dollar amount;
3 do you see that?
4 **A Yes.**
5 **Q** The allocation assumption for the Chief Operating
6 Officer of Waste Water was at 19.4 percent with the
7 assigned to IWC for Fiscal Year '18. Can you tell me
8 how that was derived?
9 **A It's actually a second or third step on this particular**
10 **schedule, and the support for that 19.4 would show up**
11 **in the Cost of Service Study for 2018. This is a**
12 **summary of the Cost of Service, of the data in the Cost**
13 **of Service Study.**
14 **Q** Okay.
15 **A So, the source for the 19.4 won't be on this page. It**
16 **will be in a different exhibit.**
17 **Q** All right, but do you know at a high level what the
18 methodological basis for the assumption is? Is it tied
19 to a dollar amount?
20 **A It is. It is.**
21 **Q** Tied to an activity, and I would assume that, would it
22 be an attempt to characterize or capture the percentage
23 of effort that the chief operating officer's department
24 devotes to IWC?
25 **A Correct.**

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1 **Q** And somebody assumed that that was 19.4 percent?
2 **A Nobody assumed it was 19.4 percent. It's what the**
3 **allocated portion after all of the direct and assigned**
4 **specific pieces were.**
5 **Q** All right. I'm just parroting what it says here, IWC
6 Allocation Assumption of 19.4 percent. What drove
7 that?
8 **A I can point you to the specifics on a different**
9 **exhibit. It may be more productive if we talk about a**
10 **different line item first.**
11 **Q** All right. I have the Fiscal Year '18 Cost of Service
12 Study, and I guess we'll get to that next and I'll ask
13 you to point it out, but let's finish the high level
14 analysis and then we'll get into the weeds, so to
15 speak, with the other?
16 **A All right.**
17 **Q** Then there's an allocation of Waste Water Operations
18 expenses. There's a total of 61,000,000, but 33.9
19 million, at almost 40,000,000, is eligible for IWC
20 allocation. Do you see that?
21 **A Yes.**
22 **Q** Is that because you're excluding utilities in making
23 this allocation?
24 **A And chemicals.**
25 **Q** Okay. So, you're including personnel and other?

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1 **A Correct.**
2 **Q** All right, and then you're allocating five percent of
3 that 33.97 million to IWC?
4 **A Correct.**
5 **Q** And do you know the methodological basis for that?
6 **A For the five percent?**
7 **Q** Yes.
8 **A It would have been based on intel gathered in**
9 **discussing the budget with folks for the Waste Water**
10 **Operations group and the finance people assigned to**
11 **support the Waste Water Operations group.**
12 **Q** All right. So, collectively, there was a judgment made
13 that five percent as opposed to some other percentage
14 would be appropriate?
15 **A Correct.**
16 **Q** All right, and then there's Waste Water Process
17 Control. What is that function, by the way, Waste
18 Water Process Control?
19 **A You know, I am not familiar enough with it to provide a**
20 **sufficient answer.**
21 **Q** All right, and somebody made a judgment, or
22 collectively whoever was involved made a judgment that
23 two and a half percent of that amount should be
24 allocated to the IWC Revenue Requirement?
25 **A Correct.**

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1 **Q** All right, and then further on down there's Industrial
2 Waste Control, you know, 5.64 million dollars. I'm
3 assuming that that is the Direct IWC Budget?
4 **A Correct.**
5 **Q** All right, and then we have Analytical Laboratory, a
6 million dollars, 1,000,060, 60 percent of which is
7 allocated to the IWC?
8 **A Correct.**
9 **Q** And again, do you know the reason why the Analytical
10 Lab budget was only a million dollars is Fiscal Year
11 '18, and it was four times higher the next year?
12 **A I do not know. I believe if you were to look at the**
13 **next schedule here, which is 2019, what you will see is**
14 **that some of the evidence that I've referred to earlier**
15 **about more detailed budget focus on each of these**
16 **individual divisions. So, instead of just a large**
17 **number budgeted in Waste Water Operations General, we**
18 **see a more discreet allocation to these various**
19 **processes and cost line items.**
20 **Q** Okay, and we'll get to that next, but 60 percent was
21 allocated for Fiscal Year '18?
22 **A Correct.**
23 **Q** And then finally, well, not finally, but there's a line
24 item for Unallocated Reserve. Can you tell me what
25 that refers to?

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1 **A It is amounts included in the budget as contingency to**
2 **deal with elements, indiscreet -- not indiscreet, but**
3 **non-specific items that are anticipated to rise.**
4 **I'll give you the biggest example for GLWA is**
5 **personnel costs would be budgeted at existing**
6 **assumptions regarding salary and wage levels, and to**
7 **the extent that this is designed to cover, amongst**
8 **other things, changes in those levels that may occur**
9 **between the time the budget is developed and the time**
10 **the costs are actually starting to be incurred.**
11 **Q Unanticipated increases in expenses; would that be fair**
12 **to say?**
13 **A Fair to say, yes.**
14 **Q All right, but 19.4 percent of that -- two and a half**
15 **million dollars is for the entire sewer system,**
16 **correct?**
17 **A Entire Waste Water Operations, yes.**
18 **Q Yes, and 19.4 percent, which is similar to the Chief**
19 **Operating Officer, was allocated to IWC for Fiscal**
20 **Year --**
21 **A Correct.**
22 **Q And do you know why a division that has a budget the**
23 **size of IWCs was allocated 19.4 percent of the**
24 **Unanticipated Expense Reserves?**
25 **A The Cost of Service protocol treats the unallocated**

