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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)Docket UW-031284 &
Complainant,)(consolidated)
V.)
AMERICAN WATER RESOURCES, INC.,)
Respondent.)

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In the Matter of The)Docket UW-031596
)Volume IV

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Penalty Assessment Against)Pages 223-325
Virgil R. Fox, President,)
American Water resources, Inc.)
in the Amount of \$3,700.)

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A hearing in the above-entitled matter

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was held at 9:01 a.m. on Tuesday, April 27, 2004, at

14

1300 South Evergreen Park Drive, Southwest, Olympia,

15

Washington, before Administrative Law Judge KAREN

16

CAILLE.

17

The parties present were as follows:

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19

COMMISSION STAFF, by Lisa Watson,
Assistant Attorney General, 1400 S. Evergreen Park
Drive, S.W., P.O. Box 40128, Olympia, Washington,
98504-1028.

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22

AMERICAN WATER RESOURCES, INC., by
Richard Finnigan, Attorney at Law, 2405 Evergreen
Park Drive, S.W., Suite B-1, Olympia, Washington
98502.

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Barbara L. Nelson, CCR

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Court Reporter

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1 JUDGE CAILLE: Let's be on the record. We
2 are here for the second day of evidentiary hearings
3 in Docket Numbers UW-031284, 010961, and 031596, and
4 these dockets pertain to American Water Resources,
5 Incorporated. Today is April 27th, and it's
6 approximately 9:00, and we're convened in the main
7 hearing room at the Commission's headquarters in
8 Olympia, Washington. We already did appearances
9 yesterday, so I think we're ready to begin with Mr.
10 Fox.

11 So Mr. Fox, if you will please stand, I'll
12 swear you in.

13 Whereupon,

14 VIRGIL R. FOX,
15 having been first duly sworn by Judge Caille, was
16 called as a witness herein and was examined and
17 testified as follows:

18 JUDGE CAILLE: Thank you. Mr. Finnigan.

19 MR. FINNIGAN: Thank you.

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. FINNIGAN:

23 Q. Mr. Fox, do you have your testimony and
24 accompanying exhibits, which are marked Exhibit
25 120-T, and then 121 through 134?

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1 A. My testimony?

2 Q. Yes.

3 A. Marked VRF-1-T? Yes. Is that --

4 Q. Do you have any corrections to make to that
5 testimony?

6 A. I don't believe so.

7 Q. Was that prepared by you or under your
8 supervision and direction?

9 A. Yes.

10 Q. If you were asked the questions that appear
11 in your testimony today, would your answers be the
12 same?

13 A. Yes.

14 MR. FINNIGAN: Mr. Fox is available for
15 cross-examination, and I would offer Exhibits 120-T
16 and 121 through 134.

17 JUDGE CAILLE: Is there any objection to the
18 admission of those exhibits?

19 MS. WATSON: No objection.

20 JUDGE CAILLE: Then Exhibits 120-T and 121
21 through 134 are admitted into evidence. Mr.

22 Finnigan, I'm not sure if your -- is it on?

23 MR. FINNIGAN: It was on, yeah. Hello?

24 Nothing. It's on, but --

25 MR. ECKHARDT: Button needs to be up.

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1 MR. FINNIGAN: I've got it backward. I
2 apologize.

3 JUDGE CAILLE: It's counterintuitive, kind
4 of like my car is. Okay.

5 THE WITNESS: I'm not sure that I understood
6 all of the exhibit numbers that you said. You asked
7 what exhibits?

8 MR. FINNIGAN: The exhibits to your
9 testimony.

10 THE WITNESS: The 1-T, I have that. The
11 others --

12 MR. FINNIGAN: The accompanying exhibits to
13 your testimony. Do you have those with you today?
14 May I approach the witness?

15 THE WITNESS: Oh, yes, yes, they're
16 attached. Yes.

17 MR. FINNIGAN: All right.

18 THE WITNESS: Excuse me.

19 MR. FINNIGAN: Thank you.

20 JUDGE CAILLE: Okay. Ms. Watson.

21

22 C R O S S - E X A M I N A T I O N

23 BY MS. WATSON:

24 Q. Good morning. Mr. Fox, would you please
25 turn to page six of your testimony?

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1 A. Okay.

2 Q. And I'd like you to turn your attention to
3 lines one through five. You state that AWR's rates
4 must be increased by \$10.79, and go on to say that a
5 larger increase is needed; correct?

6 A. Yes.

7 Q. How much is AWR requesting the rates be
8 increased?

9 A. Well, I guess we're requesting 10.79.

10 MR. FINNIGAN: Just for the record, there
11 have been some changes that Ms. Parker filed in
12 response to the bench request that may not be
13 reflected in Mr. Fox's testimony. The request of the
14 company is as reflected in the response to the bench
15 request.

16 JUDGE CAILLE: Okay. Thank you.

17 MS. WATSON: Okay.

18 Q. So Mr. Fox, by saying that AWR needs a
19 larger increase, that doesn't mean larger than
20 whatever's reflected in the bench request; correct?

21 A. Well, what I said was when you factor in a
22 need to respond to new regulations, catch up on
23 deferred maintenance, as well as the ongoing
24 operational employee needs, a larger increase is
25 needed. I would still believe that that is true.

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1 Q. Please turn to page two of your testimony.

2 A. Okay.

3 Q. Lines six through seven, you state that
4 you're responsible for all facets of management and
5 long-range planning and for the details of the
6 day-to-day operations; correct?

7 A. That's correct.

8 Q. This means that you're responsible for
9 making all of the decisions for AWR; is that correct?

10 A. Yes.

11 Q. Please turn to page 22.

12 A. Okay.

13 Q. At lines 13 through 16, you state that you
14 never make any significant expenditures or decisions
15 without Mr. Finnigan's or Ms. Parker's approval;
16 correct?

17 A. Yes.

18 Q. And you state that you've had this policy
19 for the last two to two and a half years; correct?

20 A. Yes, I'm responsible for making the
21 decisions, but I don't make them without advice.

22 Q. You've had this policy for the last two to
23 two and a half years. This means that you
24 implemented it sometime either in the beginning or
25 middle of 2002; correct?

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1 A. That's correct.

2 Q. Do you remember whether it was the beginning
3 or middle of 2002?

4 A. No, I don't know a specific date. That's
5 why I said two to two and a half years. It's, you
6 know, it wasn't something that, you know, was done
7 formally on some specific date.

8 Q. Did you seek approval with regard to
9 decisions and expenditures before you implemented
10 this policy?

11 A. I beg your pardon?

12 Q. Before you implemented the policy of not
13 making any significant expenditures and decisions
14 without approval, did you seek approval from your
15 advisers with regard to decisions and expenditures
16 before implementing that policy?

17 A. Oh, I believe I always have.

18 Q. And from whom did you seek approval?

19 A. Well, when you say approval, I'm not sure
20 that's the word I'd use. The word I would use would
21 be advice or input, and I have always sought advice
22 or input from my accountant and my attorney.

23 Q. I was using approval, because that's the
24 word that appears on line 16.

25 A. Okay. That's the word I used there. I

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1 guess I don't know exactly how to answer you. By
2 approval, I guess it becomes a question of
3 definition. If they said I shouldn't do something, I
4 wouldn't do it. So to that extent, it's approval,
5 yes.

6 Q. How do you define a significant expenditure?

7 A. Anything that would be very much money, like
8 let's say more than, oh, more than two, three, \$400,
9 or anything that I thought was unusual or anything
10 that I thought might be criticized.

11 Q. And how do you define a significant
12 decision?

13 A. Well, I'm not sure. I guess significant
14 means anything that is going to have any material
15 effect on what we're doing.

16 Q. Can you give an example of what you mean by
17 a significant decision?

18 A. Well, okay. An example might be if, since I
19 have been criticized for intercompany relations with
20 my construction business, if I expected to have my
21 construction business do some kind of work for
22 American Water, I would, even if it's a relatively
23 small amount, I would expect that to be significant
24 and I would discuss that with Julie or Rick Finnigan
25 about whether or not that's appropriate.

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1 Q. Since you implemented the policy of not
2 making a significant expenditure or decision without
3 first speaking with your advisers, have you always
4 followed the advice you received from Mr. Finnigan or
5 Ms. Parker?

6 A. I believe I always have if it was -- if it
7 was possible.

8 Q. What do you mean by if possible?

9 A. Well, for instance, if their advice were to
10 put more capital into the business, I could not
11 follow that, so I therefore wouldn't, but that has
12 not been their advice. But that would be a typical
13 example.

14 Q. If Mr. Finnigan or Ms. Parker disapproved of
15 an expenditure or a decision, what did you do?

16 A. I would not do it.

17 Q. You made the decision to sell the View Royal
18 Water System on behalf of AWR; correct?

19 A. That's correct.

20 Q. Who approved that decision?

21 A. Well, it was discussed. When you say
22 approved, you make me feel like there's some formal
23 process or specific date or time or something like
24 that. I don't use approved in that sense. The sale
25 of the View Royal system was discussed with both my

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1 accountant and my attorney and the conclusion was
2 that I had little choice. I had to raise money, and
3 I therefore did it.

4 Q. Who concluded that you had little choice?

5 A. The consensus of our opinion.

6 Q. What analysis was done before the sale?

7 A. Well, I talked to Julie Parker about the
8 ramifications of the taxes and the revenue that we
9 would bring in and how that would help our ability to
10 pay our bills and things like that.

11 Q. You also arranged to sell AWR or portions of
12 AWR to Washington Water and the Water Company of
13 Washington; correct?

14 A. That's correct.

15 Q. You also negotiated a sale to Trident
16 Utilities; is that correct?

17 A. That's correct. Now, a sale of some of the
18 systems.

19 Q. When did these negotiations take place?

20 A. I can't give you dates without looking it
21 up, but the -- I first negotiated with Washington
22 Water, and I would expect that was probably in 2001,
23 I'll guess. I would have to look it up. I could be
24 wrong. And then, after that, I tried to negotiate a
25 sale with -- I'm not sure what the company name,

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1 Steve Harrington, whatever it was -- Water Company of
2 Washington or what's the right name? Jim would know.
3 I can't remember the -- their correct legal name. At
4 any rate, it's Steve Harrington's company.

5 Q. Do you remember approximately when those
6 negotiations took place?

7 A. Sometime after trying to deal with
8 Washington Water, which -- I'll guess a year later.

9 Q. So approximately 2002?

10 A. I'll make that guess, yes. I can look up
11 the exact dates, but I did not have that requirement
12 in mind.

13 Q. Do you remember when approximately the
14 negotiations with Trident Utilities took place?

15 A. It was later than that. It was -- I would
16 guess probably early '03. The first two were for
17 sale of the entire company; the Trident was for sale
18 of I'll guess 10, 12 smaller systems.

19 Q. Did you seek advice from your advisers
20 regarding selling AWR or portions of AWR?

21 A. Yes.

22 Q. Who approved the decision to sell?

23 A. Well, again, you use approved in a manner
24 that I don't quite understand or agree with, but I
25 discussed each of these events with both my

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1 accountant and my attorney, and I'm quite satisfied,
2 then and now, that we were acting in concert, but
3 there wasn't an official date or document or
4 something that signifies approval, is where you --
5 where your terminology bothers me.

6 Q. Can we agree that approval means --

7 A. A consensus of opinion.

8 Q. -- a consensus? Okay.

9 A. Yes, yes, mm-hmm.

10 Q. What analysis was done with regards to
11 selling AWR or portions of it?

12 A. Well, I don't really know how to answer
13 that. In my own mind, it's a question of how much am
14 I going to sell it for versus what is the rate base
15 and what kind of revenue is that going to bring in.
16 I did not do some kind of a formal, written,
17 vastly-detailed kind of analysis. I don't function
18 that way.

19 Q. Those three sales did not go through; is
20 that correct?

21 A. That's correct.

22 Q. Who made the decision not to go through with
23 the sales?

24 A. I did, because the -- well, I did.

25 Q. Did you discuss that decision?

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1 A. Yes.

2 Q. With who?

3 A. With Julie Parker and Rick Finnigan.

4 Q. And did they agree with the decision not to
5 go through with the sales?

6 A. Yes.

7 Q. What analysis was done at that point?

8 A. Well, basically, the price that I had agreed
9 with the purchaser was acceptable to me, but the UTC
10 Staff determined that we couldn't sell for more than
11 rate base, and my agreement provided that if UTC
12 imposed any kind of terms that were unacceptable to
13 me, that the deal was off.