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1 **reserve as a general support service similar to the**
2 **Chief Operating Officer.**
3 **Q Right, but what I'm saying is, is do you know -- you**
4 **would agree with me that 19.4 percent is significantly**
5 **higher than, you know, the five percent and the two and**
6 **a half percent that were used for certain other**
7 **indirect costs, correct?**
8 **A Correct.**
9 **Q And if somebody were to ask, you know, you're in court**
10 **and a judge was say, well, why are these two five times**
11 **or four times what the other assumptions are, what**
12 **would be the high level explanation?**
13 **A They're treated as a, they're treated as an indirect**
14 **overhead allocation based on non-commodity and/or**
15 **personnel cost allocations. So, in other words, the,**
16 **it's allocated based on the personnel cost and not on**
17 **the total cost.**
18 **Q Okay. So, 19.4 percent is the personnel costs of the**
19 **IWC Division as a function of the personnel costs of**
20 **the entire sewer operating budget?**
21 **A I can answer that more intelligently if we look at the**
22 **other exhibits.**
23 **Q Okay. Well, we'll get that out next, but, all right.**
24 **So, all of these line items that we've dealt**
25 **with thus far on this page of Fiscal 2018, total to 9.2**

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1 million dollars, correct?
2 **A Correct.**
3 **Q And then there are, there's one other additional**
4 **Administrative Service allocation, 31.57 million of**
5 **which 7.2 percent is allocated to IWC; do you see that?**
6 **A Yes.**
7 **Q And why was 7.2 percent allocated to IWC?**
8 **A Again, that is on the more detailed allocation pages,**
9 **but it is just the overhead element we've talked about**
10 **on the prior schedule.**
11 **Q But it's a function of the total Direct IWC cost, as**
12 **well, correct?**
13 **A Yes.**
14 **Q So, the lower the Direct IWC, the lower this percentage**
15 **is going to be?**
16 **A Correct.**
17 **Q Because the 7.2 is a percentage that relates to the**
18 **Direct IWC budget as a function of some other number,**
19 **correct?**
20 **A Correct.**
21 **Q All right, and when we look at the Fiscal Year '18 Cost**
22 **of Service Study, you'll be able to direct me to how**
23 **each of these assumption numbers were derived or at**
24 **least be more specifically delineated?**
25 **A Yes.**

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1 **Q Why don't we do that now before we get to '19.**
2 **All right. Did a new document just come up,**
3 **Fiscal Year 2018, Cost of Service Study and Service**
4 **Charge Recommendations dated February 12, 2017?**
5 **A Yes.**
6 **Q All right.**
7 **MR. HANLEY: And just for the record, this is**
8 **Exhibit 19.**
9 **(Cost of Service Study was marked as Exhibit**
10 **Number 19 for identification and is attached**
11 **hereto.)**
12 **BY MR. HANLEY:**
13 **Q And what I'll represent to the witness and counsel is**
14 **that to save memory, what I did was I included your**
15 **cover memorandum and then I excluded the information**
16 **relating solely to the water system, and so I think I**
17 **can get us down to the -- sorry.**
18 **Okay. Starting on page 463757, there's a**
19 **memo that you authored delineating the process you took**
20 **to allocate the Fiscal 2018 budget to cost pools as**
21 **part of the Fiscal Year 2018 Cost of Service and**
22 **Charges Study?**
23 **A Yes.**
24 **Q And is this the document that you're referring to as we**
25 **can rely upon as showing a more detailed derivation of**

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1 these percentages?

2 **A Yes.**

3 **Q** Okay. I'm going to have to flip here. Let's get to

4 the sewer one.

5 Okay. The first, okay, and again if I'm at

6 the wrong page or I should start at a different one,

7 let me know, but I'm looking at a document that has the

8 Waste Water Operations Group, Functional Allocation

9 Matrix.

10 **A Uh-hum.**

11 **Q** Is this kind of a starting point for determining how we

12 got the percentages or how we can tie them out to

13 specific numbers?

14 **A Yes, it is. That's a good starting point.**

15 **Q** Okay. So, we have Waste Water, we have Industrial

16 Waste Control way over here, we have personnel costs

17 that are allocated five percent of Waste Water

18 Operations and 2.5 percent of the Waste Water Process

19 Control, and those tie out to what we just went over in

20 Exhibit 8, correct?

21 **A Correct.**

22 **Q** All right, and then where would I find the, okay, the

23 19.4 percent for the Chief Operating Officer of Waste

24 Water?

25 **A It shows up at the very bottom of the screen that you**

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1 **have right there, Indirect Allocation Factors.**

2 **Q** Okay.

3 **A And you see the 19.4 in the third to last column, which**

4 **is IWC, which for this particular year ties to the**

5 **personnel amount, the row right below that.**

6 **Q** All right. Okay. But here's my question. If I

7 wanted -- this just shows the same 19.4 percent that

8 shows up in Exhibit 8. What I'm trying to figure out

9 is where is -- if I want --

10 **A Keep going back.**

11 **Q** -- how you came up with 19.4 as opposed to something

12 else, where is that shown?

13 **A Keep going down. This schedule applies the factors**

14 **from the prior schedule to the budget and produces,**

15 **instead of percentages, actual numbers for each of**

16 **those elements.**

17 **Q** Okay.

18 **A And the total personnel cost assigned to IWC compared**

19 **to the total personnel cost for the entire -- there you**

20 **go, right there. So, the personnel cost in the third**

21 **to last column of 5.434 million divided by the total**

22 **personnel cost of the non-functional, the non-direct**

23 **functional groups, gets you to the 19.4 percent.**

24 **Q** Okay. So, any cost that's a personnel cost, our

25 denominator is 27.975 million?

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1 **A Correct.**

2 **Q** And so because the direct cost, the direct personnel

3 costs were, you have it as 5.9 million dollars, why did

4 you use 5.4 million dollars for the personnel costs

5 instead of 4.3 million dollars, which is what's

6 reflected as personnel costs in Exhibit 8?

7 **A Because there are allocations of personnel costs from**

8 **some of the indirect allocations we've talked about**

9 **before.**

10 **Q** Okay. So, 5.4 includes the actual personnel budget,

11 but also some indirect allocations, which then get

12 further allocated as part of these personnel costs?

13 **A Exactly.**

14 **Q** Okay. So, again, if this 5.434 is reduced, if, for

15 example, that was cut in half, that would have a

16 corresponding reduction on the 19.4 percent, it would

17 go down to half of 19.4?

18 **A Correct.**

19 **Q** It's just math, right?

20 **A Just math.**

21 **Q** Okay. All right. So, that explains the 19.4.

22 Is there a basis in here for us to determine

23 that the 5.0 versus 2.5 percent, that sort of thing?

24 **A No. The 5.0 and the 2.5 are inputs to the process as**

25 **opposed to just, to math in there, again, based on**

Page 76

1 **interviews with folks involved in creating the budgets.**

2 **Q** All right. So the 5.4 60 and the 2.5 for those numbers

3 and also the 60 percent number, those are subjective

4 determinations that, you know, are purportedly based on

5 people's experience and knowledge and all of that,

6 correct?

7 **A They're estimates based on an appropriate allocation of**

8 **the activities, yes.**

9 **Q** Right, but they're not driven by math, like the 19.4

10 is?

11 **A I am not aware of any analysis that was prepared to**

12 **develop those figures.**

13 **Q** Okay. So, let's return to Exhibit 8 and look at the

14 following fiscal year, Fiscal Year '19, and we can see

15 that the assumptions about allocations have been

16 changed somewhat for the two that were 19.4 percent,

17 the Unallocated Reserve and the Chief Operating

18 Officer, Waste Water, are now 10 percent. Is that

19 because the Direct IWC Revenue Requirement decreased?

20 **A Partially, yes.**

21 **Q** And what's the other reason?

22 **A I'm sorry, can I go back a little bit?**

23 **Q** I'm sorry.

24 **A As I mentioned earlier, and without going back and**

25 **looking at 2018, if you just recall, if you look at**

Page 77

1 that total column and go down through the various
2 pieces, A, the total budget is lower than -- I'm sorry,
3 no, it's not lower, but the detail with which it was
4 assigned to each of these line items is more refined
5 than in 2018.

6 Q All right, and do you know why, for example, the
7 allocation of Analytical Laboratory percentage went
8 down 50 percent?

9 A I don't know why.

10 Q All right, but again that's a judgment call as opposed
11 to something that's derived by math?

12 A Correct, but I also think that there is intel in that
13 judgment. So, for instance, if you were to compare the
14 2018 budget and the 2019 budget, particularly for the,
15 specifically for the Analytical Lab, what you would see
16 is that there was not any personnel budgeted to the
17 Analytical Lab. All the personnel for Waste Water was
18 budgeted up, other than IWC, was budgeted up in the
19 General, budgeted in the General Operations line item.

20 Q Okay, I get that, but my question is more fundamental
21 than that, than how the math work. The percentage
22 allocated is intended to replicate the percentage of
23 effort of the Analytical Laboratory or costs incurred
24 by the Analytical Laboratory that are attributable to
25 IWC, correct?

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1 A Yes.

2 Q And in 2018, the judgment was 60 percent, and the
3 judgment in 2019 was 40 percent, correct?

4 A Correct.

5 Q Regardless of what number is the denominator, or is the
6 total eligible allocation cost, somebody made a
7 judgment that the effort or the amount that should be
8 allocated should be decreased by 50 percent year to
9 year, correct?

10 A I don't believe that's an accurate statement. I
11 believe that somebody came up with an estimate of what
12 an appropriate allocation of the budgeted amount was,
13 understanding what was in the budgeted amount; and in
14 2018, that analysis, I don't know, but could very well
15 have recognized that the budgeted amount did not
16 include any personnel costs, and in order to just come
17 up with a reasonable estimate, that's what went into
18 the 60 percent versus the 40 percent.

19 Q But let's be clear. You're not aware of why that
20 occurred because you weren't part of that decision
21 making?

22 A I was part of the conversations. I just don't, I don't
23 have any recollection as to the rationale.

24 Q Okay. Fair enough.

25 Who was the person who did have the

Page 79

1 rationale?

2 A Again, we're going back a period of time and I'm not
3 sure as I sit here today who all would have been in
4 those conversations.