14 Q. Please turn to page 38 of your testimony.

15 And I'd like you to go to lines six through 13.

16 A. Okay.

17 Q. There you describe the transfer of
18 Birchfield to the Lewis County Water and Sewer
19 District Number Five; correct?

20 A. Yes.

21 Q. I'd like to focus on the mechanics of the
22 transfer at this time. We'll get to the other
23 aspects a little later. Mr. Finnigan and Ms. Parker
24 provided advice regarding the decision to sell;
25 correct?

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1 A. Yes.

2 Q. And they also provided advice regarding how
3 to execute the sale; correct?

4 A. That's correct.

5 Q. Did you adhere to their advice?

6 A. Yes.

7 Q. You state that Rene Remund, I'm not sure if
8 I'm pronouncing that correct.

9 A. Remund.

10 Q. Remund, okay, provided direction regarding
11 the transaction; correct?

12 A. That's correct.

13 Q. Is it a Mr. Remund?

14 A. Remund.

15 Q. Okay. Mr. Remund is Lewis County Water and
16 Sewer District Number Five's attorney; is that
17 correct?

18 A. That's correct.

19 Q. Who was he advising with regard to the
20 transfer of Birchfield?

21 A. Beg your pardon?

22 Q. Who was Mr. Remund advising?

23 A. Regarding the -- me, on behalf of the Water
24 and Sewer District.

25 Q. But he wasn't representing you in your

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1 individual capacity?

2 A. No.

3 Q. Would you please turn to page 21 of your
4 testimony?

5 A. Okay.

6 Q. I'm sorry. Actually, let's go back to the
7 subject of Birchfield momentarily.

8 A. Okay.

9 Q. Were you receiving advice from anyone in
10 your individual capacity?

11 A. No, I don't -- no.

12 Q. So it was either through --

13 A. But Mr. Finnigan represented American Water
14 and does the work for American Water. Mr. Remund
15 represented the Water and Sewer District and was,
16 what should I say, acting or thinking in behalf of
17 the Water and Sewer District. Now, Mr. Remund does
18 do other work for me on other things at various
19 times. Is that clear?

20 Q. Okay. Going back to page 21 of your
21 testimony.

22 A. Okay.

23 Q. Lines 10 and 11, you state that you hired
24 Herta Ingram, a former UTC employee; correct?

25 A. Yes.

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1 Q. You hired Ms. Ingram in August of 1998; is
2 that correct?

3 A. I don't have the date in front of me or my
4 memory, but I'll trust that you're right.

5 Q. Will you accept it subject to check?

6 A. Pardon?

7 Q. Would you accept it subject to check?

8 A. Yes, yes.

9 Q. Ms. Ingram left AWR in June 2000. Would you
10 accept that subject to check?

11 A. Yes.

12 Q. Ms. Ingram was AWR's manager of in-house
13 accounting and office activities; correct?

14 A. That's correct.

15 Q. What were Ms. Ingram's duties?

16 A. She did all of the in-house accounting work
17 and she did a correspondence with the UTC as far as,
18 you know, talking to whoever it might be, Jim Ward or
19 whatever, and she did a reasonable amount of, what
20 should I say, supervising or helping execute my
21 directions and orders with the various employees. In
22 a very small company, with two people in the office,
23 duties get very spread out.

24 Q. Did you consult Ms. Ingram regarding
25 Commission matters while she worked for AWR?

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1 A. Yes.

2 Q. On what matters did you consult Ms. Ingram?

3 A. Ooh, I can't tell you specifically, but
4 anything, anything that related to UTC, I'm sure that
5 I discussed with her.

6 Q. Did you follow the advice she gave on those
7 matters?

8 A. Follow the advice of --

9 Q. Of Ms. Ingram?

10 A. Her advice? Not always. When I could.

11 Q. Would you provide an example of when you did
12 not follow Ms. Ingram's advice?

13 A. Well, if I thought that what she was
14 suggesting was, what would I say, impossible.

15 Q. Do you have an example in mind?

16 A. I really don't.

17 Q. Have any of your advisers counseled you to
18 violate regulatory statutes?

19 A. No.

20 Q. Have any of your advisers counseled you to
21 violate Commission rules?

22 A. No.

23 Q. Have any of your advisers counseled you to
24 violate Commission orders?

25 A. No.

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1 Q. Is it your understanding that the
2 Commissioners ultimately decide how regulatory
3 requirements are applied to the companies they
4 regulate?

5 A. Yes.

6 Q. Do you understand that Staff appears before
7 the Commission in the same capacity as other parties?

8 MR. FINNIGAN: I'll object to that. I don't
9 think there's a foundation of that.

10 MS. WATSON: I'm exploring Mr. Fox's
11 understanding.

12 JUDGE CAILLE: I'm going to overrule the
13 objection. I don't see any prejudice in this, and I
14 do want -- the way Mr. Fox's testimony reads, I just
15 want to make sure he does understand the process.

16 MS. WATSON: That's actually Staff's goal,
17 as well.

18 MR. FINNIGAN: Just -- my point was that the
19 question contained a predicate that I don't believe
20 is accurate, but --

21 MS. WATSON: I can rephrase it.

22 MR. FINNIGAN: Maybe you could rephrase it.
23 Thank you.

24 JUDGE CAILLE: Okay.

25 Q. Is it your understanding that Staff appears

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1 before the Commission in the same capacity as other
2 parties?

3 MR. FINNIGAN: Same objection. Same
4 question. Just for the record, I'll maintain my
5 objection.

6 MS. WATSON: It actually was rephrased.

7 THE WITNESS: Well, when you say in the same
8 capacity, I don't know exactly what that means, in
9 the same capacity. They're not in the same capacity.
10 They're UTC Staff, I'm a business owner. Is that the
11 same capacity?

12 Q. Do you understand that in a proceeding such
13 as this one there are two parties and each of those
14 parties presents their case to the Commission?

15 A. Yes, I understand that.

16 Q. And the Commission decides --

17 A. I agree.

18 Q. -- the matter on the merits?

19 A. Yes, mm-hmm.

20 Q. Is it your understanding that Staff presents
21 recommendations to the Commission?

22 A. Excuse me. Could you repeat that?

23 Q. Is it your understanding that Staff presents
24 recommendations to the Commission?

25 A. Yes.

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1 Q. Is it your understanding that the Commission
2 may reject Staff's recommendations?

3 A. They may. I understand that.

4 Q. An example of that -- I'm going to explore
5 your memory on a past case with AWR. I'd like to ask
6 you about the consolidated docket from 1998. Those
7 docket numbers are UW-980072, UW-980258, and
8 UW-980265. I don't actually expect you to remember
9 the docket numbers. I wanted that more for clarity's
10 sake.

11 A. Right there.

12 Q. Do you remember the consolidated case from
13 1998?

14 A. You'll have to remind me. I don't.

15 Q. There was a surcharge issue. There was
16 general rates issues.

17 A. Okay.

18 Q. Do you remember that case?

19 A. I remember there was a case discussing those
20 items.

21 Q. Do you remember that Staff did not support
22 allowing in rates amounts for future AWR employees?

23 A. For future employees?

24 Q. Employees that were not then hired by AWR or
25 employed by AWR?

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1 A. I don't remember how the details of that
2 worked, who, you know, who said what, whether it was
3 Staff or the Commission. I'm not disputing you, but
4 I -- I just don't have the details in my head.

5 Q. Would you accept it subject to check?

6 A. Yes.

7 Q. Would you also accept, subject to check,
8 that the Commission allowed AWR to include money for
9 those additional employees, rejecting Staff's
10 position?

11 A. Yes.

12 Q. Are you familiar with the statutes that
13 created this Commission?

14 A. The statute that created -- I don't believe
15 I am.

16 Q. Are you familiar with the statutes in Title
17 80 RCW, relating to utilities?

18 A. I don't recognize that number. I may know
19 the gist of what it says. I don't know for sure.
20 But certainly I don't know that number.

21 Q. Are you familiar with any statutes relating
22 to this Commission and its regulation of utilities?

23 A. Not by number.

24 Q. In any way?

25 A. Well, I think I know what the Commission's

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1 goal or objectives or those kind of things are, if
2 that's what you mean.

3 Q. Would you please explain the extent of your
4 familiarity with statutes regarding the Commission
5 and its regulation of utilities?

6 A. Well, the Commission, as I understand it, is
7 appointed three people appointed by the governor and
8 the purpose of the Commission is to regulate
9 utilities, to essentially protect the interest of the
10 consumer, to see that the consumer is being properly
11 treated.

12 Q. Is that the extent of your understanding of
13 the statutes?

14 A. Well, okay. I guess I could add that the
15 rationale for that is that companies, such as water
16 purveyors or these kinds of companies, have a
17 potential, what should I say, monopolistic feature,
18 and that is why the legislation has been established
19 to protect the public against a company that might
20 have unscrupulous, maybe, ideas.

21 Q. I just want to be sure we don't leave that
22 subject before we get your full understanding.

23 MR. FINNIGAN: Excuse me. I'm sorry, go
24 ahead and finish your question.

25 Q. Okay. Are there any other aspects of the

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1 statutes that you have in mind?

2 MR. FINNIGAN: May I inquire? Is Counsel
3 asking Mr. Fox to list the various regulatory
4 aspects, like the Commission has to approve a
5 transfer of sale, that the Commission has to approve
6 rates, or are you after a general understanding?
7 Because I think the two of you are talking past one
8 another at this point.

9 MS. WATSON: I don't think we are talking
10 past one another. I'm simply exploring Mr. Fox's
11 understanding, and the last question was more of a
12 catch-all to make sure that we'd gotten it all.

13 MR. FINNIGAN: Well, I just don't think it
14 would be fair to come back and have a brief say that
15 Mr. Fox didn't list this, that or the other thing in
16 the statutes. If that's the purpose, then it ought
17 to be explicit and ask the question.

18 JUDGE CAILLE: I would prefer that you try
19 to be a little more explicit in your questions. And
20 normally on cross-examination, you ask a question
21 that invokes a yes or a no answer, instead of a
22 dialogue. And I understand what you're trying to do,
23 but I'm not sure -- well, I'll just direct you to try
24 to ask your questions in that manner.

25 MS. WATSON: Okay. There's a good portion

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1 of Mr. Fox's testimony that doesn't lend itself to
2 the standard cross-examination style. I will take
3 your comments --

4 JUDGE CAILLE: All right.

5 MS. WATSON: -- in mind, though.

6 Q. Please turn to page 20 of your testimony.

7 A. Okay.

8 Q. And I'd like you to go to lines 20 to 23.

9 There you discuss the 11-month process it took the
10 Commission to evaluate AWR's 1998 request for a rate
11 increase; correct?

12 A. Yes.

13 Q. Do you understand that rates may go into
14 effect by operation of law if the Commission does not
15 suspend rates for further investigation?

16 A. Yes.

17 Q. Do you understand that the Commission has
18 the authority to suspend a request for a rate
19 increase for further investigation?

20 A. Yes.

21 Q. Do you understand that if the Commission
22 suspends a rate increase request, the Commission is
23 given, by statute, 11 months to decide what the
24 appropriate rate should be?

25 A. Yes, I do.

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1 MR. FINNIGAN: Well, just a correction, 10
2 months from the effective date is actually what the
3 statute says.

4 Q. It is 10 months from the effective date;
5 isn't that correct, Mr. Fox?

6 A. I'll accept that, yes.

7 Q. But the actual calendar time between the
8 time that the rate increase is filed until the
9 decision time is 11 months; isn't that correct?

10 A. I think that's correct.

11 Q. Are you familiar with the Commission's
12 regulations codified in the Washington Administrative
13 Code, otherwise known as the WAC?

14 A. Yes.

15 Q. To what extent are you familiar with the
16 Commission's WAC?

17 JUDGE CAILLE: I'm sorry, the Commission's
18 what?

19 MS. WATSON: WAC. I'm using the acronym.

20 THE WITNESS: I'm not familiar by numbers.
21 I'm familiar with some of the -- well, I guess what's
22 your question? I'm not sure.

23 Q. Are you familiar with the WACs dealing with
24 water company?

25 A. Not by number. I believe that I'm familiar

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1 with the rules, if I can say it that way.

2 Q. Are you familiar with the content?

3 A. I believe so.

4 Q. Are you familiar with the Commission's WACs
5 dealing with the procedures before the Commission?

6 A. I think, pretty much.

7 Q. And when I ask that question, I'm asking
8 whether you understand the content of those WACs?

9 A. I think so.

10 Q. Please turn to page 42 of your testimony.

11 A. Okay.

12 Q. I'd like you to go to line 19.

13 A. Okay.

14 Q. You discuss past losses that AWR has not
15 been able to recover in future rates; correct?

16 A. Yes.

17 Q. And if you would please turn to page 13 of
18 your testimony, lines 21 to 23?

19 A. Okay.

20 Q. You state that the Commission does not seem
21 to recognize the feature of tax law that allows
22 losses from prior years to be carried forward;
23 correct?