5 Q Was it Mr. Arbaugh?

6 A Mr. Arbaugh is the current gentleman who is the
7 financial liaison between the finance department,
8 liaison between the finance department and the Waste
9 Water Operations.

10 Q And who was the immediately former gentleman who --

11 A I don't recall.

12 Q Okay. All right, and then there's 10 percent of
13 Unallocated Reserve and 10 percent of the Chief
14 Operating Officer at Waste Water that are allocated to
15 IWC, correct?

16 A Correct.

17 Q Why is that?

18 A Those aren't 10 percent inputs. It just so happens
19 that it rounds to 10.0 percent, and if we were to go
20 look at the 2019 Cost of Service Study, you would, they
21 would be derived in the same manner as the 19.4 percent
22 was derived for Fiscal '18.

23 Q Okay. All right. Same way. Okay, and would your
24 answer be the same for the 4.5 percent Administrative
25 Services allocation?

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1 A Yes, and if we were to get into the Centralized
2 Services, it would be same answer, as well, which in
3 the Cost of Service approach for this time frame, none
4 of the Centralized Services were allocated to IWC.

5 Q Okay, and why was that?

6 A I don't know. I suppose, well, I won't suppose. The
7 discussions with the folks that were preparing the
8 budget did not identify any, did not identify any
9 allocation of Centralized Services activities,
10 including IT. I take that back. IT was treated as
11 administrative in this tie era, but it wasn't --

12 Q What's -- I'm sorry, I didn't mean to step on your
13 answer, but what's the difference between Centralized
14 Services and Data Services?

15 A Well, there's, part of it is lines of report within the
16 organizational structure of GLWA. More directly, the
17 Centralized Services would include such things as
18 planning, maintenance and operations of the conveyance
19 system and other support services that are, I guess,
20 more field-like, and administrative would be more
21 back-office type things, such as finance and rebuilding
22 and the executive staff.

23 Q Okay, and when we're talking about Analytical
24 Laboratory, as you sit there today are you aware of
25 what the Analytical Laboratory does that is unrelated

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1 to IWC?

2 **A Other folks would be more appropriate in answering that**

3 **question. I mean, there's a lot of lab work,**

4 **obviously, that goes on with any type of Waste Water**

5 **operations.**

6 **Q Well, and correspondingly, can you describe for me what**

7 **the Analytical Laboratory does to support the IWC**

8 **function?**

9 **A My understanding that the entirety of the lab work that**

10 **the Industrial Waste Control Division does, or maybe**

11 **not the entirety but a significant portion of the**

12 **laboratory work that is required in carry out the IWC**

13 **Division mission is actually budgeted, performed within**

14 **the Analytical Lab Cost Center.**

15 **Q And what is that type of work? Testing sludge, you**

16 **know, testing, you know, waste byproducts, that sort of**

17 **thing?**

18 **A The Industrial Waste Control is in charge of monitoring**

19 **point of contact delivery to the system, not at the**

20 **Waste Water Plant necessarily. So, it's lab work on,**

21 **you know, industries that they're actually monitoring.**

22 **Q Right. Do you know whether the IWC Division generates**

23 **revenues that are separate and apart from the IWC**

24 **charges?**

25 **A I think there are fines and permitting fees that are**

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1 **levied. I don't believe they're material.**

2 **Q Have you ever heard of something called the Hauled-in**

3 **Waste program?**

4 **A Yes.**

5 **Q Do you know that there's a charge that is collected for**

6 **hauled-in waste?**

7 **A Yes.**

8 **Q Do you know how those charges are accounted for?**

9 **A When you say accounted for.**

10 **Q One of the, at least some of the function of the IWC**

11 **Division is to oversee the Hauled-in Waste program,**

12 **correct?**

13 **A I don't know that.**

14 **Q Okay. Well, do you know that they generate revenues**

15 **relating to the Hauled-in Waste program?**

16 **A I know there are fees, actually rates charged, they**

17 **call them septic tickets. I believe the charge is \$40**

18 **per ticket that are levied and charged to the septage,**

19 **yes.**

20 **Q And where is, when that money comes in where does it**

21 **get reflected?**

22 **A It's a miscellaneous revenue.**

23 **Q Okay, and does it go into the overall sewer Revenue**

24 **Requirement?**

25 **A It --**

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1 **Q Let me ask it more artfully. Do the revenues**

2 **associated with that get credited against the Revenue**

3 **Requirement for purposes of determining other rates and**

4 **charges?**

5 **A They do, and specifically in 2022, we've identified**

6 **that amount. In prior years, it has been lumped in**

7 **with estimated investment earnings because it has been**

8 **so small.**

9 **Q What is the amount?**

10 **A You know, I would have to research and look at it. The**

11 **total miscellaneous revenue is set forth is the Cost of**

12 **Service, and it's about to be published, and it is, you**

13 **know, nowhere near a half of, it's not even a half a**

14 **million dollars, I don't think, out of a half a billion**

15 **dollar --**

16 **Q Whatever it is, it's not something that you show as an**

17 **IWC revenue source in determining how much the IWC**

18 **charge should be?**

19 **A We don't align any relationship between the septage and**

20 **the IWC.**

21 **Q Okay, or any other revenue source, correct?**

22 **A Correct, it is -- correct.**

23 **Q The sole revenue source for supporting the IWC function**

24 **is supplied by the IWC charges, correct?**

25 **A The IWC charges are determined to fund the activities**

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1 **of the IWC Division, yes.**