24 A. That's correct.

25 Q. Are you talking about the ability to recover

0250

1 past losses in future rates?

2 A. Well, the tax rules are different than the
3 UTC rules. As far as tax laws, you can carry forward
4 a loss. That's a tax thing.

5 Q. But you're making a comparison with the tax
6 laws and the UTC regulatory treatment; isn't that
7 correct?

8 A. I didn't think that I was.

9 Q. At line 22 to 23, it's not the complete
10 sentence, but after the comma, there's the phrase, A
11 feature of the tax laws that the Commission does not
12 seem to recognize. Do you see that testimony?

13 A. Yes, yes.

14 Q. You were not making a comparison with the
15 tax law and the Commission?

16 A. Well, I guess my point is -- was there and
17 still is -- that when it comes to the IRS and the tax
18 laws, you can carry a loss forward, and when it comes
19 to the UTC's rules, you cannot recover a prior year
20 loss in the next year. Now, that's what I was trying
21 to say. Now, if -- whether or not I said that
22 correctly, I'm not sure, but that's my intent.

23 Q. Are you familiar with the concept of
24 retroactive rate-making?

25 A. Yes.

0251

1 Q. Do you understand that retroactive
2 rate-making prohibits future rates from being set to
3 recoup past losses?

4 A. That's correct.

5 Q. Do you understand that the opposite is also
6 true, that retroactive rate-making prohibits future
7 rates from being set to require the company to return
8 past excessive profits?

9 A. Would you repeat that?

10 JUDGE CAILLE: Could you go just a little
11 more slowly?

12 MS. WATSON: Sure.

13 JUDGE CAILLE: Thank you.

14 Q. Okay. We've established that retroactive
15 rate-making prohibits rates from being set to recoup
16 past losses?

17 A. That's my understanding.

18 Q. Do you also understand that the opposite is
19 true, that retroactive rate-making prohibits future
20 rates from being set to require the company to return
21 past excessive profits?

22 A. Yes, I believe I was aware of that.

23 Q. Do you understand that retroactive
24 rate-making is prohibited by statute and not
25 Commission policy?

0252

1 A. I guess I haven't given much thought to
2 which way it's established, but I have understood
3 that to be the case.

4 Q. Are you familiar with how rates for a
5 regulated company are set?

6 A. I think, pretty much.

7 Q. Is it your understanding that rates are set
8 on a going forward basis?

9 A. I'm not sure of that term. My understanding
10 that they're set based on the, what do you call it,
11 test year or -- is that the correct term that you
12 use? That's the time frame that you use to look at
13 to do your analysis.

14 Q. Do you understand that the rates are set
15 prospectively?

16 A. Prospectively? I'm not sure what you mean
17 by that.

18 Q. I was trying to rephrase going forward. Do
19 you understand that the rates are set based on
20 historical data adjusted for known and measurable
21 changes?

22 A. I believe that's correct.

23 Q. Is it your understanding that reasonable
24 expenses incurred by a regulated company are included
25 in rates?

0253

1 A. The UTC's interpretation of reasonable
2 expenses, yes.

3 Q. This means that unreasonable expenses
4 incurred by a regulated company are not included in
5 rates; correct?

6 A. Again, it's a question of interpretation,
7 but I'd agree with what you're saying.

8 Q. Is it your position that all costs incurred
9 by a regulated company should be included in rates?

10 A. If they're reasonable.

11 Q. So unreasonable expenses would be excluded?

12 A. Yes, I believe the point is that the UTC's
13 perception of what's reasonable and a businessman's
14 perception of what's reasonable is not always
15 necessarily the same.

16 Q. Do you understand that typically a regulated
17 company makes an investment up front and then
18 receives the investment through rates, but that the
19 ratepayers do not typically pay in advance for those
20 items?

21 A. That is correct. I understand that.

22 Q. Do you understand that the fair market value
23 may differ from the historical cost on which rate
24 base is calculated?

25 A. Yes.

0254

1 Q. Please turn to page 21 of your testimony.

2 A. Okay.

3 Q. Line 17. You discuss there and onto the
4 following page hiring the accounting firm Moss Adams;
5 correct?

6 A. No, Moss Adams is not a legal firm; it's an
7 accounting firm.

8 Q. I'm sorry, did I say legal? I meant
9 accounting. Okay. When did you hire Moss Adams?

10 A. I just don't keep dates in my head, as
11 you've probably noticed, but I would guess about
12 2000.

13 Q. And with all my questions, I just want you
14 to answer to the best of your ability. So
15 approximately 2000, you had hired Moss Adams?

16 A. Yes.

17 Q. And on line 20 of page 21, you acknowledge
18 that hiring Moss Adams was a, quote, terrible
19 decision, end quote; correct?

20 A. That's correct.

21 Q. Is it your position that ratepayers should
22 pay for terrible decisions made by a regulated
23 company?

24 A. Well, when -- yes, in this case, when the
25 decision was made with the best of intentions and for

0255

1 the benefit of the customers and in an attempt to
2 satisfy UTC's requirements. Looking at any decision
3 in retrospect, we find that we haven't always made
4 the best decision.

5 Q. On line 18 of page 21, you state that you
6 reluctantly hired Moss Adams?

7 A. That's right.

8 Q. I'm sorry?

9 A. That's correct.

10 Q. Did anyone recommend or advise you to hire
11 Moss Adams?

12 A. I don't know that anyone recommended. I
13 know that I discussed it, because -- I discussed it
14 with Julie Parker, for sure.

15 Q. Did she agree that you should hire Moss
16 Adams?

17 A. I don't know that she agreed or disagreed.
18 We discussed it.

19 Q. When you say discussed, what do you mean?

20 A. Well, my perception was that UTC, because of
21 complaints and conversations, was not satisfied with
22 our accounting. And I attempted to cure that problem
23 by hiring an accountant that was perceived to be more
24 experienced and competent and hopefully, in fact,
25 would be more experienced and competent, and

0256

1 therefore UTC would be able to be comfortable with
2 the financial information that we were producing.

3 Q. Moss Adams did not have any specialized
4 expertise in regulatory accounting, did it?

5 A. I'm afraid that I learned that, and I would
6 agree.

7 MR. FINNIGAN: Well, I was going to object,
8 because Moss Adams appears before this Commission,
9 but that's all right.

10 THE WITNESS: Well, they certainly professed
11 that they did.

12 Q. Please turn to page 11 and 12.

13 A. Okay.

14 Q. At the bottom of page 11 and the top of page
15 12, you discussed the investment you planned on
16 making in AWR; correct?

17 A. That's correct.

18 Q. You state that you were prepared to invest
19 \$300,000 in water acquisitions; correct?

20 A. Yes.

21 Q. Did you intend that investment to be equity
22 or debt?

23 A. Equity.

24 Q. You also state that you were prepared to
25 loan AWR an additional 500,000 to \$700,000; correct?

0257

1 A. That's correct, and I did.

2 Q. And that was intended to be debt?

3 A. Debt.

4 Q. Please turn to page 15 of your testimony.

5 A. Okay.

6 Q. Lines 10 through 14. You discuss charging
7 AWR two percent over the amount you were paying in
8 interest on your personal line of credit; correct?

9 A. That's correct.

10 Q. When did this occur, approximately?

11 A. When did it occur. It was fairly -- again,
12 I don't keep dates in my head, but it was fairly
13 early on. I guess beginning probably in '96, '97,
14 along in there, that I started loaning money.

15 Q. What was the interest you were charging AWR
16 at that time?

17 A. It varied at different times, but I believe
18 12 percent. I'm not sure whether I charged 12
19 percent in the beginning or whether that was a little
20 later on, and then it was later the percentage was
21 lowered. So I can't tell you the exact percentage at
22 a particular time. Again, I do have those records,
23 but --

24 Q. At line -- it looks like line 11, when you
25 stated that you were charging two percent over your

0258

1 personal line of credit interest rate?

2 A. That's correct.

3 Q. What interest rate did you have in mind?

4 A. I believe 12 at that point, and I believe I
5 was paying 10 on my personal line.

6 Q. And Mr. Finnigan told you that the UTC would
7 not see that charging two percent over the interest
8 on your personal line of credit was fair; correct?

9 A. That's correct.

10 Q. When did this advice occur?

11 A. I can't tell you the date, but he did tell
12 me that. He said that wouldn't be acceptable to UTC,
13 and we, not long thereafter, lowered the rate.

14 Q. Do you remember what you reduced your rate
15 to?

16 A. Do I remember what --

17 Q. You reduced your rate to, the interest rate?

18 A. I think ten or ten and a half, which was, I
19 believe, the rate I was paying on my line at that
20 time. My personal line of credit was a floating
21 rate, so it varied from time to time.

22 Q. So you reduced the rate that you were
23 charging AWR --

24 A. To the --

25 Q. -- to the rate that you were being charged

0259

1 on your --

2 A. To the rate that I was paying the bank.

3 Q. -- line of credit?

4 A. That's correct.

5 Q. It may be helpful for you to wait for me to

6 finish --

7 A. Okay.

8 Q. -- my questions. Do you remember when you

9 reduced your rate to AWR?

10 A. I couldn't give you a date.

11 Q. An approximate time period?

12 A. I suppose it was along in '98, '99. I would

13 have to look it up.

14 Q. When you lowered the rate being charged to

15 AWR, was that reflected in the loan documents?

16 A. Yes.

17 Q. Please turn to page 14, lines 13 through 22.

18 A. Okay.

19 Q. You purport to show the amount of interest

20 you received on loans made to AWR; correct?

21 A. That's correct.

22 Q. In 1998, the Commission allowed 10.5 percent

23 interest for debt and rates; correct?

24 A. I don't know that. That that's what the

25 Commission allowed in that time frame?

0260

1 Q. Would you accept that subject to check?

2 A. Okay.

3 MR. FINNIGAN: Could I have the question
4 again, to check?

5 Q. Sure. That the Commission, in 1998, allowed
6 10.5 percent interest for debt and rates.

7 A. I really don't know, but I'll accept that,
8 subject to check, if that's --

9 Q. This might be a little helpful, too. It was
10 the 1998 case, that consolidated docket case.

11 MR. FINNIGAN: So you're saying effective
12 for 1999?

13 MS. WATSON: Yes.

14 MR. FINNIGAN: Okay.

15 Q. During that time period, you were receiving
16 approximately 12 percent interest on loans to AWR;
17 correct?

18 A. Yes, at various times, it varied, but this
19 says the average in '98 was 11.64.

20 Q. After the Commission set interest at 10.5
21 percent, AWR continued paying you 12 percent
22 interest; is that correct?

23 A. I believe for a little while.

24 Q. Turning back to page 14, at line 20, you
25 show the interest information for year 2002; correct?

0261

1 A. Yes.

2 Q. And for 2002, you state that you received
3 only 1.5 percent in interest; correct?

4 A. Yes.

5 Q. You calculated that by taking the interest
6 amount and dividing that by the amount loaned;
7 correct?

8 A. Actually, I had Julie Parker calculate these
9 things. I knew the amount that was loaned and the
10 dollar of the interest that I received. As far as
11 this column that is effective return, Julie
12 calculated that for me, and I trust that she's
13 correct.

14 Q. Would you accept that 1.5 percent is derived
15 by dividing the interest earned by the maximum loan?

16 A. That certainly appears that way, yes.

17 Q. I believe you have a copy of Exhibit Number
18 56 with you. Would you please refer to that?

19 A. Okay.

20 MR. FINNIGAN: Could you help me, please?

21 Which is Exhibit 56?

22 Q. That was an exhibit for Mr. Ward.

23 A. Yes, I have that.

24 Q. Please go to page four of that exhibit.

25 A. Okay.

0262

1 MR. FINNIGAN: Would you hold on, please?

2 MS. WATSON: Yes.

3 MR. FINNIGAN: Thank you. Next time I'm
4 using tabs, I promise. Thank you.

5 Q. Page four of Exhibit 56 shows the
6 amortization schedule for your loan to AWR; correct?

7 A. That's correct, for one note number seven.

8 Q. Were there more than one loan outstanding to
9 AWR?

10 A. I don't know whether there was at this
11 particular time. I don't think at this particular
12 time there were -- obviously, this is note number
13 seven, so there were one through six somewhere, but I
14 believe at this point that they had been consolidated
15 and this was the only one at this time, as near as I
16 can recall.

17 Q. The interest rate on that loan was 9.5
18 percent; correct?

19 A. That's correct.

20 Q. And in 2002, all of the debt owed to you by
21 AWR was retired; correct?

22 A. That would appear to be the case, yes.

23 Q. And it was retired by AWR paying the
24 outstanding balance plus the interest owed; correct?

25 A. Yes.

0263

1 Q. And all of that debt was retired in February
2 of 2002; correct?

3 A. That's what this indicates, and I believe
4 it's correct.

5 Q. The gain from the sale of View Royal was
6 used to pay off that debt; correct?

7 A. Three hundred thousand of it was.

8 Q. The gain was not sufficient to pay off the
9 entire amount; correct?

10 A. That's correct, that's correct.

11 Q. AWR took out additional loans to pay off the
12 debt owed to you; is that correct?

13 A. That's correct.

14 Q. And those additional loans were taken from
15 AWR's line of credit; correct?

16 A. Yes.

17 Q. Do you remember when AWR drew on its line of
18 credit in order to make those payments or to pay down
19 the debt?

20 A. Well, it would have been approximately the
21 same date. I don't know the specific date.

22 Q. Please turn to Exhibit 139.

23 A. Okay.

24 Q. This is AWR's response to Staff's Data
25 Request Number 6, which contains the loan payments

0264

1 notices for the line of credit; correct?

2 A. Okay. Yes.

3 Q. The loan payment notices include information
4 regarding the outstanding balance; is that correct?

5 A. Yes.

6 Q. Please turn back to your testimony, Exhibit
7 120-T. I'd like you to go to page 34.

8 A. Okay.

9 Q. Line 15 to 17, you testify that UTC and DOH
10 have, quote, consistently refused to allow United
11 Utilities to gain approval as a satellite management
12 company, end quote; correct?

13 A. That's correct.

14 Q. The Department of Health determines whether
15 SMA status will be granted; correct?

16 A. Well, I believe that's -- they're the
17 primary one that would approve that, but they get
18 advice from the UTC.

19 Q. Do you understand that this Commission does
20 not have jurisdiction over granting or denying SMA
21 status?

22 A. That's correct.

23 Q. On page 34, lines 13 through 14, you state
24 that you transferred management of all non-owned
25 systems to United Utilities; correct?

0265

1 A. That's correct.

2 Q. Does United Utilities have its own
3 employees?

4 A. It has me, and it has on-call employees. It
5 doesn't have enough work to have employees.

6 Q. What do you mean by on-call employees?

7 A. Well, that -- depending on what is to be
8 done, could be me that does it, it could be the --
9 one of my fellows that works for Fox Company does
10 work for United Utilities occasionally. My son is a
11 plumber and a WDM. He does -- has done work
12 occasionally. On off hours, one of the American
13 Water employees could be called to do something on a
14 totally separate -- separate payroll and totally
15 outside of American Water.

16 Q. You used an acronym, WDM. What does that
17 stand for?

18 A. Water distribution manager.

19 Q. And that was your son?

20 A. My son.

21 Q. Is he certified by DOH to manage a water
22 system?

23 A. He's a WDM. He does not -- whether or not
24 he's certified to manage a water system, by that, you
25 mean an SMA?

0266

1 Q. No, my understanding is that individuals can
2 have certification from the DOH to manage a water
3 system, and then there's also the SMA. Is that your
4 understanding, as well?

5 A. Well, there's SMA, that's a satellite
6 management agency, a WDM is a water distribution
7 manager, and my son has the the WDM rating. I don't
8 believe he has the SMA rating, and if he has any
9 other ratings, I'm not aware, but none of those would
10 be required to do the work that I would ask him to do
11 for United Utilities.

12 Q. DOH approval is required before an SMA can
13 provide certified service to a water system; correct?

14 A. That's correct.

15 Q. How is United Utilities providing certified
16 service to the non-owned systems if it has not been
17 approved as an SMA?

18 A. It's not.

19 Q. Who is providing the certified system -- or
20 certified service to the non-owned systems?

21 A. At the SMA, that -- let's see, what's the
22 word I would use? Performs any required SMA
23 functions for United Utilities would be either
24 American Water or -- I can't remember the name of the
25 other company at the moment. It's Moerke in

0267

1 Chehalis, but I'd have to look up their correct name.

2 I have it here if you want to know.

3 Q. So either AWR or another company is
4 providing the SMA service?

5 A. That's correct.

6 MR. FINNIGAN: If it's helpful, there is an
7 exhibit that lists all of that out. It's Exhibit 26,
8 page 20.

9 MS. WATSON: Thank you.

10 Q. Please turn to page 22 of your exhibit, or
11 I'm sorry, of your testimony.

12 A. Okay.

13 Q. Lines five through eight, you testify about
14 hiring Mitch Myers as a general manager for AWR;
15 correct?

16 A. That's correct.

17 Q. Would you accept, subject to check, that you
18 hired Mr. Myers in March 2000?

19 A. Okay. I'll accept that.

20 Q. Did anyone advise you to hire a separate
21 manager for AWR?

22 A. Well, when you say advise me, I'm not sure
23 exactly how to characterize it, but it was UTC's
24 position that I could not be both the manager and
25 owner and that I needed to hire a manager. And

0268

1 therefore I did.

2 Q. Did anyone advise you to hire Mr. Myers in
3 particular?

4 A. I don't believe so.

5 Q. What were Mr. Myers' duties?

6 A. The general management of the water
7 business.

8 Q. You state that Mr. Myers was a thoroughly
9 experienced manager in the water industry; correct?

10 A. In my viewpoint, yes.

11 Q. Mr. Myers worked for Familian Northwest
12 before becoming AWR's general manager; is that
13 correct?

14 A. That's correct.

15 Q. Is that how you met Mr. Myers?

16 A. Yes.

17 Q. Mr. Myers was a salesperson for Familian
18 Northwest; is that true?

19 A. He was a salesperson, sales manager, and had
20 done various things for Familian.

21 Q. Mr. Myers had no prior experience in
22 managing a regulated water company, did he?

23 A. Not a regulated water company, I don't
24 believe.

25 Q. Mr. Myers had no prior experience with the

0269

1 economic regulation of water companies; correct?

2 A. No, I don't think so. And that was not part
3 of his duties.

4 Q. You hired him to manage AWR; correct?

5 A. Yes, but not to communicate with or deal
6 with UTC or UTC regulations. He knew health
7 department regulations.

8 Q. You testified that Mr. Myers' wage was not
9 included in rates; correct?

10 A. That's correct.

11 Q. Mr. Myers' salary was approximately \$60,000
12 a year; correct?

13 A. That's correct.

14 Q. Ms. Ingram's salary was also approximately
15 \$60,000 a year; correct?

16 A. That's correct.

17 Q. And Ms. Ingram's salary was included in
18 rates in Docket UW-991392; correct?

19 A. I'll accept that.

20 Q. The test period for Docket UW-991392 was
21 July 1, 1998, to June 30th, 1999; correct?

22 A. I'll accept that.

23 Q. And the approved rates went into effect on
24 November 16th, 1999; correct?

25 A. Okay. I don't know that, but I'll accept

0270

1 it.

2 Q. You'll accept it subject to check?

3 A. Sure.

4 Q. In the next rate case, which was Docket
5 Number UW-010961, the \$60,000 manager's salary was
6 removed from rates because you were the only person
7 acting as AWR's manager; is that correct?

8 A. I have to accept that. You know, I don't
9 know that -- I don't have those details in my memory,
10 but I trust you're right.

11 Q. After Mr. Myers left AWR, you assumed the
12 general manager responsibilities; correct?

13 A. That's correct.

14 Q. And your salary was included in rates;
15 correct?

16 A. I'm not sure. My salary, I know, was at a
17 level of something like 24,000, was included in
18 rates. Whether -- I don't recall that it was ever
19 included in rates above that.

20 Q. Please turn to page 15 of your testimony.

21 A. Okay.

22 Q. Lines 18 through 20.

23 A. Okay.

24 Q. You state that using V.R. Fox Company to
25 complete projects for AWR saved AWR approximately

0271

1 \$121,435; correct?

2 A. That's correct.

3 Q. Are you referring to the list of 13 projects
4 from the 1999 surcharge?

5 A. Yes.

6 Q. Please turn to your Exhibit Number 126.

7 That was also marked as VRF-7.

8 A. Well, that -- I don't have it here, but I
9 must have it here. VRF-7, yes, I have that.

10 Q. You calculate the savings to AWR based on
11 the bids AWR received for those projects; correct?

12 A. Yes.

13 Q. AWR experienced cost overruns with regard to
14 those 13 projects, didn't it?

15 A. Yes.

16 Q. And those cost overruns totaled
17 approximately \$102,000?

18 A. I don't believe I have that information
19 here.

20 Q. It's not on that exhibit.

21 A. Okay.

22 Q. From your --

23 A. Then I would have to check, but I will
24 accept that you looked at the records.

25 Q. AWR requested that the 1999 surcharge be

0272

1 extended to cover those cost overruns; correct?

2 A. That's correct.

3 Q. And the Department of Health agreed to
4 narrow the scope of what was required for those 13
5 projects; correct?

6 A. That's correct.

7 Q. That meant that AWR did not have to complete
8 certain tasks originally contemplated as part of the
9 13 projects; correct?

10 A. I believe that's correct.

11 MS. WATSON: Your Honor, I'm not sure if you
12 wanted to take a morning break, but this might be a
13 good time for that.

14 JUDGE CAILLE: All right. Why don't we take
15 a ten-minute break at this point. We're off the
16 record.

17 (Recess taken.)

18 JUDGE CAILLE: Okay. We are back from a
19 recess, and continuing with the cross-examination of
20 Mr. Fox.

21 Q. Mr. Fox, Mr. Myers left AWR in approximately
22 February of 2001; is that correct?

23 A. I'll accept that.

24 Q. Subject to check?

25 A. Yeah.

0273

1 Q. Please turn back to Exhibit 120-T, which is
2 your testimony, at page 14.

3 A. That's not one of these. 120 --

4 Q. It's your testimony.

5 A. Oh, page 22?

6 Q. Fourteen.

7 A. Fourteen. Okay.

8 Q. Lines four through seven.

9 A. Okay.

10 Q. You testified that you were forced to sell
11 the View Royal system due to, quote, UTC chastisement
12 of you for paying yourself any interest at all,
13 unquote; correct?

14 A. Yes.

15 Q. Please turn to page 39, lines 19 through 21.

16 A. Okay.

17 Q. You testify that you had no choice but to
18 sell View Royal because, quote, We could not pay our
19 bills and the banks were closing in on me, end quote;
20 correct?

21 A. That's correct. Both of those things were
22 occurring.

23 Q. You sold View Royal in January of 2001;
24 correct?

25 A. Subject to check, yes, I believe that's

0274

1 right.

2 Q. And that sale closed in February of 2001;
3 correct?

4 A. I thought it was 2002.

5 Q. I'm sorry, January of 2001 is when the sales
6 agreement was executed and February of 2002 was when
7 the sale closed; correct?

8 A. I believe that's correct. I would have to
9 look it up.

10 Q. Subject to check?

11 A. Yes.

12 Q. Please turn to Exhibit 138.

13 A. Okay.

14 Q. Pages two and three contain a letter from
15 Ms. Trachsler (phonetic) of Venture Bank. Have you
16 reviewed that letter?

17 A. Yeah.

18 Q. It was written on your request; correct?

19 A. Yes.

20 Q. Is the letter an accurate account of the
21 events it describes?

22 A. Yes.

23 Q. And Exhibit 138 is AWR's response to Data
24 Request 27. That data request requested documents
25 you relied upon in concluding that the banks were

0275

1 closing in; correct?

2 A. Yes.

3 Q. Are the letters shown on page four through
4 seven documents you relied upon?

5 A. They were, to the extent that there were
6 documents, yes.

7 Q. The data request also requested loan
8 statements; correct?

9 A. Loan payments.

10 Q. I guess it would be the loan payment
11 notices?

12 A. Okay.

13 Q. But not knowing the terminology, I had
14 written loan statements; is that correct?

15 A. Yes, and -- yes, and we provided statements.

16 Q. No statements were provided in response to
17 Data Request Number 27; correct?

18 A. They're not with this, but I know we did
19 provide them. You referred to them a bit ago.

20 Q. Those are the only statements provided;
21 correct, in Data Request Number 6, which was Exhibit
22 139?

23 A. I believe so.

24 Q. AWR had other third party loans besides the
25 line of credit; is that correct?

0276

1 A. I'm sorry, would you repeat that?

2 Q. AWR had other third party loans in addition
3 to the line of credit; correct?

4 A. Not at that time, I don't think. The other
5 loans were to me earlier.

6 Q. There was a loan from First Community Bank
7 of Washington, which then became Venture Bank. The
8 loan date on that is 5/1999.