2 **Q All right, and there's no other source of revenue?**

3 **A I don't want to imply with my answer that there's,**

4 **every dollar that comes in from IWC is colored blue and**

5 **put in the IWC bucket because it's really just an**

6 **allocation of cost.**

7 **Q No, no, no, and again our central theory in this case**

8 **is that they're over-collecting, so I'm not conceding**

9 **that either. I'm just saying that there aren't any**

10 **other sources of revenue that are intended to finance**

11 **IWC?**

12 **A Not directly, that's correct.**

13 **Q Okay. Let's return to -- we're still on Exhibit 8. On**

14 **page five of Exhibit 8 we were referring to budgeted**

15 **positions and things like that. Let me flip it for us.**

16 **There are statements of budgeted positions,**

17 **staffed positions, and there's a line that says,**

18 **DWSD/GLWA mid-2015 Redux of minus 20 budgeted**

19 **positions, minus 20 staff positions; do you see that?**

20 **A Yes.**

21 **Q Do you know why -- first of all, do you know that that**

22 **in fact occurred?**

23 **A I am not familiar with this.**

24 **Q Okay. All right. Fair enough. If that occurred,**

25 **would you expect a material reduction in personnel cost**

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1 year to year, between, say, '15 - '16 and '16 - '17?

2 **A I am not involved at that level of review of the budget**

3 **process.**

4 **Q** Okay, and I just want to make sure I understand. You

5 just accepted the budgeted numbers that were given to

6 you for personnel. You didn't do an independent audit

7 of whether that tied out to specific verifiable costs,

8 correct?

9 **A Correct.**

10 **Q** All right. Continuing on in Exhibit 8, there's a

11 document 463959, which has a Detailed Calculation of

12 Allocated Indirect Operating Costs, DWSD Budgeted Era;

13 do you see that?

14 **A Yes.**

15 **Q** Can you tell me what this is intended to depict?

16 **A Yes. This is similar to the discreet schedules that we**

17 **looked at and discussed a moment ago for '18 and '19,**

18 **and for whatever reason the year labels did not print**

19 **on this page. So, the first column is in support of**

20 **the Fiscal Year '13 figures and then '14, and the blank**

21 **column is '15, and then the last column is 2016.**

22 **Q** Okay. All right. That answered my next question.

23 **A Quite frankly, I got confused when I was looking at**

24 **this at first as well.**

25 **Q** Okay.

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1 **A And, I'm sorry, do you have a specific question?**

2 **Q** No, you can continue on because I wanted it figure out

3 what this is depicting.

4 **A Yeah. So, it's a similar approach to what we discussed**

5 **for '18 and '19. If you were to compare them**

6 **side-by-side, you would see the differences in kind of**

7 **the account structure and the cost centers and whatnot,**

8 **but the overall functionality is similar. The**

9 **different names, similar functions.**

10 **What you'll note in the DWSD budgets is that**

11 **a large portion of the discreet budget was either put**

12 **into Administration on the first line there,**

13 **Maintenance about halfway down, or Operations on the**

14 **last line before the subtotal. So, same level of**

15 **discreet allocation of the budget to, you know, Waste**

16 **Water Operation functions that existed in the GLWA era.**

17 **Q** So, for example, so they come up with the total

18 operational costs of the sewer side. For example, in

19 '14, it was \$128,000,000 and change, correct?

20 **A Uh-huh.**

21 **Q** Yes?

22 **A Yes. I'm sorry.**

23 **Q** And then you backed out a couple of things, the Direct

24 IWC Lab estimate and the Direct Meter/Flow Balance

25 estimate?

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1 **A Right.**

2 **Q** And you did that to avoid a double dip because you're

3 already including the \$8,000,000, right?

4 **A Correct. Those amounts were being discreetly assigned.**

5 **The first amount to the IWC and the second amount to a**

6 **different cost pool that is recoverable based on**

7 **suburban meters, so there's no reason to include those**

8 **in a general allocation.**

9 **Q** All right. So, then you get down to \$118,000,000, and

10 then you have some additional add-ons, CSO Cost Centers

11 Allocable to General Waste Water Ops and Allocated

12 General Waste Water. So, you come up total of

13 \$121,000,000, right?

14 **A Correct.**

15 **Q** And there's, two and a half percent of that is

16 allocable to IWC and it generates a dollar value a

17 little bit in excess of \$3,000,000, correct?

18 **A Correct.**

19 **Q** This two and a half percent, this calculation, is this

20 one that was done contemporaneously or is this a

21 re-creation?

22 **A No, it's contemporaneous with the establishment of the**

23 **2013 and 2014 charges.**

24 **Q** And where are the documents that would show me this?

25 **A I don't know that there is one that exists.**

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1 **Q** But here's my question: When you created this page

2 463959 in November of 2020, where did you get the

3 numbers?

4 **A In the calculations that led to, the calculation files**

5 **that led to the ultimate proposed rates.**

6 **Q** I guess what I'm saying is how did you know to use two

7 and a half percent as opposed to some other percentage?

8 **A In the Cost of Service Studies that were conducted for**

9 **2013 and 2014, it would have been the same process.**

10 **Whoever, interviews with, hey, how should we allocate**

11 **this budget. That process would have yielded a**

12 **judgment call of 2.5 percent.**

13 **Q** All right, here's kind of what getting at, I'm not

14 casting aspersions, I'm just trying to understand what

15 the deal is.