9 A. Well --

10 Q. May 1999.

11 A. Maybe I didn't understand your question.
12 There was the line of credit and there was a term
13 loan and then there was a surcharge loan. Those were
14 all three with First Community Bank, which is now
15 Venture Bank. Was that your question?

16 Q. No. Please let me finish my question first.

17 A. I'm sorry.

18 JUDGE CAILLE: Excuse me. I'll direct the
19 witness what to do.

20 MS. WATSON: Sorry.

21 JUDGE CAILLE: Just ask me to direct the
22 witness, and I will.

23 MS. WATSON: My apologies.

24 JUDGE CAILLE: Mr. Fox, if you will just
25 please allow Counsel to complete her question before

0277

1 you begin to answer, and the reason why is the court
2 reporter can't get both of you talking at the same
3 time.

4 THE WITNESS: I'm sorry.

5 JUDGE CAILLE: Okay. Thank you.

6 Q. Mr. Fox, there was a loan from First
7 Community Bank of Washington, which became Venture
8 Bank, and that loan date is May 1999. The loan
9 number is 4190036471. To the best of your knowledge,
10 was that loan still outstanding at the time that you
11 sold View Royal on behalf of AWR?

12 A. I don't know.

13 Q. If it helps to know the loan amount, it was
14 \$400,000.

15 A. I don't know. I'm confused here. There was
16 a loan outstanding to American Water for that amount
17 when I sold View Royal? My recollection was that
18 when I sold View Royal, at that time the debt was all
19 to me. Maybe I'm getting something confused, but --

20 MS. WATSON: May I approach the witness?

21 JUDGE CAILLE: Yes.

22 Q. Mr. Fox, I've handed you what's been marked
23 as Exhibit 113. Have you had a chance to review that
24 document?

25 A. Yes, somewhat, at least.

0278

1 Q. Do you recognize what that document is?

2 A. Well, it's a note -- a note dated May 6th,
3 '99, for a loan principal of 400,000, borrower
4 American Water Resource, so --

5 Q. In reviewing those documents, has your
6 memory been refreshed that AWR had other outstanding
7 loans besides the line of credit at the time View
8 Royal was sold?

9 A. Well, this certainly looks like it. I -- I
10 have something confused in my mind, but certainly
11 that's what this says.

12 Q. To the best of your knowledge, were there
13 other loans outstanding from Venture Bank at the time
14 AWR sold View Royal besides the \$400,000 loan and the
15 line of credit?

16 A. To the extent that this leads me to believe
17 that, yes, but I'm -- I've got something mixed up in
18 my mind that -- I can't go beyond this with my memory
19 at the moment. I don't -- something's not fitting
20 right.

21 Q. So as we're sitting here today, you're not
22 sure whether there were other loans?

23 A. There must have been. This would indicate
24 that.

25 Q. What I mean is other loans in addition to

0279

1 that one?

2 A. No, I don't.

3 Q. And do you know whether loans existed from
4 other banks besides Venture Bank?

5 A. No, there were no other loans from other
6 banks.

7 MS. WATSON: Your Honor, I'd like to make a
8 records requisition for the loan payment notices for
9 Loan Number 4190036471.

10 MR. FINNIGAN: That's Exhibit 113?

11 MS. WATSON: That's correct.

12 JUDGE CAILLE: Okay. That would be Records
13 Request Number 2. And could you repeat that, please,
14 Ms. Watson?

15 MS. WATSON: Sure. It's the loan found in
16 Exhibit 113, and I'll move for the admission of that
17 exhibit, and the loan number is 4190036471.

18 JUDGE CAILLE: And you're asking for?

19 MS. WATSON: The loan payment notices.

20 JUDGE CAILLE: Loan payment notices.

21 MS. WATSON: May I approach the witness one
22 more time?

23 JUDGE CAILLE: Yes. Did you move for the
24 admission of 113, or did you say you were going to?

25 MS. WATSON: I said that I was going to.

0280

1 JUDGE CAILLE: Okay.

2 Q. Please turn to page 40 of your testimony.

3 A. Okay.

4 Q. Lines four through six, you state that you
5 had been negotiating a possibility -- or I'm sorry --
6 a possible sale of View Royal off and on for several
7 years; correct?

8 A. That's correct.

9 Q. When did you first negotiate a possible sale
10 of View Royal?

11 A. I had been talking to both Bonney Lake,
12 Bonney Lake Water District, I guess it is, and to
13 Valley Water from virtually the time that I bought
14 View Royal. Bonney Lake almost bought View Royal at
15 the time that I wound up paying. I had periodic
16 conversations with both pretty much from there
17 forward.

18 Q. Do you remember when you purchased View
19 Royal?

20 A. I can't give you a date, but it was quite
21 early on. It must have been '96 or '97.

22 Q. How often did negotiations for the sale of
23 View Royal take place?

24 A. How often? Well, when you say negotiations,
25 I don't know whether I'd say negotiations. Various

0281

1 conversations related to that possibility. That's, I
2 think, negotiations.

3 Q. Okay. How often did those conversations
4 take place?

5 A. Oh, more than yearly, probably. Maybe not
6 as frequently as semiannual. I don't know.

7 Q. Do you remember approximately how many
8 negotiations or conversations took place?

9 A. I would say with Valley Water, I had --
10 well, I guess that must mean prior to when we got
11 into an actual negotiation that resulted in a sale,
12 because there was many conversations there, but in
13 the years leading up to that time, I don't know,
14 four, five.

15 Q. And that was with Valley Water?

16 A. Yes.

17 Q. Do you remember about how many negotiations
18 or conversations you had with Bonney Lake?

19 A. Oh, probably a similar amount. I don't
20 remember exactly.

21 Q. In those past negotiations or conversations,
22 how close did you get to an agreement?

23 A. Not very, I guess I would say.

24 Q. Were numbers ever discussed?

25 A. Yes.

0282

1 Q. To what extent?

2 A. Well, to what extent? I wanted more than
3 they were willing to pay.

4 Q. When did you commence the negotiations that
5 ultimately resulted in the sale of View Royal?

6 A. When I decided I would have to accept what
7 they were offering, basically, because I had to raise
8 money.

9 Q. Do you remember when that was?

10 A. Well, didn't we just pass that with February
11 1, was it? Is that what we just -- we just looked
12 the date up here a minute ago.

13 Q. That was the closing.

14 A. Oh, okay. Well --

15 Q. I'm asking when did the negotiations start?

16 A. I would suspect -- I would -- I would
17 suspect three, four months before that.

18 Q. Is that before the sale or the closing?

19 A. I suppose before the closing. I can't
20 remember how much time there was between the sale and
21 the closing. I'll guess the neighborhood of a month.
22 I don't really recall.

23 Q. On page 40, lines 13 through 16, you state
24 that the lost revenue from View Royal could not be
25 expected to fully offset -- be fully offset by the

0283

1 reduced cost; correct?

2 A. Would you mind repeating that?

3 Q. Sure. At page 40, lines 13 through 16, you
4 state that the lost revenue from View Royal could not
5 be expected to fully be offset by reduced cost;
6 right?

7 A. That's correct.

8 Q. You knew this to be true before you sold
9 View Royal; correct?

10 A. That's correct.

11 Q. You also state that the average customer --
12 I'm sorry, I'll start that over again. You also
13 state that the average cost per customer to produce
14 water increased after the sale of View Royal;
15 correct?

16 A. That's correct.

17 Q. And you knew this to be true before you sold
18 View Royal; correct?

19 A. That's correct.

20 Q. Please turn to page 25 of your testimony.

21 A. Okay.

22 Q. Lines four through five.

23 A. Okay.

24 Q. You testify that once you sold View Royal,
25 AWR could not adhere to the order. Are you referring

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1 to the Commission's order accepting settlement
2 agreement effective December 18th, 2001?

3 A. I'm referring largely to the personnel
4 issue. I don't know if that's the right number, but
5 we could not hire the additional person that the
6 order had anticipated.

7 Q. Okay. The order that you're referring to,
8 that's the order that established the docket account?

9 A. I believe that's correct.

10 Q. Okay. In January of 2002, Ms. Parker
11 suggested that AWR not hire additional employees due
12 to the sale of View Royal; correct?

13 A. That's correct.

14 Q. Did you know then that AWR would not be able
15 to comply with the Commission's order?

16 A. It was becoming more evident, yes. And we
17 asked that be changed.

18 Q. Did AWR know before the sale of View Royal
19 that it would not hire additional employees?

20 A. I don't know whether -- I think that was
21 kind of one of those things that was obvious and
22 wasn't specifically brought up or discussed or
23 something.

24 Q. Ms. Parker advised you that AWR would not
25 experience a tax liability as a result of the sale;

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1 correct?

2 A. That was her perception at the time that we
3 were making the decision.

4 Q. And you consulted Ms. Parker sometime during
5 the summer of 2001; is that correct?

6 A. About that issue, I don't remember exact
7 timing, but I certainly talked to her about it.

8 Q. Did you consult with Ms. Parker any time
9 between when you spoke with her about the tax
10 consequences and when you sold View Royal?

11 A. About --

12 Q. About the sale?

13 A. I don't recall specifically, but I know that
14 I talked to her a number of times.

15 Q. Did Ms. Parker advise you on the effects
16 that the sale would have on AWR, for example, cash
17 flow, the need for employees?

18 A. No, she did not anticipate the tax problem.

19 Q. Did Ms. Parker advise you on the effects the
20 sale would have on AWR?

21 A. Well, we discussed the issue of scale
22 economy and that kind of thing, yes.

23 Q. Did Ms. Parker advise you on the effects the
24 sale would have on AWR's cash flow?

25 A. I believe that was one of the issues that we

0286

1 discussed, yes. We discussed the various
2 ramifications several times. We talked frequently.

3 Q. Please turn to page 36 of your testimony.

4 A. Okay.

5 Q. Lines seven to ten, you testify that one
6 well already existed on the Birchfield property when
7 you purchased it in 1988; correct?

8 A. That's correct.

9 Q. Would you please turn to your Exhibit 131,
10 that was also labeled as VRF-12?

11 A. Okay. Yes.

12 Q. On that map, there are three wells. Was the
13 well designated as Well Number 1 the existing well?

14 A. That was -- that's correct.

15 Q. And turning back to page 36 of your
16 testimony, at line nine, you testified that you
17 drilled two additional wells because you planned to
18 develop the property; correct?

19 A. That's correct.

20 Q. Going back to 131, are those additional
21 wells shown as Wells 2 and 3?

22 A. That's correct.

23 Q. Do you remember approximately when you
24 drilled those additional wells?

25 A. I'd have to look it up. Quite some time

0287

1 ago. Ninety-eight. I don't know. I'd just have to
2 look it up.

3 Q. I think that it would have to be sometime
4 before '92.

5 A. Before '92?

6 Q. But I'm not sure. That's why I'm asking.

7 A. No. I can't -- I don't think so. That
8 would be --

9 Q. Are there any other wells associated with
10 Birchfield besides those three wells that are shown
11 on Exhibit 131?

12 A. That's a bit difficult to answer, because if
13 you look at our water system plan that was submitted
14 to DOH, there are some old water rights and things
15 that we have still are not clear with DOE on what the
16 status of those might be, so I don't want to say no,
17 because we would like those to be part of the plan,
18 but I don't want to mislead you, either.

19 Q. Right now I'm just focusing on the physical
20 well.

21 A. Okay.

22 Q. How many wells are there for Birchfield?

23 A. Three.

24 Q. Okay.

25 A. At least for all intents and purposes,

0288

1 three. There are three wells involved with this
2 drawing.

3 Q. Are there any other wells that are not
4 indicated on that drawing that exist?

5 A. No.

6 Q. Are you aware that DOH assigns each water
7 system an identification number?

8 A. Yes.

9 Q. And the number assigned to the Birchfield
10 Water System is 003157; correct?

11 A. Correct.

12 Q. DOH has no other identification number
13 associated with the Birchfield Water System; correct?

14 A. I believe that's correct.

15 Q. In 1995, you assigned the water rights from
16 the three Birchfield wells to Lewis County Utility
17 Corporation; correct?

18 A. From all three wells?

19 Q. Yes.

20 A. I would have to check, but you must have
21 looked it up. I would have to look it up, but that
22 would indicate that the well was drilled, other two
23 were drilled earlier.