16 It looks to me, as someone who hasn't been

17 provided the underlying source documents, that somebody

18 said, what was our Revenue Requirement in '14. Go back

19 and figure out how to allocate it among the cost

20 centers that we're now allocating in later years, and

21 that this is what resulted. Why am I wrong about that?

22 **A I don't know why you're wrong, but you're wrong. The**

23 **2.5 percent exists as an allocation of this budget for**

24 **purposes of the 2013 Rate Study and the 2014 Rate**

25 **Study.**

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1 Q But there is no such thing as a 2013 rate study and a
2 2014 rate study that has percentages like this.
3 **A There is.**
4 Q Have you seen it?
5 **A I prepared it.**
6 Q Where is it, though? My question is where is it?
7 **A There is documentations that summarize the -- there are**
8 **reports that summarize the rate proposals for '13 and**
9 **'14. There was not prepared a Cost of Service Report**
10 **that carries the same level of detail as those provided**
11 **in '16, '17, '18, '19, and '20.**
12 Q No, that we know, but let's stick with the concrete
13 example.
14 For Fiscal Year '14, okay, is there a
15 document recreated contemporaneously that has been
16 provide to me that says we're allocating \$121,000,000
17 of the General Operations of the Waste Water Treatment
18 Plant or the sewer side, we're allocating two and a
19 half percent of that to the IWC and that's what's going
20 in the rate?
21 **A Is there a document that's been provided to you? I**
22 **don't know.**
23 Q Well, leave aside whether, I'm sure that Mr. Pelland
24 either would provide it or would be happy to provide it
25 if there was one. Are you specifically aware of a

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1 document, and let's limit it now to Fiscal Year '14,
2 that supports the calculation that's on this page
3 463959 and which was created back in the day?
4 **A I have in my possession an analysis that was**
5 **contemporaneously prepared that produces all of these**
6 **figures. A document, per se, illustrating those**
7 **calculations was not prepared nor provided to DWSD at**
8 **the time.**
9 Q So, you have something in your possession that you
10 wouldn't expect me to have because DWSD and GLWA don't
11 have it?
12 **A Correct.**
13 Q But that you went back and used or consulted in order
14 to generate this table?
15 **A Correct.**
16 Q Okay. Now I understand. Okay, and is that a document
17 you're willing to provide to us?
18 **A It's not a document, per se. It is a series of**
19 **calculations that supported the overall allocation of**
20 **costs and development of rates in 2014.**
21 Q All right, and that was done back in, I would assume,
22 December of 2012, correct?
23 **A Correct.**
24 Q Okay, and do you have a similar calculation for Fiscal
25 Year '13?

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1 **A Yes.**
2 Q Okay, but just so we close off this line of
3 questioning, we've seen, for example, Cost of Service
4 Study for 2018 and a calculation of percentages and
5 things like that. There's not a contemporaneous
6 publicly made available document back from 2012 or '13
7 for these fiscal years we're talking about that would
8 show a similar type of computation?
9 **A The documents that exist for '13 and '14 I don't**
10 **believe go into the same degree of detail, particularly**
11 **with respect to the Industrial Waste Control charges.**
12 Q Right.
13 **A There are documents that exist and are out there and**
14 **DWSD does have and GLWA does have that summarize the**
15 **Cost of Service Study and the findings and the proposed**
16 **rates. My suspicion is that when it comes to IWC, you**
17 **know, you're got going to see this level of granularity**
18 **into how that Revenue Requirement was established in**
19 **those documents.**
20 Q Okay.
21 **MR. WATT:** Folks, while there's a pause in
22 the proceedings, I'm just letting you know I'm going to
23 have to sign out. I've got to start another deposition
24 in a few minutes.
25 Madam Court Reporter, assuming Mr. Hanley

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1 orders a copy, I would like one as well, and the Etrans
2 is fine.
3 All right, folks, nice seeing you.
4 **MR. HANLEY:** You, too.
5 **BY MR. HANLEY:**
6 Q Just a couple more exhibits here.
7 (Document was marked as Exhibit Number 15
8 for identification and is attached hereto.)
9 **BY MR. HANLEY:**
10 Q Did a new document come up, Mr. Foster, Exhibit 15?
11 **A Yes.**
12 Q This is a document numbered GLWA 378, top corner. It's
13 a Summary of the IWC Revenue Requirement Rate
14 Development for '14, '15. Can I ask if this is a
15 document you prepared, sir?
16 **A I don't believe it is.**
17 Q All right, but do you recognize this as showing the
18 methodology, the simplified methodology that was used
19 for Fiscal Year '15 for the IWC Revenue Requirement?
20 **A It ties out within, you know, a couple hundred bucks of**
21 **what is on Exhibit 8 that I did prepare, so, yes.**
22 Q Okay. So, basically, they looked at the total O & M
23 budget for the sewer side and used 10 percent of that
24 based upon the historical situation as reflected in
25 Fiscal Year '13 and '14, correct?