24 MS. WATSON: May I approach the witness?

25 JUDGE CAILLE: Yes.

0289

1 Q. If you could review that page that I handed
2 to you and the following two pages.

3 A. Okay. This is the water rights, the permit.

4 Q. I actually don't want you to talk about them
5 at this point. I just want them -- so you can look
6 at them and refresh your memory.

7 A. Okay.

8 Q. And then -- okay. Mr. Fox, in 1995, you
9 assigned the water rights from the three Birchfield
10 wells to Lewis County Utility Corporation; correct?

11 A. That -- yes.

12 Q. At this point, do you remember approximately
13 when those wells, Wells Number 2 and 3, were drilled?

14 A. No, except that it had to have been earlier
15 than I indicated a few minutes ago. Obviously prior
16 to that date.

17 Q. Lewis Utility -- I'm sorry, Lewis County
18 Utility Corporation is AWR's predecessor; correct?

19 A. That's correct.

20 Q. When Lewis County Utility Corp. became AWR,
21 AWR owned the water rights to those three wells;
22 correct?

23 A. Let's see. I don't know what date that was
24 done, but that would probably be true. However,
25 American Water never paid for drilling those wells.

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1 Q. But they owned the water rights; correct?

2 A. But the water rights got transferred along
3 with the other one, that's correct.

4 Q. Please turn to Exhibit 57.

5 A. Fifty-seven.

6 Q. Yes. Are you there?

7 A. Yes. Excuse me.

8 Q. This is the sales agreement for the
9 Birchfield Water System to Lewis County Water and
10 Sewer District Number Five; correct?

11 A. Yes.

12 Q. Do you remember when you began the sales
13 negotiations for that transaction?

14 A. I suppose -- I don't know, two, three, four
15 months before this was written, we started thinking
16 about it. When you say negotiation, there wasn't
17 much negotiation.

18 Q. What do you mean?

19 A. Well, I simply talked to Julie Parker and
20 Rick Finnigan about how to do it from American
21 Water's viewpoint, and I talked to the attorney for
22 the Water and Sewer District about what the Water and
23 Sewer District concerns need be, and we did it.

24 Q. Please turn to page 21 and 22 of Exhibit 57.

25 A. Okay.

0291

1 Q. You purport to transfer three wells in your
2 individual capacity to the Lewis County Water and
3 Sewer District Number Five; correct?

4 A. Yes.

5 Q. And you also claim to transfer the water
6 rights for those wells in your individual capacity;
7 correct?

8 A. That's what this says. However, the water
9 rights apparently, from what you said, had been
10 transferred to American Water, so that would maybe be
11 erroneous.

12 Q. Would you please turn to page 18 of Exhibit
13 57?

14 A. Okay.

15 Q. And the property allegedly owned by AWR is
16 listed there; correct?

17 A. Yes.

18 Q. No water rights are listed as AWR property;
19 correct?

20 A. I don't see that listed.

21 Q. The sales agreement is dated September 5th,
22 2003; correct?

23 A. I guess I'm looking at the wrong end, yes.

24 Q. Do you remember when that sale closed?

25 A. I guess that date.

0292

1 Q. Is it your understanding that a sale
2 typically closes on the same day that the sales
3 agreement is executed?

4 A. I don't know that that would necessarily be
5 true or not true, but it looks -- I'm pretty sure in
6 this case that that was what happened. That's what
7 the date is on here.

8 Q. Please turn to Exhibit 16.

9 A. Okay.

10 Q. Do you recognize Exhibit 16 as the
11 Department of Health Water Facilities Inventory Form?

12 A. Yes.

13 Q. Or the WFI?

14 A. Yes.

15 Q. For Birchfield?

16 A. Yes.

17 Q. Pages one and two of Exhibit 16 show a WFI
18 form that lists Kimberly Gubbe as the contact person
19 for the Birchfield Water System.

20 A. Yes.

21 Q. That WFI form is dated June 19th of 2003; is
22 that correct?

23 A. That's correct.

24 Q. And Lewis County Water and Sewer District
25 Number Five is listed as the owner; correct?

0293

1 A. Yes. This was erroneous and has been
2 corrected when sent in, as far as the contact person,
3 but yes, Lewis County Water and Sewer District was
4 listed as the owner.

5 Q. Were you here when Ms. Parker testified
6 yesterday?

7 A. No.

8 Q. Okay. Ms. Parker testified that the
9 operations of Birchfield was transferred before title
10 was transferred to the Water District. Is that a
11 correct assessment of what happened?

12 A. Yes, I believe it is, because as far as the
13 operation, we did that the first of the year.

14 Q. Can you explain why the WFI form shown at
15 pages one and two of Exhibit 16 indicate that the
16 Lewis County Water and Sewer District is the owner in
17 June and the sales agreement is dated September?

18 JUDGE CAILLE: Could you please use dates on
19 --

20 MS. WATSON: Okay.

21 JUDGE CAILLE: I just want to make sure that
22 the record's clear, so could you include the year?

23 MS. WATSON: Okay.

24 Q. The WFI form, on pages one and two of
25 Exhibit 16, lists the date as June 19th, 2003, and

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1 shows the ownership as the Water and Sewer District.
2 The sales agreement is dated September 5th, 2003,
3 which transfers title to the Water District. Mr.
4 Fox, can you explain the difference in the dates
5 there?

6 A. Well, I'm not finding the date on the WFI
7 here, but I -- oh, okay. It's up on top. Date
8 printed. I don't know what the date updated means or
9 the date printed means. I'm not sure why it's got
10 both those dates or what they're -- those are
11 DOH-produced numbers. I don't know what they're
12 referring to there, so I don't know that -- I'm not
13 sure what this -- whether this addresses the question
14 of when the system was transferred. I don't know.

15 Q. Please turn back to your testimony, Exhibit
16 Number 120-T, and please go to page 37, line 23.

17 A. Okay. Page 37, line 23, okay. Okay.

18 Q. You testified that you requested approval
19 from the Department of Health to expand the
20 Birchfield Water System up to 37 connections;
21 correct?

22 A. That's correct.

23 Q. Did you do that in your individual capacity
24 or on behalf of AWR?

25 A. The engineering, I believe, was originally

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1 billed through American Water and those -- the bills
2 for the engineering, both to increase it to 25 and
3 also to increase it to 37 were assumed by the Water
4 and Sewer District in the agreement that we were
5 earlier looking for, because it was not appropriate
6 for American Water to pay that engineering cost.

7 Q. Okay. I don't think that was responsive to
8 my question.

9 JUDGE CAILLE: Would you pose the question
10 again, please?

11 MS. WATSON: Yes. Actually, could I have it
12 read back?

13 (Record read back.)

14 THE WITNESS: Did I do the approval, request
15 the approval? Frankly, I don't know. I do know that
16 the -- that I asked our engineer to do the work for
17 that, and the work was ultimately billed to American
18 Water and, in the process of making the sale, we
19 recognized that that should not be billed through
20 American Water and, therefore, the Water and Sewer
21 District assumed it. Maybe that's roundabout, but I
22 hope it answers your question. I can't specifically
23 say. I didn't go to the engineer and say, I want you
24 to do this for me personally. I didn't go to him and
25 say, I want you to do this for American Water. I

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1 just said, you know, this is what we need to do.

2 Q. Please turn to Exhibit 17.

3 A. Seventeen. Okay.

4 Q. Do you recognize that exhibit to be an
5 excerpt of the engineering report associated with
6 AWR's request to expand Birchfield to 37 connections?

7 A. Yes.

8 Q. That report was prepared by Hatton Godat
9 Pantier; correct?

10 A. That's correct.

11 Q. And Hatton Godat Pantier is the engineering
12 firm AWR used in the development and the expansion of
13 the Birchfield Water System; correct?

14 A. And the engineer that I have used for the
15 other part of the water system and other issues, yes.

16 Q. Please turn to page eight of Exhibit 17.
17 The page numbers are located in the upper right-hand
18 corner.

19 A. Okay.

20 Q. Under section one, the ownership of
21 Birchfield is described and AWR is listed as the sole
22 owner of the Birchfield Water System; correct?

23 A. Yes.

24 Q. And the source capacity for the Birchfield
25 Water System is described there, as well, and three

0297

1 wells are discussed; correct?

2 A. Yes.

3 Q. And the Birchfield Water System, as owned by
4 AWR, was not a customer of a wholesale water
5 purveyor; correct?

6 A. The Birchfield Water System, as owned by
7 American Water, was not a customer?

8 Q. Would you like me to repeat the question?

9 A. Seems like it.

10 Q. Okay. As AWR owned it, the Birchfield Water
11 System was not a customer of a wholesale water
12 purveyor?

13 A. No.

14 Q. Correct?

15 A. No.

16 Q. It was not a customer?

17 A. That is correct.

18 Q. Okay. And that's because Birchfield had its
19 own water source; correct?

20 A. That's correct.

21 Q. You owned three properties with the name
22 Birchfield. The Birchfield Winery, the Birchfield
23 Ranch and the Birchfield Water System, correct,
24 before Birchfield Water was sold?

25 A. Yes. You say three properties. That's not

0298

1 precisely correct. The Birchfield Winery is a
2 business, not a property. The ranch is both an
3 account that we use, and that takes care of the
4 property-related things.

5 Q. But when Birchfield Water System was owned
6 by AWR, you were associated with three things --

7 A. Yes.

8 Q. -- with the Birchfield name?

9 A. Those entities existed, yes.

10 Q. I'm going to switch gears a little bit here.
11 Did you understand the terms of the settlement
12 agreement AWR and Staff signed in Docket Number
13 UW-010961? And that's the one that established the
14 docket account.

15 A. That's the DOH settlement agreement?

16 Q. No, the settlement agreement before this
17 Commission that established the docket account and
18 the set aside requirement. Did you understand that
19 settlement agreement?

20 A. I believe so.

21 Q. Did you understand the resulting Commission
22 order that adopted that settlement agreement?

23 A. I think so.

24 Q. Please turn to page 46 of your testimony.

25 A. Okay.

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1 Q. I'd like you to go to lines nine through 11.

2 A. Okay.

3 Q. You state there that the violations of the
4 Commission's order occurred after thorough and
5 thoughtful discussion with the company's accountant
6 and attorney; correct?

7 A. That's correct.

8 Q. The penalty assessment order alleges that
9 AWR failed to deposit amounts required for June of
10 2002. Who did you consult regarding the decision not
11 to deposit the set aside funds as required for June
12 of 2002?

13 A. That's the issue of a monthly deposit, not
14 the issue of using money out of that fund. That
15 particular deposit, I don't know whether we discussed
16 it. It was not possible, because the money was not
17 there, and I did discuss that issue with Julie
18 Parker, but whether I discussed it relative to that
19 specific payment, I can't answer.

20 Q. Would your answer be the same for the
21 amounts that AWR failed to deposit for July 2002,
22 August 2002, September 2002, October 2002, November
23 2002?

24 A. Yes, there was several months in there that
25 we could not make the deposits, and I recall

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1 discussing that with Julia Parker and I also recall
2 discussing it with Robin Day, my bookkeeper, and her
3 discussion with Jim Ward about that when he was in
4 our office. And her perception that she related to
5 me about that was that she had discussed that with
6 Jim, he was aware of what was happening, and he
7 didn't indicate that it was any big deal.

8 Q. Okay. And I don't think that the response
9 was responsive to my question.

10 MR. FINNIGAN: And I do think it was
11 responsive. She asked if -- who he had discussed
12 what with concerning those months, and he's responded
13 accordingly.

14 MS. WATSON: I was actually asking -- he
15 responded to one of my prior questions he couldn't
16 remember exactly who he spoke to with regard to a
17 specific payment, and perhaps my question wasn't as
18 clear as it could have been, but I was asking
19 whether, with regard to specific payments, whether
20 that response would be the same.

21 JUDGE CAILLE: I'm going to need the
22 question read back and the answer read back, please.

23 MS. WATSON: I can actually just withdraw
24 and go on. We don't have to spend time on this.

25 JUDGE CAILLE: All right.

0301

1 Q. With regard to the six months that payments
2 were not made into the docket account, do you
3 remember specifically, with regard to those specific
4 payments, who you discussed with about the decision
5 not to make those deposits?

6 A. I know that I discussed them with Julie and
7 I discussed it with Robin, my bookkeeper, and I
8 believe that later, later in that time frame
9 somewhere, I discussed it with Rick Finnigan and he
10 said, no matter what, we had to pay those payments,
11 come heck or high water, and so I just neglected
12 paying other bills and saw to it that they got paid
13 in and we did everything possible to try to make up
14 back payments, which we have made up some. I don't
15 believe it's entirely made up yet.