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1 **A Correct.**
2 **Q** Okay, and that to derive the unit charge to take the
3 total number of equivalent IWC meters and divide the
4 total Revenue Requirement by, in this case, \$211,478?
5 **A Correct.**
6 **Q** Do you know why equivalent meters is used as the
7 denominator in the rate fraction?
8 **A I know how it came to be. I could not articulate to**
9 **you the logic behind it. So, with that caveat, when**
10 **the Industrial Waste Control charge was originally**
11 **established for DWSD, and this was I want to say late**
12 **'70s, early '80s when DWSD was actively under the**
13 **umbrella of Judge Feikens' leadership, there was, I**
14 **believe, a legal precedent established within one of**
15 **the settlement agreements that the cost of the**
16 **Industrial Waste Control Program should be recovered**
17 **from non-residential customers and the recognition that**
18 **non-residential customers with larger connection sizes**
19 **would need more attention than those with small**
20 **connection sizes led to kind of this notion that if it**
21 **was allocated on a 5/8 inch meter, the equivalence of a**
22 **5/8 inch meter, that that would be a fair recovery of**
23 **the costs.**
24 **Q** And that's what's been utilized historically?
25 **A Yes, or at least 35 years.**

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1 **Q** Have you been involved in working on IWC rates and
2 charges for any other utility?
3 **A Yes.**
4 **Q** Do other utilities base it on equivalent meters, as
5 well?
6 **A There are -- several do. There are others that recover**
7 **it through commodity charges to non-residential**
8 **customers. There are some that attempt to entirely**
9 **fund it from direct fees to monitored, you know, the**
10 **specific not-monitored folks.**
11 **Q** Right.
12 **A And there are other that just recover it through the**
13 **general costs to customers at large.**
14 **Q** Have you ever given an opinion, either formally or
15 informally, to another utility about the most
16 appropriate way of recapturing these costs?
17 **A No. My opinion has always been it should be in**
18 **alignment with the general policies of the specific**
19 **utility.**
20 **Q** All right. Are you aware of what the, something called
21 EPA User Charge System?
22 **A Yes.**
23 **Q** Have you become aware of pronouncements from the folks
24 that are responsible for those, dictating those User
25 Charge Systems regarding the propriety of using

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1 equivalent meters to portion cost?
2 **A No.**
3 **Q** All right. Would you agree with me that all users of
4 the sewer system benefit in some way from the services
5 of the IWC department?
6 **A Yes.**
7 **Q** And would you further agree with me that if residential
8 users were also apportioned an allocation of the IWC
9 costs, the overall IWC Unit Charge would necessarily be
10 reduced?
11 **A The math would work that way.**
12 **Q** Right, and have you ever been asked by GLWA or DWSD to
13 perform a calculation that would include the equivalent
14 meters of all users, not just a certain non-residential
15 users?
16 **A No.**
17 **Q** Have you ever been involved in for DWSD, GLWA devising
18 a User Charge System that would recover the cost of the
19 IWC Division solely from significant industrial users?
20 **A No.**
21 **Q** Would you agree with me that to the extent that there
22 are services that directly benefit any user, those
23 benefits are visited most significantly on the SIUs or
24 Significant Industrial Users?
25 **A Can you clarify your question, please.**

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1 **Q** Well, do you have an understanding that a significant
2 percentage of the activities of the Industrial Waste
3 Control Division are devoted to monitoring and
4 regulating entities or persons that are known as
5 Significant Industrial Users?
6 **A Yes.**
7 **Q** And would you agree with me that to the extent a
8 Significant Industrial User is being monitored, that is
9 a service or benefit conferred on that user?
10 **A Or a regulatory requirement on that user, as well, and**
11 **then I would just point out that the relationship**
12 **between the attention and the benefit is the same today**
13 **as it was when the original charge methodology was**
14 **established over 35 years ago.**
15 **Q** Right. Okay. I understand that, you would agree with
16 me that an office building, like Mr. Pelland is in
17 right now, incurs an IWC charge, correct?
18 **A To the extent that it is characterized as**
19 **non-residential and reported as such by whatever**
20 **community Mr. Pelland is sitting in, yes.**
21 **Q** And do you have any reason to believe that there are
22 non-residential properties that contributed waste that
23 is no different than domestic waste contributed by
24 residential properties?
25 **A I'm sorry?**

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1 Q Would you agree with me that there are non-residential
2 property, say an office building, that has waste
3 characteristics that are similar to a residential
4 property?
5 A **I would agree with that.**
6 Q All right, and yet you understand that residential
7 properties do not incur an IWC charge, correct?
8 A **The IWC activities are not solely related to the waste
9 characteristics, but I would agree with the statement.**
10 Q Okay. All right. Some general questions about Revenue
11 Requirements and then I think we'll be very close to
12 being done.
13 You would agree with me that in deriving
14 Revenue Requirements, you endeavor not to materially
15 overstate those requirements, correct?
16 A **Correct.**
17 Q And you understand in Michigan a municipal utility is
18 required to establish rates and charges at a level that
19 recovers their costs of service as opposed to making a
20 profit, correct?
21 A **I would characterize it differently, but, yes.**
22 Q All right, and if the Revenue Requirement is materially
23 overstated, it could result in rates that are
24 excessive, correct?
25 A **I'm not going to offer a blanket assessment on that**