16 Q. Do you remember if you consulted with Ms.
17 Parker or Mr. Finnigan before each of the failed
18 deposits?

19 A. No, I don't think that we -- that we spoke
20 specifically about each particular deposit as an
21 individual item.

22 Q. The penalty assessment order alleges that
23 AWR used funds from the docket account for purposes
24 not permitted under Commission's order accepting the
25 settlement agreement. Who did you consult regarding

0302

1 the decision to spend the docket account funds for
2 tax liabilities?

3 A. Both Julie Parker and Rick Finnigan.

4 Q. Do you remember what the advice was?

5 A. The advice was that that's what we -- that
6 we shouldn't be doing that, but there was absolutely
7 no kind of an alternative, and therefore, I had no
8 choice. I had to pay the IRS.

9 Q. Turning back to page 46 of your testimony,
10 lines 14 through 17.

11 A. Okay.

12 Q. You testified that the proposed penalty --
13 or I'm sorry, you testify about the proposed penalty
14 being excessively punitive and that the Commission
15 lowered the penalty in the order assessing the
16 penalty; correct?

17 A. Yes.

18 Q. The penalty assessment was originally
19 presented at the October 8th, 2003 open meeting
20 before the Commission; correct?

21 A. I'll accept that.

22 Q. And you were not present at that open
23 meeting; correct?

24 A. I'm quite sure I was not.

25 Q. Mr. Finnigan appeared on your behalf at that

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1 open meeting; correct?

2 A. I think that's correct.

3 Q. And the Commission tabled the issue for two
4 weeks so you could be present; correct?

5 A. I didn't recall that happening, but that --
6 I'm sure you're right.

7 Q. Do you recall being present at the October
8 22, 2003 open meeting before the Commission to
9 address the penalty assessment issue?

10 A. This was an open meeting?

11 Q. Correct.

12 A. No, I'm not saying I wasn't, but no, I do
13 not recollect it.

14 Q. Have you reviewed Exhibit Number 144, which
15 was the videotape?

16 A. I don't think I have 144.

17 Q. It's a videotape of that open meeting.

18 MR. FINNIGAN: I wasn't able -- let me go on
19 the record. I'm sorry, but when we got it, I wasn't
20 able to make copies, and I tried to review it and I
21 don't have a functioning VCR, so I was not able to do
22 that.

23 Q. Do you remember hearing the Staff's
24 presentation with regard to the penalty assessment at
25 the October 22nd, 2003 open meeting?

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1 A. Do I remember hearing the Staff's
2 recommendation?

3 Q. Yes.

4 A. I don't know if that's a meeting that I was
5 at, so I don't know whether -- maybe I should
6 remember it, but my answer is no, I don't remember.

7 MS. WATSON: I would like to move for the
8 admission of a video. What I'm pondering is whether
9 we should have a VCR and a television brought up here
10 so Mr. Fox can refresh his memory. This is actually
11 the last line of questioning that I have.

12 MR. FINNIGAN: Is all you're aimed at is
13 getting the tape in?

14 MS. WATSON: Yes.

15 MR. FINNIGAN: If you could indulge us -- I
16 mean, we got the tape on Friday. If --

17 JUDGE CAILLE: Could you move closer to your
18 microphone?

19 MR. FINNIGAN: I'm sorry.

20 MS. WATSON: I think it was on Thursday.

21 MR. FINNIGAN: Well, I'm sorry. I got the
22 tape on Friday, because I was out all day Thursday.
23 But if -- maybe we can handle this as a late-filed
24 exhibit. I'd just like an opportunity to see the
25 tape, and if it's what it purports to be, I'm not

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1 going to have an objection to it. If it looks like
2 there's some custody control issue to it, then we can
3 revisit it and come back, but I think -- I think that
4 might be the most efficient way to do it. I'm not
5 expecting a problem; I just, out of responsibility,
6 feel I ought to look at it before I agree.

7 JUDGE CAILLE: Yes. Is that acceptable?

8 MS. WATSON: I believe so.

9 JUDGE CAILLE: Okay. So Mr. Finnigan, do
10 you know -- Mr. Damron here just informed me that he
11 was able to put it on a DVD. I am not sure if --
12 could you explain how you did it?

13 MR. DAMRON: It's on -- I burned it onto a
14 DVD+R disk, so you have to have a DVD that will read
15 that format. A lot of your new DVDs do that. Some
16 of the older ones will only read just strictly
17 commercial DVDs.

18 MR. FINNIGAN: Do you think that my DVD
19 reader in my computer would read that?

20 MR. DAMRON: Quite likely. I don't know how
21 old your computer is.

22 MR. FINNIGAN: Well, it's three or four
23 years old. But I have a -- well, maybe I could --

24 MR. DAMRON: Not only -- with a computer;
25 it's not only dependent on the drive, but also the

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1 software you're using.

2 MS. WATSON: I know that we also have a
3 television and VCR unit in the library here at the
4 Commission that perhaps Mr. Fox and Mr. Finnigan can
5 use in order to view the video.

6 MR. FINNIGAN: We can figure out a way to
7 get it done. If we can have a week?

8 MS. WATSON: We could take an early lunch at
9 this point.

10 JUDGE CAILLE: Oh, and go view the video?

11 MR. FINNIGAN: Go view the video?

12 JUDGE CAILLE: How long is the video?

13 MS. WATSON: Three minutes, tops.

14 MR. FINNIGAN: Oh, okay.

15 MR. DAMRON: Seven.

16 MS. WATSON: Is it seven?

17 MR. DAMRON: I believe it's seven, yes.

18 MR. FINNIGAN: Okay. I was assuming it was
19 a video of the whole open meeting.

20 JUDGE CAILLE: Yeah.

21 MS. WATSON: No, it's actually just the
22 penalty assessment item.

23 JUDGE CAILLE: Why don't we do that and that
24 will take care of it.

25 MR. FINNIGAN: That's great.

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1 JUDGE CAILLE: Okay. Let's take an early
2 lunch. Since we're -- how about coming back at 1:00?
3 Well --

4 MR. FINNIGAN: You're going to rest, right,
5 after that?

6 MS. WATSON: I just have a few questions
7 left and then he's all yours.

8 MR. FINNIGAN: Okay. So if we come back at
9 1:00, sounds like we'll be out of here by 2:00.

10 JUDGE CAILLE: Okay. That sounds fine. All
11 right. We'll recess until 1:00.

12 (Lunch recess taken.)

13 JUDGE CAILLE: All right. Let's go back on
14 the record. We are back from our lunch recess, and
15 continuing with the cross-examination of Mr. Fox.

16 MR. FINNIGAN: Just, before we do that, to
17 finish up the item on the tape, the videotape.

18 JUDGE CAILLE: Yes.

19 MR. FINNIGAN: After viewing the tape, we
20 would have no objection to its admission for the
21 limited purpose of showing that Staff had changed its
22 recommendation and presented that changed
23 recommendation to the Commission, and it was not the
24 Commission changing -- finding that the lower amount
25 should be assessed.

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1 MS. WATSON: Staff is fine with that.

2 JUDGE CAILLE: All right. We haven't moved
3 for that yet, though. Are we moving for the --

4 MS. WATSON: We haven't moved for the
5 admission of any of the exhibits.

6 JUDGE CAILLE: Okay.

7 MS. WATSON: It might be easier to save all
8 that for the end.

9 JUDGE CAILLE: Thank you for filling me in
10 on what occurred during the recess. All right.

11 Q. Mr. Fox, you just heard Mr. Finnigan make
12 the representation with regard to the video and what
13 was on the video. Do you agree with his statements?

14 A. Yes.

15 Q. I asked you a question before the break
16 regarding who you consulted regarding the -- sorry, I
17 can't speak now. I'd asked you a question about who
18 you consulted regarding the decision to spend the
19 funds for the docket account for tax liability
20 purposes. Did you consult with Mr. Finnigan and Ms.
21 Parker before you paid the taxes or after?

22 A. Before.

23 Q. We spoke earlier about hiring Moss Adams --

24 A. Yes.

25 Q. -- as an accounting firm. Did you hire Moss

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1 Adams before or after Ms. Ingram left AWR?

2 A. I'm quite sure it was before.

3 Q. We spoke earlier about Mr. Myers, who was
4 the general manager for AWR?

5 A. Yes.

6 Q. He had no experience managing a water
7 company, either regulated or unregulated; correct?

8 A. Not a water company per se, no.

9 Q. You testified earlier that the operation of
10 Birchfield was transferred to the Lewis County Water
11 and Sewer District Number Five at the beginning of
12 the year. I wanted to clarify, was that year 2003?

13 A. No, I think it was 2004. Let's see. That
14 would be four months ago, roughly.

15 Q. So title was transferred in September of
16 2003, when the sales agreement was signed?

17 A. Hmm. Oh, let me think. At one point, to
18 keep things straight, I took all of the activities
19 related to the managed systems out of American Water
20 and did put those in United Utilities. I guess that
21 must -- and I know that we wanted to make it as of
22 the first of the year so everything would be clean in
23 the book work. So I guess it must have been the
24 first of '03. Time flies. It doesn't seem that
25 long, but it would have had to have been. I'd have

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1 to look it up or ask Julie Parker to be positive, but
2 it seems like that's what it has to have been.

3 Q. Okay. You confused me a little with the
4 mention of United Utilities. Is United Utilities
5 operating Birchfield?

6 A. No. Well, United Utilities is basically
7 doing most all of the work. American Water still
8 provides SMA services if and as they might be
9 required, which --

10 Q. Let me have you focus on the sale of
11 Birchfield, and if United Utilities is involved in
12 that, explain that in your answer, too. My
13 understanding is that Birchfield, the operation of
14 Birchfield was transferred before title was
15 transferred; is that correct?

16 A. I believe that's correct.

17 Q. Okay. Who is operating Birchfield?

18 A. Well, up until the time it was transferred
19 -- no, that's not quite right. As of the first of
20 the year, and it had to have been first of '03, I
21 wanted to keep the records, what should I say,
22 cleaned up, so that it wasn't a confusion of partly
23 in one year and partly in the other. We started
24 United Utilities, taking care of all of the things
25 relative to Birchfield and the other managed systems.

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1 Q. And I have just two more questions for you
2 that I hope will clear up the record, because I think
3 we were a little confused earlier, or I was. AWR
4 sold View Royal in January of 2002; correct?

5 A. Yes.

6 MR. FINNIGAN: I think the record reflects
7 that the closing was in February.

8 MS. WATSON: '02, right.

9 MR. FINNIGAN: Yeah.

10 Q. But the sales agreement was executed in
11 January of 2002?

12 A. I believe that's correct, and it was closed
13 in I think late February.

14 Q. Okay. Of 2002?

15 A. Yes.

16 MS. WATSON: Okay. Those are all of my
17 cross questions at this time. I'd like to move for
18 the admission of Exhibits 139, 144 and 113.

19 MR. FINNIGAN: Could I have those numbers
20 again, please?

21 MS. WATSON: Sure. It's 139, 144 and 113.

22 MR. FINNIGAN: 113.

23 MS. WATSON: 113 was the note.

24 MR. FINNIGAN: Ah, yes. With the exception
25 of the limited purpose for 144, I have no objection.

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1 MS. WATSON: And the limited purpose was
2 what Staff had intended, as well.

3 JUDGE CAILLE: All right. Then Exhibits
4 139, 144 and 113 are admitted into evidence.

5 MS. WATSON: For clarity's sake, the Staff
6 did not use 135, 136 or 137, and the remaining cross
7 exhibits have already been entered.

8 JUDGE CAILLE: Thank you. Redirect.

9 MR. FINNIGAN: Thank you.

10

11 R E D I R E C T E X A M I N A T I O N

12 BY MR. FINNIGAN:

13 Q. A few brief items. Mr. Fox, before lunch,
14 you were asked questions about a \$400,000 note, which
15 is Exhibit 113.

16 A. Yes.

17 Q. If I tell you that the balance on the note,
18 as of June of 2003, was 195,000, does that help you
19 refresh your recollection?

20 A. Yes, that -- I didn't remember that --
21 originally, that the note was 400. That's what
22 confused me with the earlier questions.

23 Q. And that is an obligation of American Water
24 to Venture Bank?

25 A. It is, or was. That has now been

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1 renegotiated, but that's true at that time.

2 JUDGE CAILLE: I'm sorry, what was the date
3 on that?

4 MR. FINNIGAN: June -- the date of the
5 balance was June 2003.

6 JUDGE CAILLE: Thank you.

7 MR. FINNIGAN: It's also reflected in Ms.
8 Parker's cost of -- weighted cost of debt analysis.

9 JUDGE CAILLE: Thank you.

10 Q. You were asked questions concerning the
11 interest rates that you charged on your loans to
12 American Water at the outset. Do you remember those
13 questions?

14 A. Yes.

15 Q. Why did you charge the interest rate that
16 you did?

17 A. Well, I spent several years on a loan
18 committee, bank board loan committee, and I learned a
19 lot about rates and how rates are set, and they're
20 set based on the risk and various factors. And this
21 was a loan that was -- that couldn't be made
22 elsewhere, so I tried to strike the balance between
23 being fair to me and being as reasonable as I could
24 for American Water. So I set the rate considerably
25 lower than it should have been, but still a little

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1 above what I was paying the bank.

2 Q. At that time, did you try and find
3 conventional sources of lending for American Water
4 Resources?

5 A. I did, both -- I went to a couple of other
6 banks, and I also -- I tried to get additional
7 funding from a couple of private sources.

8 Q. Was anything available from those sources?

9 A. No, no, it was considered to be too great a
10 -- we weren't making money. People don't want to
11 loan to people that aren't making money.

12 Q. You were asked a series of questions about
13 the wells related to the Birchfield Water System. Do
14 you remember those questions?

15 A. Yes.

16 Q. Was the cost of drilling those wells ever
17 paid for by American Water Resources, either directly
18 or through a reimbursement?

19 A. No, American Water wasn't asked to pay for
20 them and didn't pay for them.

21 Q. You were asked some questions about the
22 docket account. Do you remember that discussion?

23 A. Yes.

24 Q. Did you have any general discussion with
25 your staff about American Water's inability to make

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1 those payments?

2 A. Yes, with Robin Day.

3 Q. Did any member of your staff have a
4 discussion with Commission Staff about those
5 payments?

6 A. Yes, when I discussed it with Robin, she
7 said that, a few days before that, that Jim Ward had
8 been in our office and she said that she had
9 discussed it and pointed that out to him, and he
10 indicated -- I don't know that he directly said it,
11 it was no big deal, but that was the impression that
12 she had was his feeling, that it was no big deal.

13 Q. Did you -- do you remember approximately
14 when that conversation occurred?

15 A. Well, it was -- I don't know the date, but
16 it was about at the time that we were several
17 payments behind, because it was soon after that that
18 I discussed it further with Julie and with you, and
19 at the time when you said no matter what, I had to
20 get those payments made.

21 Q. Would that have been the fall -- in the --
22 that's a bad question. Would it have been in the
23 summer or in the fall, do you remember?

24 A. The best I can say is I think it would have
25 been early fall.

0316

1 Q. You were asked some questions about the View
2 Royal sale and negotiations or conversations. Do you
3 remember that line of questioning?

4 A. Yes.

5 Q. In your mind, was it a sure thing that the
6 deal with Valley Water District would actually close?

7 A. Not till the last second.

8 Q. And why was that?

9 A. Well, because Valley Water was waffling
10 around about what they did and didn't want to do, and
11 that had driven me to the point of also discussing
12 the possibility with -- further with Bonney Lake, and
13 until the last minute, I wasn't sure they were going
14 to do it.

15 Q. And they meaning -- the they you refer to is
16 Valley Water?

17 A. Valley Water.

18 Q. You were asked some questions about the Moss
19 Adams accounting firm. Do you remember those
20 questions?

21 A. Yes.

22 Q. Did Moss Adams make any representation to
23 you concerning their background in regulatory
24 utilities?

25 A. Yes.

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1 Q. And what representations did they make?

2 A. Well, the person that I had talked to was
3 Mary Jo White, and the accountant that did most of my
4 work was a gal by the name of Diane Bredeson
5 (phonetic). And Mary Jo said that both of them had
6 some pretty fair knowledge about regulatory things,
7 but they had an expert within their firm that was,
8 kind of the way she described it, you know, the
9 expert in regulatory things, and if and as that
10 person was needed, they would be working with them.

11 Q. What was your experience about the actual
12 knowledge of the two persons assigned to your account
13 about regulated -- regulation?

14 A. I don't think they knew much.

15 Q. And did you find that out before you entered
16 into the relationship with Moss Adams or sometime
17 after you began seeing their work product?

18 A. Oh, I -- well, well after I began, when I
19 began seeing that they weren't able to do the things
20 that the UTC expected.

21 Q. And at the start of the day, there was some
22 discussion back and forth between you and Ms. Watson
23 about the word approved. Do I understand correctly
24 that when you use that word, that means you consulted
25 with your advisers?

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1 A. Yes, the way I -- the way I view it is I
2 consult with people, then I make my final decision.

3 Q. But in all cases, you're the one who makes
4 the final decision?

5 A. Yes.

6 Q. I should never say that was my final
7 question. I have one more. During -- there was a
8 discussion about the role of Mr. Remund in the
9 Birchfield transaction. Do you remember those
10 questions?

11 A. Yes.

12 Q. Was it Mr. Remund's role to see to it that
13 the needs of Lewis County Water and Sewer District
14 Number Five were met?

15 A. Yes, I had had him do other work for me in
16 the past and I'm aware that he does work for other
17 utilities, like Lewis County P.U.D. and other
18 utilities, so I thought that he knew about those
19 kinds of things, discussed that with him, and asked
20 him if he would represent Water and Sewer District
21 Number Five, because I knew it had a separate set of
22 rules that needed to be paid attention to.

23 Q. In fact, didn't he propose changes in the
24 documentation to meet what he felt were the interests
25 of the Water District?

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1 A. That's correct, he did.

2 MR. FINNIGAN: Thank you, Your Honor. That
3 concludes my redirect.

4 JUDGE CAILLE: Any re-cross?

5 MS. WATSON: I do have just a couple of
6 questions. I'm looking for a cite. If I can have
7 just a moment?

8 JUDGE CAILLE: All right.

9 MR. FINNIGAN: While she's doing that, I do
10 want to correct a misstatement I made on the record,
11 so the record is correct. I had indicated that page
12 20 of Exhibit 26 contained a listing of the SMA
13 activity, but I've looked at it again and it's only a
14 partial listing. So I do want to make that
15 correction so that the record is clear.

16 JUDGE CAILLE: That is of which exhibit?

17 MR. FINNIGAN: Twenty-six. It's a listing
18 of other entities. It actually doesn't have some of
19 the full list of the SMA activity, so I apologize for
20 that.

21

22 R E C R O S S - E X A M I N A T I O N

23 BY MS. WATSON:

24 Q. Okay. Actually, I think I just have one
25 question for you, Mr. Fox. You spoke about a meeting

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1 between Robin Day and Jim Ward; correct?

2 A. Yes.

3 Q. Were you present?

4 A. I was not.

5 MS. WATSON: Okay. Thank you. I have
6 nothing further.

7 JUDGE CAILLE: Anything further?

8 MR. FINNIGAN: No, I don't.

9 JUDGE CAILLE: All right. Then thank you,
10 Mr. Fox. You're excused. Okay. I will get an
11 exhibit list to you that is cleaned up and all the
12 additions made. Let's see. We have some bench
13 requests that will be coming in and a couple of
14 record requests. I just want to remind the company
15 about the record requests. And then the bench
16 requests were for -- Request Two -- no, Bench
17 Requests Nine and Ten should be coming from both the
18 Company and Staff. And Bench Request -- and that
19 would be Exhibit 204. Bench Request 11 is the
20 calculation of tax that I requested of the company, I
21 believe. That's Exhibit 203.

22 MR. FOX: I can leave; right?

23 JUDGE CAILLE: Yes, you may. Thank you very
24 much.

25 MR. FOX: Thank you.

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1 MR. FINNIGAN: That's Staff.

2 MS. WATSON: Actually, Bench Request Number
3 11 was made to Staff, and we had a question about
4 that one.

5 JUDGE CAILLE: Oh, yes.

6 MS. WATSON: The way that we understand the
7 request, it was the calculation of the tax rate used
8 to get the tax amount during the test period. Is
9 that accurate?

10 JUDGE CAILLE: Would you ask that question
11 again?

12 MS. WATSON: Sure. Staff's understanding of
13 the bench request was that you wanted the calculation
14 of the tax rate used to get the tax amount during the
15 test period; is that correct?

16 MR. DAMRON: Well, either that or I think
17 there's a caveat there that we know whatever the
18 company considers to be the relevant -- or the Staff
19 considers to be the relevant tax rate and just back
20 that up with some kind of documentation. Are we off
21 the record?

22 JUDGE CAILLE: No, we're on the record.

23 MS. WATSON: So you're looking for the tax
24 rate that Staff used?

25 MR. DAMRON: Yeah, there's two ways to do

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1 this, and your Staff can check this out
2 mathematically. Where you have variable tax rates
3 and variable tax schedule, I mean, every time you
4 make an adjustment, the tax rate may go up or down,
5 but what I've found is if you make your calculations
6 out to pro forma results after your recommended
7 revenue adjustment up or down, and you can have your
8 taxable income at that level and then just take that
9 rate, whatever it is, and apply it equally to each
10 adjustment, and mathematically you will get to the
11 same result. And by all means, please test that
12 theory, but that's what I have found.

13 And it's much simpler than this kind of a
14 thing that you get, and it -- I think custom has
15 allowed that kind of thing.

16 JUDGE CAILLE: Does that -- is that
17 satisfactory? All right. Okay. And the only other
18 housekeeping matter I'm thinking of right now is the
19 briefing schedule. Is that correct? Why don't we go
20 off the record and discuss that.

21 (Discussion off the record.)

22 JUDGE CAILLE: Ms. Watson, would you please
23 summarize your issue about the Bench Requests One
24 through Eight that you mentioned while we were off
25 the record?

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1 MS. WATSON: Sure. There was a discussion
2 when Mr. Ward was on the stand regarding some of the
3 numbers that we had submitted in response to the
4 Bench Requests Number One through Eight, and Staff
5 has had an opportunity to go through and look at
6 those numbers again and we have found a few mistakes,
7 and we had requested the opportunity to file a
8 revised response to the bench requests.

9 JUDGE CAILLE: All right. And I have
10 granted that request.

11 We have also agreed to the briefing
12 schedule, and initial briefs will be due on June
13 18th, these are simultaneous briefs, and simultaneous
14 replies, responses will be due on July 2nd. Is
15 everything clear about bench requests, record
16 requests? I don't know that we've given a date for
17 the -- can the bench requests -- Staff's calculation
18 of the tax be done at the same time -- there's a due
19 date of tomorrow at noon. Will that work?

20 MS. WATSON: Yes.

21 JUDGE CAILLE: If you need more time -- why
22 don't we strive for that.

23 MS. WATSON: When would you like the Revised
24 One through Eight? I'm not sure that the whole thing
25 will be revised, but --

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1 JUDGE CAILLE: Yes. As soon as you can. I
2 mean, I don't know if you can do that by noon
3 tomorrow. No. Okay.

4 MS. WATSON: How about we will strive to get
5 it by the end of the day tomorrow. If not, end of
6 the day Thursday.

7 JUDGE CAILLE: That would be fine. Why
8 don't we just make it end of the day Thursday.

9 MS. WATSON: Okay.

10 JUDGE CAILLE: And the record request from
11 Staff to the Company?

12 MR. FINNIGAN: I don't know. I don't even
13 remember the first one, but it's in my -- I did write
14 it down, so I do have it. But I don't remember them
15 as being overly burdensome, so --

16 JUDGE CAILLE: The first one was accounting
17 documents regarding the transfer of Birchfield to
18 AWR.

19 MR. FINNIGAN: Oh.

20 JUDGE CAILLE: The note payable in common
21 stock. Did she say she needed to search for that?

22 MR. FINNIGAN: She did.

23 JUDGE CAILLE: And the other one was the
24 records request. Loan payment --

25 MR. FINNIGAN: That one should be --

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1 JUDGE CAILLE: -- notices.

2 MR. FINNIGAN: That should be relatively
3 easy to respond to.

4 JUDGE CAILLE: Well, I'll just -- I'll let
5 the parties work that part out.

6 MR. FINNIGAN: Since we have some time.

7 JUDGE CAILLE: Yes, you do. All right.
8 Anything further? Thank you very much. Okay. The
9 briefing, initial briefs will be due on July 18th
10 (sic) and response briefs will be due on July 2nd.
11 Thank you very much. Anything further?

12 MR. FINNIGAN: No.

13 JUDGE CAILLE: Okay. Thank you.

14 (Proceedings adjourned at 1:32 p.m.)

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