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1 **question.**
2 Q I guess what I'm saying is, and take it out of this
3 context, I'm just talking generalities, one of the
4 reasons you want to make sure the Revenue Requirement
5 is not materially overstated is that you don't result
6 in rates that are too high, correct?
7 A **Appropriate rate setting balances the Revenue
8 Requirement with the expected needs from the rates.**
9 Q Right. But one of the -- you already told me that you
10 want to make sure that the Revenue Requirement is not
11 materially overstated. We've established that,
12 correct?
13 A **Okay.**
14 Q And the reason is, is because if the Revenue
15 Requirement is materially overstated, it could result
16 in rates that are in excess of the cost of service,
17 correct?
18 A **Okay.**
19 Q Yes?
20 A **Yes.**
21 Q Okay, and if the Revenue Requirement is materially
22 overstated, it could result in accumulation of
23 excessive amounts of cash in the utility, correct?
24 A **I'm not going to make a judgment on excessive amounts
25 of cash, even in general terms.**

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1 Q All right, but you would agree with me that a goal of
2 establishing Revenue Requirements is to make sure that
3 they are not materially overstated, correct?
4 A **The goal establishing Revenue -- I won't agree with
5 that statement, no.**
6 Q So, it's okay to establish Revenue Requirements based
7 upon materially overstated cost data?
8 A **That's not the question you asked.**
9 Q Okay. Let me ask it again. Is it a goal of rate
10 making to insure that the Revenue Requirement that is
11 utilized is not materially overstated?
12 A **I don't think you can -- I can't answer that on the
13 overstated aspect in a vacuum. The goal of rate making
14 is to take into consideration all types of policy
15 considerations, including long-term financial
16 sustainability and regulatory issues in order to, as
17 responsibly as possible, create a cost recovery system
18 that meets larger objectives.**
19 Q Right, and I understand that the Cost of Service in
20 your view could include accumulating money that you
21 might use in the future for, say, capital improvements,
22 and in your view that's consistent with the Cost of
23 Service, right?
24 A **Correct.**
25 Q And leaving aside that, that's a quarrel for another

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1 context, but once you've determined the Cost of
2 Service, whatever that is, you want to make sure that
3 the Revenue Requirement you're utilizing in
4 establishing the rates is not materially overstated
5 from the Cost of Service that you've determined?
6 A **By definition, the Revenue Requirement established from
7 the financial plan in the budget is the Cost of Service
8 to be utilized for rates.**
9 Q Exactly, but if the Cost of Service is overstated then
10 the Revenue Requirement is overstated, correct?
11 A **They're one in the same, yes.**
12 Q Okay. Fair enough, and as you sit here today do you
13 have any opinions as to whether the Revenue Requirement
14 for the IWC charges was materially overstated in any of
15 the fiscal years, from Fiscal Year 2013 to Fiscal Year
16 2021?
17 A **I believe that the Revenue Requirements for each of the
18 years in question were established based on opinions
19 and estimates of what those making the judgments at the
20 time believed were reasonable and appropriate.
21 Clearly, the data shows that those opinions and
22 estimates have changed over time.**
23 Q Well, and some of them turned out to be, charitably,
24 turned out to be wrong, right?
25 A **I can't make that judgment. They were based on the**

1 estimates at the time and as are all budgets and
 2 estimated allocations.
 3 Q Well, let me ask it this way: When you're talking
 4 about the Analytical Lab, if the entire Analytical Lab
 5 budget in 2014 was \$3,000,000, was it reasonable for
 6 somebody to assume that \$8,000,000 of that budget
 7 should be attributable to IWC?
 8 A Was it reasonable for somebody to assume that when they
 9 were making the judgment on the information they had in
 10 2012, I don't -- I can't conclude that it was
 11 unreasonable. I can conclude that after the fact, the
 12 assumption that went into, that was made at the time
 13 did not bear out to be what was reported, and, again, I
 14 stress what was reported as being the actual cost of
 15 that facility, of that operation.
 16 Q Reported in the Certified Annual Financial Statements,
 17 correct?
 18 A Reported in the audited financial statements, reported
 19 in the audited financial statements, and you can talk
 20 about whether the audited financial statements purport
 21 to specifically audit the amounts that are shown on
 22 individual --
 23 Q You understand that people rely upon, there's a reason
 24 for creating audited financial statements, correct?
 25 A Yes.

1 Q And people rely upon the accuracy of those?
 2 A Yes.
 3 Q Are you aware of any attempt by DWSD to go back and
 4 restate its financial statements for any prior periods
 5 as it relates to IWC charges?
 6 A No.
 7 MR. HANLEY: I have no further questions at
 8 this point, sir. Thank you for your time.
 9 MR. PELLAND: I have nothing further.
 10 (The deposition was concluded at 12:56 p.m.)
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1 STATE OF MICHIGAN)
 2 COUNTY OF WAYNE)
 3
 4 I certify that this transcript, consisting of
 5 102 pages, is a complete, true, correct record of the
 6 testimony of BART FOSTER, held in this case on
 7 Thursday, January 14, 2021.
 8 I also certify that prior to taking this
 9 deposition, BART FOSTER was duly sworn to tell the
 10 truth.
 11 I also certify that I am not a relative or
 12 employee of or an attorney for a party; or a relative
 13 or employee of an attorney for a party; or financially
 14 interested in the action.
 15
 16 Dated this 22nd day of January, 2021.
 17
 18
 19
 20 Sandra L. Patton, CER-5653
 21 My Commission Expires: April 26, 2025
 22 309 South Gratiot, Suite 2
 23 Mount Clemens, Michigan 48043
 24
 25

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